

Trial by Battle in France and England

by

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Abstract

Trial by battle was a medieval European form of legal proof in which difficult lawsuits were decided by a single combat between two duellists before a judge. This dissertation surveys the history of trial by battle in the French-speaking regions of the European continent and England, concentrating on the period between roughly 1050 and 1350 when it was most practiced.

Chapter One examines the origins of the procedure and the earliest references to it in the legal codes of the early Middle Ages. The second chapter discusses the courts in which it could be used and the gradual process by which higher courts reserved the privilege of holding judicial duels. Chapter Three examines the nature of the suits in which trial by battle could be used, while Chapter Four looks at the litigants who participated in it, finding that not only knights, but also poor men, could fight judicial duels, while women, clergy, Jews, the young, the elderly, the disabled and certain kinds of kin enjoyed varying forms and levels of

exemption from them. The fifth chapter traces the steps involved in a lawsuit leading to proof by battle, while the sixth one describes the procedures on the duelling field and the consequences of winning and losing a judicial duel. Chapter Seven traces the history of opposition to trial by battle and concludes with its gradual decline and disappearance.

The honour and shame of medieval litigants, and the reputations which both upheld these conditions and resulted from them, form an ongoing theme in this discussion. Trials by battle, both actual and threatened, were above all events that challenged and re-established their participants' status and reputation in their communities.

For my mother

Acknowledgements

Dissertations, like opponents in judicial duels, must ultimately be tackled alone; however, without the advice of many helpful people, I would not have wrestled this one into submission.

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Introduction

Mathieu d'Escouchy and Olivier de La Marche were not afraid to see blood. The former was a fifteenth-century Picard chronicler who had personally fought at the battle of Montlhéry in 1465. The latter was a courtier of the duke of Burgundy; in his memoirs he recounted many of the major battles and tournaments he had seen in his day. Nevertheless, amidst their tales of shattered lances, flowing wounds, and armoured men colliding with a crunch, one incident left both chroniclers taken aback. It had occurred in 1455. La Marche, a young man at the time, had witnessed it in person, and Escouchy was clearly familiar with the details of the event.¹

In the town of Valenciennes, in the duchy of Hainault, two men had fought a judicial duel in the centre of the marketplace. Neither of them was a knight. Jacotin Plouvier was a commoner from the town, while Mahiot Coquel was a tailor from Tournai. In the street one day, Plouvier had accused Coquel of murdering his kinsman in an ambush, a particularly

¹ *Chronique de Mathieu d'Escouchy*, ed. G. du Fresne de Beaucourt, vol. 2 (Paris: Jules Renouard & Co., 1863), c. CXXXIII, pp. 297-305. *Collection complète des mémoires relatifs à l'histoire de France*, vol. 10: *Les mémoires de messire Olivier de La Marche*, vol. 2, ed. M. Petitot (Paris: Foucault, 1825), c. XXXII, pp. 213-8. The two accounts are so similar that Escouchy may have based his version in part on La Marche. See also the account of Georges Chastellain in his *Chronique*, in *Œuvres de Georges Chastellain*, ed. Kervyn de Lettenhove, vol. 3 (Brussels: F. Heussner, 1864), pp. 41-9.

heinous form of homicide. He warned the tailor to watch himself, for vengeance would surely follow. Coquel, for his part, sought protection from the provost and justices of the town. He did not deny the killing, but insisted that it had been committed in self-defence. This argument posed a quandary for the court, for the town had by long tradition possessed the privilege of providing sanctuary to those who had killed someone, as long as their cases had since been ruled to be self-defence or at least settled with the victim's immediate kin.² The provost warned Plouvier that, according to the customs of the city, he must either withdraw so serious an accusation or prove it by his body: that is, he must challenge Coquel to a duel. Plouvier coldly chose the second option and Coquel accepted the challenge.

The two men were placed in separate prisons, where they waited ten months for their day in the lists because the Duke of Burgundy, in whose principality the town lay, wished to witness their battle in person. On May 20, 1455, they faced one another at last. Each man was armed not with a sword, but with a baton of medlar wood and a shield carried upside-down to indicate that he was not noble. They were dressed in identical suits of tight-fitting leather, with their feet left bare and their hair clipped short. Over their clothes they applied a layer of grease to foil attempts at grappling, but they dipped their hands in basins of ashes to ensure that they could still grip their weapons.

They fought before a curious multitude, in lists specially constructed for the occasion. Although Mahiot Coquel was the smaller and weaker of the two men, he gained an early advantage by throwing sand in Plouvier's face. This tactic allowed him time to land a blow that caused Plouvier to bleed from the forehead. His opponent was not so easily defeated,

² The two accounts differ on this point. La Marche (pp. 213-4) says only that the town provided sanctuary to those who had killed in self-defence, while Escouchy (p. 298) thought that the privilege was extended to all those who had been accused of murder but had reached a private settlement with the kin of the deceased, a practice which was still possible under some circumstances.

however. Jacotin Plouvier seized him about his body and threw him to the ground. Kneeling on his chest, he gouged out Coquel's eyes. Then, before the horrified audience, he hurled his opponent from the lists, thereby winning the duel. Mahiot Coquel was dragged away and hanged.

"In truth, it is an abominable thing to record," wrote Escouchy, "and it seemed to many present that it was contrary to our faith."³ La Marche concurred: "The whole combat seemed too base a matter for the court of Burgundy."⁴ Nevertheless, trial by battle had been practiced in the region for centuries. The behaviour of Plouvier and Coquel had, in fact, been customary for more than nine hundred years. Unbeknownst to the chroniclers, this judicial duel would be one of the last trials ever concluded by combat.

The story of trial by battle ranges widely in both time and space. First recorded in the Burgundian laws of 502, the procedure eventually reached regions of Europe as distant and diverse as Iceland, Iberia and Russia. Peaking in popularity around 1200 in Western Europe, it subsequently suffered a fitful decline, but was not abolished until centuries later. This dissertation traces the rise and fall of this legal practice: its origins, the courts and the people who employed it, the disputes and the strategies for dispute resolution in which it was utilized, the customs which governed it, the critics who censured it, and finally its demise.

The themes are admittedly broad ones, even for so obscure a topic. To contain the subject matter somewhat, the study which follows will concentrate on a single branch of this history: the tradition of judicial duelling which developed in the western half of the Frankish Empire and subsequently engendered the law of trial by battle in both France and England.

³ "...et en verité, c'est chose abominable de le recorder, et sambloit à plusieurs y estans, que c'estoit [faire contre] nostre Foy;" Escouchy, pp. 304-5.

⁴ "Tout ce combat parut un chose trop ignoble à la cour de Bourgogne." La Marche, p. 501.

This limitation allows some geographical boundaries to be placed upon the investigation. It covers the whole of the French-speaking Continent, not just the Kingdom of France proper. This area includes the western regions of France, which were at times possessions of the kings of England, and also Burgundy, Brittany and Flanders, which were at times independent principalities. It also includes the Occitan-speaking regions of southern France, although, as the dissertation will show, the practice was more common in the southwest than in the southeast. However, the geographical parameters exclude Catalonia and the Iberian peninsula beyond it, although these regions likely acquired their own judicial duelling customs from France.⁵ While the French-speaking Continent contained many different legal jurisdictions, in matters of judicial duelling the laws of this region recognizably belonged to a single family of legal customs, as will be demonstrated.

England, too, was an heir of this tradition. As Chapter One explains, the judicial duel arrived on its shores with the Normans in 1066. Scotland subsequently inherited the practice as well, but for the sake of focus it is not discussed in this dissertation, except where cross-border disputes with Englishmen are concerned.⁶ Wales and Ireland are likewise excluded; the former never had a tradition of trial by battle, while legal procedures in the latter developed along an independent path.⁷

While the geographical scope of the investigation has been limited, the temporal scope suffers fewer constraints. This dissertation attempts to track the rise and disappearance of trial by battle from its ancient inspirations to the statute of 1819 which formally abolished it in

⁵ For the origins and history of trial by battle in Spain, see Gonzalo Oliva Manso, *Pugna Duorum: perfiles jurídicos, su manifestación en la sociedad y la política medieval de Castilla y León* (Madrid: Universidad Nacional de Educación a Distancia, 2000).

⁶ The definitive study of trial by battle in Scotland remains George Neilson's *Trial by Combat* (Glasgow: William Hodge & Co., 1890).

⁷ See page 38, n. 36, *infra*.

England. In practice, however, the period under discussion will be much narrower. The bulk of historical records regarding the procedure date roughly from between the years 1050 and 1350, peaking, as has been said, around 1200 and showing a distinct decline in the thirteenth century. It is on this period that the investigation concentrates.

A Brief Historiography

This dissertation endeavours to remedy the shortage of recent book-length works surveying the practice of trial by battle in England and France. The list of such books is quite short. Henry Charles Lea pioneered the field in 1866 when he devoted Book II of his opus *Superstition and Force* to judicial duels, exploring them from a pan-European perspective.⁸ As the title of his book suggests, he viewed his subject matter from a nineteenth-century standpoint, as an example of the kind of violent irrationality beyond which his own society had happily progressed. George Neilson followed this work in 1890 with *Trial by Combat*, which collected many stories and anecdotes pertaining to judicial duels in England and Scotland.⁹ However, his sources included few actual legal documents, as the Curia Regis Rolls had yet to be edited at the time, and the Selden Society had barely published its first volume.

For another survey of the subject, we must jump ahead some three generations to the doctoral dissertation, *Trial by Battle*, published by M.J. Russell in 1977.¹⁰ Russell, a solicitor by profession, spent some two decades meticulously collecting and organizing all the references to English trials by battle that he could find. This work would later be published as

⁸ Henry Charles Lea, *Superstition and Force* (Philadelphia: Henry C. Lea, 1866). Republished as *The Duel and the Oath*, ed. Edward Peters (Philadelphia: University of Pennsylvania Press, 1974).

⁹ Neilson, *Trial by Combat*, *op. cit.*

¹⁰ M.J. Russell, *Trial by Battle*, doctoral dissertation, University of London, 1977.

three articles in the *Journal of Legal History*.¹¹ In 1978, Monique Chabas published a corresponding thesis on the history of trial by battle in France, including in it many unpublished fourteenth-century records from the Parlement of Paris.¹² The research for these two works was completed just as historians began to take an interest in judicial ordeals once again and several scholars of the 1970s and early 80s published new articles rethinking the mechanisms and the motivations on which ordeals were founded.¹³ Since then, there have been numerous articles and two studies of individual trials, but no new surveys of the subject covering England and France, although Robert Bartlett did devote a chapter of his book *Trial by Fire and Water* to judicial duels, noting that their history and geography are significantly different from those of the unilateral ordeals, which are the main concern of his study.¹⁴

The time has come to explore trial by battle once again in its depth and breadth. This forgotten practice has much to show us about the ancient practices and assumptions out of which many of the Western world's current legal systems developed. From a perspective centuries in the future, it is easy to dismiss early French and English litigants and jurists as exotic, irrational and superstitious characters. However, a closer examination of the traces they have left behind shows them instead to be thoughtful and sceptical, if occasionally

¹¹ M.J. Russell, "Trial by Battle and the Writ of Right," *Journal of Legal History* 1:2 (1980), pp. 111-134. *Idem*, "Trial by Battle and the Appeals of Felony," *Journal of Legal History* 1:2 (1980), pp. 135-164. *Idem*, "Trial by Battle in the Court of Chivalry," *Journal of Legal History* 29:3 (2008), pp. 335-357.

¹² Monique Chabas, *Le Duel judiciaire en France (XIII^e - XVI^e siècles)* (Saint-Sulpice de Favières: Éditions Jean-Favard, 1978).

¹³ Rebecca Colman, "Reason and Unreason in Early Medieval Law," *Journal of Interdisciplinary History* 4 (1974), pp. 571-91; Peter Brown, "Society and the Supernatural: A Medieval Change," *Daedalus* 104 (1975) pp. 133-51; Colin Morris, "*Judicium Dei*: The Social and Political Significance of the Ordeal in the Eleventh Century," *Church, Society and Politics XIII-XIV*, ed. Derek Baker (Oxford: Basil Blackwell, 1975) pp. 95-111; Charles M. Radding, "Superstition to Science: Nature, Fortune and the Passing of the Medieval Ordeal," *American Historical Review* 84:4 (1979), pp. 945-69; Paul Hyams, "Trial by Ordeal: The Key to Proof in the Early Common Law," in *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne*, ed. Morris S. Arnold *et al.* (Chapel Hill: University of North Carolina Press, 1981), pp. 107-128. See Chapter Five of this dissertation for further discussion of these articles and others.

¹⁴ Eric Jager, *The Last Duel* (New York: Broadway Books, 2004); Claude Beguerrand, *Le duel d'Othon de Grandson (1397)* (Lausanne: Université de Lausanne, 2008); Robert Barlett, *Trial by Fire and Water* (Oxford: Clarendon, 1986), pp. 103-126.

opportunistic, people attempting to find justice using the resources available to them in their own era.

Defining Trial by Battle

The concept of trial by battle itself also requires clarification, for it is similar to a number of other closely related practices. To differentiate it from its nearer cousins, I propose a threefold definition, as follows. First, a trial by battle may be distinguished from other medieval European rituals of combat in that it is a means of resolving a dispute. At the heart of every judicial duel was an accusation and a denial of that accusation. As the thirteenth-century canonist Raymond of Peñafort put it, “A duel is a single combat between some people for the proof of truth.”¹⁵ Combat in the context of a tournament or some of the late medieval deeds of arms, where the purpose of the occasion was merely to demonstrate skill at arms, win prizes, or to show one’s love for a fair lady, clearly falls outside this definition. The criterion may be further refined by adding that the dispute in question must concern a legal wrong, whether it is a crime or some form of harm which was normally addressed through ‘civil’ litigation. We may thus exclude the disputes at the heart of many other deeds of arms, like the formal combat in 1385 fought by the young Jean le Maingre, a future marshal of France, with a Gascon who mocked him for being small and ill-proportioned.¹⁶

Nevertheless, it is true that combats over legal wrongs are still a broad category, for many a fight in history has been provoked by illegal behaviour on the part of one of the parties. The second defining characteristic, one that distinguishes a trial by battle from a mere brawl, is

¹⁵ “*Duellum est singularis pugna inter aliquos ad probationem veritatis...*” Raymond of Peñafort, *Summa*, II, §1. In Petrus Browe, ed. *De ordaliis*, vol. 2 (Rome: Universitas Gregoriana, 1933), p. 81.

¹⁶ Steven Muhlberger, *Deeds of Arms: Formal Combats in the Late Fourteenth Century* (Highland Village, TX: Chivalry Bookshelf, 2005), pp. 166-7.

that it must be arbitrated by a temporal third party possessing some authority to make the results legally binding. Thus a street fight, although it may be occasioned by a legal dispute, is not a trial by battle. Neither, it should be noted, is the extra-judicial duel of the sixteenth century and later, although such duels were sometimes the result of bitter litigation. The ancient military custom of inviting champions to fight in single combat before two assembled armies also falls outside this definition, unless there was some third party to act as a judge and attempt to enforce the resulting penalties.¹⁷ The exact nature of the arbitrator, however, may vary considerably. As we shall see, early medieval trials by battle could be adjudicated by a wide variety of people and courts of law were sometimes rather ad hoc.

The third characteristic of a trial by battle is that it involves a single combat, actual or proposed. Some historians, notably Kurt-Georg Cram, have observed many similarities in the way that wars, feuds and judicial duels were used (sometimes interchangeably) as means of dispute resolution, but this dissertation will focus specifically on legal disputes settled by a duel between two individuals.¹⁸ While one of the two combatants may be the representative of a corporate body such as a monastery, there can be only two people involved at once in the physical fighting. Nevertheless, the fight itself need not be consummated in order for a legal case to be considered a trial by battle. As Stephen White has pointed out and this dissertation demonstrates, the majority of trials by battle were settled by negotiation before the duel actually occurred.¹⁹ This was, in fact, the goal of the procedure.

¹⁷ For more information on this subject, see Matthew Strickland, "Provoking or Avoiding Battle? Challenge, Duel and Single Combat in Warfare of the High Middle Ages," in *Armies, Chivalry and Warfare in Medieval Britain and France: Proceedings of the 1995 Harlaxton Symposium*, ed. Matthew Strickland, Harlaxton Medieval Studies 7 (Stamford: Watkins, 1998), pp. 317-42.

¹⁸ Kurt-Georg Cram, *Iudicium belli: zum Rechtscharakter des Krieges im deutschen Mittelalter* (Munster: Bohlau Verlag, 1955).

¹⁹ Stephen D. White, "Proposing the Ordeal and Avoiding It," in *Cultures of Power: Lordship, Status and Progress in the Later Middle Ages*, ed. Thomas Bisson (Philadelphia: University of Pennsylvania Press, 1995), pp. 89-123,

Similarly, any form of judicial ordeal that does not involve two contestants and an actual or proposed duel is not a trial by battle. Historians sometimes refer to judicial duels as bilateral ordeals, to distinguish them from the unilateral ordeals. These latter included the ordeal of fire, where the proband was required to carry a piece of hot iron for a set distance without being seriously burned; the ordeal of hot water, where he was required to retrieve an object from a kettle of hot water; or the ordeal of cold water, where he was immersed in cold water to see if he floated, which would indicate his guilt.²⁰ In each of these cases, only one party to a suit was required to take the test, whereas a duel required participation on both sides. In the ordeal of the cross, which was practiced briefly in the Carolingian Empire, both contestants were required to stand with their arms outstretched until one of them let his limbs drop from exhaustion.²¹ This contest was a bilateral ordeal but involved no physical contact between the contestants and thus cannot be classified as a judicial duel.

Some historians have attached great importance to the concept of *iudicium dei*, the judgement of God, as a defining characteristic of judicial duels.²² While the belief that God would protect the innocent party and punish the guilty one was indeed very widespread in England and French-speaking lands during the period that trial by battle was practiced, I do not believe that it is a defining characteristic of the procedure. As Chapter Seven will discuss, even sceptics participated in judicial duels. Furthermore, unlike the unilateral ordeals, which required belief in divine intervention in order to work, judicial duels did not depend upon miracles for their functionality and therefore did not disappear with the same rapidity as other

²⁰ The use of the masculine pronoun is intentional here. As Kerr, Forsyth and Plyly have noted, the probands in medieval trials by cold water were usually male. It was only later that this form of legal proof became associated with witch trials. See Margaret H. Kerr, Richard D. Forsyth & Michael J. Plyly, "Cold Water and Hot Iron: Trial by Ordeal in England," *Journal of Interdisciplinary History* 22:4 (1992), pp. 573-95.

²¹ See Robert Bartlett, *Trial by Fire and Water*, pp. 9-10.

²² See especially Morris and Radding, *op. cit.*

ordeals when these processes lost their ecclesiastical sanction in the thirteenth century.

Certainly belief in divine intervention contributed to the popularity of trials by battle and ecclesiastical scepticism contributed to their decline. However, claims to divine favour may be better understood as one strategy among many for avoiding combat entirely or for enforcing and publicizing the results when a final showdown proved to be inevitable.

The three-part definition of trial by battle is, to some extent, a construct for the convenience of historical enquiry. While it coincides roughly with the high medieval usage of the Latin word *duellum* and the French and Occitan words *bataille* and *batala* when they are used in the context of legal matters, it does not match these expressions exactly. Early medieval sources used many different words for judicial combat, and writers at the end of the Middle Ages described an ever-wider variety of single combats as duels.

The seventh-century etymologist Isidore of Seville defined the word *duellum* as a fight between two people and contrasted it with *bellum*, the word for war.²³ However, he makes no mention of legal disputes in his definition. The word was quite uncommon in the early Middle Ages, but when it reappeared in the eleventh century, it referred with few exceptions to judicial combat or the right to hold such battles. In England, the word only came into general use in the first quarter of the twelfth century.²⁴

Some early medieval texts have unique words to describe judicial duels. An edict of the seventh-century Lombard king Rothair refers to it as “a *camfio*, that is, a fight,” while the Synod of Neuching, held near Munich in 772, calls it both a *champfwich* and a *wehadinc*.²⁵

²³ Isidore of Seville, *Etymologiae*, book XVIII, ed. J. Cantó Llorca (Paris: Les Belles Lettres, 2007), c. 1.9, p. 56.

²⁴ Jane Martindale, “Between Law and Politics: The Judicial Duel under the Angevin Kings (Mid-Twelfth Century to 1204),” in *Law, Laity and Solidarities: Essays in Honour of Susan Reynolds*, ed. Pauline Stafford, Janet Nelson & Jane Martindale (Manchester: Manchester University Press, 2001), p. 120.

²⁵ “...liceat eum per *camfionem*, id est, per *pugnam*...” *Edictus ceteraeque Langobardorum leges*, ed. Frederick Bluhme, *Monumenta Germaniae Historica, Leges Fontes Iuris* 2 (Hannover: Hahn, 1869), p. 14, c. 9. “*De*

Elsewhere, however, judicial duels were described with generic Latin words for a fight or battle, like *pugna*, *certamen*, and *bellum*. Learned sources also showed an early fondness for the Greek word *monomachia*, meaning single combat, while some charters refer to the procedure as a *campus*, the Latin word for a field, but also possibly related to the German word *Kampf*, or combat.²⁶ In Old French, the usual words for trial by battle were *bataille* and *batala* in the *langue d'oïl* and *langue d'oc* respectively.²⁷ However, as with the Latin word *bellum*, they were more commonly used to mean a large scale battle without judicial dimensions. Thus, most of the time medieval writers did not use specialized vocabulary to refer to judicial duels. The legal status of any given fight in a medieval text must be determined from the context in which it is mentioned. While this determination is not difficult in practice, some of the earliest references to activities resembling trial by battle do present some ambiguities, as Chapter One demonstrates.

Late medieval sources can also present difficulties, for even the word *duellum* came eventually to mean not a court-sanctioned combat but rather the extra-judicial activity signified by the modern French and English word 'duel'. From the middle of the fourteenth century onwards, distinctions between the different kinds of deeds of arms began to blur. Knights might fight a judicial duel over an act of treason like surrendering a defensible castle to the enemy, or they might hold jousts à *outrance* with their enemies during the course of a siege. While judicial duels were still recognizably a distinct entity, chroniclers like Froissart

pugna duorum, quod wehadinc vocatur... Qui supra predictae pugne, quod champfwich diximus, peracto iudicio se simile vindicare erigere contra quarentem presumpserit..." *Concilia aevi Karolini*, ed. A. Werminghof, Monumenta Germaniae Historica, Concilia II (Hannover: Hahn, 1906), no. 16, cc. IV, V, p. 100.

²⁶ "*Si placitatio venerit ad duellum, quod vulgo dicimus campum...*" *Recueil des chartes de l'abbaye de Cluny*, ed. Alexandre Bruehl, vol. 5 (Paris: Imprimerie Nationale, 1894), no. 3809, p. 158. William of Chartres refers in 1257 or 1258 to "*monomachiam, quae bellum dicitur vel duellum...*" See Browe, vol. 2, p. 62.

²⁷ A charter from the abbey of Lézat in Gascony refers to "*duellum, que vulgo batala dicitur...*" at the end of the eleventh century. *Cartulaire de l'abbaye de Lézat*, ed. Paul Ourliac & Anne-Marie Magnou, vol. 1 (Paris: C.T.H.S., 1984), no. 400, p. 311.

often mentioned them alongside and amongst other forms of single combat. Treatises on the tournament frequently included a copy of Philip IV of France's ordinance of 1306 regulating trial by battle.

As legally-sanctioned judicial duels became rare events and distant memories, the word *duellum* gradually became attached once more to a wider variety of single combats. By the end of the fourteenth century, the anonymous chronicler known as the Religieux of Saint-Denis could describe jousters at the tournament of Saint-Inglevert choosing between a hastilude with blunted lances and a more praiseworthy *duellum* with sharp weapons.²⁸ These games had nothing to do with questions of law. They were organized during a truce in the Hundred Years War so that knights from England, the Lorraine and Hainault could simply demonstrate their prowess. In the end, the word survived longer than the legal procedure it described.

In this dissertation I use the words “trial by battle” and “judicial duel” to describe the legal practice examined here. The first expression refers to the process as a whole, from the initial accusation, through all the steps of a summons and a trial, to either an accord or a battle. The second expression refers more specifically to the fight which settled an intractable trial by battle. Not all trials by battle ended in a duel. Similarly, I have chosen to translate the expressions *bellum vadiare* and *gager bataille* as “to pledge battle,” rather than the more common legal expression “to wage battle.” I find that the latter translation confuses too many readers into believing that judicial combats were fought in cases where this was not so. To wage, or rather pledge, battle was only to promise to hold a judicial duel at a later time.

²⁸ *Chronique du religieux de Saint-Denys, contenant le règne de Charles VI*, ed. M. L. Bellaguet, vol. 1 (Paris: Crapelet, 1839), p. 674.

Sources

The sources of information on trial by battle are many, but the references are scattered. Battle was a rare form of legal proof even at the height of its popularity. In their classic textbook on English legal history, Pollock and Maitland wrote “We doubt whether in Bracton’s day the annual average of battles exceeded twenty,” and even this estimate is probably high.²⁹ There is thus no single medieval source from England or the French-speaking Continent which one may consult in order to study a large sample of judicial duels. Information must be gleaned from a wide selection of texts: not only legal documents, but also chronicles, administrative records, literature, hagiography and pictorial sources. Each of these sources illuminates a different facet of the procedure, but each one must be understood in terms of its author and the purpose for which it was written.

The obvious starting point for the investigation of a legal subject is to study the laws which discuss it. This approach presents immediate difficulties for the medievalist because the secular laws of medieval Europe were customary rather than written. Law resided to a large extent in the collective memory of those who participated in the courts. There is no body of statutes to explain the workings of these courts. Medieval rulers did, nevertheless, issue legal codes and ordinances from time to time. Nevertheless, even the codes of the early medieval period were framed not as comprehensive collections of laws, but rather as rulings upon a series of questions which had presented legal difficulties in recent years. Thus, while medieval laws provide some of the first evidence of trial by battle, they often raise more questions than they answer.

²⁹ Frederick Pollock & F.W. Maitland, *The History of the English Law before the Time of Edward I*. 2nd ed., vol. 1 (1898; reprint, Clark, NJ: The Lawbook Exchange, 2007), p. 633.

More detail may be found in the Carolingian capitularies, which were intended not to be a set of laws but rather a series of instructions to officials overseeing ninth-century imperial courts. After the disintegration of the Carolingian empire in the late ninth century, the ordinances of later kings affected the practice of trial by battle only in limited geographical areas or among certain classes of people who enjoyed royal protection. One of the few pieces of what may be called legislation affecting trial by battle in the royal jurisdiction of France is paradoxically Louis IX's ordinance of 1258 which abolished it for the duration of his reign. Recorded medieval laws are thus of rather limited utility when trying to understand the judicial duel.

A richer source of information may be found in the lay customals. These treatises provide detailed descriptions of the common law of England and the laws affecting the various jurisdictions of France, including both substantive and administrative provisions. The texts are sometimes described as codes of law, but they should not be understood as such. They were not the work of lawmakers, but rather textbooks written by judges for the benefit of other judges sent to carry out their duties in unfamiliar territory. Hence, the English *Leges Henrici Primi*, to give one example, are not a collection of laws which Henry I introduced, but rather a treatise on the law of his time.³⁰ In France, customals were often necessary tools for jurists whose academic training was in Roman law rather than contemporary regional practice. The first of the comprehensive customals was the *Ancien coutumier de Normandie*, dating to circa 1190. It was followed by the early redactions of the customs of Anjou, the *Livres de jostice et de plet* from Orléans, the *Summa de legibus Normanniae* (also called the *Grand coutumier de Normandie*) and others.

³⁰*Leges Henrici Primi*, Ed. L.J. Downer (Oxford: Clarendon Press, 1972), p. 2.

The learned authors of these books show some familiarity with the Roman *Corpus Iuris Civilis* of Justinian, which was being taught in the emerging universities. They used this text as a model to organize their discussions and fill out any sections where local precedents were lacking. Their books must thus be understood as being partially theoretical treatises; they may not always have reflected the actual practice of law in the secular courts.³¹ Fortunately, this is less of a problem for the study of trial by battle than for other subjects, as Roman legal procedure did not include judicial duels. The customals must nevertheless be treated carefully and compared with other sources when possible.

Canon law also influenced the practice of trial by battle. Popes wrote letters to pronounce upon the legality and morality of individual judicial duels. Bishops and ecclesiastical scholars offered opinions on the subject, and synods from the eleventh century onward began to impose sanctions upon churchmen who participated in trials by battle. These individual documents were collected and commented upon by the canonists of the twelfth century, and during the course of this century ecclesiastical opinion gradually coalesced into a firm official position opposing the practice of judicial duelling. However, apart from a handful of early medieval experiments with the procedure, ecclesiastical courts had never employed battle as a form of proof. Although the presence of churchmen was needed to bless the instruments of the unilateral ordeals in secular courts, judicial duels required neither miracles nor even ecclesiastical participation in order to work. The canon lawyers were thus often left to provide commentary from the sidelines of a process they did not control. Their opinions carried significant political weight, but ultimately represented only a portion of the many points of view on the subject.

³¹ John Gilissen, *La coutume*, Typologie des sources du moyen âge 41 (Turnhout, Belgium: Brepols, 1982), p. 41.

More illustrative of the actual practice of trial by battle are the charters produced by many churches, monasteries and rulers. Charters record the possession and transfer of real property and rights. They occasionally record that a piece of land came to its owners through judicial combat, providing details about the dispute and the occasion of the duel. These details make them the richest source of information about trial by battle in the eleventh and twelfth centuries. They are, however, chiefly concerned with ecclesiastical property, as abbeys and churches were more likely to produce and preserve such documents than laymen were, and church cartularies are more likely than laymen's individual charters to be edited and published. In England, there is the additional problem that the practice of dating charters did not become widespread until the beginning of the fourteenth century. This obstacle has been partially overcome by the development of the DEEDS Project at the University of Toronto, a database which compares the word patterns in undated charters with those in dated documents in order to estimate their antiquity.³²

Charters are most useful for studying the trials by battle of the twelfth century. The Church administration grew increasingly uncomfortable with the practice towards the end of the century, so that by the time the Fourth Lateran Council forbade clerics to participate in ordeals and judicial duels in 1215, trial by battle had all but disappeared from charters.

Fortunately, this period of the late twelfth and early thirteenth century coincides with the appearance of some of the first records produced by English courts. The English Curia Regis Rolls begin in 1196, while scattered cases from the Parlement of Paris survive only from 1254 onwards, just in time for Louis IX's ordinance abolishing the judicial duel in 1258. Unlike modern court records, these are not complete transcripts of cases, or even summaries with the detail of modern judgements, but rather terse synopses of names and pleadings which are

³² The DEEDS database may be found online at the following address: <http://www.utoronto.ca/deeds/>.

rarely longer than a paragraph or two. In the English rolls, these cases represent a significant proportion of the judicial duels held in the country, as trials by battle were usually removed to the royal court if combat seemed inevitable, but the French records represent only those cases under the royal jurisdiction, usually concerning important vassals of the king. They must be supplemented with other sources in order to understand the differences between high-profile suits among the nobility and the more humble disputes among commoners that comprised the majority of French trials by battle.

The English monarchy's early adoption of record-keeping has also produced several other collections of administrative documents which provide further information about the preparations required for a judicial duel. The Pipe Rolls, dating from 1155 onwards (plus a single roll from 1130), were the financial accounting documents of the exchequer. Among other things, they record payments from litigants for the privilege of coming to a private agreement out of court. They also show money paid by the crown to approvers, criminals who had agreed to provide evidence against their accomplices and to fight them in judicial duels if necessary. In addition, these rolls note the hiring of fencing teachers for approvers, the purchase of weapons and the retainer of a royal champion. Similar documents are in shorter supply in France, but the Norman exchequer recorded numerous payments by litigants resulting from lost or avoided duels, and additional notes appear in other financial records.³³ Other administrative documents include the Patent Rolls and the Close Rolls, which record the public and private correspondence of the English kings from 1202 and 1204 onwards, respectively. These records include instructions to sheriffs and other royal officials regarding

³³ *Magni Rotuli Scaccarii Normanniae*, ed. Thomas Stapleton, 2 vols. (London: Society of Antiquaries of London, 1840-44). See also *Le Plus ancien registre des comtes des consuls de Monferrand en provençal auvergnat, 1259-1272*, ed. R. Anthony Lodge (Paris: Clermont-Ferrand, 1985).

the hearing of cases and the transport and treatment of prisoners.³⁴ They offer a glimpse of some of the activities relating to trial by battle seen from outside the courtroom itself.

Chronicles are another source of information regarding judicial duels. They provide much information that legal records do not. From them we may learn about the human emotions and motivations which sparked such trials and the details of the combats themselves. However, these sources come with their own limitations. While a few chroniclers, like Olivier de La Marche, were eyewitnesses to the events they described, many more works were written by clerics who had only heard about the events at second or third hand. Consequently, in those cases where a duel attracted attention from more than one chronicler, they occasionally contradict one another.³⁵ All of these accounts tend to privilege the most violent and dramatic events and the disputes of the high nobility. The less sensational trials, where battle was pledged but the parties managed to reach an accord before the day of the duel, are scarcely mentioned.

Many insights regarding the holding of duels and the opinions and emotions of medieval Europe on the subject can also be obtained from vernacular literature. The heroes of epic and romance are often to be found battling a treacherous villain before their liege lord. In these stories, we may observe authors calculating the consequences of hypothetical judicial scenarios and examining the moral implications of such matters as equivocal oaths. However, the fictional duel was also a well-established literary trope. While the scenarios described in fictional lawsuits were usually theoretically possible according to the legal sources of their day, they tended to play out in the most dramatic and sensational manner possible. Thus,

³⁴ *Rotuli Litterarum Clausarum (1204-27) in Turri Londinensi Asservati* ed. Thomas D. Hardy, 2 vols. (London: Eyre and Spottiswoode, 1833-1844). *Calendar of Close Rolls Preserved in the Public Record Office*, 47 vols. (London: HMSO, 1900-1963).

³⁵ Observe Eric Jager's struggles to reconcile conflicting versions of the famous duel between Jean de Carrouges and Jacques Le Gris in the endnotes of his chapter on the event in *The Last Duel*, pp. 224-5.

while there are several stories in which a knight must defend his queen from charges of treasonous adultery, there are none about more mundane judicial duels over timber rights or the profits of a mill, cases for which there are more real-life examples. Ultimately, authors' main concern was to tell a memorable story, not to create a perfect reproduction of reality.

Similar issues arise when one attempts to extract information about judicial duels from hagiographical sources. Here too the stories have common tropes: the saint whose intervention miraculously changes the course of a fight, or the penitent convict whose injuries are wondrously healed. Nevertheless, the stories offer insights into the anxieties of litigants at the time when they were written and the spiritual uncertainties which such an ordeal generated.

It is only by drawing these diverse and scattered sources together and viewing trial by battle from their multiple perspectives that the subject may be perceived in any depth. Many aspects of its history are nevertheless obscure and can only be estimated by means of interpolations across geographical and chronological distances. Working from the widest possible variety of sources serves to mitigate the deficiencies of any one single form of documentation.

The Chapters

This dissertation is divided into seven parts. It traces the beginnings of trial by battle, the courts in which it was employed, the conditions necessary to hold such a trial, its participants, the procedure in the court and on the field, and the decline of judicial duelling. One theme running through the work is the subject of honour and reputation. I use the word honour here not in the broad sense of personal virtue, but in the sense that it is used by anthropologists, to

describe both social status or estate (which Frank Henderson Stewart calls vertical honour) and a person's perceived right to respect among his peers (horizontal honour in Stewart's terminology).³⁶ To have a cloud of suspicion hanging over one's head or to have a reputation for making false accusations were both forms of shame that had concrete legal and social repercussions in high medieval England and France. Anthropologists have long commented on the use of violence to restore lost honour, and medieval descriptions of judicial duels are filled with comments about the participants' honour and the reputations which both upheld it and resulted from it. Building on Stewart's definition and recent work on *fama* and *renommée* in medieval French law, I will discuss trials by battle as events that challenged and re-established their participants' status and reputation in their communities.³⁷

The first chapter of the dissertation will examine the origins of trial by battle, considering the evidence for judicial ordeals in the Greek, Roman and barbarian worlds before moving on to discuss the first references to judicial duels in early medieval legal codes. Since the nineteenth century, scholars have pointed to numerous episodes from ancient history and claimed for them the distinction of being the first surviving example of trial by battle. However, when these cases are compared with the definition of trial by battle laid out above, none of them meet all the criteria. Judicial duelling appears to have been born out of a synthesis of Roman, barbarian and Christian elements in the early Middle Ages.

Chapter Two discusses the courts in which trial by battle occurred, from local seigneurial adjudications to the royal courts. It traces the evolution of trial by battle into a privilege of high justice and the efforts of magnates and monarchs to take gradual control of the practice.

³⁶ Frank Henderson Stewart, *Honor* (Chicago: University of Chicago Press, 1994), pp. 56-61.

³⁷ See Claude Gauvard, '*De grace especial*': *Crime, état et société en France à la fin du Moyen Âge* (Paris: Publications de la Sorbonne, 1992), pp. 705-752, and *idem*, "La Fama, une parole fondatrice," *Mediévales* 24 (Spring 1993), pp. 5-13, as well as the collection *Fama: The Politics of Talk and Reputation in Medieval Europe*, ed. Thelma Fenster & Daniel Lord Smail (Ithaca, NY: Cornell University Press, 2003).

The chapter also considers the various attitudes of medieval towns, some of which sought exemption from judicial battles, and some of which--like Valenciennes--sought to preserve them as an urban privilege.

In Chapter Three, I examine the kinds of disputes that could lead to a trial by battle, and the way that the honour of the participants often lay at the heart of these suits. These matters could be described as cases involving *honor*, either in the Latin sense of a fief or benefice, or in the later sense of personal dignity. While judicial duels could originally settle many different kinds of suits involving both property and personal injury, they were eventually allowed in only the most serious accusations of crime.

Chapter Four looks at the different classes of people who participated in trials by battle. The procedure was by no means a preserve of lay noblemen. The chapter will consider the evidence for the participation of the unfree, the poor, women, clerics, Jews, the young, the aged and the disabled. There is evidence to be found for judicial battles between many kinds of unusual and marginalized individuals, but at the same time it is clear that, normally, only those who held the same social class or status (or vertical honour, to use Stewart's term) could fight one another.

The fifth chapter follows the course of a trial by battle from the original discovery of wrongdoing to the eve of the battle itself. It discusses the crucial part played by the reputations of the plaintiff and the defendant. An individual's reputation among his peers determined whether he was imprisoned while awaiting trial, whether he could muster warrantors and sureties, the forms of proof available to him and his options when faced with a wager of battle.

Chapter Six concerns the combat itself. It examines the preparations for the contest, the equipment, the venue, the combat and its aftermath. In all of these elements, we may observe tension between the litigants, the authorities and the wider community, as each group sought to influence the course of events. Once the combatants began to fight, however, the outcome became highly unpredictable. Unexpected wins and losses provided fuel not only for miracle stories, but sometimes also for further episodes in the course of the dispute.

The final chapter explores the tradition of scepticism towards trials by battle, which began almost as soon as the practice itself, and the disappearance of the procedure. It questions whether John Baldwin's theory of a "crisis of the ordeal" at the end of the twelfth century applies to judicial battles, as they experienced a more gradual decline than the unilateral ordeals.³⁸ It concludes by tracing the evolution of the judicial duel into the extra-judicial duel of honour and the attempts of assorted parties to revive the procedure, which lasted into the nineteenth century.

By tracing the history of trial by battle in all its complexity, I hope to demonstrate how and why men like Jacotin Plouvier and Mahiot Coquel chose to face one another on the field.

³⁸ John W. Baldwin, "The Crisis of the Ordeal: Literature, Law and Religion around 1200," *Journal of Medieval and Renaissance Studies* 24 (1994), pp. 327-53.

Chapter One

The Origins of Trial by Battle

Historians have traditionally assigned the origins of trial by battle to the misty, undocumented past of Europe's northern peoples, assuming that these populations brought the practice with them when they settled in the Roman Empire during the migration period. Indeed Roman laws, although they occasionally contained elements of violence and ordeal, never employed duelling as a legal process. Nevertheless, the classical Mediterranean world was not unfamiliar with the idea that single combat could be used as a substitute for mass battle, in literature, if perhaps not in real life. By the time the first clear references to trial by battle appeared in the laws of the Romanised barbarians at the beginning of the Middle Ages, these northern and southern peoples had been in contact with one another for many generations. It is in the places where elements of Roman and non-Roman culture intermingled, combining with the influence of Christianity, that early medieval trial by battle can be studied.

The Ancient World

Jean Philippe Lévy, one of the most recent scholars to look at ordeals in ancient times, concluded that there were no examples of trial by battle in ancient Mesopotamia, Egypt or

Greece.¹ Although it would be beyond the scope of this dissertation to survey the ancient sources thoroughly, it is notable that his opinion was shared by the hundred years of scholarship that preceded him, with the exception of some quibbles on the subject of Greece.² Trial by ordeal in the ancient world was the subject of much academic interest up until the Second World War, but it has not inspired more than a handful of articles since that time. It was of particular interest to legal historians of the German *Rechtsschule*, who speculated freely about the workings of early courts. Unfortunately, their hypotheses were largely unburdened by supporting evidence, and more recent scholarship has turned its attention to subjects about which the sources have more to say. Nevertheless, the scholarship to date has turned up several examples of events that resembled trial by battle in the ancient world. On closer inspection, all of them turn out not to be judicial duels, strictly speaking, although they bear resemblances to the medieval procedure.

Other forms of trial by ordeal certainly existed at the time. The Code of Hammurabi contains provisions for testing the innocence of a defendant by having him throw himself in a river to see if the current would carry him away and pronounce him guilty.³ The biblical Book of Numbers instructs priests on the procedure for a ritual that will reveal whether a woman has been unfaithful to her husband. The priest was to gather some dust from the floor of the tabernacle, sprinkle it over a cup of holy water, and curse the contents. If the woman

¹ Jean Philippe Lévy, "Le Problème des ordalies en droit Romain", in *Autour de la preuve dans les droits de l'Antiquité* (Naples: Jovene, 1992), p. 52 n. 3.

² Cf. Hermann Nottarp, *Gottesurteilstudien*, Bamberger Abhandlungen und Forschungen 2 (München: Kassel, 1956), pp. 44-6; Federico Patetta, *Le Ordalie* (Turin: Studio di Storia del Dritto e Scienza del Diritto Comparato, 1890), ch. III. On the subject of Greece, see *infra*.

³ *Hammurabi's Laws: Text, Translation and Glossary*, ed. M. E. J. Richardson (London: Sheffield Academic Press, 2000), c. 2, p. 43.

drank it and experienced no ill effects, she was innocent, but if it caused "her belly to swell and her thigh to rot," she was guilty.⁴

A better-known example from the Old Testament, and one much cited by medieval proponents of trial by battle, is the combat between David and Goliath recounted in I Samuel. However, it was not, strictly speaking, a judicial duel according to the definition formulated in the introduction to this dissertation, because it was not adjudicated by a third party and its object was not to prove the truth of a claim. In the words of Goliath, "If [David] be able to fight with me, and to kill me, then will we be your servants; but if I prevail against him, and kill him, then shall you be our servants and serve us."⁵ This was not a case brought before anything resembling a court or overseen by a mortal arbiter, and at no point in the text does David or Goliath suggest that his opponent is not speaking the truth.

A similar scenario is presented in Book Three of the Greek *Iliad*, when Paris and Menelaus hold a duel before the armies of their respective homelands. Pointing to the fact that the battle combines single combat, "numinous import" and dispute resolution, A. MacC. Armstrong asserted in 1950 that this encounter was an example of a primitive Greek tradition of trial by combat, already in decline by the time that other sources on ancient Greek legal history were written.⁶ However, a closer look at the duel shows that while it is an early example of a single combat before armies, it is not a trial.

Agamemnon explains the stakes in a prayer he offers to Zeus just before the event.

Oh Father Zeus, ruling from Ida, most great
and glorious lord, and you, all-hearing, all-seeing
Sun, and you O Earth and Rivers, and you
Infernal powers that punish the shadows of men

⁴ Numbers 5:11-31.

⁵ I Samuel 17:9.

⁶ A. MacC. Armstrong, "Trial by Combat among the Greeks," *Greece and Rome*, vol. 19, no. 56 (June 1950), pp. 73-4.

Who here swear falsely, I pray to all of you now
To witness and then watch over these faithful oaths
If Menelaus goes down before Alexander [Paris]
Let him keep Helen and all her treasures, and we
Will depart in our sea-going vessels. But if Menelaus
Of the tawny hair shall slay Alexander then let
The Trojans return both Helen and all her wealth
And make to the Argives whatever further repayment
Seems adequate and right...⁷

Hector is asking the gods to punish those who do not keep their oaths to abide by the outcome of the duel. He is not asking them to decide which party has made a better case or whether either of the parties has offered false testimony. The facts of Helen's abduction and Paris' involvement therein are not disputed. Rather, each side is calling upon the gods to help it maintain its cause by force, since there is no third party overseeing the contest. Menelaus states his expectation of Zeus in a prayer:

Lord God, let me punish Prince Alexander
Him who wronged me in the beginning. Slay him
By means of me, that many a man
Unborn may shudder to wrong a host who has offered
Him friendship.⁸

Zeus is being asked to act as an executioner, but not as a judge. To Menelaus' mind, the issue of guilt and innocence has already been decided. The fact that Aphrodite later intervenes in the battle on Paris' behalf does not change anyone's judgement about the abduction of Helen.

The combat might be characterized as a form of dispute resolution, even a dispute over a point of law, but it is a stretch to assume that it was ever considered a trial. While it fits Armstrong's definition of a trial by battle, it lacks a third party to oversee and regulate the conflict. As Armstrong points out, the absence of a judge also affected the outcome of several other military single combats mentioned in Greek literature, for the parties to the disputes

⁷ *The Iliad of Homer*, trans. E. V. Rieu (Oxford: Oxford University Press, 1963), p. 55.

⁸ *Ibid.*, p. 63.

often did not accept the results.⁹ Nevertheless, this scenario appealed to Greek writers. Single combat became a literary trope recognized throughout the classical world.

The Romans

Examination of the Roman sources reveals even more problems with the examples that some of the early scholars have offered as precursors of the judicial duel. Blackstone, Asverus, d'Arbois de Jubainville, Düll and other historians of the law saw trials by battle camouflaged in the works of a variety of Roman writers, but these arguments lose their plausibility on closer inspection.

One such example is the comedy *Casina* by Titus Maccius Plautus, written circa 200 BC. This work bridges the Greek and Roman worlds, as it is set in the Athens of an unspecified earlier era. The play's plot revolves around two slaves, Olympio and Chalinus, who both want to marry the same slave girl. Olympio's cause is supported by Lysidamus, the master of the house, while Cleostrata, Lysidamus' wife, thwarts him by taking the side of Chalinus. The characters finally settle the issue by drawing wooden lots from an urn full of water, but not before a fight breaks out between the slaves. As Olympio calls on the gods for good luck before the draw, Chalinus wishes him ill fortune. Lysidamus, enraged, orders Olympio to strike Chalinus. When Cleostrata demands to know what Olympio thinks he's doing, he replies, "My Jupiter ordered it".¹⁰ She orders Chalinus to strike Olympio back, and when Lysidamus asks Chalinus what he means by his violence, he replies, "[It was] because my

⁹ Armstrong, pp. 74-8.

¹⁰ "*Quia Iuppiter iussit meus.*" *Plautus II*, ed. Paul Nixon, Loeb Classical Library (London: William Heinemann, 1917), p.44.

Juno here ordered it."¹¹ The scene is clearly a parody of epics like the *Iliad*, where the will of the Gods decides the outcome of battles.

The German scholar Rudolf Düll considered the scene a piece of evidence for a primitive judicial ordeal, as it contains the elements of a civil dispute and a ritual that appeals to the gods.¹² However, there is no indication in the play that the fight is by any means a way of reaching a judgement. The participants have decided to use the urn and the lots long before the fists begin to fly, and their skirmish has no discernable effect on the final draw. There is no reason to see the battle as anything other than a literary device for creating suspense by delaying the draw's outcome. A judicial duel may involve an appeal for divine intervention, but not all conflicts involving divine intervention are by definition judicial duels.

Henri d'Arbois de Jubainville pointed to Livy's account of the battle between the Horatii and the Curatii in the seventh century BC as possible evidence of an early Roman tradition of trial by battle.¹³ According to Livy, who was writing at the turn of the first century, the Roman family of the Horatii had a set of triplet sons, and so did the Alban Curatii. When Rome and Alba went to war, the rulers of the two kingdoms decided to settle the dispute by holding a battle between the Horatii and the Curatii, and letting its outcome determine which kingdom would rule the other. When one Horatius was left standing at the end of the fight, Rome gained control of Alba.¹⁴

Livy's account is similar to the episode in the *Iliad*, in that both sides swear an oath to the gods beforehand, but do not call on them to pass judgement on the dispute itself. The

¹¹ "Quia iussit haec Iuno mea." *Ibid.*, p. 46.

¹² Rudolf Düll, "Zur Frage des Gottesurteils im vorgeschichtlichen römischen Zivilstreit" in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung* LVIII (1938), p. 31ff.

¹³ H. d'Arbois de Jubainville, *Études sur le droit celtique*, vol. 1 (Paris: Thorin & Fils, 1895), pp. 55-60.

¹⁴ Livy, *Ab urbe condita*, ed. B.O. Foster, vol. 1, Loeb Classical Library (London: Heinemann, 1919), book I, c. xxiv, pp. 82-94.

Roman *fetial*, a sort of diplomatic negotiator with a spiritual role, declares "Hear Jupiter ... If one shall first depart [from the battle], by general consent, with malice aforethought, then on that day do thou, great Diespiter, so smite the Roman people as I shall here today smite this swine," and he sacrifices a pig.¹⁵ Once again, a battle is used to bring a conflict to an end, but it is not an attempt to prove the truth or justice of either side's position. There is no judge with the power to ensure that both sides abide by their oaths, so the participants invoke a god, but only in the role of an enforcer, not as an arbiter.

This is not to say that first-century Romans drew no connection between truth-telling and the endurance of pain. Carlin Barton, in his study of Roman conceptions of honour, provides several examples of Romans who stabbed or killed themselves in order to support their statements. He cites Tacitus' tale of the centurion Julius Agrestis, who, when the general Vitellius scorned his reports, said "Since you require some decisive proof ... I will give you proof you can believe," and committed suicide on the spot.¹⁶ Barton argues that Romans considered a person's word more credible when he agreed to take great risks or endure suffering in order to express it.

Neither was the concept of proof by ordeal alien to the Roman imagination in the centuries immediately before and after Christ. Lévy provides the examples of the vestal virgin Tuccia, mentioned by Valerius Maximus and Pliny the Elder, who proved her chastity by carrying water in a sieve, and Claudia Quinta, described by Cicero and Livy, who cleared her reputation by using only her girdle to free a boat grounded on the Tiber river.¹⁷ However, he points out that these accounts, written long after the cases they report, refer to individual

¹⁵ "'Audi,' inquit, 'Iuppiter ... Si prior defexit publico consilio dolo malo, tum tu ille Diespiter populum Romanum sic ferito ut ego hunc porcum hic hodie feriam.'" *Ibid.*, p. 84

¹⁶ Tacitus, *Historia*, 3.51. Quoted in Carlin Barton, *Roman Honor: Fire in the Bones* (Berkeley: University of California Press, 2001), p. 61.

¹⁷ Lévy, *op. cit.*, 36-9.

events and do not indicate the existence of a judicial process that employed ordeals or believed in divine judgements.

Another nineteenth-century school of thought associated judicial combat with the Roman legal practice known as the *legis actio sacramentum*. This procedure is mentioned in the *Institutiones* of Gaius from circa AD 150. When the procedure was invoked, two parties who both claimed ownership of a slave or other piece of property were each to deposit a sum of money with a Praetor, or civil judge. Afterwards, they presented their claims in court while touching the property or a representative piece of it with a rod. Gaius informs us that the rod was representative of a lance and acted as a symbol of domination. The Praetor then made a judgement and the losing party had to forfeit his money to the treasury.¹⁸

After Gustav Asverus drew attention to the etymology of some of the key expressions in the *Institutiones*, scholars such as Bethmann-Hollweg, Götting and Voigt speculated freely on the significance of the word *sacramentum*, with its connection to the word *sacer*, and the verb *vindicare*, which could mean to launch such a lawsuit, but also to take vengeance.¹⁹ They saw the procedure as the survival of an earlier ritual that invoked the gods, and one historian even concluded that the ceremony was the preliminary part of a Roman judicial combat.²⁰ Later scholars like Noailles and Lévy questioned these conclusions, asserting that Romans were perfectly capable of designing rituals that were symbolic from the time of their

¹⁸ *Gai Institutiones*, ed. E. Seckel & B. Kuebler, 7th ed. (Leipzig: Tuebner, 1935), book IV, §13-17.

¹⁹ Gustav Asverus, *Über die legis actio sacramentum* (Leipzig: Breitkopf, 1837); Moritz August von Bethmann-Hollweg, *Der Civilprozess des gemeinen Rechts in geschichtlicher Entwicklung*, vol. 1 (Bonn: Adolph Marcus, 1864), p. 132; Karl Wilhelm Götting, *Geschichte der römischen Staatsverfassung* (Halle: Buchhandlung des Waisenhauses, 1840), p. 139; Moritz Voigt, *Die XII Tafeln*, vol. 1 (Leipzig: A.G. Liebeskind, 1883), p. 591, n.3.

²⁰ Otto Gradenwitz, "Zwangsvollstreckung und Urtheilsicherung," in *Festgabe für Rudolph von Gneist...* ed. Heinrich Brunner, *et al.* (Berlin: J. Springer, 1888), p. 289.

conception, and pointing out that there is no evidence whatsoever for literal judicial combats.²¹

Justinian's *Institutiones* incorporate much of Gaius' work, but they make no mention of the *legis actio sacramentum*. The procedure appears to have fallen out of use after Gaius' time and makes no further appearances in Roman law. Like the other supposed examples of trial by combat among the Romans, it proves chimerical and cannot have been the direct ancestor of the medieval procedure. Nevertheless, these examples may perhaps indicate that judicial duelling would not have been a radically outlandish idea for a Romanized population. To discover the immediate origins of trial by battle, however, one must look beyond Rome and the Roman era.

Early “Barbarian” References

It is common for histories of trial by battle and duelling to trace the origins of the practice to the cultures who inhabited the fringes of the Roman Empire, particularly the Germanic peoples.²² However, these assertions are based on the uncritical acceptance of nineteenth-century scholarship, of which the Germans in particular produced a great deal. It must be remembered that until the First World War, fatal duels of honour still occurred on occasion in Germany. One of the strongest, and longest-surviving duelling cultures was (and to a certain extent still is) to be found in German universities, where sword fighting fatalities were still occurring in the 1850s and to this day there are alumni of the student fraternities who sport facial scars from bouts of the fencing contest known as *Mensur*. Nineteenth-century German

²¹ Pierre Noailles, *Fas et jus: Études de droit Romain* (Paris: Belles Lettres, 1948), pp. 57-61; Lévy, pp. 54-60.

²² See, for instance, Vicki Ziegler, *Trial by Fire and Battle in Medieval German Literature* (Rochester, NY: Camden House, 2004), p. 7; Kevin McAleer, *Dueling: The Cult of Honor in Fin-de-Siècle Germany* (Princeton: Princeton University Press, 1994), p. 13.

proponents of duelling sought to establish the practice's origins as thoroughly Germanic, while opponents wished to prove that it was Latin in origin and thus probably imported by those degenerate epicenes, the French.²³ These polarized positions tended to draw in even French and English historians. As a result, books and articles from that period must be read with these contemporary debates in mind.

In fact, the recorded examples of judicial duels among the peoples on the fringes of the Roman Empire are just as problematic as the examples of classical ones. A handful of references to practices resembling trial by battle survive in the first-century works of Livy, Velleius Paterculus and Tacitus. These, too, are difficult to classify as true judicial duels and are further complicated by the brevity, and sometimes hostility, of their authors.

Livy recounts an incident closely resembling a trial by battle that occurred during the Punic Wars. The general Scipio Africanus decided to hold gladiatorial games in honour of his deceased father and uncle while he was campaigning in New Carthage, now part of Spain. Among the Iberian Celts there, he found that he did not need to purchase slaves to perform the battles, as freeborn men volunteered for the opportunity. "Some," wrote Livy, "who had been unable or unwilling to end their differences by a legal hearing, after agreeing that the disputed property should fall to the victor, settled the matter with the sword." Among these men were the cousins Corbis and Orsua who both claimed to have inherited the right to rule the city of Ibes. Although Scipio wanted to arbitrate the dispute by peaceful means, "they both said they

²³ McAleer, p. 12. Unfortunately, McAleer's own discussion of the origins of duelling contains numerous factual errors. See also Lisa Fetheringill Zwicker, *Dueling Students: Conflict, Masculinity and Politics in German Universities, 1890-1914* (Ann Arbor, MI: University of Michigan Press, 2011) pp. 44-50.

had refused that request to their common relatives and that they were to have as their judge no other god or man than Mars.”²⁴

This anecdote raises more questions than it answers about the legal practices of the Iberian Celts. Did judicial duelling have a place in their law or were the battles witnessed by Scipio the extra-legal consequence of a system incapable of settling some disputes? Did Iberian Celtic dispute settlement mechanisms normally call upon the gods, or was the appeal to a god of war proof that the dispute had become too difficult for the normal legal system to contain? What was the relationship between these duels and blood feuds? In the case of Corbis and Orsua, we are told that family members involved themselves in the dispute. It is possible, as first proposed by Max Pappenheim, that trials by battle were originally a means of limiting feuds and settling intrafamilial conflicts with a minimum of bloodshed, but one cannot be certain on the basis of just one anecdote whether this theory holds true for the Iberian Celts.²⁵

There is also the issue of whether one can rely on Livy’s account to describe the practice accurately. Scipio’s gladiatorial games occurred in 206 BC, more than two centuries before Livy reported them. The chronicler saw the incident as an example of the immoderate passions of the barbarians, commenting “Since they [Corbis and Orsua] could not be made to give up such madness, they furnished the army with a remarkable spectacle, demonstrating how great an evil among mortals is the ambition to rule.”²⁶ If Livy was aware of any further

²⁴ “*Quidam quas disceptando controversias finire nequierant aut noluerant, pacto inter se ut victorem res sequeretur, ferro decreverunt. ...negatum id ambo dicere cognatis communibus, nec alium deorum hominumve quam Martem se iudicem habituros esse.*” Livy, *op. cit.*, vol. 8, book XXVIII, c. xxi, p. 88.

²⁵ Max Pappenheim, “Über die Anfänge die germanische Gottesurteile,” in *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 48 (1928), pp. 149-52.

²⁶ “*...cum dirimi ab tanta rabie nequirent, insigne spectaculum exercitui praebuere documentumque quantum cupiditas imperii malum inter mortales esset.*” Livy, vol. 8, book. XXVIII, c. Xxi, p. 88.

details that explained the reasons for the combat or the procedures leading up to it, he chose not to let them complicate the moral of his story.

Another hostile perspective on barbarian duels was offered by Velleius Paterculus, who commanded Roman cavalry in Germania between 4 and 9 AD. The eighteenth-century English jurist William Blackstone identified a passage of the soldier's writing as early evidence for judicial combat among the Germans and this claim was repeated by later historians such as George Neilson.²⁷ However, closer scrutiny of the passage and its context show that the claim is quite weak.

Before the Germans destroyed three legions in the battle of Teutoberg Forest in 9 AD, he was sent to the region under the command of Publius Quintilius Varus. Varus embarked on a strategy of winning the Germans' confidence by offering them his services as a judge. Looking back, Velleius suspected that the Germans had used these occasions to waste the general's time and energy. He wrote:

Unless a man has experienced it, he may scarcely believe it, but those cunning Germans, a race of great savagery and born to lying, were inventing a fictitious series of lawsuits and, first provoking one another to quarrels, then acting grateful that Roman justice was putting an end to them and that their savagery was mellowing under the novelty of hitherto unknown learning and that they were restricted in the customary right of settling matters by arms, so that one might think with the greatest folly that Quintilius was sent there so he could hold court in the urban praetors' forum, not so he could be of use to an army deep inside Germania.²⁸

Was Velleius describing a Germanic system of trial by battle, or are his words only the bitter misunderstanding of a soldier recalling the lead-up to a violent uprising that killed many of

²⁷ William Blackstone, *Blackstone's Commentaries on the Laws of England*, ed. Wayne Morrison, vol. 3 (1768; reprint, London: Cavendish Publishing, 2001), book 3, chapter 22, p. 265 (p. 337 in older editions); George Neilson, *Trial by Combat* (1890; reprint, Union, NJ: The Lawbook Exchange, 2000), p. 4.

²⁸ "At illi, quod nisi expertus vix credat, in summa feritate versutissimi natumque mendacio genus, simulantes fictas litium series et nunc provocantes alter alterum in iurgia, nunc agents gratias quod ea Romana iustitia finiret feritasque sua novitate incognitae disciplinae mitesceret et solita armis discerni iure terminarentur, in summam socordiam perduxere Quintilium, usque eo, ut se praetorem urbanum in foro ius dicere, non in mediis Germaniae finibus exercitui praeesse crederet." Velleius Paterculus, *Compendium of Roman History, Res gestae divi Augusti* (London: Heinemann, 1924), book II, s. 118, p. 298.

his troops? It is not clear whether the “customary right of settling matters by arms” occurred in the context of some form of Germanic court or arbitration, or whether Velleius was trying to say that Germanic society had only the law of the jungle for a dispute settlement mechanism. Alternatively, he could have meant that the Germans were also lying about the violence of their own pre-Roman system. The text provides us with no further clues and Velleius was, at any rate, hardly an objective observer.

A few generations later, Tacitus had little more to say about Germanic legal procedure. He reported that in the villages and cantons of Germania, cases were decided by elected chiefs, who were each advised by one hundred assessors. Their harsh penalties for treason and cowardice appealed to him, but if he had heard any rumour about judicial duels, this information was not included in a work meant to compare Roman practices unfavourably with the wholesome simplicity of the barbarians.

Tacitus did, however, describe a duelling practice that Germans used as a means of divination in wartime. “They pit a member of the tribe with whom they are at war, who has in some way been made captive, against a chosen one of their own countrymen, each with the arms of his native land. The victory of one or the other is accepted as a portent.”²⁹ Jacob Grimm noted Tacitus’ words in his opus, *Deutsche Rechtsalterthümer*, using *Germania* as an early example of the ordeal of battle, indeed his only evidence for the practice predating the eighth century.³⁰ However, at no time does Tacitus mention duelling as a means of dispute resolution. Unlike the examples of Paris and Menelaus or the Horatii and the Curatii, these Germanic battles were not even intended to resolve larger conflicts, but only to predict their

²⁹ “*Eius gentis, cum qua bellum est, captivum quoquo modo interceptum cum electo popularium suorum, patriis quemque armis, committunt: victoria huius vel illius pro praeiudicio accipitur.*” P. Cornelius Tacitus, *Germania*, ed. Allan A. Lund (Heidelberg: Universitätsverlag, 1988), § 10, p. 78.

³⁰ Grimm, vol. 2 (1899; reprint, Hildesheim: Olms-Weidmann, 1992), p. 588.

course. Thus, although they were a form of combat believed to be influenced by supernatural intervention, they cannot be counted as even the most rudimentary form of legal proof.

After the first century AD, records of barbarian practices resembling judicial duels disappear entirely for a full four centuries. It is not until after the events of the migration period had shuffled populations from one end of the European continent to another that the earliest records of true trials by battle began to be written.

The First Medieval Records

The first explicit reference to trial by battle appears in the Burgundian Code. Burgundian law allowed a man accused of a crime or tort to clear his name by offering an exculpatory oath. The system was vulnerable to perjury, which led King Gundobad to issue a decree in 502 containing the following words. “If the party to whom the oath has been offered does not wish to receive it, but says that his adversary’s pledge of truth can be proven by arms, and the other [i.e. accused] party will not give up, let permission for combat not be denied.”³¹ This passage described a practice that would still be recognizable more than nine hundred years later. Here at last the duel was part of a formal and regulated legal process used to establish the validity of a legal case.

It is not clear where the Burgundian practice came from. Heinrich Brunner thought that Gundobad was not inventing a new process but rather reviving one that had been suppressed temporarily.³² There is little evidence of any suppression, however, since documentation is

³¹ “...si pars eius, cui oblatum fuerit iusiurandum, noluerit sacramenta suscipere, sed adversarium suum veritatis fiducia armis dixerit posse convici, et pars diversa non cesserit, pugnandi licentia non negetur.” *Leges Burgundionum*, ed. L. Rudolf de Salis, *Monumenta Germaniae Historica, Leges* 1, vol. 1 (Hannover, MGH, 1892), c. XLV, p 75.

³² Heinrich Brunner, *Deutsche Rechtsgeschichte*, vol. 2, rev. Claudius von Schwerin (Berlin: Duncker & Humblot, 1928), p. 556.

all but non-existent for Burgundian legal practices before Gundobad. A passage closer to the beginning of the code, most likely promulgated a few years before, says that if the parties who are designated to hear a defender's oath are not willing to accept it, then the case should be referred to the judgement of God.³³ The means of God's judgement is not specified, but as the code mentions no other forms of ordeal, there is reason to believe that it meant the judicial combat specified in the later title.

It is difficult to say with any certainty which people invented trial by battle. Since the practice was not recorded among the Ostrogoths, and the laws of the Visigoths have nothing to say about it, all subsequent examples appeared within an ever-widening radius around Burgundian territory.³⁴ Robert Bartlett has argued convincingly that the Franks were the first people to use the ordeals of fire and water, as all the earliest references to this form of proof are concentrated in Frankish sources.³⁵ It would be tempting to identify the Burgundians similarly as the inventors of judicial duelling, since all subsequent references to trial by battle appear in an ever-widening radius around Burgundian territory. However, the process could just as easily have been already widespread in Continental Europe when the Burgundian Code was written and this pattern of diffusion may simply reflect the appearance of early medieval legal records in general. Hence, one should be cautious about drawing definitive conclusions.

What is apparent is that the practice was not common to all the peoples on the periphery of the former Roman Empire, nor even to all the Germanic-speaking peoples. Not only was it absent among the Goths, but there is no mention of it in the Salic law until Louis the Pious

³³ *Leges Burgundionum*, c. VIII.2. p. 49.

³⁴ There was a judicial duel held in 820 at the court of Louis the Pious between the Visigothic noblemen Bera and Sanilo, but the location seems to have been chosen because Visigothic law did not have provisions for such a contest. See A. Iglesia Ferreirós, "El proceso del conde Bera y el problema de las ordalias" in *Anuario de historia del derecho español* 51 (1981), pp. 189-98.

³⁵ Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Clarendon, 1986), pp. 3-12.

issued capitularies with additional titles in the early ninth century. However, it does show up in the laws of the neighbouring Ripuarian Franks in the first half of the seventh century. The Lombards considered it customary when their king Rothair issued his edict in 643, and the Alamans were using it when they recorded their laws in the early eighth century. It later made appearances in the laws of the Bavarians, Frisians, Thuringians and Saxons, but the ample records from Anglo-Saxon England make no mention of it at all. Later sources also place it in Scandinavia, Ireland and Russia, but the dates of its arrival or invention there are not recorded.³⁶ While judicial duels may have originated among the peoples who migrated from the northern coasts of Europe, their absence among the Salian Franks and the Anglo-Saxons reminds us that early Germanic culture was not homogenous and cannot be treated as such. Nevertheless, early medieval lawmakers seem to have borrowed readily from each other, for many of the elements found in early legal codes from east of the Rhine made appearances centuries later in French and English laws.

The reference to trial by battle in the Burgundian law is instructive because it contains elements that appear in other early medieval sources as well. Later jurists would also grapple with the issues of when to allow duels to occur, whether to permit the use of champions, how to stage a lawful combat, and what God felt about the practice. It is worthwhile to quote the title of 502 in its entirety, because it covers all of these elements.

³⁶ For Scandinavia, see Marlene Ciklamini, "The Old Icelandic Duel" in *Scandinavian Studies* 35 (1963), 175-7. The earliest reference to trial by battle in Russia is a note by the Arab traveller Ibn Dost, who visited Novgorod in the first half of the eleventh century and found the procedure being used as an appeal when both parties were unsatisfied with a judgement. He is quoted in Alfred Rambaud, *A Popular History of Russia from the Earliest Times to 1882*, vol. 1, trans. L.B. Lang (Boston: Estes & Lauriat, 1879), pp. 87-8, but I have been unable to source this text. Note that the eleventh century law code *Russkaya Pravda* does not contain a reference to judicial duels as Rambaud claims (p. 84). Irish sources are complicated by fierce academic debates about the dating of texts that survive only in manuscripts copied at much later dates. It is safe to say that evidence of judicial duels in that region is very dubious before at least AD 700, and the practice probably dates to a much later century. See Fergus Kelly, *A Guide to Early Irish Law* (Dublin: Dublin Institute for Advanced Studies, 1988), pp. 211-213.

We know that many of our people are so seduced by frivolous cases and the instinct for greed, that often they do not hesitate to offer oaths about uncertain matters and perjure themselves regularly about known ones. To banish this customary vice, we decree by the present law that as often as a case shall arise among our people and he who has been accused denies by offering oaths that the property which is sought is owed by him, and that the deed has been done which is charged, it will be fitting that an end be imposed on their dispute with this procedure: if the party to whom oath has been offered does not wish to receive these guarantees, but shall say that his adversary can be convicted by the pledge of truth demonstrated in arms, and the opposing party [the accused person] will not back down, let permission for combat not be refused; furthermore, one of the same witnesses who were assembled to give oaths shall fight, with God as the judge. For it is just that if anyone shall say straightaway that he knows the truth of the matter and shall offer to take an oath, he should not hesitate to fight. But if the witness of him who offered the oath is defeated in that combat, let all witnesses who promised that they would swear an oath be compelled to pay three hundred solidi as a fine on that account without any display of unwillingness. But if he who rejected the oath [the accuser] shall have been killed, let the undefeated party of the victor be given ninefold the disputed sum from his property of the accuser, so that as a result, one may delight in truth rather than perjury.³⁷

The title deals with one of the key issues that occupied early medieval legists, that of legal proof. In a society where legal records depended on oral transmission, and criminal investigations were usually conducted by the victims themselves rather than any apparatus of the state, lawsuits frequently amounted to little more than the words of one person pitted against another. Early medieval procedure relied heavily on the exculpatory oath to settle difficult disputes. The defendant swore that he was not responsible for the wrong which had been committed, and he was sometimes joined in his oath by a set number of kin and close associates. These oaths often had a spiritual dimension, being made on relics, altars or holy

³⁷ “*Multos in populo nostro et per vacationem causantium et cupiditatis instinctum ita cognoscimus depravari, ut de rebus incertis sacramenta plerumque offerre non dubitent et de cognitis iugiter periurare. Cuius sceleris consuetudinem submoventes praesenti lege decernimus, ut, quotiens inter homines nostros causa surrexerit, et is, qui pulsatus fuerit, non deberi a se quod requiritur, aut non factum quod obicitur, sacramentorum oblatione negaverit, hac ratione litigie eorum finem oportebit inponi: ut, si pars eius, cui oblatum fuerit iusiurandum, noluerit sacramenta suscipere, sed adversarium suum veritatis fiducia armis dixerit posse convici, et pars diversa non cesserit, pugnandi licentia non negetur; ita ut unus de eiusdem testibus, qui ad danda convenerint sacramenta, Deo iudicante confligat; quoniam iustam est, ut si quis veritatem rei incunctanter scire se dixerit et obtulerit sacramentum, pugnare non dubitet. Quod si testis partis eius, qui obtulerit sacramentum, in eo certamine fuerit superatus, omnes testes, qui se promiserant iuratuos, trecenos solidos multae nomine absque ulla induciarum praestatione cogantur exsolvere. Verum si ille, qui rennerit sacramentum, fuerit interemptus, quidquid debebat, de facultatibus eius novigildi solutione pars Victoria reddatur indempnis, ut veritate potius quam periuriis delectentur.*” *Leges Burgundionum*, c. XLV, pp. 75-6.

books. The co-swearers, or compurgators, were not necessarily witnesses. Their oaths merely indicated their solidarity with the defendant. The main difficulty with this procedure was that it was vulnerable to perjury. Defendants had little incentive to admit any wrongdoing or offer any compensation. On the other hand, the prospect of having to fight a judicial duel if his oath was not believed encouraged a litigant to choose his words carefully.

It was salutary for disputants to settle their cases in court, but early medieval rulers had few resources with which to compel their subjects to accept their jurisdiction or judgement. If one of the parties to a suit was unwilling to receive the other's oath, then the resulting standoff could hardly reflect well on the ruler. Noble courts presented just one alternative among several methods of dispute settlement. Evidence from the Frankish world shows that disputing parties often settled their differences out of court, drawing up oral or written contracts on their own or with the help of a third party.³⁸ Underlying everything lay the threat of lethal feud, illegal under the Burgundian Code, but still contemplated.³⁹ Trial by battle combined the advantages of multiple dispute settlement mechanisms. It allowed the disputants to negotiate a settlement under the mediation of a respected superior and the eyes of prominent witnesses, but it also offered the threat of violence in order to ensure that the negotiations were treated seriously by both parties.

The Burgundian Code allowed trial by battle in any kind of suit "as often as a case shall arise among our people," as long as the defendant denied the accusations and the plaintiff refused to accept his oath. However, later codes limited the kinds of suits in which parties could resort to arms. The Riparian Franks, whose laws were drawn up in the first third of

³⁸ See Patrick Geary, "Extra-judicial means of conflict resolution," in *La giustizia nell'alto medioevo (secoli V-VIII)*, Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo 42, vol. 2 (Spoleto: Presso la Sede del Centro, 1995), pp. 997-1052.

³⁹ *Leges Burgundionum*, c. II.7.

the seventh century, used duels in contested cases regarding theft and in claims regarding a man's free status.⁴⁰ The contemporary *Pactus legis Alamannorum*, drawn up by the Franks' neighbours and subjects, the Alamans, applied the procedure to cases of secret death and poisoning, while later versions of their laws added capital crimes of all sorts, the theft of valuable property, disputes over dowries and land boundaries, and questions of whether to re-open a case that had already been settled.⁴¹ The Alamans' neighbours, the Bavarians, who recorded their customary laws between 744 and 748 and became subjects of the Franks soon afterward, saw trial by battle as a means to settle important disputes over immoveable property, and also included a provision for using it when prosecuting someone for bewitching their crops.⁴² These cases cover a wide variety of disputes over both property and personal harm. Their only unifying theme is that none of these cases were trivial matters.

To these examples may be added the Lombard edict of Rothair from 643, which calls for duels to settle accusations regarding capital crimes and adultery, as well as instances where a woman was accused of killing her husband.⁴³ Rothair's Edict was unique for also stipulating certain situations in which trials by battle were forbidden. If a man accused his nephew of being born in adultery, Rothair decreed "it would seem grave and wicked that such a suit be left to the slip of one shield in a fight."⁴⁴ He uses similar words to describe cases where one man claims the guardianship of another's wife and where a woman's kin suspect her husband of having killed her. These laws, which are among the later titles in the edict, seem to have

⁴⁰ *Lex Ribvaria*, ed. Franz Beyerle & Rudolf Buchner Monumenta Germaniae Historica, Leges I, vol. 3, part 2 (Hannover: Hahn, 1954), cc. 36.4, 60.2, pp. 88, 108.

⁴¹ *Pactus legis Alamannorum*, c. XIV.1. *Leges Alamannorum* cc. LIV.1-2, LXXXI, LXXXVI.4, XCI. In Karl Lehmann & Karl Eckhardt, eds., *Leges Alamannorum*, Monumenta Germaniae Historica, Leges Nat. Ger. 5.1 (Hannover: Hahnsche, 1966), pp. 24, 112-3, 145-7, 149-50, 153,

⁴² *Lex Baiuvariorum*, ed. Ernst von Schwind, Monumenta Germaniae Historica, Leges Nat. Ger. 2 (Hannover: Hahn, 1926), cc. XVI.17, XVII.2, XIII.8, pp. 411, 444, 448.

⁴³ *Edictus Rothari in Edictus ceteraeque Langobardorum leges*, ed. Frederick Bluhme, Monumenta Germaniae Historica, Leges Fontes Iuris 2 (Hannover: Hahn, 1869), cc. 9, 198, 202, 213, pp. 14, 41-4.

⁴⁴ "*Quia grave et impium videtur esse, ut talis causa sub uno scuto per pugna dimittatur.*" *Ibid.*, c. 164.

been written in response to specific cases on which Rothair had to rule. They suggest that the Lombard people occasionally contemplated judicial duels in a much wider variety of situations than the ones mentioned in the laws, but that opinions on the legality of the procedure were sometimes divided.

Trials by battle were also mentioned in the laws of the Frisians, Saxons and Thuringians, drawn up in the early ninth century after they too were subdued by the Franks. The *Lex Frisionum*, like the Ripuarian code, prescribed duels in cases where a man's free status was contested.⁴⁵ The Saxon laws mention it only once, in connection with disputes about land ownership, but a later title appended in the reign of Louis the Pious permits them to use it in cases of theft.⁴⁶ The Thuringian laws contemplated the method in connection with a much wider variety of crimes. It might be used to prove the murder of a free man, to prove that a man who had been killed in a presumed act of theft was actually innocent, in cases where a nobleman had shamefully been tied up by his enemies, a house burned by night or, as in the Alemannic law, a woman accused of being a poisoner.⁴⁷

Although these examples show that there were significant variations between the different early medieval law codes regarding the kinds of cases that could result in a duel, they also point to some themes that recur in diverse regions and centuries. When duelling was contemplated as a mode of proof, the case was a serious matter that had claimed a man's life, wife, land or valuable property. It was used as a means to settle disputes where an accusation had been made and no one could prove or disprove them. Many of the situations in which it was contemplated were crimes that by their very nature would not have left material evidence

⁴⁵ *Lex Frisionum*, eds. Karl August Eckhardt & Albrecht Eckhardt, *Monumenta Germaniae Historica, Leges Fontes Iuris* 12 (Hannover: Hahn, 1982), c. XI.2-3, p. 54.

⁴⁶ *Leges Saxonum in Leges Saxonum und Lex Thuringorum*, ed. Claudius von Schwerin, *Monumenta Germaniae Historica, Leges Fontes Iuris* (Hannover: Hahn, 1918), p. 54.

⁴⁷ *Lex Thuringorum*, cc. II, XXXVI, XXXIX, XLI, LII, pp. 57, 62-3, 65.

or witnesses, matters like adultery, magic, poisoning and secret homicide. These accusations required extraordinary modes of proof if they were to be resolved in court.

There was also an assumption in some of the early medieval laws that those who could be tried by judicial duels were free men or women, although they could be of low estate.

Rothair's Edict stipulates that a man commencing a duel should swear an oath while holding the hand of his kin or fellow freemen (*conliberti*).⁴⁸ A later Lombard law dating from 717 proposes to settle with a combat those cases of theft allegedly committed by fugitive slaves, but makes it clear that the master, not the absent slave, is responsible for undertaking the duel.⁴⁹ In the Frisian laws, a man who had been emancipated from the half-free status of a leet could participate in a duel specifically when he felt that his former master had defamed him by claiming that his status was still servile.⁵⁰ Finally, there is a ninth-century example in the additional Saxon laws, which says that a free man accused of theft but found without any stolen property in his possession could choose to be tried by a judge or go either to a duel or to the ordeal of the cross, where he and his accuser stood with their arms outstretched until one of them let his hands drop and lost the case. However, if the accused man was a slave, he would have to be tried by the ordeal of hot water.⁵¹ This tradition of reserving judicial duels for those litigants of free social status would continue for centuries to come.

Most of the early medieval laws also allow for the use of champions under certain circumstances. The section of the Burgundian Code quoted above allowed fighting by proxy in any kind of case, providing only that the champion was a witness in the dispute. Gregory of Tours describes a judicial duel from the year 590 between a forester of King Guntram of

⁴⁸ *Edictus Rothari*, c. 368, p. 69.

⁴⁹ *Leges Liutprandi*, c. 11.V, p. 89.

⁵⁰ *Lex Frisionum*, c. XI.3, p. 54.

⁵¹ *Leges Saxonum*, p. 54.

Burgundy and the royal chamberlain, who was named Chundo. Chundo, accused of killing a buffalo in the royal domain, put forward a nephew to fight in his place, but the forester fought on his own behalf. The nephew, described as a boy (*puer*), managed to wound the forester fatally, but was killed himself in the process. Chundo attempted to escape from the field to a monastery, but he was caught and executed.⁵² Although sources from the twelfth century onward make it clear that able-bodied men could not appoint champions to fight on their behalf in criminal cases, the rules were apparently different among the early medieval Burgundians. It is also possible that Chundo was past fighting age. The forester, for his part, did not have a champion.

Other codes mention champions only in connection with female defendants. Rothair's Edict and the Thuringian laws say that a woman accused of killing or conspiring to kill her husband may be defended in a duel by her relatives.⁵³ The latter stipulate that if she cannot secure a champion, she is required to prove her innocence by walking on nine hot ploughshares.

If the codes suggest that the principal parties in a judicial duel were free folk, the same was not always the case for their champions. The Bavarian laws limit the compensation due to the master of a slave whom another party designated as a champion and who lost his duel.⁵⁴ Frisian law lumped champions in the same sentence as aborted fetuses and men caught in the act of theft or arson, as individuals whose death did not need to be compensated with *wergeld*.⁵⁵ This attitude would appear again in English and French documents from later

⁵² Gregory of Tours, *Libri Historiarum*, eds. B. Krusch & W. Levison, *Monumenta Germaniae Historica, Scriptores Rerum Merovingicarum*, 1.1 (Hannover: Hahn, 1951), lib. X, c. 10, p. 494.

⁵³ *Edictus Rothari*, c. 202, p. 43; *Lex Thuringorum*, c. LII, p. 65.

⁵⁴ *Lex Baiuvariorum*, c. XVII.1-2, pp. 446-9.

⁵⁵ *Lex Frisionum*, c. V.1, p. 46.

centuries, where champions were not usually men of high status and their reputation was often somewhat disreputable.

Other aspects of battle procedure in the laws of early medieval societies are harder to compare, since lawmakers of that era did not feel the need to explain in detail how their courts operated. One characteristic that early trials by battle had in common was the emphasis on public gestures. If a Ripuarian Frank wished to contest an accusation of theft, he went to his accuser's house and hung a sword on the doorpost.⁵⁶ A Frisian wishing to accuse someone of homicide was to make his statement in court while holding the edge of the accused man's tunic.⁵⁷ Alamans who sought to settle a disagreement over the boundaries of their land were to present their count with a clod of the disputed soil. The count wrapped it in a cloth and put his seal on it. In a ceremony reminiscent of Gaius' *legis actio sacramentum*, the fighters called on God for aid before the deciding combat, touching the package with their swords.⁵⁸ All of these gestures seem to have been designed to cement court cases into a community's collective memory, an important safeguard in societies where legal records rested on oral testimony rather than written documents.

Of course, the most dramatic ritual of all was the duel itself. Unlike later battles, which were usually fought with clubs, the earliest medieval judicial duels appear to have been particularly dangerous affairs that frequently led to fatalities. The Burgundian law refers to the possibility of a combatant being killed, and Gregory of Tours' case of the forester and the chamberlain Chundo provides an explanation of how such a death could occur.

...both men stood forth on the field. The boy hurled his lance at the forester and pierced his foot, so that he soon fell on his back. Then, drawing a knife which hung from his

⁵⁶ *Lex Ribvaria*, c. 36.4, p. 88.

⁵⁷ *Lex Frisionum*, c. XIV.5, p. 58.

⁵⁸ *Leges Alamannorum*, c. LXXXI, 145-7.

belt, the boy, while trying to cut the fallen man's throat, was himself stabbed in the stomach. Thus both of them were laid low and died.⁵⁹

Other legal codes stated implicitly or explicitly that combatants were to fight with sharp weapons. As mentioned above, pre-duel rituals from both the Ripuarian and Alemannic laws involved swords, making it probable that such weapons were used in the duel itself. Another title from the Alemannic laws, concerning disputes over dowry, allowed the disputing parties to settle their differences by fielding fighters "with drawn swords" (*spata tracta*) while Frisian law referred to judicial combatants carrying unspecified weapons (*arma*).⁶⁰ The provisions in Bavarian and Frisian law regarding the wergeld of vanquished champions indicate that these contests could also lead to fatalities.

On the other hand, a law of 724 by the Lombard king Liutprand provided that those who were accused of theft and defeated in judicial combat, but later found to be wrongly convicted, should receive back any compensation money that they had paid to the victim.⁶¹ This provision would suggest that some Lombard combatants were expected to survive their altercations. Customs regarding the physical practice of judicial duelling may well have varied from jurisdiction to jurisdiction.

The overall impression of trial by battle offered by the earliest medieval codes is one of diversity. Although the procedure may have sprung from a single source, different jurisdictions were already showing local variations in its practice between the sixth and the eighth centuries. It was a flexible tool, capable of being adapted to local circumstances.

⁵⁹ "...in campum uterque steterunt; iactaque puer illa lancea super custodem silvae, pedem eius transfigit; moxque resupinus ruit. Puer vero, extracto cultro, qui de cingulo dependebat, dum collum ruentis incedere temptat, cultro sauciatus ventre transfoditur. Cecideruntque ambo et mortui sunt." Gregory of Tours, *op. cit.*, book X, §10.

⁶⁰ *Leges Alamannorum*, c. LIV.2, pp. 112-3; *Lex Frisionum*, cc. XI.3, XIV.5, pp. 54, 58.

⁶¹ *Leges Liutprandi*, c. 56.III, p. 106.

In the ninth century, the Carolingian emperors made several changes to the practice of trial by battle. By the time of Charlemagne, all the jurisdictions with recorded laws regarding judicial duelling had been incorporated into the Frankish empire. Nevertheless, rather than imposing new customs on their conquered principalities, the Franks preferred to allow them to maintain their existing laws, so that older edicts like the Burgundian Code continued to hold force. On top of these laws, the Carolingian emperors made additions, changes and clarifications, which they recorded in directives known as capitularies.

The first capitulary to mention trial by battle is Charlemagne's addition to the Ripuarian law from the year 803. Regarding the section of the existing law on the composition for wounds, he added a clause ruling that a man who wished to deny he had wounded another could swear an oath with twelve compurgators or undergo the ordeal of the cross, or he could fight a judicial battle (*decertare*). If the defendant chose the last option, he was to be armed with a shield and baton (*fustis*).⁶² This clause is the first record of what was to become a long medieval tradition of fighting judicial duels with batons or clubs rather than edged weapons. The baton rule was later included in a second capitulary from Charlemagne's reign, and after that was repeated in two more capitularies from early in the reign of Louis the Pious.⁶³ It appears to be a Carolingian innovation, overturning previous customs. Although clubbing a combatant into submission was only marginally less brutal than killing him with a sword, the new rules most likely reduced the number of cases that ended in inconclusive double deaths, like those of Chundo's nephew and the forester. On a practical level, it also alleviated the need to procure two swords, a not inconsiderable expense at that time.

⁶²*Capitularia Regum Francorum*, ed. A. Boretius, vol. 1, Monumenta Germaniae Historica (Hannover: Hahn, 1883), no. 41, c. I.4., p. 119.

⁶³*Ibid.*, no. 82, c. 3, p. 180; no. 134, c. 1, p. 268; no. 135, c.1, p. 269.

Louis the Pious also introduced new elements to the practice of trial by battle. In a capitulary from the year 816, he ruled that champions should be chosen from among only those witnesses who came from the county in which the dispute occurred, “because it is not credible that the truth of an issue concerning the status of a man or his possession can be better known by others.”⁶⁴ He also decreed that champions who lost a battle should lose their right hand because they were guilty of perjury, but other witnesses for the losing side could redeem their own hands for a fee.⁶⁵ These provisions suggest that cases of perjury, which Gundobad had hoped to discourage with the threat of judicial violence, were still very much a problem three hundred years later.

The Judgement of God

The earliest medieval legal codes often express confidence in divine intervention. King Gundobad ordered that champions should fight “with God as the judge” (*deo iudicante*), and his sentiments were echoed in the other codes. Rothair’s Edict describes the word *camphio* as a “combat according to the judgement of God” (*pugnam ad dei iudicium*).⁶⁶ The elaborate Alemannic ritual for determining the boundaries of disputed land says “let [the litigants] call God the Creator to witness, so that God may give victory to him who has a just claim,” while a similar ritual in the Bavarian laws says “let judgement belong to God.”⁶⁷

However, in the year 731 King Liutprand of Lombardy already had his doubts about divine intervention. On the subject of trying cases of poisoning by battle, he wrote “For we

⁶⁴ “... *quia non est credibile, ut de statu hominis vel de possessione eius per alios melius cognosci rei veritas possit.*” *Ibid.*, no. 134, c. 1.

⁶⁵ *Ibid.*

⁶⁶ *Leges Burgundionum*, c. XLV, p.76. Rothair’s Edict, c.198.

⁶⁷ “...*et testificent Deum creatorum, ut, cui sit iustitia, illi donet Deus victoriam.*” *Leges Alamannorum*, c. LXXXI, p. 146. “...*et ad dei pertineat iudicium.*” *Lex Baiuvariorum*, c. XVI.17, p. 444.

are uncertain about the judgement of God and we have heard that many men have unjustly lost their case through combat; however, on account of the constitution of our Lombard people we cannot abolish this law.”⁶⁸ He was the first recorded lawmaker to question the institution’s theological foundations, but not the last.

Until the end of the eighth century, representatives of the Church had very little to say about judicial duelling. As seigneurs with secular judicial responsibilities as well as ecclesiastical roles, bishops certainly came into contact with secular law. Nevertheless, their writings devoted the lion’s share of their attention to the somewhat more pacific ordeals of hot and cold water, hot iron and the cross. Early medieval formulary books contained between them dozens of model ceremonies for blessing cauldrons and hot irons, but the lone example of a blessing for duellists and their weapons comes from twelfth-century England, not from the kingdom of the Franks.⁶⁹

Synods had a little more to say about the subject, and their position on it evolved considerably over the Carolingian period. The first synod to examine the matter was a local gathering in Neuching, near Munich, in the year 772. “Concerning the battle of two people which is called *wehadinc*,” says a canon, “let people not choose it as before, although they are prepared to do so, lest it happen that they are planning to use charms or diabolical schemes or magic arts.”

In the next canon, the same synod also ruled out the procedural possibility of using a combat to appeal a previous combat. “Similarly he who, as a reaction to a judgement already

⁶⁸ “*Quia incerti sumus de iudicio dei, et multos audiimus per pugnam sine iustitia causam suam perdere; sed propter constitutinem gentis nostrae langobardorum legem ipsam uetare non possumus.*” *Leges Liutprandi*, c. 118.II. See also pp. 284, *infra*.

⁶⁹ See *Formulae Merovingici et Karolini Aevi*, ed. K. Zeumer, *Monumenta Germaniae Historica, Leges V* (Hannover: Hahn, 1886), pp. 599-725; For the lone English example, see Petrus Browe, *De Ordaliis*, vol. 2 (Rome: Pontificia Universitas Gregoriana, 1933), pp. 14-15.

carried out, rouses himself to avenge the abovementioned battle (which we called *champfwich*), let him swear the oath they call *ahteid* in the church with three reputable oath-helpers.”⁷⁰ The fact that a church council was ruling on issues of secular legal procedure does not seem to have presented a conflict for these eighth-century legislators.

A later synod at Tours in 813 was also concerned about supernatural cheating. It decreed “Priests are enjoined that they not distribute the sacred chrism outside the church, where it can be touched by anyone. For it is thought that criminals who have been anointed with or drunk such oil cannot be detected by any examination at all.”⁷¹ The clerics at these early synods were concerned not about the institution of judicial combat *per se*, but rather about how to carry it out fairly and ensure that one party did not handicap the supernatural odds in its own favour beforehand.

The Council of Valence, a local gathering of the bishops of Lyon, Vienne and Arles in 855, produced a canon with a distinctly different tone. While previous synods had concerned themselves with aspects of trial by battle, but not expressed any opposition to the broader concept of the procedure, this council took a much harsher position. The document produced left no doubts about the participants’ feelings on the subject.

And because disputes--even to the point of battles of armed men--are accustomed to break out from this sort of swearing, or rather perjury [i.e. the oaths of compurgators], and the blood of war to be shed in peacetime with the cruellest of spectacles, we decree according to the ancient custom of ecclesiastical observation that whoever kills another man or renders him crippled by wounds in a battle so iniquitous and contrary to Christian peace should be separated like a worthless murderer from the company of the church and all the faithful, and compelled to carry out legitimate penance in all ways. Furthermore,

⁷⁰ “*De pugna duorum, quod wehadinc vocatur, ut prius non sortiantur, quam parati sint, ne forte carminibus vel machinis diabolicis vel magicis insidantur.*” “*Qui supra predictae pugne, quod champfwich diximus, peracto iudicio se simile vindictae erigere contra querentem presumpserit, sacramentum quod ahteid dicunt, iuret in aeclesia cum tribus nominatis sacramentalibus.*” *Concilia aevi Karolini*, ed. A. Werminghof, *Monumenta Germaniae Historica, Concilia II* (Hannover: Hahn, 1906), no. 16, cc. 4-5, p. 100.

⁷¹ “*Item presbyteris iniungendum est, ne sacrum chrisma foras conclavi dimittant, ubi a quolibet attingi possit. Nam criminosos eodem chrismate unctos aut potatos nequaquam ullo examine deprehendi posse a multis putatur.*” *Ibid.*, no. 289, c. 20.

he who has been killed is to be considered unsuitable for the commemoration of the Lord's prayers, just like his murderer and a voluntary seeker of his own death; nor is his body, according to the decree of the canons, to be brought to the sepulchre with psalms and prayers.⁷²

While this canon may have been condemning all fights in the court and not just trial by battle, it undoubtedly covered judicial duels as well. This stance reflected the work of a man of the previous generation, Bishop Agobard of Lyon. Agobard was deeply unhappy with the Burgundian law which governed most of his flock. Some three centuries after Gundobad had promulgated his code, the distinctions between Burgundians, Franks and the descendants of the Gallo-Romans were becoming increasingly irrelevant. Since Burgundian law allowed only Burgundians to testify against other Burgundians, defendants sometimes had to resort to combat in order to prove their innocence, despite the fact that reputable witnesses belonging to other ethnicities were willing to swear oaths on their behalf.

Agobard decried this situation in his *Liber adversus legem Gundobadi*, an epistle to the recently crowned emperor Louis the Pious. Citing Christ's declaration that all Christians were one people in the eyes of God, he asked the emperor to place the Burgundian realm under Salian law so that henceforth Burgundians and Franks could testify at the same trials.⁷³

The judicial duel, Agobard insisted, was not a just or equitable way to settle disputes.

For a case often occurs where not only strong men but even the old and infirm are challenged to battle and fight, even for the pettiest causes. In such ferocious contests,

⁷² "Et quia ex hujusmodi juramentorum, immo perjuriorum, contentione etiam usque ad armorum certamina solet prorumpi et crudelissimo spectaculo effunditur cruor belli in pace, statuimus juxta antiquum ecclesiasticae observationis morem ut quicumque tam iniqua et christiana paci inimica pugna alterum occiderit seu vulneribus debilem reddiderit, velut homicida nequissimus, et latro cruentus, ab ecclesiae et omnium fidelium coetu seperatus, ad agendam legitimam poenitentiam modis omnibus compellatur. Ille vero qui occisus fuerit, tamquam sui homicida et propriae mortis spontaneus appetitor, dominicae oblationis commemoratione habeatur alienus, nec cadaver, juxta sanctorum canonum decretum, cum psalmis et orationibus ad sepulturam deducatur." Quoted in Olivier Guillot, "Le duel judiciaire du champ legal, sous Louis le Pieux au champ de la pratique en France (XIe s.)," in *La giustizia nell'alto medioevo*. Settimane di Studio del Centro Italiano di Studi sull'Alto Medioevo XLIV (Spoleto: Presso la Sede del Centro, 1997), pp. 773-4.

⁷³ Agobard of Lyon, *Adversus legem Gundobadi* in *Opera Omnia*, ed. L. van Acker, Corpus Christianorum Continuatio Mediaevalis LII (Turnhout: Brepols, 1981), c.IV, p. 21.

there occur unjust murders and cruel and perverse accidents of judgement, not without a loss of faith, charity and piety, since those men suppose that God is present with he who can overcome his brother and hurl him down into profound misery. This is the worst error and confusion of order, that the scriptures of truth are disregarded in favour of this perversity, and Christian concord ruined, and it is thought most unworthily concerning God, who is good by nature, that he favours rapacious people and opposes the wretched.⁷⁴

Agobard expanded his position in a later book for the same emperor titled *De divinis sentiis contra iudicium Dei*. There he made the case that nowhere in scripture had God ever called for a trial by ordeal, nor had any of the saints set an example by participating in one.⁷⁵ He reminded Louis of verse after verse of the Old and New Testaments that condemned bloodshed and called upon Christians to seek actively a non-violent way of life. The book also advanced the argument that God's judgement was not always manifest or easy to interpret, for sometimes the unjust won over the innocent. After all, he pointed out, Cain had killed Abel and not vice versa, Jacob and not Esau had received his father's blessing, and Egypt conquered the Israelites, rather than the reverse. God's final sentence would be known on the day of judgement, and until then it was vain for earthly judges to assume that they could divine his will by holding battles.⁷⁶

These two books were the first ecclesiastical works to treat the subject of judicial duelling, and ordeals in general, at any length.⁷⁷ While Agobard's argument was influential in the neighbourhood of his own diocese and his points would be picked up again by much

⁷⁴ "...enim causa accidit, ut frequenter non solum ualentes uiribus, sed etiam infirmi et senes lacessiantur ad certamen et pugnam, etiam pro uilissimis rebus. Quibus feralibus certaminibus contingunt homicidia iniusta et crudeles ac peruersi euentus iudiciorum, non sine amissione fidei et caritatis ac pietatis, dum putant Deum illi adesse, qui potuerit fratrem suum superare, et in profundum miseriarum deicere. Hic est pessimus error et ordo confusus, ut pro talibus peruersitatibus et Scriptura ueritatis contempnatur, et concordia christiana dispereat, et de Deo, qui natura bonus est, tam indigne sentiatur, ut faueat rapacibus et aduersetur miseris." *Ibid.*, c. VII, p. 23.

⁷⁵ *De divinis sentiis contra iudicium Dei*, in van Acker, op. cit., c. II, p. 32.

⁷⁶ *Ibid.*, pp. 47-8.

⁷⁷ Agobard also quoted St. Avitus, bishop of Vienne and a contemporary of King Gundobad, expressing his doubts that trials by combat were always won by the most righteous party, but Avitus' opinion is not attested elsewhere. See Agobard, p. 27.

later theologians, his books do not seem to have had the desired impact on the emperor.

While Louis abolished the ordeal of the cross in a capitulary of 818 or 819, he did not do the same for the judicial duel.⁷⁸

Elsewhere in the Frankish empire, bishops were much more comfortable using trial by battle as a judicial procedure. Adrevald of Fleury, recording the miracles performed by the relics of St. Benedict at his monastery, reported an occasion in 834 when battle was employed to settle a dispute between the monks of Fleury and their brethren at St. Denis. At issue were the rights to some property, or *mancipia*. Both parties sent their most knowledgeable envoys to argue their case before the emperor's administrator, Viscount Genesius, but they could not reach any decision. The case was further complicated by the fact that Genesius was familiar with Salic law, but not with ecclesiastical matters constituted under Roman law. "At last," reported Adrevald, "it was decided that witnesses from each party would step forth, who, after giving an oath, would impose an end on the controversy, fighting it out with shields and sticks."

However, not all of the clerics were in agreement. "Although it seemed just and righteous to everyone, a certain learned man of law from the Wastinens region [Orléans and Gâtinais] ... put forth the judgement that it was not right that witnesses fight in battle on account of ecclesiastical matters but rather that the advocates apportion the ownership rights among themselves." At first Genesius approved of the idea, "but truly Saint Benedict did not neglect that judge and legislator who first advanced the idea of dividing the property cunningly and bestially as befitted his name." (The man of law is thought to have been none other than Lupus of Ferrières.) "For immediately, as the ownership was divided in two parts,

⁷⁸ *Capitularia Regum Francorum*, no. 138, c. 27, p. 279.

he was so struck by the just judgement of God, that he could not say anything in any way, the function of his whole tongue having been bent back.”⁷⁹

Here Adrevald indicates that there was by no means widespread consensus among Frankish clergy about the legitimacy of judicial duelling.

Indeed, trial by battle does seem to have been considered separately from other ordeals when other thinkers tackled the issue of God’s judgement. The famously bellicose Bishop Hincmar of Rheims wrote a letter defending the use of ordeals by fire and water, citing the case of Lot’s family as a precedent for the former and the Flood as an example of the latter, but he did not mention judicial duels and forbade their use in his own diocese.⁸⁰

The Church’s position on trial by battle solidified in 867 when Pope Nicholas I issued a letter regarding the emperor Lothair’s attempts to divorce his wife Teutberga. Nicholas discovered that Lothair was planning to hold a court session in order to prove that his marriage was illegitimate, or failing that, to accuse Teutberga of adultery, forcing her relatives to prove her innocent by means of combat. The Pope took the side of the beleaguered queen and tried to prevent the session from happening, using arguments that echoed those of Agobard. “Moreover, we find that there is no precept in law from anywhere that has adopted trial by battle, although we read that it is present in certain situations: for instance, the holy story presents David and Goliath; however, divine authority never approves it anywhere as something considered legal.” He went on to say “With this argument and ones of this sort, the

⁷⁹ “*Tandem adiudicatum est, ut ab utraque parte testes exirent, qui post sacramenti fidem scutis ac baculis decertantes finem controversiae imponerent. Sed cum id iustum rectumque visum fuisset omnibus, quidam Wastinensis regionis legis doctor ... iudicium protulit non esse rectum, ut bello propter res ecclesiasticas testes decernerent, immo magis inter se mancipia advocati partirentur. ... At vero s. Benedictus nequaquam iudicis illius et legislatoris oblitus est, qui primus sententiam dividendi mancipia versute iuxta nomen suum ac bestialiter protulit. Namque continuo, ut eadem in duas divisa sunt partes mancipia, ille iusto Dei iudicio ita percussus est, ut nullo modo aliquid loqui posset, incurvato tocius linguae officio...*” Adrevald of Fleury, *Ex Adrevaldi Floriacensis Miraculis Sancti Benedicti*, ed. O. Holder-Egger, *Monumenta Germaniae Historica, Scriptores*, vol. 15, part 1 (Hannover: Hahn, 1887) c. 25.

⁸⁰ Charlotte Leitmaier, *Die Kirche und die Gottesurteile* (Vienna: Verlag Herold, 1952), p. 53.

partisans [of Lothair] seem only to tempt God.”⁸¹ The argument that judicial duels, and ordeals in general, forced God to perform a miracle on command and tempted him not to intervene at all, proved to be the cornerstone of later judicial policy. Nicholas, meanwhile, succeeded in forcing Lothair to remain married to Teutberga, but not without further efforts.

For the earliest canonists, trials by battle seemed to occasion sporadic debates, but did not produce a consistent policy. There was suspicion in some quarters that the practice was un-Christian and easy to corrupt, but by and large the power to change secular legal procedure lay outside the ecclesiastical sphere and early medieval clerics concerned themselves with issues they could control. Later on, Pope Nicholas’ letter became the foundation of a more developed ecclesiastical position on the procedure, but for him, the problems inherent in the ordeal of combat were a side issue to his main concern that Lothair not be allowed to divorce. Thus, while there are examples of ecclesiastical opposition to the procedure in the early Middle Ages, churchmen did not make the issue a priority and their resistance was sporadic.

The lack of ecclesiastical involvement in early trials by battle and the absence of the procedure from early Christian writings and canon law courts indicate that it was not invented by the Church. Similarly, Roman law offers nothing that resembles judicial duelling, although the classical world was not completely unfamiliar with the concept of using single combat as a form of dispute resolution. However, we cannot conclude from this information that the fully developed practice originated in a dim prehistoric *Urzeit* of the northern European peoples. It is just as likely to have been a product of the ethnogenesis that occurred at the very beginning of the Middle Ages, being neither Roman, nor Christian, nor even barbarian in origin but rather a new product of the convergence of all three cultures. It was

⁸¹ “*Monomachiam vero in legem assumi nusquam praeceptum fuisse repperimus: quam licet quosdam iniisse legerimus, sicuti s. David et Goliath sacra prodit historia, numquam tamen, ut pro lege teneatur.*” Browe, vol. 2, p. 11.

certainly not an unchanging institution. Even the earliest records show that the procedure was regularly adopted in situations where it had not been used before, rejected by peoples who had previously employed it, and modified in its particulars. Seen from this perspective, it becomes less important to try and pinpoint the first judicial duel, and more fulfilling to trace the ways in which it subsequently spread and evolved.

Chapter Two

The Courts

In order to understand trials by battle, it is first necessary to understand the circumstances under which they could be contemplated and the ones in which they actually took place. Not every lawsuit could end in a judicial duel; in fact, this form of proof was only proposed in a small fraction of cases and only a minority of the proposals ever came to blows. Trials by battle belonged only to certain courts, specific varieties of pleas, and certain classes of people. This chapter examines the jurisdictions in which judicial duels were possible. While documentation is limited for the ninth and tenth centuries, eleventh-century records show that trials by battle occurred in courts great and small. As time passed, the procedure was increasingly restricted to royal and military jurisdictions, until it faded altogether.

Jurisdictions in Francia

Before the tenth century, the only records of trials by battle known to survive are high-profile cases like the one in the previous chapter related by Gregory of Tours about the dispute between the forester and the royal chamberlain Chundo.¹ These judicial duels were

¹ See pp. 43-4, *supra*.

fought in the presence of a royal court. However, Louis the Pious' ninth-century capitularies suggest that proof by battle also meant to be used more widely, and this is what we find in the tenth century, when monastic cartularies begin to shed light on the workings of local justice in West Francia.

In the Carolingian era, legal jurisdiction beyond the immediate domain of the king's court was held by the counts, who oversaw subordinate officials known as viscounts (*vicecomites*), or local magistrates called *vicarii*. In theory, these subordinates were delegates selected by the counts, though in practice they were likely to come from local aristocratic families who already had some *de facto* judicial power. Most routine court cases were adjudicated in regional tribunals known as the *malli*, over which these officials presided. A *mallus* was a public assembly of the free men in an area known as a *vicaria*, which usually corresponded to the boundaries of a handful of villages. These courts were held in a fixed location on a regular basis, normally four times a year. Franks who felt they had been wronged in some way could bring their accusations to court at these times and be heard.

In addition, both the royal court and the various counts could hold an occasional plenary *placitum generale*, attended by the more important individuals in their respective domains. This personal court was one more *mallus* among many, but it also heard disputes between the most important officials in a county or the kingdom. In theory, a count was an officer himself, appointed to act on behalf of the king. In the era of territorial expansion he was sometimes a Frankish commander imposed on the region from outside, but more often he was also a local aristocrat, and in either case he had to seek the political cooperation of other nobles in order to carry out his duties.² His role was not usually to judge, but rather to mediate the dispute and find an amicable resolution. In this task he was assisted by the advice

² James Lowth Goldsmith, *Lordship in France, 500-1500* (New York: Peter Lang, 2003), pp. 90-93.

of knowledgeable local men who held the unwritten law of the region and a body of precedents in their collective memory. These men assisted in formulating the court's resolutions in conjunction with the presiding count, *vicecomes* or *vicarius*. A capitulary of Charlemagne sought to reform their role by ordering in 803 that they be appointed for life by the crown, thus attempting to prevent his counts from hand-picking their own partisans to pronounce upon controversial cases. After that time these men were known as *scabini*.³

By the middle of the tenth century, although Carolingian central governance was fragile, the vocabulary of this judicial infrastructure remained. One of the earliest charters to mention trial by battle, written in the Burgundian town of Châlon-sur-Saône in 955, shows this system still in operation, if not quite as clear-cut as the model laid out in the ninth-century capitularies. A man named Ariodus brought a claim before the Viscount Rotbert in his *mallus publicus*. Ariodus had initiated a case in the court of the nearby Viscount Gislebert, seeking to lay claim to the property left by a deceased individual named Acoldrus, but the land was also claimed by others. In this original suit in Gislebert's court, Ariodus encountered '*escabiniores*' but found that their opinion was not in his favour. In response "he proved on the relics of Saint George and through Lord God the Highest and the virtue of Saint George that by law he ought to grasp more with regard to the heritage of Acoldrus than those contrary men."⁴ He came to court prepared for battle, but his opponents defaulted and would not fight him, so he brought his account of the case to Rotbert to ensure that the proceedings were recorded for future reference. In this case it is apparent that jurisdictional boundaries between

³ Olivier Guillot provides a succinct overview of this judicial system in Oliver Guillot *et al.*, *Pouvoirs et institutions dans la France médiévale*, vol. 1 (Paris: Armand Colin, 1994), pp. 175-9.

⁴ "Ariodus super reliquias sancti Georgi probavit per Domino Deo altissimo et virtute sancti Georgii plus legis debuit tenere que istos homines contrarios in hereditatem Acol dri." *Recueil des chartes de l'abbaye de Cluny*, ed. Auguste Bernard & Alexandre Bruehl, vol. 2 (Paris: Imprimerie Nationale, 1880), no. 979, p. 75.

different courts were not always clear and that there was a certain amount of fluidity in the actual practice of justice.

Carolingian judicial institutions, such as the ones in the example above, were evolving in the middle of the tenth century, although there has been considerable scholarly debate over whether this evolution was mainly in legal terminology rather than actual practice and whether it was a gradual process or a sudden revolution. Certainly the language of Burgundian justice was changing in this period. The last document to refer to a Burgundian court as a *mallus* is dated 964, only nine years after Ariodus' case.⁵ References to *scabini* were also disappearing from the region. Georges Duby reported that around the year 940, Burgundian charters began to refer instead to *fideles* of the Duke of Burgundy as the main repositories of legal memory. Duby thought that the new terminology reflected the increasing independence of local lords in France, but more recently Stephen White has questioned whether this change of title indicated a significant change in the status of judicial personnel or their duties.⁶

The new vocabulary is apparent in the very earliest charter mentioning trial by battle, an entry in the cartulary of the church of Saint Vincent of Mâcon which dates from somewhere between 936 and 954. In this case the Duke of Burgundy, Hugh the Black, personally arbitrated a land ownership dispute which had arisen between the church of Saint Vincent and

⁵ Yvonne Bongert, *Recherches sur les cours laïques du X^e au XIII^e siècles* (Paris: A. & J. Picard, 1949), p. 81.

⁶ Georges Duby, "The evolution of judicial institutions: Burgundy in the tenth and eleventh centuries," *The Chivalrous Society*, trans. Cynthia Postan (Berkeley: University of California Press, 1977), p. 17. Stephen D. White "Tenth-Century Courts at Mâcon and the Perils of Structuralist History: Re-Reading Burgundian Judicial Institutions," in *Conflict in Medieval Europe: Changing Perspectives on Society and Culture*, ed., Warren C. Brown and Piotr Górecki (Aldershot: Ashgate, 2003), pp. 49-50.

a man named Dodlenus. At court the Duke was assisted by his *fidelis* Alberic and some other men whose position is not specified, but there is no mention of any *scabinus*.⁷

Where a legal jurisdiction matched the boundaries of an ancient town, a lay court might be overseen by a bishop, or held jointly by secular and ecclesiastical officials. Such a court is represented in a case from Dijon dating from the early years of the eleventh century. There, a challenge to a judicial duel was overseen by Bruno of Roucy, who was the bishop of Langres, and two counts, Hugo and Gyrardus, who are possibly Hugues, Count of Chalons, and Geraud, Count of Forez.⁸ Many ecclesiastical institutions also constituted their own *vicariae* with immunity from secular jurisdictions. They were able to police and judge all but the most serious of their dependents' crimes and disputes. These powers are likely the reason why the canons of Saint Vincent of Mâcon recorded that a certain Remistagius came directly to their cloister one day around the turn of the millennium, determined to prove either by oath or by combat that he had a right to certain lands that they considered their own.⁹ The charter does not record whether the occasion was officially a court day. While the incident may have been a case of extrajudicial dispute settlement, of which there are many examples in this era, the reference to formal procedures like the oath and duel suggests that the canons of Saint Vincent had a tribunal of their own by this date and may not have needed to take ordinary cases to the count's court as they had done in the case of Dodlenus above.

At this point, a geographical pattern becomes evident in the earliest charters mentioning judicial duels. Dijon, Mâcon and Châlon-sur-Saône all lie on the Saône River, not far upstream from Agobard's home in Lyon and the city of Valence where the ninth-century

⁷ *Cartulaire de Saint-Vincent de Mâcon*, ed. M.C. Ragut (Mâcon: Imprimerie d'Émile Protat, 1864), no. CCLXXXII, p. 168.

⁸ Rudolf Hübner, *Gerichtsurkunden der fränkischen Zeit*, 1st. Abt. (1891; reprint, Aalen: Scientia Verlag, 1971), p. 111, no. 612.

⁹ *Cartulaire de Saint-Vincent de Mâcon*, no. CCCCXXIV, p. 251.

synod condemned ecclesiastical participation in trials by battle. The tenth-century records, few though they are, have a definite concentration in Burgundy, which cannot be entirely explained by their proximity to the monastery of Cluny and its enthusiasm for preserving written records. There are, however, two other records of judicial duelling from the same century which come from outside the Rhône watershed. The cartulary of the abbey of Beaulieu in Limousin records a duel in 960 and a Hebrew text from late in the century mentions another dispute in Limoges that threatened to pit Christian and Jewish champions against each other.¹⁰ These cases, while outside the political limits of Burgundy, also represent a rather contained geographical area. It may well be that the French tradition of trial by battle originated in these parts of Francia and spread outwards, but the paucity of documentation for judicial procedures of any kind in other parts of the kingdom makes it difficult to know for certain.

During the late tenth century and well into the eleventh, a wave of fortress construction and aristocratic violence swept first southern and then northern France. The new castles conferred *de facto* political powers on their owners and neighbouring jurisdictions were forced to concede rights to these lords. The fortifications became the sites of new courts, and the boundaries of the old Carolingian *vicariae* evolved to reflect the new reality. By the time Philippe de Beaumanoir wrote his famous treatise on the customs of the Beauvaisis three centuries later, he described the jurisdictions of various lords as intermingled and

¹⁰ *Cartulaire de l'abbaye de Beaulieu*, ed. Maximin Deloche (Paris: Imprimerie Impériale, 1859), no. XLVII, pp. 85-6. Shlomo Eidelberg, "Trial by Ordeal in Medieval Jewish History: Laws, Customs and Attitudes," *Proceedings of the American Academy for Jewish Research* 46 (1979-80), p. 113.

interpenetrated (*entremêlées et enclavées*) to the point where disputes over seigneurial rights frequently arose.¹¹

In the eleventh century, the legal landscape reflected the decentralization of the political world. The great magnates of the kingdom acknowledged in their charters that judicial roles which had once in theory been appointed positions were now hereditary. Typically, a magnate of comital status or higher acknowledged the right of certain vassals the right to hold courts, but he retained for himself the privilege of hearing the most serious cases. The parameters of this retained justice could vary by region or even from charter to charter, but it tended to involve the right to hear cases which dealt with death and serious bodily harm, particularly rape, arson and homicide. The right to hold judicial duels, while it might be retained, could also be delegated to the lower courts.¹²

After the turn of the millennium, but especially after 1050, trial by battle was also becoming a legal option in regions farther north, if it had not existed there already. In a charter dated 1008, King Robert the Pious granted the Abbey of St. Denis the power to hold duels along with all other secular judicial powers over the abbey precinct.¹³ By combing cartularies, Olivier Guillot has also found a trove of fourteen eleventh-century records of duels and resolved challenges to duel from the region of Anjou-Touraine, where they seem to have briefly enjoyed modest popularity among the monks of Saint-Serge and Saint-Bach, and Saint-Aubin d'Angers. These cases were contested not only in the presence of the Count of Anjou, but also before some of his lesser castellans. There was even a challenge issued in the

¹¹ Philippe de Beaumanoir, *Coutumes de Beauvaisis*, ed. A. Salmon, vol. 2 (Paris: Alphonse Picard et Fils, 1900), §1653, p. 345.

¹² A.C.F. Koch, "L'origine de la haute et de la moyenne justice dans l'ouest et le nord de la France," *Tijdschrift voor Rechtsgeschiedenis* 21 (1953), pp. 429-30 and n. 30.

¹³ J.-F. Lemarignier, "La dislocation du 'pagus' et le problème des 'consuetudines' (Xe-XIe siècles)," in *Mélanges d'histoire du Moyen Age dédiés à la mémoire de Louis Halphen* (Paris: PUF, 1951), p. 404.

court of the bishop of Angers.¹⁴ Although two documents refer to criminal trials, most of the cases were civil disputes over land ownership and lordship over serfs, and as such they were heard in the courts of the seigneurs who held the most immediate jurisdiction over the parties.¹⁵

When the parties were vassals of different lords, there was often ambiguity about which court should hear a case. This gave litigants some leeway to pick a tribunal themselves and allowed lords who had developed a reputation as good judges to expand the purview of their courts. When litigants consistently favoured one court over neighbouring jurisdictions, they could over time change its customary jurisdictional boundaries. The situation could also create problems when the litigants could not find a mutually acceptable tribunal. In 1111, a wager of battle between Count Theobald IV of Blois and King Louis the Fat simmered inconclusively for months because the men could not find a judge to preside over their champions' combat.¹⁶ The personal reputations and political skills of judges were often more important than their official titles in this period.

Even in the later twelfth century, when French legal records began to make distinctions between the powers known as high and low justice, the right to hold judicial duels was still a power to which barons below the rank of count could aspire. A.C.F. Koch has demonstrated that in Picardy and southern Ponthieu around the year 1200, charters used the word *duellum* interchangeably with the word *bannum*, which referred to a lord's power to punish criminals. The jurisdiction of lesser barons to hold seigneurial court and punish thieves and lesser criminals, which would later be known as middle justice, was indicated in that region by the

¹⁴ Olivier Guillot, Appendix to "Le duel judiciaire: du champ légal (sous Louis le Pieux) au champ de la pratique en France (XIe s.)," in *La Giustizia Nell'Alto Medioevo*, Settimane di Studio del Centro Italiano di Studi Sull'Alto Medioevo XLIV, vol. 2 (Spoleto: Presso la Sede del Centro, 1997), p. 775, no. 19.

¹⁵ *Ibid.*, pp. 774-83. See especially numbers 17, 18, 20, 21 and 30.

¹⁶ Bongert, p. 68.

words *sanguinem*, *latronum*, *duellum* and *bannum*, or more often some combination of three of these elements.¹⁷ In Normandy, the *Très Ancien Coutumier*, written around 1199, declared “All knights and vavassors have justice in their own lands over duels in civil cases (those in which the defeated champion must pay 60 sous).”¹⁸ This association between the right to oversee judicial duels and the broader jurisdictional powers of many barons may explain why many French nobles did not follow King Louis IX’s lead in 1258 when he forbade trial by battle in the royal domain. For many of them, the abolition of judicial duelling was an attack on the privileges that defined their status. One song from the period declared “Gentlemen of France, you are greatly astounded. I say to all those who were born on fiefs: by God you are no longer free; you are well separated from your liberty, for you are judged by inquest.”¹⁹

Yvonne Bongert perceived the French kings as being essentially hostile to trial by battle, even before Saint Louis’ famous ordinance. In 1174, Louis VII issued a charter to the church of Saint-Pierre de Juziers guaranteeing that henceforth men residing on its lands would not be allowed to prove their free status by means of combat, and this document was followed by similar ones issued by the chanceries of Philip Augustus and Louis VIII.²⁰ However, these documents must be weighed against other records from the Île de France. Philip Augustus also issued charters confirming the rights of several towns to hold duels.²¹ One of the early documents generated by the Parlement of Paris, recorded in 1239, describes the testimony of

¹⁷ Koch, pp. 447-9.

¹⁸ “*Omnes milites et vavassores suam habent justiciam in terris suis de duello in civili causa (de victo campione LX solidos).*” *Coutumiers de Normandie*, ed Ernest-Joseph Tardif, vol.1, *Le très ancien coutumier de Normandie* (Rouen: Imprimerie d’Espérance Cagniard, 1881), c. 41, pp. 34-5. “Civil cases” in this case refers to cases involving property.

¹⁹ “*Gens de France, mult estes esbahie! / Je di à touz ceus qui sont nez des fiez : / Si m’ait Dex, franc n’estes vous mès mie; / Mult vous a l’en de franchise esloigniez, / Car vous estes par enquete jugiez.*” J.V. Le Roux de Lincy, “Chansons historiques des XIIIe, XVe, et XVe siècles,” *Bibliothèque de l’école des chartes* I (1839), p. 372. See also Chapter Seven, p. 302, *infra*.

²⁰ For Saint-Pierre de Juziers, see Bongert, p. 234. For later examples, see *Cartulaire de Sainte-Croix d’Orléans (814-1300)*, ed. Joseph Thilliers & Eugène Jarry (Paris: A. Picard & Fils, 1906), CXV (1195), CXLII (1204), CCI (1224).

²¹ *Vide infra*, pp. 72-3.

witnesses in a dispute between the king and the bishop of Orléans over which of their courts was entitled to preside over duels between men who lived in the bishop's fief in the castellany of Orléans. Both parties wanted the right to preside over these battles.²²

Over the course of the thirteenth century, the French crown also regained a measure of control over many of the territories outside the Île de France. In most of these regions too, trial by battle was a customary practice. The royal *baillis* and provosts appointed to oversee regional courts in these areas were also responsible for adjudicating judicial duels. Even when a region had been won by force of arms, as in the case of Normandy, a wholesale reorganization of judicial practices was not feasible. Law was customary, and while kings had some limited leeway to repeal customs that were widely considered unjust, they had limited power to legislate. In the second half of the thirteenth century, there was a movement to record the legal customs of the regions surrounding the Île de France. In Normandy there had already been an attempt to do this in 1199, when an anonymous jurist produced the *Très Ancien Coutumier*, but now a second Norman legal collection was compiled, as well as customals for the Orléanais, Beauvaisis, Anjou and Touraine. While these books were unofficial guides and had no legal force of their own, their authors were frequently royal officials, undoubtedly trying to impose some order on the profusion of local customs in their jurisdictions.²³ In all of these regional customs, trials by battle were still occurring, and they were dutifully described by the jurists.

Even in the south of France, customals mentioned the judicial duel. At the beginning of the thirteenth century, developments in the study of law led the regions of Languedoc and

²² *Actes du Parlement de Paris*, ed. Edgard Boutaric, vol. 1 (1863; reprint, Hildesheim: Georg Olms Verlag, 1975), no. 18, p. CCVI.

²³ See Albert Rigaudière, *Pouvoirs et institutions dans la France médiévale*, vol 2: *Des temps féodaux aux temps de l'État* (Paris: Armand Colin, 1994), p.132, for the connections between the authors of the customals and the royal court.

Dauphiné to embrace a legal system based more closely on Roman exemplars than the models used by the jurisdictions of the north. However, records of customs from Montpellier, Carcassonne and Perpignan dating from just before this period show that trial by battle was still a legal option when they were written.²⁴ By studying charters, Jean-Marie Carbasse has mapped the extent of judicial duelling in southern France and found that the practice was alive in the thirteenth century on the edges of the *pays du droit écrit* in Basse-Auvergne, Périgord, Comminges and Bigorre, as well as the southwest, but had disappeared from the southeast.²⁵ It may well be that the practice had never been well established in the lower part of the Rhône watershed.

Occasionally, even after the ordinance of 1258 forbidding trial by battle, challenges to combat were made in the royal court, especially after Louis' death in 1270. In 1280 the Parlement heard the case of Jeanne de la Valette, who accused the knight Rathier of Montricher and his son Rathou of burning several houses that belonged to her and offered to produce a champion to fight them.²⁶ In 1296, the Parlement of Paris heard the case of Agnes, wife of Jean de Villeroy, who wanted to challenge her brother Gaco of Ligny to a duel by proxy for allegedly poisoning her other brother Gérard. Her request was denied.²⁷ Another case, a matter of defamation between Raymond Gocelin and Pierre de Gocelin in 1306, may have been the impetus for Philip the Fair to repeal Louis IX's ordinance and officially allow judicial duelling once again.²⁸

²⁴ Giorgio Enrico Levi, *Il duello giudiziario: Enciclopedia e bibliografia* (Florence: Gino Ciolli, 1932), p. 255.

²⁵ Jean-Marie Carbasse, "Le duel judiciaire dans les coutumes méridionales" *Annales du Midi* 87, no. 124 (1975), pp. 385-403. See especially the map on p. 402.

²⁶ Boutaric, no. 2269b, p. 217. See also pp. 114, 149-50, *infra*.

²⁷ Le Comte Beugnot, ed. *Les Olim ou registres des arrêts*, vol. 2, pt. 1 (Paris: Imprimerie Royale, 1842), p. 403. See also pp. 148-9, *infra*.

²⁸ *Ibid.*, 485.

Nevertheless, the records of the Parliament of Paris describe very few challenges to battle, of which only a small handful resulted in combat. The last case to be approved by the Parlement was the celebrated battle between Jean de Carrouges and Jacques le Gris in 1386 over the rape of Carrouges' wife. Its fatal outcome seems to have discouraged this court from agreeing to any more violence.²⁹ An ordinance of 1409 decreed that trial by battle had been abolished in all courts except for the Parlement of Paris, but the practice persisted, if only in theory, in many regional customs. The last French combat to be approved by a court and come to blows was the one between Jacotin Plouvier and Mahiot Coquel in 1455 under the jurisdiction of the town of Valenciennes. At the time, the town lay in the domain of the Duke of Burgundy, who considered himself a sovereign prince and thus exempt from ordinances regulating royal courts.³⁰

Jurisdictions in England

In contrast to the situation in France, English records of trial by battle come almost exclusively from the royal courts. This arrangement came to pass because judicial duelling was not indigenous to England but was introduced by the Normans. Moreover, the greater administrative control of the English kings over their territory ensured that many of the disputes that led to battle were settled in royal courts rather than local ones.

The essential division of English courts was established before the Conquest. As in France, the Anglo-Saxon kingdom was a patchwork of jurisdictions, each with its own legal customs. By the middle of the eleventh century, the Anglo-Saxon kings were asserting their

²⁹ This case is examined in depth in Eric Jager, *The Last Duel* (New York: Broadway Books, 2004). See also, p. 309, *infra*.

³⁰ Olivier de la Marche, *Les mémoires de Messire Olivier de La Marche*, in *Collection complète des mémoires relatifs à l'histoire de France* ed. M. Petitot (Paris: Foucault, 1825), pp. 213-8. See pp. 1-3, *supra*.

right to try certain kinds of cases, no matter where in the kingdom the disputes originated. The concept of a kingdom-wide peace, and the king's duty to uphold it, was rapidly developing. Much the same way as French higher nobility reserved the right to deal with serious crimes, Anglo-Saxon kings claimed responsibility for cases of murder, treason, arson and rape throughout the land. However, the royal government did not have the means to enforce the king's peace everywhere, so in some regions the kings granted local earls the proceeds of fines for infractions against it. In other areas, the king appointed sheriffs to oversee the workings of justice. Shire courts headed by these earls or sheriffs met two or three times a year to deal not only with royal justice, but also with lesser cases of theft and violence. In addition, royal proclamations would be read and important land transfers and property disputes would be settled there, where they could be witnessed by the chief lay and ecclesiastical figures in the region.

Below the level of the shire court was the hundred court or wapentake. Shires averaged a dozen hundreds each, and these courts probably sat once a month. Some of them were chaired by bailiffs appointed by the sheriffs, while others were manorial courts resting in the private hands of local landholders. These courts dealt with everyday conflicts between neighbours regarding fields, harvests and animals. The laws they enforced were strictly local in nature.³¹

When the Norman invaders took control of England, they left this legal system largely intact, simply filling the key positions with their own personnel and increasing the frequency with which the local courts sat. At the same time, they also introduced certain Norman processes into the country, and one of these was the trial by battle.

³¹ Alan Harding, *The Law Courts of Medieval England* (London: George Allen and Unwin, 1973), pp. 13-30.

Trial by battle is entirely absent from the legislation of the Anglo-Saxon kings and the records of lawsuits from their era.³² The Domesday Book contains the first records of its use. At the behest of the king, the Domesday inquest met in special joint sessions of the shire and hundred courts at various locations across England. Among its thousands of entries, it recorded six instances when disputes over land ownership resulted in offers to do battle.³³ Four of the cases, at Matlask, Tasburgh, Fodderstone and Bixley, were in Norfolk, which had a large number of disputed fiefs, and the others were single examples in Kesteven, Lincolnshire and “Pechingeorde”, Surrey. In all of these cases, there is no evidence that duels were ever fought, although the Pechingeorde case may have come close, as the entry concerns grants that the abbot of Chertsey was forced to make “for the battle he ought to have fought against Geoffrey the Small.” The cases also seem to have been initiated by a limited number of individuals. The entries at Tasburgh and Fodderstone both involved claims made by one Hermer or Henry of Ferrers, whose name suggests that he came from the Continent, while the ones at Matlask and Kesteven both involved Count Alan of Brittany, who commanded William’s rearguard at the battle of Hastings.

An ordinance attributed to William the Conqueror supports the impression that trial by battle was new to England. It deals with the possible forms of proof that could be made if a Norman accused an Englishman of a serious crime like theft or homicide. The Englishman was given the options of accepting the offer or clearing himself by the ordeal of hot iron.

³² See Morton W. Bloomfield, “Beowulf, Byrhtnoth, and the Judgement of God: Trial by Combat in Anglo-Saxon England,” *Speculum* 44:4 (1969), p. 549. The article discusses many scenarios of single combat, and a few examples of combat used as a *iudicium Dei*, but does not uncover any instances in which the practice was used in Anglo-Saxon law courts.

³³ The four cases from Norfolk have been discussed by M. J. Russell. See “Trial by Battle and the Writ of Right,” *Journal of Legal History* 1:2 (1980), pp.112-3. They are at Matlask, Bixley, Tasburgh (Russell calls it Tibenham), and Fodderstone (which some editions call Foston). For the cases at Kesteven and Pechingeorde, see Robin Fleming, *The Domesday Book and the Law* (Cambridge: Cambridge University Press, 1998), nos. 1190 and 1534, pp. 212, 247.

Conversely, a Norman challenged to a judicial duel by an Englishman had the option of declining the procedure and clearing himself by the compurgatory oaths of his associates according to Norman law.³⁴ These rules seem to be designed to give Englishmen alternatives to the new and unfamiliar procedure, but nevertheless offered Normans significant legal advantages.

Throughout the post-Conquest period, trials by battle occurred primarily in royal courts. In 1178, Henry II ordered five justices to travel with the royal household wherever it went and hear his subjects' complaints. This became the Court of the King's Bench, or *Coram Rege*. Richard I established another body of justices to remain permanently at Westminster and this became the Court of Common Pleas. Regular eyres of travelling justices, who heard important cases and ensured that the king's rights were maintained throughout England, were drawn from this latter body. All of these courts might oversee judicial duels, but the Court of the King's Bench seems to have been a particularly common venue for them. In 1200, King John ordered two duels for cases of robbery to be held in his presence "for he wishes to see them."³⁵ As Doris Stenton says, "The frequency with which judicial duels were thereafter put before the King, both in rolls of pleas and of essoins, [i.e. procedural delays] almost suggests that this writ was taken as a general directive."³⁶ Indeed, although offers of battle appear on a rare but regular basis in the rolls of the eyres, nearly all of the ones that reached the point of blows seem to have found their way to the king's court.

³⁴ *Regesta Regum Anglo-Normannorum: The Acts of William I (1067-1087)*, ed. David Bates (Oxford: Clarendon Press, 1998), no. 130, pp. 445-8. See also pp. 171-2, *infra*.

³⁵ "...quia ea vult videre." F.W. Maitland, ed. *Select Pleas of the Crown*, Selden Society vol. 1 (London: B. Quaritch, 1888), no. 83, p. 40.

³⁶ Doris Stenton, *English Justice between the Norman Conquest and the Great Charter, 1066-1215* (Philadelphia: American Philosophical Society, 1964), p. 95.

On some occasions seigneurial courts also awarded battles. In 1147, champions representing the priory of St. Frideswide and a knight named Edward battled in the court of Robert II de Beaumont, Earl of Leicester, over the priory's right to receive homage and service in return for a hide of land which Edward held.³⁷ A bishop's secular court might also settle disputes over the tenure of fiefs by means of battle. In 1221 the bishop of Bath was ordered to supply the king's court with the record of a duel between two knights over their rights to two fiefs. His episcopal predecessor had apparently presided over the entire procedure.³⁸

Even the occasional hundred court could hold judicial combats. Another entry in the Curia Regis Rolls, dating from 1201, records that jurors from the hundred of Aldenham in Hertfordshire insisted that the abbot of St. Albans, who was lord of the local hundred, had the right to oversee duels in his hundred court which had been pledged in the seigneurial court of Aldenham manor, which belonged to the abbot of Westminster.³⁹

Despite these exceptions, the bulk of the evidence for trial by battle in England comes from royal courts. In part, this is a result of the English monarchy's early adoption of meticulous record keeping systems during the height of the judicial duel's popularity in the period between roughly 1150 and 1230. Despite the differences between the court systems of the two kingdoms, the pattern of the duel's decline followed much the same timeline on both sides of the English Channel. This phenomenon is discussed at length in Chapter Seven.

³⁷ R.C. Van Caenegem, ed. *English Lawsuits from William I to Richard I*, vol. 1, Selden Society vol. 106 (London: Selden Society, 1990), no. 316, p. 265.

³⁸ *Curia Regis Rolls*, vol. 10 (London: HMSO, 1949), p. 189.

³⁹ *Curia Regis Rolls*, vol. 2 (London: HMSO, 1925), p. 56. For more examples of judicial duels in local courts, see Cyril T. Flower, *Introduction to the Curia Regis Rolls, 1199-1230 AD*, Selden Society no. 62 (London: Bernard Quaritch, 1944), pp. 114-6.

Jurisdictions of the Towns

One form of medieval legal jurisdiction which has not yet been discussed is the courts belonging to medieval towns. The similarities and differences between the use of trial by battle in English and French towns make it useful to compare them.

In England, many towns obtained exemptions from trial by battle for their citizens. The earliest of these is Newcastle-on-Tyne, whose charter from Henry I states “If anyone should formally accuse a burgher regarding any matter, he may not fight the burgher but the latter ought to defend himself by law [i.e. by an oath], unless it is a matter of treason, in which case he ought to defend himself by battle. Nor can a burgher fight against a villein unless he should previously have quitted his burgage [i.e. relinquished his right as a burgher].”⁴⁰ A very similar formula can be found in the charter of Wearmouth, which dates from somewhere between 1154 and 1195.⁴¹ The charter of the city of London, dating to 1131, is less equivocal regarding the citizens’ rights: “And let none of them fight a battle.” This formula found its way into the charters of many other cities, including Canterbury (1155-8), Lincoln (1194), Norwich (1194), and the merchant guilds of Winchester (1190) and Gloucester (1200).⁴²

On the Continent, townsfolk were less likely to be granted complete freedom from judicial duels, whether they lived in a commune or a less independent *ville de franchise* where the courts were overseen by royal, ducal or seigneurial officials. Instead, French lords

⁴⁰ “*Si quis burgensem de re aliqua appelaverit, non potest super burgensem pugnare, sed per legem se defendat burgensis, nisi sit de proditione, unde debeat se defendere bello. Nec burgensis contra (villanum) poterit pugnare nisi prius de burgagio exierit.*” There is also a B-text of this charter with slightly different wording. Adolphus Ballard, *British Borough Charters, 1042-1216* (Cambridge: Cambridge University Press, 1913), p. 132.

⁴¹ *Ibid.*, 34-5. Unfortunately, Ballard quotes only excerpts from the charter, so the DEEDS database cannot be used to estimate a more specific date.

⁴² “*Et nullus eorum faciat bellum.*” A variation of these words, from a re-issuing of the charter in 1155, states “*Et quod nullus eorum faciat duellum.*” This is the version copied by other cities. Ballard, p. 133.

preferred to regulate the practice and ensure that they themselves would benefit from any revenues that resulted from a duel.

When Louis VI granted a generous charter to the new village of Lorris in the hope of attracting colonists, freedom from duelling was not one of the rights he offered. The charter allowed men of the village accused of “anything” to clear themselves by an oath if the accusation could not be proven by a witness, but a lesser-known clause, often left out when abridged versions of the charter are reproduced in modern textbooks, makes it clear that judicial combat was still an option. It sets out the fines for reaching a private accord out of court during each stage of a trial by battle.⁴³

The procedure also appears in the charters of some of the more urban *villes de franchise*. In the influential *Établissements de Rouen* of 1160, which became the template for many town charters in Normandy and beyond, a trial by battle could proceed in the mayor’s court all the way up to the point of combat, but the duel itself had to be held before the duke’s *bailli*.⁴⁴ Even the burghers of the great metropolis of Paris, which was not a commune, were subject to the procedure until Louis IX abolished it. Detailed regulations for trial by battle in the city’s courts do not survive, but they may be extrapolated from the ordinance abolishing it. In this document, the king outlined the manner in which his courts, especially the Châtelet, which was the main court for the lay citizens of the city, should operate in his absence while he was on crusade. The document describes at some length the variety of disputes in which a trial by battle could be anticipated.⁴⁵

⁴³ Maurice Prou, *Les coutumes de Lorris et leur propagation au XII^e et XIII^e siècles* (Paris: L. Larose et Forcel, 1884), p. 140, c. 32 (exculpatory oath); p. 134, c. 14 (judicial duel).

⁴⁴ A. Giry, *Les Établissements de Rouen: Études sur l’histoire des institutions municipales*, vol. 2 (Paris: F. Vieweg, 1885), pp. 38-9, c. 31.

⁴⁵ *The Établissements de Saint Louis: Thirteenth-Century Law Texts from Tours, Orléans and Paris*, ed. F.R.P. Akehurst (Philadelphia: University of Pennsylvania Press, 1996), pp. 7-14.

Many towns in the French-speaking Continent achieved greater political autonomy by becoming communes, but they too continued to hold judicial duels. Cambrai, granted commune status after an uprising in 1077, produced a lengthy municipal ordinance in the thirteenth century, detailing the precise procedures to be followed in a judicial duel.⁴⁶ Similarly, the charter of Amiens, confirmed by Philip Augustus in 1209, envisioned the possibility of a duel in difficult disputes over debts and contracts, requiring only that champions not be hired from outside the town.⁴⁷ As late as 1366 Charles V confirmed the Norman town of Pontorson's right to hold battles over drawn blood and debts, and as we have seen the town of Valenciennes clung to its duelling rights until after 1455.⁴⁸

Not much farther north, however, the communes of Flanders more closely resembled the English boroughs, for they often obtained exemptions from trial by battle. Ypres led the way by abolishing the practice in 1116, and the trend was soon continued in the influential charter of Saint-Omer in 1127.⁴⁹ In the latter example, the newly-made Count of Flanders, William Clito, granted the burgesses of that city a complete exemption from the duel in every market of Flanders. It should be noted that the charter of Saint-Omer was drawn up in the violent aftermath of the murder of Count Charles the Good. It was issued on April 14, a mere three days after a particularly ferocious judicial duel over treason in Ypres between the knights Herman the Iron and Guy of Steenvoorde, chronicled by Galbert of Bruges.⁵⁰ That encounter

⁴⁶ E.M. Meijers & A.S. Blécourt, eds., *Le Droit Coutumier de Cambrai*, vol. 1 (Haarlem: H.D. Tjeenk Wilink & Zoon, 1932), pp.230-234.

⁴⁷ Maurice Crampon, *La commune d'Amiens: Dossier documentaire* (Amiens: Centre Régional de Documentation Pédagogique, 1971), pp. 9, 11; articles 24, 44 & 17 respectively.

⁴⁸ A. Canel, "Le combat judiciaire en Normandie," *Mémoires de la Société des antiquaires de Normandie* 22 (1836), p. 636.

⁴⁹ Arthur Giry, *Histoire de la ville de Saint-Omer et ses institutions jusqu'au XVe siècle* (Paris: F. Vieweg, 1877), pp. 372-3.

⁵⁰ Galbert of Bruges, *The Murder of Charles the Good*, ed. and trans. James Bruce Ross (1959; reprint, Toronto: Medieval Academy of America, 1982), pp. 212-3. See pp. 124 & 152-3, *infra*.

undoubtedly highlighted for the burgesses the importance of avoiding such combats if at all possible.

The difference between English and French municipal jurisdictions is most likely related to the relative newness of trial by battle in England at the time that the first borough charters were issued. Since judicial duelling was still an alien practice for the citizens of London in 1100, it was natural for them to seek an exemption from it. Furthermore, since many towns sought to use Londoners' rights and privileges as a template for their own aspirations, it is not surprising that the exemption became widespread. Conversely, in northern France the judicial duel had a longer history and burgesses did not always contemplate the possibility of abolishing it. Like the French nobility, they may have regarded the right to hold judicial duels as a privilege of their independent status.

Only in the extreme north, in the larger and more cosmopolitan cities of Flanders, were judicial duels abolished at an early stage. This is not necessarily because Flemish burghers were more peace-loving than their French and Norman counterparts. The charter of Saint-Omer was, after all, issued as a result of an armed uprising, and Flemish cities continued to boast powerful militias and produce many mercenary companies for centuries to come. More likely, trial by battle was a much riskier practice in these large trading cities, where burghers often found themselves litigating against foreigners of unknown capabilities and mercenary champions were easy to find.

Military Courts

In the second half of the fourteenth century, as many courts were abandoning trial by battle as a mode of proof, a new system of courts emerged which would help to keep it alive

for another century. These were the Court of Chivalry in England and the ad hoc courts of the constable and marshals of France.

Throughout the High Middle Ages, military captains and commanders had possessed a certain amount of judicial power. While an army was in the field, its commander was responsible for settling the disputes that arose among his soldiers and for ensuring that they did not commit any unauthorized offences against outsiders. His authority could include jurisdiction over capital crimes like murder and treason, as well as the power to settle disputes over soldiers' wages and ransoms. Sometimes, as in the ransom cases, he could find himself having to judge between his own men and foreigners, possibly even enemy soldiers. The body of law by which he governed was customary rather than written, but has nevertheless been studied by such scholars as Matthew Strickland and Maurice Keen.⁵¹ Not until 1360 did the Italian civil lawyer Giovanni da Legnano write an academic treatise attempting to codify it. In French-speaking lands, his work was adapted and popularized by the prior Honorat Bovet, whose book *L'arbre de batailles* quickly began to circulate after its composition around 1386.⁵² These works shed some light on the *ius armorum* regarding such matters as sieges, truces, ransoms and the status of churchmen, as such customs were observed throughout Latin Christendom.

In the twelfth century, the constable, previously a minor official in charge of the stables, became one of the most important figures in the French royal household. He was

⁵¹ Two major studies of customary military law are Matthew Strickland, *War and Chivalry: The Conduct and Perception of War in England and Normandy, 1066-1217* (Cambridge: Cambridge University Press, 1996), and Maurice Keen, *The Laws of War in the Late Middle Ages* (London: Routledge and Keegan Paul, 1965).

⁵² Giovanni da Legnano, *Tractatus de bello, de represaliis et de duello*, ed. Thomas Erskine Holland (Oxford: Oxford University Press, 1917); Honorat Bovet (Honoré Bonet), *L'Arbre des batailles*, ed. Ernest Nys (Brussels: C. Muquart, 1883). Bovet's name is spelled several different ways in the many manuscript copies of his work. Older editions tend to refer to him as Honoré Bonet and many books in English call him Honoré Bouvet. Most recently, Hélène Millet and Michael Hanley have argued for calling him Honorat Bovet. I have adopted their spelling in this dissertation. See Hélène Millet and Michael Hanley, "Les batailles d'Honorat Bovet: Essai de biographie," *Romania* 114 (1996), pp. 138-141.

occasionally given command of the king's cavalry, an assignment which fell to him with increasing frequency in the thirteenth century. By the reign of Philip IV, he was regularly appointed to the post of lieutenant-general, as the military governor of a restive province was known, and by the middle of the fourteenth century he had become the commander of the royal army.⁵³ In this role, he was assisted by the marshals, of whom there were two after 1240. As the constable's duties increased, the marshals took on much of the day-to-day administration of armies in the field, including the responsibility for judicial matters. Although the constable's tribunal most likely kept plea rolls, the ones from the Middle Ages have not survived.

The first evidence of an individual case adjudicated by a marshal comes from the year 1317 and involves a judicial duel. In a letter to the *bailli* of Amiens, King Philip V announced that the squire Thomas Danot had been banished from the kingdom of France after failing to appear when summoned to a combat *in curia marescallorum Francie* and that he was to be captured and punished, and his goods seized if he were found anywhere in the kingdom. Sadly, the letter does not describe the case which led to Thomas' flight, except to say that he had been appealed by another squire, Mathew d'Otun, and that both squires came from a garrison on the Flemish frontier.⁵⁴

By the middle of the fourteenth century, the itinerant tribunals of the constable and marshals, which had previously tended to follow the army wherever it went, began to conduct their business at a large marble table in the great hall of the Palais de Justice in Paris. This location would eventually become their permanent home and give their court the name of the

⁵³ John Hewitt Mitchell, *The Court of the Connétable: A Study of a French Administrative Tribunal during the Reign of Henry IV* (New Haven: Yale University Press, 1947), pp. 4-5.

⁵⁴ Gabriel le Barrois d'Orgeval, *Le Tribunal de la Connétablie de France: du XIV^e siècle à 1790* (Paris: Librairie des Écoles françaises d'Athens et de Rome, 1918), pièce justificative no. 1, pp. 323-4.

table de marbre. The case of Otun versus Danot mentions only the involvement of the marshals, and not the constable, while other fourteenth-century cases appear to have been adjudicated by the constable without the aid of the marshals. In 1343, the king and the constable presided jointly over a pledge of battle without any mention of the marshals, while in 1376 an extended feud between the Count of Savoy and the Marquis of Saluces led these two noblemen to place their gages in the hand of the constable without the direct involvement of the king.⁵⁵ Although the courts of the marshals and the constable had similar and even overlapping jurisdictions, they did not fuse into one institution until the late fifteenth century, by which point trial by battle was effectively dead in France.⁵⁶

The king was not the only magnate who employed marshals. In the fourteenth century, the Duke of Burgundy had one to govern his own soldiers and the Duke of Anjou appointed one who was responsible for dealing with conflicts arising from his military activities in Sicily.⁵⁷ Kings and magnates might also hear important military cases themselves, without the assistance of their courts. However, as trials by battle grew rarer, they increasingly occurred in either the Parlement of Paris or the ducal courts, rather than the tribunals of constables and marshals. A royal ordinance of 1409 decreed that there were to be no more judicial duels in the French realm unless they had been ordered by the king and Parlement.⁵⁸ This effectively put an end to duelling as a procedure in royal military courts, although the courts themselves flourished in subsequent centuries.

In England, the king's permanent military court was known as the Court of Chivalry. Clear evidence of its existence is documented from 1348 onwards, although Matthew Paris

⁵⁵ Monique Chabas, *Le duel judiciaire en France, XIIIe - XVIe siècles* (Paris: Éditions Jean-Favard, 1978), p. 160.

⁵⁶ Hewitt, p. 14.

⁵⁷ Maurice Keen, *Laws of War*, p. 27.

⁵⁸ Jean Juvénal des Ursins, *Histoire de Charles VI, roy de France* (Paris: A. Desrez, 1841), pp. 443-4.

remarked that a dispute over spoil taken on the Gascon campaign in 1254 should have been arbitrated by the earl of Hereford, because the office of Constable belonged to him by hereditary right.⁵⁹ By the time that the tribunal had become a permanent institution, the Constable of England and a single marshal (later to be known as the Earl Marshal) presided over it jointly. As in France, these men were two of the many officials also known as constables and marshals who acted on behalf of noble households or received temporary appointments to lead the royal army on particular campaigns.⁶⁰

Like other military tribunals, the Court of Chivalry had cognizance of cases relating to the army and military campaigns. Indeed, it was responsible for matters relating to deeds done beyond the borders of the kingdom, where English common law did not apply. Although it survives today as a minor tribunal with the authority to hear only disputes over heraldry, in the fourteenth century it often concerned itself with serious matters like treason. The exact parameters of its jurisdiction were imprecise, however. Fourteenth- and fifteenth-century captains and commanders still had jurisdiction over their men in the field, and high-profile cases of treason or other military questions like disputed armorial bearings could just as easily find their way into the king's court instead.⁶¹

Further complicating matters was the nature of military cases. Giovanni da Legnano referred to military law as a *ius gentium*, or law of nations, which meant to him that it applied throughout the former Roman empire and the domain of the Roman church. For that reason, any judge appointed by a sovereign lord had the authority to hear military cases, even if they

⁵⁹ Maurice Keen, "The Jurisdiction and Origins of the Constable's Court" (1984) in Keen, *Nobles, Knights and Men-at-Arms in the Middle Ages* (London: The Hambledon Press, 1996), p. 144.

⁶⁰ G.D. Squibb, *The High Court of Chivalry: A Study in the Civil Law in England* (Oxford: Clarendon Press, 1959), pp. 1-2.

⁶¹ Keen, "Jurisdiction," p. 145.

originated in some other territory or among men who had never served his sovereign.⁶² This was a practical arrangement, as Keen points out, for the plaintiff in a case regarding a disputed ransom, for example, could expect difficulties if he applied to the defendant's commander or liege lord for justice. He would have to obtain the necessary safe-conducts to travel into enemy territory and then remain in a hostile city if the case dragged through procedural delays, only to face a judge who was likely to be partisan. Under these circumstances, the offer of a judicial duel could ensure that a knight seeking justice would be welcomed by a court interested in seeing a spectacle and that any partiality on the part of the judge would have limited means for expression.⁶³

This logic can be observed in a case held before Edward III in 1350. Jean Visconti, a Cypriot knight, accused Thomas de La Marche, a bastard son of the king of France, of knowing about but not reporting a conspiracy to capture the king of Sicily and his chief justice, even though Thomas was in the same king's pay at the time. Thomas was also accused of having written false letters about affairs in Sicily. Edward allowed the two knights to fight a duel at Westminster, although the English crown was not involved in the war in Sicily. Jean lost the fight, but the King intervened to save his life.⁶⁴

Trial by battle, then, could be found in courts both grand and humble. It could be held before kings, but also in the courts of lesser lords, in the tribunals of independent towns and even in military camps. Often, the right to hold judicial duels was regarded as a privilege and

⁶² Keen, *Laws of War*, pp. 57-8.

⁶³ *Ibid.*, pp. 41-2.

⁶⁴ Thomas Rymer, *Foedera, conventiones, literae* etc., vol. III, part I, ed. George Holmes (London: 1726), p. 58. English historians, citing the chronicler Geoffrey le Baker have long assumed that the French king subsequently executed La Marche for having the temerity to take his case to the court of an arch-enemy of France. See for example M.J. Russell, "Trial by Battle in the Court of Chivalry," *The Journal of Legal History* 29:3 (2008), p. 351. However, the French historian Marcellin Boudet demonstrated that this was not the case and La Marche in fact lived another ten years after his famous duel. See *Thomas de La Marche Batard de France et ses aventures (1318-1361)* (1900; reprint, Geneva: Mégaritis Reprints, 1978).

jealously preserved even when it was rarely exercised. However, as the Middle Ages progressed, it came to be associated with higher courts, especially the courts of sovereigns. The military elite who patronized these institutions were the last litigants to give up the practice.

Chapter Three

The Suits

Just as trial by battle could occur in many different courts, it could also be used to settle a wide variety of cases. There are examples of English and French judicial duels provoked by everything from the non-payment of debts to high treason. Nevertheless, the procedure was much more common in some situations than in others, and it faced increasing restrictions as time went on. Amidst the bewildering multitude of disputes that could bring litigants to blows, a few commonalities emerge. First, in both France and England, trial by battle evolved from a procedure which could be used in numerous kinds of cases to one which was reserved primarily for the criminal sphere, particularly for the most serious crimes. Secondly, throughout the high Middle Ages every judicial duel was, at its core, a test of the status and personal reputations of its participants.

It is traditional to classify modern suits according to the categories of civil and criminal actions. However, this distinction represents somewhat of an anachronism for much of the period when trial by battle was practiced. The first English writer to divide cases this way was the author of the treatise known as *Glanvill*, who wrote between 1187 and 1189, but his definition of crime encompassed many personal wrongs that would be classified as civil actions today, while his definition of civil cases was restricted to disputes over land and a

handful of personal actions.¹ Even Roman law, from which the crime-tort distinction of Anglo-American law and the crime-deliict distinction of the Continent originate, did not use the categories in the way that they are used today. For instance, in Justinian's *Institutes*, theft had to be prosecuted by the victim and not by a public criminal procedure, while adultery was a crime that could be prosecuted by the state.²

Discussing trials by battle according to whether they occurred in civil or criminal suits is therefore not an entirely satisfactory classification. It is more fitting to follow the categories of the medieval jurists themselves. These disputes fall into two broad categories: those cases in which a man might appoint a champion and those in which he was expected to fight in person. The former corresponded roughly to those private conflicts which we would think of today as civil cases, but also shaded into questions of theft when it dealt with moveable property. The latter was comprised of a particular subset of criminal cases known as appeals. These were not appeals in the modern sense of the word, but rather cases in which a private individual known as an appellant, who was usually the victim, brought an accusation to court on his own initiative. Convictions in these suits usually led to some form of punishment for the guilty party. Most of these cases would be recognizable as criminal ones today, but some of them involved the breach of a private contract of fealty and bore some resemblance to civil law, as we shall see in the case of treason. These two categories correspond roughly with the Roman division between civil and criminal cases respectively, but they were already

¹ For an in-depth discussion of this topic, see Paul Hyams, "Does it Matter when the English Began to Distinguish between Crime and Tort?" in Richard Kaeuper, ed., *Violence in Medieval Society* (Woodbridge: Boydell Press, 2000), pp. 107-28.

² *Institutiones*, in Paul Krueger, ed., *Corpus iuris civilis*, 22nd ed. (Berlin: Weidmann, 1973), §4.1.7, 4.1.18, 2.14. For further discussion of the subject, see Charles Donahue, Jr., "The Emergence of the Crime-Tort Distinction in England," in *Conflict in Medieval Europe*, eds. Warren Brown & Piotr Gorecki (London: Ashgate Publishing, 2001), p. 221.

discernible in the Carolingian period and do not seem to be a product of the high medieval renaissance of Roman law.

While there are examples of trial by battle in nearly every field of medieval law, defeat in any judicial duel was, as Henry Charles Lea observed, “not merely the loss of the suit, but also a conviction of perjury ... and in criminal cases it was also a conviction of malicious prosecution on the part of the worsted appellant.”³ Every judicial duel that had proceeded all the way to the day of combat began with one combatant swearing an oath on the field that his accusatory statement was true and the other swearing that the accuser was lying. I would expand Lea’s statement to argue that duels were fought over a somewhat broader question. Disputes came to blows over not just particular statements of fact, but over the parties’ right to be taken at their word when they pronounced these statements. They were tests of the disputants’ honour.

Honour, in this sense, is not merely a synonym for virtue. The word has been used by anthropologists for more than sixty years to express a specific social concept. In its inverse aspect, shame, it was first employed by Ruth Benedict and E.R. Dodds. Benedict used it as a means to explain the mindset of the Japanese during the Second World War. She drew a distinction between what she called guilt cultures and shame cultures. In a guilt culture, individuals hold certain standards of morality and they are troubled by a guilty conscience if they fail to live up to these standards. This sense of guilt is not dependent upon anyone else’s knowledge or judgement of their failing. Conversely, in a shame culture social sanctions take on greater importance than personal ones. Individuals are very sensitive to the way in which others may perceive them. Ridicule or rejection from others, even if it is

³ Henry Charles Lea, *Superstition and Force*, 1866, reprinted as *The Duel and the Oath* (Philadelphia: University of Pennsylvania Press, 1974), pp. 166-7.

unfounded, will cause a deep sense of shame, while secret sins may not trouble people quite as much.⁴ Benedict saw the America of her day as being chiefly a guilt culture, while Japan was primarily a shame culture. The anthropological field has long since moved on to a more nuanced understanding of Japanese culture, but the distinction remains a useful one for understanding certain forms of thought and behaviour found in many societies.⁵ Not long after Benedict published her book, E.R. Dodds brought the concept of shame cultures and guilt cultures to the field of history, finding much of the former in the Homeric heroes' preference for public esteem over the satisfaction of a quiet conscience.⁶

Later, the anthropologist Julian Pitt-Rivers made a major contribution to the discussion of honour itself with the essay "Honour and Social Status."⁷ In it, he attempted to provide a cross-cultural definition of the concept. "Honour," writes Pitt-Rivers, "is the value of a person in his own eyes, but also in the eyes of his society. It is his estimation of his own worth, his *claim* to pride, but it is also the acknowledgement of that claim, his excellence recognized by society, his *right* to pride. ... The claimant to honour must get himself accepted at his own evaluation, must be granted reputation, or else the claim becomes mere vanity, an object of ridicule and contempt..."⁸ In Pitt-Rivers' definition, honour has both an interior personal aspect, the estimation of one's own worth, and an outer one, the public acknowledgement of one's claim.

⁴ Ruth Benedict, *The Chrysanthemum and the Sword: Patterns of Japanese Culture* (Boston: Houghton Mifflin, 1946), pp. 222-3.

⁵ Because of the war, Benedict was not able to go to Japan and could only interview Japanese people in America. It is now thought that many of her statements about Japanese culture represent only the ideology of a particular segment of that society at a particular moment in history. For more recent criticism of her ideas about honour and shame as they apply to present-day Japanese culture, see Millie R. Creighton, "Shame and Guilt Cultures: A Forty-Year Pilgrimage," *Ethos* 18:3 (September, 1990), pp. 279-307.

⁶ E.R. Dodds, *The Greeks and the Irrational* (Berkeley: University of California Press, 1951), pp. 17-18.

⁷ Julian Pitt-Rivers, "Honour and Social Status," in *Honour and Shame: The Values of Mediterranean Society* (Chicago: University of Chicago Press, 1966), pp. 21-39.

⁸ *Ibid.*, pp. 21-2.

More recently, Frank Henderson Stewart simplified this definition, arguing that honour is not a sentiment but a type of right, specifically a right to respect. It is what may be called a “claim-right”, the right to demand something of other people, as opposed to a “liberty right”, the right to do as one pleases. “[B]ut this is only a *pis aller*. What honor is a right to is not the same in all cases,” he hastens to warn.⁹

Medievalists, too, have discussed the semantic fields that words like the Latin *honor* and the French *honneur* encompassed in various periods. Glyn Burgess and Yvonne Robreau observed that the word retained its classical sense of “office,” as well as “benefice” and “fief”, in French literature, but over the course of the twelfth and thirteenth centuries came to be used more often in an abstract sense to mean things like “personal dignity”, “social rank” and “due respect.” It appears particularly often as the thing which literary knights are seeking when they set out into the world.¹⁰ All of these abstract senses are consistent with Pitt-Rivers’ definition and seem to fit Stewart’s as well, when one sees the word in the context of a sentence.

There has also been a limited amount of historical research on medieval honour itself, particularly as it applied to legal matters. John S. Beckerman noted that in twelfth-century England one could sue one’s rivals and receive compensation not only for economic losses, but also for any dishonour (*dedecus*) which one had received.¹¹ Studying late medieval French crime through royal letters of remission, Claude Gauvarde observed “Honour does not exist except through the regard of others. To honour someone (*porter honneur*) is to see

⁹ Frank Henderson Stewart, *Honor* (Chicago: University of Chicago Press, 1994), p. 21.

¹⁰ Glyn Sheridan Burgess, *Contribution à l’étude du vocabulaire pré-courtois* (Geneva: Droz, 1970), pp. 68-90. Yvonne Robreau, *L’honneur et la honte : Leur expression dans les romans en prose du Lancelot-Graal (XII^e-XIII^e siècles)* (Geneva: Droz, 1981), pp. 7-41. See also Gilles Rocques, “La Réputation dans la langue française médiévale : ébauche d’un glossaire onomasiologique du moyen français” *Médiévales* 24 (Spring, 1993), p. 46.

¹¹ John S. Beckerman, “Adding Insult to *Iniuria*: Affronts to Honour and the Origins of Trespass,” in *On the Law and Customs of England: Essays in Honor of Samuel E. Thorne* (Chapel Hill: University of North Carolina Press, 1981), p. 163.

honour in them. ...Honour is thus a benefit which has to be fiercely defended. When it can no longer be either respected or recalled, the situation becomes a conflict. We have arrived at the origins of violence and crime.”¹² She has found that often a failure to pay expected respect led from insulting words to violent blows and lay at the heart of many crimes in this period.

Considerably more ink has recently been devoted to the reputation on which honour is grounded and the means by which medieval communities produced it. The Latin word *fama* meant not only “fame” and “infamy” but also “rumour,” “reputation,” “the things people say,” “memory” and “the things people know.”¹³ In French, the words *renom* and *renommée* had much the same function.¹⁴ A few scholars have noted the importance of these words to medieval jurisprudence. Medieval courts depended heavily on rumour and public opinion. Public talk alerted them to the fact that crimes had occurred and determined how they dealt with individual witnesses and litigants. Special ceremonies of shame, like the pillory, were intended specifically to damage the reputation.¹⁵ One’s reputation in the community was not merely a matter of social nicety. It determined whether a defendant was arrested and imprisoned pending trial, what forms of proof were available to clear his name and whether he could speak in court at all. Outside the courts, one’s reputation and the public talk which

¹² “L’honneur n’existe que par le regard des autres. Porter honneur c’est voir l’honneur. ... L’honneur est donc un bien qui doit être âprement défendu. Quand il ne peut plus être ni respecté ni reconnu, la situation devient conflictuelle. Nous sommes là aux origines de la violence et du crime.” Claude Gauvard, ‘De grace especial’: *Crime, état et société en France à la fin du Moyen Âge*, vol. 2 (Paris: Publications de la Sorbonne, 1992), p. 706.

¹³ Thelma Fenster & Daniel Lord Smail, “Introduction,” *Fama: The Politics of Talk and Reputation in Medieval Europe* (Ithaca, NY: Cornell University Press, 2003), p. 2. Claude Gauvard, “La Fama, une parole fondatrice,” *Médiévales* 24 (Spring 1993), pp. 5-13.

¹⁴ Robreau, pp. 95-98.

¹⁵ F.R.P. Akehurst, “Good Name, Reputation and Notoriety in French Customary Law,” in *Fama, op. cit.*, p. 79. A. Porteau-Bitker & A Talazac-Laurent, “La Renommée dans le droit pénal laïque du XIIIe au XVe siècle,” *Médiévales* 24 (Spring 2003), pp.67-80. Barbara Hanawalt, “Of Good and Ill Repute: The Limits of Community Tolerance,” in ‘Of Good and Ill Repute’: *Gender and Social Control in Medieval England* (Oxford: Oxford University Press, 1998), pp. 2-5.

created it also had tangible consequences. Where today one might use written records like an academic transcript, a clean criminal record or a credit report to establish one's *bona fides*, the largely oral societies of medieval Europe depended heavily on public opinion. It determined whom one could marry, whether one could apprentice one's children and if one could purchase items on credit or enter into a host of other business arrangements. One's good *fama* had to be guarded very carefully, especially in legal matters, for when it was called into question, the stakes were very high indeed. Consequently, a wide variety of legal disputes could potentially lead to a judicial duel.

Immoveable property

Many of the surviving records for trial by battle in the tenth and eleventh centuries involve immoveable property. This is because most of the sources from this period are monastic cartularies, which were primarily concerned with ecclesiastical land holdings. While these sources say little about penal law, they do provide considerable insight into disputes about land. In England and the French-speaking Continent, the possession of land and rights over the people who lived on it were closely tied to social status. In legal documents, the Latin word *honor* usually referred to a fief, an estate, a seigniorship or a benefice.¹⁶ An *honor*, in this sense, was a marker for what Frank Henderson Stewart has called vertical honour, the right to respect which comes from one's rank or station in society.¹⁷ To lose an *honor* was more than just an economic blow to a medieval litigant; it affected one's position in the community.

¹⁶ See J.F. Niermeyer and C. Van de Kieft, *Mediae Latinitatis Lexicon Minus*, rev. by J.W.J. Burgers (Leiden: Brill, 2002), s.v. *honor*, especially definitions 14 through 26. See also Robreau, pp. 7ff.

¹⁷ Stewart, 59.

Many Continental regions have only two or three surviving charters about judicial combat, but the area around Angers seems to have experienced a modest run of wagers of battle between 1050 and 1150, particularly around the year 1100. The cartularies of the monasteries of Saint-Serge and Saint-Bach, and Saint-Aubin, together contain eight charters that provide a particularly clear impression of the variety of land disputes that could lead to a judicial duel in this region.

Land disputes could cause considerable difficulties for medieval courts in northern and western France. When someone sold or donated to a monastery a parcel of land that he had inherited, his heir was entitled to buy it back and return it to the family estates after the vendor's death. The heir could not, however, reclaim lands that the vendor had not inherited. This process of reclamation, identifiable in early cartularies, would later be later be termed redemption, or *rescousse*, and still later known to modern French law as the *retrait lignager*.¹⁸ One such case arose sometime between 1093 and 1152, when a man named Hamelin assembled a collection of land parcels and offered them to the monastery of Saint-Serge and Saint-Bach in order to become a monk. Relatives of the vendor later claimed some of the land from the monastery, saying that they had the right to redeem it, but the monastery disputed the claim. A judicial duel was pledged, but when the demandants failed to appear on the appointed day, the court decided that the land belonged to the monastery after all.¹⁹ Similarly, a woman named Doda and her children sold a parcel of family land to the same monks, and conceded to them her rights to an adjoining parcel which they bought from her brothers. Later she and the children denied that they had agreed to let the monks

¹⁸ See Philippe de Beaumanoir, *Coutumes de Beauvaisis*, ed. A. Salmon, vol. 2 (Paris: Alphonse Picard et Fils, 1900), §1356-1417.

¹⁹ *Cartulaires de l'abbaye Saint-Serge et Saint-Bach d'Angers*, ed. Yves Chauvin, vol. 2 (Angers: Presses de l'Université d'Angers, 1997), no. 19, pp. 376 & 383.

keep this second parcel, which the brothers had already occupied, and a duel was proposed to settle the matter. In this case, the central question which the duel was to decide did not concern the land itself, but rather which of the two parties was misrepresenting the contract they had made. Before the case could come to blows, the monks agreed to pay Doda 20s. and the duel was cancelled.²⁰

Sometimes monasteries themselves were the demandants in suits over land. Somewhere between 1082 and 1101, a knight named Rouaud de Luigné invaded land that the monks of Saint-Aubin claimed to own in the village of Alleuds. The monks complained about this disseisin to Bishop Geoffrey of Anjou, who agreed to hear the case after some initial reluctance. The Bishop ruled in the monastery's favour, but Rouaud refused to accept the judgement, so one of the laymen who had accompanied the monks to court offered to settle the case by combat. The offer was not accepted and it is unclear whether the monks ever regained seisin of the land.²¹

Another variation on the land dispute occurred when a third party asserted feudal rights over land that had recently been purchased from his tenant. Such a case was heard in 1096, when Garin the Black tried to extract a higher *cens* from the monks of Saint-Serge and Saint-Bach for some lands that had been sold to them by a departing crusader. The monks insisted that they owed Garin only 8d. of annual tax for it, but Garin demanded more money until the prospect of a duel forced him to abandon his claim.²² Other feudal rights might also be the subject of a trial by battle. Forty years before Garin the Black's case, the monks of Saint-Aubin had faced a similar situation when the Vicomte of Thouars tried to claim an advowson

²⁰ *Ibid.*, no. 189, pp. 593 & 598.

²¹ *Cartulaire de l'abbaye de Saint-Aubin d'Angers*, eds. Comte Bertrand de Broussillon & Eugène Lelong, vol. 1 (Paris: Picard et Fils, 1903), no. CCIII, pp.235-7.

²² *Saint-Serge et Saint-Bach d'Angers*, vol. 1, no. 323, pp. 263-7.

from them, demanding that they give him either 100s. or a horse of the same value whenever they elected a new abbot. When the monks threatened to hold a duel over the dispute, the vicomte was convinced that such an exaction was no longer appropriate.²³

The appurtenances of land, like mills and woods, might also be the subject of duels. At a point between 1095 and 1100, a change in the course of the river Loire gave three millers the opportunity to expand their operation from two mills to five. Since the stretch of the riverbank on which the mills were situated was a fief of the monastery of Saint-Serge, the monks sought to renegotiate the annual *cens* which the millers owed them, sparking a lawsuit that ended in a day-long battle of champions.²⁴ A few years previously, the monks of Pincé, a priory of Saint-Aubin, found themselves embroiled in litigation when a knight named Fulk de Muris insisted in a lawsuit that he had the right to take both green and dead timber from the wood of Malépinay. In order to prove him wrong, they agreed to hold a judicial duel. This case would have ended in combat, except that the people who were supposed to referee the duel failed to appear on the appointed day, causing a further round of litigation.²⁵ By the midpoint of the twelfth century, judicial duels over land were becoming rarer in charters, not only in Anjou but across French-speaking lands, as opposition to the procedure grew among the clerics who drew up such documents. By 1280, Beaumanoir could assert confidently that battle did not belong in cases involving Church real estate.²⁶

Fortunately for historians, the legal customals pick up the description of land law at the beginning of the thirteenth century, providing evidence of its evolution, or at least of changing expectations among professional jurists. They show that the lay population

²³ *Saint-Aubin d'Angers*, no. XXIX, pp. 49-51.

²⁴ *Saint-Serge et Saint-Bach d'Angers*, no. 244, pp.224-7.

²⁵ *Saint-Aubin d'Angers*, vol. 2, no. DCCCLXXIX, pp. 352-353. See also p. 240, *infra*.

²⁶ Beaumanoir, vol. 2, §1823, p. 423.

continued to use the practice for immovable property cases until the middle of the thirteenth century, at which point it was abandoned gradually.

The *Très ancien coutumier de Normandie* indicates that in Normandy around 1190 it was still possible to hold a duel of champions when two clerics claimed to have been presented with the same benefice.²⁷ The customal's later analog, the *Summa de legibus Normanniae* from circa 1254, no longer mentions Church property, but still devotes a long section to an explanation of how laymen could wage battle in cases of contested inheritance.²⁸

However, the *Livres de jostice et de plet* from Orléans, written at roughly the same time as the *Summa*, exhibit some confusion on the subject of judicial duelling and property. On the one hand, this customal says that cases where inherited land is contested because of escheat, sale, gift, rental, mortgage or a will can all go to battle, while a few sentences later it explains that in cases of inheritance there can be no battle but only proof by witnesses.²⁹ Further confusing the matter, the practice of writing wills had by this point in the mid-thirteenth century been growing more common in literate circles. These wills could move an inheritance case into the jurisdiction of the Church courts, which kept copies of such documents, making a judicial battle impossible because it was not a part of canon law procedure.

Despite the sentence saying that wills can be contested by battle, the *Livres de jostice et de plet* claim in two other places that this is not possible.³⁰ These two sentences come at the end of chapters, suggesting that they had been added later than the rest of the text and the

²⁷ *Coutumiers de Normandie*, ed. Ernest-Joseph Tardif, vol.1, pt. 2, *Le très ancien coutumier de Normandie* (Rouen: Imprimerie d'Espérance Cagniard, 1881), c. LXXVII.3, p. 76.

²⁸ *Coutumiers de Normandie*, vol. 2, 1896, c. CXXIV, pp. 331-40.

²⁹ *Li livres de jostice et de plet*, ed. Pierre-Nicoles Rapetti (Paris: Firmin Didot Frères, 1850), book 4, c. IV.1, pp. 125-6.

³⁰ *Ibid.*, book 2, c. XIV.5, p.98 and book 4, c.IV.1, p. 126.

rule was new enough that there was still some uncertainty about whether it should be considered customary and the older text revised to make it consistent.

In 1258, Louis IX issued an ordinance banning trial by battle for any kind of suit in his domain. This document was widely promulgated in several forms and comprises the bulk of the text known as the Customs of the Châtelet.³¹ Although it only applied to courts under direct royal control, the law seems to have been influential not only in the neighbourhood of Paris but also in neighbouring regions where the kings had been regaining political control in the preceding decades. It is included at the beginning of several thirteenth-century compilations of the customs of Anjou. Indeed, in Anjou, home of so many eleventh- and twelfth-century charters about trial by battle, judicial duels were no longer a major concern in property disputes by the time the first customal for the region was drawn up around 1270, although the customs do contradict Louis's ordinance more directly in many other kinds of suits. This customal mentions in passing that if a magnate demanded inherited land from a vavassor who held it from him, the vavassor could choose to have the case held in the court of the magnate's overlord rather than the magnate's own tribunal and he would be exempted from trial by battle there.³²

This custom implies that battles were still being held over immoveable property in lower courts, but the customal does not describe them explicitly. When a later version of these customs was recorded in 1385, a glossator made it clear that judicial duels could only occur

³¹ See *The Etablissements de Saint Louis: Thirteenth-Century Law Texts from Tours, Orléans and Paris*, ed. F.R.P. Akehurst (Philadelphia: University of Pennsylvania Press, 1996), cc. 3-9, pp. 10-14. For the original Old French text see *Ordonnances des rois de France de la troisième race*, ed. Eusèbe de Laurière, vol. 1 (Paris: Imprimerie Royale, 1723) pp. 87-8. See also pp. 300-302, *infra*.

³² *Coutumes et institutions de l'Anjou et du Maine antérieures au XVI^e siècle*, ed. C.-J. Beaufort-Beaupré, pt. 1, vol. 1 (Paris: A Durand & Pedone-Lauriel, 1877), §B 47, p. 89.

in courts of high justice, making it unlikely that any trials by battle over land were occurring at all.³³

Philippe de Beaumanoir, writing about the customs of the Beauvaisis in 1280, also barely mentions trial by battle in the context of property disputes. According to Beaumanoir, there should be no battle in cases of redemption, for the poor should not have to resort to violence when their heritage has been sold out from under them. Similarly, judicial duels over dower and novel disseisin were to be forbidden unless the defendant was willing to fight, and the property of minors was not to be staked on a battle either.³⁴ These sections of the *Coutumes de Beauvaisis* make up a very small part of Beaumanoir's extensive discussion of judicial duelling.

In 1306, Philip the Fair's ordinance restoring trial by battle specifically limited the procedure to criminal cases, effectively preventing the return of property battles in the royal domain. However, in regions where the crown had less influence, the practice was slower to disappear from the record. The *Très ancien coutumier de Bretagne*, written around 1330, said that a dispute over the inheritance of land could still go to combat if the tenant was willing to proceed by that method.³⁵ This, however, is the last mention of judicial duelling over immoveable property in a French customal and may have been somewhat of an anachronism.

The ordinance of 1306 was nevertheless not the last word on judicial duelling over land. If the definition of a property dispute is stretched to include struggles over entire territories, the possibility of using the procedure persisted well into the fifteenth century. Johan Huizinga

³³ *Ibid.*, §35, p. 225.

³⁴ Beaumanoir, vol. 2, §1820-1825, pp. 421-4.

³⁵ *La très ancienne coutume de Bretagne*, ed. Marcel Planhol, 1896 (reprint; Paris: Champion-Slatkine, 1984), c. 134, pp. 164-5.

collected several late medieval examples of princes challenging one another to duels with large territories at stake. Edward III of England challenged Philip VI for the throne of France and Philip returned the favour in 1347 over Edward's capture of Calais. Later the teenaged Richard II challenged his French counterpart Charles VI to settle their war by the same procedure. Louis of Orléans challenged Henry IV, and Henry V challenged the dauphin before the battle of Agincourt. In 1425 Duke Philip the Good of Burgundy challenged Humphrey of Gloucester for the control of Holland. Even as late as the sixteenth century, Emperor Charles V twice proposed to settle his differences with the king of France by the sword.³⁶ These duels pushed the definition of trial by battle. Although the parties in each case proposed neutral adjudicators to act as judges, there was in all practicality no way to enforce a decision reached by such means. This is no doubt why none of the duels ever came to pass. The exchange of letters involved in these disputes bought the princes time to muster troops and allowed them to construct a reputation for personal courage. For them, the process of trial by battle served as a useful military tactic, but its final consummation was neither practical nor desirable.

Immoveable Property in England

The development of the trial by battle over immoveable property took a different course in England. In land cases from the Conquest onward, it was closely associated with one particular form of action, the writ of right. An English plaintiff (known as a demandant in these suits) who wanted to begin litigation over land had to obtain a document known as a writ from the royal court. If he held his land from the king, the writ of right was known as a

³⁶ Johan Huizinga, *Herfsttij der Middeleeuwen* (Haarlem: Tjeenk Willink, 1919), pp. 162-4. See also Werner Goetz, "Über Fürstzenweikämpfe im Spätmittelalter," *Archiv für Kulturgeschichte* 49 (1967), pp. 135-63.

praecipe in capite for its opening words and it was addressed to his local sheriff, commanding him to “do right” to the demandant. If the land in question was held from another lord, a royal writ was still required. This writ was called simply *Praecipe* and it initiated a similar case in the lord’s own court. The treatise known as *Glanvill* provides examples of both writs.³⁷ In either case, the demandant had to be prepared to prove by battle that he had a better right than the current tenant to occupy the land in question. The tenant in these cases might be either the person who was occupying the land or that person’s lord, if the occupier chose to transfer responsibility for the case to him by naming him as a warrantor.³⁸

Until some point in the mid-twelfth century, traditionally assumed to be the Assize of Clarendon of 1166, the only form of proof that this particular action allowed was battle. Writs of right could be used to deal with a diverse selection of land-related scenarios. Most often they resulted when one person challenged the legitimacy of another’s seisin of a parcel of land. The demandant would state that his ancestor died seised of the land and that he was the ancestor’s most direct heir. This situation usually occurred when the ancestor had died well in the past and the dispute between his heirs over who should inherit the fief only arose much later. Sometimes the question of which lord the land was held from was also part of the dispute. Alternatively, a lord could challenge his tenant’s right to occupy a parcel of land, or a tenant could challenge his lord’s right to hold land in demesne.³⁹

³⁷ G.D.G. Hall, ed., *The Treatise on the Laws and Customs of the Realm of England Commonly Called Glanvill* (London: Thomas Nelson & Sons, 1965) c. I.6, p. 5 & c. XII.3, p. 137. Kings occasionally applied the former writ instead of the latter to lands held by their barons, allowing demandants to take their cases to shire courts and denying barons the opportunity to hear these cases or to be informed that they were occurring. It is this practice to which article 34 of the Magna Carta, about the writ which is called *praecipe*, objects.

³⁸ As a classic example, see the case from 1215 in *The Cartulary of the Treasurer of York Minster*, ed. Janet Burton (York: Borthwick Institute Publications, 1978), no. 32.

³⁹ For in-depth discussion of these variables, see S.F.C. Milsom, *The Legal Framework of English Feudalism* (Cambridge: Cambridge University Press, 1976), pp. 71-102.

A tenant wishing to contest a writ of right by battle had to deny the demandant's claim completely. The clashing claim and denial became the basis on which the battle was fought. By the time of *Glanvill*, the tenant could elect to defend himself by grand assize, an early form of jury, instead of battle.⁴⁰ Grand assizes were better equipped to pronounce on a multilayered argument, while battle was only able to answer a yes and no question. The recent Assize of Northampton in 1176 had also introduced the assizes of mort d'ancestor and novel disseisin, which allowed demandants to call on a similar panel of twelve men to pronounce on land transfers which had taken place in the recent past. Because of the obvious risk of injury that battle entailed, the procedure was used less and less often in thirteenth-century writ of right cases, as the alternatives became better suited to sophisticated cases.

However, it was sometimes not in a tenant's best interest to put his case in the hands of a jury. In 1287, the monks of Bury St. Edmunds decided to take a dispute over two manors to a duel rather than a grand assize because "we are doubtful of the countryside, as friendly with and akin to our enemies."⁴¹ The last duel to be struck over a writ of right occurred around 1300, but there were attempts to revive the practice in the sixteenth and seventeenth centuries, and it was not officially abolished until 1819.⁴²

Other "Civil" Disputes

Outside the writ of right, judicial duels were very rare in English civil cases. On the Continent, however, the procedure could be applied to a much wider variety of disputes. In

⁴⁰ *Glanvill*, II.6, pp. 26-9.

⁴¹ "...*patriam habentes suspectam utpote adversariis nostris familiarem et affinem...*" V.H. Galbraith, "The Death of a Champion (1287)," in *Studies in Medieval History Presented to F.M. Powicke*, ed. R.W. Hunt *et al.* (Oxford: Clarendon Press, 1948), p. 293.

⁴² Russell, "Writ of Right", pp. 127-8. The decline of trial by battle is covered in more detail in Chapter Seven of this dissertation.

addition to suits over the status of land, in some French-speaking regions the status of the individuals who occupied the property might also be grounds for a trial by battle. These cases revolved around honour, in Stewart's sense of the right to respect, in its most obvious form. They directly investigated an individual's social rank, or "vertical honour".

An early case of this sort appears in the eleventh-century *Livre des serfs de Marmoutier*. At a point between 1040 and 1088, a man denied being a serf of Marmoutier, but the monks of that monastery produced one of the man's relatives, who testified in court that he was in fact unfree and challenged him to defend his statements by combat. The man promptly dropped his claim and the battle did not happen.⁴³

Cases of a similar sort are hinted at in other documents. In particular, there seems to have been some concern about such suits in Étampes at the end of the twelfth century. A letter by Louis VII from 1179 regarding the administration of the town sets limits on the amount of money that the king, the provost and the champions could extract from the losing party in a duel, but exempted from this rule duels fought over several matters, including *servitus*, which were considered more serious than the others.⁴⁴ Not long after, a charter of 1195 issued to the church of Sainte-Croix d'Orléans by Philip Augustus declared that all but four of the men dwelling in the church's lands in Étampes were serfs and that there was to be no litigation or battle on the subject.⁴⁵

Gilbert of Mons relates a remarkable case that arose between two knights at the court of the Count of Hainault. A knight named Gerard of Saint-Aubert had been in an argument with several other knights and insulted one of them by calling him a serf. The disputants'

⁴³ *Le Livre des serfs de Marmoutier*, ed. André Salmon (Paris: Guillard-Verger, 1845), no. 11.

⁴⁴ "Pro duello victo non exigimus ultra sex libras...nisi fuerit duellum de infractura banlive, vel muertro, vel latrocinio, vel raptus, vel servitute." Laurière, vol. XI, p. 211.

⁴⁵ *Cartulaire de Sainte-Croix d'Orléans*, ed. Joseph Thillier and Eugène Jarry (Paris: A. Picard & fils, 1906), no. CXV.

ruffled feathers were eventually smoothed, but the insulted man's cousin, Robert of Beaurain, was unwilling to let the issue of servitude drop and later in the count's court challenged Gerard to prove his words by battle. Gerard accepted the challenge and some days later he won the duel on a legal technicality when his opponent failed to show up on time. The hot-headed Robert was led away in chains, having been quite literally owned.⁴⁶

In England, the treatise *Glanvill* also contemplated the possibility of a dispute over a freed villein's status. It declared that the villein's freedom could be proven by battle, but the fighting had to be done by someone who had witnessed the manumission, for an ex-villein could not fight on his own behalf.⁴⁷ However, there are no records of battles over cases of this sort and they must have died out shortly after *Glanvill*'s time.

Although battles over serf status are mentioned explicitly in Louis IX's ordinance against duelling, indicating that it was still possible to hold them in Paris until the mid-thirteenth century, they did not disappear entirely. In the Beauvaisis, Beaumanoir felt that it was hypothetically possible to hold a trial by battle over serfdom. The serf could not initiate such a case, but if he claimed to be a free man and the lord wanted to disprove the claim, the lord could settle the case in court by means of witnesses. If the witnesses were family members of the serf, the case was considered closed, but if they were other community members, the serf could challenge one or more of them to battle and prove them wrong.⁴⁸ The rules regarding family members would have made proposing a judicial duel somewhat more difficult than it had been in Marmoutier some two hundred years previously.

⁴⁶ *La chronique de Gislebert de Mons*, ed. Léon Vanderkindere (Brussels: Librairie Kiessling & Co., 1904), pp. 209-214. See also pp. 203 & 244-5, *infra*.

⁴⁷ *Glanvill*, V.5, p. 57.

⁴⁸ Beaumanoir, §1431, pp. 222-3.

Moveable Property

In addition to suits involving land and its appurtenances, there were certain cases involving moveable property that could also result in battle. These often straddled the line between penal law and private dispute. The commonality among these cases is that they all revolved around the issue of whether one of the parties was a man of his word. Medieval business transactions were often conducted without written contracts, receipts or other records. When disputes arose, they depended on the testimony of witnesses. To suggest that a litigant was dishonest was to damage his ability to do business.

Trial by battle was associated with theft cases as early as the beginning of the ninth century, when it made an appearance in Charlemagne's capitulary *De latronibus*. The capitulary considered the problem of what to do with an accused thief who had not been caught with stolen goods, but was nevertheless *famosus*, or infamous. The emperor advised that if there was someone willing to prosecute the thief (probably his victim), that person should speak up before the thief cleared himself with an oath, and the two men should go out into a field armed with clubs to settle the dispute.⁴⁹ However, little can be said about duels over moveable goods in the three centuries following this document. Charters, which have so much to say about disputes over immoveable property, say little about moveable goods except occasionally to reserve for powerful lords jurisdiction over both theft and judicial duels.⁵⁰

Louis VII decreed in 1168 that there should be no combats in Orléans over goods worth 5s. or less and his ordinance was much repeated in other customs, but this rule left many

⁴⁹ *Capitularia Regum Francorum*, ed. A. Boretius, vol. 1, Monumenta Germaniae Historica (Hannover: Hahn, 1883), no. 82, cc. 2-3, p. 180.

⁵⁰ A.C.F. Koch, "L'origine de la haute et de la moyenne justice dans l'ouest et le nord de la France," *Tijdschrift voor Rechtsgeschiedenis* 21 (1953), p. 430.

transactions in which duelling was still possible.⁵¹ One passage of the Norman *Summa de legibus* from the middle of the thirteenth century says that duels are allowed in disputes over debt, advances of money, compensation, agreements, damages incurred, promises, the transport of goods, pawning, and theft.⁵² This list does not lend itself easily to modern legal categorization, as it includes elements of contract, tort and crime all mixed together, but all of the cases are essentially disagreements about the movement of money or goods.

These cases tested a key component of their participants' honour: the value of their word. In thirteenth-century France, important business required the presence of individuals known as warrantors. A warrantor was a person who agreed to witness a transaction and to vouch for its details in court if a dispute should arise. The *Livres de jostice et de plet* explain the role of such a witness in court.

And so one asks: if the master of a ship denies that he ever received the merchandise [which he was supposed to transport for you] how should you proceed? And you should respond with these words: "I complain of Gui, master of such-and-so ship, to whom I entrusted my goods, a cargo of pepper, and he was to bring it for me to Orléans in such-and-so town, but I did not receive it; and if he should wish to say that he did not have my goods, in such a form, I am prepared to show and swear, both on my own behalf and through my warrantor, that it was so, just as I said.

The ship's master then presents himself and his warrantor and denies the accusation. The writer asks rhetorically what a judge should do in such circumstances.

And the response is that one ought to ask about the plaintiff and his warrantor and if he is a *preudom* and honest one ought to hear him, and also [one should enquire] whether the defender is worthy to bear his own proof and that of his warrantor, and to know what the truth is or to oppose the accusation through a pledge of battle; for in such a case one can indeed have battle: for there is *traïson* and a kind of larceny.⁵³

⁵¹ Laurière, vol. 1, p. 15.

⁵² "Harum autem querelarum [de mobilis possessionibus] quedam sunt de debito, quedam de prestito, quedam de adirato, quedam de pacto, quedam de damno illato, quedam de promisso, quedam de ablato, quedam de nantatione, quedam de furto..." Coutumiers de Normandie, vol. 2, c. LXXXVII.5, p. 210.

⁵³ "Emprès demande l'en se li sires de la nef nie que il n'oit mie recueu la marchandise, comment l'en porra l'en attendre? E l'en respont par tex paroles : Ge me plein de Gui, metre de cele nef, à qui jé baillié mon avoir, une charge de poivre, et la me dut amener à Orliens, en ceste vile, ne je ne ai puis avoier; et s'il veaut dire que

The case is presented as a criminal matter, involving *traïson*, which in this case means deception, and a “kind of” (*mambre de*) larceny.

In a different scenario, one might find someone in possession of stolen goods without having evidence that he personally participated in any criminal wrongdoing. In such a case, the accused party might call on the person who had sold the goods to him to be his warrantor. The customs of Anjou and Touraine explain what should occur once the warrantor has been summoned to court and inspected the disputed goods.

And if he says after the viewing: “I will indeed warrant you,” the defendant must be quit of the suit and have his money back; for even if he won the plaintiff would challenge the warrantor for the thing. And so one can go from warrantor to warrantor up to seven; and if the last of the seven warrantors said: “I will warrant this [animal], for it was raised by me”; or if it is cloth, or clothing, or some other thing, one could say: “It was my work and from my house”; and if the plaintiff said: “I deny it: it was stolen from me,” then the judge should take possession of the thing and he could adjudge a battle between the two of them, or between two others, if each of them wished to make a substitution.⁵⁴

Here again, the case straddles the boundary between civil and criminal law and it is left up to the parties whether they wish to face one another in person, as they would in a criminal appeal, or to leave the battle to champions.

In addition, a passage in Beaumanoir demonstrates just how much the course of such a trial could depend on the reputations of the parties.

il n'ait ma chose eue, et en ceste forme, je le sui prez de mostrer et de l'avérer, et par moi et par garanz, que si est ceste chose, si com ge le di. ... Et l'en respont que l'en doit demender la personne de celui qui demende et de son garant, et s'il est preudom et honeste, l'en le doit oïr, issint que le deffenderres est loisanz de prandre la prove de li et de son garant, et de quenoistre que c'est voirs, out d'escondire par gage de bataille; car en tel chose doit bien avoir bataille : car il i a traïson et mambre de larrecin.” Jostice & plet, 7.IV.2, p. 161.

⁵⁴ “Et après la veue si il dit: « Je vous garantiré bien; » l'autre doit estre quites du plet, et doit avoir son argent; quar si tout gaignet la chose cil qui demande apeleret cil qui est garisseors. Et ens puet aler de garant en garant jusque à VII. Et si li derrier des VII dit : « Ceste [chose] li garantirey je bien, quar c'est de ma norreture; » et si c'estoint dras ou robes ou autres choses, cil porret bien dire : « Ce fut de mon euvre de ma meson ; » et si l'autre dit « Je m'en deffens, eincois me fut emblé; » si doit la justice tenir la chose en sa main, et puet bien juger des II une bataille par eux II ou par II autres, si chescun se voulet changer...” *Coutumes et institutions de l'Anjou...*, pt. 1, vol. 1, c. 100, p. 123.

And also if the person who is arrested seized and in possession is of a bad reputation, and the other person who he says gave him the stolen goods is of good reputation, the wager [of battle] should not be accepted but rather he who has been arrested vested and in possession would be punished for larceny. And if both parties are of bad reputation ... one may accept the wager, for it does not matter which man loses. ... And if both parties are of good reputation, and are willing to wait for an inquest, once again the wager is to be accepted; for it often happens that one considers people good who are not good, and it must be true that one of the two parties committed the larceny.⁵⁵

Here it becomes explicit just how important it would have been for residents of the Beauvaisis and probably other jurisdictions to maintain a reputation for honesty. Losing the respect of one's peers could have very dangerous consequences.

Philip IV's ordinance of 1306 restoring duelling at the Parlement of Paris permitted duels over all capital crimes except for theft. Although theft was usually punished by hanging, it was by this point well established as a crime over which many lower courts had jurisdiction, while the French crown was working hard to limit judicial duelling to the Parlement of Paris. Nevertheless, residual references to it appear in the late fourteenth-century customals of Burgundy and Brittany, regions that were still somewhat independent of royal justice.⁵⁶

In England too it was possible at one time to hold a battle in certain cases involving moveable goods. The Laws of Henry I say that one cannot have a duel over goods worth ten shillings or less.⁵⁷ *Glanvill* mentions the possibility of battle in cases of debt if the creditor does not have sureties or a gage to prove that the debt existed.⁵⁸ Sureties were third party witnesses similar to warrantors, except that they also agreed to compensate the lender if the

⁵⁵ "Et aussi se cil qui est pris saisis et vestus est de mauvese reomee et li autres de qui il dit qu'il li bailla le larrecin est de bonne renomee, le gage ne sont pas a recevoir, ainçois doit estre cil justiciés du larrecin qui est pris saisis et vestus. Et se chascuns est de mauvese renomee, ... l'en puet bien les gages souffrir, car il ne puet chaloir liqueus perde. ... Et se chascuns est de bonne renomee et bien veut attendre l'enqueste, encore font li gage a recevoir, car il avient souvent que l'en cuide teus a bons qui ne le sont pas, et ce ne puet estre que li uns d'aus deus n'ait fet le larrecin." Beaumanoir, §1815, pp. 419-20.

⁵⁶ *Le Coutumier Bourguignon Glosé*, ed. Michel Petitjean et Marie-Louise Marchand (Paris: Éditions C.N.R.S., 1982), c. 279, p. 235. Planiol, c. 40, p.98.

⁵⁷ *Leges Henrici Primi*, ed. L.J. Downer (Oxford: Oxford University Press, 1972), c. 59,16a, p. 188.

⁵⁸ *Glanvill*, lib. X, c. 12.

debtor defaulted, while a gage was an object which the debtor handed over to the creditor as collateral. If a man denied that he had agreed to stand surety for a debtor, the principal or another surety could also challenge him to battle. The same was true for warrantors who defaulted when a buyer called on them to prove that a sale had happened.⁵⁹

Duels over debt disappeared from England much earlier than they did from France and probably were not common in any period. The lone surviving case record for a pledge of battle on these grounds comes from 1237.⁶⁰ However, the principle remained that one could challenge recalcitrant warrantors to battle if they refused to testify. The thirteenth-century treatise known as the *Brevia Placitata* said that a man who was named as a warrantor in a charter could deny his warranty by means of battle, at which point he would have to pit his reputation and his fighting skills against those of one of the charter's witnesses.⁶¹

English courts also oversaw battles in cases that were unambiguously questions of theft. The use of approvers seems to have been a uniquely English institution. Approvers were criminals who confessed to their crimes in return for judicial leniency. In order to obtain the opportunity to "abjure the realm," or go into exile, they had to testify against a set number of their criminal accomplices and convict them by battle if necessary. These cases mostly involved theft or robbery. Approvers are first mentioned in the *Dialogue of the Exchequer* around the year 1179 and payments for their upkeep appear in the Pipe Rolls and other exchequer documents from 1185 onwards.⁶² Although approvers' battles appeared less frequently in the Curia Regis Rolls after the middle of the thirteenth century, occasional

⁵⁹ *Ibid.*, lib. X, cc. 5, 15.

⁶⁰ *Close Rolls of the Reign of Henry III*, vol. 3 (London: HMSO, 1902), p. 472.

⁶¹ *Brevia Placitata*, ed. G.J. Turner & Theodore Plucknett, Selden Society 66 (London: Quaritch, 1951), p. 3.

⁶² For a more extensive discussion of the subject, see Frederick C. Hamil, "The King's Approvers: A Chapter in the History of English Criminal Law," *Speculum* 11:2 (1936), pp. 238-58; and M.J. Russell, "Trial by Battle and the Appeals of Felony," *Journal of Legal History* 1:2 (1980), pp. 149-53.

combats still occurred over the next two centuries until 1456, when two approvers contested an accusation of theft in the last judicial duel to be fought in England.⁶³

From these examples, it becomes apparent that a bad reputation could severely handicap one's ability to make any kind of agreement. The smooth flow of trade depended on the trust of friends and neighbours who were willing to act as warrantors. In addition, the courts, which did not yet have the tools of forensic accounting at their disposal, depended on public opinion to help them evaluate the probability of wrongdoing when parties came before them. A good reputation was not just a matter of social nicety. It conferred upon its bearer business opportunities and legal rights which he could ill afford to lose.

Default and False Judgement

Not only warrantors and sureties, but even judges and jurors could be challenged to battle in some circumstances. These cases fell into the category known as appeals, a classification roughly contiguous with criminal law. In medieval law, the word appeal (*appel*) had a meaning much different from the modern one. A medieval appeal was not a decision referred to a higher court, but rather a case in which the victim was responsible for calling out (*appellare*) the suspect and prosecuting the case in person. For most of the Middle Ages, this was the only way to prosecute criminals in England and France. The appeal in its modern sense did not exist in secular courts. One could not reopen a case on the grounds that a mistake had been made in the application of the law. The only way to overturn a decision

⁶³ William Gregory's *Chronicle of London* in *The Historical Collections of a Citizen of London in the Fifteenth Century*, ed. James Gairdner, Camden Society, New Series 17 (London: Camden Society, 1876), pp. 199-202.

was to prosecute the judge in the court of his lord for failing to carry out his duties honestly. This was a serious criminal offence which could cause a guilty judge to lose his position.

Appeals against judges fell into two categories. The default of justice occurred when a judge simply refused to hear a case which should have been in his jurisdiction. The *Très ancien coutumier de Normandie* says that a man who receives such treatment from his lord can challenge him to a judicial duel and such a case would be heard in the court of the duke of Normandy, while Beaumanoir mentions in passing that this procedure was possible in the Beauvaisis as well.⁶⁴

Another form of appeal occurred when a judge rendered a decision that was in some way dishonest or illegal. In that case, the wronged party might challenge the judge in the court of the judge's overlord. This action, known as an appeal for false judgement, is found in the customs of Anjou. If the judge was a baron, it might necessitate taking a suit as far as the royal court.⁶⁵ Not only judges but also jurors might be challenged for false judgement. The *Établissements* of Rouen allowed a man who had a complaint against a *juré* to make a complaint to the mayor and take his case to the court of the king's *bailli* if a duel was pledged.⁶⁶ Similarly, the customs of the Beauvaisis allowed an individual who was dissatisfied with a jury's decision to challenge the jurors to fight. However, Beaumanoir explains that there were some conditions on the procedure. While jurors could be appealed, the *bailli* of the County of Clermont could not. Also, it was not appropriate to allow an appeal in a property case that revolved around a well established custom, or else a custom-altering precedent might be set. Furthermore, Beaumanoir advised appellants to challenge

⁶⁴ *Coutumiers de Normandie*, vol. 1, c. 30, pp. 26-7. Beaumanoir, vol. 2, §1780, p. 403.

⁶⁵ *Coutumes et institutions de l'Anjou...*, pt. 1, vol. 1, c. 90, pp. 117-8.

⁶⁶ A. Giry, *Les Établissements de Rouen: Études sur l'histoire des institutions municipales*, vol. 2 (Paris: F. Vieweg, 1885), c. 31, pp. 38-9.

only one juror at a time. If they challenged the jury as a body, they would have to fight all of them.⁶⁷

In Beaumanoir's time, courts were moving away from trial by battle as a means for proving false judgement. The legist Pierre de Fontaines, a contemporary of Louis IX, recalls how he took part in a case of false judgement brought by two women against the judges of the royal court in Saint-Quentin. The case was heard in the Parlement of Paris under Louis' new rules for procedure, and the women won. This, said Pierre, was the first appeal from Vermandois to be settled without battle. Further along, he related that the Parlement had later ruled on a case against a judge who answered to the Count of Ponthieu. This dispute had also been settled without a battle, this time in favour of the judge.⁶⁸ Beaumanoir was not impressed by these precedents, for he insisted that in cases of default or false judgement, the superior court hearing the case must follow the procedure of the inferior court in which the appeal was initiated.⁶⁹ However, his opinion seems to have lost out to the new royal practice.

English law also allowed trial by battle in cases of false judgement. *Glanvill* explained that lower courts were not obliged to defend their record by battle when they sent representatives to the Curia Regis to testify regarding decisions which had been reached in the past. However, if someone accused a lower court of not merely altering the record but having made a false judgement in the first place, the court would be obliged to defend itself by battle. The author of *Glanvill* appears to be ambivalent about which legal category these cases fall into. When he distinguishes criminal from civil cases at the beginning of his treatise and lists examples of each category, he does not mention false judgement at all, and

⁶⁷ Beaumanoir, §24, 1758, 1755, vol. 1, p. 28; vol. 2, pp. 392 & 391.

⁶⁸ *Le Conseil de Pierre de Fontaines*, ed. M.A. J. Marnier (Paris: Durand & Joubert, 1846), c. XXII, no. XXIII-IV, pp. 304-5.

⁶⁹ Beaumanoir, vol. 2, §1780, p. 403.

he classifies default of justice in certain suits regarding land as a civil matter belonging to sheriffs.⁷⁰ Later, he is careful not to refer to false judgement as an appeal, or to the parties as appellant or appellee. However, while he states that the accusing party should ideally prosecute the duel through a champion, as was typically the procedure in “civil” suits, he also says that the defending court must be represented by one of its own members, ideally the person who rendered the judgement.⁷¹

A case like this appears in the *Curia Regis Rolls* for 1201. The prior of Coventry accused a county court of making a false judgement when it did not permit him and other litigants to hold an official viewing of disputed land before they held a judicial duel in a writ of right case. Challenging William de Charnelles, one of the men who had brought a record of the county’s decision to the royal court, the prior offered to discredit the duel with another duel and presented two men, either of whom was prepared to act as his champion. William, for his part, alleged that the prior had not been denied his viewing, but had simply failed to show up for it. The case may not have been considered entirely routine, for it was adjourned and the clerk made a note in the margin to consult with the king on the matter.⁷² Perhaps the issue did not go to combat after all, for this is the last record of the case.

Crimes of Violence

Crimes involving violence could also be proven by battle. Numerous historians have remarked on the similarities between judicial duels and feuds, as both could involve tit-for-tat

⁷⁰ *Glanvill*, I,4, p. 4.

⁷¹ *Ibid.*, VIII,9, p. 101.

⁷² *Curia Regis Rolls*, vol. 1 (London: HMSO, 1922), pp. 445-6.

fighting and delicate peace negotiations.⁷³ The nineteenth-century German historian Felix Dahn was the first scholar to elaborate on the idea that judicial duels were in fact a way to reduce and control blood feuds in order to keep them from tearing entire communities apart.⁷⁴

French sources show a certain amount of diversity when they treat the question of how serious violence had to be in order to be grounds for a trial by battle. Some of them considered assault sufficient provocation, while others did not. In the commune of Athyes, a charter confirmed by Philip Augustus allowed judicial duels in cases of assault by day or night if the victim was unwilling to accept an oath of innocence from the accused perpetrator and his compurgators.⁷⁵ In Orléans, the *Livres de justice et de plet* allowed battle only if the assault caused an injury worth fifteen sous or more. (This injury might be caused by, among other things, flinging foul *ordure* out of a house so that it landed unintentionally on a victim passing in the street below.)⁷⁶ Such an injury had to be one that caused bruising or drew blood, but a bloody nose or mouth did not count.⁷⁷ Elsewhere, the damage had to be more serious. The *Summa de legibus* of Normandy declared that assault and the breaking of the Duke's peace were not enough to justify judicial combat: the victim had to show that the assault had caused dangerous amounts of blood to flow or he had been mayhemed, that is to say permanently injured.⁷⁸

⁷³ See, for instance William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law and Society in Saga Iceland* (Chicago: University of Chicago Press, 1997), Chapter 7. More recently, Paul Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, NY: Cornell University Press, 2003), pp. 146-7.

⁷⁴ Felix Dahn, *Fehde-Gang und Rechts-Gang der Germanen* (Berlin: Carl Habel, 1877), pp. 47-8.

⁷⁵ *Ordonnances des Rois de France de la troisième race*, ed. Eusèbe Laurière, vol. 11 (Paris: Imprimerie Royale, 1769), c. 3, pp. 298-9.

⁷⁶ *Justice & plet*, pp. 279- 296.

⁷⁷ *Ibid.*, 295.

⁷⁸ *Coutumiers de Normandie*, c. LXXIV.3, p. 184.

In England, minor assaults were dealt with in local courts and are largely absent from surviving legal records. *Glanvill* does not mention assault among the felonies that can be appealed in royal courts. However, by the middle of the thirteenth century when the treatise known as Bracton was written, the royal jurisdiction had expanded to include incidents causing serious injury when they were violations of the king's peace. Bracton distinguishes between scratches, contusions caused by stones or clubs, and deep cuts caused by a sharp blade. Only the last category of wounds constituted grounds for a trial by battle.⁷⁹ The jurist was most likely taking this distinction from the *Digest* of Justinian, but if so, he was not the first judge to do so, for royal justices seem to have begun using it in practice for several decades before he sat down to write. Accusations of assault were rare in the royal court unless they were included in a case of robbery, but in 1224 John de la Lide tried to challenge William Darnel to a judicial duel over a head wound he had received from a sword.⁸⁰ On the whole, the judicial duel was never a preferred way to settle assault cases, as the appellant always ran the risk of receiving a second beating in the course of proving his case.

In theory, rape was also an appeal that could be prosecuted through judicial combat, but courts were reluctant to proceed with such cases and hedged them with discouraging conditions. In Normandy, the rape of a married woman had to be prosecuted by her husband and the rape of a widow could be undertaken similarly by a male relative. Claims of rape from unmarried women were treated with considerable scepticism. The *Très ancien coutumier* of Normandy says:

If any woman who is someone's concubine wishes to be engaged to her lover, so that she claims that he ravished her by force, and it is observed by matrons that she sustained no

⁷⁹ *Bracton De legibus et consuetudinibus Angliae: Bracton on the Laws and Customs of England*, ed. George E. Woodbine, vol. 2 (Cambridge, Mass: Belknap Press of Harvard University Press, 1977), pp. 407-8.

⁸⁰ *Curia Regis Rolls*, vol. 11, p. 441. The case was dismissed because the defendant proved that John had already accused a clerk of causing the same wound in an ecclesiastical court.

wound of deflowering and no cry was heard among the neighbours, but she offers that this should be proven by judgement, let her not be heard, but rather beaten and sent away. Why? Because many women are malicious and moved by a spiteful spirit, so that they wish to place their life in a case, so that they may kill their lover, an innocent, whom they hold in hatred.⁸¹

The status and respect which the alleged rape victim held in her community was crucial in determining how the trial would proceed. Beaumanoir explains this further in his discussion of abduction, a crime which medieval jurists included in their definition of rape.

If Pierre makes off with Jehan's wife or his daughter or his niece or his ward and he does not take anything with the woman except what she is accustomed to wear, and Jehan wishes to accuse Pierre and pledge battle by saying that Pierre mistreated her, the wager depends on the admission of the woman and her reputation, for if she admits that she went off with him of her own free will and without the use of force, there is no wager; but if she says that force was used... then there would be a wager on account of the rape.⁸²

Trial by battle was clearly meant to be reserved for defending the reputations of women who were considered respectable.

The onerous burden of proof in such cases meant that very few of them ever reached the courts. In fact, the only surviving records mentioning trial by battle in connection with rape seem to be a cluster of three late cases from the end of the fourteenth century. Two of these cases, Vilenos versus Walsh in 1384 and the famous battle of Carrouges versus LeGris in 1386, were battles between knights. In each case, the accuser declared that his overlord had taken advantage of his wife, but in the former case the accusation was framed as a case of treason rather than rape. The lone record of a wager of battle over rape alone comes from a

⁸¹ "Si vero aliqua mulier, concubina alicujus, amasium suum habere voluerit sponsum, ita quod dicat eum per vim rapuisse, et visa fuerit per matronas nullam deflorationis laesionem sustinuisse et clamorem inter vicinos auditum non fuisse, et ipsa offerat se hoc judicio probatura, non audiat, sed fustata recedat. --Quare?-- Quia multe mulieres sunt malitiose et maligno spiritu perturbate, que vellent vitam suam in casum ponere, ut amasium suum, quem odio habent, possunt interficere innocentem." *Coutumiers de Normandie*, c. L.4, p. 41.

⁸² *Se Pierres en mene la fame de Jehan, ou sa fille, ou sa niece, ou cele qui est en sa garde et il n'en porte riens avec la fame fors ce qu'ele a acoustumé a vestir, et Jehans veut acuser Pierre et metre en gage par dire que Pierres li ait mautolue et traitement, cil gage gisent en la reconnoissance de la fame et en sa renomee, car s'ele reconnoist qu'ele s'en ala aveques li de son bon gré sans force fere, il n'i a nus gages; mes s'ele disoit que force li fust fete... adonques i seroient li gage pour la reson du rat.* Beaumanoir, vol. 1, § 926, pp. 467-8. *Metre en gage* in the context of a legal proceeding means to pledge to hold a battle.

pardon issued by King Charles VI. A poor labourer from the village of Montmartin-en-Graignes in Normandy accused his equally poor neighbour of breaking into his home and raping his wife. The two men received permission from the local *bailli* to hold a judicial duel, but friends and neighbours, concerned that the loser of such a contest would leave behind a widow and impoverished children, arranged a compromise between the two men out of court. The men then sought the king's permission to cancel the judicial duel.⁸³

There was also a divergence of opinions over the question of whether injurious words could be cause for battle. The duel between Gerard of Saint-Aubert and Robert of Beaurain in 1188 revolved around the latter's literal interpretation of the former's aspersions on his family's status.⁸⁴ On the other hand, the *Livres de jostice et de plet* insisted that "Deeds, and not words, make battle."⁸⁵ In the fourteenth century, the Parlement of Paris refused duels to litigants in some cases of insult, but not in others. In 1306, the same year as Philip IV's ordinance restoring trial by battle, it turned down a wager of battle that the nephew of a cardinal offered against two knights for speaking "injurious words" against his uncle.⁸⁶ Five years later, it also overturned a decision made by the secular court of the bishop of Saint-Brieuc in Brittany to hold another judicial duel over injurious words that one squire had spoken to another.⁸⁷ However, in 1343 his successor Philip VI permitted two knights to hold a combat over defamatory words, while forbidding two others from doing the same when one of them claimed that the other had lied when he said that the household of the first had given

⁸³ Louis-Claude Douet d'Arcq, *Choix de pièces inédites relatives au règne de Charles VI*, vol. 2 (Paris: Ch. Lahure, 1864), pp. 133-4. See also p. 136, *infra*.

⁸⁴ *Vide supra*, pp. 98-9.

⁸⁵ "Parole ne fet pas bataille, mès li fait." *Jostice & plet*, p. 102.

⁸⁶ *Les Olim ou registres des arrêts*, ed. Le Comte Beugnot, vol. 2, pt. 1 (Paris: Imprimerie Royale, 1842), p. 485.

⁸⁷ *Ibid.*, vol. 3, pt. 2, sect.1, p. 679.

shelter to criminals.⁸⁸ The records of the Parlement of Paris do not supply explanations of why the first gage was permitted while the second one was denied. The reasons may have depended entirely on the personalities and the political skills of the individuals involved.

Such defamation cases dealt directly with challenges to the appellant's *fama*, or reputation. During the era of the Hundred Years War, these kinds of cases began to escape from the judicial system altogether, becoming deeds of arms that blurred the distinction between judicial combat and tournaments. Knights occasionally avenged insults in the lists under the supervision of a neutral third party, but these colourful events had little to do with the law of the region where they were fought and the referee often did not have any official judicial powers. Eventually disputes of this sort would escape even adjudication and become the early modern duels of honour.

Other Violent Crimes

Incidents involving robbery and arson also sparked occasional trials by battle, especially when they were seen as deliberate and personal affronts rather than simple crimes of opportunism. They are discussed in the treatises as individual crimes, but in records mentioning judicial duels they rarely occur on their own. Most often these two crimes appear in conjunction with either each other or with assault as part of larger disputes.

Several cases appear to be episodes in ongoing conflicts between parties of nobles and their retainers. At York in 1224 Robert de Percy challenged William de Percy to a judicial duel for conducting an armed raid on his mill. William and his companions had torn out the mill's timbers, smashed the millstones and the grain boxes and carried off the grain, the

⁸⁸ Brigitte Labat-Poussin, Monique Langlois & Yvonne Lanhers, eds., *Actes du Parlement de Paris : parlement criminel, règne de Philippe VI de Valois, inventaire analytique des registres X^{2A} 2 à 5* (Paris: Archives Nationales, 1987), nos. 4115, 4165 v^o C.

useable wood and the iron parts of the mill mechanism. After that, they proceeded to beat and rob several of Robert's servants who had raised the hue and cry. This incident, in which some of the attackers were alleged to have been mounted, armoured and displaying banners, looks more like an open act of war than a case of banditry.⁸⁹ In a similar case from the Parlement of Paris in 1280, Jeanne de la Valette, a *femme de corps* of Aimeri de Rochouart, accused the knight Rathier of Montricher and his son Rathou of a nocturnal campaign of arson against a number of houses that she owned.⁹⁰ In these situations, trial by battle appeared to be a way to continue the conflict by other means.

In England, violent crimes sometimes also occurred in conjunction with cases of daytime housebreaking. On occasion these incidents seem to have functioned as a way for neighbours to police each other's behaviour. Because the responsibility for law enforcement still fell mostly to civilians, neighbours sometimes expressed their disapproval of an individual's reputation and sent him a warning by storming into his house and raising a ruckus there. When this form of housebreaking escalated into physical violence and robbery, it was known as *hamsoken*. The shaming incidents bear some similarity to the practice of *charivari* observed across Europe by historians of the early modern period, but they could be provoked by a much wider variety of misdemeanours than just sexual impropriety.⁹¹ When they escalated beyond noise and vandalism into serious acts of violence, the victim could try to reclaim his right to respect by appealing his tormentors in court.

⁸⁹ *Curia Regis Rolls*, vol. 11, p. 409.

⁹⁰ *Actes du Parlement de Paris*, ed. Edgard Boutaric, vol. 1 (1863; reprint, Hildesheim: Georg Olms Verlag, 1975), no. 2269A, p. 217. See also pp. 149-50, *infra*.

⁹¹ For a succinct discussion of *charivari*, see Edward Muir, *Ritual in Early Modern Europe*, 2nd ed. (Cambridge: Cambridge University Press, 2005), pp. 106-10. See also Natalie Zemon Davis, "The Reasons of Misrule: Youth Groups and Charivaris in Sixteenth-Century France," *Past and Present* 50 (1971), pp. 49-54.

A case of this sort came before the Warwickshire eyre in 1221. Richard son of John complained that he had been at home sick when Geoffrey of Shireford forced his way into the house and assaulted him and his wife. Geoffrey in turn complained that John had been delaying a court case by claiming bed-sickness, but he was reputed to be leaving his house on a daily basis, going to his cart and carrying out other activities. Geoffrey claimed that the assault had actually happened out of doors and the conflicting testimony eventually moved the court to allow a judicial duel, which Geoffrey won.⁹²

In cases such as these, a trial by battle may have been an attempt by both parties to impose some closure on a long-simmering dispute. In theory, such a duel would give the parties the opportunity to fight for dominance in the most unsubtle way possible. In practice the threat of such a contest encouraged many quarrelling neighbours to come to reach an accord out of court before such a drastic outcome transpired.

Homicide

Homicide was also a very serious accusation which warranted wagers of battle. Together with theft, it was one of the few crimes for which the English laws of William I introduced proof by combat.⁹³ For the jurists of the thirteenth century, the difficulty lay in determining which forms of homicide should be settled by combat and which should not. At this time, English law was only beginning to consider the distinctions between homicide and murder, and accidental versus deliberate killing. Between the eleventh and fifteenth centuries, the word *murdrum* drifted from meaning a killing which is committed in secret to denoting an

⁹² F.W. Maitland, ed. *Select Pleas of the Crown*, Selden Society, vol. 1 (London: B. Quaritch, 1888), pp. 107-8.

⁹³ Robertson, Agnes J., ed. & trans., *Laws of the Kings of England from Edmund to Henry I*, vol. 2 (1925; reprint, Cambridge: Cambridge University Press, 2000), p. 241

unprovoked or particularly heinous homicide, and then returned to its original meaning again.⁹⁴

Robert Bartlett has noted that trial by battle was usually employed in cases that were both heinous and clandestine in nature, as these were difficult to prove in any other manner.⁹⁵ However, in practice the courts were cautious about awarding battle in such circumstances, even when customals recommended it in theory. Bracton wrote that cases of poisoning, for example, could not be tried by jury and had to go to battle unless the combatants were manifestly mismatched, and this position was repeated at the end of the thirteenth century in the treatise *Fleta*.⁹⁶ However, well before his time, courts were wary of allowing grieving kinsmen of the victim to fight battles unless the appellant had some personal knowledge of the crime. In 1198, a royal court arranged for a duel between one Edwin son of Brunstan and a smith whom he accused of stabbing his brother to death. However, when Edwin later admitted that he had not seen the act himself, he lost the case without any blows being struck.⁹⁷ In a similar case from 1221, a royal justice dismissed an appeal for murder brought by one Thomas Marshall because he admitted that he had not seen or heard the deed himself and he was in fact out of town at the time that it happened.⁹⁸ In this case, trial by battle seems to have been denied because the *fama* of the appellants was not sufficiently trustworthy.

⁹⁴ John Bellamy, *The Criminal Trial in Late Medieval England: Felony before the Courts from Edward I to the Sixteenth Century* (Toronto: University of Toronto Press, 1998), pp. 57-60.

⁹⁵ Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Clarendon Press, 1986), p. 106.

⁹⁶ Bracton, vol. 2, p. 387. *Fleta*, eds. H.G. Richardson & G.O. Sayles, vol. II, Selden Society 72 (London: Bernard Quaritch, 1955), p. 79.

⁹⁷ Doris M. Stenton, ed., *Pleas Before the King or His Justices, 1198-1212*, Selden Society vol. 68 (London: B. Quaritch, 1952), no. 14, p. 3.

⁹⁸ Maitland, *Select Pleas of the Crown*, pp. 87-8.

In France, the *Très ancien coutumier* of Normandy listed both open and secret homicide among the pleas of the sword, but a later treatise from Guyenne said that the appellant had to testify to having seen the killing blow, the bloody hands of the perpetrator, and the sword piercing the victim's body.⁹⁹ The thirteenth-century *chanson de geste*, *Parise la Duchesse*, demonstrated the dangers inherent in accusing someone of a clandestine crime. In that story, traitors give the duchess Parise a gift of poisoned apples. She passes them on to her husband's brother, who dies, and the traitors subsequently accuse her of murder, which she has to disprove by finding a champion to fight a judicial duel for her.¹⁰⁰ Something similar happens in *Gaydon* when conspirators attempt to poison Charlemagne with apples and Gaydon is accused, except that he is obliged to fight his own duel.¹⁰¹

In reality, the Parlement of Paris rejected two wagers of battle in cases of alleged poisoning dating from 1296 and 1341.¹⁰² In the latter case, a knight named Jean Bisot accused one Clément la Hure of having engaged in an extramarital affair and then poisoned not only his mistress, but also his own wife, his servant and two of Jean's relatives who had direct knowledge of the deed, effectively removing all the possible witnesses to his crimes. Parlement ordered an inquest into the matter and concluded that Bisot's accusations were groundless.

The only case of poisoning in the French-speaking realm that came to blows was the celebrated battle between Gérard d'Estravayer and Otho III de Granson held at Bourg-en-Bresse, now in France, but part of the Duchy of Burgundy at the time. This case, recently

⁹⁹ *Coutumiers de Normandie*, LIII.1, p. 43. L. Lacoutre, "Formalités des duels et combats judiciaires en Guyenne dans les XIII^e ou XIV^e siècles," *Bulletin de la Société de Borda* 38 (1914), p. 78.

¹⁰⁰ *Parise la Duchesse (Chanson de geste du XIII^e siècle)*, ed. May Plouzeau, vol. 1 (Aix-en-provence: Publications du CUERMA, 1986), pp.184-6.

¹⁰¹ *Gaydon: Chanson de geste du XIII^e siècle*, ed. Jean Subrenat (Louvain: Peeters, 2007), pp. 56-67.

¹⁰² *Olim*, vol. 2, pt. 1, p. 403 (1296) and Labat-Poussin, Langlois & Lanhers, *Actes*, no. 4143B, 4145 & 4148 v°. (1341). For further discussion of poisoning and trial by combat, see Franck Collard, *Le crime de poison au Moyen Âge* (Paris: Presses Universitaires de France, 2003), pp. 199-203. See also p. 226, *infra*.

examined by Claude Beguerrand, was more than a simple question of homicide. Otho, better remembered as a poet and a popularizer of St. Valentine's Day as a festival of courtly love, was a favourite of his lord, Count Amadeus VII. When the count died from what is now thought to be tetanus, his other subjects' suspicion turned to Otho, whose extensive land acquisitions had already been cause for disapproval. However, Otho was not accused of having personally poisoned the count, but rather of having consented to and conspired in the crime, and having helped the culprit, a physician, to escape the region.¹⁰³ Otho, who had spent the years immediately previous at the English royal court, did not have enough respect from his peers to quash this allegation and he was subsequently defeated in combat.

The issue of self-defence was also part of legal consciousness. From at least the latter half of the thirteenth century onward, medieval legal doctrines were strict about the use of this defence. Usually they required that the defendant not have been the one to strike the first blow and that he make every attempt to flee as far as he could before retaliating as a last resort. He also had to use force commensurate with the actions of his attacker.¹⁰⁴ However, Thomas Green has shown that once English coroners' records appear in the fourteenth century, one can compare the coroners' rolls and the trial rolls for the same cases and observe juries massaging the facts in the defendant's favour in order to save him from the noose.¹⁰⁵ An appeal by battle would have cut off this legal strategy, but in England we find that courts quashed appeals of homicide and arranged jury trials instead when defendants plausibly pleaded self-defence.¹⁰⁶

¹⁰³ Claude Beguerrand, *Le duel d'Othon de Grandson (1397)* (Lausanne: Université de Lausanne, 2008), pp. 150-1. See also p. 310, *infra*.

¹⁰⁴ Naomi D. Hurnard, *The King's Pardon for Homicide Before AD 1307* (Oxford: Oxford University Press, 1969), pp. 92-3.

¹⁰⁵ Thomas A. Green, "Societal Concepts of Liability for Homicide in Medieval England," *Speculum* 47:4 (1972), pp. 676 ff.

¹⁰⁶ Hurnard, p. 276.

In Anjou, however, the fact that a homicide was a case of self-defence might not protect the killer from an appeal. In a thirteenth-century redaction of the region's customs, the man who could show that he had been struck before killing his opponent was not to be hanged. However, if the dead man's relatives claimed that their dying kinsman had denied starting the fight and commanded them to avenge his death, one of them could challenge the killer to combat and he would be hanged if he lost.¹⁰⁷ A similar scenario is presented in the thirteenth-century *chanson* of *Huon de Bordeaux*. The eponymous knight is accused of having killed Charlemagne's son Charlot, but pleads that he did so in self-defence and in ignorance of Charlot's identity when the prince ambushed him on the road to Paris. Huon is nevertheless forced to fight a judicial duel when Charlemagne's courtier Amauri appeals him for homicide and treason.¹⁰⁸

In real life, there was palpable concern about the possibility of wrongful accusation in cases of murder. The *Olim*, or early records of the Parlement of Paris, record a case from 1309 where a judge's caution in awarding battle led to startling results. Estould de Ruppe-Fort, a *domicellus* from Toulouse, had accused the knight Raymund Unaudi of treacherously killing one Guillelm de Mombeto at a peace conference organized between Estould and Raymund's warring supporters, and otherwise plotting the demise of Estould's party. The knight accepted Estould's challenge, but the court ordered an inquest to investigate the matter before deciding how to proceed. As a result, the supposedly dead Guillelm turned up alive and testified that in fact it had been Estould and his allies who had arrived armed at the conference and had attacked Raymund's party. The court ended up ordering Estould to pay

¹⁰⁷ *Coutumes et institutions de l'Anjou...*, pt.1, vol.1, c. 25, p. 80.

¹⁰⁸ *Huon de Bordeaux : Chanson de geste du XIII^e siècle, publiée d'après le manuscrit de Paris BNF fr. 22555 (P)*, ed. William W. Kibler & François Suard (Paris: Champion, 2003), lines 1239-1461, pp. 71-81.

Raymund 50 *livres tournois* for his damages and distress, confiscating Estould's lands and holding him in prison.¹⁰⁹

Treason

The most grievous and direct way to challenge someone's right to respect was to commit treason against him. The modern English word *treason* covers a variety of medieval words and deeds. In the Middle Ages it was, as Frederic Maitland famously put it, "a crime with a vague circumference and more than one centre."¹¹⁰ John Bellamy, building on the model laid out by Maitland, writes that the medieval crime of treason can be traced to both Roman and Germanic roots. The concept attributed to the early medieval peoples, evident in their earliest law codes, had as its core the idea of infidelity. Treason occurred when either party in a relationship of fealty or family broke the obligations that the bond entailed. The Roman concept, laid out in the *lex Quisquis* and the *lex Julia maiestatis* collected by Justinian, consisted of two main ideas. *Perduellio* was a military betrayal, like the breaking of a truce, the unnecessary surrender of a fortress or the passing of intelligence to the enemy. The *crimen maiestas*, on the other hand, was an injury to the dignity or authority of a ruler. It could include such disparate acts as wearing the imperial purple, committing adultery with a princess, using soothsayers and minting false coinage with the emperor's image on it.¹¹¹ Both Germanic and Roman elements are to be found in cases of trial by battle, but treason duels of any sort were rare outside of fiction until the middle of the fourteenth century, when they enjoyed some sixty years of relative popularity.

¹⁰⁹ *Olim*, vol. 3, pt. 1, sect. 2, pp.381-2. Beaumanoir anticipates a case such as this in §1803.

¹¹⁰ Pollock & Maitland, vol. 2, p. 503.

¹¹¹ J.G. Bellamy, *The Law of Treason in England in the Later Middle Ages* (Cambridge: Cambridge University Press, 1970), p.2.

Before the Black Death, most references to trials by battle over treason were to be found in literature. In fact, most fictional judicial duels involved treason in some way. However, such cases were all but absent from actual court records. In the literary sources from this period, the word *traïson* can extend well beyond the Roman and Germanic legal definitions to mean treacherous behaviour generally and can also be used in the more familiar sense of a betrayal of fealty, particularly the breaking of an oath of homage to the king. A good deal of ink has been spilled over the question of whether it was legal to levy war against one's legitimate king before fourteenth-century statutes expressly forbade it.¹¹² Literary treatments of the subject show that medieval writers had nuanced opinions on the subject and considered a wide variety of hypothetical scenarios.

Trials by battle over military treason featured regularly in medieval French literature. A common situation involved one character accusing another of having surrendering a fortress he could have defended. In the thirteenth-century prose *Lancelot*, Banin son of Ban accuses and subsequently kills his father's seneschal for conspiring to treasonously surrender a castle.¹¹³

The *Chanson de Roland* also culminates in a judicial duel over military treason in the classical sense of *perduellio*. When Charlemagne seeks the judgement of his barons on the treacherous Ganelon, who plotted the Saracen ambush that killed Roland, he says *Les .xii. pers ad traït por aveir*, "He betrayed the twelve peers for money."¹¹⁴ A few lines later, Ganelon defends his actions by insisting that Roland started the quarrel and that he himself

¹¹² Stephen D. White summarizes the historiography in "The Ambiguity of Treason in Anglo-Norman-French Law, c. 1150 - c.1250," in *Law and the Illicit in Medieval Europe*, eds. Ruth Mazo Karras, Joel Kaye & Ann E. Matter (Philadelphia: University of Pennsylvania Press, 2008), pp. 90-91.

¹¹³ *Lancelot: Roman en prose du XIIIe siècle*, ed. Alexandre Micha, vol. 7 (Geneva: Librairie Droz, 1980), pp. 12-22.

¹¹⁴ *The Song of Roland*, ed. and trans. Glyn Burgess (London: Penguin, 1990), p. 203, line 3756.

had given Roland, Olivier and all the companions an official warning by issuing a formal verbal *défi*. At the end of the eleventh century when the poem was written, oaths of fealty were not considered eternal or non-negotiable and a withdrawal of loyalty of this sort was possible and legal with proper advance notice.¹¹⁵ Ganelon is thus claiming that he was engaged in a private war with Roland.

The knight Thierry argues in turn that both Ganelon and Roland were vassals of Charlemagne and Ganelon's loyalty to the king should have taken precedence over a private quarrel because both men were serving in the king's army at the time.¹¹⁶ In France, private wars between noblemen were tolerated well into the fifteenth century, but the line between such conflicts and treason was crossed when parties who were not involved in the quarrel became victims or when the fighting began to affect royal interests.¹¹⁷ Thierry fights Ganelon's kinsman Pinabel over the question of whether this has occurred. Emmanuel Mickel points out that the poem's author felt little need for Thierry to refute Pinabel's arguments on this matter, for the poet and his audience would likely have been unsympathetic to them.¹¹⁸ He notes that the facts that Roland was ambushed and that he was related to Ganelon by marriage would also likely have contributed to the judgement of treason.¹¹⁹

In practice, trials by battle over military treason were rare before the fourteenth century. A real incident occurred in England in 1163. Joscelin of Brakelond records that Robert of Montfort and his kinsman Henry of Essex fought a duel over an incident that had occurred

¹¹⁵ S.H. Cuttler, *The Law of Treason and Treason Trials in Later Medieval France* (Cambridge: Cambridge University Press, 1981.), p. 5.

¹¹⁶ *Chanson de Roland*, lines 3826-3830.

¹¹⁷ Cuttler, pp.32-3.

¹¹⁸ Emmanuel J. Mickel, *Ganelon, Treason and the "Chanson de Roland"* (University Park, PA: Pennsylvania State University Press, 1989), p. 74.

¹¹⁹ *Ibid.*, pp. 79-80, 85-6.

six years previously. During a battle against the Welsh, Henry was alleged to have dropped the royal standard and fled the field, crying that the king was dead. This led to panic among the English forces, and nearly cost the life of the king, who was in fact very much alive. Robert later defeated Henry in a dramatic judicial duel.¹²⁰ The six-year delay between the crime and the accusation suggests that the incident itself was not the only catalyst for the battle, however. As Stephen White observes, treason cases in this period cannot be divorced from their political circumstances; a more complicated animosity between Robert and Henry undoubtedly lay behind the decision to fight.¹²¹

Even more problematic was the question of whether a nobleman could withdraw his loyalty to the anointed king if he presented him with a formal *défi*. In 1095 Robert de Mowbray led a number of other barons in a revolt against King William Rufus. One of his compatriots, Arnulf of Hesdin, was later accused of treason because of this incident, but he succeeded in winning a judicial duel through a champion. Another nobleman, William of Eu, was also accused of treason, but he was not as lucky. The unfortunate William lost his duel and was sentenced to be blinded and castrated.¹²² These cases did not centre around the facts of the revolt, but rather around the definition of treason itself. This blurring of the distinction between fact and law was not unusual in medieval litigation.

Even before *Glanvill* re-introduced the Roman phrase *laesa maiestatis* to the English legal vocabulary, it was possible to hold a judicial duel over the defamation of the king, even if there was no indication that treasonous deeds had been committed. The Pipe Rolls record

¹²⁰ *English Lawsuits from William I to Richard I*, ed. R. C. Van Caenegem, vol. 2, Selden Society 107 (London: Selden Society, 1991), pp.385-6. See also p. 267, *infra*.

¹²¹ Stephen D. White, "Alternative Constructions of Treason in the Angevin Political World: *Traïson* in the *History of William Marshal*," *E-Spania* 4 (2007), <http://e-spania.revues.org/index2233.html>. Accessed August 18, 2009.

¹²² *English Lawsuits*, pp. 113-7. See also p. 271, *infra*.

that in 1166 Hugh of Clinton had to pay twenty marks for abandoning a wager of battle regarding slanderous words spoken against the king.¹²³

Certainly the killing of one's lord or his family members could occasion a trial by battle. This scenario occurred much more often in literature than in life. As Stephen White has pointed out, many stories presented hypothetical treason scenarios that raised questions of law. Is it treason if one defies one's lord before killing him or kills him openly? What if one kills him without recognizing who he is? What of the case of Bernier, whose lord Raoul de Cambrai killed numerous of his kinsmen and burned a nunnery with Bernier's mother inside it before Bernier finally slew him?¹²⁴ The imaginary trials often ventured responses to questions which were rarely or never tested in the courts.¹²⁵

A real political assassination provoked a judicial duel in Flanders in 1127. Charles, the count of Flanders, had been murdered by a disaffected political faction led by his chancellor, the provost Bertulf of Bruges. After a month of turmoil, the provost himself was put to death by the count's successor. On the same day, one of Charles' supporters fought a judicial duel with Guy of Steenvoorde, a member of the provost's faction. Guy himself had not been present at the count's murder, but he was considered a conspirator in the plot because he had married Bertulf's niece.¹²⁶ Unlike other crimes, people accused of treason could be convicted for merely conspiring to commit a crime, even if they had not carried it out. Once again, it is helpful to keep in mind White's point that treason trials were driven by political

¹²³ *The Great Roll of the Pipe for the twelfth year of the reign of King Henry II, A.D. 1165-1166*, Pipe Roll Society, vol. 9 (London: Pipe Roll Society, 1888), p. 60.

¹²⁴ *Raoul de Cambrai*, ed. & trans. Sarah Kay (Oxford: Clarendon Press, 1992), pp. 292-6.

¹²⁵ Stephen D. White, "Imaginary Justice: The End of the Ordeal and the Survival of the Duel," *Medieval Perspectives* 13 (1998), pp. 39-40.

¹²⁶ Galbert of Bruges, *The Murder of Charles the Good*, ed. & trans. James Bruce Ross (Toronto: University of Toronto Press, 1982), pp. 212-3. See also p. 152-3, *infra*.

considerations and it is not possible to extricate them from the circumstances in which they occurred.

In the thirteenth century, treason could mean a mortal breach of loyalty to one's lord, but also stealthy or deceitful behaviour in a more general sense.¹²⁷ The French word *traïson* could refer to any violent crime committed without warning. "*Traïson* is when one hates mortally but does not present any sign of hatred so that, by this hatred, one kills or has killed, or assaults or has assaulted to the point of injury the person whom one hates treasonously," wrote Beaumanoir.¹²⁸ The concept he had in mind appears to be closer to the English word *treachery*. As we have seen above, the *Livres de jostice et de plet* stretched the definition further, considering even the non-delivery of a shipment of goods to be a form of treason.¹²⁹ As Akehurst explains, noting that the word *honneur* had not yet achieved its present meaning, "To act *en traïson*, was thus to act, as we would say, dishonourably, although Beaumanoir and his century did not yet think of it in those terms."¹³⁰

Another literary scenario involving treason and trial by battle, found in several romances, is the classic case of the lord's wife who is accused of adultery and forced to find a knight to defend her, or alternatively, the knight who is accused of sleeping with his lord's wife and must defend himself. The former situation appears in Chrétien de Troyes' *Chevalier de la charrette* when the traitorous Meleagant accuses Queen Guinevere of having slept with the wounded seneschal Kay because there is blood in her bedsheets, when in fact the blood

¹²⁷ For more discussion of this topic, see F.R.P. Akehurst, "Murder by Stealth: *Traïson* in Old French Literature," *Studies in Honor of Hans-Erich Keller: Medieval French and Occitan Literature and Romance Linguistics*, ed. Rupert T. Pickens (Kalamazoo: Medieval Institute Publications, 1993), pp. 459-473.

¹²⁸ "*Traïsons si est quant l'en ne moustre pas semblant de haine et l'en het mortelment si que, par la haine, l'en tue ou fet tuer, ou bat ou fet batre dusques a afoleure celui qu'il het par traïson.*" Beaumanoir, vol. 1, § 826, p. 430.

¹²⁹ *Vide supra*, p. 101.

¹³⁰ Akehurst, "Murder by Stealth," p. 473.

belongs to Lancelot, who cut himself on the bars of the queen's bedroom windows.¹³¹ A trial by battle against the adulterous male vassal is proposed in the French romance *Tristan* by Beroul, and actually occurs in *Ami et Amile*, where the knight Ami substitutes himself for his look-alike friend Amile.¹³² Adultery, being a case for ecclesiastical courts, was not tried by judicial duel, but engaging in scandalous behaviour with a baron's wife or daughters could be viewed as a form of betrayal of one's loyalty to him. However, as the stories warn, the potential for misunderstandings and incorrect accusations was high.

The *History of William Marshal*, written around 1230, contains an episode where the famous knight responded to rumours that he had been sleeping with Margaret, queen of the young Henry III. He dared any three of his enemies at court to make a formal accusation of "traason" and challenge him to three successive duels, but his attempt to clear his reputation was stymied when no one stepped forward. William was forced to request a safe-conduct from the king so that he can leave the court and the kingdom.¹³³ The incident was, in other words, an attempt to assert his right to respect, but it failed. When William was unsuccessful, the prospect of further shaming and damage to his honour was enough to drive this highly successful knight into temporary exile.

While judicial duels for treason were rare events, they enjoyed a brief period of popularity in Paris in the fourteenth century. In 1317 two knights named Jean de Varennes and Ferry de Piquigny pledged to hold a battle over "matters touching the king and the realm

¹³¹ Chrétien de Troyes, *Le chevalier de la charrette* ed. Catherine Croizy-Naquet (Paris: Champion, 2006), p. 324, lines 4808 ff., p. 320.

¹³² Beroul, *The Romance of Tristan*, trans. Alan S. Federick (New York: Penguin, 1970), pp. 111, 115; *Ami et Amile: Chanson de geste*, ed. Nathalie Desrugillers-Billard (Paris: Éditions paleo, 2008), pp. 62-3.

¹³³ Anthony J. Holden, ed. & Stewart Gregory, trans., *History of William Marshal*, vol. 1, Anglo-Norman Text Society, Occasional Publications Series, no. 4 (London: Anglo-Norman Text Society, 2004), lines 770-804. David Crouch suggests that the Marshal's biographer may have taken some literary license with the details of the dispute, which likely did not concern sexual behaviour at all. *Ibid.*, vol. 3, p. 99, n. 5693. See also, p. 203, *infra*.

of France.”¹³⁴ Lists were constructed for the event in the garden of the royal palace and left standing after the dispute was settled by mediation. The venue proved to be useful, for it became the location of five more treason duels in the four years following.¹³⁵ Two more such trials were held at Gisors in Normandy in 1322 and 1330. According to Cuttler, a contest in 1331 between two knights from Toulouse was most likely the last time that a judicial duel was used to settle a treason case in the kingdom of France.¹³⁶ The actual substance of the cases was of little importance to the chronicler who described them. While the first battle clearly involved royal politics, four of the others are described simply as *trayson* and the one held between Eude de Vautemain and Guillaume Mauferas in 1321 apparently concerned treason and murder.¹³⁷ This last suggests a dispute over treachery in the sense described by Beaumanoir.

In England and the French territories held by the English crown, the age of treason duels fell later than in France. Until the final decades of the fourteenth century, battles over treason were very uncommon and usually concerned military activities, which made it difficult for a court to hear evidence through any of its more usual procedures. The judicial duel between Thomas de La Marche and Jean Visconti in 1350 over Jean’s activities in Sicily is an example of this kind.¹³⁸ In 1352 the Statute of Treasons at last codified English treason law, touching on matters such as regicide, the killing of officials and adultery with royal women. It also clarified that a traitor could be not only someone who was guilty of treasonous acts, but also someone who “compasses or imagines” the death of the king.¹³⁹

¹³⁴ *Chronique Parisienne anonyme du XIVe siècle*, ed. A. Hellot (Nogent-le-Rotrou: Imprimerie Daupeley-Gouverneur, 1884), p. 31. See also pp. 269 & 304-5, *infra*.

¹³⁵ *Ibid.*, pp. 39, 54, 55, 60.

¹³⁶ *Ibid.*, pp. 70, 132. Cuttler, p. 88.

¹³⁷ *Chronique Parisienne anonyme*, p. 60.

¹³⁸ See Chapter Two, pp. 78-9.

¹³⁹ *Statutes of the Realm*, vol. 1 (London: HMSO, 1810), p. 320.

Not long after, the Court of Chivalry became an official entity, as has been discussed above. However, these new judicial tools did not immediately lead to any judicial duels. The brief revival of English trial by battle lies between the years 1380 and 1408.

The battle in 1380 between John Annesley and Thomas Katrington seems to have started the trend. Their dispute concerned Katrington's surrender of the castle of Saint-Sauveur-le-Vicomte in Normandy to the French, allegedly in exchange for money. According to the chronicler Thomas of Walsingham, their battle at Westminster and Katrington's eventual dramatic defeat attracted larger crowds than the king's coronation a few years earlier.¹⁴⁰

A less well-known combat was fought in 1384 between Martlet Vilenos or Villeneuve and John Walshe. The appellant was a Navarrese living in Cherbourg and the appellee was a lieutenant (*subcapitaneus*) at Cherbourg castle. The details of the allegations have been lost, but Walsingham informs us that the case concerned treason against the king and the realm. However, he says, Vilenos later admitted that the real source of the dispute was that Walshe had raped his wife.¹⁴¹ Around this time, there were also a series of battles held on the Scottish border between English and Scottish knights. Although the exact causes of most of these disputes are not known either, there was the case of the Scottish squire Thomas of Beverly who appealed one Walter of Strathern in 1392. Walter had previously belonged to the retinue of the Scottish Earl of Moray, but he chose to abandon his lord and do homage to the English king. For this, he was accused of treason before England's own constable.¹⁴²

At the turn of the fifteenth century, when trial by battle was swiftly disappearing from England, a change occurred in the nature of the treason accusations that led to combat.

¹⁴⁰ Thomas of Walsingham, *Historia Anglicana*, vol. 1, R.S. 28.1, part1 (London: HMSO, 1857), pp. 430-1. John Bellamy, "Sir John de Annesley and the Chandos Inheritance," *Nottingham Medieval Studies* 10 (1966), pp. 94-105. See also pp. 264-5, *infra*.

¹⁴¹ Walsingham, vol. 1, part 2, pp. 117-8.

¹⁴² George Neilson, *Trial by Combat* (1890; reprint, Union, NJ: The Lawbook Exchange, 2000), p. 222.

Several of the handful of treason cases that proceeded all the way to battle concerned treasonous speech and plots against the king, rather than tangible actions. As the twelfth-century case of Hugh of Clinton illustrated above, the concept of *laesa maiestatis* was not new to England, but now it became the main catalyst of trials by battle for treason.

The suit between the Dukes of Hereford and Norfolk in 1398 may have set a precedent in this regard. Thomas Mowbray, the Duke of Norfolk, had taken the Duke of Gloucester prisoner the year before, accusing him of treason. When the Duke of Gloucester died in custody, Thomas feared that he had made an enemy of King Richard II and confided as much to Henry of Lancaster, the Duke of Hereford (who later became Henry IV). The chronicler John Trokelow framed the matter in terms of honour and shame, saying that Thomas' alleged words had sounded as though he was trying to dishonour the king.¹⁴³ Henry, seeing an opportunity to destroy the reputation of a political competitor, appealed Thomas of treason. Their case was allowed to proceed all the way to the day of the duel before the king intervened at the last minute and banished both men from the realm, Mowbray forever and Henry for ten years.¹⁴⁴

This case was followed by others, some of which involved considerably humbler actors. In 1408 Jean Bolomer, a tailor from Bordeaux, accused his fellow burgher, Bertrand Usana, of making treasonous remarks against king and country. Usana had allegedly remarked to him that the English were bad lords who had illegally cut and carried off numerous trees. The two men fought a battle at Nottingham in the court of chivalry. The king halted it before

¹⁴³ “*pro quibusdam verbis ... sonantibus in dedecus ipsius regis.*” *Chronica Monasterii S. Albani, Johannis de Trokelow*, ed. Henry Thomas Riley, R.S. 28, vol. 3 (London: HMSO, 1866), p. 225.

¹⁴⁴ The case was subsequently immortalized by Shakespeare, who used it as the inspiration for Act 1, Scenes 1 and 3 of *Richard II*.

its conclusion and declared both parties innocent, but not before both men had proven their “respectability, reputation and honour” by fighting manfully.¹⁴⁵

Several decades later, a servant named John Davey accused his master, the armourer William Catour, of uttering treasonous words and prophecies against the king. In 1447 this case was allowed to proceed all the way to its martial conclusion, and Catour was slain on the field.¹⁴⁶ It was to be the last judicial duel struck before the Court of Chivalry.¹⁴⁷ These cases, fought over wrongful words rather than wrongful deeds, set the precedents for the extra-judicial duels of honour that would arise in the following century.

Among such a wide variety of reasons for trials by battle, a broad pattern emerges. Until the thirteenth century, most records of the practice were primarily concerned with cases involving possessions. These could involve not only land, but also appurtenances like mills or woods, and money owed in rents. Occasionally they also involved valuable moveable goods like ship cargoes or horses. As clerical and bourgeois litigants sought to avoid having to fight in possessory cases and legal authorities produced charters and ordinances to support them, disputes involving personal injuries, although they also produced examples of combat from an early period, became the primary reason for trial by battle from the thirteenth century onward. Eventually trial by battle came to be associated exclusively with personal injuries, particularly the clandestine kind that involved a serious breach of trust.

¹⁴⁵ “...protunc nobis videbatur honestum, famam et honorem tam valentium pugilum conservare...” Thomas Rymer, ed., *Foedera, Conventiones, Literæ, et Cujuscunque Generis Acta Publica* etc., 2nd ed., vol. 8 (London: J. Tonson, 1727), pp. 538-40. See also p. 308, *infra*.

¹⁴⁶ Neilson, p. 200. See also p. 235, *infra*.

¹⁴⁷ For further discussion of the Court of Chivalry and the decline of judicial duelling in England, see M.J. Russell, “Trial by Battle in the Court of Chivalry,” *Journal of Legal History* 29:3 (2008), 335-357. See also Chapter Seven.

The uses of the procedure correlate roughly with the semantic drift of the Latin word *honor* and its vernacular counterparts. Originally a word for tangible lands and offices, from the thirteenth century onwards it slowly changed its sense and came to mean something more akin to ‘glorious reputation’. Trial by battle, especially in its later incarnations, was a tool for maintaining one’s reputation and ensuring that in the future one’s peers would be careful to offer respect.

Chapter Four

The Participants

If the outcome of a trial depended upon a physical contest, what was to prevent a strong and violent individual from exploiting the legal system to his advantage? Could a bully without any scruples fight his way to greater power and riches through strategic litigation? It appears that this problem did not escape the notice of medieval thinkers, for they placed a number of barriers in the way of the plaintiff who wished to antagonize an opponent who was, on some axis, not his own size.

Trials by battle attracted participants from many walks of life. There are examples of judicial duels involving rich and powerful men, but also ones that drew in very poor peasants, women, clerks and Jews. Reading accounts of trials both real and fictional, it becomes apparent that the right to fight a judicial duel was determined not so much by the status of the participants relative to society as a whole, but rather their status relative to one another. A fitting opponent for judicial combat not only possessed physical strength similar to one's own, but also belonged to the same social strata. The fourteenth-century English treatise, *The Mirror of Justices*, says "Battle may not be joined between all folk, for it cannot be joined except between *parigals*, nor even all peers, for not between father and son, nor

between women, nor children, nor clerks, nor kinsmen by blood or affinity.”¹ In fact, we can observe the main social cleavages of medieval English and French society by examining who was allowed to fight a judicial duel with whom.

Conversely, successfully pledging a battle with someone was a declaration that one’s social status was roughly equivalent to theirs. When different forms of privilege and oppression intersected, this could occasionally lead to unusual pairings. Consequently, fighting a judicial combat could improve the winner’s standing among his peers and ruin the loser’s reputation. It could not, however, overturn an entire social structure, making a peasant into a noble, a woman into a man, or a younger son into an elder one. Trial by battle concerned what Frank Henderson Stewart has called *horizontal honour*, the respect due to a peer, rather than *vertical honour*, the right to respect which was the prerogative of one’s class, sex, estate, or other rank despite any personal failings.² Numerous customs prevented medieval French- and Englishmen from battling opponents who did not have the same vertical honour as themselves, but permitted them to risk and lose their horizontal honour against people who shared their class, gender, estate, religion, age group and good health.

Class

Trial by battle was by no means the exclusive prerogative of the nobility. From the earliest case records until some of the very last challenges, men of very humble origin participated as well. The earliest records, being mainly charters, mostly involve disputes between individuals who were wealthy enough to have inherited land. However, when

¹ “Entre totes genz ne se joint mie bataille, car ele ne se joint forque par entre parigals, ne uncore nient entre touz piers, car ne mie par entre père e filz ne par entre femmes, ou enfanz ou clers, ou parenz ou affins.” *The Mirror of Justices*, ed. William Joseph Whittaker, Selden Society vol. 7 (London: Bernard Quaritch, 1895), pp. 110-111.

² Frank Henderson Stewart, *Honor* (Chicago: University of Chicago Press, 1994), p. 59.

criminal records first begin to appear, they demonstrate that there were also many poor people involved in trials by battle.

One of the earliest references to judicial combat in criminal cases involves peasants. Sometime between 1068 and 1082, the cartulary of the monastery of Saint Aubin of Angers recorded a charter from the lord of Montreuil in southern Anjou promising to cease the bad custom of using judicial duels as a threat to extract money from the peasants living on a parcel of land in nearby Méron belonging to the monastery. The lord's *vicarius* had apparently been in the habit of employing transients to falsely accuse numerous villeins of crimes ranging from the shedding of blood, to theft, to the poaching of hares. When a peasant denied that he had been involved in any such activity, the *vicarius* declared that, since there was only a single witness who had seen the crime and no second witness to confirm his story, the suit would have to be settled by a duel. The frightened peasant would be forced to consent to the battle, but since he was not versed in the fighting arts, he would agree to any extortion suggested by the *vicarius* in order to avoid having to participate in it.³

Many English approvers were common thieves, and the opponents they chose to accuse were rarely more respectable than themselves. Typical of the breed were Walter Blowberme and Hamo the Stare, whose duel was immortalized when a clerk doodled a picture of it on a Curia Regis roll. Walter accused Hamo of having been his accomplice in a series of thefts and claimed that the defendant had received two tunics of coarse cloth as his share of the

³ *Cartulaire de l'abbaye de Saint-Aubin d'Angers*, ed. Eugène Lelong, vol. 1 (Angers: Germain & Grassin, 1903), no. 220, pp. 256-7.

plunder. When Hamo was defeated and hanged, the words “he had not chattels” became his epitaph.⁴ Clearly this was not a battle between wealthy individuals.

By the end of the fourteenth century, when judicial duels were rare and memorable events, chroniclers were more inclined to take note of battles between humble men. In the aftermath of the so-called “Last Duel” between the noblemen Jean de Carrouges and Jacques le Gris in 1386, two men described as “poor people and labourers” and men of “little power” attempted to arrange a copycat battle in Normandy over a similar case of rape, but they were convinced by friends to make peace.⁵ The last judicial duel to be fought out before a French-speaking court was a murder accusation made by a tailor against a townsman of Valenciennes, while the last one in England was held between Thomas Whitehorne, who had no profession or fixed abode, and James Fisher, who made his living as a tailor (often a poorly-paid craft in the fifteenth century) and by fishing.⁶

The right to defend one’s suit by battle was therefore not solely a privilege of the nobility. While the chroniclers most often took interest in cases that were threatened or fought between the lords of their lands, many cases were not exercises in chivalry, but rather prosaic disputes between common men. Such a procedure would have been particularly daunting for those who had not been trained since childhood to handle weapons and shields.

Although the participants in a duel might be of low social status, they could not be of low legal status. English serfs were, with few exceptions, limited to testifying only in manorial

⁴ M.T. Clanchy, “Trial by Battle and Highway Robbery in the Hampshire Eyre of 1249,” in *Medieval Legal Records, Edited in Memory of C.A.F. Meekings*, ed. RF. Hunnisett & J.B. Post (London: HMSO, 1978), p. 51. See also the case of John Throstle, p. 52.

⁵ “...misérables personnes et gens de labor ... leurs petites puissances...” *Choix de pièces inédites relatives au règne de Charles VI*, ed. Louis-Claude Douet d’Arcq, vol. 2 (Paris: Ch. Lahure, 1864), pp. 133-4. See also p. 113, *supra*.

⁶ *Chronique de Mathieu d’Escouchy*, ed. G. Du Fresne de Beaucourt, new ed., vol. 2 (Paris: Jules Renouard & Co., 1863), p. 297. Gregory’s Chronicle, in *The Historical Collections of a Citizen of London in the Fifteenth Century*, ed. James Gairdner, Camden Society, New Series 17 (London: Nichols and Sons, 1876), p. 201. See also p. 307, *infra*.

courts or in criminal cases. As Chapter Three demonstrated, a suspected serf could not fight a judicial duel in person to prove that he was a free man. In fact, he could not fight in any judicial duel at all. The act of waging battle was itself a demonstration of one's free status. In the standard formula for naming a champion in English writ of right cases, the demandant offered to prove his or her right to the property "by the body of a certain free man" (*per corpus cuiusdam liberi hominis*). Unfree status was a taint that lasted for one's entire life. A freed serf produced as a champion in a property dispute could be lawfully excluded "even if he has been made the rank of knight since he was freed from villeinage," wrote the author of *Glanvill*.⁷

In French jurisdictions, the legal right of serfs to testify in court varied from region to region, but in general the unfree were forbidden to engage in judicial combat. A handful of exceptions may be found in the Île de France. Between 1108 and 1128, King Louis the Fat authorized the bishop of Paris and three churches in the region of the city to employ their serfs as witnesses and champions in property disputes against free landholders.⁸ The fact that these churches needed special license in order to extend these rights to their serfs, and that these licenses were found only in the region of Paris, indicates that it was not a common practice. Around 1280, Philippe de Beaumanoir wrote that in the Beauvaisis, a serf could not appeal a free man and he was not allowed to testify except in his lord's court. If a lord found

⁷ *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, ed. G.D.G. Hall (London: Thomas Nelson & Sons, 1965), lib. V,5, p. 58.

⁸ *Recueil des actes de Louis VI, roi de France (1108-1137)*, ed. M. Jean Dufour, 2 vols. (Paris: Bocard, 1992), nos. 22 (Notre-Dame de Paris, 1108); 121 (Bishop of Paris, 1112); 138 (Saint-Maur-des-Fossés, 1118); 261 (Chartres, 1128). Olivier Guillot has demonstrated that an earlier charter, dating to 1058, is false but nevertheless indicative of later attitudes: O. Guillot, "La participation au duel judiciaire de témoins de condition serve dans l'Ile-de-France du XI^e siècle : autour d'un faux diplôme de Henri I^{er}," in *Droit privé et institutions régionales : Études historiques offertes à Jean Yver* (Paris: Presses Universitaires de France, 1976), pp. 345-361.

that his man had pledged a battle elsewhere, he could remove him from the case.⁹

Nevertheless, Beaumanoir acknowledges later in the text that the situation was changing in his time. While serfs could not launch criminal appeals or participate in battles, they could be called as witnesses at inquests over such issues as property and defamation.¹⁰

Customary law in much of France also limited the possibilities for battle between different classes of free men, although it did not absolutely forbid them. In the second half of the thirteenth century, French society began to take special interest in distinguishing the nobility as a legal caste from those people who were merely wealthy and powerful. Louis IX issued the first letter patent ennobling an aristocrat in 1270 and his son Philip IV issued many more.¹¹ Noblemen could be further divided into those who had been knighted and those who had not. While Andreas Capellanus could write in the later twelfth century that the act of knighting a man was enough to confer nobility on him, by the middle of the thirteenth century it was first necessary for a man to be accepted as a noble before he could be knighted.¹²

Legal treatises from the thirteenth century also reflect these distinctions. An early redaction of the customs of Anjou and Touraine, dating from around 1270, explains that a commoner (*home costumier*) could accuse a knight--or a gentleman who ought to be a knight (*gentil home qui deust ester chevalier*)--of a serious crime and challenge him to battle, but the knight would be permitted to fight on horseback if he chose, while the commoner would be limited to fighting on foot. If, however, a knight made a similar appeal against a

⁹ Philippe de Beaumanoir, *Coutumes de Beauvaisis*, ed. Amédée Salmon, vol. 2 (1900; reprint, Paris: A. & J. Picard, 1970), §§ 1799, 1209, pp. 122-3, 375.

¹⁰ *Ibid.*, §1259, p. 152.

¹¹ David Crouch, *The Birth of Nobility: Constructing Aristocracy in England and France, 900-1300* (Harlow, England: Pearson Education Ltd., 2005), p. 3.

¹² *Ibid.*

commoner, both parties would be forced to fight on foot.¹³ The customal of Artois, from circa 1300, presents much the same rules for any gentleman (*gentieus hom*) who is accused by a peasant (*villains*).¹⁴ Beaumanoir includes similar laws, adding that a knight could fight in armour if he was the appellee, but he would not have that advantage if he were the one who accused a commoner. “If a knight or squire appeals against a commoner (*home de pooste*), he fights ... just like a commoner, for since he is lowering himself to appeal against such a base person, his dignity is reduced in that case to the same kind of armour as the appellee has by right, and it would be a very cruel thing if the gentleman appealed against a commoner and he had the advantage of a horse and armour,” the jurist explains.¹⁵

The key phrase here is “his dignity is reduced”. The anthropologist Julian Pitt-Rivers noted the law in his ground-breaking article on honour and social status.¹⁶ In order for a superior to accept a duel with an inferior, he noted, the superior must first acknowledge that his opponent has the power to impugn his honour at all. By taking this course of action, he acknowledges that he is unable to act in the manner of a man of greater status and either punish the malefactor directly or simply ignore the wrong that was done to him. In other words, not only was trial by battle considered appropriate for parties of equal status, it could actually force two people of different classes into a position of rough equality.

¹³ *Coutumes et institutions de l'Anjou et du Maine antérieures au XVI^e siècle*, ed. C.-J. Beautemps-Beaupré, pt. 1, vol. 1 (Paris: A. Durand & Pedone-Lauriel, 1877), pp. 118-9. This law is repeated in the redactions of 1385 and 1437.

¹⁴ *Coutumier d'Artois*, ed. A. Tardif (Paris: Alphonse Picard, 1883), tit. XL.11, p. 96.

¹⁵ “*Se chevaliers ou escuiers apele homme de poosté, il se combat ... aussi comme li hons de poosté, car parce qu'il s'abesse en apeler si basse persone, sa dignetés est ramenee en cel cas a teus armeures comme cil qui est apelés a de son droit, et mout seroit crueus chose se li gentius hons apeloit un homme de poosté et il avoit l'avantage du cheval et des armeures.*” Beaumanoir, § 1715, p. 377.

¹⁶ Julian Pitt-Rivers, “Honour and Social Status,” in *Honour and Shame: The Values of Mediterranean Society*, ed. J.G. Peristiany (Chicago: University of Chicago Press, 1966), p. 31.

In England too, it may be seen that judicial duels between individuals generally involved people from roughly the same social stratum. However, there are no analogs to the French customs regarding battles between gentlemen and commoners. This may be because English nobles were harder to define as a legal class. Unlike the French kings, medieval English monarchs did not issue documents ennobling aristocrats. Knighthood implied nobility from at least the late twelfth century, but many knights were effectively penniless. In 1220, a knight had to be removed from a jury in Herefordshire because “he is in a household and has no land.” He was effectively a household servant of his lord. By the middle of the thirteenth century an English knight’s younger sons could not count on becoming knights themselves.¹⁷ As David Crouch puts it, “In England it can be seen that the only workable definition of a nobleman remained a man who dressed and acted like a nobleman and was not laughed at.”¹⁸ Since status was determined by society at large, the English nobleman had to be on his guard against any hint of ridicule, for public contempt could threaten his very privileges of nobility.

Rare attempts to cross class boundaries in trials by battle caused surprise and consternation in England. The case of William Taylor of Lapworth from 1402 is one of the unusual examples of a commoner challenging noblemen. William was an approver, a convicted felon who had agreed to appeal a set number of his fellow criminals in exchange for his life. Instead of accusing disreputable characters, he managed to appeal a selection of respectable abbots, priors, knights and squires, among others, for treason. On the day of his first battle, he confessed that his accusation was false and he was promptly drawn and hanged. Nevertheless, his appellees required special dispensation from the king in order to

¹⁷ “*Robertus in familia est et non habet terram.*” *Curia Regis Rolls*, vol. 9 (London: HMSO, 1952), p. 157. Crouch, pp. 249-50.

¹⁸ Crouch, p. 3.

clear their names.¹⁹ The challenge to a judicial duel, even (or perhaps especially) when it was issued by a scoundrel, was a stain that required extra effort to eradicate.

The shortage of cases similar to this one suggests that the vast majority of litigants were constrained by the principle expressed in the *Mirror of Justices*: one could fight only with one's peers. While judicial duels could have a radical impact on the status of their participants, custom prevented them from being used by lower-class individuals as a means to disrupt class hierarchies.

Gender

For the most part, it is quite safe to say that trial by battle was a privilege of men. Certainly there is no evidence that any woman in England or a French-speaking jurisdiction ever personally struck any blows in a judicial duel. However, this is not to say that women were not involved in trials by battle. There are several examples of women who threw down gages and fought battles by proxy with the help of champions. In moments of academic speculation, medieval jurists also contemplated the possibility of a female duellist fighting in person, and they did not always rule it impossible. As a result, it would be more accurate to say that trial by battle was an activity that was, if not the exclusive domain of men, then heavily gendered masculine.

Although there were several examples of female military commanders in the high and late Middle Ages, few women from the English and French kingdoms gained much personal experience with fighting and the use of weapons.²⁰ However, as Megan McLaughlin points

¹⁹ G.O. Sayles, ed. *Select Cases in the Court of the King's Bench under Richard II, Henry IV and Henry V*, vol VII, Selden Society vol. 88 (London: Bernard Quaritch, 1971), pp. 132-4.

²⁰ The subject of fighting women (as opposed to female commanders) in medieval Europe has received limited scholarly attention. The key article remains Megan McLaughlin, "The Woman Warrior: Gender, Warfare and

out, noblewomen could not have been entirely ignorant of the military training that occurred in their own households.²¹ Anna Comnena recalled that among the crusaders she observed in Byzantium was one Gaita, the wife of the Norman baron Robert Guiscard. This lady wore armour and was once seen galloping after some fleeing Norman soldiers and forcing them to return to a battle at spearpoint.²² Christian chroniclers of the Crusades have little to say about female soldiers, but the Muslim chroniclers Imad al-Din and Baha al-Din reported that several women fought and died with the Frankish armies of the Third Crusade. It is not clear to what extent the Christians may have been suppressing accounts of what they regarded as deviant female behaviour or the Muslims may have been exaggerating what they saw as a failure of the Christians to guard their women's virtue.²³

McLaughlin notes that examples of fighting women are harder to find in the late Middle Ages and contemporary reactions to them are stronger. Among the fighting women of late medieval France can be found the duchess Jeanne de Montfort, who rallied troops and participated personally in combat after her husband died in 1345, during the Breton War of Succession.²⁴ There is also the famous example of Joan of Arc, who commanded soldiers, wore armour and was wounded by an arrow at the English stronghold of Les Tourelles, although she probably did not participate in the fighting herself. These women's exploits were recorded as marvels and curiosities, not as examples that other women should follow.

More typical of later medieval attitudes toward the idea of women fighting was Giles of Rome's *De Regimine Principum*, written for the French King Philip IV, probably in the late

Society in Medieval Europe," *Women's Studies: An Inter-Disciplinary Journal* 17:3-4 (1990), pp. 193-209. See also Helen Nicolson, "Women on the Third Crusade," *Journal of Medieval History* 23:4 (1997), pp. 335-49.

²¹ McLaughlin, p. 202.

²² Anna Komnene, *Alexiad*, trans. E.R.A. Sewter, rev. by Peter Frankopan (London: Penguin, 2009), book IV, § 6, p. 121.

²³ Nicolson, pp. 337-41.

²⁴ Philippe Contamine, *La Guerre au moyen âge* (Paris: Presses Universitaires de France, 1980), p. 395.

1280s. Giles had encountered Plato's opinion that both men and women should be educated and trained for war, just as dogs of both sexes were trained to hunt and stand guard. The idea piqued Giles' interest enough to make him discuss it, but he ultimately rejected it on the grounds that women were mentally and physically weaker than men, making them unsuitable for war, and they were furthermore needed in order to manage households, something that dogs did not do. In this opinion he was later joined by Thomas Aquinas.²⁵ For these men and many others, the notion of women engaging in combat was more of an academic thought experiment than a serious possibility. It was simply too radically different from the world in which they lived.

Outside the martial realm, women had much more agency. Under English common law, an unmarried woman had considerable control over her legal affairs. She could own land in her own right and, in cases involving real and personal property, she could sue and be sued. Once she was married, however, her property was merged with that of her husband and she could neither initiate a property case, nor be sued for land or money unless her husband was also named as a party to the case. In criminal matters, a woman could be held liable for a crime, but she was limited in the kinds of accusations she could bring to court herself as an appellant. *Glanvill* explained that a woman could not accuse other people of crimes except in certain circumstances. She could bring an appeal against someone who had done injury to her own body, or she could accuse someone of killing her husband, but only "if she speaks of what she saw herself, for the husband and wife are one flesh."²⁶ In such a case, the defendant would be tried by an ordeal of fire or water, rather than a battle. If a woman witnessed or

²⁵ For a comprehensive discussion of Giles' and Aquinas' thoughts on women and war, see James M. Blythe, "Women in the Military: Scholastic Arguments and Medieval Images of Female Warriors," *History of Political Thought*, vol. 22, no. 2 (Summer, 2001), pp. 252-7.

²⁶ *Glanvill*, lib. XIV.1, 3, pp. 173, 174.

suspected a homicide committed against someone else, she would not be able to bring an appeal against the perpetrator.

Nevertheless, there are a few examples of female approvers in England. In 1156, the Pipe Rolls record that Henry II's treasury paid fifteen shillings and eight and a half pence to maintain "a certain female approver," in prison and in 1204 another Pipe Roll records that the household of King John maintained another such woman for sixteen weeks at the cost of four shillings and eight pence.²⁷ This latter sum amounts to half a penny a day, only half the rate paid for male approvers in the same period. The female approvers are shadowy figures and we know neither their names, nor the crimes they committed or prosecuted. Quite possibly, like many male approvers, they either died in prison awaiting trial or the people they accused confessed or fled, allowing them to abjure the realm without having to fight a duel.

Women also participated in writ of right suits regarding land, where it was customary to use champions and the sex of the principals posed no physical disadvantages. We may see them at work in the charters that often resulted from these lawsuits. The records of Burton monastery in Staffordshire note that sometime between 1184 and 1188 Juliana de Shobnall pledged a battle with one Godfrey de Shobnall over half a hide of land. Their champions came to court ready to fight, but the contest was cancelled when the Shobnalls reached an eleventh-hour compromise.²⁸ This pattern of escalation followed by last-minute negotiation and settlement was typical of disputes over land.

²⁷ *The Great Rolls of the Pipe for the Second, Third and Fourth Years of the Reign of Henry the Second*, ed. Joseph Hunter (London: George Eyre & Andrew Spottiswoode, 1844), p. 4. *The Great Roll of the Pipe for the Sixth Year of the Reign of King John*, ed. Doris Stenton, Pipe Roll Series (New Series) 18 (London: J.W. Ruddock & Sons, 1940), p. 9. These entries were first noted by M.J. Russell in "Trial by Battle and the Appeals of Felony," *Journal of Legal History* 1:2 (1980), p. 141.

²⁸ *English Lawsuits from William I to Richard I*, ed. R.C. Van Caenegem, vol. 2, Selden Society vol. 107 (London: Selden Society, 1991), p. 639.

The increasing use of juries in England gave thirteenth-century women an alternative to ordeals and battles. Bracton states that criminal cases involving women should automatically be referred to a jury, declaring succinctly “On account of their sex, women should not be compelled to fight a duel.”²⁹ The very brevity of the statement, without any discussion of possible loopholes or exceptions, suggests that this was not a principle which the jurist expected to be disputed. Indeed, after the mysterious approver of 1204, women do not seem to appear anymore in thirteenth-century English judicial duels. The early fourteenth-century *Mirror of Justices*, on the other hand, felt it necessary to explain that men and women were not able to fight duels with one another because they were not *parigals*, and that even some equals were unable to fight each other, for two women could not hold a judicial duel either.³⁰

Later medieval records of women involved in trials by battle are rare as well. In 1353, a woman from Calais challenged a man to a duel “over certain treasons to us [the king], to the town and to our subjects.” Since the town was under English control at the time, the king sent a letter to the captain who was acting as governor, ordering him to take charge of the proceedings and to conduct them according to local custom.³¹ The results of the case do not appear to be documented, and the anonymous woman, whose fight would surely have been unusual enough to have interested a chronicler or two, may have reached an accord before she ever met her opponent in the lists.

This scenario is exactly what happened in another late case. According to the chronicle known as the *Eulogium (Historiarum sive Temporis)*, in 1402 “a certain woman accused an elderly minor brother from the convent of Cambridge of having said certain words against

²⁹ “*Non tenetur duellum facere propter sexum.*” Henri de Bracton, *De legibus et consuetudinibus Angliae*, ed. George E. Woodbine, vol. 2 (Cambridge, MA: The Bellknap Press, 1977), p. 403.

³⁰ *Mirror of Justices*, pp. 109, 110-1.

³¹ *Foedera, Conventiones, Litterae et cuiuscumque generis Acta Publica, etc.*, ed. Thomas Rymer, 2nd ed., vol. 5 (London: George Holmes, 1727), p. 755.

the King; and he stood before the justiciar, who gave the sentence that he should fight with the woman with one hand tied behind his back.”³² The woman was later convinced to drop the accusation when the archbishop of Canterbury himself stepped in to broker peace.

This is an unusual case in that the duel was recognized to be an asymmetrical contest between people of different status but allowed to proceed anyway. The trial may also have had something to do with the recent rebellion of Owain Glyndwyr in Wales. That event ignited unease in England, for there was a rash of unusual treason trials in the year 1402, including the one where William Taylor of Lapworth accused a number of prominent nobles and clergymen, as mentioned above.

The woman’s case is reminiscent of the Middle High German romance *Apollonius von Tyrland*, in which there is a judicial duel between a woman and a man. The man is required to stand up to his waist in a narrow pit with his right hand tied behind his back. He fights with a club, while the woman circles him and strikes him with a three-pound stone bound up in the end of a scarf.³³ A similar scenario appears in the *Fechtbücher* of the German armsmasters Hans Talhoffer and Paulus Kal, dating from 1459 and approximately 1480 respectively. In both books, illustrations show a duel between a man and a woman as it should theoretically be conducted in the southern regions of the German empire.³⁴ It is not

³² “*Item mulier quaedam accusabat Fratrem Minorem de conventu Cantibrugiae senem de certis verbis dictis contra Regem; qui statuitur coram iustitiario. Qui dedit sententiam quod pugnaret cum muliere una manu post dorsum ligata.*” *Eulogium (Historiarum sive Temporis)*, ed. Frank Scott Haydon, Rolls Series 9, vol. 3 (London: HMSO, 1863), p. 389.

³³ Hans Fehr, *Das Recht in der Dichtung* (Bern: A. Francke A.-G. Verlag, 1931), pp. 221-2.

³⁴ Hans Talhoffer, *Alte Armatur und Ringkunst, 1459*, Copenhagen, Kongelige Bibliothek, MS Thott 290 2, ff. 80r-84r. The sequence of images were included and expanded in *idem, Talhoffers Fechtbuch aus dem Jahre 1467*, ed. Gustav Hergsell (Prague: Ottomar Beyer, 1887), plates 242-50. Paulus Kal, *Fechtbuch, gewidmet dem Pfalzgrafen Ludwig*, Bayerische Staatsbibliothek MS Cgm. 1507, ff. 49v-51v. I eagerly await publications by Laura Erickson, a doctoral candidate at the University of Washington, who is researching the role of women in German judicial duels.

clear, however, that a duel of this sort took place anywhere in the fifteenth century, except in the imaginations of Masters Talhoffer and Kal.

French jurists were more willing than their English counterparts to entertain the possibility that a woman might volunteer to fight in a trial by battle. As in England, Continental duels over property were usually fought by champions. Unlike English law, however, several French customs also allowed women to appoint champions if they became involved in criminal suits. It was usually in the context of these battles that the possibility of Amazonian behaviour came up.

The first example of French women involved in judicial duels comes from a letter by Philip Augustus conceding rights to the town of Amiens in 1190. It states “If anyone should demand money from any widow, let her defend herself with an oath against one witness, but not against many, and she will remain in peace; if, however, he has sought any possession of hers from her as a gage, let her defend her own self by battle (*ipsa se per bellum defendet*).”³⁵ The wording of this paragraph makes it seem as if widows were required to take up a club and shield personally, but, as the previous chapter illustrated, men in French jurisdictions were consistently given the right to use a champion in disputes over moveable property, so it seems unlikely that Amiens was exceptional in this regard. More likely, the sentence is the result of a clerk’s attempt to ensure that the subjects of all the Latin verbs could not be confused for one another, and the final *ipsa* was intended to mean simply ‘she’ and not ‘she herself in person.’

³⁵ “*Si quis ab aliqua vidua pecuniam requieserit ipsa contra unum testem, non contra plures, per sacramentum se deffendet et in pace remanebit; si vero ab ea aliquam ejus possessionem ut vadium requisierit, ipsa se per bellum deffendet.*” Giorgio Enrico Levi, *Il Duello Giudiziario : Enciclopedia e Bibliographia* (Florence: Tipografia Gino Ciolli, 1932), p. 127.

In general, married women in French jurisdictions faced much the same legal disabilities as their English cousins. They could not buy, sell, rent or loan property without their husbands' permission. Single women, on the other hand, had more control over their business affairs. The *Livres de justice et de plet*, a legal textbook dating from the 1250s and dealing with the customs of the Orléans region, explains that a woman without a husband could plead a case in court and could also have the right to swear an oath (*jurisdiction*), to administer an estate (*procuracion*) and to represent someone else in court (*avocacion*).³⁶ Furthermore, the treatise concludes, "One may ask if, in a woman's suit, there may be a question of battle? One says that yes; it may occur in the same way that it does in a man's case."³⁷

A few decades later, Philippe de Beaumanoir described a somewhat different set of customs in the Beauvaisis. Married women, he wrote, could not launch an appeal (that is, a criminal suit), without the authorization of their husbands, and they could not present their accusations without naming a champion. Women of any marital status were not permitted to testify in any case where they might be challenged to a judicial duel.³⁸ Suits over dower were also specially exempted from proof by battle, because they involved the privileges of women.³⁹

Nevertheless, Beaumanoir also provided an example of a case where a woman had offered to fight a judicial duel with a man. The case revolved around the whereabouts of a missing infant. The mother had been pregnant and had been heard in labour, but the child

³⁶ *Li livres de justice et de plet*, ed. Pierre-Nicolas Rapetti (Paris: Institut de France, 1850), lib. XVIII, c. II, § 3, p. 273. Rapetti glosses *seignor* in this passage as *mari*, p. 416, s.v. *sires*.

³⁷ "L'en demende se en cause de feme a point de bataille? L'en dit que oïl; ausint comme il a en cause d'ome, an ce quas i a." *Ibid.*, lib. XVIII, c. II, § 4, p. 274.

³⁸ Beaumanoir, vol. 2, §1175, §1259, §1796, §1795, pp. 107, 152, 413.

³⁹ *Ibid.*, vol. 2, §1822, pp. 422-3.

was nowhere to be found. She claimed that she had given the infant to her own mother. The grandmother, in turn, insisted that she had handed the baby over to its father, and offered to prove her claim by battle if he denied it. The father, however, argued that he should not be obliged to prove his innocence in such a manner because no one had ever seen the grandmother in possession of the child, even though she admitted that she had received it. In the face of such a strong presumption of foul play, she should not be allowed to pass the blame so easily. According to Beaumanoir, the court did not accept the father's argument, but he does not record what transpired after this juncture.⁴⁰

The records of the Parlement of Paris show that women were occasionally the principals in cases where judicial duels were proposed, but their presence usually meant that the court decided to proceed by inquest instead. Where a duel was permitted, it seems to have been understood that the woman in question was entitled to name a champion to fight on her behalf.

In 1293 a man named Droet offered a wager of battle to a woman known only as the wife of Jean, called Hape, in the court of the chapter of Soissons. Because there was some disagreement between the chapter and the king's officials over whether Droet was a royal serf, the case was referred to the Parlement. After a botched attempt at an inquest, the Parlement returned the case to the chapter of Soissons with instructions to try the woman by "plenary justice."⁴¹

In 1296, Agnes de Villeroy accused her brother, the knight Gaco de Ligny, of poisoning her other brother Gerard and killing him. The record is careful to say that she was acting under the authority of her husband, the knight Jean de Villeroy. Parlement looked into the

⁴⁰ *Ibid.*, vol. 2, §1813-4, pp. 417-8.

⁴¹ *Actes du Parlement de Paris*, ed. Edgard Boutaric, vol. 2 (1863; reprint, Hildesheim: Georg Olms Verlag, 1975), no. 823, p. 446.

circumstances of Gerard's death but ultimately decided that a duel was not appropriate.⁴²

There is also the case of Marguerite de Bauçay, whose case generated a series of documents dated to 1342 and 1343. Her brother-in-law Josselin de la Forêt accused her of attacking his relatives and orchestrating a campaign of violence against his vassals' homes. Marguerite had the case moved from the court of the seneschal of Poitou to Parlement, where she pled that she should not be forced to engage in battle.

...because equality would not be preserved if a woman, who is forbidden from the duty of men, should be able to be placed in a wager of battle, because perhaps she may not be able to find someone to fight for her voluntarily, and she could not do it for herself: considering the fragility of her sex, she could not be appealed to battle in whatever manner one pleased.⁴³

In this passage, equality (*equalitas*) refers not primarily to the equality of the sexes, but rather to the levelling power of a criminal appeal, which forced a certain parity upon its participants. Just as a knight could not fight a commoner while mounted on horseback, a man sometimes could not fight a woman at all. This limited the means of making proof for both of them in a criminal appeal.

Not all cases conformed neatly to this principle, however. An unusual combination of custom and political circumstances produced a completely anomalous lawsuit before the Parlement of Paris in 1280. Jeanne de la Valette, a *femme de corps* of Count Aimery de Rochechouart, accused the knight Rathier of Montricher and his son of burning houses that

⁴² *Les Olim, ou registres des arrêts*, ed. Le Comte Beugnot, vol. 2, pt. 1 (Paris: Imprimerie Royale, 1842), pp. 403-4.

⁴³ “*Quod non servaretur equalitas si mulier, qui virorum officium est interdictum, in gagium poni posset, quia forsan non posset invenire pro ea debellare volenter, et pro se non posset: attenta sexus fragillitate non poterat quomodolibet ad gagium appellari.*” Quoted in Monique Chabas, *Le duel judiciaire en France (XIII^e - XVI^e siècles)* (Paris: Éditions Jean-Favard, 1978), p. 154, n. 124. See also *Actes du Parlement de Paris : Parlement Criminel, règne de Philippe VI de Valois, inventaire analytique des registres X^{2A}2 à 5*, eds. Brigitte Labat-Poussin, Monique Langlois & Yvonne Lanhers (Paris: Archives Nationales, 1987), nos. 4096 v^o. A, 4097 C, 4098 v^o. B, 4099 F, 4103 E, 4154, & 4156 v^o.

belonged to her.⁴⁴ The knight accepted her wager of battle and the king's court, which turned down so many later women's challenges, allowed it to proceed. Despite being technically unfree, Jeanne was represented on the appointed day of the fight by a knight named Guillaume de Forneles. He arrived on horseback in armour, prepared to fight Rathier and his son, but at the last moment, Jeanne dismissed the suit and entirely renounced the claim.⁴⁵ The negotiations or other pressure that led to this reversal are not recorded, but it is notable that the resulting accord seals a peace not between the Montrichers and Jeanne herself, but between them and her lord Aimery. Henceforth, the count and the knights were not to launch any suit or appeal against one another, either in person or by proxy.

This record suggests that Jeanne may have been a principal in the case only in name. She appears to have been a stalking horse for the count, but he showed little inclination to conceal his interest in the suit. He was, in fact, no stranger to the duelling lists. Five years previously, no less a personage than Edward I of England had loaned him a horse for another judicial battle.⁴⁶ Most likely, Jeanne's role in the affair was a strategic one. Because she was a woman, she was allowed to name a champion, ensuring that Aimery's faction was represented by the best fighter they could employ. Despite the seeming practicality of this tactic, it does not appear to have been adopted in any other cases.

For men, trial by battle was viewed not only as a test of one's word, but also as a test of one's masculinity. The Roman legal tradition regarded the right to testify in court as a

⁴⁴ The fact that Jeanne possessed more than one house also raises questions about her status. Depending on how one reads the passage, the houses could also have belonged to the count. The Parlement of Paris described Jeanne as a *femina de corpore*, but what level of servility this entailed in Rochechouart is unclear. The surname la Valette probably refers to the hamlet of Valette close to Rochechouart and not to her position.

⁴⁵ Boutaric, vol. 1, no. 2269A, p. 217. See also pp. 114, *supra*.

⁴⁶ Rymer, vol. 2, p. 56.

privilege of free men.⁴⁷ Medieval writers did not fail to notice that the Latin word for witness, *testis*, also meant testicle.⁴⁸ Scandinavian culture, which influenced Normandy and later England through the Normans, also drew a close association between power and physical manhood. Klaus van Eickels points out that the contemporaries of Rollo, the first Norman duke, often conflated the masculine sex and gender, considering physical and political impotence to be aspects of the same problem.⁴⁹ Since bringing a suit to a high medieval court and fighting a duel were privileges of free men, and losing a duel could deprive one of those privileges forever after, twelfth- and thirteenth-century writers sometimes portrayed judicial combat as an ordeal that could put a man's very sex at stake.

The theme of sexual potency and castration appears in numerous texts concerning judicial duels. Indeed, the duellist's sexual organs appear to have been a site of contention before, during and after his battle. The previous chapter discussed various scenarios of rape and adultery which often led to treason duels in medieval vernacular literature. The defective or unblemished state of a man's sexual organs could also determine whether a duel should occur. In the first half of the thirteenth century, Bracton counted the man with no testicles as being too maimed to participate in a judicial battle and allowed that he could have a champion.⁵⁰

Apparently contradictory but based on similar beliefs is one of the tales of Renart the Fox from a generation previous. It envisioned a scenario where castration was the cause of a duel. In the sixth branch of the popular animal fable, Ysangrin the wolf launches a criminal

⁴⁷ George Mousourakis, *The Historical and Institutional Context of Roman Law* (Aldershot: Ashgate Publishing, 2003), p. 131.

⁴⁸ See, for instance, the passage by Albertus Magnus discussed in Jody Enders, *The Medieval Theatre of Cruelty: Rhetoric, Memory, Violence* (Ithaca, NY: Cornell University Press, 1999), pp. 85-6.

⁴⁹ Klaus van Eickels, "Gendered Violence: Castration and Blinding as Punishment for Treason in Normandy and Anglo-Norman England," *Gender and History* 16:3 (November, 2004), p. 591.

⁵⁰ Bracton, p. 410.

appeal against Renart because of three crimes which are all insults to the wolf's sexuality. One of Renart's pranks has caused Ysangrin to lose large amounts of hair on his head and face, so that he looks like a tonsured monk. All the courtiers make fun of him when he arrives at King Noble's court thus shaven, and ask him if he has joined a religious order. Another prank carried off Ysangrin's tail--the sexual symbolism of which would not have been lost on the story's intended audience--provoking the courtiers to say "You cannot come indoors, good Sir. Cover your hole!"⁵¹ Finally, Ysangrin admits that Renart has been having sexual relations with his wife. The wolf has been left not only cuckolded, but castrated and literally bearded. In order to restore his status and receive respect once more from his peers, he needs to beat Renart in a duel, which he does, only to have Renart escape death and return to his trickery.

Castration could also occur during the course of judicial duels both real and legendary. In 1127, in the aftermath of the assassination of Count Charles the Good of Flanders, a treason battle pitted one of the count's loyalists, named Herman the Iron, against the rebel Guy of Steenvoorde. The fight was already going badly for Herman when Guy threw him to the ground and began beating him in the face with his mailed mittens. Herman feigned unconsciousness...

...But lying prostrate, as one may read of Anateus, he regained his powers little by little from the coolness of the earth, and he skilfully revived while Guy rested secure in his victory. Meanwhile, smoothly withdrawing his hand until it rested at the lower edge of the hauberk, where Guy was not armoured, he seized him by the testicles and, with his gathered strength, hurled him away from himself all in one motion. In this wrenching buck, the whole nature of Guy's lower body was broken, and thus prostrated, Guy gave in and declared himself to be defeated and dead.⁵²

⁵¹ "Einssi ne devez pas aler, / Biau sire, covrez vostre tro." *Le Roman de Renart: édité d'après les manuscrits C et M*, ed. Naoyuki Fukumoto, Noboru Harano & Satoru Suzuki, vol. 1 (Tokyo: Librairie Éditions France Tosho, 1983), lines 13916-7.

⁵² "At ille prostratus, sicut legitur de Antheo, a frigitate terrae vires paullatim resumpsit, et callide dum requiesceret Widonem de victoria securum reddidit. Interim manum suavius subducens usque ad inferiores

Galbert of Bruges reports approvingly that Guy was hanged for treachery.

Another unfortunate duellist is recalled in a miracle of Saint William of York dating from around 1208.⁵³ This man, falsely accused of arson by a vicious neighbour, was blinded and castrated by his accuser in the course of a trial by battle. The accuser then threw his eyes and testicles into the audience, much to the chronicler's disgust.⁵⁴ This castration probably occurred after the fight had already been concluded. The sentence of blinding and castration was a well-known alternative to the death penalty in England after the Norman Conquest.⁵⁵ The author of the miracle also specifies that the accuser accomplished his task with the aid of a sharp knife, a weapon that was not ordinarily used by commoners in English judicial duels, so it is likely that he took up the blade only after he had won the duel. His long-suffering victim is said to have received new eyes and testicles after praying to Saint William.

A very similar miracle is attributed to Saint Wulfstan. A certain Thomas, who led a rather sinful life in Eldersfield, Worcester in 1221, was falsely accused of attacking the husband of his former lover. The husband fought a duel against him and won. As punishment, Thomas' eyes and testicles were gouged out and thrown to the audience, who used them for an impromptu game of soccer. He was taken to the home of a pious woman, where he prayed diligently to the saint and begged forgiveness for his adulterous relationship

loricae oras, in qua parte non fuerat Wido premunitus, raptum per testiculos, collectis viribus ad puncti unius momentum a se propulit, in quo rapticio pulsu tota de subitus natura corporis rupta, ita prostratus defecit Wido, ut victum et mortuum se fore exclamaret." Galbert de Bruges, *Histoire du meurtre de Charles le Bon, comte de Flandre (1127-1128)*, ed. Henri Pirenne (Paris: Alphonse Picard, 1891), p. 94. See also p. 124, *supra*.

⁵³ Van Caenegem dates this duel to 1177, but Christopher Norton argues convincingly for the later date in *St. William of York* (Woodbridge: Boydell & Brewer, 2006), p. 178. I am grateful to Payson Muller for the latter reference.

⁵⁴ *English Lawsuits from William I to Richard I*, ed. R.C. Van Caenegem, vol. 2, Selden Society 108 (London: Selden Society, 1991), p. 557.

⁵⁵ Van Eickels, 588-602. A similar punishment, albeit without the miraculous outcome, was also the fate of William of Eu, who was involved in a conspiracy against William Rufus in 1095. Orderic Vitalis claims that it was William's faithlessness to his wife that provoked his brother in law Hugh, the Earl of Chester, to press for the sentence to be carried out. *English Lawsuits*, pp. 113-117.

with his former lover. One night, his wounds began to itch and all his missing organs grew back. This miraculous occurrence was attested by no less an authority than the bishop of Worcester, who visited him and touched his new testicles.⁵⁶

The entire story seems to be a pun on the word *testificare*, although the word itself is never used. According to *Glanvill*, a person who lost a judicial duel in England at the time was accounted a perjurer and lost his right to testify in any future court case.⁵⁷ Even though Thomas had lost his case, the power to make testicles (*testes facere*) was granted to him through the mercy of the saint.

Judicial duelling was closely entwined with masculinity in twelfth- and thirteenth-century imaginations. It was not simply a privilege of males, but a means by which masculine honour could be established, lost or restored. Losing a duel meant losing one's law, or right to testify in court, a disability which would put a free man in much the same legal position as a married woman. Judicial combat entailed serious risks to one's status: so much so that at times observers considered not only litigants' gender, but even their very sex to be at stake.

Clergy

There was one class of men who were routinely exempted from judicial duels. Unlike serfs and women, the exclusion of clerics from trials by battle was not a sign of a lower status, but rather of membership in a different, parallel estate which could not be altered by the outcome of a judicial duel. Clerics, who wore long habits, were forbidden from shedding

⁵⁶ *The Vita Wulfstani of William of Malmesbury*, ed. Reginald R. Darlington, Camden Series XL (London: Royal Historical Society, 1928), pp. 168-175. The record of the assault case, without reference to the punishment, appears in *Pleas of the Crown for the County of Gloucester (1221)*, ed. F.W. Maitland (London: Macmillan & Co., 1884), pp. 21-2.

⁵⁷ *Glanvill*, II.iii, p. 25.

blood, and were not allowed to marry after the reforms of the eleventh century, have sometimes even been called the third gender of medieval Europe.⁵⁸

Several scholars have traced the development of the Church's position on judicial ordeals, bringing to light much evidence for clerical involvement along the way. Peter Browe and Charlotte Leitmeier collected relevant excerpts from medieval ecclesiastical documents, shedding light on the theological underpinnings of the procedures.⁵⁹ John Baldwin drew attention to the canonists of the late twelfth and early thirteenth century, particularly Peter the Chanter, whose opposition to ordeals most likely influenced the Fourth Lateran Council.⁶⁰ Robert Bartlett has also examined the changes in ecclesiastical policy that led the church to abandon its role in overseeing ordeals held in secular jurisdictions and blessing the instruments and participants.⁶¹ In addition to these important discussions, it should also be noted that clerks themselves competed with laymen in the secular courts on a regular basis. Facing the possibility of very real material losses, some of them were reluctant to give up the duel merely on principle. As a result, doctrines forbidding the clergy from duelling developed slowly and individuals sometimes flouted the rules in order to settle their own immediate disputes.

⁵⁸ See R.N. Swanson, "Angels Incarnate: Clerical Masculinity from Gregorian Reform to Reformation," in *Masculinity in Medieval Europe*, ed. Dorothy Hadley (New York: Longman, 1999), pp. 160-77 and P.H. Cullum, "Clergy, Masculinity and Transgression in Late Medieval England," in *ibid.*, pp. 178-96.

⁵⁹ Petrus Browe, *De Ordaliis*, Pontifica Universitas Gregoriana Series Theologica 11, 2 vols. (Rome: Pont. Universitas Gregoriana, 1932-1933). Charlotte Leitmeier, *Die Kirche und die Gottesurteile* (Vienna: Verlag Herold, 1953).

⁶⁰ John W. Baldwin, "The Intellectual Preparation for the Canon of 1215 against Ordeals," *Speculum* 36: 4 (October 1961), pp. 613-636. See also Finbarr McAuley, "Canon Law and the End of the Ordeal," *Oxford Journal of Legal Studies* 26:3 (2006), pp. 473-513, which presents the reforms of 1215 as a continuation of the Gregorian Reforms. Mathais Schmoeckel examines the developments after 1215 in "Ein sonderbares Wunderwerck Gottes," "Bemerkungen zum langsamen Rückgang der Ordale nach 1215," in *Ius Commune: Zeitschrift für Europäische Rechtsgeschichte*, ed. Dieter Simon & Michael Stolleis (Frankfurt: Vittorio Klostermann, 1999), pp. 123-164. See also pp. 292-4, *infra*.

⁶¹ Robert Bartlett, *Trial by Fire and Water* (Oxford: Clarendon Press, 1986), pp. 90-102.

Opposition to trial by battle was evident early at the level of the Church councils and grew more insistent as time went on, but individual clerics did not always follow official policy. As Chapter One discussed, Bishop Agobard of Lyon wrote two tracts harshly criticizing the practice just as it was being introduced into Salic law, and the Council of Valence declared in 855 that winners of duels in the Rhône region would be excommunicated, while losers who died would be refused burial in consecrated ground.⁶² Pope Nicholas I ruled that combat was not a suitable way for King Lothair of the Franks to prove the illegitimacy of his marriage to Queen Teutberga because the procedure was not part of canon law and it represented a “temptation of God.” At the same time, monks and priests on the front lines of medieval disputes occasionally saw the procedure as a useful means of resolving lawsuits. The monks of Fleury and St. Denis were not averse to using judicial combat in 834 to settle a particularly thorny property dispute.⁶³

In the second half of the eleventh century, the combined impact of the Gregorian reforms and the peace movement led ecclesiastical writers to consider whether clerics could remain spiritually pure while bearing of arms. Several French peace councils from this era forbade the clergy to carry “secular weapons.”⁶⁴ Nevertheless, in 1080, the provincial synod of Lillebonne in Normandy produced a canon which hinted that clerical duels were not unknown to the bishops of the day. Instead of completely forbidding clergy from participating in trials by battle, they ruled “If a clerk undertakes a duel without the

⁶² See pp. 49-51, *supra*.

⁶³ See pp. 54-5, *supra*.

⁶⁴ Amy G. Remensnyder, “Pollution, Purity and Peace: An Aspect of Social Reform between the Late Tenth Century and 1076,” in *The Peace of God: Social Violence and Religious Response in France around the Year 1000*, ed. Thomas Head and Richard Landes (Ithaca, NY: Cornell University Press, 1992), p. 286.

permission of the bishop ... let him compensate the bishop with money.”⁶⁵ Although Pope Nicholas’ ruling on trial by battle was already being disseminated by the canonists Regino of Prüm and Burchard of Worms, and the policy that clergy should not cause effusions of blood was already well established, rank-and-file clerics were apparently still participating in judicial combat.⁶⁶

However, in practice it took time for ecclesiastical policies on duelling to be implemented. It was hardly practical for churches and monasteries to eschew trials by battle entirely. They relied upon judicial combats to establish their rights to land in secular courts and they did not always have lay tenants who were in a position to act as champions for them. This was the situation which Louis VI sought to ameliorate in the early twelfth century when he issued the four charters permitting the serfs on ecclesiastical domains around Paris to participate in duels.⁶⁷

There are also references to judicial duels between rank-and-file clergy to be found in twelfth-century ecclesiastical correspondence. Between 1107 and 1110 Abbot Geoffroi of Vendôme wrote to Pierre, the bishop of Saintes, because one of the bishop’s clerks had pledged a duel with one of his monks. “If your [clerk] Rainald is trying to shake the keys of the holy Church and to annul the decrees of the Roman pontiffs, which thoroughly prohibit single combat between ecclesiastical men, we hope that in response to his pompous efforts he has become acquainted with the humility of the Roman church, which rattles the pompous

⁶⁵ “*Si clericus ... duellum sine licentia episcopi susceperit ... episcopo per pecuniam emendetur.*” *Sacrorum Conciliorum Nova et Amplissima Collectio*, ed. Joannus Dominicus Mansi, vol. 20 (Venice: Antonio Zatta, 1775), no. XIX, p. 560.

⁶⁶ For discussion of Regino and Burchard, see Leitmeier, pp. 57, 60.

⁶⁷ *Vide supra*, p. 136.

and squashes the arrogant,” he warned.⁶⁸ Subsequent correspondence does not reveal whether the bishop took his suggestion.

In the mid-twelfth century, the Church established a much firmer position on trials by battle. Pope Innocent II wrote to the abbot of Tours in 1140 that clerks who fought in duels or even introduced champions on their own behalf were to be removed from holy orders.⁶⁹ His successors Alexander III and Celestine III attempted to reinforce this position by repeating it.⁷⁰

This policy was not always easy to enforce, as another letter, this one between John of Salisbury and Pope Alexander III, demonstrates. At some point between 1159 and 1163, the secretary to the Archbishop of Canterbury wrote to report on a case that had unfolded between a clerk in the household of the archbishop of York and an archdeacon from the same city. Some years previously, the former had accused the latter before the royal court of poisoning and killing the archbishop, an allegation which King Stephen wanted to try in his own court because of the seriousness of the crime and the fact that the case had been initiated in his presence. It was only when Stephen died that John of Salisbury and other Church leaders were able with great difficulty to convince his heir, Henry II, to allow the case to be tried in an ecclesiastical court, where the archdeacon cleared himself with the aid of oath-helpers.⁷¹ It is important to note that in both of these cases, ecclesiastics chose to fight other ecclesiastics. While the physical capabilities of these men cannot be known, it is apparent that they belonged to the same estate and held similar ranks. Their proposed battles

⁶⁸ “*Si vero Rainaldus vester claves sanctae ecclesiae agitare et Romanorum decreta pontificum, quae inter ecclesiasticos viros monomachiam penitus inhihent, adnullare conatur, contra eius inflatos conatus humilitatem Romanae ecclesiae, quae inflate crepare et superba premere novit, appellamus.*” *Patrologia Latina, cursus completus*, ed. Jacques-Paul Migne, vol. 157 (Paris: Garnier Fratres, 1899), Epistola XXXIX, pp. 140-1.

⁶⁹ Charles du Fresne, Sieur Du Cange, *Glossarium Mediae et Infimae Latinitatis*, vol. 3 (1678; Reprint, Niort: L. Favre, 1884), s.v. Duellum, p. 206B.

⁷⁰ Leitmeier, pp. 87-90.

⁷¹ Browe, no. 54, p. 47.

concerned power struggles within the estate of those who prayed, rather than contests between members of different social orders.

In 1176, in the wake of the tensions surrounding the death of Thomas Becket, Henry II issued a letter to Pope Alexander III confirming that English clergy, in addition to having the right to be tried in ecclesiastical courts, were not to be compelled to fight judicial duels.⁷² Although the treatise *Glanvill*, written a few years later, makes no mention of clerical status in its discussion of the grounds for exemption from trial by battle, the examples of duelling clerics after this date are few and contemporary sources made it clear that they were highly irregular.⁷³

The Fourth Lateran Council took the ecclesiastical position even further, declaring that not only were clerks forbidden from shedding blood, but they were also forbidden from participating in judgements involving bloodshed, including the judicial duel.⁷⁴ In 1234, Raymond of Peñafort produced the *Decretals* of Gregory IX, which gave these rules further exposure.⁷⁵ By this point the official position of the Church was unequivocal.

Finbarr McAuley has recently pointed out that these provisions belonged to a tradition with its roots in the Gregorian reforms of the eleventh century. It was part of a broader attempt to establish clear boundaries between the clergy and the secular world by encouraging clerical chastity, regulating dress and forbidding clerks from such activities as

⁷² Ralph of Diceto, *Images historiarum* in *Opera historica*, ed. William Stubbs, Rolls Series 68 (London: HMSO, 1876), vol. 1, p. 410. See also Matthew Paris, *Historia Anglorum*, ed. Frederic Madden, Rolls Series 44, vol. 1 (London: Longmans 1866), p. 395.

⁷³ See the fifteenth-century cases of William Taylor of Lapworth and of the anonymous clerk and the woman, pp. 139 & 144-5, *supra*.

⁷⁴ *Constitutiones concilii quarti Lateranensis una cum commentariis glossatorum*, ed. Anotonio Garcia y Garcia, Monumenta Iuris Canonici, Corpus Glossatorum 2 (Vatican City: Bibliotheca Apostolica Vaticana, 1981) p. 147, c. 18. See p. 296, *infra*.

⁷⁵ *Corpus iuris canonici*, ed. Emil Friedberg & Emil Ludwig Richter, part 2: *Decretalium Collectiones*, 2nd ed. (Leipzig: Bernardt Tauchnitz, 1881), lib. 1, tit. 20, c. 1, col. 144; lib. 3, tit. 50, c. 9, cols. 659-60; lib. 5, tit. 14, cc. 1-2, col. 805; lib. 5, tit. 25, cc. 1-2 cols. 825-6.

practicing a trade, engaging in drunkenness or gambling.⁷⁶ It should also be noted that sexual agency, practicing a trade, public drunkenness and gambling were activities that were often gendered masculine.⁷⁷ The effect of the reforms was not only to remove clergy from the secular activities that often led to criminal disputes, but also to remove them from the competition for masculine reputation. One did not measure one's manhood against a cleric, for there was little glory to be had in testing one's prowess against a man who had renounced many of the privileges of masculinity.

The one area where the exemption of the clergy from trial by battle was not recognized was in the Scottish marches. In Yorkshire, cross-border disputes were settled not according to English procedure, but by local custom. It required clerks to defend themselves personally in judicial duels over criminal matters, and it could result in their beheading if they lost. In 1216, Innocent III wrote a sharply-worded bull denouncing the practice of forcing clerks and even prelates to undergo judicial duels in this region.⁷⁸ His words apparently did not move local justices, for as late as 1237 certain clerics complained about the custom to a papal legate and alleged that in their own lifetime the Prior of Lide had become a victim of it.⁷⁹ When magnates from both sides of the border drafted the *Leges Marchiarum* in 1249, the practice still featured prominently. Only the kings of England and Scotland and the bishops

⁷⁶ McAuley p. 503.

⁷⁷ See for instance A. Lynn Martin, "The Role of Drinking in the Male Construction of Unruly Women," in *Medieval Sexuality: A Casebook*, ed. April Harper & Caroline Proctor (New York: Routledge, 2008), p. 103.

⁷⁸ Du Cange, 206C

⁷⁹ *Gregory's Chronicle*, 186-7. See also *Proceedings and Ordinances of the Privy Council of England*, ed. Harris Nicolas, vol. 6 (London: Great Britain Record Commission, 1837), pp. 57-8. There is an interesting parallel in the late case of the prior of Kilmainham, in Ireland. In 1446, the prior travelled to London to pledge a battle against the earl of Ormond in the English court of chivalry. Although King Henry VI pardoned the earl before the duel, the prior made a point of showing up in armour at the field on the appointed day. Some of his bellicosity may be attributed to the fact that the priory of Kilmainham belonged to the military order of the Knights of Saint John.

of Durham and St. Andrews were exempt from it.⁸⁰ Not coincidentally, these were the four men who had no obvious peers in the region. Their positions relative to one another were already well established, so any battle they undertook would have overturned the entire social order of the Marches, rather than settling matters of what Frank Henderson Stewart calls horizontal honour.

South of the Marches, claiming to belong to the clergy was an established tactic for avoiding battle in the thirteenth century. In 1220, two men in Lincolnshire attempted to avert a duel over the murder of their lord in just such a way. The judge was sceptical of their claim, however, for the record noted “And let it be known that they were found in lay habit and without tonsure and delivered thus to jail, and no one essoined them as clerks before the gages were given nor did anyone claim them as clerks, but after the gage was given they said they were clerks.”⁸¹ In this case, the tactic appears to have failed. In a much later trial in 1368, a bishop’s ordinary showed up to take custody of a defendant who claimed to be a cleric only after he had lost a duel. The ordinary’s timely intervention saved the clerk from the gallows.⁸²

By the late Middle Ages, the prohibitions on clerical arms-bearing and blood-shedding were widely accepted. Nevertheless, Daniel Thiery has shown that exceptions to the rule were not uncommon in England. The necessities of civil defence, travel on dangerous roads, serving on military expeditions and occasional neighbourhood altercations meant that in practice some late medieval English clerics did carry weapons and a few even used them.⁸³

⁸⁰ George Neilson, *Trial by Combat* (1890; reprint, Union, NJ: The Lawbook Exchange, 2000), pp. 122-7.

⁸¹ “*Et sciendum quod inventi fuerunt in laico habitu et sine tonsura et ita liberati gaole, et nullus essoniavit ante vadia data quod fuerunt clerici, nec aliquis eos petit ut clericos, set post vadium datum dixerunt quod fuerunt clerici.*” *Select Pleas of the Crown*, pp. 132-3.

⁸² *Calendar of the Patent Rolls, Edward III*, vol. 14 (London: HMSO, 1913), p. 167.

⁸³ Daniel Thiery, “Ploughshares and Swords: Clerical Involvement in Acts of Violence and Peacemaking in Late Medieval England, c. 1400-1536,” *Albion* 36:2 (Summer, 2004), pp. 201-222; *Idem*, *Polluting the Sacred*:

However, even some of the more militant English clerks were careful not to be seen having any involvement in judicial duels if they could help it. When the parson of Langar in Nottinghamshire had his luggage (*male*) stolen in 1360 while he was participating in a military campaign in France, it was his servant, not the parson himself, who brought an accusation in the Court of Chivalry against the alleged thief. When the court adjudged that there should be a battle between the valet and the thief, the indirect taint of bloodshed was enough to make the parson compel his servant to withdraw the charge.⁸⁴

Meanwhile, in France the exemption of clerks from trial by battle took longer to gain acceptance. Pope Innocent III wrote to the bishop of Besançon in 1202 that he had heard complaints about certain judges in the bishop's archdiocese who compelled Cistercian monks to undergo ordeals of hot iron, cold water and battle.⁸⁵ This is the last unambiguous reference to French churchmen fighting judicial duels.

By the middle of the thirteenth century, the issue was nevertheless still causing conflict in parts of the kingdom. While canon law was now unequivocal in forbidding churchmen to participate in judicial duels, they were finding it difficult to withdraw from the procedure unilaterally. In one case, the rights that Louis VI had granted to the serfs of Notre Dame de Paris in order to fight on their lords' behalf came back to trouble the canons in 1245. Some of the church's tenants tried to use these same rights to prove that they were not serfs. The churchmen could neither fight duels nor hire champions to prove their case without running

Violence, Faith and the 'Civilizing' of Parishioners in Late Medieval England (Leiden: Brill, 2009), pp. 153-172.

⁸⁴ *Select Cases Before the King's Council, 1243-1482*, ed. I.S. Leadam & J.F. Baldwin, Selden Society 35 (Cambridge, MA: Harvard University Press, 1918), p. 47.

⁸⁵ "*Sunt enim nonnulli de parochianis vestris, quemadmodum nostris est auribus intimatum, qui ... eos [monachos] ad saecularia pertrahere iudicia non formidant et examen aquae frigidae ignisque candentis vetitumque duellum subire compellunt...*" *Patrologia Latina*, vol. CCXIV (1890), p. 1106.

the risk of being stripped of their holy orders, but they required nothing less than papal intervention to allow them to prove their case by witnesses and documents.⁸⁶

Seeking to address this problem, Innocent IV wrote a letter to the archbishops and bishops of France in 1252. “We wish to oppose this bad custom with what remedy we can,” he decreed. “To counter this, if any sort of judgement or execution of any sort should arise from any of you having refused to defend his cause by duel in any sort of cases, or having succumbed in this type of reproved proof on account of this, let the judgement and whatever follows from it or precedes it be rendered null and void.”⁸⁷ It is not clear, however, that any clerics had actually taken the step of fighting judicial duels in person before the decretal was issued. Nevertheless it is likely that the prelates’ concerns contributed to Louis IX’s decision to ban judicial duels from the royal domain six years later, for his ordinance mentions cases of contested serfdom specifically.⁸⁸ The privileges of those who prayed had become established.

After this point, examples of duelling clerics disappear, although one still finds occasional cases of ecclesiastics, in their capacity as secular judges, ordering judicial duels to occur. A trial by battle in 1260 between Templars from Feucherolles and Monemer just west of Paris, mentioned briefly in the *Olim* and cited by Chabas as an example of clerical duelling, seems on closer inspection to have been a criminal dispute between tenants (*hospites*) of these two institutions, and thus probably did not involve any clerics, except in

⁸⁶ *Cartulaire de l’église de Notre Dame de Paris*, ed. M. Guerard, vol. 2 (Paris: Crapelet, 1850), pp. 393-4.

⁸⁷ “...nos huic pravae consuetudini remedio, quo possumus obviare volentes...si aliquibus vestrum in quibuslibet casibus defendere per duellum recusantibus causam suam aut in huiusmodi reprobo probationis genere succumbentibus propter hoc contra tales sententia seu executio quaecumque processerit, eadem et quicquid ex ea secutum fuerit vel ob ipsam, nullius penitus sit momenti.” Browe, vol. 1, no. 41, p. 27.

⁸⁸ *The Établissements de Saint Louis: Thirteenth-Century Law Texts from Tours, Orléans and Paris*, ed. F.R.P. Akehurst (Philadelphia: University of Pennsylvania Press, 1996), p. 13, c. 6.

the role of judge.⁸⁹ By 1280, Beaumanoir could state confidently that in the Beauvaisis, judges should not allow a suit involving a cleric because clerics were not required to respond in secular courts, and even if one tried to appeal someone for a crime, his ordinary, or ecclesiastical judge, could remove him from a secular court at any stage of the trial.⁹⁰ A late medieval redaction of the customs of Anjou and Maine, dating from circa 1437, states that a cleric may escape being deposed for fighting a duel if he receives dispensation from his bishop.⁹¹ However, judicial duels were so rare by this point that it is safe to assume that the paragraph is merely an academic insertion by a jurist who had seen the canons of the Council of Lillebonne.

There is, then, a significant change in the role of the clergy in these contests between 1100 and 1250. As universities rose and the study of Roman and canon law flowered in Western Europe, clerics ceased to engage in trial by battle, even among themselves, and succeeded in establishing their estate as a separate group with its own policies towards judicial duels and indeed its own parallel legal system.

Jews and Aliens

Clergy and lay Christians were not the only categories to which medieval English and French people could belong. Jews were also sometimes exempted from trial by battle, and other groups, like Anglo-Saxons in early Norman England and Lombards in late medieval France, were also treated as special classes of outsiders when they interacted with the dominant legal system.

⁸⁹ *Olim*, vol. 1, part 1, p. 468. Chabas, p. 155, n. 128.

⁹⁰ Beaumanoir, §1800, §1801, p. 414.

⁹¹ *Coutumes et institutions de l'Anjou et du Maine*, part 1, vol. 2, tit.2, c. 20, p. 39.

The references to Jewish participation in trials by battle are few and far between, but they do exhibit a pattern. The few case records of actual combats indicate that Jews only fought other Jews or recent converts. However, some Christians maintained that they had a right to challenge a Jew to battle, until this action was explicitly forbidden.

It is easiest to discuss Jewish trials by battle from England first, for the medieval history of the Jews there is somewhat truncated. Jewish immigrants arrived in England after the Norman Conquest and they were expelled by Edward I in 1290.⁹² At the community's height, it is believed to have consisted of only three to five thousand individuals. They were considered serfs of the royal treasury and their economic activities were closely monitored and exploited. In 1194, Henry III issued a series of royal ordinances requiring that all contracts involving Jews, including debts, mortgages and rents, be registered at central depositories known as *archae chyrographorum*, to be established in major towns.⁹³ These registries, created to keep the king apprised of potential revenues from Jewish sources, most likely also served to protect the Jewish community from trials by battle, for they ensured that all property cases involving Jews could be judged on the basis of documentary evidence.

As a result of these factors, there were, to my knowledge, only two recorded cases of trial by battle involving Jews in medieval England. The Pipe Rolls record briefly that in 1205 Isaac Blund, a Jew from York, paid the considerable sum of two hundred marks and two marks of gold so that a trial by battle pledged against him in Nottingham might continue

⁹² It is possible that a very small number of Jews settled in England before the Conquest, but the evidence for their presence is open to debate. See Robin R. Mundill, *The King's Jews: Money, Massacre and Exodus in Medieval England* (New York: Continuum, 2010), pp. 1-4.

⁹³ Reva Berman Brown & Sean McCartney, "The Exchequer of the Jews Revisited: The Operation and Effect of the *Scaccarium Judeorum*," *The Medieval History Journal* 8:2 (October, 2005), p. 308.

to proceed. Unfortunately, further details of the case do not seem to have survived.⁹⁴ As in other situations, the Crown tended to use the Jewish community as a cash cow at every opportunity.⁹⁵

In Oxford in 1285, one John de Prene accused a Jew named Isaac, son of Isaac de Pulet, of murdering his brother. He offered to prove the accusation by battle if necessary. Isaac refused to respond to this accusation, saying only that he was not guilty and that he did not want to place himself on the country, that is, be judged by a jury of local people. He asked that the case be removed to London, where he could be judged by a jury of both Christians and Jews.⁹⁶ The court remanded him to prison while the justices considered what to do about the case. Isaac does seem to have been transferred to London, but five years later, when the Jews were expelled from England, he was still in the Tower awaiting his trial.⁹⁷ After that, he disappears from the record.

Jewish trials by battle in France have a longer and more complex history. From an early date Jews were not, as a rule, required to participate in judicial ordeals. A capitulary of Louis the Pious from 825 established that they were not to be subjected to the tests of fire, scalding water or flagellation.⁹⁸ Indeed, it made little sense for a court to seek divine judgement on someone whose religious behaviour, from a Christian perspective, did not meet with divine approval in the first place. However, the capitulary made no mention of trial by battle.

⁹⁴ *Great Roll of the Pipe for the Seventh Year of King John*, ed. Sidney Smith, Pipe Roll Society, New Series, vol. 19 (London: J.W. Ruddock & Sons, Ltd, 1941), p. 211. This case does not seem to be recorded in the Curia Regis Rolls.

⁹⁵ See also the entry in the Norman exchequer rolls for the Jew Dexlebenie L'Aigle (de Aquila) who made a payment of 400 to the exchequer of Normandy in 1198 in order to settle a wager of battle (*de fine suo pro duello*): *Magni Rotuli Scaccarii Normanniae*, ed. Thomas Stapleton, vol. 2 (London: J.P. Nichols & Son, 1844), pp. 315. The financial records do not mention Dexlebenie's adversary or the reason for the suit.

⁹⁶ *Oxford City Documents: Financial and Judicial, 1268-1665*, ed. J. E. Thorold Rogers (Oxford: Clarendon Press, 1891), pp. 221-3. This case is noted in passing by M.J. Russell in "Trial by Battle and the Appeals of Felony," p. 140.

⁹⁷ *Calendar of Patent Rolls, Edward I, A.D. 1281-1292* (London: HMSO, 1893), p. 402.

⁹⁸ *Capitularia regum Francorum*, ed. A. Boretius, vol. 1. Monumenta Germaniae Historica, Capit. 1. (Hannover: Hahn, 1883), p. 330.

In the high Middle Ages, Jews in France participated in the secular legal courts in much the same way that Christians did, except that they were permitted to swear a specialized oath, *more Judaico*, upon a Torah rather than employing a standard Christian oath and a saint's relic or a copy of the gospels. The legal status of Jews was similar to that of serfs, but kings and barons guarded their custody of Jewish communities jealously, the better to exploit them and their money lending services.⁹⁹ This supervision may explain the relative rarity of judicial duels involving Jews in France.

The earliest record of Jews in a trial by battle survives in a Hebrew manuscript. It is also one of the few documented cases of judicial combat from the tenth century. Around 994, a conflict over religion arose between a recent convert to Christianity and his former co-religionists in Limoges. The convert challenged the Jewish community to appoint a champion who could do battle with him in the court of the local lord so that he could prove the superiority of Christianity over Judaism. The Jewish leaders were reluctant to do this, but the lord of the region compelled them to surrender collateral so that their champion would be present on the appointed day. Unfortunately, the manuscript is incomplete and the outcome of the incident is not known.¹⁰⁰

For the next case record of a Jew from a French-speaking region involved in a judicial duel, it is necessary to skip ahead more than two centuries to a completely different jurisdiction.¹⁰¹ A register of the Norman exchequer lists cases, the complete records of which are now lost, heard at Falaise in the year 1207. Under the title *De Bataille de Juis*, it reports succinctly, "It was decided that Caloth the Jew can indeed prosecute Abraham for

⁹⁹ William Chester Jordan, *The French Monarchy and the Jews: From Philip Augustus to the Last Capetians* (Philadelphia: University of Pennsylvania Press, 1989), pp. 42, 132-4.

¹⁰⁰ Shlomo Eidelberg, "Trial by Ordeal in Medieval Jewish History: Laws, Customs and Attitudes," *Proceedings of the American Academy for Jewish Research*, vol. 46, part 1 (1979-1980), p. 113.

¹⁰¹ See also the entries from 1198 in the Norman exchequer rolls at n. 95, *supra*.

assault on the highway.”¹⁰² Similarly, an anonymous chronicle concerning the kings of France reports briefly that in 1294, two Jews fought a duel before the king and queen on an island of the Seine in Paris.¹⁰³

These cases involve Jews or former Jews prosecuting members of their own community. In general, the Jewish communities of France, which tended to be urban and remained under the jealous authority of their Christian overlords, had neither the desire nor the opportunity to settle legal disputes with batons and shields. After Philip Augustus expelled the Jews from the royal domain and then readmitted them in 1198, he followed the English example in establishing registries for Jewish contracts in every town.¹⁰⁴ The upheaval of this relocation tended to make the remaining Jewish community even more urban and more concentrated on the profession of money lending, making combative dispute settlement even less palatable.

Some Christians, on the other hand, may have been reluctant to eschew trial by battle in their quarrels with Jews. In 1317, Philip the Fair issued an ordinance regarding the few Jews who had been readmitted to the royal domain after a second round of expulsions of 1306. It proclaimed “We order and grant to all our Jews and those who fall out with them that no one, either Christians or others, may place them in a wager of battle for any circumstance except apparent murder.”¹⁰⁵ This privilege was confirmed by Jean I in 1360, and once more in 1372 by Charles V, who dropped the exception for murder.¹⁰⁶ These kings may have been

¹⁰² “Il fu jugié que Caloth li juis puet bien sivre Abraham d’assaut de chemin.” *Établissements et coutumes, assises et arrêts de l’échiquier de Normandie*, ed. M.A.J. Marnier (Paris: Imprimerie de Stahl, 1839), p. 114.

¹⁰³ *Recueil des historiens des Gaules et de la France*, ed. Martin Bouquet, rev. L. Delisle et al., vol. 21 (Paris: Imprimerie Impériale, 1855), p. 133k.

¹⁰⁴ Jordan, *French Monarchy and the Jews*, p. 42.

¹⁰⁵ “Nous ordonnons et octroyons à tous nos Juifs, et à ceux qui istront d’iceux que nuls, soient Chrestiens, ou autres les puissent, ou aucuns d’eux mettre en gage de bataille pour nul cas, ce n’est pour meurtre apparent.” *Ordonnances des rois de France de la troisième race*, ed. Eusèbe Laurière, vol. 1 (Paris: Imprimerie Royale, 1723), p. 646.

¹⁰⁶ Levi, p. 234.

responding to specific cases, or at least the threat of litigation, but no court records of this sort survive.

A similar battle actually occurred in the County of Hainault in 1326, although the accused was a convert to Christianity. A smith named Jean the Fleming from the village of Estinnes accused Guillaume, a recently converted Jew, of having desecrated an image of the Virgin on the wall of the guest house in the monastery of Cambron. Jean had reputedly been informed of the crime by an angel. In the absence of adequate evidence, the two men fought a judicial duel before the count's court in Mons. Guillaume was defeated and burned at the stake.¹⁰⁷ The story travelled widely and was later known to Olivier de La Marche and Cornelius Zantvliet.¹⁰⁸ In the late sixteenth and seventeenth centuries, other writers added many details, making Jean an elderly paralytic and Guillaume a robust man who had refused to crack under torture.¹⁰⁹ Gérard Waelput has shown that Guillaume the Jew, known as Guillaume the Christian in a tax roll of 1320, was a real citizen of Mons, who seems to have moved to the town shortly after the expulsion of the Jews from the French royal domain in 1307. Waelput notes that there was also a distinct breakdown in Jewish-Christian relations in

¹⁰⁷ The chief details of the event are preserved in a letter written by the abbot of the monastery in 1327 and reproduced in A. Le Waitte, *Historiae Camberonensis pars prior sive diva Camberonensis a Iudaeo perfido quinquies icta et cruentata, duobus distincta libris* (Paris: Cramosia, 1672, pp. 66-8. Many of Le Waitte's other sources are, however, much later versions of the story. The tale is also found in the work of another fourteenth-century chronicler. *Willelmi capellani in Brederode postea monachi et procuratoris Egmondensis Chronicon*, ed. C. Pijnacker Hordijk (Amsterdam: Johannes Müller, 1904), pp. 167-8. *Chronicon Cornelii Zantvliet*, in *Veterum scriptorum monumentorum historicorum, dogmaticorum, moralium amplissima collectio*, ed. Edmond Martène & Ursin Durand, vol. 5 (Paris: Montalant, 1724), pp. 181-2.

¹⁰⁸ *Chronicon Cornelii Zantvliet*, in *Veterum scriptorum monumentorum historicorum, dogmaticorum, moralium amplissima collectio*, ed. Edmond Martène & Ursin Durand, vol. 5 (Paris: Montalant, 1724), pp. 181-2. Olivier de La Marche cites a slightly garbled version of the story in *Le livre de l'avis de gaigne de bataille*, in *Traité du duel judiciaire, relations de pas d'armes et tournois*, ed. Bernard Prost (Paris: Léon Willem, 1872), pp. 51-3. Lea, citing nineteenth-century historians, assumes that their stories described more than one case. Henry Charles Lea, *Superstition and Force*, 1886, reprinted as *The Duel and the Oath*, ed. Edward Peters (Philadelphia: University of Pennsylvania Press, 1974), pp. 209-10.

¹⁰⁹ Gérard Waelput, "Les juifs à Mons au Moyen Âge (2e partie)," *Le Moyen Âge* 107:3 (2001), pp. 505-6.

Mons around 1326. Jews lost their status as burghers of the town and new Jewish arrivals were no longer granted citizenship.¹¹⁰

The story also bears a strong resemblance to the stories of host desecration studied by Miri Ruben. Beginning in Paris in 1290 and spreading eastward through the German empire and points eastward over the course of the fourteenth and fifteenth centuries, many communities accused Jews of having obtained and desecrated Eucharistic hosts. Typically the desecrations were said to have been performed in rooms hidden from public view, but were brought to light by miraculous occurrences. They inspired cults of worship and, in some communities, massacres of Jews.¹¹¹ The story from Mons appears to be part of this larger pattern.

The exemption of Jews from trial by battle is therefore slightly less clear-cut than it appears at first. From the point of view of French royal courts, Jewish faith alone did not preclude participation in the procedure until the ordinance of 1317. Indeed, none of the customals mention it as a reason to resort to a less violent form of legal proof. In practice, however, the distinct social position of medieval French and English Jews meant that they were rarely regarded as the peers of the opponents they faced in litigation, although exceptions could be made for a recent convert. Their status as outsiders, rather than explicit legal custom, is most likely the reason why they were not involved in more judicial duels.

Another example of an out-group granted exemption from trial by battle is the ‘Lombards’ of Paris. A community of these merchants from Italy settled in the city and took on a share of the money changing and pawnbrokering business in the second quarter of the thirteenth century. These activities, combined with their additional role as papal tax

¹¹⁰ *Ibid.*, pp. 507-8, 510-11.

¹¹¹ Miri Rubin, *Gentile Tales: The Narrative Assault on Late Medieval Jews* (New Haven, CT: Yale University Press, 1999), p. 45.

collectors, exposed them to contempt from the general population. After the violent upheavals sparked by the Black Death, they were taken under the wardship of the king in much the same manner as the Jewish population. In an ordinance of 1382 regulating their profession, Charles VI ordered that they were not to be tried in any courts except royal ones and that they were not to be obligated to accept offers of judicial combat unless they wished it.¹¹²

Jews and Lombards were not the only groups possessed of special privileges with regard to trial by battle. In the early years after the Norman conquest of England, the Anglo-Saxon population also had distinct rights when it came to the judicial duel. An act issued by William the Conqueror to his new subjects decreed that if a Frenchman accused an Englishman of theft or homicide, the Englishman would be permitted to choose whether he would prefer to settle the case by combat or by the ordeal of hot iron, which had a longer tradition of use in England. Conversely, if an Englishman accused a Frenchman of the same crimes, it would be the choice of the accuser whether the case would proceed by means of battle or if the Frenchman would be required to clear himself by the oaths of compurgators.¹¹³ This custom seems to have died out after William I's death, for it is not mentioned again. As the Normans and Anglo-Saxons began to intermarry, it would have become harder and harder to distinguish an Anglo-Saxon from an Anglo-Norman.

The position of the Anglo-Saxons seems to be the reverse of that of the Jews and Lombards. The latter were groups who originated outside England and France and remained quite distinct from the general population even after they had been settled in these kingdoms

¹¹² *Recueil général des anciennes lois françaises*, ed. Isambert, Jourdain & Décrusy, vol. 6 (Paris: Belin-Leprieur, 1824), p. 565, c. 17.

¹¹³ *Regesta Regum Anglo-Normannorum: The Acts of William I (1066-1087)*, ed. David Bates (Oxford: Clarendon Press, 1998), pp. 445-8.

for several generations. The Anglo-Saxons, on the other hand, were the native majority when the Norman conquerors brought trial by battle with them from the Continent and some of the Anglo-Saxon elite were still in a position to consider the Normans their peers. Consequently, Jewish communities struggled over a period of centuries to have their exemption from combat recognized, while the Anglo-Saxon population received an exemption in the early years of their contact with the procedure, but subsequently lost it as they assimilated their Norman overlords. The early exception may well have been a way for the Conqueror to ease tensions caused by the new and not universally popular custom.

Out-groups and foreigners in general appear to have been considered unsuitable opponents in trials by battle. Several town charters discouraged such judicial duels. The twelfth-century charter of Amiens decreed that combatants could not be foreigners, while the fourteenth-century customs of Marmande permitted foreigners to participate in judicial duels but gave them the right to decline such contests.¹¹⁴ Beaumanoir thought that in cases of larceny, outsiders of unknown reputation could only hold judicial duels against other outsiders.¹¹⁵ In the English town of Fordwich, custom dictated that a foreigner who appealed a citizen was compelled to fight while immersed to his navel in the river Stour while the defendant was permitted to sit in a rowboat and use as his weapon an oar three ells long.¹¹⁶ The cases of Amiens and Fordwich appear to be designed to protect burghers from intimidation by outsiders of unknown strength and abilities, while the custom of Marmande appears to be primarily concerned with appeasing the foreigners themselves, possibly so that

¹¹⁴ Maurice Crampon, *La commune d'Amiens: Dossier documentaire* (Amiens: Centre Regional de Documentation Pédagogique, 1971), p. 9, art. 17; *Les coutumes de l'Agenais*, ed. Paul Ourliac & Monique Gilles, vol. 1 (Montpellier: Presses de Savoie, 1976), p. 229, art. 240.

¹¹⁵ Beaumanoir, vol. 2, §1815, p. 418.

¹¹⁶ *Borough Customs*, ed. Mary Bateson, vol. 1, Selden Society 18 (London: Bernard Quaritch, 1904), pp. 32-3.

the threat of litigation did not intimidate merchants from distant regions into taking their trade elsewhere.

A trial by battle was a tool for re-establishing order within a community. If the parties already came from dissimilar backgrounds or distant regions, they did not occupy positions in the same estate or social stratum to begin with. It was simply not possible for one of them to displace the other in local affairs and a judicial duel had only the potential to create more strife within communities than it settled between individuals.

Kin

If some people were too foreign to be appropriate opponents in judicial duels, others could not be challenged to combat because they were entirely too familiar. Close kin were sometimes forbidden from fighting one another because of their familial bond. From at least 1270 onward, the customary law of Anjou forbade duels between brothers in matters of property. Indeed, cases of this kind had to be fought by champions even when close kin were not involved. However, custom did allow the siblings to pledge battles against one another over serious criminal matters like murder and treason.¹¹⁷ In Anjou, the sons of commoners traditionally received equal shares of their father's land and chattels, while the nobility did not divide their family patrimony, but might leave purchases and new conquests to their younger sons.¹¹⁸ The man who fought his own brother in person and killed him would have the potential to become the *de facto* heir, whether he had been entitled to the property or not. The law was most likely instituted in order to prevent this abuse, as well as the grave sin of fratricide.

¹¹⁷ *Coutumes et institutions de l'Anjou et du Maine*, pt. 1, vol. 1, pp. 175, 355.

¹¹⁸ *Ibid.*, pp. 64, 70.

Conversely, English litigants in property disputes could claim that it was necessary to hold a duel over a writ of right precisely because they were close kinsmen, although they too had to use champions in such cases. From the second half of the twelfth century onwards, property disputes in England were customarily referred to a grand assize. This jury of local people viewed the land, interviewed the neighbours and informed the court which of the parties held possession of the property by right. However, as in Anjou, if the land was not a knight's inheritance or a military tenancy, then upon the death of its possessor, it was customary to divide it equally between all the male heirs in the family.¹¹⁹ An assize of local people could sometimes vouch for the identity of the land's original possessor but still not know which of his sons had inherited any particular parcel of it. If one of the parties claimed the land through an ancestor two generations past, the gaps in local memory could become more vexing still. As a result, litigants in writ of right cases from the first quarter of the thirteenth century sometimes requested a judgement by battle precisely because they came "from one stock" (*de uno stipite*).¹²⁰ However, in cases where the birth order of the heirs was well known and the land was known to descend by primogeniture, both the duel and the assize could safely be rejected. This scenario appears in a case from 1231.¹²¹

Before the mid-point of the thirteenth century, there seems to have been a shift in thinking in England on the question of trials by battle between brothers, for a treatise from this period stated that all writ of right cases involving not only brothers, but also all kinsmen within the third degree, were not to be granted either the battle or the grand assize but had to

¹¹⁹ *Glanvill*, VII, 3, p. 75.

¹²⁰ See, e.g. *Pleas Before the King or His Justices, 1198-1212*, ed. Doris Stenton, vol.2, Selden Society 68 (London: Bernard Quaritch, 1952) pp. 102-3; *Curia Regis Rolls* vol. 5, p. 265; *Rolls of the Justices in Eyre, Being the Rolls of Pleas and Assizes for Lincolnshire 1218-9 and Worcestershire 1221*, ed. Doris Stenton, Selden Society 53 (London: Bernard Quaritch, 1934), p. 312; *Bracton's Note Book*, ed. F.W. Maitland, vol. 3 (London: C.J. Clay & Sons, 1887), p. 29. See also M.J. Russell, "Trial by Battle and the Writ of Right," *Journal of Legal History* 1:2 (1980), pp. 120-1.

¹²¹ *Curia Regis Rolls*, vol. 14, p. 300.

be settled by producing a charter or a guarantor.¹²² The policy of forbidding judicial duels to kinsmen is repeated in legislation and in the fourteenth-century treatise known as the *Mirror of Justices*.¹²³ The shift does not appear to be a result of continental influence, for the kings of England had already lost their control of Anjou by this point.

While all the males in one family could be laypeople and they could all belong to the same social class, their family tree created an internal hierarchy among them. There were older generations and younger ones, elder sons and younger sons. The indiscriminate use of trial by battle had the potential to disrupt this structure, making non-heirs into heirs simply by virtue of their champion's prowess. In addition, it invited comparisons to the story of Cain and Abel, defying biblical precedent by awarding the disputed lands to the man who felled his own brother. Jurists sought to avoid this outcome by avoiding trial by battle in disputes between close kin, where third-party knowledge about the inheritance was still likely to exist in living memory.

Children and the Elderly

An heir sometimes found that his kinsman's death had burdened him with more than just a property dispute. The murder of a relative might leave a young person with the responsibility of pursuing a criminal appeal against his ancestor's slayer and expose him to the peril of fighting a judicial duel. Alternately, an older man might find himself enmeshed in a criminal suit at an age when his best fighting years were long behind him. The customals sought to prevent massively unequal contests by granting exemptions from combat

¹²² *Brevia Placitata*, ed. G.J. Turner & Theodore Plucknett, Selden Society 65 (London: Bernard Quaritch, 1951), p.3.

¹²³ *Statutes of the Realm*, vol. 1 (London: Great Britain Record Commission, 1810), p. 218. *Mirror of Justices*, p. 111.

to the young and the elderly. Their definitions of a man's fighting age show remarkable consistency across time and geography.

Minors were not to fight judicial duels until they were twenty or twenty-one years of age. The *Livres de jostice et de plet* say that a young man in the region of Orléans in the 1250s was old enough to plead in court at age fifteen, but he was not required to fight a duel in person until he was twenty.¹²⁴ Beaumanoir states that the same rules applied in the Beauvaisis, "for it would be a bad thing to allow children into a pledge of battle before they attain the age at which they should know the danger which there is in gages."¹²⁵ Around 1330, this was also the customary age in Brittany.¹²⁶ In Normandy, minors reached full age a year later at twenty-one, and this was also the age at which they could be appealed and challenged to a judicial duel.¹²⁷ Two redactions of the customs of Anjou state that this was also the customary age for young noblemen to be allowed to duel in Angevin territory in both the thirteenth and fifteenth centuries.¹²⁸ These customals seem to have been reflecting actual French customary practice rather than borrowing material from Roman law, for the Roman age of majority was twenty-five.

In England, there were more complicated rules about the age at which one could fight a judicial duel. *Glanvill* says only that one must be of full age (*maior*).¹²⁹ Bracton does not mention youth as an impediment to battle in a criminal appeal, but he does say that one must be fourteen years of age to claim a free socage by writ of right and twenty-one to claim a military fee. However, the defendant in such a case must be twenty-one regardless of the

¹²⁴ *Livres de jostice et de plet*, p. 131.

¹²⁵ "...car male chose seroit de souffrir enfans en gage devant qu'il aient aage par quoi il doivent connoistre le peril qui est en gages." Beaumanoir, §1810, pp. 416-7.

¹²⁶ *La très ancien coutume de Bretagne*, ed. Marcel Planhol (1896; reprint, Paris: Champion-Slatkine, 1984), p. 148, c. 107.

¹²⁷ *Très ancien coutumier*, p.79. *Summa de Legibus Normanniae*, p. 185.

¹²⁸ *Coutumes et institutions de l'Anjou et du Maine*, pt. 1, vol. 1, p. 60, c. 99; pt. 1, vol. 2, p. 481, c. 1301.

¹²⁹ *Glanvill*, lib. XIV.1, p. 173.

kind of land being claimed.¹³⁰ In a writ of right case, the judicial duel would be fought by champions anyway, so the primary concern was to ensure that the minor was old enough to be responsible for the consequences of his legal actions.

A treatise from 1291 or 1292, known as *Britton*, discusses age limits for criminal appeals in England. It states that judicial combatants need only be fourteen years of age.¹³¹

However, a treatise from the same era, known as the *Fleta*, contradicts this, stating that boys are not regarded as robust and fit enough to bear arms in a duel or otherwise until they have reached age twenty-one.¹³² *The Mirror of Justices*, dating from the fourteenth century, states that a man and a child may not fight one another in judicial combat. It also asserts that an ‘infant’ under the age of twenty-one may not be hanged for homicide unless his deed is notorious fact, so this age may be the point of adulthood that the author has in mind.¹³³

Case records also provide few clues to the minimum age for judicial combat. In 1218, a child of seven years of age was considered too young to be implicated as an accessory in a murder case after his father, the principal defendant, lost a judicial duel.¹³⁴ Six years earlier, the king’s court had heard the testimony of Thomas de Baskerville, who witnessed a man break into his house and murder his father some years before. Thomas had not been able to bring an appeal to court and offer to prove his accusation by combat until he came of age.¹³⁵ Unfortunately, the record provides no clues by which to guess how old Thomas was when he finally made his appeal.

¹³⁰ Bracton, vol. 4, p. 312.

¹³¹ *Britton*, ed. Francis Morgan Nicols, vol. 1 (Oxford: Clarendon Press, 1865), c. xxiii.1, 4, pp. 98, 100.

¹³² *Fleta*, ed. & trans. H.G. Richardson & G.O. Sayles, vol. 2, Selden Society 72 (London: Bernard Quaritch, 1955), lib. 1, c. 9, p. 19.

¹³³ *Mirror of Justices*, pp. 111, 139.

¹³⁴ *Rolls of the Justices in Eyre, Being the Rolls of Pleas and Assizes for Yorkshire in 3 Henry III (1218-19)*, ed. Doris Stenton, Selden Society 56 (London: Bernard Quaritch, 1937), p. 299.

¹³⁵ *Select Pleas of the Crown*, pp. 42-3.

Despite the evidence of *Britton*, it would seem safer to assume that English youth were usually exempted from trial by battle until their early twenties in much the same way as their French counterparts. At this age a youth would have had time to reach full physical maturity. Nicholas Orme notes that late medieval English noblemen typically began to bear arms from their mid teens through age twenty.¹³⁶ Johnathan Boulton, who has studied English knighting ceremonies in the eleventh through thirteenth centuries, finds a great deal of variation in the age at which young noblemen were dubbed. While royalty might receive their spurs as early as age fourteen, young noblemen who did not belong to the king's lineage were usually dubbed around age twenty-one. However, individual ages among this latter group ranged from sixteen to thirty-five.¹³⁷ Among commoners, the exact moment at which a young man reached adulthood may not have been a fixed date, but rather a debateable point which was determined by community consensus. This would account for some of the variation on the subject in the legal treatises.

Medieval Englishmen did not always keep track of their ages and the ages of their friends and neighbours with the same exactitude as people do today. Occasionally a litigant's age caused some dispute in court. In 1220, a husband and wife sought to claim some land in Gloucester through a writ of right. They offered as their champion one Reginald, son of Robert, who claimed to remember that his father had told him in the time of King Henry II about the wife's grandfather's seisin of the property. The tenant objected that Reginald was not old enough to remember Henry's reign. However, the record states, "it seems to the justices that he can very well be a witness of the time of King Henry, grandfather of the lord

¹³⁶ Nicholas Orme, *From Childhood to Chivalry: The Education of the English Kings and Aristocracy, 1066-1530* (London: Methuen, 1984), pp. 191.

¹³⁷ D'A. J. D. Boulton, "Classic Knighthood as Nobiliary Dignity: The Knighting of Counts and Kings' Sons in England, 1066-1272," in *Medieval Knighthood V: Papers from the Sixth Strawberry Hill Conference, 1994*, ed. Stephen Church & Ruth Harvey (Woodbridge: The Boydell Press, 1995), pp. 74-5, 85-6.

king, and he is not speaking about the day on which [Henry] was crowned and so forth, so it was decided that the duel should proceed.”¹³⁸ This discussion would make Reginald a man in his thirties, a reasonable age for fighting a judicial duel.

Old age could also entitle one to hire a champion as a proxy. On this matter, the customs of many different regions agree: the age of sixty marked the point at which a man was no longer required to fight in person. The rule may be found in the customs of Normandy, Anjou, the Beauvaisis, and Artois.¹³⁹ Glanvill, Bracton and the *Fleta* concur.¹⁴⁰ Only *Britton* differs, stating that the upper age limit was seventy.¹⁴¹ This last number comes from the same passage of the treatise that claims young men were required to fight at age fourteen. It seems likely that the author was mistaken in this matter or the text is corrupt.

One case record supports the limit of age sixty. In a murder trial in Cornwall from 1201, an older appellor offered his son as a champion “because he himself has passed the age of sixty years.”¹⁴² On the other hand, there is a later case in the Year Books of Edward II that argues for a more flexible interpretation of the upper age limit. In 1317, an appellant known as John of B. accused two men of being responsible for the death of his cousin. However, when the attorney of the principal defendant proffered a glove and offered to wage battle, John’s attorney was quick to object. “You see that he [the defendant] has made this suit as a man who has passed the age of three score years and ten [i.e. seventy], and the law does not permit a man of that age to do battle,” he pointed out. The judge, for reasons that are not recorded, chose to receive the glove anyway and the defendant did not appear to be unduly

¹³⁸ “...videtur iusticiariis quod bene potest esse testis de tempore Regis H. Aui domini Regis, et non dicit de die quo coronatus fuit etc., consideratum est quod duellum procedat etc.” *Bracton’s Note Book*, p. 378.

¹³⁹ *Summa de legibus Normannie*, p. 185, c. lxxiv.1; *Coutumes et institutions de l’Anjou et du Maine*, pt. 1, vol. 1, p. 80, c. 25; Beaumanoir, §1713, p. 377; *Coutumier d’Artois*, p. 95, tit. XL, c. 6.

¹⁴⁰ *Glanvill*, p. 173, c. xiv.1; Bracton, vol. 2, p. 403; *Fleta*, vol. 2, p. 83.

¹⁴¹ *Britton*, c. xiv.4, p. 100.

¹⁴² “...desicut ipse transfuit etatem lx annorum.” *Pleas Before the King or His Justices*, vol. 2, p. 176.

alarmed by the discrepancy in ages. John of B. promptly withdrew from the bar, and the justice judged that the accused party was quit of the suit and not to be prosecuted further.¹⁴³

This case is a fine example of the test of resolve that preceded many trials by battle. The litigants had the opportunity to compare their respective reputations in a public forum and determine whose strength and status were greater. Sometimes, one of them won the contest decisively before the gloves were even exchanged. The principal defendant in this particular trial, who is known only by the initials J. A., must have been a truly intimidating senior. His example demonstrates that becoming an old man, like coming of age, did not always happen on a predetermined date. In a trial by battle, the exemption for old age might have more to do with the relative strength of the parties than with one of them having reached a fixed date of senectitude.

Disability

Not all litigants had the formidable physique of J. A. Legal authorities also sought to extend a measure of protection to injured people and to those who had congenital conditions that prevented them from fighting effectively. Like the elderly, these people also had the opportunity to name a champion who would fight on their behalf in a criminal appeal.

The customals sought, in particular, to protect the man who had lost the function of some part of his body. Someone with this condition was said to be mayhemed, *mehaigniez*, *mahemiatus*, or maimed. The customs of Anjou and Artois, as well as Beaumanoir, *Glanvill*, Bracton, and the *Mirror of Justices* protected both appellants and appellees with defective or

¹⁴³ *Year Books of Edward II*, vol. XXII: 11 Edward II, A.D. 1317-1318, ed. John Collas & William Holdsworth, Selden Society 61 (London: Quaritch, 1942) pp. 263-4. Russell muddles this case somewhat, reporting that the defendant was named Henry le Scrope. This was, in fact, the name of the justice who heard the case. The appellee is known only by the initials J.A. "Appeals of Felony," p. 140.

missing limbs.¹⁴⁴ As time passed, the lists of injuries which were considered debilitating grew more specific. *Glanvill* defined mayhem as a broken bone or an injury to the crown of the head causing a cut or abrasion. The customs of Anjou included in its exemption those who were one-eyed or deaf. Bracton mentions the loss of an eye or an ear, and adds castration, missing incisors and even crooked fingers.¹⁴⁵ The *Mirror of Justices* extends the list to include lepers, mad men and born fools. All of these conditions would serve to make a contest unequal before it had even begun.

Another class of debilitating conditions were those that arose between the day that the duel was pledged and the fight itself. A principal or a champion might fall ill or even die. The court would have to determine whether another man would be allowed to take up the cause. A situation like this occurred in Gloucester in 1221, when a champion in a dispute over land had an epileptic seizure before the day of his battle. When the litigants next had a day in court, the champion's principal sought to change champions. He was allowed to do this because several neighbours had witnessed the seizure and immediately reported it to the castle in Gloucester, where they had found gatekeepers who were willing to act as witnesses and vouch for the champion's incapacity.¹⁴⁶

The author of *Glanvill* admitted that he was uncertain what should be done if a champion died before the day of his battle.¹⁴⁷ Another writ of right case, this one in 1230, settled the question. The court determined that the principal of a dead champion could substitute

¹⁴⁴ *Coutumes et institutions de l'Anjou et du Maine*, pt. 1, vol. 1, p. 175, c. 177; *Coutumier d'Artois*, p. 96, tit. XL, c. 10; Beaumanoir, §1713 p. 377; *Glanvill*, XIV.1, p. 173; Bracton, vol. 2, pp. 409-10; *Mirror of Justices*, p. 111.

¹⁴⁵ *Bracton's Note Book* records the case of a defendant in 1227 who could not come to his duel because he had become blind (p. 213). The Coroners' Rolls also mention a man who successfully pleaded that he was too maimed to fight because he was missing two fingers. Barbara Hanawalt, *Crime and Conflict in English Communities, 1300-1348* (Cambridge, MA: Harvard University Press, 1979), p. 42.

¹⁴⁶ *Rolls of the Justices in Eyre for Gloucestershire, Warwickshire and Staffordshire*, ed. Doris Stenton, Selden Society 59 (London: Bernard Quaritch, 1940), pp. 106-7.

¹⁴⁷ *Glanvill*, II.3, p. 24.

another fighter in his place because the death had been the result of natural causes and not the champion's own foolishness.¹⁴⁸ This case drew some attention, for it was recorded in the collection of precedents known as *Bracton's Note Book*. Presumably, a champion who died because of his own bad judgement could not be replaced.

What of the man who was simply much smaller and weaker than his opponent? The *Fleta* mentions in passing that judges tried to prevent unequal fights. If a man was accused of a secret and heinous crime like poisoning, he was made to defend himself by battle "except for the sake of discretion and equity, because it could come to pass sometime that there is a disparity between a weak man and a strong one."¹⁴⁹ Nevertheless, it rarely happened that the accuser and the accused were perfectly matched.

The hagiographical literature from the century that preceded the *Fleta* reflects a certain degree of public anxiety about the possibility of being forced to fight a larger, stronger opponent. In the miracles of several English saints, innocent men find themselves falsely accused and placed in a position where they must either lose their reputation by making amends to a scoundrel or risk their life and substance in a judicial duel. Far from resting confident in the judgement of God, they plead for saintly intervention. Saint Godric was content merely to foretell the death of an innocent combatant who sought him out and to declare after the man's death that his soul had not been dragged to hell.¹⁵⁰ Saint William miraculously healed a weak man's injuries after his robust neighbour had thoroughly maimed him in a duel.¹⁵¹ Saint Thomas Becket was credited with a timelier miracle.

¹⁴⁸ *Bracton's Note Book*, p. 329.

¹⁴⁹ "...nisi per discrecionem et equitatem hoc fiat quandoque pro inconueienti quod contingere possit inter debilem et potentem." *Fleta*, c. 31, p. 79.

¹⁵⁰ Reginald of Durham, *Libellus de vita et miraculis S. Godrici, heremitae de Finchale*, ed. J. Stevenson, Surtees Society 20 (London: J. B. Nichols, 1847), c. LXXXVI, pp. 189-91.

¹⁵¹ *Ibid.*, p. 557. See p. 153, *supra*.

The stronger man, having caught up the weaker one, lifts him high up above the ground so that he can smash him into the earth; the weaker man, raised thus in the air, lifts up his spirit to heaven and prays quickly: "Help, holy Thomas martyr!" Indeed, the danger was great and sudden, and the time for prayer brief. There are witnesses who were present: the stronger man, as if crushed by the weight of the holy name, suddenly collapsed under the one he held, and was overcome.¹⁵²

While hagiography cannot be treated as strict journalistic reporting of events, these stories demonstrate that medieval writers were not insensitive to the fact that differences in physical strength created distinct advantages or disadvantages for combatants. Even as these writers expressed their trust in the will of God, they demonstrated that many men of modest physique, and indeed society at large, were deeply uneasy with the process.

The law of medieval France and England did not simply allow brute force to prevail in trials by battle. Numerous categories of disputants, like women, the elderly and the disabled, were permitted to fight by proxy through champions. Others, like clergy and Jews, occasionally challenged members of their own estate to duels but were eventually forbidden to participate entirely. When exceptional challenges between people from exempted categories occurred, they followed a simple principle: the opponents in a judicial duel had to be an even match for one another. The intersection of different forms of privilege and oppression could sometimes force a court to make difficult calculations, and just as often cause litigants to back away from their disputes in consternation. Was a disarmed nobleman on foot a fitting match for a commoner? Was a clerk with one hand tied behind his back the equal of a woman? Was a hearty septuagenarian a suitable opponent for a younger man with

¹⁵² *"Debiliorem fortior apprehensum et super se elevatum altius a terra suspendit, ut projectum in terram collidat; minor a terra sic elevatus elevat mentem ad coelum et breviter orans ait: 'Sanct Thoma martyr, adjuva!' Erat enim periculum grande et subitum, et orandi spatium breve. Testes sunt qui affuerant: robustior, acsi sanctii nominis pondere pressus, repente sub eo quem tenebat corruens superatus est." Ibid., p. 556.*

less martial experience? The status of the individual litigants mattered less than the idea that their prowess should be roughly equivalent to that of their opponent.

As time went on the exemptions multiplied, so that the individuals who could use the procedure became a smaller and smaller portion of the population. One group remained bound to judicial combat, however. For the free, secular man of fighting age without physical impairments, a trial by battle remained a high-stakes test of one's place in the world. Even among such men, custom ensured that gauntlets could only be exchanged with those who occupied a very similar place in society. Judicial duels reinforced social order, they did not overturn it.

Trial by battle regulated horizontal disputes between equals at various levels. It could be used to defend one's life and reputation, but not to usurp the rank of one's betters. While physical prowess could certainly give a man an unfair advantage in the procedure, the law ensured that this was virtually the only form of advantage to which he was entitled. It was a contest in which one could lose much, but make only moderate gains.

Chapter Five

Procedure in the Court

At the heart of modern scholarship about trial by battle lies a deceptively straightforward question. Why did medieval judges and litigants choose to settle cases using this practice when other modes of dispute resolution were available? In the last century and a half, multiple strands of interpretation have developed and intertwined, drawing in material from anthropology, psychology, theology, the history of science, and still more fields in order to answer it. Together they have mapped the main problems of a complex and nuanced issue.

For the writers of the nineteenth century, trial by battle, along with the other judicial ordeals, represented a prime example of medieval irrationality. Scholars followed Enlightenment thinkers like Montesquieu in ascribing it to a primitive mindset that modernity must strive to overcome.¹ Charles MacKay devoted an entire chapter of his book *Extraordinary Popular Delusions and the Madness of Crowds* to the ordeals of fire and water, along with their relatives, the judicial duel and the duel of honour.² Later in the nineteenth century, writers saw the abandonment of judicial duels as an important step in the linear development of Western society from barbarity to civilization. Henry Charles Lea

¹ Charles de Secondat, baron de Montesquieu, *De l'esprit des lois*, vol. 3 (1748; reprint, London: 1768), book 28, c. 17, p. 304.

² Charles MacKay, *Extraordinary Popular Delusions and the Madness of Crowds* (1841; reprint, Ware, Hertfordshire: Wordsworth Reference, 1995), pp. 537-77.

celebrated landmarks in the manumission of human reason “from the cruel and arbitrary domination of superstition and force.”³ Federico Patetta sought parallels to trial by battle among the “primitive” peoples of Africa, Australia and the Americas, although he found examples scarce.⁴ For these scholars, the practice could be explained as an intermediate stage between the animal world of violent conflict and the mature judicial systems of their own time and place.

As the last extra-judicial duels of honour faded from memory, academic interest in the subject waned. Two world wars and the subsequent independence of many colonial states challenged Western perceptions of modern Europe as the apogee of human civilization. Nevertheless, there remained a school of thought that viewed the judicial duel as essentially irrational and typical of the “Dark Ages”. Paul Rousset used it as an example of what he saw as a medieval belief in immanent justice, the idea that the universe conspires to reward the just and punish the wicked.⁵ Charles Radding compared the practice to the cargo cults of Melanesia and suggested that medieval society had collectively arrested itself in one of the stages of cognitive development that the psychologist Piaget ascribed to children. He attributed the disappearance of the procedure to the growth of scepticism in the twelfth century, which led people to understand that many natural forces acted consistently without supernatural aid.⁶ As recently as 1991, R.C. Van Caenegem characterized judicial duels, and other ordeals, as involving the “renunciation of the reasoned investigation and of the critical

³ Henry Charles Lea, *Superstition and Force* (Philadelphia: Henry C. Lea, 1866), p. 524.

⁴ Federico Patetta, *Le Ordalie: studio di storia del diritto e scienza del diritto comparato* (Turin: Università di Torino, 1890), pp. 53-5, 59-60, 69-70.

⁵ Paul Rousset, “La Croyance en la justice immanente à l’époque féodale,” *Le Moyen Age* 54 (1948), pp. 225-48.

⁶ Charles M. Radding, “Superstition to Science: Nature, Fortune and the Passing of the Medieval Ordeal,” *American Historical Review* 84:4 (1979), pp. 951-5, 959-65.

examination of evidence and information that the judge could assemble and the rational mind could analyze.”⁷

In the nineteen-seventies and early eighties, a functionalist school of thought challenged this perspective. Two decades before, Hermann Nottarp had already drawn a distinction between the dual roles of ordeals as a form of legal proof (*Beweismittel*) and as a means of reaching a decision (*Entscheidungsmittel*).⁸ Rebecca Colman saw in the ordeal a mixture of both rational and irrational elements, just as one may find in any modern society. She characterized it as a product of close-knit communities where disputes could usually be settled quickly because everyone understood everyone else’s business. When an intransigent case arose, ordeals exerted psychological pressure on guilty parties, causing them to fail, and their procedures acted as purgative rituals that restored equilibrium to the community.⁹ Peter Brown expanded on this view, noting the vagueness of many prescriptions for staging ordeals and for judging their success or failure. The ambiguity allowed participants and observers alike to construct their own verdict by common consensus. “The phenomenon on which the group concentrated is, in fact, still as open ended as a Rorschach test,” he wrote.¹⁰ Paul Hyams built upon Brown’s argument, adding that in England, the impetus for ordeals came from communities themselves seeking to find closure for conflicts and to avoid cycles of violent retribution.¹¹ These articles saw ordeals, including trial by battle, as deriving their legitimacy primarily from their function of maintaining cohesion in small communities. The

⁷ R.C. Van Caenegem, “Methods of Proof in Western Medieval Law,” in *Legal History: A European Perspective* (London: The Hambledon Press, 1991), p. 73.

⁸ Hermann Nottarp, *Gottesurteilstudien* (Munich: Kosel, 1956), pp. 269-70.

⁹ Rebecca Colman, “Reason and Unreason in Early Medieval Law,” *Journal of Interdisciplinary History* 4:4 (1974), pp. 571-91.

¹⁰ Peter Brown, “Society and the Supernatural: A Medieval Change,” *Daedalus* 104 (1975), p. 139.

¹¹ Paul R. Hyams, “Trial by Ordeal: The Key to Proof in Early Common Law,” in *On the Laws and Customs of England: Essays in Honor of Samuel E. Thorne*, ed. Morris S. Arnold *et al.* (Chapel Hill: University of North Carolina Press, 1981), pp. 96-8.

rituals were rational in the sense that they served a useful purpose. They brought difficult disputes to a conclusion that the entire community could see, remember and agree upon.

At the same time, Colin Morris sought to understand the judicial ordeals of the eleventh century in terms of the belief systems of that century. As he reminds us, boundaries between religion, politics and society were not clearly delimited at the time. It was taken as given that God should be consulted in political matters and offered an opportunity to intervene. Even as reformers sought to disentangle the powers of laymen and ecclesiastics, they relied upon ordeals to prove their arguments in courts of law.¹²

Robert Bartlett expanded the discussion of medieval beliefs and challenged the functionalists directly. Addressing Colman's article, he observed that, while psychological factors may indeed have affected the performance of duellists and other participants in ordeals, it is more accurate to say that these pressures would have a greater impact on nervous personalities, and nervousness does not always correlate with guilt. At any rate, it is impossible to judge whether ordeals were effective in uncovering the truth, for they were reserved for cases in which there was insufficient evidence of any other kind. Bartlett also questioned whether community consensus and cohesion were integral to the ordeal, citing cases where the ambiguous outcome of the ritual only caused more conflict, tearing communities apart. He pointed out several occasions when authorities used their power to impose ordeals on unwilling participants and communities, reserving for themselves the right to interpret the results.¹³

¹² Colin Morris, "Judicium Dei: The Social and Political Significance of the Ordeal in the Eleventh Century," *Church Society and Politics XIII-XIV*, ed. Derek Baker (Oxford: Basil Blackwell, 1975), pp. 95-111.

¹³ Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Clarendon Press, 1986), pp. 34-41, 157-60.

For Bartlett, a key force driving ordeals was the belief system of their participants. Before the twelfth century, he argued, European science and theology did not contain any precept that contradicted the principles of the ordeal. If one begins from the premise that there is an omniscient, omnipotent and just God who routinely intervenes in the affairs of men, then it is not irrational to believe that judicial ordeals work, for a deduction does not need to be true in order to be rational. Bartlett conceded, however, that judicial duels were sometimes different from the other ordeals, for the participants in the Scandinavian *hólmanga* and the later duels of honour carried out their battles without expressing any confidence in divine intervention. Therefore, in some circumstances, duels could be simply an *entscheidungsmittel*.¹⁴ This observation raises a question. If duels held in some times and places did not require any faith in God's intervention, how indispensable was the role of belief in judicial duels?

The explanations based on functionality and belief have since generated more articles. Kerr, Forsyth and Plyly noted the very low conviction rate in 275 ordeals of fire and water held between 1194 and 1208. Citing recent research on the body density of modern armed forces personnel, they observed that many women and the vast majority of men with low levels of body fat (as they presume most medieval people possessed) will sink in water. Hot iron, on the other hand, can leave third-degree burns that have a dry white or leathery brown appearance resembling a healing wound. Finding that the ordeal of cold water was reserved almost exclusively for men, while women usually went to the ordeal of hot iron, they concluded that these tests were used as an "instrument of mercy" which gave their probands

¹⁴ *Ibid.*, 114-5, 161-6.

a fighting chance of success.¹⁵ This is another hypothesis that must play down the existence of the judicial duel. A duel carried to its conclusion necessarily has at least one losing party and so can hardly be characterized as merciful.

Stephen White has taken a different approach, considering the role of ordeals in the broader context of the lawsuits from which they sprang. Using western French cases from 1050 to 1100 as his examples, he pointed out that the majority of proposed ordeals, whether by fire, water, or battle, were never consummated. The ordeal, he argued, should be seen not only as a form of proof, but also as a “worrisome procedural possibility, as a threat or instrument of power” that pressured litigants to reach a negotiated settlement or abandon their claim.¹⁶ This strategy was sometimes a successful one for those who proposed it, but sometimes backfired badly on them, leading to losses in court and even deaths. Seen from this perspective, the choice to hold a judicial duel had everything to do with the plans and judgements of individuals and little to do with community cohesion.

A more recent article by H. L. Ho attempts to synthesize the arguments to date. Ho divides historians’ explanations for ordeals into four categories. Medieval people considered the practices an acceptable part of legal procedure because they had socio-political legitimacy (the functionalist argument and White’s paper), epistemic legitimacy (in that they exerted psychological pressure on guilty parties to admit to the truth, as Colman suggested), spiritual legitimacy (as argued by Morris and Bartlett) and ethical legitimacy (evidenced, in Ho’s argument, by consistent rules of procedure, such as the attempts to ensure that duelling

¹⁵ Margaret H. Kerr, Richard D. Forsyth & Michael J. Plyly, “Cold Water and Hot Iron: Trial by Ordeal in England,” *Journal of Interdisciplinary History* 22:4 (1992), pp. 573-95.

¹⁶ Stephen D. White, “Proposing the Ordeal and Avoiding It,” in *Cultures of Power: Lordship, Status and Progress in the Later Middle Ages*, ed. Thomas Bisson (Philadelphia: University of Pennsylvania Press, 1995), p. 91.

weapons were equal and men were handicapped when they fought against women).¹⁷ This division is a helpful way to map the diversity of discussions on the subject.

Another way in which to understand ordeals, and more specifically trial by battle, is to consider how they were affected by the contemporary concepts of honour and reputation discussed in Chapter Three. These concepts form at once a belief system and also a collection of socio-political behaviours. This chapter examines how honour and reputation influenced every stage of a trial by battle, creating options for some litigants, but forcing others to confront physical danger and death.

A trial by battle was, above all, a test of honour and shame. Much that seems irrational or confusing about the process does so because modern readers will tend to assume that medieval trials were conducted much like modern ones and sought to achieve the same ends. This was not entirely the case. Modern jurisprudence benefits from the aid of police forces, forensic investigations, professional prosecutors or litigators, and a paper trail of documents issued by both the litigants themselves and impersonal third parties, all of which help it to reconstruct events that occurred in the past. A modern trial seeks to discover the facts of a case and apply to them written laws and precedents. From these it can reach a decision regarding guilt in criminal cases and liability in civil ones. In present-day Western culture, the crime scene investigator, the detective and occasionally the lawyer feature as heroes, and many stories revolve around the successful puzzling-out of fiendishly difficult cases. Medieval courts did not have the same infrastructure, personnel, or confidence in their ability to uncover the past. While they certainly did not ignore the facts or the concept of innocence and guilt, they accepted that such matters were often beyond the reach of mortal men. Nevertheless, they were sometimes faced with crises that threatened to escalate unless a

¹⁷ H.L. Ho, "The Legitimacy of Medieval Proof," *Journal of Law and Religion* 19:2 (2003-2004), pp. 269-97.

resolution of some kind could be reached. The priorities of medieval justices necessarily lay in resolving the present and the future manifestations of a dispute, rather than discovering its history. Under these circumstances, they sought to evaluate the one thing they could reliably discover: the honour and reputation of the litigants.

The Dispute

A *placitum*, or lawsuit, began when one of the parties suffered some form of harm constituting a legal wrong. As Chapter Three demonstrated, this wrong could be either a serious crime or a dispute over real property if it were to lead eventually to threats of battle. Typically these were also cases with few or no reliable witnesses, although this was not always the case, as we shall see. A crime that occurred in the open gave the victim the opportunity to raise the hue and cry, summoning his neighbours to apprehend the criminal. Felons apprehended in this manner still carrying the stolen goods or a bloody knife were often brought to a hastily convened court and punished in summary fashion, without the benefit of a trial.

If a crime occurred openly in thirteenth-century Beauvais, a judge could proceed with an inquest on the basis of a statement from one of the witnesses, and no formal accuser was required. “For it would be a bad thing, if someone had killed my close kinsman amidst a celebration or before a multitude of good folk,” wrote Beaumanoir, “if I should have to do battle in order to pursue vengeance.”¹⁸

If the criminal escaped from the scene of the crime, apprehending him was not easy. Even in the late Middle Ages, only the largest households and the largest cities maintained

¹⁸ “...car male chose seroit, se l'en puet justicier selonc le mesfet, en pleine feste ou devant grant plenté de bonne gent, s'il convenoit que je me combatisse pour le vengeance pourchacier...” Philippe de Beaumanoir, *Coutumes de Beauvaisis*, ed. Amédée Salmon, vol. 2 (1900; reprint, Paris: A. & J. Picard, 1970), §1710, p. 376.

any organization resembling a police force. It was not until the fourteenth century that Philip IV of France established a force of royal serjeants to patrol his domain and arrest criminals who had been accused or caught in the act. In 1302 there were eighty men on foot who operated within the walls of Paris and another eighty on horseback who could be sent beyond the city. By 1327 their total number had risen to 700, but at this point public complaints about abuses of power compelled the king to reduce the force.¹⁹ In London, each ward of the city organized its own night watch, but these men were responsible only for enforcing curfew and assisting the hue and cry. Modern police forces with responsibility for investigating crime on their own initiative and gathering evidence came into being only after the Revolution in France and the formation of the London Metropolitan Police in 1829.²⁰

Rumour and public talk made some deeds notorious even if they had few witnesses. These cases presented the court with procedural difficulties. For much of the Middle Ages, secular criminal law worked much the same way that civil law does today. With the exception of cases like the example mentioned by Beaumanoir above, judges and rulers could not prosecute suspects on their own initiative. The victim (or his kin in the case of a homicide) had to come forward and make a formal accusation. Methods for effecting public prosecution developed slowly, over the course of centuries. In England, the Assize of Clarendon in 1166 was the first law to codify the use of juries of presentment. These were groups of twelve reputable men whose responsibility was to report any and all rumours of crimes committed in their hundred to the sheriff.²¹ From 1194 onwards, Englishmen who

¹⁹ Richard W. Kaeuper, *War, Justice and Public Order: England and France in the Later Middle Ages* (Oxford: Clarendon, 1988), p. 169.

²⁰ Clive Emsley, *Gendarmes and the State in Nineteenth-Century Europe* (Oxford: Oxford University Press, 1999), p. 43; *Idem*, *The English Police: A Political and Social History*, 2nd ed. (Harlow, England: Longman, 1996), pp. 24-31.

²¹ Assize of Clarendon, c. 1. *Select Charters and Other Illustrations of English Constitutional History*, ed. William Stubbs, 3rd ed. (Oxford: Clarendon Press, 1876), p. 143.

witnessed a sudden death of any kind or found a body were also obligated to summon a coroner. This royal official was responsible for making a record of any wounds on the body before it was buried. He also summoned the jury of presentment and arranged for the arrest of any suspects. Although the role of presenting juries was to name suspicious people rather than decide on a verdict, Roger Groot notes that their word could effectively exonerate a suspect or ensure that he was taken into custody.²² It was an additional reason for individuals to maintain a good reputation among their neighbours. In the fourteenth century, this process of presenting cases came to be known as indictment.

In France, jurists began demonstrating greater confidence in their own forensic abilities over the course of the thirteenth century. As an alternative to the appeal, some regions allowed a man of good reputation to report a crime to a local magistrate without having to make a formal appeal. This action was known as a *denuntiatio*. It permitted a judge to set in motion an *inquisitio generalis*, in which he summoned witnesses to give testimony and attempted to determine whether the crime had actually taken place, whether anyone in particular appeared to be implicated in it and whether the alleged action was in fact illegal.²³ This procedure was given impetus by the inquisitions against heresy which arose in southern France in the wake of the Albigensian crusade.

In the north, various regional customs allowed a judge to imprison a notorious suspect on the basis of general rumour in the hope that someone would come forward with an accusation. Nevertheless, suspicious individuals could only be held for a limited period of time. In Anjou, the arrest had to be cried around castle and parish after seven, fifteen and forty days. If no one stepped forward at this point, the suspect had to be released, although

²² Roger D. Groot, "The Jury of Presentment before 1215," *The American Journal of Legal History* 26:1 (1982), pp. 1-24.

²³ Edward Peters, *Inquisition* (New York: The Free Press, 1988), p. 64.

he might be required to provide pledges that he would return to answer any future accusation.²⁴ Thus the opinions of neighbours could put an individual to considerable trouble and disadvantage even if his case never went to trial. For the suspect, release from prison at this stage would not have been an entirely happy outcome. His reputation was now demonstrably damaged, yet he had little opportunity to clear his name.

In England, one strategy open to a felon from the twelfth century onwards was to confess his crimes and put himself in the hands of the king, becoming an approver (*probator*) in order to save his life.²⁵ An approver's duty was to prosecute any and all of his associates in crime, fighting judicial duels with them if necessary. Each approver had to negotiate individually with a justice to determine the number of trials he would have to undertake. Twelfth-century felons were usually required to convict only one associate, but by the thirteenth century the usual number was five and some approvers had to commit to appealing many more men. In 1294 Nicholas of Thropewell named 70 associates and undertook to convict the "greater part" of them.²⁶

The intent of the practice was to prosecute notorious criminals without forcing victims to battle men whose status was far below their own, for in such a fight there was much risk and little glory to be won. Richard FitzNigel explained that judges agreed to create approvers "on account of the great multitude of scoundrels and in order that, even in this way, the land

²⁴ *Coutumes et institutions de l'Anjou et du Maine antérieures au XVI^e siècle*, ed. C.-J. Beautemps-Beaupré, pt. 1, vol. 1 (Paris: A. Durand & Pedone-Lauriel, 1877), p. 47, c. 24.

²⁵ The first reference to a *probator* comes from 1130, in the earliest Pipe Roll: *Magnum rotulum scaccarii...anno tricesium-primum regni Henrici Primi*, ed. Joseph Hunter (London: Public Record Commission, 1833), p. 1. See Frederick C. Hamil, "The King's Approvers: A Chapter in the History of English Criminal Law," *Speculum* 11:2 (1936), pp. 238-58, and M. J. Russell, "Trial by Battle and the Appeals of Felony," *Journal of Legal History* 1:2 (1980), pp. 149-53.

²⁶ *Calendar of Patent Rolls, Edward I*, vol. 3 (London: HMSO, 1895), p. 61.

may be purged of miscreants.”²⁷ Here again is the principle that only men of similar social status, the same “vertical honour” as Frank Henderson Stewart calls it, should fight one another.

However, both the courts and the approvers themselves soon found ways to exploit the rules. In 1170, the Exchequer paid 24 s., 6 d. to an approver named Evrard, and 56 s., 8 d. to Peter of Saint-Lô, his teacher (*magister*), so that they could make three eyres through all of England.²⁸ While criminal bands could range widely, it is unlikely that Evrard had partners in crime across the entire kingdom. He appears to have been medieval England’s first experiment in crown prosecution.

For the approvers’ part, they understood that it was easier to intimidate and convict people who could not fight very well. Sheriffs also found ways to profit. A statute from 1311 declared that people of good fame accused by approvers should not be imprisoned,

Because many prisoners become approvers in order to extend their lives and on account of various oppressions and pains which sheriffs and gaolers, in whose custody they are, cause to them and force them to appeal the richest people of the country and people of good reputation, whom they cause to be attached and placed in vile and harsh prisons, and take grievous ransom from them, from which imposts and exactions no advantage accrues to the king.²⁹

Variations of this statute had to be repeated in 1327 and 1340, suggesting that the problem of abuses was not easily eradicated. A practice intended to preserve the reputation of respectable victims could be perverted to have exactly the opposite effect. Nevertheless,

²⁷ “...propter numerosam sceleratorum multitudinem, ut uel sic peruersis terra purgetur...” Richard FitzNigel, *Dialogus de Scaccario: The Course of the Exchequer*, ed. & trans. Charles Johnson, F.E.L. Carter & D.E. Greenway (Oxford: Clarendon Press, 1983), pp. 87-8.

²⁸ *The Great Roll of the Pipe for the Sixteenth Year of Henry the Second, A.D. 1169-1170*, Pipe Roll Society (Old Series), vol. 15 (London: Wyman & Sons, 1892), p. 34. See also pp. 233-4, *infra*.

²⁹ “Purceo que multz des prisons devienent appellours pur lour vies esloigner et par diverses grevances et peins que viscontes et gaolers leur fount, en qi garde il sont, et les enforment dappeler les plus riches du pais, et gent de bone fame les queux il fount attacher et metre en vile et dure prisonnes, et puent greve ranscon de eux des quels toltes et prises nul avantage accrest au Roi...” 5 Edward 2, c. 34, *Statutes of the Realm*, vol. 1 (London: Great Britain Record Commission, 1810), p. 165. See also 1 Edward III, stat. 1, c. 7 (1327) and 14 Edward III, stat. 1, c. 10 (1340).

English kings found value in the institution, for they continued to employ it well into the fifteenth century. The Close Rolls preserve numerous letters ordering royal officials to transport approvers to prison or maintain them there.³⁰ The last judicial duel to be fought on English soil was also an approver's battle.³¹

The victim faced more difficult circumstances if no one succeeded in immediately apprehending a criminal. A lawsuit was not his only option, especially before the twelfth century. As Paul Hyams has pointed out, the victim's responses could also include flight, "lumping it" or accepting his loss, private negotiation with his opponent, or violent self-help.³² Tradition dictated the range of socially acceptable responses, in some cases including a violent act of vengeance, but the victim usually had a variety of options, or as Hyams terms it, a *repertoire*. Violent retribution could trigger an equally violent response, although such behaviour was not normally regarded as legal in England.³³ By contrast, in parts of Continental Europe during the high Middle Ages, laws recognized that relations between people of all classes could fall into a condition of "mortal enmity," in which violence was to be expected.³⁴ Among the upper class, aristocrats settled scores not only by killing one another, but also by plundering and burning the lands of their enemies' clients and tenants. Howard Kaminsky regards these feuds as a legal institution, while Stephen White has more recently argued that twelfth- and thirteenth-century Frenchmen regarded the category of

³⁰ See, e.g. *Close Rolls of Henry III* (London: HMSO, 1902-1938), vol. 1, pp. 26, 82, 273, 525; vol. 2, pp. 143, 368; vol. 3, pp. 504, 524; etc.

³¹ Gregory's Chronicle, in *The Historical Collections of a Citizen of London in the Fifteenth Century*, ed. James Gairdner, Camden Society, New Series 17 (London: Nichols and Sons, 1876), p. 201.

³² Paul R. Hyams, *Rancor and Reconciliation in Medieval England* (Ithaca, NY: Cornell University Press, 2003), p. 5.

³³ See Paul R. Hyams, "Was There Really Such a Thing as Feud in the High Middle Ages?" in *Vengeance in the Middle Ages*, ed. Susanna A. Throop & Paul R. Hyams (Farnham, Surrey: Ashgate, 2010), pp. 151-2.

³⁴ Robert Bartlett, "'Mortal Enmities': The Legal Aspect of Hostility in the Middle Ages," in *Feud, Violence and Practice: Essays in Medieval Studies in Honor of Stephen D. White*, ed. Belle S. Tuten & Tracey L. Billado (Farnham, Surrey: Ashgate, 2010), pp. 197-212.

guerres as including a much broader range of wars of revenge, judicial processes and political struggles.³⁵

Although the Romanists insisted that the sovereignty of kings entitled them to forbid private warfare within their realms, customary law regarded the *guerra* as a fact of life. Beaumanoir devotes a chapter to the subject of private aristocratic wars, while the *Établissements de Saint Louis* and *Livres de jostice et de plet* attempt to empower judges by setting out penalties for anyone who attempts to break a private truce which was ratified in court.³⁶ The rules they lay out for the practice of revenge have many similarities to the rules of trial by battle. It began with a formal *diffidatio*, it was forbidden to women, children, clergy and lepers, and its results were often regarded as a judgement of God. In England, the more centralized monarchy made private war technically illegal, yet there are also numerous examples of English nobles rising up against one another and the king with little or no repercussions to themselves.³⁷ Acts of violence, when they were carried out in the proper form, were often seen as a constructive means to establish political and social order rather than a disruptive force of disorder.

In such an environment, the court itself had to maintain face and prestige. Since it did not belong to a state with a monopoly on violence, it was, to some extent, competing against other forces to be the premier form of dispute resolution in its region. Trial by battle allowed courts to cooperate with disputants by incorporating the practice of feud into their

³⁵ Howard Kaminsky, "The Noble Feud in the Later Middle Ages," *Past and Present* 177 (2002), pp. 55-83; Stephen D. White, "Un imaginaire faidal : la representation de la guerre dans quelques chansons de geste," in *La vengeance, 400-1200*, ed. Dominique Barthélemy, François Bougard & Régine Le Jan (Rome: École Française de Rome, 2006), pp. 175-98. See especially pp. 178-80 of the latter work for a historiography of definitions of *guerre* and feud.

³⁶ Beaumanoir, §§1667-1689, pp. 354-65; *Établissements de Saint Louis, Thirteenth-Century Law Texts from Tours, Orléans and Paris*, ed. F.R.P. Akehurst (Philadelphia: University of Pennsylvania Press, 1996), c. 31, p. 25; *Livres de jostice et de plet*, ed. Pierre-Nicolas Rapetti (Paris: Institut de France, 1850), liv. 2, c. VI, p. 83; liv. 4, c. XII, p. 132.

³⁷ Kaminsky, pp. 74-9.

jurisdiction instead of attempting to ban it. Indeed, Beaumanoir states that one of the ways to conclude a *guerra* was to hold a trial by battle.³⁸ Duelling was in many ways a form of private war by other means.

The Accusation

For the victim of crime who chose to pursue his dispute in a court of law, the proceedings began with his appeal. This was not an appeal in the modern legal sense of a hearing to correct a judicial error, but rather a formal accusation. Even in the late Middle Ages, appeals by private individuals continued to occur alongside new public forms of prosecution like the indictment in England and the inquisition on the Continent. The appellant had to make a brief version of his accusation to a coroner or judge and then wait until the appellee could be summoned or arrested in time for the next scheduled meeting of an appropriate court. This would usually be a county court if he was in England, or the court of a local seigneur with high justice if he was in the greater French kingdom. If the dispute lay between noblemen, the accusation might come at a gathering of their overlord's court.

There is little evidence for strict formalism in French accusations before the late Middle Ages. Yvonne Bongert found that they simply involved the appellant stating his complaint, sometimes followed by some variation of the words "so help me God."³⁹ Beaumanoir provides a simple formula, requiring the appellant to name the appellee, state the crime, choose the form that his suit will take (as in, for instance, a trial by battle), and mention any

³⁸ Beaumanoir, §1682, p. 361.

³⁹ Yvonne Bongert, *Recherches sur les cours laïques du X^e au XIII^e siècles* (Paris: A. & J. Picard, 1949), pp. 241-2.

exceptions that applied to his or her case. These exceptions were circumstances like being female, young or elderly, or in some way physically incapable of fighting.⁴⁰

Bracton provides a more detailed template for English appeals from around the year 1230. The accuser had to state the year, date, place and hour of the crime and he also had to describe the weapons used, the injuries inflicted and any goods that were stolen.⁴¹ He was then required to offer to prove the accusation by his body. This meant that he offered trial by battle.

If the appellee was not already in prison, officers of the court were dispatched to summon him. At this point, some accused felons escaped. Daniel Smail has noted that in fourteenth-century Marseille, the flight of suspected felons to the sanctuary of nearby churches was treated as a normal part of the legal process.⁴² In England accused persons who could not be found might subsequently be deemed outlaws, while in France they could only be banished from the domain of the lord who held high justice over the region.

A person accused of a particularly serious offence might be arrested and imprisoned. Few suspects who were placed in prison remained there long, however. Prisoners of any standing were released as soon as they could find sureties who would guarantee their appearance in court. Here again, social standing in the community was an asset, for the man who was esteemed in the eyes of his peers had little trouble finding sureties, while disreputable characters were less fortunate. Standing as a surety for someone else also created bonds of obligation among community members.

⁴⁰ Beaumanoir, vol. 2, §1711, p. 376. See Chapter Four of this dissertation.

⁴¹ Henri de Bracton, *De legibus et consuetudinibus Angliae*, ed. George E. Woodbine, vol. 2 (Cambridge, MA: The Bellknap Press, 1977), p. 388.

⁴² Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity and Legal Culture in Marseille, 1264-1423* (Ithaca, NY: Cornell University Press, 2003), p. 75.

For “civil” cases involving the seisin of land, the plaintiff was called a demandant. By the time of *Glanvill*, demandants in England who wished to pursue a seisin dispute by battle had to obtain a writ of right from the royal chancery in order to begin their case. This was a document from the king addressed to the lord from whom the land was held, commanding him to do “full right” to the bearer in respect to the disputed property.⁴³ While the issuance of such documents had become a matter of course by the time of the Magna Carta, they still often required considerable travel and inconvenience to obtain.

Strategies of Confrontation

For many litigants, the greatest challenge lay in compelling their opponents to come to court. Once an appellant or demandant had lodged a formal accusation (a *clamor* in Latin), both parties had the opportunity to use procedural delays. From at least the beginning of the twelfth century, a litigant in much of France could reply to a summons with a *contremand*. This was a statement requiring the hearing to be delayed for two weeks. In important cases, one could issue as many as three *contremands*.⁴⁴ Similarly, an English defendant was permitted three summonses to three separate court dates before action could be taken to compel him to appear. This action would involve escalating seizures of his goods and chattels, followed eventually by outlawry if he did not come to court.⁴⁵

Litigants could also receive delays for specific kinds of excuses. These delays were known as *essoins*. Either party could send word to the court that he was unable to appear because he had been called upon for military service, or he had gone on a pilgrimage, or he

⁴³ *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, ed. G. D. G. Hall (London: Thomas Nelson, 1965), XII,3, p. 138.

⁴⁴ Bongert, p. 189.

⁴⁵ Frederick Pollock & F.W. Maitland, *The History of the English Law before the Time of Edward I*, 2nd ed., vol. 2 (1898, reprint; Clark, NJ: The Lawbook Exchange, 2007), p. 592-3.

was home sick in bed, and the case would have to be postponed until the next scheduled sitting of the court. The number of essoins and the allowable reasons for them varied according to local custom. In Normandy, a man was officially too ill to appear if he was observed to be unable to put on his own trousers.⁴⁶

Medieval justice could move at a snail's pace. In part, this was to ensure that all parties had a fair opportunity to receive a summons and respond to it, despite poor road conditions or personal circumstances. The delays were also often used as a tactic to give the parties time to negotiate outside court. In the Curia Regis Rolls and the *Olims* of the Parlement of Paris there are numerous inconclusive suits which do not seem to have been pursued to the point of judgement within the courts. An unresolved suit ran the risk of becoming a long war of attrition upon the reputations of its participants, as allegations and counter-allegations passed back and forth.

One way to ensure that a defendant or tenant did not drag his heels with procedural delays was to ambush him with a suit when he was attending his lord's court. This inherently dramatic method was a trope of medieval literature, but it occurred in real life too. The biographer of the English knight William Marshal recalls an occasion when William's enemies began spreading rumours that he was having sexual relations with the young King Henry's queen, Margaret, an accusation that caused a falling out between William and the Young King. The knight surprised his detractors in 1182 by attending a royal feast when they expected him to stay away. In the presence of the court, he challenged them to accuse

⁴⁶ *Très ancien coutumier de Normandie*, c. LXXXII.4, p. 88.

him formally of treason and fight him in a duel. Presented with a direct invitation from the star of the tournament circuit, William's enemies backed off.⁴⁷

This strategy could also backfire, however. The chronicler Gilbert of Mons recalled a dispute that erupted just six years after William's case in the presence of the count of Hainaut. One courtier confronted another over allegations the latter was making about the free status of the former's family.⁴⁸ Faced with a public challenge to his reputation as a truth-teller, the second knight chose to pledge himself to a trial by battle. On the day of the duel, he proved victorious and his challenger was led away in chains. When enemies surprised one another with lawsuits, an offer of battle upped the ante, forcing parties to decide which accusations they were willing to defend and which ones they would back away from, incurring shame.

Champions

Battles regarding property could be fought by champions, and English demandants who presented their writ of right in court almost always brought one with them. Disputants in French property cases also employed them and they occasionally appear in French appeals as well, when one of the parties was female or elderly and thus ineligible to fight. Proxy fighters in property cases are much in evidence in Normandy, Anjou and Paris, but also appear as far south as Lézat, south of Toulouse.⁴⁹ In theory, the champion had to be a material witness to the case. He swore an oath that he had seen the demandant or the

⁴⁷ *History of William Marshal*, ed. A.J. Holden, vol. 1 (London: Anglo-Norman Text Society, 2002), lines 5693-5832, pp. 291-7. David Crouch suggests that William Marshal's biographer may have distorted some of the reasons for this dispute, which may not have involved William's sexual behaviour at all. *History of William Marshall*, vol. 3, p. 99, n. 5693. See also p. 126, *supra*.

⁴⁸ Gilbert de Mons, *La Chronique de Gislebert de Mons*, ed. Léon Vanderkindere (Brussels: Librairie Kiessling & Co., 1904), pp. 209-10. See also pp. 99, *supra*, and p. 244-5, *infra*.

⁴⁹ *Cartulaire de l'abbaye de Lézat*, ed. Paul Ourliac & Anne-Marie Magnou, vol. 1 (Paris: C.T.H.S., 1984), no. 410, p. 318.

demandant's ancestor in possession of the property. Alternatively, he could swear that his own late father had witnessed the ancestor's possession and instructed him always to uphold the demandant's right. "Why cannot a man prove his right by his own body?" asked a thirteenth-century English treatise. "Because he cannot speak of the hearing nor of the view of the seisin of his ancestor. And because he cannot bring suit himself."⁵⁰ English judges were well aware that demandants in property disputes were motivated by self-interest and were often too young to have ever seen the disputed property in their ancestor's possession. The presence of a champion demonstrated that there was at least one other person willing to support the demandant's claim.

The use of two champions in property disputes gave courts and litigants the opportunity to shift the focus of a dispute slightly. If they could not determine the rightful ownership of a piece of property, they could proceed instead by determining which of the champions was more worthy to be taken at his word. While a question of property could be stymied by conflicting testimony or a shortage of information, a question of honour could always be settled by the mechanism of battle.

In practice, some champions were hired strangers. By 1275, it was necessary for Edward I of England to do away with the part of the champion's oath swearing to knowledge of the seisin, because, the statute claimed, it had become little more than perjury.⁵¹ This law, the First Statute of Westminster, arrived quite late in the history of English champions, for the

⁵⁰“*Pur quey ne put home desrener sun dreit par son cors demeygne? Pur ceo quil ne put pas pa3 rler de oye ne de veue ne de la seysine son auncestre. E pur quil ne put pas porter sute a luy memeis.*” *Casus Placitorum and Reports of Cases in the King's Courts, 1273-1278*, ed. & trans. William Huse Dunham Jr., Selden Society 69 (London: Bernard Quaritch, 1952), p. 16, c. 76. Compare the *Summa de Legibus Normanniae* from circa 1254: “*Notandum siquidem est quod in secutionibus hereditariis potest appellator sequelam suam facere per hominem suum, qui se asserat hoc audisse et vidisse. Secutus similiter potest defensionem suam facere per hominem suum, qui verba sequele secutoris per singular denegat esse vera.*” *Coutumiers de Normandie*, ed. Ernest-Joseph Tardif, vol. 2 (Paris: Picard & Fils, 1896), c. cxxiv.14, p. 339.

⁵¹ 3 Edward I, Statute of Westminster I, c. 41, *Statutes of the Realm*, vol. 1, p. 37.

last writ of right battle where blows were struck occurred only twenty-five years later. The economist Peter Leeson has argued that there was an open market for champions in England long before this, beginning in the eleventh century, and that legislation evolved to reflect this reality only belatedly. He posits that disputed land was, in effect, auctioned to the party who could make the highest bid for the services of a professional champion.⁵² However, it is not prudent to assume that hired mercenary champions were ubiquitous in England from the Conquest onwards, for many champions clearly belonged to the *familia* of their principals. Indeed the very definition of a mercenary is somewhat ambiguous.

Four champions in the Domesday Book are described as the “man” (*homo*) of their noble principals. When the issue at hand involves seisin in the time of King Edward the Confessor and names are mentioned, they prove to be English, so it is not impossible that they had personal knowledge of the causes for which they fought.⁵³ Russell has also found that several champions in the earlier part of the twelfth century were relatives of their principals, and thus probably genuine witnesses.⁵⁴

These practices are consistent with contemporary customs in France. Several eleventh-century charters mention that champions were the *famuli* or *homines* of the monasteries for whom they fought, or an inhabitant of the land in dispute.⁵⁵ The four charters of Louis VI allowing various ecclesiastical parties around Paris to use their serfs as champions indicate that it was not possible even for individuals or institutions as powerful as the bishop of Paris and the church of Notre-Dame de Paris to hire outsiders to fight their battles at the beginning

⁵² Peter Leeson, “Trial by Battle,” *Journal of Legal Analysis* 3:1 (Spring 2011), p. 346.

⁵³ See Robin Fleming, *The Domesday Book and the Law* (Cambridge: Cambridge University Press, 1998), nos. 1190 & 2399, pp. 212, 343.

⁵⁴ M. J. Russell, “Hired Champions,” *American Journal of Legal History* 3 (1959), p. 243.

⁵⁵ Olivier Guillot, “Le Duel judiciaire: du champ légal (sous Louis le Pieux) au champ de la pratique en France (XI^e s.),” in *La Giustizia nell’alto medioevo*, Settimane di Studio del Centro Italiano di Studi Sull’Alto Medioevo XLIV, vol. 2 (Spoleto: Presso la Sede del Centro, 1997), appendices 18, 23, 26, 29, 30, pp. 774-781.

of the twelfth century.⁵⁶ In Normandy a hundred years later, the *Ancien coutumier* mentions casually that some vassals hold their fiefs on the understanding that they will fight a duel for their lord whenever it is necessary. Where other French records mention the relationship between a champion and his principal before the middle of the twelfth century, he proves to be either a kinsman or a vassal.⁵⁷

The earliest recorded evidence for concerns about mercenary champions comes from the first charter of the city of Rouen in 1150. Henry II, in his capacity as Duke of Normandy, ruled that no one in that city was required to fight a man whom ten legal witnesses attested to be a hired champion (*pugil conducticius*).⁵⁸ The treatise *Glanvill*, written sometime between 1187 and 1189, shows that hired champions had also become a recognized problem in England by this time.

Many times it happens that a hired champion is produced in court to deraign in return for a reward. If the opposing party objects against his person, saying that he is not suitable and on account of this he accepted a payment for making the proof, and saying further that he is prepared to prove this against the champion, if he should wish to deny it, either in person or through another person who saw the champion when he accepted the payment, one shall hear this objection, and the principal battle shall be postponed. If the champion is convicted and defeated in a duel over this accusation, then his lord shall lose his suit and the champion, as a convicted man, shall lose all law of the land; that is to say, he shall never again be allowed as a witness in court and therefore can never make proof for anyone else by a duel.⁵⁹

⁵⁶ *Recueil des actes de Louis VI, roi de France (1108-1137)*, ed. M. Jean Dufour, 2 vols. (Paris: Boccard, 1992), nos. 22 (Notre-Dame de Paris, 1108); 121 (Bishop of Paris, 1112); 138 (Saint-Maur-des-Fossés, 1118); 261 (Chartres, 1128).

⁵⁷ See e.g. Bongert, p. 231, n. 1.

⁵⁸ *Histoire de Rouen pendant l'époque communal 1150-1382, suivie des pièces justificatives*, ed. A. Chérueil, vol. 1 (Paris: Nicéas Periaux, 1843), p. 242. This provision was repeated in a charter issued by John Lackland in 1200. *Ibid.*, p. 250.

⁵⁹ "Contingit autem multociens quod campio conducticius in curia producit ad dirationationem faciendam pro mercede. Et si idem contra illius personam excipiat pars aduersa, dicens eum minus idoneum et propter hoc quod premium inde accepit ad illam dirationationem faciendam, et hoc paratus sit probare uersus eum si id negare uoluerit aut per se aut per alium uidentem ubi inde premium accepit, super hoc audietur et remanebit principale duellum. Si uero super hoc conuictus fuerit et per duellum uictus, tunc dominus suus loquelam suam amittet: et ille campio tanquam uictus omnem legem terre amittet, scilicet quod in curia numquam de cetero admittetur ut testis et ita dirationationem pro alio per duellum de cetero facere non poterit." *Glanvill*, II,3, p. 25.

This procedure essentially required the objecting party to fight a battle with his opponent's champion in order to prove that the champion should not be allowed to fight a trial by battle. Perhaps unsurprisingly, there are few records of litigants who actually attempted to make use of this legal provision.⁶⁰ In practice, when such an objection did come up, it was either overruled by the judge or the case was decided by means other than battle.⁶¹

The issue is further complicated by the ambiguous nature of the terms *pugil conducticius* and *campio conducticius*. Neither the charter of Rouen nor *Glanvill* define the expression. Legal historians thus far have assumed that it encompassed any champion who was paid for his work.⁶² However, it is profitable to examine the subject in light of some of the recent discussions among military historians about mercenaries. Not all medieval soldiers who received remuneration for their combative services were considered mercenaries by their contemporaries. By the twelfth century, most soldiers in the field received pay of some kind, but only a small proportion of them were referred to as *routiers* or *mercenarii*. As Stephen Brown put it, "Money was a resource which facilitated service; proof of its provision does not answer the question why the service was sought or forthcoming."⁶³ Recently, Stephen Morillo has proposed a more nuanced model for defining mercenary service. He argues that soldiers in different time periods and cultures may be classified along two axes: according to how embedded or separated they are from the mainstream social fabric of their societies, and according to whether their service is determined by political obligation or by free economic

⁶⁰ A case of unknown date may be found in F.W. Maitland, *Select Pleas of the Crown*, ed. F.W. Maitland, vol. 1, Selden Society 1 (London: Bernard Quaritch, 1888) no. 126, p. 81. The outcome of the battle is not recorded. In another case, from 1220, a witness was convicted of being a hired champion without the necessity of a battle. *Ibid.*, no. 192, p. 127.

⁶¹ See also *Select Pleas of the Crown*, no. 202, p. 137.

⁶² See, e.g., Russell, "Hired Champions," *op. cit.*, and Cyril Flower, *Introduction to the Curia Regis Rolls, 1199-1230 A.D.*, Selden Society 62 (London: B. Quaritch, 1944), p. 120.

⁶³ Stephen D.B. Brown, "Military Service and Monetary Reward in the Eleventh and Twelfth Centuries," *History* 74 (1989), p. 23.

choices. In this model the true mercenary is both a social outsider and a free economic agent.⁶⁴ Arguably, this was the kind of person whom English and Frenchmen of the twelfth and thirteenth centuries understood to be a mercenary and it was also the kind of champion to whom twelfth-century legislation objected. We cannot assume that all champions who were rewarded for their services were outsiders acting solely out of financial self-interest.

There are several examples of occasions when payment or reward for the services of a champion was conducted in the open and raised no objections. In the late eleventh-century document from southern France mentioned above, an abbot of Lézat came to an agreement with a strongman from the village of Benque, roughly 40 km away, granting him a cottage and a third of the proceeds of justice in the vicinity in return for the man's homage and his promise to fight in any judicial combat waged against the monks.⁶⁵

A more daring agreement was reached between the collegial church of Saint-Seurin of Bordeaux and a man from the parish of Uch at the end of the twelfth century. According to a document preserved in the church's cartulary, the man, who came from some distance away, approached a deacon and the canons and he informed them that a certain parcel of land in his parish had long belonged to them but their right to the fief had fallen out of living memory. He offered to win back the land at his own expense, by battle if necessary, if they would invest him with it and accept his fealty. The chapter assented to this proposal on the understanding that they would not pay him anything, and three knights witnessed the transaction.⁶⁶

⁶⁴ Stephen Morillo, "Mercenaries, Mamluks and Militia: Towards a Cross-Cultural Typology of Military Service," in *Mercenaries and Paid Men: The Mercenary Identity in the Middle Ages*, ed. John France (Leiden: Brill, 2008), pp. 247-55.

⁶⁵ *Cartulaire de l'abbaye de Lézat*, *op. cit.*, pp. 309-11.

⁶⁶ *Cartulaire de l'église collégiale Saint-Seurin de Bordeaux*, ed. Jean-Auguste Brutails (Bordeaux: G. Gounouilh, 1884), no. 144, p. 112.

Another agreement comes from Beauvais where the mayor and commune reached an understanding with one Geoffroi Blondel in 1256. In exchange for his homage, they retained him for 20 *sous Parisis* a year and set rates for substantial bonuses if he were ever required to appear armed in the court or strike blows on the commune's behalf.⁶⁷ Whether Geoffroi or the other champions had much personal knowledge of their overlords' property and rights is an open question, but the issue did not prevent the abbey, the church or the commune from drawing up their agreements in public.

The common theme in each of these records is that the hired champion agreed to give ongoing, long-term homage to his principals, binding himself to fight judicial duels just as others bound themselves to go to war or exact vengeance on behalf of their liege lords. While these champions were originally free agents, the terms of their charters turned their service from an economic choice into a political obligation. Indeed, this appears to have been a desirable consequence of hiring a champion on retainer. In the first two cases, it is also clear from the records that these men came from nearby villages and were well integrated into the social structures of their communities. In Morillo's typology, this would make them politically obligated and socially embedded "social combatants," the opposite of mercenaries on both axes. Indeed, it may well be that French courts in their various jurisdictions did not consider such men *pugiles conducticii* as such, and this would be why there were no recorded objections to their retainer. Their concern was not that one or two local men might be rewarded for taking the part of their lords over the long term, but rather that fighters from outside the local power structures might be rented temporarily, taking the part of whoever could offer the most lucrative contract.

⁶⁷ *Littérature latine et histoire du Moyen Âge*, ed. Léopold Delisle (Paris: Ernest Leroux, 1890), p. 69. Sieur Charles du Fresne Du Cange, *Glossarium mediae et infimae Latinitatis*, vol. 2 (1678; reprint, Niort: L. Favre, 1884), s.v. *campiones*, col. 062A.

In England, it is harder to characterize the relationship between principals and champions in the twelfth century, for no contracts between the two survive. However, there are examples of champions being paid for their service. In 1163, the Pipe Rolls record that Henry II's own exchequer paid one Thomas, "the king's champion," £4, 11 s. and 2 d.⁶⁸ The sum amounted to a year's pay at 3 d. a day, plus two pennies: triple the rate that an approver could expect. This is the first record of an English champion hired on a long-term retainer. The king's actions apparently did not excite comment outside the Pipe Rolls. Russell has also found several examples of English champions from the later twelfth century who were rewarded with grants of land for their services.⁶⁹ These grants suggest that they had a long-term relationship with their principals and the communities in which the land disputes occurred.

Nevertheless, the concerns about mercenary champions demonstrated by the treatise *Glanvill* were not unfounded. Russell noted the names of several men who appear multiple times in the records, representing different principals on each occasion in disputes over estates that were geographically distant from one another.⁷⁰ These men likely had little connection to their principals other than money. The cases in which they were involved occurred between 1198 and 1231. These dates simply reflect the years for which edited volumes of the Curia Regis Rolls, the main source of information on this matter, were available when Russell wrote his article; but there does seem to have been a shift in the relationship between champions and principals after the turn of the thirteenth century. After this point, it is hard to find a principal in a land dispute championed by kinsmen as before.

⁶⁸ *The Great Roll of the Pipe for the Ninth Year of Henry the Second, A.D. 1162-1163*, Pipe Roll Society (Old Series) vol. 6 (London: Wyman & Sons, 1886), p. 43.

⁶⁹ Russell, "Hired Champions," p. 256.

⁷⁰ *Ibid.*, 245-53.

The surviving English examples of contracts between principals and champions all come from a period roughly conforming to the second half of the thirteenth century. Among them, we find William the Nevu of Alderton who was required to provide service as a champion to his lord Robert Russell as a condition of his tenure.⁷¹ His charter is similar to those of the earlier French examples, but the threat of litigation appears to have been less pressing and he was never called upon to fulfill his service, eventually being released from it by his lord's heir. Other contracts show a more temporary relationship between champion and employer, one based largely on money. In 1258, the Bishop of Bath and Wells hired Henry de Fernberg to act as his champion in an anticipated legal case. Henry would receive ten marks if the battle was pledged, five when he was shaved for battle and a further fifteen marks would be entrusted to a third party who would deliver them to him if he struck at least one blow in the duel.⁷² In a charter from 1272, John of Smerill hired William of Heynton as his champion in an upcoming suit, promising £8 if he won a battle. William was given a parcel of land as security, but the agreement provided that if John and the opposing party came to an accord without requiring a battle, William would receive nothing.⁷³

There are signs of a growing professionalism among champions on the Continent as well. Scattered records reveal strategies employed by principals to ensure that they were represented by the best available fighter. The Norman exchequer rolls record that in 1180 Clément de Warroc was fined 10 sous by royal court because he made a champion who had

⁷¹ *Landboc, sive registrum monasterii Beatae Mariae Virginis et Sancti Cénhelmi de Winchelcumba*, ed. David Royce, vol. 1 (Exeter: William Pollard & Co., 1892), pp. 49-50. This charter is undated. Based on the word patterns contained within it, the dating program at the DEEDS database at the University of Toronto estimates that it comes from c. 1249.

⁷² Russell, "Hired Champions," pp. 254-5.

⁷³ *The Manuscripts of His Grace, the Duke of Rutland, Preserved at Belvoir Castle*, ed. H.C. Maxwell Lyte, vol. 4 (London: HMSO, 1905), no. 34, p. 49.

taken on another case work for him instead.⁷⁴ In 1190, the customs of Amiens forbade townsmen to find champions from outside their town.⁷⁵ The chronicler of Saint-Denis, writing around 1270, breathed a sigh of relief that Louis IX had abolished judicial duels in the royal domain. According to him, it had often happened that, when there was a battle between a rich man and a poor one, the rich man would hire all the available champions and the poor one would have no one to defend him.⁷⁶ It was apparently no longer necessary to choose a champion only from among one's kin, liegemen or *amici*, as it had been in the days when the churches of Paris had needed to use their serfs to fill the office.

Towards the end of the thirteenth century, the profession seems to have been in decline, even outside the royal domain. Beaumanoir, writing around 1280, thought that in the past, some people had kept champions on retainer to fight for them in any suit that came up, but he considered it a bad custom that had since been abolished. If a duel should be fought over property matters in his own time, he supported the custom of amputating the hand of the losing champion, lest any fighter be tempted to take a bribe from the opposing party.⁷⁷ His musing was largely academic, however, for by this time duels were no longer being fought over property disputes.

Thirteenth- and fourteenth-century scholarly attitudes towards champions in England in France were not enthusiastic, but not overwhelmingly negative. By contrast, contemporary legal customs in much of the German empire considered the profession to be tainted with such infamy that it ranked alongside bastardy, acting and prostitution.⁷⁸ English and French

⁷⁴ A. Canel, "Le Combat judiciaire en Normandie," *Mémoires de la Société des antiquaires de Normandie* XXII (1836), pp. 617-8.

⁷⁵ Maurice Crampon, *La commune d'Amiens: Dossier documentaire* (Amiens: Centre Régional de Documentation Pédagogique, 1971), p. 9, article 17.

⁷⁶ *Grandes Chroniques de France*, ed. M. Paulin, vol. 4 (Paris: Techener, 1838), p. 427.

⁷⁷ Beaumanoir, vol. 2 §1137, §1721, pp. 89-90, 379.

⁷⁸ Lea, p. 188.

scholars were slightly more generous. Thomas of Chobham's *Summa Confessorum* of 1216 stated that champions existed in a state of fraternal hatred, for one could not honour he whom one wished to kill. The author conceded, however, that it was sometimes necessary to use champions to defend one's land from litigation, just as one would defend one's person and property from a thief. He advised confessors to counsel litigious parishioners to seek alternative modes of resolution wherever possible.⁷⁹ In Paris, the courtier and legal scholar Pierre de Fontaines repurposed some passages from Justinian's *Digest* on the legal disabilities of gladiators, who were forbidden from inheriting land or passing it on to their children. In his text, the *arenarius* of the Roman law became the French *champion*.⁸⁰ Nevertheless, Pierre altered the passages so that these legal disabilities applied only to champions who had been defeated. Winning and untried champions were presumably not so infamous. Honorat Bovet was also of the opinion that infamous characters should not be made champions. He points out that if such a man were conquered, people would say that he had lost because of his own sins, not those of his principal.⁸¹ The champion, then, possessed questionable honour which was made even more precarious because it might be utterly destroyed in a battle, causing him not only physical, but even legal disability.

Pleading

When champions had been engaged and summons had been answered, eventually the demandant and tenant or the appellant and the appellee would both appear in court at the

⁷⁹ Thomas of Chobham, *Thomae de Chobham summa confessoris*, ed. F. Broomfield, *Analecta Mediaevalia Namurcensia* 25 (Louvain: Nauwelaerts, 1968), pp. 293-4.

⁸⁰ Pierre de Fontaines, *Le Conseil de Pierre de Fontaines*, ed. M.A.J. Marnier (Paris: Durand & Joubert, 1846), XXXIII.32, pp. 398-9.

⁸¹ Honorat Bovet (Honoré Bonet), *The Tree of Battles of Honoré Bonet*, ed. & trans. G.W. Coopland (Liverpool: Liverpool University Press, 1949), c. XVI, p. 199.

same time and the suit could begin in earnest. The plaintiff stated his case again, usually in more detail than before. He would describe either the crime that had been committed against him (or against a deceased relative), or the series of transfers that had caused a parcel of property to come down to its current tenant, rather than his own rightful seisin. At this point, one or the other party could also offer to prove his case by battle. In cases involving land, an offer of battle by means of champions was so common that in English documents the formulaic phrase “*et hoc offert probare per corpus cuiusdam liberi hominis sui*” was often shortened to “*et offert probare etc.*” According to Beaumanoir, this was also the point at which an appellant in a criminal case in the Beauvaisis needed to mention any reasons why he should be allowed to have a champion, otherwise he would be required to fight in person.⁸²

The defendant was required to affirm or deny this accusation. In the event of a surprise appeal, Beaumanoir allowed an appellee some hours to send for his family and other counsellors, and to consult with them before replying, but he did not permit the appellee to leave the courtroom.⁸³ Around the same time, a similar rule for litigants seems to have applied in England. One appellant in a case of false judgement was caught by surprise when his opponent offered to defend the record of the court by battle. He received leave to “imparl” with his advisors, but then ran from the room and was judged to have lost his case.⁸⁴

English court records typically do not report that a defendant made a case on his own behalf, but rather that he simply denied the accusation word for word. As Maitland wrote, “The language of the law, even in Bracton’s day, has no word equivalent to our *trial*. We

⁸² Beaumanoir, vol. 2, §1711, p. 376.

⁸³ *Ibid.*, §§923-4, 1712, vol. 1, pp. 466-7, vol. 2, pp. 375-6.

⁸⁴ *Casus Placitorum and Reports of Cases in the King’s Courts, 1272-1278*, ed. William Huse Dunham, Selden Society 69 (London: Bernard Quaritch, 1952), p. 100.

have not to speak of trial; we have to speak of proof.”⁸⁵ The object of the parties’ presentations in court was not to dissect one another’s statements for inconsistencies, but merely to agree upon the question which they would put to the test and the form that the test would take.

Occasionally, it required some discussion before the parties could determine the exact points upon which they disagreed, however. A flat denial on the part of the defendant was sometimes followed by a version of events that differed only partially from the plaintiff’s accusation.⁸⁶ The defendant might also raise objections to the demandant or appellant’s accusation. The defendant could be too young to stand trial or too old for battle; the plaintiff might be a married woman acting without her husband’s permission or a serf acting without his lord’s consent.⁸⁷ The case might already have been heard and settled in another court. These defences could end a suit or at least derail the proceedings and cost the other party time, confusion and loss of face while the judge tried to get to the bottom of them.

Other delays were also possible. The appellee in an English criminal case could demand an inquest to determine whether the appellant had really been wounded as he claimed, or whether a false appeal had been made out of sheer hatred and spite (*odio et atia*). These questions would require the judge to seek answers from a fact-finding panel of local men. If the case had been removed to the King’s Bench, this inquiry would require time to be sent for and to report back.⁸⁸ The tenant in a writ of right case might ask for a postponement so that a party of respectable men from his neighbourhood could hold a *view*, or inspect the disputed

⁸⁵ Pollock & Maitland, vol. 2, p. 598.

⁸⁶ See, for instance, the trial of the axe murderer Thomas, son of Alienora of Bayeux. *Select Pleas of the Crown*, ed. F.W. Maitland, vol. 1, Selden Society 1 (London: Bernard Quaritch, 1888), no. 107, pp. 129-133.

⁸⁷ See Chapter Four.

⁸⁸ Roger D. Groot, “The Jury in Private Criminal Prosecution before 1215,” *American Journal of Legal History* 27:2 (1983), p. 117.

land.⁸⁹ This procedure was also practiced in Normandy, although it does not seem to have been known elsewhere in France.⁹⁰ These men acted as a kind of jury and they could inform the judge of the land's rightful owner. Undoubtedly, local politics played a significant part in deciding which "free and lawful men," as *Glanvill* called them, were suitable for the role. This was another way in which high medieval men built their reputations within their communities and created bonds of mutual obligation. Nevertheless, a view of land might not produce a unanimous decision. If the men could not agree, the case would proceed on its way towards battle.

A tenant might also object that the demandant did not have a champion. The late thirteenth-century treatise on English legal procedure known as the *Casus Placitorum* recalls the case of a woman who tried to ambush the earl of Clare with a writ of right. Prepared for the suit, the earl appeared in court with his champion on the day that the writ was presented. The woman, who likely had not expected him to be present on that day, had not brought a fighter with her. Since she needed to name a champion in order for the wager of battle to occur, and she had no one suitable with her, she lost the entire suit.⁹¹

Alternatively, one party or the other, or sometimes even a warrantor or juror, could shut down the proceedings by proposing to hold a judicial duel or other ordeal over some aspect of the pleadings. Stephen White has made the important observation that this manoeuvre served to focus wide-ranging disputes by framing the entire trial according to the proposer's

⁸⁹ *Glanvill*, II. 1-2, p. 22.

⁹⁰ *Très Ancien Coutumier*, c. XXIV, p. 21; Bongert, p. 193, n. 4.

⁹¹ *Casus Placitorum and Reports of Cases in the King's Courts, 1272-1278*, ed. William Huse Dunham Jr., Selden Society 69 (London: Bernard Quaritch, 1952), p. 7, c. 31. By contrast, a woman appealed in one of Chrétien de Troyes' romances had forty days to find a champion. *Yvain*, ed. Karl D. Uitti, in *Chrétien de Troyes, Œuvres complètes* (Paris: Éditions Gallimard, 1994), line 3691, p. 428.

choice of question.⁹² This was a risky course of action which led some litigants to success, but utterly destroyed others.

The legal manoeuvres whereby a defendant called for an inquest, a view or the production of a champion were high medieval developments in trial procedure. They allowed more time for evidence to be introduced into the proceedings. They also gave the parties further opportunity for delay and negotiation, a key characteristic of medieval litigation. Alternatively, one party or the other could propose to hold a judicial duel or ordeal of fire or water over some aspect of the pleadings.

Proof

If it became apparent from the statements of the parties and inquiries among their neighbours that the truth of a disputed matter was not evident, the judge would have to proceed to a legal proof. This stage of the trial would often be scheduled for a later date, providing the parties with yet more opportunities for delay and negotiation. Proof was not the inevitable outcome of a medieval lawsuit. A more desirable result was composition. When the proceedings advanced to this stage, the pressure to reach a private settlement intensified for both parties.

Trial by battle was hardly the only form of proof, nor was it ever the most common. Normally, a judicial duel occurred only when both parties agreed to it, although there were exceptions, as we shall see. Other possible proofs included the purgatory oath, the ordeals of fire and water, the grand assize, proof by documents or witnesses.

The mode of proof most common in the early Middle Ages was the wager of law, or compurgatory oath. This was a simple procedure in which one of the parties cleared himself

⁹² White, "Proposing the Ordeal," p. 104.

by swearing a solemn oath upon a holy book or relics, affirming or denying that the alleged wrong had occurred. In most cases, the swearer needed to find a certain number of upstanding men to take the oath along with him. These men were known as oath-helpers or compurgators, and their number varied according to the jurisdiction, the period and the offense. An oath requiring someone to swear twelve-handed meant that he needed to have eleven oath-helpers. These people had to be men who had earned the respect of their community, for they were often described as *homines legitimi* or *probi homines*.

Oath-helpers have been described as character witnesses,⁹³ but they were not witnesses *per se*. They did not provide the court with any information regarding the moral fibre of the parties or the facts of the case at hand. Instead, they simply demonstrated their support for their principal's oath. Their role was not to provide evidence or to help the court evaluate it, but rather to facilitate a material test of their principal's honour or shame. If he did not command enough respect in his community to round up the necessary bodies, he lost his suit.

This proof was adopted by the canon law courts and came to be known as the *purgatio canonica* by the beginning of the twelfth century. Medieval jurists were well aware of its shortcomings. The earliest reference to trial by battle, in the Burgundian Law of 502, prescribes the duel as the solution to a situation where the plaintiff and his family believe that the defendant's oath is simple perjury and they refuse to accept it.⁹⁴ Nearly seven centuries later, a charter of Philip Augustus outlined much the same procedure for cases of assault and wounding in the commune of Athyes.⁹⁵ Despite the potential for abuse, the oath was customary in certain situations well into the thirteenth century and beyond. In Normandy, for

⁹³ J. H. Baker, *An Introduction to English Legal History* (London: Butterworths, 1971), p. 10.

⁹⁴ *Leges Burgundionum*, ed. L. Rudolf de Salis, *Monumenta Germaniae Historica, Leges* 1, vol. 1 (Hannover, Hahn, 1892), c. LXV.

⁹⁵ *Ordonnances des rois de France de la troisième race*, ed. Eusèbe Laurière *et al.*, vol. 11 (Paris: Imprimerie Royale, 1769), pp. 298-302.

instance, when a person was suspected of homicide but no one would appeal him, he could clear himself by a purgatory oath and go free.⁹⁶ As magnates consolidated their control over many courts in the high Middle Ages, it also became more difficult to convince oath-helpers who genuinely knew their principal to make long journeys to centralized courts. In their place, the professional compurgator, like the professional champion, became a hazard of medieval justice.⁹⁷ Over time, the purgatory oath came to be used for increasingly minor matters and figured less prominently in medieval jurisprudence.

A more strenuous but much less common form of proof was the unilateral judicial ordeal. This test normally took the form of the trials of fire and water: carrying hot iron, plucking an object from a cauldron of hot water, or being entirely submerged in cold water to see if one floated or sank.⁹⁸ The first surviving evidence of these ordeals appears in the early law codes of the Franks. Robert Bartlett has argued that Frankish hegemony spread them throughout Europe from their original birthplace in Francia.⁹⁹ The tests of fire and water required belief in divine intervention in order to work. God was required to ensure that the burned or scalded hands of the innocent did not suppurate, or that a pool of water would reject the immersion of an unworthy proband.

These ordeals were usually reserved for different circumstances than duels. Whereas a duel required one party to challenge another, ordeals often occurred when a suspect was held on suspicion of having committed a crime, but no one would step forward to prosecute him and he could not muster enough compurgators to clear his reputation. While men and women of honour might clear themselves with an oath, there were classes of people who did

⁹⁶ *Très ancien coutumier*, c. LXXI.3, p. 67.

⁹⁷ Pollock & Maitland, vol. 2, p. 636.

⁹⁸ Dominique Barthélémy, "Diversité des ordalies médiévales," *Revue historique* 280:1 (1988), pp. 11-23.

⁹⁹ Bartlett, *Trial by Fire and Water*, pp. 4-12.

not possess the honour required for such a procedure. The Saxon laws of Edward the Elder, Canute and Ethelred the Unready prescribed ordeals of fire and water for people known as *tihhtbisig* men, whose honour was damaged by ill repute. These were people who had been accused of crimes in the past, were strongly suspected, or had already been convicted of perjury, as well as foreigners and friendless men who could not muster the necessary oath-helpers, and serfs, who were not considered oath-worthy because of their status.¹⁰⁰

Participants in the ordeals of fire and water were thus, as a group, significantly different from participants in judicial duels, who possessed the privileges that came with honour.

Ordeals by fire and water made regular appearances in the case records of the eleventh and twelfth centuries, but withered and largely disappeared in the space of a generation not long after the Fourth Lateran Council of 1215.

Expanding to fill the vacuum, other forms of proof soon took the place of the oath and the ordeals of fire and water. In England, juries of presentment had been called upon since at least the Assize of Clarendon in 1166 to inform county and eyre courts of the wrongdoings in their districts. Since these panels of men had already taken pains to educate themselves about local crimes and disputes, it was not a difficult step to require that they also pronounce upon a defendant's culpability or liability. It became customary for a defendant to "put himself upon the country" in order to settle his suit. This form of proof became so popular that, by the third quarter of the thirteenth century, all other varieties of proof had become anomalies in England.¹⁰¹

A jury verdict was nevertheless not a "scientific" process from a twenty-first century point of view. The methods by which jurors obtained their information are opaque to the

¹⁰⁰ *Ibid.*, pp. 30-33.

¹⁰¹ Thomas Andrew Green, *Verdict According to Conscience: Perspectives on the English Criminal Trial Jury, 1200-1800* (Chicago: University of Chicago Press, 1985), p. 3.

present-day historian. While they could be fined for failing to present crimes which had been recorded by the coroners or for contradicting the coroner's rolls with far-fetched versions of the facts, their verdicts were, for the most part, uncontested. The judgments acquired their legitimacy from the honour of jurors, which was manifested in their reputations as upright and lawful men. It was this honour that the crown sought to attach to its own institutions.

The inscrutability of jury verdicts could make this form of proof seem like yet another variety of ordeal: ordeal by public opinion. For some litigants, this kind of trial appeared to be a very risky undertaking, so much so that they preferred to arrange a judicial duel. In 1287, the monks of Saint Edmunds pursued their defence in a writ of right case over two manors in Suffolk all the way to a particularly deadly duel "since we mistrusted the country of being friendly and akin to our enemies."¹⁰² As it happened, they lost anyway.

Juries were known on the Continent as well, although they were not called on a regular basis as they were in England after the Assize of Clarendon. In the Carolingian era, kings had been entitled to summon panels of reliable local men to pronounce upon the boundaries of royal and ecclesiastical domains.¹⁰³ There is little evidence of the procedure after the decline of the Carolingian empire, but it reappeared in Normandy in the thirteenth century. The *Summa de legibus Normanniae* describes how such a procedure might work around 1250. If a murder suspect was apprehended and imprisoned because of his infamy, he could authorize the judge to summon at least twenty four oathworthy (*legales*) people who were not believed to harbour any hatred against him. These folk were to be called one by one to impart any evidence of which they were aware before a panel of four knights. The suspect

¹⁰² "...tandem patriam habentes suspectam utpote adversariis nostris familiarem et affinem..." College of Arms MS Arundel XXX, f. 174v. See also V.H. Galbraith, "The Death of a Champion (1287)," in *Studies in Medieval History Presented to F.M. Powicke* (Oxford: Clarendon Press, 1948), p. 284.

¹⁰³ Van Caenegem, "Methods of Proof," p. 81.

was to be present and he was given the opportunity to make a reasonable objection to the summoning of any juror, although he apparently did not address the testimony directly. If twenty out of the twenty-four or more summoned people could agree upon a set of allegations, the case would be considered proven.¹⁰⁴ As in England, this procedure was considered perilous. “No one should put himself upon the inquest if he can help it,” says the customal of the Châtelet, the court of the city of Paris, “for there can be great danger, since no one can be loved by everyone.”¹⁰⁵

Beaumanoir describes another jury system at work in the lay courts of the Beauvaisis, calling it an *enquête*. In this procedure, the jury itself was empowered to give the verdict. He recalls a case where a defendant was convicted of murder because the jurors turned up information that gave lie to his alibi and placed him on the same stretch of deserted road as the victim at the time of the killing, a circumstantial piece of evidence, but evidence nonetheless.¹⁰⁶ Unlike the English case records, however, Beaumanoir mentions a remarkable conflict:

And on this inquest we requested a judgment, over which there was great debate; for some jurors wanted to condemn him [the defendant] to death based on the inquest and others said that, since the fact was not proved by the inquest he should not die, and the others said he should indeed, for one could not prove murder in an inquest except by finding the suspect in an open lie and in a patent presumption of guilt. And the result was that he was judged and condemned for the fact by the inquest, and was drawn and hanged; and before he died he admitted that he had done the deed.¹⁰⁷

¹⁰⁴ Tardif, vol. 2, c. LXVII.11-15, pp. 172-4.

¹⁰⁵ “Nulz ne se doit, que il puisse, metre en enquête, quar il i puet avoir peril moult grant; quar nulz ne puet estre de touz amez...” *Le livre des constitucions demenées el Chastelet de Paris*, ed. M. Charles Mortet, *Mémoires de la Société de l'histoire de Paris et de l'Île de France*, vol. 10 (Paris: H. Champion, 1884), §61, p. 71.

¹⁰⁶ Beaumanoir, vol. 2, §§1235-1243, pp. 139-43.

¹⁰⁷ *Et cele enquête nous meïsmes en jugement, au quel jugement il eut debat grant; car li un le vouloient condamner et jugier a mort par la dite enquête, et li autre disoient que puis que li fes n'estoit prouvés par l'enquête, qu'il ne devoit pas recevoir mort, et li autre disoient que si fesoit, car en autre manière ne se pouoit prouver murtres par enquête que par trouver celi qui en est soupeçoneus en apertes mençonges et en apertes presompçons. Et fu la fins tele qu'il fu jugiés et condamnés du fet par la dite enquête, et fu trainés et pendus; et avant qu'il receust mort, connut it qu'il avoit fet le fet. Ibid., §1243, pp. 141-3.*

In this debate we see the concept of legal proof undergoing a fundamental transformation. By this point, even in the case of a secret homicide, evidence was considered obtainable and knowable. The facts themselves could be put on trial and tested against one another. It was now a matter of determining what kinds of evidence were sufficient to obtain a conviction.

Guilt, at one time thought to be something known only to the defendant and God in difficult cases, could now be discovered by human agency. Beaumanoir's mention of the defendant's confession is meant to assure us of this last point. Under these circumstances, if the inner knowledge of the parties could be discovered, it was no longer necessary to proceed by means of difficult and dangerous ordeals designed to test their outer state, that is, their reputation in the community. We should not, however, assume that the courts of the Beauvaisis rejected the judicial duel when they adopted the jury. When a juror made a pronouncement, the defendant still had the option of accusing him of perjury and challenging him to a duel.¹⁰⁸

In the thirteenth century, the French royal court began using a form of inquest in which the responsibility for the verdict lay with the judge. If a judge obtained information that a suspect was *infamis*, he was authorized to summon the defendant, call witnesses to testify against him, and condemn him if he was found guilty. It was no longer necessary to convince an appellant to risk his safety and reputation in order to set a suit in motion. This inquisitorial method had been developed and refined by the inquisitors of heretical depravity who operated in Languedoc in the second quarter of the thirteenth century.¹⁰⁹ A key difference between the ecclesiastical and secular tribunals, however, was that defendants in the secular courts were permitted to know the identities of the witnesses who testified against

¹⁰⁸ Beaumanoir, vol. 2, §1755, pp. 390-1.

¹⁰⁹ See also pp. 298, ff, *infra*.

them and to respond to the evidence they provided.¹¹⁰ In 1260, Louis IX decreed that matters which had once been tried by duels before the Parlement of Paris would now be settled by inquests. By 1270, Beaumanoir was also familiar with the procedure, which he called the *aprise*.¹¹¹

Inquisitorial procedure encouraged jurists and canonists to engage in lively discussions about the rules of evidence. They created the categories of full proofs, which were sufficient to support a judgement, and partial proofs, which were not. The former included the testimony of multiple witnesses, the support of public documents and the confession of the defendant, while the latter included the testimony of a single witness, flight from the scene of the crime and public rumour. Within each category, there were hierarchies in which some proofs trumped others.¹¹² The inquest did not entirely do away with the judicial duel, however. Even in the fourteenth century, judges were sometimes faced with a notorious criminal, a serious crime, and a lack of evidence to prove the case. If no full proof was forthcoming, it was still possible for a witness to challenge the defendant to a duel.¹¹³ Nevertheless, late medieval legal theory came to value confession over other forms of proof. This preference caused judicial duels to be almost completely replaced by attempts to obtain a confession of guilt from the defendant through torture.

At no time was trial by battle ever the most common way to resolve a lawsuit. In every period of the Middle Ages, other forms of proof predominated. The judicial duel was instead a rare but disquieting possibility which could occur when other proof failed. As medieval

¹¹⁰ Peters, p. 67.

¹¹¹ *Ibid.*, §1238, pp. 140-1.

¹¹² Jean Philippe Lévy, *La hiérarchie des preuves dans le droit savant du Moyen Âge*, Annales de l'Université de Lyon, 3rd ser., fasc. 5 (Paris: Librairie du Recueil Sirey, 1939), pp. 26-31.

¹¹³ Monique Chabas, *Le duel judiciaire en France (XIII^e-XVI^e siècles)* (Saint-Sulpice de Favières: Éditions Jean-Favard, 1978), pp. 140-141.

courts developed increasingly sophisticated rules of evidence, opportunities to duel arose less often. Nevertheless, the shrewd litigant never failed to recall that battle was a legal option and retained it in his repertoire of legal manoeuvres.

The Wager of Battle

The litigant who offered battle demonstrated his intention by offering a physical object to the judge. This object was known as a gage or wad. As early as the Domesday Book, there is a reference to an individual presenting a *vadimonium* in order to prove his seisin of land by a duel.¹¹⁴ This object may originally have been a sum of money. The earliest reference to a gauntlet as a gage comes from the *Song of Roland*, in which Pinabel offers his right glove as a promise to fight Thierry.¹¹⁵ Other articles of clothing were also used as gages occasionally. The *Otterbourne Chronicle* and a fourteenth-century record of the Parlement of Paris mention hoods.¹¹⁶ Another record from Paris and a reference in Froissart's *Chronicle* demonstrate that caps were sometimes used as well.¹¹⁷ The preference for gauntlets probably had to do with their mnemonic value. They were especially suited to sealing medieval agreements because they came in unique matching pairs. This property allowed them to be used as a kind of chirograph for the illiterate.

The record of a writ of right case from 1422 describes in detail a ceremony of the gloves that was by that time already an antique curiosity: "And the Court ordered that the tenant's champion should put five pence in his glove, to wit, one penny in each finger-stall, and that he should hold it in his right hand made bare up to the elbow, and that he should throw his

¹¹⁴ Fleming, *Domesday Book and the Law*, no. 1190, p. 212.

¹¹⁵ *The Song of Roland*, ed. Glyn Burgess (London: Penguin Books, 1990), p. 205, line 3845.

¹¹⁶ Du Cange, *Glossarium*, vol. 3, s.v. *duellum*, p. 204B. Chabas, p. 80, n. 104.

¹¹⁷ Chabas, p. 80, n. 105. Du Cange, 3:204B.

glove into the court. And the demandant's champion was ordered to do likewise."¹¹⁸ The champions in this case were standing at the bar of the court and could not reach the judge unless they tossed their offerings. This may be the original reason why duellists threw down gauntlets for others to pick up, a tradition which outlasted the courtroom.

When both parties had given gages, it was the responsibility of the judge to determine whether a duel was appropriate. In early days, he seems to have made the decision on the spot, but by the fourteenth century the Parlement of Paris often required litigants to wait within the bounds of the city for several weeks or months while it decided whether battle should lie. For example, Jean Bisot and Clement La Hure waited from December 22, 1341 until June 15, 1342 for the court to decide that battle did not lie in their lurid case of adultery and poison.¹¹⁹ When the judge assented to the duel and set a date for it to occur, the battle was said to have been waged, or pledged.¹²⁰ At this point, the parties could no longer change their minds about the mode of proof or settle the case out of court without paying a fine to the judge.

In some cases, a duel might follow immediately after the judge accepted the wager. In thirteenth-century Anjou, it was customary for champions to battle the very same day, while criminal appeals fought in person were to be scheduled for a later date.¹²¹ The waiting period between the wager and the battle varied by region and could be as little as the seven days

¹¹⁸ *Year Books of Henry VI, I Henry VI (1422)*, ed. C.H. Williams, Selden Society 50 (London: Bernard Quaritch, 1933), p. 95.

¹¹⁹ Paris, Archives Nationales, X^{2A}4, ff. 4143 B, 4145, 4148 v^o. Summarized in Brigitte Labat-Poussin, Monique Langlois & Yvonne Lanhers, ed., *Actes du Parlement de Paris: parlement criminel, règne de Philippe VI de Valois, inventaire analytique des registres X^{2A}2 à 5* (Paris: Archives Nationales, 1987), pp. 215-7. See also p. 117, *supra*.

¹²⁰ To avoid confusion, I have translated the word *vadiatus* as "pledged" rather than "waged" throughout this dissertation. I do so to prevent the impression that battles which were waged were necessarily fought.

¹²¹ *Coutumes et institutions de l'Anjou et du Maine*, vol. 1.1, pp. 55-56, c. 74

stipulated in an eleventh-century charter from Notre Dame de Paris, or as many as fifty days in fourteenth-century Lille.¹²²

If there was a delay, both parties might be required to furnish men known as sureties to guarantee their future court appearances. In earlier sources, these men were sometimes known as hostages (*otages*). They might be fined or severely punished if their principal failed to appear for his duel or lost his battle. The *Song of Roland* describes the king demanding thirty hostages from Thierry in order that he may go free before his battle.¹²³ In twelfth-century Lorrain, the giving of sureties made a wager of battle official. Before they gave hostages, parties could reach a private agreement with one another and call an end to their suit by each paying the judge just six pennies, but once the sureties had been agreed upon, they had to pay 2s. 6d. to escape their duel.¹²⁴ As with the sureties for the original court appearance and the oath-helpers, the ease or difficulty with which a party recruited these men told him and his community how much respect he could command from his peers. It would surely have weighed upon his decisions as he girded for the final and most gruelling stage of the trial.

In order to avoid a battle which had already been pledged, litigants were often required not only to reach an accord with their opponents, but also to pay a fine to the court. The Pipe Rolls record numerous examples of payments made to the English royal treasury *pro concordia duelli*, while the rolls of the Norman exchequer provide similar information for the duchy of Normandy. The amount of the fine varied. Many Norman litigants paid ten sous,

¹²² Bongert, p. 246.

¹²³ *Song of Roland*, lines 3846-53, pp. 205-6.

¹²⁴ Maurice Prou, *Les coutumes de Lorrain et leur propagation au XII^e et XIII^e siècles* (Paris: L. Larousse & Forcel, 1884), c. 14, p. 134.

but in 1180 one Robert Guelbert had to pay 25 livres and 13 sous.¹²⁵ In the thirteenth and fourteenth centuries, the charters of many French towns specified the amount that would have to be paid to a judge if a battle were called off after pledges were exchanged.¹²⁶ While this sum would seem to discourage accords, it must be viewed in light of the much larger fines paid by the loser of a battle that was fought to a finish.

Monique Chabas saw such accords as a high medieval development, improving upon an earlier, more primitive, system where violent revenge was considered a necessity.¹²⁷

However, even some of the earliest references to battles in case records from the French kingdom mention accords reached after battles had been pledged. Sometime between 980 and 1016, the monks of Saint-Pierre de Bèze, near Dijon, and an individual named Ogier agreed to hold a battle over the possession of two female serfs, yet Ogier backed down and the two parties drew up a written accord instead.¹²⁸ William Ian Miller has demonstrated that violent revenge has existed side-by-side with agreements regarding monetary compensation since very ancient times; indeed talion and blood money are inextricably linked. It was the very possibility of violence that made many negotiated agreements possible.¹²⁹ For his part, Ogier expressed an official reluctance to commit homicide and instead graciously accepted 50 sous from the monks.

Once a battle had been pledged, it was often removed to a higher court. In England, kings claimed the appeals of felony as their own, while a criminal appeal on the Continent was likely to be sent to the court of an overlord with powers of high justice. In the

¹²⁵ *Magni Rotuli Scaccarii Normanniae*, ed. Thomas Stapleton, vol. 1 (London: Society of Antiquaries of London, 1840), p. 63.

¹²⁶ See Chabas, pp. 92-4, 188.

¹²⁷ Chabas, p. 91.

¹²⁸ *Chronique de l'abbaye de Sainte-Bénigne de Dijon suivie de la chronique de Saint-Pierre de Bèze*, ed. E. Bougaud & M. Joseph Garnier, *Analecta divionensia* (Dijon: Darantier, 1875), p. 298.

¹²⁹ William Ian Miller, *Eye for an Eye* (Cambridge: Cambridge University Press, 2006), pp. 24-7, 104-8.

meantime, the parties had yet another opportunity to negotiate. M.J. Russell, the indefatigable enumerator of English judicial duels, found that, out of a total of 1,241 proposals of trial by battle mentioned in English sources between 1050 and 1650, 154 battles were pledged but not fought, while a further 363 battles proceeded all the way to a violent conclusion.¹³⁰ Since all the other cases were neither pledged nor fought, fewer than half of all proposals resulted in a wager of battle.

The wager represented a hardening of both parties' bargaining positions. It might be the product of a sudden and rash dispute between courtiers, as evidenced in the chronicle of Gilbert of Mons above, or it might be a long, drawn-out affair with each move carefully calculated. However, once the gauntlets had been accepted, a duel could not be avoided without difficulty and expense. The parties were drawing ever closer to a confrontation in the lists.

The process for trial by battle in medieval England and France may be compared to the procedure leading to a strike in modern labour law. The goal of the parties was not necessarily to reach a final showdown. At each step on the way, opportunities for negotiation and compromise were built into the trial. As the case progressed, parties faced the prospect of shaming themselves in a violent public spectacle. Pressure escalated in increments until one or both parties made concessions and an agreement could be reached.

At each stage of a trial, the honour of a litigant and its manifestation in his reputation would either smooth the course of his suit or make it more difficult for him. The respect which a defendant commanded from his peers determined whether he was tracked down and imprisoned or merely issued a summons to court. It determined whether his neighbours

¹³⁰ M.J. Russell, "Trial by Battle" (doctoral dissertation, University of London, 1977), p. 273.

would stand surety for his court appearances, and whether they would support him in a jury or inquest. It was a critical part of the decision regarding the form of proof he would undergo. Trials by battle were the crucible in which honour was tested. Issues of respect and reputation informed each decision a litigant made about whether to continue with his suit or to seek an accord.

Chapter Six

On the Field

At the climax of a trial by battle lay the combat itself. Brutal, bitter and prone to surprises, it was the focus of much anxiety. Over time, both legal authorities and the acephalous pressure of custom increasingly regulated its details. The rules they produced sought to contain the chaos of the event and hedge it around with ceremony. They did not, however, seek to limit its physical danger. Late medieval judicial duels were just as likely--if not more likely--than the ones that had come before them to cause death or serious injury. They were also difficult to manipulate. The object of many of the regulations was to make the outcome of a battle as unpredictable as possible and to give the audience as little opportunity as possible to intervene. Nevertheless, participants and audiences alike found ways to influence the process and interpret rules to their advantage. This tension between the pressure of community partisanship and the randomness of single combat is evident in many accounts of battles struck and concluded.

On this last point, trial by battle differs somewhat from the unilateral ordeals like the carrying of hot iron and the ordeal of ducking in cold water. The functionalist school of thought discussed in the last chapter has long noted that these last procedures were open to interpretation and manipulation. Early medieval prescriptions for the carrying of hot iron had

little to say about the size and shape of the iron, exactly how hot it should be or how far it should be carried. Similarly, instructions for the ordeal of cold water did not specify how long the proband should remain immersed. Rebecca Colman saw in this vagueness an opportunity for “elasticity” in ordeal rituals, allowing a tacit community consensus to determine how severe a trial should be.¹ Her argument had to de-emphasize trials by battle, however, because this elasticity was not as evident in the case of bilateral ordeals. Unlike the unilateral tests, trial by battle survived long enough for its rules to be prescribed in some detail by customals and formulae from numerous regions. The severity of a judicial duel also depended very much on the ferocity of the combatants themselves rather than the decision of the community. Nevertheless, an examination of the events that preceded and followed the combat itself shows that there was still room for community members to exert their influence.

Preparations

While most litigants remained at liberty once they had given sureties for their appearance on the day of combat, others were detained or imprisoned to ensure their attendance. In thirteenth-century Amiens, both appellants and appellees were imprisoned pending battles over serious charges of felony, although third parties were permitted to visit both of them in order to mediate an accord. Litigants in cases of debt were similarly assigned housing within the town walls by the provost and required to stay there until the day they fought.²

Thirteenth-century Norman combatants could also be kept in prison, with the added

¹ Rebecca V. Colman, “Reason and Unreason in Early Medieval Law,” *Journal of Interdisciplinary History* 4:4 (Spring, 1974), pp. 589-90.

² *Recueil des monuments inédits de l’histoire du tiers état*, ed. Augustin Thierry, 1st ser., vol. 1 (Paris: Firmin Didot Frères, 1850), p. 139, n. 3.

provision in custom that if force was used by or against them there, the *bailli* was to inquire into the incident and see that both the responsible party and the guards were punished.³

English approvers of the time were also kept in jail and several letters in the Close Rolls relay instructions for their care.⁴

Several fifteenth-century combatants were imprisoned before their duels as well, even though they would seem to have been quite capable of producing sureties. James Butler, the earl of Ormond who appealed the prior of Kilmaine in 1446, was kept in the Tower of London until a letter from the king ordered that he be moved closer to Smithfield, a neighbourhood just outside the city walls, “for youre brething [and] more ease”.⁵ In 1454, Mahiot Coquel and Jacotin Plouvier, who fought one of the last judicial duels in the French-speaking realm, were imprisoned for ten months. The former was kept in the town jail, while the latter was held in one of the gatehouses of the town of Valenciennes. Coquel, as the defender and a local resident, had all his living expenses paid by the town, while Plouvier was expected to pay for his own food.⁶ The conditions under which a combatant was imprisoned or allowed to walk free would undoubtedly have influenced his health and his frame of mind as he prepared himself for a judicial duel.

There is also evidence that some judicial duellists received instruction in fighting while they were waiting for the day of their battle. Beginning in 1170, the Pipe Rolls note that several approvers had masters, who were also paid by the king and received somewhat more

³ A. Canel, “Le combat judiciaire en Normandie,” *Mémoires de la société des antiquaires de Normandie*, 3rd series, vol. 22 (Paris: Derache, 1856), p.580.

⁴ See, e.g. *Close Rolls of Henry III* (London: HMSO, 1902-1938), vol. 1, pp. 26, 82, 273, 525; vol. 2, p. 143, 368; vol. 3, pp. 504, 524; etc.

⁵ *Proceedings and Ordinances of the Privy Council of England*, ed. Sir Harris Nicolas, vol. 6 (London: Great Britain Record Commission, 1837), pp. 57-8.

⁶ *Chronique de Mathieu d’Escouchy*, ed. G. Du Fresne de Beaucourt, vol. 2 (Paris: Jules Renouard & C^{ie}, 1863), p. 300. See pp. 1-3, *supra*.

money than their students.⁷ M. J. Russell has observed that some of these masters can be identified as former champions and thus were probably instructing their charges in the art of fencing rather than counselling them on the finer points of legal practice.⁸ Thirteenth-century entries in the Close Rolls also record orders to gaolers that prisoners should be allowed to practice with the baton and shield. This training was not necessarily very extensive however. In 1237, Galfrid of Burghers was given just three or four days to familiarize himself with his weapons.⁹ His training does not seem to have helped him much. Two years later, the Curia Regis Rolls record a peace settlement between the brothers of a Galfrid de Burgeresse and the man who convicted him of robbery, presumably by battle.¹⁰

Medieval fighting instructors usually practiced their art as a sideline, and possibly an itinerant existence, rather than a full-time profession. Professional guilds of fencing masters did not begin to incorporate until the end of the medieval period; the first known one in Europe was the Brotherhood of Saint Michael in Bruges, which formed in 1456, the year after Plouvier and Coquel fought the fifteenth century's last judicial duel in French-speaking territory.¹¹ Nevertheless, there is evidence that professional fencers and schools existed long before this time. In 1280 and 1286, the city of London felt the need to outlaw schools of sword and buckler fencing, and in 1311 a Roger le Skirmisour was prosecuted for breaking this law and luring to his school "the sons of respectable parents, to the wasting of the

⁷ *The Great Roll of the Pipe for the Sixteenth Year of Henry the Second, A.D. 1169-1170*, Pipe Roll Society (Old Series), vol. 15 (London: Wyman & Sons, 1892), p. 34.

⁸ M. J. Russell, "The Champion's Master in Trial by Battle: A Note," *Journal of Legal History* 5:1 (1984), pp. 76-8.

⁹ *Close Rolls of Henry III*, vol. 3, p. 524.

¹⁰ *Curia Regis Rolls*, ed. L. C. Hector, vol. 16 (London: HMSO, 1979), p. 163, no. 836.

¹¹ Matt S. Galas and Eli Steenput, "Statutes of the Fencing Masters of Bruges (1456)," in *Arts de Combat*, ed. Fabrice Cognot (Dijon: A.E.D.E.H., 2011).

property of their parents and injury of their own characters.”¹² The Paris *taille* of 1292 lists seven men as fencers, ranging from Sanse in the Rue Beaubourg who paid just 2 sous in taxes, to Master Thomas on the prestigious Rue de la Calendre, who paid 30 sous.¹³ However, by the enumeration of 1297, all but one of these men had disappeared from the tax rolls.¹⁴ Some of them may have been listed under other trades they also practiced, while others appear to have moved on or managed to evade taxes.

Names and details survive about very few of the fencing masters from some of the late judicial duels. In 1446, Henry VI sent a letter to Philip Treher, a fishmonger of London, requesting that he should “be intendaunt and of counsaile” to John Davy, the appellant in a treason case before the Court of Chivalry. A later note to the Keeper of the Privy Seal explained that he had been “teching certain pointes of armis” to Davy and also to the Prior of Kilmaine mentioned above. Treher was to receive twenty pounds for his services.¹⁵ The fact that the man assigned to two of the most high-profile battles of his day was also a fishmonger by trade suggests that fencing instruction was still more of a hobby than a profession in London at the time.

There is also a story attached to the fencing master who taught Mahiot Coquel, although this one may be more of a rumour or a legend. One day, when the master was passing through the gate in which Plouvier was being held, Plouvier managed to throw dirty water on

¹² *Liber Custumarum*, ed. Henry Thomas Riley, Rolls Series 12:2 (London: Longmans, Green, & Co., 1860), pp. 282-3. *Calendar of Letter-Books of the City of London, 1309-1314*, ed. Reginald R. Sharpe (London: J.E. Francis, 1902), p. 266, f. cxxxiii.

¹³ Henri Daressy, *Archives des maîtres d’armes de Paris* (Paris: Maison Quantin, 1888), p. 127.

¹⁴ The lone survivor is Jacques in the Rue du Roi-de-Sicile. *Le livre de la taille de Paris, l’an 1297*, ed. Karl Michaelsson (Göteborg: Almqvist & Wiksell, 1962), p. 152.

¹⁵ *Privy Council*, vol. 6, pp. 56, 59. See also p. 130, *supra*, for the case of *Davy v. Catour*.

him from a window. The offended master vowed to teach Coquel a secret move by which he would defeat his opponent and kill him.¹⁶

A combatant's reputation among the officials of the court and within his community undoubtedly had an influence on the kind of fighting instruction he received. Courts and communities could manipulate the situation by assigning him one instructor rather than another, or by deciding to pay for his instruction. Nevertheless, fighting lessons could only have a limited impact in the relatively short time between a wager of battle and the duel itself. In Coquel's case, he was ignominiously defeated by Plouvier, despite the secret teachings of the fencing master. The people of Valenciennes could not afterwards determine what the secret move was supposed to have been or if it had been employed.

Judicial duellists also had to prepare themselves spiritually. John of Salisbury wrote that there was a shrine to St. Drausin in Soissons where champions were accustomed to hold vigils. It was so famous that duellists came there from as far away as Burgundy and Italy to pray.¹⁷ These spiritual preparations were the focus of some ambivalence among the clergy. While several sources dating from before the Fourth Lateran Council contain liturgies for the blessing of hot irons and other tools of the ordeal, there is just one example of a blessing for a shield and baton used in trial by battle. It comes from England and is dated rather vaguely between the time of the Conquest and the year 1130.¹⁸ Most of the evidence for the religious steps some judicial duellists may have taken comes from literature. Several heroes of *chansons de geste* from the second half of the twelfth century, including characters in *Garin*

¹⁶ Georges Chastellain, *Chronique*, in *Œuvres de Georges Chastellain*, ed. Kervyn de Lettenhove, vol. 3 (Brussels: F. Heussner, 1864), pp. 41-9.

¹⁷ Joannes Saresberiensis, *Epistolae*, ed. J.-P. Migne, *Patrologia Latina, cursus completus*, vol. 199, pt. 1 (Paris: J.-P. Migne, 1890), Epistola CXLV, col. 136D.

¹⁸ Petrus Browe, *De Ordaliis*, vol. 2 (Rome: Universitas Gregoriana, 1933), no. 6, p. 14-5.

le Loherain, Aye d'Avignon, Gui de Nanteuil and *Godefroid de Bouillon*, spend the night before their respective battles holding a vigil in a church.¹⁹

Many tales from literature also feature the protagonists hearing mass and taking communion on the morning before their duels.²⁰ This practice was not always well regarded in real life. According to Peter the Chanter in the early thirteenth century, champions were customarily permitted to attend mass, but not to communicate. The Chanter was opposed even to this much accommodation of trial by battle. “If someone should fight to defend his life, although it necessarily behoves him either to die or to defend himself, I doubt whether the Eucharist should be given to him if he asks for it,” he argued, “because one can scarcely fight to the death against someone without having fraternal hatred for him, which is a sin against the Holy Spirit.”²¹

In the later Middle Ages, there appears to have been more emphasis on the private spiritual preparations of the combatants, rather than the public ones. Honorat Bovet advised princes to take judicial duellists aside well in advance of their battles and counsel them on the care of their souls. They should strongly recommend that the combatant find a worthy and discreet priest to whom he could confess before he put his life in danger. This task was to be undertaken before he went about the more mundane business of supplying himself with armour and horses.²²

¹⁹ M. Pfeffer, “Die formalitäten des gottesgerichtlichen Zweikampfs in der altfranzösischen Epik,” *Zeitschrift für Romanische Philologie* 9 (1885), p. 41.

²⁰ Pfeffer, pp. 41-44.

²¹ “Item: si aliquis pugnaret pro capite suo defendendo, ita quod necessario oportet eum mori vel se defendere, dubitarem ei, si peteret, esset danda eucharistia, quia vix posset pugnare contra aliquem ad mortem nisi haberet fraternum odium quod est peccatum in spiritum sanctum.” Peter the Chanter, *Summa*, Troyes MS 276, fol. 122^{vb} & Paris, Bibliothèque nationale, MS Latin 9593, fol. 146^{ra}, quoted in John Baldwin, “The Intellectual Preparation for the Canon of 1215 Against Ordeals,” *Speculum* 36:4 (1961), p. 631, n. 110.

²² Honorat Bovet (Honoré Bonet), *The Tree of Battles*, ed. G.W. Coopland (Liverpool: Liverpool University Press, 1949), c. CXXX, pp. 207-8.

A duellist's spiritual undertakings and the help he received with them from others around him would certainly have affected his psychological preparedness and consequently his performance. In this case, it was key figures in the community, namely priests, rather than a broader circle of associates, who held the power either to reassure a combatant or to put him under more pressure.

Place and Time

While the combatants were preparing themselves for their fight, and likely attempting to negotiate a last-minute settlement, officials of the court had preparations of their own to make. A judicial duel required a location in which to fight and marshals to keep order on the field. Duelling grounds were quite deliberately set up in such a way that they severely limited the audience's opportunities for influence and involvement in the battle. These limits only became more pronounced as time went on.

Before the thirteenth century, judicial duels, like the tournaments of the day, were not yet ordinarily held in fenced lists. In the early Middle Ages, the Latin word *campus* meant both an open field and, more rarely, a combat. When the sources became more specific about the locations of duels, the venues were still fields or meadows. A charter from St. Frideswide in Oxford dating around the year 1147 mentions that a judicial duel held three generations before had been staged in "a green meadow above the house of Godwin."²³ Similarly, another charter from the church of Sainte Catherine-du-Mont near Rouen, dated 1240, describes a battle held in pastures between a certain church and a manor. The audience sat on the ground around the fighting circle (*circulum pugnantium*).²⁴

²³ "...in viridi pastura supra domum Godwyni." *English Lawsuits*, vol. 1, no. 316, p. 265.

²⁴ Browe, vol. 2, no. 74, p. 59.

Open fields were not the only possible venue for a judicial battle. In urban areas, they could also be fought in a more central location. An incident in the life of Saint Godric, recorded around the middle of the twelfth century, mentions a judicial duel fought on a green between the castle and the cathedral.²⁵ On the Continent, Peter the Chanter complained that judicial duels were fought in the bishop's and archdeacon's courtyards in Paris.²⁶ The councils of Paris in 1212 and Rouen in 1214, reflecting the theological climate leading up to the Fourth Lateran Council, ordered that cemeteries and other sacred places were no longer to be used for this purpose.²⁷ Courts appear to have simply used any open space that was convenient to their location.

Gradually, the space in which the combatants fought came to be more strictly defined. A charter of 1104 from the abbey of Nouaillé refers to an island in Poitou where it was customary for champions to go when judicial duels were held.²⁸ The English chronicler Jocelin of Brakelond writes of a similar place near Reading Abbey, where Henry of was defeated when he saw a miraculous apparition.²⁹ *Girart de Vienne*, a twelfth-century *chanson de geste*, also contains a scene in which the legendary heroes Roland and Oliver fight on an island, this one in the river Rhone below the town of Vienne.³⁰ This last text suggests a reason for using such a place as a location for a battle. In the story, the combatants fight alone on the isle, and all observers must watch from the walls and towers of

²⁵ Reginald of Durham, *Libellus de vita et miraculis S. Godrici, heremita de Finchale*, ed. J. Stevenson, Surtees Society 20 (London: J. B. Nichols, 1847), c. LXXXVI, p. 191. In the present day, this green is located a few metres from Durham University's history department.

²⁶ Baldwin, "Preparations," p. 631.

²⁷ *Sacrorum conciliorum nova et amplissima collectio*, ed. Johannes Domenicus Mansi, vol. 22 (Venice: Antonio Zatta, 1778), col. 842, c. xv & col. 920, c. xv.

²⁸ *Chartes de l'abbaye de Nouaillé de 678 à 1200*, ed. P. de Monsabert (Poitiers: Société des Archives Historiques du Poitou, 1936), no. 187, p. 292.

²⁹ *Chronica Jocelini de Brakelonda: De rebus gestis Samsonis abbatis monasterii Sancti Edmundi*, ed. John Gage Rokewode (London: Camden Society, 1840), p. 52. See also p. 123, *supra*.

³⁰ *Girart de Vienne*, ed. Wolfgang van Emden (Paris: A. & J. Picard, 1977), lines 5336-5610, pp. 237-48.

the town. Everyone is accorded a good view, but the opportunities for the audience to manipulate the outcome of the combat are severely limited. However, this arrangement does not prevent the author from adding a plot twist involving a treacherous armed squire in a boat.

Violent and unsubtle audience interference was a very real danger in judicial duels. In 1199 the champion Philip of Bristol complained to the English royal court that he had been fighting a battle in Wiltshire and had prostrated his opponent when one Robert Bloc disrupted the fight, snatching the downed man's baton and striking Philip over the head with it.³¹ By the thirteenth century, several customs mention that it was the responsibility of the court to provide guards who could maintain order in and around the lists.³² Even as early as 1092, a duel in Angers had to be called off because the people who were supposed to guard the field did not show up.³³ After Louis IX abolished trial by battle from the French royal domain, a knight named Matheus le Voier complained to the Parlement of Paris because he had been accustomed to receive five sous for guarding the field whenever there was a judicial duel and this source of income had been taken away from him.³⁴

In England, echoing Norman practice, it was customary for the local sheriff to appoint four knights to act as marshals at the four corners of the field. These men could be summoned to court at a later date to produce an oral record of the duel's outcome. Even this measure did not create as much order and clarity as might have been hoped. In the case of

³¹ *Curia Regis Rolls*, vol. 1, p. 100.

³² See, e.g. *Summa de legibus Normannie*, in *Coutumiers de Normandie*, ed. Ernest-Joseph Tardif (Paris: A Picard & Fils, 1896), c. LXVII.5, p. 169; Customs of Caumont (1289) and Marmande (1340) in *Les coutumes de l'Agenais*, ed. Paul Ourliac & Monique Gilles, vol. 1 (Montpellier: Presses de Savoie, 1976), pp. 228-9, no. 242, p. 429, no. 179; *Le droit coutumier de Cambrai*, ed. E.M. Meijers & A.S. Blécourt, vol. 1 (Haarlem: H.D. Tjeenk Willink & Zoon, 1932), p. 232.

³³ *Cartulaire de l'abbaye de Saint-Aubin d'Angers*, ed. Bertrand de Broussillon & Eugène Lelong, vol. 2 (Paris: Picard & Fils, 1903), no. DCCCLXXIX, p. 352. See also p. 91, *supra*.

³⁴ *Les Olim, ou registres des arrêts*, ed. Le Comte Beugnot, vol. 1, part 1 (Paris: Imprimerie Royale, 1839), p. 491.

Philip of Bristol and Robert Bloc, Robert denied all wrongdoing and claimed that he himself had been one of the guards of the field, appointed by the local sheriff.³⁵

From the end of the twelfth century onwards, some courts began to erect physical barriers between the duelling field and the audience. In 1195, the prévôté of Argentan in Normandy noted the expense of fencing a field for the holding of a duel.³⁶ In thirteenth-century Cambrai, the provost was to pound in the first stake of the lists as soon as a battle had been pledged.³⁷ Another form of barrier appears in an early redaction of the customs of Anjou, dating from the thirteenth century. It says that the parties are permitted to seek an agreement even after the champions are armed “within the cords and outside the cords.”³⁸ This description implies an arrangement resembling a boxing ring.

In the fourteenth century, sources began to mention fenced lists more often, perhaps following the fashion of contemporary tournaments. In 1317, such lists were constructed in a garden of the Palais royal in Paris for a judicial duel between two noblemen.³⁹ The traces of another set of lists were still to be seen on the Île de Notre-Dame at the end of the same century according to the Goodman of Paris.⁴⁰ The custom of Brittany, from the middle of the fourteenth century, states that the barriers around the lists should be sturdy enough that a horse cannot cross them and fighters on foot know when they have been driven from the

³⁵ *Curia Regis Rolls*, vol. 1 (London: HMSO, 1922), p. 100.

³⁶ “...campo hordando ad duellum tenendum.” Canel, p. 620.

³⁷ *Droit coutumier de Cambrai*, p.232.

³⁸ “Il est usage que puis que bataille est jugée que toujours en puit l’en demander amendement en cordes et hors cordes, puis qui li champion sunt armé...” *Cordes* does not appear to be an idiosyncratic spelling of *cour*, since that word is rendered as *cort* elsewhere in the text. *Coutumes et institutions de l’Anjou et du Maine antérieures au XVI^e siècle*, ed. C.-J. Beaufort-Beaupré, part 1, vol. 1 (Paris: A. Durand & Pedone-Lauriel, 1877), p. 52, c. 57.

³⁹ *Chronique Parisienne anonyme du XIV^e siècle*, ed. A. Hellot (Nogent-le-Rotrou: Daupeley-Gouverneur, 1884), p. 39, c.28. See also p. 124, *supra*.

⁴⁰ *Le menagier de Paris*, ed. Georgine E. Brereton & Janet M. Ferrier (Oxford: Clarendon, 1981), p. 68. The Île de Notre Dame lay just east of the Île de la Cité. It has since been joined with another island to form the Île Saint Louis. It may be the same island on which two Jews fought a judicial duel in 1294. See *Recueil des historiens des Gaules et de la France*, ed. Martin Bouquet, rev. L. Delisle *et al.*, vol. 21 (Paris: Imprimerie Impériale, 1855), p. 133k.

field.⁴¹ By the end of the century, Honorat Bovet felt that a duel must be held in an enclosed field with a warden to maintain its security, or else the battle would not have been properly conducted.⁴²

In the later Middle Ages, when judicial combats were fewer and farther between, some sources record detailed instructions for the preparation of a field. The ordinance of Philip IV, reinstating trial by battle in 1306, said that lists should be forty paces wide and eighty paces long, and the combatants should each have a pavilion at opposite ends of the space.⁴³ In Valenciennes, the lists for Coquel and Plouvier were constructed in the marketplace, perhaps reflecting the civic privileges associated with the event. They were circular and sixty feet around, suitable for a combat on foot. They were also surrounded by a fence of “double wood” (*bois doubles*), described as having been built to protect the combatants, especially the one who was victorious. The combatants each had a chair draped in black cloth, which was removed when the fighting began.⁴⁴ A similar round field with a post and rail fence can be seen in a miniature of a judicial duel depicted in a late copy of the *Grand coutumier de Normandie*, dating to circa 1460.⁴⁵

In England, surviving prescriptions for the construction of judicial duelling fields describe only the lists used for combat between nobles on horseback. These resemble the ones found in the ordinance of Philip IV. Thomas of Woodstock, writing around 1400, thought they should be sixty paces long by forty paces wide and surrounded by a double layer of barred fences seven feet tall. These fences were likely of the post-and-rail variety

⁴¹ *La très ancien coutume de Bretagne*, ed. Marcel Planiol (1896; reprint, Paris: Champion-Slatkine, 1984), c. 134, p. 165.

⁴² Bovet, c. CXVI, p. 200.

⁴³ An edition of this document appears in Monique Chabas, *Le duel judiciaire en France (XIII^e - XVI^e siècles)* (Saint-Sulpice de Favières: Éditions Jean Favard, 1978), p. 277.

⁴⁴ *Mathieu d'Escouchy*, p. 304.

⁴⁵ New York, Pierpont Morgan Library, MS M.457, folio 85v. The image is reproduced in Phyllis G. Tortora & Keith Eubank, *A Survey of Historic Costume* (Greeley, CO: Fairchild Publications, 1989), p. 101.

seen in many contemporary illustrations of tournaments. They were to be constructed in a place where the ground was flat and hard, without stones.⁴⁶ A memorandum issued by an official of Henry VI in 1453 presents a slightly different picture. It directed that the sheriffs of London were to prepare duelling grounds at Smithfield by gravelling and sanding the location and constructing scaffolding from which the king could view the fight, as well as constructing barriers and lists.⁴⁷ The result remained that the combatants and the audience were well separated from one another. By this time, expectations regarding fences, guards and viewing stands were well defined. However, the key conundrum regarding duelling grounds remained. The audience had to be kept well away from the combatants, but the legitimacy of the exercise depended upon its public character, thus allowing a large number of people to testify to its outcome at a later date.

There were also customary expectations regarding the day and time of the duel. Sometimes champions or their principals did not show up at all.⁴⁸ As Stephen White has explained, many ordeals were proposed with little expectation that they would be consummated. If the tactic failed to result in a compromise by the day of the battle, some combatants simply abandoned their cases abruptly.⁴⁹ The record of one English wager of battle contains an agreement that the representatives of one party would appear at

⁴⁶ *The Ordenaunce and Fourme of Fightyng within Listes*, in *The Black Booke of the Admiralty*, ed. Sir Travers Twiss, vol. 1, Rolls Series 55 (London: HMSO, 1871), pp. 306-7.

⁴⁷ *Privy Council*, vol. 6, p. 130.

⁴⁸ E.g. *Cartulaires de l'abbaye Saint-Serge et Saint-Bach d'Angers*, ed. Yves Chauvin, vol. 2 (Angers: Presses de l'Université d'Angers, 1997), p. 383, no. 19; *Actes du Parlement de Paris*, ed. Edgard Boutaric, vol. 1 (1863; reprint, Hildesheim, Georg Olms Verlag, 1975), p. 217.

⁴⁹ Stephen D. White, "Proposing the Ordeal and Avoiding It: Strategy and Power in Western French Litigation, 1050-1100," in *Cultures of Power: Lordship, Status and Progress in the Later Middle Ages*, ed. Thomas Bisson (Philadelphia: University of Pennsylvania Press, 1995), p. 110.

Westminster on the designated day without issuing any delaying essoins, or else lose their case.⁵⁰

The hour of the day by which the combatants should arrive at the field was also governed by custom. In the Middle Ages, it was difficult to measure the time of day with any great precision while standing outdoors in an open space, so the parties had some leeway to arrive late. Tardiness could be a useful ploy if last-minute mediation looked as if it might produce an accord just in the nick of time. However, this tactic had its limitations. In many French regions, custom dictated that duellists had to arrive at the lists by noon or risk losing their battles.⁵¹ The reason for using midday as the deadline was probably because it is the simplest hour of the day to calculate without ready access to a sundial. If shadows begin to grow longer, noon has passed.

The dangers of missing the deadline are illustrated by a case that occurred in Mons in 1188. Two knights, Gerard of Saint-Aubert and Robert of Beaurain, were scheduled to fight a judicial duel over the former's allegations that the latter's family were of servile status. Gerard arrived early on the day of the duel and stood waiting in the public square along with the Count of Hainault, who was to judge the duel, and various other clergymen and dignitaries. To everyone's astonishment, Robert delayed until a nearby monastery rang the midday bells. Gerard demanded that the judge rule he had won the battle by default. According to a chronicler, "The count's men, were thus strictly admonished, and considering the sun with the instruction of the clergy standing nearby, they said that the hour of noon had

⁵⁰ *Curia Regis Rolls*, vol. 13 (London: HMSO, 1959), p. 135, no. 600.

⁵¹ Normandy: Canel, p. 624; The Beauvaisis: Philippe de Beaumanoir, *Coutumes de Beauvaisis*, ed. A. Salmon, vol. 2 (Paris: Alphonse Picard & Fils, 1900), p. 398, §1771; Parlement of Paris: Chabas, p. 275, c. 11; Guillaume du Breuil, *Stilus curie parlamenti*, ed. Felix Aubert (Paris: Alphonse Picard & Fils, 1909), c. XVI.4, p. 111 (At the Parlement, both sources agree that the appellant must appear by noon, but the defendant could delay until the hour of *nones*, i.e. three in the afternoon.); Guyenne: L. Lacoutre, "Formalités des duels et combats judiciaires en Guyenne dans les XIII^e ou XIV^e siècles," *Bulletin de la Société de Borda* 38 (1914), p. 80.

passed.”⁵² Robert chose this moment to ride up, just a little late. He was promptly clapped in chains. Few duels offered the judge so clear an opportunity to choose a winner, but when the occasion presented itself, we find the judicial duel working in much the same way that the functionalist school of thought has claimed that other ordeals operated. The verdict was the result of the community (or at least its leading members) consulting with one another and reaching a consensus about a somewhat ambiguous phenomenon.

Providing that both parties appeared in time on the morning of their combat, the ceremonies of the duel itself could begin. These varied somewhat by region and time period, but contained many similar elements. Until the fourteenth century, medieval sources have little to say about prescribed rites, and indeed early duels may have been conducted with an absolute minimum of pageantry. Conversely, some of the most elaborate treatises about the staging of such combats were written after the last judicial duels had been fought; they may well contain flights of fancy that were never played out in real life.

The combatants and their supporters might arrive at the field in a procession. In thirteenth-century Cambrai, the provost and councillors led the champions on a parade around the park where the duel was to be held so that all the gathered folk could pray for them.⁵³ Beaumanoir described preliminary ceremonies wherein each combatant was introduced by his lawyer and the legal question around which the case revolved was restated for the benefit of the audience.⁵⁴ In Guyenne at the end of the fourteenth century, the combatants were to ride into the lists and then dismount, make a cross upon the ground, and

⁵² “*Unde homines comitis districtius ammoniti, considerantes solem, et a clericis astantibus instructi, dixerunt horam nonam esse transactam.*” Gilbert of Mons, *La chronique de Gislebert de Mons*, ed. Léon Vanderkindere (Brussels: Librairie Kiessling & Co., 1904), p. 212. See also note 2 for Vanderkindere’s argument that *hora nona* means noon rather than three in the afternoon in this context. See also pp. 99 & 203, *supra*.

⁵³ *Droit coutumier de Cambrai*, p. 232.

⁵⁴ Beaumanoir, vol. 2, §§ 1834-8, pp. 429-31.

kiss it before retiring to pavilions set up at either end of the field. These tents could be elaborate edifices containing not only a table and a meal, but also a physician, a lawyer and a master armourer, together with the tools of their trade.⁵⁵ Hardouin de la Jaille, writing in 1483, envisioned an even more complex scene wherein first the prince was seated on his scaffold and then the other nobles, king of arms, marshal, secretary, heralds, poursuivants, serjeants and trumpeters took their places in turn, followed by the combatants and their parties.⁵⁶ Hardouin would, however, never have an opportunity to stage such a ceremony.

Weapons and Accoutrements

In many regions, the first duty of the combatants upon entering the lists was to present their weapons and equipment to the judge for inspection. In some jurisdictions, this inspection occurred before the day of the duel itself. Combatants in Cambrai were to come to court two weeks after the battle had been pledged, so that their equipment could be approved. Their armour and weapons were then sealed in sacks and held by the court for safekeeping until the day of the duel so that no one could tamper with them.⁵⁷ The formula from Guyenne also required a separate day for the presentation of arms, but the court did not subsequently hold them for safekeeping.⁵⁸ In the case of English approvers, the court itself was responsible for producing the weapons and equipment, and purchases of this kind appear

⁵⁵ Lacoutre, "Guyenne," pp. 80, 85-6. This was probably a late development. The ordinance of Philip VI merely mentions that the combatants were to have pavilions and chairs (Chabas, p. 277), while the lists for the duel of Plouvier and Coquel contained a chair at either end draped in black cloth (Olivier de la Marche, *Mémoires*, in *Collection complète des mémoires relatifs à l'histoire de France*, ed. M. Petitot, vol. 10.2, [Paris: Fourcalt, 1825], p. 215.) A detailed thirteenth-century custom of Amiens states explicitly that champions were to be equipped without iron and they were not to eat or drink while they were on the field. It says nothing about chairs or pavilions. Charles Du Fresne Du Cange, *Glossarium Mediae et Infimae Latinitatis*, rev. ed., vol. 2 (1678; reprint, Niort: L. Favre, 1883), s.v. "Campiones," p. 64, col. A.

⁵⁶ *Formulaire des gages de bataille par messire Hardouin de la Jaille*, in *Traité du duel judiciaire, relations de pas d'armes et tournois*, ed. Bernard Prost (Paris: Léon Willem, 1872), pp. 149-151.

⁵⁷ *Droit coutumier de Cambrai*, p. 231.

⁵⁸ Lacoutre, "Guyenne," pp. 79-80

in the Pipe Rolls and at least one account book.⁵⁹ In Yonne in 1176, there were officials known as *marguilliers* who had the sole right to furnish arms for judicial duels.⁶⁰ Measures such as these gave judges the opportunity to ensure that one party could not gain undue advantage because of superior weapons or equipment. At the same time, it gave court officials some degree of control over such subtleties as the weight of the arms and the fit of the equipment. These matters could be vitally important in the heat of a fight.

The weapon used in the majority of French and English judicial duels was not the sword, nor indeed any other blade. From the Carolingian period onwards, most duels were fought with a wooden club or baton. The capitularies of Charlemagne and Louis the Pious speak of a shield and *fustis*.⁶¹ The next source to mention weapons, a charter from Angers dated to the year 1056, describes a champion armed *cum scuto et baculo*.⁶² Still later texts from the thirteenth century provide specifications for the weapon. Combatants in the town of Amiens were not to be armed with any iron or steel, nor any pointed object (*broke*). Their batons were to be three and a half feet long (according to local measure) and they were to be not only the same length, but also the same thickness and the same kind of wood.⁶³ In a contemporary episode of the fables of Reynard the Fox, Reynard and Ysengrin fight a judicial duel with batons of a similar kind. Ysengrin's is made of medlar wood, while

⁵⁹ *Crown Pleas of the Wiltshire Eyre, 1249*, ed. C.A.F. Meekings (Devizes: Wiltshire Archaeology and Natural History Society, 1960), p. 91. See Frederick C. Hamil, "The King's Approvers: A Chapter in the History of English Criminal Law," *Speculum* 11:2 (1936), p. 245, n. 6 for approvers' equipment in the Pipe Rolls.

⁶⁰ *Cartulaire général de l'Yonne*, ed. Maximilien Quantin, vol. 2 (Auxerre: Perriquet, 1860), no. CCLXVII, p. 285.

⁶¹ *Capitularia regum Francorum*, ed. A. Boretius, vol. 1, Monumenta Germaniae Historica, Capit. 1 (Hannover: Hahn, 1883), no. 41, c. 4, p. 117; no. 134, c. 1, p. 168; no. 135, c. 1, p. 269; no. 139, c.10, p. 283, c. 15, p. 284; no. 165, c. 12, p. 331.

⁶² *Cartulaire de ... Saint-Aubin d'Angers*, vol. 1, no. XXIX, p. 50.

⁶³ Du Cange, s.v. "Campiones," p. 63, col. C.

Reynard's, perhaps for comic effect, is made from a spiky branch of hawthorn.⁶⁴ Plouvier and Coquel also had medlar batons, these ones cut to the same size and weight.⁶⁵ The duellists in the Morgan Library's copy of the *Grand coutumier de Normandie* carry wooden clubs that taper towards their grips, not unlike baseball bats.⁶⁶

In England, references to the duelling baton in both texts and images have been collected and analysed by M. J. Russell.⁶⁷ The distinctive feature of the English baton was its head. Depending upon the image, this part resembled anything from the grip of a canoe paddle to the head of a pickaxe. In texts, such weapons were called *baculi cornuti* or *bastouns cornus*.⁶⁸ Images of them date from approximately 1180 onwards. Such a weapon would have been capable not only of delivering strikes, but also of hooking and grappling an opponent.

Horned batons were not unknown on the Continent, but the references to them are fewer and more scattered. A versified version of the *Grand coutumier de Normandie* mentions *bastons à cornelle*, although the original prose text makes no mention of horns.⁶⁹ There is also a miniature in a manuscript of Beaumanoir which shows combatants wielding formidable pickaxes.⁷⁰ Finally, a seal in the French National Archives dating from around 1300 bears the inscription "S[ÉEL] HENRI CHAILLAU L[']JESCREMISSEUR DE

⁶⁴ *Le roman de Renart: édité d'après les manuscrits C et M*, ed. Naoyuki Fukumoto, Noboru Harano & Satoru Suzuki, vol. 1 (Tokyo: France Tosho, 1983), p. 488, lines 14999 & 15011.

⁶⁵ La Marche, *Mémoires*, p. 216.

⁶⁶ MS M.457, f 85v, *op. cit.*

⁶⁷ M. J. Russell, "Accoutrements of Battle," *Law Quarterly Review* 99:3 (1983), pp. 432-6. Note that Russell missed the marvellous series of panels depicting a trial by battle found in the Saint William window of York Minster and dating from the early fifteenth century. See Thomas French, *York Minster: The St. William Window*, Corpus Vitrearum Medii Aevi Great Britain Summary Catalogue 5 (Oxford: Oxford University Press, 1999), pp. 70-73 & plate 10.

⁶⁸ Britton, ed. Francis Morgan Nicols, vol. 1 (Oxford: Clarendon, 1865), c. XIII.14, p. 107.

⁶⁹ Canel, p. 581. Canel quotes the verse customal at length, but unfortunately does not provide a reference.

⁷⁰ Berlin, Staatsbibliothek, MS Hamilton 193, f. 194r. Reproduced in M.J. Russell, "Trial by Battle," doctoral dissertation, University of London, 1977, p. 313.

CHAALONS” and depicts a horned baton superimposed on a shield.⁷¹ These examples represent three different jurisdictions. It is hard to know whether horned batons were as widespread in France as in England but rarely mentioned in documents, or if the examples merely show that artists and poets occasionally looked to England for artistic inspiration.

Shields came in a wide variety of shapes and tended to reflect the fashions of their time. A clerk’s doodle on an English Curia Regis roll from 1249 shows two duellists fighting with curved rectangular *scuta* with bosses. These shields would have been capable of covering the area between the shoulder and the knee.⁷² Other images from the same era show large rectangular bucklers with a single rigid handhold, measuring roughly two feet long if they were scaled up to life size. The fighters in the Beaumanoir manuscript are different again, having shields of the classic “heater” type, being rectangular at the top and tapering to a rounded point at the bottom, while a champion depicted on the brass of Bishop Wyvil of Salisbury from 1375 sports an early form of convex shield with a boss.⁷³

Some shields could take highly unusual shapes. Of particular note is the shield on the seal of Henri Chaillau. At first glance it appears to be merely a heater type with a rounded point, similar to the ones in the Beaumanoir manuscript, but a closer examination of the image reveals that it bears a sharp spike attached to the bottom.⁷⁴ A spearhead and scroll-

⁷¹ Paris, National Archives, seal no. 5860. The only published image of this seal that I am aware of is a finely detailed reproduction on the commercial website *Historic Waxcraft* (<http://www.historicwaxcraft.com/sealinfo.php?slID=558>, last accessed on December 15, 2011). The site appears to be inactive and its proprietors have not responded to e-mail.

⁷² London, Public Record Office, KB 26/223. Published as the frontispiece to *Select Pleas of the Crown*, ed. F.W. Maitland, Selden Society 1 (London: Bernard Quaritch, 1888). M.T. Clanchy reports that Maitland’s photograph now shows the scene more clearly than the original document, which has been damaged by light, wear and ill-judged repairs. M.T. Clanchy, “Trial by Battle and Highway Robbery in the Hampshire Eyre of 1249,” in *Medieval Legal Records, Edited in Memory of C.A.F. Meekings*, ed. R.F. Hunnisett & J.B. Post (London: HMSO, 1978), pp. 28-9.

⁷³ Edward Kite, *The Monumental Brasses of Wiltshire* (London: Edward Kite, 1860), plate 1.

⁷⁴ In his catalogue of the seals in the National Archives of France, Louis-Claude Douet d’Arcq somehow mistook the baton and shield for a fire rake superimposed on a cauldron, although it looks nothing like a cooking vessel. *Inventaire de Sceaux*, vol. 2 (Paris: Henri Plon, 1867), p. 396, no. 5860.

shaped lines growing from the top edge may also represent metalwork attached to the shield itself. The spike and spearhead may, in fact, be part of a single vertical handle running the entire length of the shield. There are analogs for such a design. Three manuscripts of a fifteenth-century German fencing treatise by Hans Talhoffer depict duellists fighting with shields that taper to points at both the top and the bottom. These implements are taller than the combatants themselves and contain hooks with which to grapple an opponent. They are also held by a vertical bar running along the back of the shield.⁷⁵ John of Ibelin's *Assizes of Jerusalem*, a customal in French for crusaders, also describes a kind of specialized duelling shield, called a *harace*. This device stood from a palm to half a foot's length taller than its wielder and contained two eyeholes, through which one could see the enemy while still remaining covered.⁷⁶ The scroll-like devices above the Henri Chaillau shield may have had this function as well. They would have allowed a combatant to parry blows while still being able to see through his shield, and at the same time to use his shield to hook and grapple opponents. Similar duelling shields may well have existed in more parts of Europe, but to date no one has published a scholarly work about them. Their size and weight would have forced champions into a less mobile contest fought at close range. From these diverse examples we can conclude that, while batons maintained much the same shape for centuries, there was much less conservatism in the shape of shields.

Common duellists sometimes had other equipment beside their baton and shield. When treatises began to discuss legal customs in more detail during the thirteenth century, regulations regarding combatants' clothing came to be recorded in writing as well. Judicial

⁷⁵ Hans Talhoffer, *Alte Armatur und Ringkunst*, 1459, Copenhagen, Kongelige Bibliothek, MS Thott 290 2, ff. 97v.-103r., 110v.-117r. *Talhoffers Fechtbuch (Gothaer Codex) aus dem Jahre 1443*, ed. Gustav Hergsell (Prague: Gustav Hergsell, 1889), plates 35-47. *Talhoffers Fechtbuch aus dem Jahre 1467*, ed. Gustav Hergsell (Prague, J. G. Calve, 1887), plates 124-164.

⁷⁶ John of Ibelin, *Le livre des assises*, ed. Peter W. Edbury (Leiden: Brill, 2003), c. 89, p. 236.

duellists usually fought with a bare minimum of protective equipment. The English treatise known as *Britton* says that they should have bare heads, hands and feet, and not even a gambeson (*linge armure*) for protective clothing.⁷⁷ The *Mirror of Justices* also says that they should not have on them any iron, horn or baleen.⁷⁸ Images from the time show duellists wearing unbelted knee-length tunics and little else.⁷⁹ Some records mention specialized clothing for judicial combat. An English account book from 1249 records purchases of white leather (likely tawed leather), felt and linen for approvers' arms and *tunicas armaturas*.⁸⁰ These materials may in fact have been for the same duel as the one that was illustrated on the Curia Regis roll. It is possible, therefore, that the tunics depicted in the illustration are in fact reinforced and padded, although this would have provided only minimal protection from the picks.

Later images show some slight variation in the clothing. In 1355, Bishop Wyvil of Salisbury launched an aggressive and successful lawsuit against the earl of Salisbury to lay claim to Sherborne Castle. Threatening to let the suit progress to battle, he forced the earl to concede the property. To celebrate his victory, he commissioned an unusual brass for his tomb. The bishop is shown sitting in his castle while his champion guards the gate with a horned baton. The champion on Bishop Wyvil's brass wears a short, tight-fitting tunic more in keeping with the fashion of the mid fourteenth century. An account of the same champion describes him as being clothed in a short garment of white leather and a coat of red silk painted with the bishop's arms.⁸¹

⁷⁷ *Britton*, c. XIII.14, p. 107.

⁷⁸ Andrew Horn, *The Mirror of Justices*, ed. William Joseph Whittaker, Selden Society 7 (London: Quaritch, 1895), p. 112.

⁷⁹ Russell, "Accoutrements," p. 437.

⁸⁰ Clanchy, p. 33, n. 53.

⁸¹ Kite, p. 16 & plate 1.

The combatants depicted in the early fifteenth-century window of York Minster wear tailored tunics and hose, with bare feet in the combat scenes. Bright crimson glass is used for the clothing. This choice of colour also matches the equipment described in a late case from 1422, when both parties were described as wearing red leather.⁸² Indeed, red equipment and red or white leather made frequent appearances in late medieval English cases.⁸³

On the Continent, similar norms for clothing prevailed. A combatant in thirteenth-century Amiens could arm himself in leather, tow, felt and cloth, but could not have on him any iron or steel. Wood and bone were also forbidden, except for a pair of splinted leg guards made from wood or baleen.⁸⁴ According to the customs of Normandy from the same period, duelling armour could be made only from cloth, hide, wool or tow, although fighters could have shin guards made from wood or leather.⁸⁵ The figures in the Berlin manuscript of Beaumanoir wear a tight-fitting doublet and hose sewn to one another with a row of large stitches around the waist. The hose end in stirrups, through which their bare feet and heels protrude. Coquel and Plouvier were dressed in tightly-fitted boiled leather, a material which can be made quite hard.⁸⁶ Their arms and legs were bare below the elbow and the knee.⁸⁷ Equipment of this sort would have been much less expensive than steel armour and easier to assemble on a short deadline.

Sources on both sides of the Channel also mention the shaving and greasing of combatants. Some versions of the customs of Normandy called for fighters to have their hair

⁸² *Year Books of Henry VI, I Henry VI (1422)*, ed. C. H. Williams, Selden Society vol. 50 (London: Bernard Quaritch, 1933), p. 95.

⁸³ See Russell, "Accoutrements," p. 437.

⁸⁴ "...et les gambes astelées et warnies de cauches de balaine ou de fust." Du Cange, s.v. "Campiones," p. 64, col. B.

⁸⁵ *Summa de legibus*, c. LXVII.3, pp. 168-9.

⁸⁶ La Marche, *Mémoires*, p. 215.

⁸⁷ Mathieu d'Escouchy, pp. 300-1.

trimmed in a short bowl cut above their ears.⁸⁸ Based on pictorial evidence, Russell argues convincingly that this fashion is what is meant by the numerous English sources that use the phrase “shorn” or “shaved like a champion.”⁸⁹ It is interesting to note that the first use of the expression comes from the ordinance Richard I issued to his army in 1189. There, the haircut is used as part of a shaming punishment for thieving crusaders at sea, attesting to the somewhat disreputable social standing of champions.

Other Continental sources mention the shaving of fighters as well. In Cambrai and the Beauvaisis, combatants were described simply as being shaved, while the Assizes of Jerusalem called for them to be *roignés à la reonde*, and Coquel and Plouvier had their hair cut *tous jus*.⁹⁰ The duellists depicted in the fifteenth-century copy of the *Grand coutumier de Normandie* sport bowl haircuts similar to the ones found in English images.⁹¹ The practice would have prevented duellists from using each other’s hair as a handhold, a not unlikely occurrence in judicial combat.

Some French customs also allowed the combatants to grease themselves.⁹² The Norman *Summa de legibus* suggests that this measure was optional, saying that combatants can be anointed if they want.⁹³ Coquel and Plouvier were provided with bowls of grease before their fight, and then allowed to dip their hands in bowls of ashes so that they would still be

⁸⁸ “*Uterque super aures capillos debet habere rotunde adequatos*,” *Summa de legibus Normannie*, c. LXVII.3, p. 169.

⁸⁹ Russell, “Accoutrements,” pp. 439-42.

⁹⁰ *Droit coutumier de Cambrai*, p. 232; Beaumanoir, *Coutumes de Beauvaisis*, vol. 2, § 1835, p. 430; *Livre des assizes*, c. 89, p. 236; Mathieu d’Escouchy, p. 300.

⁹¹ MS M.457, f. 85v, *op. cit.*

⁹² *Livre des assizes*, c. 89, p. 236; Beaumanoir, *Coutumes de Beauvaisis*, vol. 2, § 1835, p. 430; *Droit coutumier de Cambrai*, p. 232.

⁹³ *Summa de legibus Normannie*, c. LXVII.3, p. 169.

able to grip their weapons.⁹⁴ This measure would have made it more difficult for them to come to grips when their fight moved into close range.

All of these accoutrements and the practice of shaving and greasing applied only to commoners in most French jurisdictions. Noblemen, when they fought each other in person, were permitted the same kind of armour and weapons they were accustomed to using in battle. They were also allowed to fight on horseback if they wished. This is the manner in which they may be found settling their trials by battle in the *chansons de geste* and other literature from the beginning of the twelfth century onwards. It also seems to have been the custom in Flanders, where an account from 1127 describes two knights using horses, lances, swords, hauberks and armoured mittens.⁹⁵

In contrast, English practice may have forced knights to fight under the same conditions as commoners until the advent of the Court of Chivalry in the middle of the fourteenth century.⁹⁶ Accounts of the few cases of noble duels from the earlier period do not specify the weapons.⁹⁷ However, the English *Mirror of Justices* from the reign of Edward II claims that knights too should be armed without iron and carry a horned baton.⁹⁸ A. Canel thought these conditions also applied in Normandy, since there are no accounts of armoured duels there until the fourteenth century,⁹⁹ but this may also be because there were exceedingly few

⁹⁴ La Marche, *Mémoires*, p. 216.

⁹⁵ Galbert de Bruges, *Histoire du meurtre de Charles le Bon, comte de Flandre (1127-1128)*, ed. Henri Pirenne (Paris: Alphonse Picard, 1891), p. 94. See also pp. 122 & 149, *supra* for a description of this fight and pp. 137-8 for rules regarding the horses and armour of nobility and commoners.

⁹⁶ For a late description of the harness of combatants in the court of chivalry, see John Hill, "Traytese of the Poyntes of Worship in Armes," (1434) in Charles Ffoulkes, *The Armourer and his Craft* (London: Methuen & Co., 1912), pp. 173-6.

⁹⁷ In 1095, Arnulf of Hesdin used a champion wielding unspecified weapons. The accounts of the duel between Robert de Montfort and Henry de Essex in 1163 are also silent on the subject of arms and armour. A miracle of Saint Cuthbert does mention a combatant of unknown social class pierced by a lance. *English Lawsuits*, vol. 1, pp. 114, 384-7, vol. 2, p. 504.

⁹⁸ *Mirror of Justices*, p. 112.

⁹⁹ Canel, p. 586.

judicial duels between nobles anywhere in French-speaking lands during the twelfth and thirteenth centuries.

Chapter Four has already discussed the advantages that many French customals allowed to noblemen when they were challenged by commoners. However, even in the Île de France of the late fourteenth century, noble judicial duels were rare enough that there was disagreement about how they should be carried out. Guillaume de Breuil cautioned advocates to be careful to specify that the combat should be fought on horseback with noble arms, lest their noble client find himself having to make do with a champion's baton, as some people apparently said was customary for knights. However, Guillaume personally thought that the Parlement of Paris had never been so strict towards knights. In his opinion, the law seemed tacitly to allow each person to fight with the weapons appropriate to his status.¹⁰⁰

Fourteenth-century battles between nobles were certainly fought in armour and might employ a wide variety of weapons, including lances, pollaxes, swords and daggers. A few of the contemporary prescriptions for such equipment are in fact rich and neglected documentary sources for the study of arms and armour. A formula from Guyenne for presenting arms for a duel lists all the pieces of a knight's harness from the underwear out.¹⁰¹ A document from Brittany is even more comprehensive. It preserves the choice of arms and armour stipulated by the defendant Pierre de Tournemine for one of the last judicial duels in the French-speaking realm. By this point, Breton custom permitted the defendant to choose the arms.¹⁰² Pierre and his lawyers drew up specifications for everything from the dimensions of the weapons to the metal of the rivets in the armoured gauntlets and the

¹⁰⁰ *Stilus curie parlamenti*, c. XVI.9, p. 106.

¹⁰¹ Lacoutre, "Guyenne," pp. 81-4.

¹⁰² *Très ancien coutume de Bretagne*, c. 130, p. 160.

materials for making the tie-strings of his underwear.¹⁰³ Despite the level of detail in the document, there was considerable debate when Pierre and his opponent met to compare their arms. He had failed to mention that he would also be wearing spurs and it had not been clear which region's standards of measure he had used when he dictated the length of the weapons.

The case demonstrates just how difficult it was for two knights to come up with equal and equivalent sets of late medieval harness in an era when military equipment was made by hand and not standardized at all. Any possible difference could be seized upon by lawyers and treated as an unfair advantage.

Even the manner in which the armour was worn could lead to objections and legal pitfalls. Beaumanoir advised that advocates should reserve their client's right to loosen and tighten his armour on the field.¹⁰⁴ Guillaume Du Breuil warned that, according to the custom of France, an appellant who entered the lists with his visor raised would have to fight that way.¹⁰⁵ The consequent legal wrangling in situations such as these could be used as a face-saving way to postpone the fight. Thus, while noble combatants of the fourteenth and early fifteenth centuries had more personal control over the arms and armour they brought to their duels, there were still opportunities for both the court and their opponents to have an influence on their equipment and to attempt to manipulate the outcome of the duel through it.

Oaths and Proclamations

Before the fight could commence, three procedures had to be met. The parties to the suit had to swear an oath attesting to the truth of their case, the fighters had to swear that they had

¹⁰³ The document is edited in Guy-Alexis Lobineau, *Histoire de Bretagne* (Paris: François Muguet, 1707), pp. 672-7.

¹⁰⁴ Beaumanoir, §1835, p. 430.

¹⁰⁵ *Stilus curie parlamenti*, c. XVI.29, p. 115.

not employed magic of any sort, and the judge or marshal had to make a proclamation forbidding interference by the audience. The order in which these statements occurred and the precise words used to pronounce them could vary somewhat according to the year and the jurisdiction, but the basic elements of the pre-battle formalities remained remarkably similar over time and geography.

The oaths of the parties were often pronounced first and were sometimes sworn at another location before the procession to the field of battle. In the fictional chanson of *Huon de Bordeaux* they happen in the royal palace, and in a miracle of Saint Cuthbert they take place in a church.¹⁰⁶ According to English custom, the parties and any champions were first required to come armed to the meeting place of the court and swear their oaths there.¹⁰⁷

On the Continent, the holy objects on which the oaths were taken were more often brought to the field itself. The relics of saints were often used, but the object could also be a missal or a copy of the gospels. After the Fourth Lateran Council, the holy object was most likely to be the last option, since clerics were less willing to loan their treasures for the occasion and book ownership was becoming more common in secular circles. By 1250, William of Rennes, a much-copied glossator of the *Summa* of Raymond of Peñafort, was of the opinion that clerics who offered relics for such duels would be rendered irregular if the fight resulted in a combatant's death.¹⁰⁸ In Cambrai, the court used relics brought to the field, but sergeants and magistrates oversaw the oath and no clergy participated in the ceremony.¹⁰⁹ On the other hand, Philip the Fair was able to draw on some clerics close to the

¹⁰⁶ *Huon de Bordeaux : Chanson de geste du XIII^e siècle, publiée d'après le manuscrit de Paris BNF fr. 22555 (P)*, ed. William W. Kibler & François Suard (Paris: Champion, 2003), lines 1603-84, pp. 90-94. *English Lawsuits*, vol. 2, no. 468, p. 504. See also Pfeffer, p. 47.

¹⁰⁷ *Britton*, c. XIII.12, p. 106.

¹⁰⁸ *Browe*, vol. 2, no. 108, p. 84.

¹⁰⁹ *Droit coutumier de Cambrai*, p. 232.

French monarchy, giving a priest or monk responsibility for the missal and cross over which oaths were sworn in the royal court. However, the cleric was expected to leave the area of the field when this part of the ceremonies had concluded.¹¹⁰

The parties, whether they were the fighters or non-combatants who had put forward champions, were required to kneel and take one another by the hand, placing their other hand on the relics or the book. Some customs specify that the plaintiff was to be on the right and the defendant on the left.¹¹¹ There was some debate about which party should swear first; in England it was always the defendant, but on the Continent it could vary by jurisdiction.

The order of speaking was important because the person making the first oath could frame the question. He began with some variation of the words “Hear this, o man whom I hold by the hand...” and he went on either to name his opponent’s offence or to deny that he himself had committed an offence.¹¹² Attention had to be paid to the wording. A common trope in high medieval literature was the litigant who swore an equivocal oath before an ordeal. The words were literally true but nevertheless deceptive.¹¹³ Since the outcome of a trial by battle theoretically relied on a judgement of God, such an oath raised the sticky question of whether God would be obliged to play along with the deception.

The second party to take the oath swore simply that the first oath-taker had perjured himself. Thus all battles, no matter their original dispute, were also fought over the question of perjury. A loss on the field would have consequences not only for defendants, but also for the oath-worthiness of the plaintiff. The oath-takers were next required to kiss the relic or

¹¹⁰ Chabas, pp. 278-80.

¹¹¹ *Summa de legibus Normannie*, c. LXXVI.6, p. 170. *Stilus curie parlamenti*, c. XVI.30, p. 115.

¹¹² *Coutumes et institutions de l’Anjou et du Maine*, part 1, vol. 1, c. 100, p. 123; *Summa de legibus Normannie*, c. LXXVI.6, p. 170; Parlement of Paris: Chabas, pp. 279-80; Britton, c. XIII.12, p. 106; *Mirror of Justices*, c. XXIV, pp. 111-2; *De placitis et curiis tenendis* in Frederic W. Maitland and William Paley Baildon, *The Court Baron*, Selden Society 4 (London: Bernard Quaritch, 1891), p. 77.

¹¹³ See Ralph J. Hexter, *Equivocal Oaths and Ordeals in Medieval Literature* (Cambridge, MA: Harvard University Press, 1975), pp. 4-16.

holy book. Villains of literature often found themselves unable to approach or touch the holy objects when they made their perjured oaths.¹¹⁴

Another part of the pre-combat ceremonies was the oath of the combatants disavowing the aid of magic. Widespread belief in the judgement of God did not preclude a simultaneous belief that the outcome of trials by battle could be abetted or thwarted by magical means. This part of the ceremony had a long tradition, appearing as early as the edicts of the Lombard king Rothair in 643.¹¹⁵ Typically, the combatants were required to recite a list of talismans, swearing that they did not have them on their person. The objects could include herbs, potions, jewels, glass, stones, bones, amulets, pieces of writing, or sorcery and trickery in general.¹¹⁶ The items on the list varied from one source to another, but the sense of the oath remained the same. The words were not merely formulaic. In 1355, a champion of the bishop of Salisbury (the same one who is pictured on the bishop's brass), was found to have rolls of prayers and spells secreted in his equipment.¹¹⁷ The discovery does not seem to have caused much scandal, but the case was delayed long enough for the bishop to reach an accord with his adversary, the earl of Salisbury.

A third part of the pre-combat ceremonies was the proclamation to the audience forbidding interference. A representative of the court announced to the onlookers that no one was to speak or make any kind of motion that could influence the outcome of the battle. Again the words varied according to the time and the jurisdiction, but the sense of the

¹¹⁴ Pfeffer, p. 52.

¹¹⁵ *Edictus Rothari in Edictus ceteraque Langobardorum leges*, ed. Frederick Bluhme, Monumenta Germaniae Historica, Leges Fontes Iuris 2 (Hannover: Hahn, 1869), c.368, p. 69.

¹¹⁶ Henri de Bracton, *De legibus et consuetudinibus Angliae*, ed. George E. Woodbine, vol. 2 (Cambridge, MA: The Bellknap Press, 1977), p. 400; *Britton*, c. XIII.13, p. 107; *Summa de legibus Normannie*, c. LXXVI.7, p. 171; Beaumanoir, vol. 2, §1840, p. 432; *Stilus curie parlamenti*, c. XVI.31, p. 115; Lacoutre, "Guyenne," p. 81.

¹¹⁷ Kite, p. 17

proclamation remained the same.¹¹⁸ In some cases, it was considered prudent to remove select audience members from the field entirely. In Beaumanoir's Beauvaisis, it was customary to forbid all members of the parties' lineages from attending the duel.¹¹⁹ The wisdom of this provision is demonstrated by a contemporary English case. The champion Philip of Lindsey complained to the king at Westminster that he had been involved in a writ of right battle before itinerant royal justices at Northampton when "there ran upon him such a multitude of his ill-wishers both on horse and foot that he was overwhelmed by the multitude of men and trodden by the hoofs of horses so that he could not defend himself in any way, and the said men, to his eternal defamation, charged him with having cried for quarter in the duel."¹²⁰ By the early fourteenth century, the customary proclamation in France required all audience members except for the guards of the field to dismount from horses and sit on benches or the ground.¹²¹ At this point, the combat could begin.

In most customs, the marshals of the field then positioned the fighters so that neither one had an advantage of sun or terrain.¹²² A lone dissenting opinion comes from Honorat Bovet, who felt that the appellant was entitled to choose the best position.¹²³ Afterwards, the marshals retreated to the four corners of the lists. In late medieval custom, the presiding official gave a cry that began the combat. French judges shouted "Do your duty, do your duty, do your duty!" while English ones cried in French "Let them go and do their duty in

¹¹⁸ Bracton, vol. 2, p. 400; *Summa de legibus Normannie*, c. LXXVI.5, p. 169; Beaumanoir, vol. 2, §1842, pp. 432-3; Ordonnance of Philip VI: Chabas, p. 276; *Très ancien coutume de Bretagne*, c. 134, p. 165.

¹¹⁹ Beaumanoir, vol. 2, §1842, pp. 432.

¹²⁰ *Calendar of the Patent Rolls Preserved in the Public Record Office*, Henry III, vol 6, AD 1266-1272 (London: HMSO, 1913), p. 579.

¹²¹ Chabas, p. 276.

¹²² Du Cange, vol. 2, s.v. "Campiones," p. 65A; *Droit coutumier de Cambrai*, p. 233; *Coutumier d'Artois*, ed. Adolphus Tardif (Paris: Alphonse Picard, 1883), t. XLI.3, p. 98; M.J. Russell, "Trial by Battle and the Writ of Right," *Journal of Legal History* 1:2 (1980), p. 114;

¹²³ Bovet, c. CXX, p. 201.

God's name!"¹²⁴ The occasion had reached the point beyond which only the combatants themselves could influence the course of the duel.

Combat

The character of individual judicial duels varied immensely, from ritualized taps for the sake of tradition to desperate, bloody struggles for life and death. A battle could last hours or mere seconds. Much depended upon the nature of the case and the individuals involved.

Some battles were distinctly perfunctory. A charter from the cathedral of Notre Dame in Paris records a battle in 1269 which was settled immediately after the "blows of the chapter" (*ictus capituli*). These hits, it adds, are commonly known as "the king's blows" (*les cous lou roi*).¹²⁵ Louis Tanon thought they represented a brief exchange between the two champions, surmising that parties were more willing to compromise if the combat was not won and lost in its opening seconds.¹²⁶ However, it seems more likely that the king's blows were merely formalities without any intent to injure. As Chapter Two discussed, trials by battle were often initiated in local courts, but the duels themselves were transferred to courts of high justice. If the parties reached an accord just prior to their battle, the higher court would nevertheless have wanted to be the one to receive the customary payment of composition money.

A dispute about this very issue came before the Parlement of Paris in 1259, when the canons of the church of Saint Peter of Soissons marked a settlement with the count of

¹²⁴ "*Faites vos devoirs faites vos devoirs, faites vos devoirs!*" Chabas, p. 280 (see also Du Cange, vol. 2, p. 65B); "*Laissez les aller a faire leur devoir de par Dieu!*" Thomas of Woodstock, pp. 322-3.

¹²⁵ *Cartulaire de l'église de Notre Dame de Paris*, ed. M. Guérard, vol. 3 (Paris: Imprimerie de Crapelet, 1801), p. 433.

¹²⁶ Louis Tanon, *Histoire des justices des anciennes églises et communautés monastiques de Paris* (Paris: L. LaRose et Forcel, 1883), pp. 21-4.

Soissons by holding the king's blows in their own chapter.¹²⁷ The canons were forced to pay a fine to the royal bailli, who held the right of high justice in the district. Both Tanon and Count Beugnot, who edited the case, misunderstood the nature of the suit. Beugnot thought that the canons had dealt blows to one of the king's men and inserted a word to that effect, while Tanon thought that the fine was levied because the canons had held a duel after the case was already settled.¹²⁸ In fact, the dispute was one of jurisdiction. This is why the record of the judgement goes on to call for an inquest into rights of high justice in the region.

The ritual of the king's blows was probably a way to demonstrate the rights of the court and the consent of the parties to make payments to the appropriate authorities. It was characteristic of a legal system still based heavily on oral culture rather than written records. For the witnesses to the agreement, observing an exchange of blows in the appropriate venue was more memorable than subscribing to a document. A formula from Cambrai also contains a ceremony at the beginning of a duel involving ritual blows. Each of the combatants was to hold his baton by the end while a magistrate held it by the middle. Each in turn rapped his weapon three times on his adversary's shield before the combat began in earnest.¹²⁹ Perhaps the ceremony would end at this point if an agreement had already been reached.

Some battles could be long, leisurely affairs lasting hours. Champions in property disputes often preferred to fight in a cautious manner with many pauses, knowing that their principals were continuing to negotiate a settlement from the sidelines. Around the turn of the twelfth century a champion for the abbey of Saint Serge and Saint Bach in Angers stalked

¹²⁷ *Olim*, vol. 1, pp. 465-6.

¹²⁸ *Ibid.*; Tanon, pp. 22-3.

¹²⁹ *Droit coutumier de Cambrai*, p. 233.

his opponent for the greater part of a day before he managed to debilitate him enough to cause the monks' adversaries to grow frightened of losing and agree to an accord.¹³⁰

Numerous sources pondered the problem of what to do if a battle remained unresolved when darkness fell. In an early case from the Limousin dating to 960, the champions of two noblemen fought over a piece of land from the second hour of the day until sundown. When neither of them had conceded defeat at the end of the day, the presiding count took counsel with the men around him and decided that neither party had won the suit. The land would instead be donated to the abbey of Beaulieu.¹³¹ In 1180, the exchequer rolls of Normandy recorded the names and amercements of many people "who were present at a judicial duel held at Lisieux by night."¹³² It is not clear from this record whether the fine was for allowing the fighting to continue beyond sunset or if the entire judicial duel was in some way illegal. Later, thirteenth-century customs prescribed other solutions for such cases. In Normandy and England, the defendant was considered to have won if he could hold out until the first stars appeared in the sky.¹³³ In the local custom of Amiens, however, the combatants were to be taken to prison and left there without food or drink until morning, when the combat resumed.¹³⁴ In Philip IV's rules of 1306 for French courts, the problem could be handled in more than one way and the parties were expected to settle the question with the judge before the fighting began. If they continued until sunset, the judge could give them another day on

¹³⁰ *Cartulaires de l'abbaye Saint-Serge et Saint-Bach*, vol. 1, no. 244, p. 226.

¹³¹ *Cartulaire de l'abbaye de Beaulieu*, ed. Maximin Deloche (Paris: Imprimerie Impériale, 1859), no XLVII, p. 86.

¹³² *Magni Rotuli Scaccarii Normanniae*, ed. Thomas Stapleton, vol. 1 (London: Society of Antiquaries of London, 1840), p. 102. See also Jane Martindale, "Between Law and Politics: The Judicial Duel under the Angevin Kings (Mid-Twelfth Century to 1204)," in *Law, Laity and Solidarities: Essays in Honour of Susan Reynolds*, ed. Pauline Stafford, Janet Nelson & Jane Martindale (Manchester: Manchester University Press, 2001), p. 145, n. 121.

¹³³ *Summa de legibus*, c. LXVII.8, p. 171; Bracton, vol. 2, p. 400; Britton, vol. 1, c. XIII.17, p. 107.

¹³⁴ Du Cange, vol. 2, s.v. "Campiones," p. 65B.

which to continue, or they could settle the case in some alternate fashion.¹³⁵ Honorat Bovet thought that continuing the duel on the morrow was the default course of action, unless other arrangements had been made in advance.¹³⁶ In practice, the question seems to have been an academic one. After the tenth century, there are no further accounts of actual judicial duels that lasted until nightfall.

Most worrisome for all involved was the prospect of a fast, hard and messy battle fought to a finish. Combatants could be defeated in a multitude of ways. Fencing was already an art, but had not yet taken on the safety rules of a sport. Europe's earliest fencing treatise, an illustrated tract on the sword and buckler produced around 1300, demonstrates not only how to cut and thrust, but also how to use one's shield to strike an opponent and constrain his movements.¹³⁷ Later medieval treatises show how to deliver blows with the pommel of the sword, grapple, break and dislocate limbs, and throw one's opponent to the ground. The medieval sword fight was what would nowadays be called a mixed martial art.

Some accounts of judicial combat demonstrate just how harsh a fight could become. We have already seen the battle in twelfth-century Flanders which ended with one knight sitting on his opponent, pounding his face with armoured mittens, while the other wrenched his adversary's testicles.¹³⁸ For noblemen, duels almost always ended in grappling with daggers, especially from the fourteenth century onward, when their plate armour deflected most sword blows. In 1380, the knight John Annesley fought the squire Thomas Katrington in a judicial duel over treason in the English Court of Chivalry. A chronicler reports that John threw Thomas down, but when he attempted to fall on him, he was blinded by his visor and the

¹³⁵ Chabas, p.277.

¹³⁶ Bovet, c. CXVIII, p. 200.

¹³⁷ Leeds, Royal Armouries MS I.33, published as *The Medieval Art of Swordsmanship*, ed. Jeffrey Forgeng (Union City, CA: Chivalry Bookshelf, 2003).

¹³⁸ Galbert de Bruges, p. 94.

sweat running inside it, and instead landed next to him. The two men rolled on the ground until the king called a halt. When Thomas was lifted from the earth, he could neither stand nor speak. The exertion, the heat, and the weight of his armour had been so great that when he was placed in a chair he fell out of it, and he died the next day.¹³⁹ Duels such as this one bore little resemblance to the knightly battles of literature.

There is also evidence of biting and eye-gouging. Bracton thought that a man was too maimed to fight a judicial duel if he was missing his front teeth, “for they help him greatly to victory.”¹⁴⁰ This indeed was how James Fisher ended the last judicial duel to be fought in England, taking his opponent’s nose in his teeth and putting his thumb in the man’s eye.¹⁴¹ There are also several reports of eyes torn out in other times and regions.¹⁴² It is tempting to consider these acts foul play or unchivalrous behaviour. Such judgements are anachronistic, however. In the English-speaking world, rules forbidding biting, gouging, scratching and grappling were only accepted as the precepts of “fighting fair” after 1838, when many of the country’s boxers adopted the London Prize Ring Rules, a code which reformed their sport into a mainstream recreational activity. (Hitting below the belt was forbidden somewhat

¹³⁹ Thomas of Walsingham, *Historia Anglicana*, vol. 1, Rolls Series 28.1.1 (London: HMSO, 1857), pp. 433-4. See also p. 128, *supra*.

¹⁴⁰ “...vero dentes multum coadiuvant ad devincendum.” Bracton, vol. 2, p. 410.

¹⁴¹ William Gregory’s *Chronicle of London* in *The Historical Collections of a Citizen of London in the Fifteenth Century*, ed. James Gairdner, Camden Society, New Series 17 (London: Camden Society, 1876), p. 202.

¹⁴² (1152) *Recueil des chartes de l’abbaye de Saint Germain des Prés*, ed René Poupardin, vol. 1 (Paris: H. Champion, 1909), no. CXVII, p. 176; (1208) *English Lawsuits*, vol. 2, no. 505, p. 558 (Van Caenegem dates this duel to 1177, but Christopher Norton argues for the later date in *St. William of York* [Woodbridge : Boydell & Brewer, 2006], p. 178); (1455) Olivier de La Marche, *Livre d’avis de gage de bataille*, in *Traité du duel judiciaire*, ed. Bernard Prost (Paris: Léon Willem, 1872), p. 8 (not entirely reliable, as La Marche is incorrect about several other aspects of this duel); La Marche, *Mémoires*, vol. 2, p. 217. Mention should also be made of a Frankish duel in Nablus observed by the Syrian emir Usamah ibn Munqidh in 1138. In that case one combatant tried to gouge out the other’s eyes, but was unable to do it because there was already too much blood on the other man’s face. See Usamah ibn Munqidh, *An Arab-Syrian Gentleman and Warrior in the Period of the Crusades*, trans. Philip K. Hitti (New York: Columbia University Press, 1929), p. 168.

earlier, in a set of rules promoted by the pugilist Jack Broughton in 1748.)¹⁴³ If medieval judicial duels seem unsporting, it is because they were not a sport.

A judicial battle could end in one of three ways: one combatant could kill the other, one of the two men could concede defeat, or the judge could call a halt because a settlement had been reached or imposed while the parties were fighting. The first option was the least common. Champions in particular were loath to kill one another. Russell found just one report of a death in the records of English writ of right battles, and that example seems to have been an accident.¹⁴⁴ I have found no fatalities among the champions of the French-speaking realm, and deaths were not always the outcome even in criminal duels.

Judicial duels over criminal matters tended to be fought harder, since a losing defendant could be hanged for his crime. Nevertheless, it is both physically and psychologically difficult to kill another human being at close range with a blunt club, whether horned or not.¹⁴⁵ Appellants preferred to leave this work to the executioner if at all possible. It is only in the fourteenth century, when duels between nobles with edged weapons became more common, that there are more reports of fatalities.

Much more often, one of the duellists conceded defeat. This was accomplished by uttering a word or phrase. Vanquished English combatants cried *craven*, while their Continental counterparts may have said *recreant*.¹⁴⁶ A knight in the romance *Parise la Duchesse* cries “Mercy, for the love of God! I concede myself recreant. Take care that you

¹⁴³ Robert G. Rodriguez, *The Regulation of Boxing: A History and Comparative Analysis of Policies Among American States* (Jefferson, NC: McFarland & Co., 2009), pp. 24-7.

¹⁴⁴ Russell, “Writ of Right,” p. 124.

¹⁴⁵ On psychological inhibitions to killing at close range, see Lt. Col. Dave Grossman, *On Killing: The Psychological Cost of Learning to Kill in War and Society* (Boston: Little, Brown & Co., 1995), pp. 120-33.

¹⁴⁶ *Mirror of Justices*, p. 112.

do not kill me!”¹⁴⁷ Combatants in Amiens were to say “I concede myself recreant, guilty and attainted of the deed (or tort), both me and my masters in the suit.”¹⁴⁸ However, these sentences would seem to be singularly long formulae to pronounce while one was being clubbed over the head or about to be spitted on a sword. More likely, the actual expression of recreancy was shorter and varied somewhat from battle to battle. Much as modern children “call uncle” when roughhousing, these words could end the fight. They would not, however, mitigate the damage to a party’s reputation. The treatise *Glanvill* refers to calling craven as “that distressed and shameful word which sounds so dishonourably from the mouth of the vanquished,” while the *Mirror of Justices* calls it “the horrible word.”¹⁴⁹

By the fourteenth century, it was also possible to score a technical victory by ejecting one’s opponent from the lists. This possibility first appears in the ordinance of Philip IV, but is later found in other sources.¹⁵⁰ It is also how Mahuot Coquel defeated Jacotin Plouvier in Valenciennes in 1455.¹⁵¹

The conditions that could compel any given man to confess himself recreant, and possibly give up his life, were difficult to calculate. Some people submitted in the first exchange of blows, while others were undeterred even by obvious injuries. One approver in fifteenth-century London secured a victory in three strokes.¹⁵² Conversely, Ademar of Chabannes reported that a champion in eleventh-century Angoulême remained on his feet for

¹⁴⁷ “*Merci, por amor Dé! / Je me rant recreüs; gardez ne m’ociez!*” *Parise la Duchesse: Chanson de geste du XIII^e siècle*, ed. May Plouzeau, vol. 1 (Aix-en-provence: Publications du CUERMA, 1986), lines 585-6, p. 198.

¹⁴⁸ “*Je me rench recreans et coupables et atains du fait, ai tort, je et mes maistres en la querelle.*” Du Cange, vol. 2, s.v. “campiones,” p. 65B.

¹⁴⁹ *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, ed. G.D.G. Hall (London: Thomas Nelson, 1965), II,7, p. 28. *Mirror of Justices*, p. 112.

¹⁵⁰ Chabas, p. 280; *Très ancien coutumier de Bretagne*, p. 165; see also the reference to Thomas Katrington’s horse, *infra*, n. 182.

¹⁵¹ La Marche, *Mémoires*, p. 217; Escouchy, p. 305. See also pp. 1-3, *supra*.

¹⁵² *A Chronicle of London, from 1089 to 1483*, ed. Nicholas Harris Nicolas & Edward Tyrell (London: Longman, Rees, Orme Brown & Green, 1827), p. 128.

six hours even though he was bleeding profusely from the head. The man never surrendered; he eventually had to be carried from the field half-dead and remained bedridden for a long time thereafter.¹⁵³ Training was not always a predictor of success. Trained duellists choked often enough that the poet Conon de Béthune could describe the way he became tongue-tied around women with the following simile: “It fares for me like the deed of a champion / who learns fencing for a long time / and when he goes to the field to deliver blows / knows nothing of the shield or the baton.”¹⁵⁴ Since judicial duellists trained to cause injuries and even kill, their training could never completely simulate the experience of a real battle.

The extent of a combatant’s injuries were not always evident to anyone else, and at times they may not have been evident even to the combatant himself. Recent research on combat stress has found that sudden floods of adrenaline and other stress hormones can produce feelings of dissociation from one’s body, as well as auditory exclusion, tunnel vision and a sense that time is moving in slow motion.¹⁵⁵ The physical effects of blows can also be difficult to foresee. Few people today have extensive personal experience with hand-to-hand fighting and fewer still have done it legally and are willing to write about it. One of the exceptions is Rory Miller, a former guard in a maximum security prison and member of an emergency response team. On the relationship between theory and practice in violent situations, he reports:

Reason is weak. [...] Things that should work don’t all the time. I’ve been completely unfazed by a crowbar slamming into the back of my head and been left dizzy and puking

¹⁵³ Browe, vol. 2, p. 32-3.

¹⁵⁴ “*Si va de moi con fait del champion / Qui de lon tens aprent a escremir / Et kant il vient ou champ as cous ferir / Si ne seit rien d’escu ne de baston.*” Conon de Béthune, “*Si voiremant con cele don je chant,*” in *Les Chansons de Conon de Béthune*, ed. Axel Wallensköld (Paris: Champion, 1921), p. 4.

¹⁵⁵ Lt. Col. Dave Grossman & Loren W. Christensen, *On Combat: The Psychology and Physiology of Deadly Conflict in War and Peace*, 3rd ed. (Millstadt, IL: Warrior Science Publications, 2008), pp. 54-60, 94-99.

for three days from a light slap ... also to the back of the head. I couldn't have reasoned that out.¹⁵⁶

This unpredictability was the core mystery of trial by battle, the element that imbued it with an air of the supernatural. If medieval people often interpreted the results of judicial duels and the sense of otherworldliness experienced by combatants as divine intervention rather than the logical consequence of natural causes, it should not be particularly surprising.

A battle would also come to an end if representatives of the parties agreed to re-open negotiations even as the fight was underway. Beaumanoir said that it was the duty of the judge to halt the fighting and carefully note the placement of the parties so that they could resume the combat from the same position if negotiations broke down again. He recalled a duel before the king's court in Paris where the fighting between two noblemen was halted just as one combatant's foot became entangled in the reins of the other man's horse. The man with the tangled foot was warned that he would have to begin fighting again from that position, and as a consequence he was willing to make peace.¹⁵⁷

By the fourteenth century, judges did not always allow judicial battles to progress all the way to their conclusions. Between 1317 and 1330 six out of seven duels held before the French royal court were aborted on the field when royal officials stepped in at the last moment to broker peace at the urging of the combatants' friends.¹⁵⁸ In every case, these were treason duels between noblemen. They appear to have been a form of political

¹⁵⁶ Rory Miller, *Meditations on Violence: A Comparison of Martial Arts Training and Real World Violence* (Boston: YMAA Publication Centre, 2008), p. 26.

¹⁵⁷ Beaumanoir, vol. 2, §1844-5, pp. 433-4. Beaumanoir does not mention the names of the parties, but he may be referring to the duel between Jocelin de Borde and Ourric de Molesne in 1239, which was "*ordinatum, tractatum et pacificatum ad ultimum*" according to one record. *Actes du Parlement de Paris*, ed. Edgard Boutaric, vol. 1 (1863; reprint, Hildesheim: Georg Olms Verlag, 1975), no. 18, p. cccvii.

¹⁵⁸ *Chronique Parisienne anonyme*, §§61, 26, 29, 55, 56, 83 & 201, pp. 31-2, 39, 54-5, 70, 132. A seventh judicial duel was permitted to occur. It concerned murder as well as treason. See also p. 127, *supra*.

posturing and the act of showing up for such contests seems to have been sufficient to uphold the combatants' respective reputations.

As the fourteenth century wore on, the popularity of treason duels between noblemen with edged weapons did not wane. Kings began to intervene even when there was no agreement to be had among the parties. If the treason was imputed against the sovereign and the realm, the king could simply solve the dispute by pardoning the accused. Other forms of treason might require a different resolution. When Thomas de la Marche and Jean Visconti took their dispute over a plot against the king of Sicily to the English royal court in 1350, Edward III allowed them to fight and waited until Thomas was about to kill the prostrate Jean before intervening.¹⁵⁹

By the last quarter of the fourteenth century, it was considered normal for a judge to intervene on his own initiative, especially if one party appeared to be winning the combat. Honorat Bovet wrote around 1386 that the cry "Holla ho" should be used to end the fighting.¹⁶⁰ John Hill, author of an English treatise from 1434, instructed that if the king stopped the combat, the appellant's counsel was not allowed to move from his place or intervene until judgement had been given.¹⁶¹ Almost all judicial duels at this late date were arbitrated by kings and sovereign princes. These rulers were in a better position than their eleventh- and twelfth-century predecessors to impose a final judgement on the suits and penalties on the loser. The probability of death and injury in these late duels was still high, but the possibility of intervention gave some control over the outcome to a party other than the combatants themselves.

¹⁵⁹ Thomas Rymer, *Foedera, conventiones, literae* etc., ed. George Holmes, 2nd ed., vol. III, part I (London: J. Tonson, 1726), p. 58. See also pp. 78-9, *supra*.

¹⁶⁰ Bovet, c. CXX, p. 201.

¹⁶¹ John Hill, p. 176.

Aftermath

When a judicial duel was allowed to continue all the way to a clear win, it remained only to impose a penalty on the loser. The nature of the punishment depended on whether the losing combatant was the plaintiff or the defendant, and also on whether he was a principal in the suit or merely a champion fighting on someone else's behalf. Differences between time periods and regional customs add still more variables to the equation.

Defendants who lost criminal appeals were treated in the same way as criminals convicted by other modes of proof. Usually they were dragged to the gibbet behind a horse and hanged. For lesser crimes, they were occasionally mutilated instead. By the fourteenth century, several redactions of French custom followed the example of Philip the Fair's ordinance and declared that judicial duels could be undertaken only in the case of crimes that were punishable by death.¹⁶² Nevertheless, judges often had some opportunity to shape the verdict by commuting a death sentence to mutilation or some lesser penalty. Van Eickels has noted the tendency of Norman rulers in Normandy, England and Sicily to use blinding and castration rather than execution as a punishment for treason or offences against the king's peace, and a number of his examples come from cases settled by battle.¹⁶³ Henry of Essex, a twelfth-century English nobleman who was convicted of treason and left for dead on the field, was later allowed to become a monk at Reading abbey.¹⁶⁴ Even at the French royal court in the fourteenth century, losers of appeals by battle did not always die. In 1321, a

¹⁶² Chabas, p. 273; *Ancien coutumier de Bretagne*, c. 134, p. 164; *Coutumier Bourguignon Glosé (Fin du XIV^e siècle)*, ed. Michel Petitjean & Marie-Louise Marchand (Paris: Éditions du CNRS, 1982), c. 406, p. 300.

¹⁶³ Klaus van Eickels, "Gendered Violence: Castration and Blinding as Punishment for Treason in Normandy and Anglo-Norman England," *Gender and History* 16:3 (2004), pp. 588-697.

¹⁶⁴ *Jocelini de Brakelonda*, p. 52. See also p. 123, *supra*.

squire convicted of murder and treason was dragged to the Châtelet by his hands and feet and imprisoned there, but he does not seem to have been executed.¹⁶⁵

It was also customary in several regions to confiscate the property of a convicted criminal, just as if he had been convicted by some other form of proof. The chronicler Ralph Niger noted that Henry of Essex's sons were never able to regain possession of his lands after his ill-fated duel.¹⁶⁶ Bracton and *Britton* both mention that a losing appellee was to forfeit all his goods and his heirs were to be disinherited.¹⁶⁷ Laws of the same kind also apparently applied in contemporary Normandy, but there the rules regarding the disposal of the convict's immoveable property could be more complicated. Sometimes the property belonged to the duke, but in other Norman seigneuries, lords had the privilege of reclaiming the land of their tenants when it escheated in this manner.¹⁶⁸ In 1257, the abbot of Coulombs, near Nogent, had to take a suit to the Parlement of Paris in order to establish his right to such property.¹⁶⁹ Farther east in the Beauvaisis, Beaumanoir reports that it was customary for each of the lords from whom a convict held his property to reclaim the land that was theirs, and in Artois around 1300 these seignorial rights appear to have been assumed as a matter of course.¹⁷⁰

Sometimes even a victory could prove pyrrhic for the defendant. The Chronicle of Hyde tells of the wealthy Arnulf of Hesdin who was appealed before the king of England in 1095, probably in connection with the baronial revolt led by Robert of Mowbray that same year. Although Arnulf succeeded in defending his innocence by means of a duel, "he was so

¹⁶⁵ *Chronique Parisienne anonyme*, § 68, p. 60.

¹⁶⁶ *English Lawsuits*, vol. 1, no. 407, p. 384.

¹⁶⁷ Bracton, vol. 2, p. 400; *Britton*, c. XIII.16, p. 108.

¹⁶⁸ See Chabas, pp. 99-100.

¹⁶⁹ *Olim*, vol. 1, part 1, p. 24.

¹⁷⁰ Beaumanoir, vol. 2, §1718, p. 378. See also *Coutumier d'Artois*, c. XLII.2, p. 101.

moved by anguish and wrath that he abandoned everything he held from the king in England and departed against the royal will and orders. Having joined the army of the Christians, he reached Antioch and ended his days there.”¹⁷¹ This story suggests that judicial duels were not always a perfect and complete method for restoring lost honour. When a trial by battle was permitted to proceed all the way to its bloody conclusion, it sometimes indicated that a relationship had become irreparably damaged. In this case, the victor’s only option was to remove himself from the region.

Customs differed more dramatically on the question of how to treat a defeated appellant. Any punishment for defeat had to deter false and malicious appeals on the one hand without discouraging victims from pursuing justice through the courts on the other hand. Some jurisdictions felt the first goal was more important, while others were more interested in the second one. English custom, inherited from Normandy, tended to treat the defeated appellant more leniently than the convicted criminal. *Glanvill* said that he should pay sixty shillings and forever lose his law.¹⁷² This penalty was still a significant punishment: in addition to the hefty fine, it meant that he would no longer be able to swear an oath in court or participate in a lawsuit, except in his own defence. At the time, many daily transactions depended on warrantors and sureties. A failed appellant without honour lost many opportunities to do favours for friends and neighbours, and with them he lost the opportunity to receive favours in return. Since much of the medieval economy depended on this social capital, he faced a serious disability.

¹⁷¹ “...tanto dolore et ira est commotus, ut abdicatis omnibus quae regis erant in Anglia, ipso rege invito et contradicente, discederet; associatus autem Christianorum exercitui Antiochiam usque devenit ibique eternum diem clausit.” *English Lawsuits*, vol. 1, p. 114. See also p. 123, *supra*.

¹⁷² *Glanvill*, c. XIV.1, p. 172.

Some years later, Bracton also says that a defeated appellant should be committed to prison for unspecified punishment, but should not lose his life or limbs.¹⁷³ The forfeiture of property also seems to have been a possibility for some late medieval appellants. A letter in the Patent Rolls from 1399 granted the widow of Robert of Hall the goods her late husband forfeited to the king when he accused another man of treason and was subsequently killed in a judicial duel.¹⁷⁴ However, the same case demonstrates that sometimes trials by battle did not end as tidily and conclusively as jurists might have hoped. Robert's property had originally been given to both the widow Mary and another man, Thomas of Hesham. When Thomas tried to reclaim the goods, he too had been ambushed and killed by Robert's enemies. Mary was left to attempt to regain possession of her late husband's property on her own.

Across the Channel, the Norman custom that had shaped English practices was itself changed significantly when Philip Augustus regained control of the duchy of Normandy in 1204. Guillaume le Breton reported approvingly that one of the first changes the new king made was to abolish the custom which fined a losing appellant sixty sous but otherwise did not punish him. Henceforth, defeated appellants could be executed and mutilated just like defendants.¹⁷⁵ The harsh treatment of appellants seems to have been characteristic of the north-western parts of the French realm. Beaumanoir prescribed the same penalties of execution and forfeiture for failed appellants as he did for convicted criminals.¹⁷⁶ A thirteenth-century redaction of the customs of Anjou also stated that either losing party in an appeal could be hanged, unless the case was a small possessory suit, such as a dispute over

¹⁷³ Bracton, vol. 2, pp. 400-1.

¹⁷⁴ *Patent Rolls*, Henry IV, vol. 1, p. 119.

¹⁷⁵ Guilelmus Brito, *Philippidos*, in *Oeuvres de Rigord et de Guillaume le Breton, historiens de Philippe-Auguste*, ed. H. François Delaborde (Paris: Librairie Renouard, 1882), p. 219, lines 228-40.

¹⁷⁶ Beaumanoir, vol. 2, §1718, p. 378.

the ownership of a beast, in which case the loser paid sixty sous to the court and reimbursed the winner's expenses.¹⁷⁷

In other French-speaking regions, it was more common to set the same fine for losing appellants as for those who lost a "civil" suit over property. A fine of sixty to sixty-seven sous in the local money was traditional in many regions during the thirteenth and fourteenth centuries, despite the fact that this sum represented quite different values when inflation over time and the differences between regional currencies are taken into account.¹⁷⁸ In some jurisdictions, like the town of Étampes, defeated duellists paid separate fines to the king, the royal provost and the winning party.¹⁷⁹

Defeated nobles also often forfeited their horse and arms, just as they would in a tournament. Beaumanoir wrote that these items belonged to the sovereign and the customs of Agen gave them to the lords of Agen, but the *ordonnance* of Philip IV granted them to the constable and marshal who were in charge of guarding the field.¹⁸⁰ A late treatise on combat in the English Court of Chivalry grants the English constable the same fee.¹⁸¹ In 1380, one zealous English constable claimed the horse of the duellist Thomas Katrington before the combat had even begun. The horse, momentarily unattended during the swearing of oaths,

¹⁷⁷ *Coutumes et institutions de l'Anjou et du Maine*, part 1, vol. 1, nos. 91 & 100, pp. 119 & 124.

¹⁷⁸ Étampes: 60 s. (1179), *Ordonnances des rois de France de la troisième race*, ed. Eusèbe de Laurière et al., vol. 11 (Paris: Imprimerie Royale, 1777), p. 211; Belac: 60 s. (before 1218), *Cartulaire des comtes de La Marche*, ed. Georges Thomas (Angoulême: Imprimerie Ouvrière, 1934), no. XLI, p. 81; Chambly: 67 s., 5 d. (1222), *Ordonnances*, vol. 11, p. 308; Asniers: 67 s., 5 d. (1223), *Ordonnances*, vol. 12, p. 312; Caumont: 65 s. (1289), *Coutumes de l'Agenais*, vol. 1, no. 176-7, p. 428; Gontaud: 65 s. (early 14th c.), *Coutumes de l'Agenais*, vol. 1, no. 155, p. 353; Marmande: 65 s. (1340) *Coutumes de l'Agenais*, vol. 1, no. 237, p. 227; Burgundy: 65 s., 6 d. (late fourteenth century) *Coutumier Bourguignon glosé*, c. 17, p. 10.

¹⁷⁹ *Ordonnances*, vol. 11, p. 211.

¹⁸⁰ In the Beauvaisis and the Agenais, the horses and arms of both parties were forfeit, regardless of the outcome. Beaumanoir, vol. 2, §1718, p. 378. *The Costuma d'Agen: A Thirteenth-Century Customary Compilation in Old Occitan*, ed. F.R.P. Akehurst (Turnhout, Belgium: Brepols, 2010), p. 82. Chabas, p. 280.

¹⁸¹ *Ordenaunce and Fourme of Fightyng within Listes*, p. 328.

had thrust its head between the rails of the fence and was deemed to have been ejected from the lists.¹⁸² The battle nevertheless continued on foot.

When a trial by battle concerned a “civil” case, the chief penalty for the losing party was the loss of any claim to the disputed property or rights. In theory, a judicial duel ended the dispute definitively, but in practice some tenants proved to be more recalcitrant than others. One charter of the monks of Saint Serge and Saint Bach of Angers, concerning the rights to some mills over which their champion fought for the better part of a day, is followed by a postscript added not long afterwards. The millers, who had agreed to pay a *cens* and tithes on their mills after their champion was injured in the duel, had refused to render the money to the monks. Some of the brothers were at the point of contemplating “temporal vengeance,” but the abbot instead arranged a meeting with the most cooperative of the millers. Together they re-negotiated an accord, and in the process the monks paid the miller four pounds of *deniers*.¹⁸³ Clearly, accords reached as a result of duels were not always easy to enforce. The very fact that the parties in this case reached their first agreement in haste on the field of battle after a judicial duel may have been a reason why their peace proved unsustainable.

Nearly a century and a half later, a writ issued by Henry III suggests that the outcomes of English duels could sometimes meet with local resistance as well. The prior of Brewood in Somerset had won some land by means of a judicial duel, but his neighbours were nevertheless making it difficult for him to enjoy it. The writ says:

The sheriff of Somerset is commanded that he is to give the prior of Brewood free egress and ingress into his land in *Daghenescove*, which he deraigned in the said county by means of a duel, just as he ought to have. And see that the same prior possesses the land peacefully, not permitting Richard Luvel and William of Godmanstone to trouble the prior unjustly. And let [the sheriff] do enough from now on that we do not hear a

¹⁸² Thomas of Walsingham, p. 432.

¹⁸³ *Cartulaires de l'abbaye Saint-Serge et Saint-Bach*, vol. 1, no. 244, pp. 226-7.

complaint thereafter about the rest of the matter and that it does not become fitting to appoint a different hand on account of your failure.¹⁸⁴

The note demonstrates that multiple stakeholders could be involved in the enforcement of a judicial decision. When one of the parties chose not to comply with the sentence, the other might try to seek out more powerful allies as an alternative to self-help. In the end, the success of the endeavour could depend on individuals' political skills as much as the result of the battle itself.

The principal parties were not the only participants in judicial duels who experienced consequences after a win or a loss. Losing champions sometimes faced harsh justice as well. The custom of amputating the right hand of champions went back at least as far as a capitulary of Louis the Pious from 816.¹⁸⁵ Carolingian procedure required the fighters to be chosen from among each party's witnesses. The other witnesses in the losing party also received sentences of maiming, but could redeem their hands with monetary payments.

By Beaumanoir's time, the penalties for witnesses had disappeared, but the mutilation of champions was still possible. The jurist explained the practice thus: "were it not for the maiming that [the champion] risks, someone might dissimulate fraudulently for money and declare himself defeated, for which his master would bear the expense and the shame, and he would make off with the money; and for this reason the judgement of mutilation is a good

¹⁸⁴ "*Mandatum est vicecomiti Sumerset' quod priori de Brewud' faciat habere liberum egressum et ingressum ad terram suam in Daghenescove, quam disrationavit in predicto comitatu per duellum, sicut habere debet, et terram illam ipsum priorem facias pacifice possidere non permittens quod Richardus Luvel et Willelmus de Godmanston' ipsum priorem molestent injuste. Et tantum inde faciat quod decetero non audiamus inde querelam et quod nos non oporteat aliter manum apponere pro defectu tui.*" *Close Rolls of the Reign of Henry III*, vol. 4 (London: HMSO, 1911), p. 353. Cf. the less forbidding language in *Glanvill*, II, 4, p. 26.

¹⁸⁵ *Capitularia regum Francorum*, ed. A. Boretius, vol. 1, *Monumenta Germaniae Historica Capit.* 1 (Hannover: Hahn, 1883), no. 134, c. 1, p. 268.

one.”¹⁸⁶ In Beaumanoir’s era, judicial duels involving champions were very rare. He also makes it clear that this practice of maiming the losing champion was a custom of the county of Clermont. In other parts of the French realm, it had likely already faded, for there are no mentions of severed hands among the charters. In England, the penalty appears never to have been customary. The lone analogous example is the case of Elias Piggun, whose foot was cut off in 1220 because he was found to be a hired champion masquerading as a warrantor.¹⁸⁷ Beaumanoir’s discussion of the punishment is thus largely academic.

The fallout from judicial combat could be swift and severe, but it was not always so. Even after the combatants had left the field, their political skills and former social standing continued to matter. Winners sometimes discovered that their victory changed little, while losers managed to salvage money and dignity, or wriggle off the hook entirely. The outcome resulted not only from the sentence of the judge, but also from the actions of the parties themselves and the participation of other interested players in the wider community.

A medieval judicial duel, however, does not quite fit the interpretations of many twentieth-century historians of the ordeal. It was not entirely the product of a community consensus. Admittedly, the peers of the litigants had a significant role to play in the lead-up to the wager of battle and the subsequent attempts to produce an accord. As the day of combat grew closer, however, the ability to influence the course of the dispute came increasingly to lie in the hands of the community’s more powerful members: priests, courtiers, the judge and the officials of the court. At the decisive moment of battle, all

¹⁸⁶ “*Car se n’estoit pour le mehaing qu’il en porte, aucuns par barat se pourroit feindre par louier et se clamerait vaincus, par quoi ses mestres en porteroit le damage et la vilenie, et il en porteroit l’argent, et pour ce est bons li jugemens du mehaing.*” Beaumanoir, vol. 2, §1721, p. 379.

¹⁸⁷ *Curia Regis Rolls*, vol. 8, p. 278.

participants except for the combatants themselves were silenced and physically separated from the action. Often the final judgement was made entirely without community input, a situation which, rather than producing consensus, occasionally led to further divisions. As a result, some decisions reached by battle had to be renegotiated with greater community input at a later date.

The participants in trials by battle were by no means credulous or passive in the face of divine judgement. They eagerly pursued any advantage they could acquire. Any rule that could be interpreted was debated vigorously. Any ambiguity was seized upon immediately. If medieval litigants believed in the intervention of God, they also believed in leaving Him as little room to work as possible. Indeed combat, once underway, could defy prediction, preparation and even reason itself.

Chapter Seven

Scepticism and Decline

One of the conundrums that has most preoccupied historians of trial by battle, second only to the question of why the practice existed in the first place, is the issue of why and how it disappeared. Various explanations have been proposed. From the late nineteenth-century perspective of Henry Charles Lea, the fading of the judicial duel was an inevitable outcome of “the struggle between progress and centralization on the one side, and chivalry and feudalism on the other.”¹ A century later, Peter Brown and the functionalist school also thought that the centralization of judicial power was an important factor, claiming that, together with population growth, it spurred a move from consensus-based judgements to ones imposed by authorities.² Charles Radding echoed Lea in a different way, seeing the change as the product of developmental progress, this time in Europe’s collective psychology. He attributed it to the beginnings of scientific thinking in the twelfth century and the growing understanding that natural forces behaved consistently without supernatural aid.³

John Baldwin, for his part, thought that the key development had been in religious thought, particularly the arguments disseminated by the influential Peter the Chanter, which

¹ Henry Charles Lea, *Superstition and Force* (Philadelphia: Henry C. Lea, 1866). Republished as *The Duel and the Oath*, ed. Edward Peters (Philadelphia: University of Pennsylvania Press, 1974), p. 216.

² Peter Brown, “Society and the Supernatural: A Medieval Change,” *Daedalus* 104 (1975), p. 143.

³ Charles M. Radding, “Superstition to Science: Nature, Fortune and the Passing of the Medieval Ordeal,” *American Historical Review* 84:4 (1979), pp. 959-65.

influenced the Fourth Lateran Council to forbid clerics to participate in ordeals.⁴ Howard Bloch detected misgivings about ordeals and judicial duels in secular literature as well, and Baldwin later seized upon this idea to propose that there had been a “crisis of the ordeal” in both lay and religious circles around the year 1200.⁵ Robert Bartlett surveyed the evidence for trials by ordeal and battle and found no signs of a decline in these procedures during the twelfth century. Instead, he argued that 1215, the year of the Fourth Lateran Council, marked an abrupt turning point in their history, both because of changes in beliefs and as a result of developments in judicial procedures and institutions.⁶ He conceded, however, that the decline of trial by battle was much less dramatic and the factors he identified had much less effect on it.⁷

The rise and fall of trial by battle followed a somewhat different trajectory than that of the ordeals of fire and water. R.W. Southern’s claim that early medieval people “had a tendency to fly to the ordeal in any matter of doubt whatsoever” has often been quoted and, more recently, disputed.⁸ It is particularly unrepresentative of attitudes towards the judicial duel. One could say that there was a crisis of the judicial duel almost from the first appearance of the practice. The tendency, if any, in early records of trials by battle was to express doubt, criticism and regret regarding the procedure. Official ecclesiastical opposition to ordeals in the late twelfth century played an important role in the decline of the judicial

⁴ John W. Baldwin, “The Intellectual Preparation for the Canon of 1215 Against Ordeals,” *Speculum* 36:4 (1961), pp. 627-36.

⁵ R. Howard Bloch, *Medieval French Literature and Law* (Berkeley: University of California Press, 1977), pp. 11, 14. John W. Baldwin, “The Crisis of the Ordeal: Literature, Law and Religion around 1200,” *Journal of Medieval and Renaissance Studies* 24 (1994), pp. 328-53.

⁶ Robert Bartlett, *Trial by Fire and Water: The Medieval Judicial Ordeal* (Oxford: Clarendon, 1986), 34-102, especially p. 100.

⁷ *Ibid.*, p. 126.

⁸ R.W. Southern, *The Making of the Middle Ages* (New Haven: Yale University Press, 1953), p. 96; Rebecca V. Colman, “Reason and Unreason in Early Medieval Law,” *Journal of Interdisciplinary History* 4:4 (1974), p. 583; Robert Bartlett, *Trial by Fire and Water*, p. 26; Stephen D. White, “Imaginary Justice: The End of the Ordeal and the Survival of the Duel,” *Medieval Perspectives* 13 (1998), p. 36.

duel, but it was only one part of a cluster of legal and cultural changes which affected the practice. Despite these factors, trial by battle proved to be a remarkably resilient institution. Its disappearance is not characterized by a single moment of abandonment, but rather by a long, irregular decline over the course of centuries.

The Early Critics

Some of the earliest records of trial by battle come from its critics. The ninth-century archbishop Agobard of Lyon quoted his sixth-century predecessor Bishop Avitus of Vienne questioning the wisdom of judicial duelling: “Can it really be that celestial justice determines the motive of suits by resort to spears and swords, since, as we often perceive, the party of the just tenant or demandant suffers in battle and the greater strength or stealthy connivance of the unjust party prevails?”⁹ If Agobard is correct in his attribution, Avitus’ comments were contemporary with the early sixth-century laws of the Burgundian king Gundobad, the very first source to make an unambiguous reference to trial by battle. There is here no evidence of confidence in what Henry Charles Lea called superstition and force. Rather, the earliest commentator was well aware of the fundamental contradiction involved in attributing the outcome of a combat to the will of a just God.

For Gregory of Tours, another writer of the sixth century, proposals of trial by battle served to illustrate the dangers of wrath and pride. He records that late in the sixth century King Gunthram of the Burgundians insulted an emissary sent to him by his uncle, King Childebert of the Franks, calling the man a traitor and a breaker of promises. The emissary

⁹ “*An forte sine telis et gladiis causarum motus aequitas superna non iudicat, cum sepe, ut cernimus, pars aut iuste tenens aut iusta deposcens laboret in preliis, et praeualeat inique partis uel superior fortitudo uel furtiua supreptio?*” Agobard of Lyon, *Adversus legem Gundobadi*, in *Agobardi Lygdvnensis: Opera Omnia*, ed. L. Van Acker, Corpus Christianorum, Continuatio Mediaevalis LII (Turnhout: Brepols, 1981), c. XIII, p. 27.

promptly requested to be allowed to disprove the charge by battle against a man of his own rank. Rather than brining the dispute to a head, this request simply provoked more insults from both sides when no one dared to step forward and accept the challenge.¹⁰

Later, a forester of the same King Gunthram accused the royal chamberlain, Chundo, of having killed a buffalo in the royal domain. The king ordered a trial by battle, in which Chundo was represented by his younger nephew. The contest ended in a bloody knife fight and both combatants died. When Chundo attempted to escape, he was pursued, captured and stoned to death. “Later the king repented greatly that rage had driven him so headlong that for the sake of a small offence he had allowed harm to come to a man who was loyal and necessary to him,” Gregory concludes.¹¹

In another of the same chronicler’s vignettes, not strictly judicial in nature, a Lombard soldier stood on the shores of Lake Lugano and challenged the Franks invading his country to fight him in single combat to see which side God favoured. The Franks, whom Gregory had been condemning just a few sentences previously for their plundering and mistreatment of civilians, lost no time in hacking the soldier to death.¹² These accounts, although they do not explicitly condemn trial by battle, hardly present a ringing endorsement of the practice. For Gregory, duels were the result of intemperate words and ill-considered actions. In his moral parables, they offered the opportunity for him to impart object lessons about unwise behaviour rather than shining examples of God’s intervention on earth.

¹⁰ Gregory of Tours, *Libri historiarum*, ed. B. Krusch & W. Levison, Monumenta Germaniae Historica, Scriptores rer. Merov. 1.1 (Hannover: Hahn, 1951), lib.VII, cap. 14, pp. 334-6.

¹¹ “*Multum se ex hoc deinceps rex paenitens, ut sic eum ira praecipitem reddidisset, ut pro parvulae causae noxia fidilem sibi virum necessarium celeriter intermisit.*” *Ibid.*, lib. X, cap. 10, p. 494. See also pp. 42-4, *supra*.

¹² *Ibid.*, lib. X, cap. 3, pp. 484-5.

The barbarian law codes could also display ambivalence towards judicial duelling. In 724 the Lombard king Liutprand felt it necessary to rule that decisions of battle regarding theft could be overturned if it later became clear that the accused party had not stolen the goods after all.¹³ Seven years later, he decreed that a person convicted by battle of poisoning and killing a freeman should pay compensation but not lose all of his property. “For we are uncertain concerning the judgement of God and we have heard that many men have lost their case unjustly through the duel; however, on account of the custom of our Lombard people, we cannot abolish this law.”¹⁴ As an early medieval king, Liutprand had only limited power to legislate. We may surmise from his words that among the Lombards there existed both people who repeated stories about duellists unjustly defeated and also those with political influence who insisted upon maintaining the custom.

The ninth-century bishop Agobard of Lyon wrote two treatises dealing with ordeals and duels. The first one, *Adversus legem Gundobadi*, condemned the Burgundian Code for, among other things, allowing judicial duels while the Salian law, which applied elsewhere in the Frankish kingdom, did not employ them. The second work, *De divinis sententiis contra iudicium Dei*, focused on ordeals and duels specifically.¹⁵ Agobard’s arguments against duelling were multiple. Like some of Liutprand’s subjects, he felt that the ordeal often produced unjust results and pointed out that examples of just men overcome by wicked ones could be found even in scripture. He also argued that the judicial duel, having neither scriptural nor Roman precedents, was a heretical practice introduced by the Arian king

¹³ *Edictus ceteraeque Langobardorum leges*, ed. Frederick Bluhme, Monumenta Germaniae Historica, Leges Fontes Iuris 2 (Hannover: Hahn, 1869), “Livtprandi leges anni XII,” cap. 56. III, p. 106.

¹⁴ “*Quia incerti sumus de iudicio dei, et multos audiimus per pugnam sine iustitia causam suam perdere; sed propter consuetudinem gentis nostrae langobardorum legem ipsam uetare non possumus.*” *Ibid.*, anni XIX, cap. 118.II, p. 130.

¹⁵ *Agobardi Lvgdunensis, op. cit.*, pp. 18-28, 29-49.

Gundobad. It had therefore not been instituted by God. Furthermore, judicial combat was contrary to the Christian principle of brotherly love, since a duellist cared more for his property or compensation money than for the well-being of his adversary. Finally, Agobard argued that since the will of God was hidden and unknowable, attempts by mere mortal men to uncover it were nothing more than stupidity and arrogance. He cited biblical prohibitions against divination, likening ordeals to soothsaying because they attempted to pronounce upon points in time about which there could be no certainty.¹⁶

Agobard's argument was theological rather than legal. He may be regarded as the first theologian to pronounce upon the judicial duel and the subject of ordeals in general. Although his first treatise was directed at Louis the Pious, he seems to have had little effect upon Carolingian policy. In fact his words have survived in only one manuscript, which led a precarious existence before it arrived at the Bibliothèque nationale de France.¹⁷

Louis' grandson, Lothar II, also provoked ecclesiastical criticism of trial by battle. In 857, he put his wife Teutberga on trial for incest and a variety of other sexual offences in order to divorce her and marry his mistress. The queen confessed to the crimes, but later fled to Lothar's uncle Charles the Bald, king of West Francia, and recanted her confession. The dispute festered for much of the 860s. In one attempt to resolve it, Lothar proposed that the queen should prove her innocence by appointing a champion to battle his own representative in a judicial duel. Pope Nicholas I nixed this suggestion in a papal letter to Charles in 867. "We find that single combat has never existed as a precept found in law," he wrote, "even though we have read that some cases occurred; for example sacred history offers David and Goliath. However, nowhere did divine authority sanction this as something upheld by law,

¹⁶ *Ibid.*, p. 47.

¹⁷ Bartlett, p. 75. It is now Bibliothèque nationale de France MS Latin 2853.

for this case and proceedings of this kind would only seem to tempt God.”¹⁸ This letter enjoyed more renown than Agobard’s treatises, for it was later cited by the early canonists Regino of Prüm, Burchard of Worms and Ivo of Chartres.¹⁹ The last, writing in the later eleventh and early twelfth centuries, also cited Nicholas’ decision in four of his letters to secular and ecclesiastical contacts who sought his advice regarding difficult legal disputes.²⁰ In each of these cases, Ivo sought to dissuade his correspondents from engaging in proposed judicial duels. Nevertheless, the fact that the issue arose at least four times during the bishop’s career suggests that many of Ivo’s contemporaries did not share his distaste for trial by battle.

Ecclesiastical censure was not consistent or widespread. As Chapter One outlined, early medieval synods, when they paid attention to trial by battle at all, were more interested in proposing regulations for the practice than in abolishing it altogether. The peace of God movement of the late tenth and eleventh centuries did not attempt to do away with judicial duels either. It was, if anything, pleased to divert violent disputes into the courts, where arbitration limited the scale of the bloodshed and brought prestige to local rulers.

The First Crisis of the Judicial Duel

In addition, ecclesiastical involvement may or may not have been a causal factor in the abolition of trial by battle in Scandinavia at the beginning of the eleventh century. It has long

¹⁸ “*Monomachiam vero in legem assumi, nusquam praeceptum fuisse reperimus: quam licet quosdam iniisse legerimus, sicut sanctum David et Goliath sacra prodit historia, nusquam tamen ut pro lege teneatur, alicubi divina sancit auctoritas, cum hoc et huiusmodi sectantes Deum solummodo tentare videantur.*” *Patrologia Latina Cursus Completus*, ed. J.P. Migne, vol. 119 (Paris: J.-P. Migne, 1852), col. 1144D.

¹⁹ Regino of Prüm, *De ecclesiasticis disciplinis et religione Christiana*, lib. 2, cc. LXXVII-LXXVIII, , *Patrologia Latina Cursus Completus*, op. cit., vol. 132 (1853), col. 300A-B. Burchard of Worms, *Decretum*, cc. 49-51, *PL*, vol. 140 (1853), col. 823A-B. Ivo of Chartres, *Decretum*, *Patrologia Latina*, vol. 161, lib. 8, c. 187, *Patrologia Latina*, vol. 161 (1855), col. 623B-C.

²⁰ Ivo of Chartres, *Epistolae*, *Patrologia Latina*, vol. 162 (1854), ep. LXXIV, col. 96A; ep. CCV, col. 211A; ep. CCLXVII, col. 254B; ep. CCLXXX, col.281C.

been noted that the disappearance of the duel in Denmark, Norway and Iceland coincided with the adoption of Christianity. However, the correlation is sometimes rougher than it first appears. In Denmark and Norway, Christianity spread slowly over the course of the tenth century. Saxo Grammaticus claimed that King Svein Forkbeard of Denmark abolished the judicial duel in 975 after witnessing a bishop successfully perform the ordeal of hot iron, but he also reported that King Harald Hein had to forbid the custom once again in 1074 and faced opposition for doing so.²¹ In Norway, Jarl Eirikr appears to have had more success, abolishing the judicial duel in 1014. This does not seem to have been done in deference to the new religion, however. According to one saga, the new rule was enacted to prevent berserkers from challenging rich men to duels and taking all their property.²²

In Iceland, the correlation between Christianity and the end of judicial duelling is stronger. In 1000, the *althing* agreed that the entire country would adopt Christianity *en masse*. Six years later, the same assembly decided to abolish trial by battle. Nevertheless, the one decision may not have been the direct cause of the other. Icelandic society was undergoing many changes at the time. As Konrad Maurer first noted, a more relevant development may have been the creation of a court of appeals in 1004, which rendered duels less necessary.²³ Nevertheless, the combined evidence of Denmark, Norway and Iceland shows that judicial duelling did indeed experience a moment of crisis similar to the one that John Baldwin and others claim occurred for the ordeal around 1200. However, this crisis peaked in the early eleventh century and was entirely limited to Scandinavia.

²¹ Saxo Grammaticus, *Saxonis Gesta Danorum*, ed. J. Olrik & H. Raeder, vol. 1 (Copenhagen: Levin & Munksgaard, 1931, lib. X, c. XI.4, p. 282; lib XIV, c. LIV.19, p. 508.

²² Konrad Maurer, *Island: von seiner ersten Entdeckung bis zum Untergange des Freistaats* (Munich: Christian Kaiser, 1874), pp. 60-1.

²³ Marlene Ciklamini, "The Old Icelandic Duel," *Scandinavian Studies* 35:3 (1963), p. 191.

When considering the role of Christianity in this first crisis of the duel, the Scandinavian experience should be compared with other parts of Europe. The turn of the millennium was also the period when the first recorded trials by battle occurred in the northern parts of Spain, which were staunchly and aggressively Christian. Later in the eleventh century, the procedure was introduced to England, which had also been converted for several centuries at that point. Clearly Christian faith did not present a philosophical barrier to judicial combat in all parts of Europe at the time.

The Canon Lawyers

The Church's position against trial by battle only began to crystallize with the publication of Gratian's *Decretum* in 1140. Gratian quoted Pope Nicholas' statement in opposition to the judicial duel among his many canons, but he recorded no discordant statements directly supporting the practice.²⁴ His research ensured that trial by battle would be studied and discussed by later theologians, and ecclesiastical opposition would eventually become a part of canon law. Nevertheless, his work came just at a time when it was becoming much more common for churches and monastic institutions to preserve charters recording their activities in the secular courts. These documents show that judicial duelling had become widespread in England and the French-speaking regions of the Continent and ecclesiastical institutions occasionally employed the procedure in their secular litigation. However much scholars may have opposed trial by battle and dreamed of reforming legal practice, judicial duels were still a fact of legal life for many of their contemporaries in the Church, who did not want to lose valuable property. Gratian's glossator Huguccio opined at the end of the twelfth century that

²⁴ *Corpus Iuris Canonici: Decretum Magistri Gratiani*, ed. Emil Albert Friedberg & Emil Ludwig Richter (Leipzig: B. Tauchnitz, 1879), c. 2, q. 5, c. 22, col. 464.

those who were challenged to a judicial duel should concede their case rather than incur irregularity,²⁵ but this view does not appear to have gained much traction in practice.

As Finbarr McAuley has noted, Gratian's conclusions were part of a larger twelfth-century debate about legal procedure in general.²⁶ The rediscovery of Roman law had given the intellectuals of Western Europe examples of alternative legal procedures with which to compare their own practices. At the same time, there was dissatisfaction with the existing procedures in ecclesiastical courts, which were failing to enforce the ideals of the Gregorian reforms. Simony and clerical marriage were by nature secretive activities, but a formal trial for these offences required an accuser, and proof of wrongdoing required at least two eyewitnesses or documentary proof. These requirements could rarely be procured. As Gratian noted in the same *quaestio* as his discussion of the duel, a trial could also be initiated based on the offender's public notoriety, or *mala fama*, in the absence of an accuser.²⁷ However, in that case, the accused was entitled to prove his innocence simply by swearing a purgatory oath. This system was proving to be an ineffective method for policing clerical offenders.

Some churchmen may have wondered if it would not be better to follow the lead of the secular courts and threaten suspected perjurers with the possibility of a terrifying ordeal. However, any possibility of canon law taking this course was thwarted by the fact that ordeals and duels had no place in Roman law and scriptural references to them were both scarce and ambiguous. For a system of law based on written precedents, this problem presented an insurmountable barrier. Canon lawyers sought a better alternative.

²⁵ John W. Baldwin, "The Preparations for the Canon of 1215 against Ordeals," *Speculum* 36 (1961), p. 625, n. 74.

²⁶ Finbarr McAuley, "Canon Law and the End of the Ordeal," *Oxford Journal of Legal Studies*, 26:3 (2006), pp. 484-6.

²⁷ Gratian, c. 2, q. 5, c. 16, cols. 459-60.

Reforms in England

Dissatisfaction with contemporary legal procedures also fuelled debate and innovation in the secular courts during the twelfth century. As Chapter Five outlined, the middle of the century saw the development of early forms of the English jury. By the late 1180s, the author of the treatise *Glanvill* was firmly convinced of the grand assize's superiority over battle as a form of proof.

The assize ... takes account so wholesomely of both men's life and their state of integrity that they may decline the uncertain hazard of the duel while preserving the rights which they usually possess by law in their free tenement. And by this method, one manages to avoid the ultimate punishment of undesired and premature death, or at least the reproach of complete disgrace following that distressed and shameful word, which sounds so scandalously from the mouth of the vanquished. Moreover, this legal constitution is based on the greatest equity, for justice, which is scarcely produced by the duel even after many and long delays, is more swiftly and easily attained through its use. ... Furthermore, just as the loyalty of multiple suitable witnesses counts for more than the trust of just one, so this constitution relies on greater equity than battle does; for whereas battle is fought on the testimony of one oath-taker, this constitution requires the oaths of at least twelve men.²⁸

The arguments of the *Glanvill* author are similar to those of many early critics of trial by battle. He considered judicial duels an uncertain (*ambiguum*) method of reaching a decision and wished to avoid the loss of life. Unlike his predecessors, he also pointed out that they were a more time-consuming procedure than the assize, as they allowed for more delays. In addition, it is striking that much of *Glanvill*'s argument is concerned with honour and shame. The duel was not only physically dangerous, it also carried the possibility of catastrophic

²⁸ “*Est autem assisa illa ... quo uite hominum et status integritati tam salubriter consulitur ut in iure quod quis in libero soli tenemento possidet retinendo duelli casum declinare possint homines ambiguum. Ac per hoc contingit insperate et premature mortis ultimum euadere supplicium, uel saltem perhempnis infamie obprobrium illius infesti et uerecundi uerbi quod in ore uicti turpiter sonat consecutuum. Ex equitate autem maxima prodita est legalis ista constitutio. Ius enim, quod post multas et longas dilationes per duellum uix euincitur, per beneficium ipsius constitutionis commodius et acceleracius expeditur. ... Preterea, quanto magis ponderat in iudiciis plurium idoneorum testium fides quam unius tantum, tanto maiori equitate nititur ista constitutio quam duellum: cum enim ex unius iurati testimonio procedat duellum, duodecim ad minus hominum exigit constitutio iuramenta.*” *Tractatus de legibus et consuetudinibus regni Anglie qui Glanvilla vocatur*, ed. G.D.G. Hall (London: Thomas Nelson & Sons, 1965), II, 7, p. 28.

infamy. The author contended that it was more equitable to base judgement upon the litigants' reputations among their peers than on the unpredictable outcome of a fight. In this point, he highlights the conflation of shame and guilt in contemporary English law. Although he writes of champions and jurors as being *testes*, he does not mean witnesses in the modern sense. As we have seen, champions were not required to provide information to the court beyond a simple (and later, formulaic) affirmation of their principal's rights, while twelfth-century juries were made up of people who may or may not have had personal knowledge of the facts of a case. Both of these kinds of witnesses were better indicators of a litigant's honour than of his guilt or liability, and therefore it was better to judge his reputation based on the opinion of a selection of his peers rather than the support of a single fighter.

Reforms in Southern France

England was not the only place where procedures for making legal proof were changing. Beginning in the second half of the twelfth century, the French regions south of the Loire also began to change the way they dealt with legal cases. As Justinian's *Corpus iuris civilis* became known and studied, judges looked to Roman laws rather than the memories of local people when they were seeking precedents to assist them with difficult cases. Southern France came to be known as the *pays de droit écrit* because its legal practices were based on written texts, while custom still reigned supreme in the north.

This incorporation of Roman law also affected legal procedure and modes of proof. In much of the south, the procedure for hearings came to resemble ecclesiastical practice, depending on the oath of the accused and later the increasing use of evidence from witnesses

and charters.²⁹ The difference between northern French legal practices and southern ones was not always clear-cut, however. From the later twelfth through early fourteenth centuries, many towns of the Midi were granted charters detailing their local legal customs.

From these documents, we can see that the judicial duel did not disappear everywhere in the south. Where once the council of Valence had condemned the wounds and deaths resulting from judicial duels, there was now a zone from the Mediterranean north to Lyon and West nearly to the Garonne where duels were no longer mentioned. Beyond this zone, however, the judicial duel was still very much alive as an occasional form of legal proof and can be found in charters. Where the two zones met, places like the Périgord, the Agenais, Gascogne and Comminges sought to clear up any uncertainty by detailing their duelling practices in their customs. In these places, the judicial duel did not disappear until the fourteenth century, at the same time that it fell out of use in the rest of France, but customals often emphasized that both parties had to agree to it in order for it to be employed. Jean-Marie Carbasse has mapped these zones where judicial duels were abandoned and where they remained in force.³⁰ They do not correspond exactly with the territory traditionally known as the *pays de droit écrit*. In the western parts of this region, Roman law and judicial duels led an uneasy coexistence.

A Crisis of the Ordeal?

Meanwhile, the University of Paris had grown into a major centre for students of theology. The glossators of Gratian were contemplating the body of canon law concerning

²⁹ Daniel Lord Smail, *The Consumption of Justice: Emotions, Publicity and Legal Culture in Marseille, 1264-1423* (Ithaca, NY: Cornell University Press, 2003), pp. 52-9.

³⁰ Jean-Marie Carbasse, "Le duel judiciaire dans les coutumes méridionales," *Annales du Midi* vol. 87, no. 124 (1975), p. 402.

ordeals and debating whether the practice was still legal under canon law and the circumstances under which it might be permitted in secular courts. Towards the end of the century, the scholar Peter the Chanter proved to be a particularly persistent and influential opponent of ordeals in all their forms. His arguments against ordeals and judicial duels took a new form: to counter the many contemporary tales of ordeals producing divine miracles, he collected examples of miscarriages of justice resulting from these procedures. His most memorable example was the tale of two Englishmen who went on pilgrimage together. When one pilgrim returned home without the other, he was accused of murder and sent to the ordeal of water. He failed the ordeal and was hanged--much to the sorrow of the second pilgrim, who arrived home not long afterwards.³¹

For the Chanter, ordeals were wrong not only because they tempted God, but also because they were irrational; miraculous intervention often simply failed to materialize and the natural properties of iron, water and flesh took their predictable course.³² His contemporaries were not entirely unaware of this fact. If litigants believed in divine judgment, then why, he demanded, “in trial by battle, when someone appoints a champion as a proxy, is the man not a weakling or a sextogenarian, since God will be demonstrating miracles anyway?”³³ According to the Chanter, champions agreed to fight duels for three reasons. Either they were confident that their strength and skill at arms was superior, in which case it was an unequal fight; or they were certain of their innocence, which was presumption, since only God could judge the hearts of men; or they believed that a miracle

³¹ Peter the Chanter, *Petri Cantor Verbum abbreviatum*, ed. J.-P. Migne, *Patrologia Latina*, vol. 205 (1853), cols. 230D, 231A, 547A.

³² On the Chanter's arguments, see John W. Baldwin, “Preparations,” pp. 629-31 and *idem*, *Masters, Princes and Merchants: The Social Views of Peter the Chanter and His Circle*, vol. 1 (Princeton: Princeton University Press, 1970), pp. 323-32.

³³ “Item: in monomachia, quare ponit championem pro se, si fuerit quis non valetudinarius vel sexagenarius, quandoquidem Dominus est ibi miracula ostensurus?” Peter the Chanter, *Verbum abbreviatum*, col. 548B.

would occur, which was a diabolical temptation of God.³⁴ In addition, the Chanter argued that participation in ordeals of all sorts was tantamount to the shedding of blood, an activity forbidden to clergy. In his opinion, it was wrong for a priest even to bless the tools of an ordeal or the weapons of a duel, for this amounted to blessing bloodshed. Similarly, priests should not offer communion to champions, since these men intended to wound or kill their opponent if necessary.³⁵ Although Peter the Chanter died in 1197, John W. Baldwin speculates plausibly that his arguments had an important influence on Pope Innocent III, who had been his contemporary at the University of Paris, and on the Fourth Lateran Council, over which the pope presided.³⁶

Baldwin is on less solid ground when he posits that the Fourth Lateran Council was preceded by a secular “crisis of the ordeal” at the beginning of the thirteenth century. This thesis was first proposed in the 1970s by Howard Bloch in his book *Medieval French Literature and Law*. Bloch argued that it is possible to detect in vernacular literature from the turn of the thirteenth century a crisis of “feudal” values and a shift from support of the old, highly personal and decentralized forms of rule to an endorsement of stronger monarchical government.³⁷ A key component of this shift in values was a failure of faith in ordeals. According to Bloch, it is illustrated in the romance *Le Mort le roi Artu*, where Queen Guinevere is given poisoned apples as a gift, but passes them on to the knight Gaheris, accidentally killing him. The knight’s brother Mador de la Porte accuses Guinevere of treasonous murder and Lancelot agrees to be her champion, even though he believes she is guilty. On the day of the duel, Mador swears an oath alleging that Guinevere killed Gaheris

³⁴ *Ibid.*, col. 233A.

³⁵ Baldwin, “Preparations,” pp. 630-1.

³⁶ *Ibid.*, pp. 635-6. See also *idem*, “Crisis of the Ordeal,” pp. 341-2.

³⁷ Bloch, pp. 11, 14.

deliberately, and thus his oath is technically untrue. Lancelot subsequently wins the battle. He also defends himself in a second judicial duel against Gawain, managing to win only by continuing the fight until sunset. In Bloch's view, these examples demonstrated a failure of faith in divine justice on the part of both the characters and the author.³⁸

Baldwin nuanced Bloch's argument somewhat, arguing that the trial scenes in four key families of romances dating from the years before 1215 echo the debates over the ordeal that were current in intellectual circles at the time.³⁹ While faith in miracles prevailed, the characters in these tales acted out contemporary concerns about the ways in which these miracles could be abused and manipulated.

Stephen White later raised still more issues with this line of inquiry, basing his discussion on some five dozen trial scenes from epics and romances. Literature from 1200, he argued, did not in fact reflect the reality of most contemporary ordeals at all. Literary ordeals almost always followed a narrow range of tropes. Typically these cases were accusations of treason involving either homicide or illicit sex. They were never settled by an accord and almost always proceeded to a judicial duel rather than a unilateral ordeal. This duel was always effective in disproving false accusations. Although these trial scenes occasionally raised legal questions, they did not reflect the arguments against ordeals raised in contemporary intellectual circles. Rather, they showed the simple preference of aristocratic men for trial by battle.⁴⁰ A crisis of faith in the ordeal is hard to identify among the secular population in 1200, White demonstrates. However, he points out, one sign that the general population felt fear and anxiety about such modes of proof is the fact that they routinely tried to avoid them

³⁸ *Ibid.*, p. 46.

³⁹ Baldwin, "Crisis of the Ordeal," pp. 328-9.

⁴⁰ Stephen D. White, "Imaginary Justice," pp. 36-7.

in real life, reaching accords before they had to undergo their tests.⁴¹ This phenomenon was not limited to the period around the turn of the thirteenth century.

Whether or not he was influenced by a groundswell of popular opinion, in 1215 Innocent III presided over the Fourth Lateran Council, a major synod which concerned itself above all with the role of the clergy in the secular world. Echoing the concerns of Peter the Chanter, the prelates agreed that, in addition to refraining from any direct or indirect participation in sentences involving blood, clergy should not bestow any blessing upon ordeals of hot iron or cold water. The same canon added rather cryptically that all previously promulgated prohibitions concerning single combats or duels were still in effect.⁴² This statement has generally been taken to refer to the prohibitions in Lateran II and III against tournaments.

In England and France, the effect of Lateran IV upon the unilateral ordeals was soon felt. Without a priest to bless the instruments and invoke divine intervention, the procedure was deprived of the theoretical mechanism which made it work. Henry III responded by abolishing unilateral ordeals in England in 1219.⁴³ The courts of France likewise dropped the procedure, with only occasional exceptions.⁴⁴ Judicial duels, however, continued to occur. As Bartlett notes, a duel did not require the elements to change their natural properties in response to a blessing, as the trials by fire and water did.⁴⁵ It could be carried out without clerical sanction. Indeed, the withdrawal of ecclesiastical support seems to have affected the duel only indirectly, by spurring the development of judicial alternatives to duelling.

⁴¹ *Ibid.*, p. 36.

⁴² *Constitutiones concilii quarti Lateranensis una cum commentariis glossatorum*, ed. Anotonio Garcia y Garcia, Monumenta Iuris Canonici, Corpus Glossatorum 2 (Vatican City: Bibliotheca Apostolica Vaticana, 1981), p. 147, c. 18.

⁴³ *Patent Rolls of the Reign of Henry III*, vol. 1 (London: HMSO, 1901), p. 186.

⁴⁴ One exception may be found in the *Actes du Parlement de Paris*, ed. Edgard Boutaric, vol 1 (1863; reprint, Hildesheim, Georg Olms, 1975), p. cccv.

⁴⁵ Bartlett, p. 116.

Decline in England

It is difficult to say exactly when support for trial by battle peaked and when it fell out of favour, but in England, where records were most abundant, there was a discernable decline in judicial duelling between 1200 and 1250. A very rough measure of the number of trials by battle in the kingdom can be gained by studying the corpus of dated charters, the Pipe Rolls, and the Curia Regis Rolls. Each of these sources shows the frequency of duelling dropping off at a different point in time. A search for the word *duellum* and its variants in the DEEDS database returns nineteen dated charters, of which only four date from later than 1215.⁴⁶ This pattern is not surprising, given that it was usually the clergy who recorded their land disputes in charters. However, the phrases “*offert probare*,” “*offert etc.*,” and “*offert et caetera*,” which the customals use to propose a battle in writ of right suits, provide different results. The first phrase turns up two cases from 1228, while the latter two phrases are found in nine charters dating from 1228 to 1292. However, in none of these charters does the formulaic offer of battle lead to an actual wager, let alone a combat.

M. J. Russell painstakingly tallied up all the references to English trials by battle he could find and made tables of them as an appendix to his doctoral dissertation of 1977. While these numbers do not permit sophisticated statistical analysis, coming as they do from many different kinds of records, they do provide a rough picture of the popularity of trial by battle. Russell himself explained some of the problems with his tables. “We have precious little information before the start of the continuous Pipe Rolls in 1158, whilst we have a lot of references for the first decade of the thirteenth century, when the published Pipe Rolls and

⁴⁶ Two of these charters, numbers 00690221 and 00690222, deal with the same case. (DEEDS database, University of Toronto, <http://www.utoronto.ca/deeds/>, last accessed December 19, 2011.) The charters come from Tutbury Priory. *Cartulary of Tutbury Priory*, ed. Avrom Saltman (London: HMSO, 1962), no. 221 & 222.

Curia Regis Rolls overlap.”⁴⁷ He found that between 1150 and 1200, his sources recorded 222 proposals of battle that were not accepted and 27 formal wagers of battle that were not consummated, while cases went all the way to a duel in 187 records. Between 1200 and 1250, there was talk of battle in 372 cases and 107 unconsummated wagers, while duels occurred in 123 cases. However, between 1250 and 1300, talk of battle appears in only 34 cases, there were no records of unconsummated wagers, and Russell found only 20 judicial duels.⁴⁸ Examining Russell’s tables, a drop-off seems to occur in the early 1230s, some fifteen to twenty years after the Fourth Lateran Council. However, Russell would appear not yet to have seen Volume Fifteen of the published Curia Regis Rolls, which begins in the year 1233. The volumes published since he defended his dissertation show a longer, slower decline in references to trial by battle extending into the 1240s.

A similar decline could be posited for the Continent, but it is harder to measure, as French jurisdictions were fragmented and the first half of the thirteenth century falls into the gap between the charter evidence and the first *Olims* from the Parlement of Paris. What can be said is that the decisions of the Fourth Lateran Council led lay courts in France to reconsider the way they dealt with difficult cases.

Alternative Forms of Trial

Unlike the previous critics of trial by ordeal, the Fourth Lateran Council designed a template for an alternative form of trial to be used in ecclesiastical courts. This they detailed in Canon Eight.⁴⁹ A suspect was to be arraigned either because of a formal accusation made

⁴⁷ M.J. Russell, “Trial by Battle” (doctoral dissertation, University of London, 1977), p. 271.

⁴⁸ *Ibid.*, p. 273. There is an unconsummated wager of battle mentioned in a pair of charters from 1254. *The Cartulary of Tutbury Priory*, *op cit.*

⁴⁹ *Constitutiones concilii quarti...* c. 8, pp. 54-7.

by an individual, a less formal denunciation made to judges, or through his own public notoriety. No matter how his case came to the judges' attention, he was to be called to court, presented with the articles of the accusations against him, and given the opportunity to answer the charges. He was also to be provided with the evidence amassed against him, including not only the depositions of witnesses (if any), but also their names, detailed in a *legitima inscriptio*, or lawful accusation. After this he was given the opportunity to make exceptions and replies to the evidence. The judge then compared the evidence from each side of the dispute to make a decision.⁵⁰ Although examples of suits heard under similar procedural rules can be found in both secular and ecclesiastical courts in the years immediately previous, the Fourth Lateran Council bestowed formal legitimacy on the method and it soon increased in popularity.

This procedure allowed judges to investigate rumours of wrongdoing *ex officio*, even when victims were reluctant to present a formal accusation. It appealed to the Capetian monarchs, who were just then consolidating their control over their new territories in Normandy, Anjou and the Touraine. These territories were governed according to their own longstanding customary laws, but the kings appointed loyal provosts to oversee the courts. The challenge lay in convincing litigants to bring their disputes to royal judges for arbitration. Using the inquisitorial method, courts did not have to wait for suits to be brought before them; they could dispense justice on their own initiative. Inquests, in their secular form, came to co-exist with traditional formal accusations and judicial combat in secular French courts.⁵¹

⁵⁰ McAuley, pp. 489-93.

⁵¹ See Chapter Five, pp. 222-3..

The inquisitorial method also called for the judge to weigh and compare arguments openly. While a suspect could be brought to trial because of his bad *fama*, it was necessary to supply actual information regarding his wrongdoing in order to convict him. Questions regarding evidence arose and had to be resolved. Were some witnesses worth more than others? What happened when one party proffered a witness to prove his case, but the other party supplied a document? Rules and hierarchies of evidence developed.⁵² While earlier methods of proof, such as oaths of compurgation by co-swearers, had been demonstrations of the defendant's honour, attention now focused on the facts of the case, emphasizing instead the defendant's innocence or guilt. It was a re-thinking of the entire basis on which judgements rested.

The new methods of proof won a major victory over the judicial duel in 1258 when Louis IX abolished trial by battle from the French royal courts.⁵³ In that year, he issued a special decree detailing how cases were henceforth to be carried out.⁵⁴ Accusations by private individuals would still be permitted, but the accuser was warned beforehand that he would have to provide at least two witnesses in order to prove his case. Suits still proceeded through all the customary complaints, replies and continuances that had existed before, but when the time came for an offer of battle, the witnesses were furnished instead. The decree applied to all kinds of cases, but it specified the actions that would fall under the new rules. Serious crimes like treachery (*trahison*), rape, arson and larceny would now be tried this way,

⁵² Jean Philippe Lévy, *La hiérarchie des preuves dans le droit savant du Moyen Âge*, Annales de l'Université de Lyon, 3rd ser., fasc. 5 (Paris: Librairie du Recueil Sirey, 1939), pp. 26-31.

⁵³ I draw attention here to Tardif's often-overlooked dating of the ordinance. He argued that it must have been issued between November 11, 1257 and October 13, 1258. Ernest-Joeseph Tardif, *La Date et le caractère de l'ordonnance de Saint Louis sur le duel judiciaire* (Paris: L. Larose & Forcel, 1887), pp. 1-12.

⁵⁴ *Ordonnances des rois de France de la troisième race*, ed. Eusèbe de Laurière, vol. 1 (Paris: Imprimerie Royale, 1723), pp. 87-93.

as well as appeals against a man's serfdom and appeals for false judgement and default of judgement.⁵⁵

The full implications of this law were not driven home until the following year, when Count Enguerrand de Coucy ran afoul of them. The story is told by William of Saint-Pathus and the *Chronique de Primat*.⁵⁶ Enguerrand's troubles began when some of his foresters caught three noble youths, who were being fostered at a nearby abbey, shooting arrows in a wood that belonged to him. The foresters had the youths imprisoned and hanged. The abbot and the boys' relatives appealed to the king. Louis sent out sergeants to arrest the count and had him imprisoned in the Louvre. When he was brought before the king, Enguerrand demanded to be tried by battle, for the case touched on "his person, his honour and his inheritance."⁵⁷ Louis refused, insisting that there should be an inquest. When the count refused to be tried in this manner and his supporters argued with the king, Louis declared that they were making a conspiracy against the realm and his own honour, and had Enguerrand thrown back in prison. Enguerrand did not win back his freedom until he had paid twelve thousand *livres parisis* and lost jurisdiction over the wood in which the boys were caught. The episode demonstrated the growing power of the French monarch to all of Louis' subjects.

As Faral points out, it was likely only at this point that the French aristocracy realized the ordinance against judicial duelling would apply not only to cases arising from the royal domain, but also to all suits that reached the royal courts.⁵⁸ Louis, for his part, had his ordinance ratified by the Parlement of Paris in 1260 to legitimize it further. The reaction

⁵⁵ *Ibid.*, cc. 5-9.

⁵⁶ The full text of both accounts is found in E. Faral, "Le Procès d'Enguerran IV de Coucy," *Revue historique de droit français et étranger*, 4th series, 26 (1948), pp. 219-22.

⁵⁷ *Ibid.*, p. 220.

⁵⁸ *Ibid.*, p. 247.

from his subjects was not entirely happy. The baron Jean de Thorote, who had represented Enguerrand de Coucy at the royal court, was heard to say that the king might as well have hanged all his barons, and he was forced to make a public apology for his words before the king.⁵⁹ An anonymous critic produced a song. “Gentlemen of France, you are greatly astounded. / I say to all those who were born on fiefs: / by God you are no longer free; / you are well separated from your liberty, / for you are judged by the inquest. / When a defence cannot help you, / you are cruelly tricked by every plea.”⁶⁰

In the years that followed, judicial duels disappeared from the Parlement of Paris, although not without some initial difficulties. Mathieu le Voier, a knight who was accustomed to receive five sous for guarding the duelling field in Corbeil, demanded to be compensated for his loss of revenue, but his request was denied.⁶¹ In Saint-Pierre-le-Moutier, the prior wished to continue holding duels in the court he oversaw as a secular landholder, but he was no longer permitted to employ any of the personnel he shared with the local royal *bailli* in order to administer them.⁶² Indeed, trial by battle certainly did not disappear from the whole of the French kingdom, for many barons and even churchmen like the abovementioned prior continued to have jurisdiction over high justice in their own fiefs, and they continued to have their own customary policy regarding duels.

⁵⁹ *Ibid.*, p.222.

⁶⁰ “*Gens de France, mult estes esbahie! / Je di à touz ceus qui sont nez des fiez : / Si m’ait Dex, franc n’estes vous mès mie; / Mult vous a l’en de franchise esloigniez, / Car vous estes par enquete jugiez. / Quant deffense ne vos puet faire aie / Trop iestes cruelment engingiez, / a touz pri.*” J.V. Leroux de Lincy, ed. “Chansons historiques des XIII^e, XIV^e, et XV^e siècles,” *Bibliothèque de l’École des Chartes* I (Paris: Imprimerie de Decourchant, 1839), p. 372.

⁶¹ *Les Olim ou registres des arrêts*, ed. Le Comte Beugnot, vol. 1, pt. 1 (Paris: Imprimerie Royale, 1839), p. 491.

⁶² *Ibid.*, p. 494.

Survival in France

Louis' heirs were not as deeply committed to maintaining the ban on judicial duelling as their canonized predecessor had been. In 1277, during the reign of Philip the Bold, the records of the Parlement note the names of men acting as pledges for two knights who had been granted a battle by the court.⁶³ Although the king had initially forbidden the judicial duel, he was prevailed upon to allow the two knights, who had been waging a bitter private war, to fight each other in the lists. He nevertheless halted the combat before the fight produced a clear winner.⁶⁴

Louis' grandson, Philip the Fair, attempted to renew the prohibition in 1296 and 1303 as part of a broader ban on private wars and tournaments, which had the potential to distract the nobility from his own wars.⁶⁵ Nevertheless, in 1306 he bowed to pressure from his nobles and issued a declaration permitting the return of trial by battle to the royal courts.⁶⁶ While judicial duels had proven difficult to abolish, they could still be regulated. The document laid out strict rules detailing the procedure for undertaking a trial by battle, both in the courtroom and on the field.⁶⁷

The new ordinance did not allow unrestricted duelling. It confined the judicial duel to a limited criminal sphere. Henceforth, battles could only be fought over serious criminal accusations, like treason, homicide, or other cases of serious violence. In order for a wager of battle to be accepted, four conditions would have to be met. First, it had to be "notorious, certain and evident" that an offence had actually occurred. This clause addressed the

⁶³ *Ibid.*, vol. 2, pt. 1, p. 85.

⁶⁴ A. Canel, "Le combat judiciaire en Normandie," *Mémoires de la Société des antiquaires de Normandie* 22 (1836), pp. 630-1.

⁶⁵ Laurière, *Ordonnances*, vol. 1, pp. 328-9 (1296), & p. 390 (1303).

⁶⁶ *Ibid.*, vol. 1, p.435.

⁶⁷ The document is reproduced in Monique Chabas, *Le duel judiciaire en France (XIII^e - XVI^e siècles)* (Saint-Sulpice de Favières, Éditions Jean Favard, 1978), pp. 272-81.

concerns that Peter the Chanter had once raised with his story about the two pilgrims.

Second, the crime had to be one that was punishable by death, but it could not be larceny.

This provision made sense in light of the fact that the fighters might die in the course of the duel. Third, the case had to be one that could not be proven by witnesses or any other means except battle, and fourth, the accused had to be already suspected on plausible grounds.⁶⁸

The last criterion is an interesting one. It demonstrates that trial by battle in France had made a subtle shift from a procedure in which both parties were considered honourable men to one in which the reputation of the accused had already been damaged. He was, in the words of the ordinance, *diffamé*.

The new statute was followed by a small flurry of thrown gauntlets in the first half of the fourteenth century. However, although the king had permitted judicial duels in principle, he and the Parlement of Paris were not enthusiastic about accepting wagers of battle in individual cases. In the subsequent years of Philip IV's reign, the Parlement and the king forbade various individuals to hold duels over treasonous words spoken against a cardinal, poisoning, treacherously planning an ambush, and a complicated case involving treason, murder and arson.⁶⁹ In addition, they overturned pledges waged in the courts of the seneschal of Toulouse and the secular court of the bishop of Saint-Brieuc.⁷⁰

The real revival of judicial duelling began in 1317, at the beginning of the reign of Philip V. When Jehan de Varennes accused Ferry de Picquigny of high treason, the king not only permitted the duel, but he even had lists specially constructed in the garden of the royal palace, where the combatants fought before a crowd that included not only his royal majesty,

⁶⁸ *Ibid.*, p. 273.

⁶⁹ *Olim*, vol. 2.1, pp. 485, 592-4; vol. 3.1.2, pp. 381-7.

⁷⁰ *Ibid.*, vol. 2.1, pp. 496-7; vol. 3.1.2, pp. 679-80.

but also King Philip of Navarre, and a multitude of barons and local Parisians.⁷¹ The lists would see use five more times before Philip's death in 1322.⁷² These duels all sprang from very similar cases. The parties were noblemen and the accusation was treason. In all but one instance, third parties were able to negotiate peace on the field and the duels were not fought to a conclusion. In light of these cases, it appears that the king had not so much surrendered to his barons' violent wishes as he had channelled several private wars and their accompanying peacemaking processes into the jurisdiction of the royal court. These cases reflect the growing power of the French monarchy at the beginning of the fourteenth century.

Decline in England

Meanwhile, the judicial duel continued to be legal in England throughout the thirteenth and fourteenth centuries. However, as has been noted, it fell into a gradual decline after the 1230s. Battles between champions over writs of right disappeared with particular rapidity, so that the last cases of this sort in which blows were struck occurred around the year 1300.⁷³ This disappearance can be attributed to several factors. First was the introduction of new procedures for settling property disputes during the reign of Henry II. In the final quarter of the twelfth century and possibly even before 1166, he introduced the assize of novel disseisin, a hearing at which a recently disseised demandant could bring his case before a royal justice. These assizes were settled by referring the question to a jury. The procedure had the advantage of being much swifter than the older writ of right. It also bypassed local

⁷¹ *Chronique Parisienne anonyme du XIV^e siècle*, ed. A. Hellot (Nogent-le-Rotrou: Imprimerie Daupeley-Gouverneur, 1884), p. 31, no. 16. See also pp. 127 & 269, *supra*.

⁷² *Ibid.*, pp. 39, 54, 55, 60.

⁷³ M. J. Russell, "Trial by Battle and the Writ of Right," *Journal of Legal History* 1:2 (1980), p. 127. *Year Books of the Reign of King Edward the First, Years XXXII-XXXIII*, ed. & trans. Alfred J. Horwood, Rolls Series 31A, vol. 4 (London: HMSO, 1864), pp. xxxix-xl. The same case is mentioned without reference to its eventual conclusion in the *Novae Narrationes*, ed. S.F.C. Milsom, Selden Society 80 (London: Bernard Quaritch, 1963), p. 30, c. B16.

seigneurial courts in favour of the shrieval and eyre courts controlled by the king, thus consolidating the power of the English monarchs.⁷⁴

Another reason for the decline of judicial duelling may have been the greater prevalence of written documents. As more and more landowners were able to prove their seisin with charters, duels became necessary in fewer and fewer cases. The acceptance of documentary proof was nevertheless a gradual process. M. T. Clanchy relates what is probably an apocryphal tale regarding the Earl of Warenne in the reign of Edward I who, when asked by what warrant he held his lands, produced a rusty sword and declared “This is my warrant! For my ancestors came with William the Bastard and conquered their lands with the sword, and by the sword I will defend them from anyone intending to seize them.”⁷⁵ The idea that words written on the skin of a dead sheep could trump words that came from the mouth of an honourable man was not an entirely intuitive concept for medieval landholders.

Long after writ of right cases had become rare curiosities, they continued to be a cause for concern. As Chapter Five showed, some people protected themselves from litigation by hiring champions on retainer. Indeed, the increasingly commercial nature of such contracts may have contributed to the disrepute of the procedure. Nevertheless, as late as 1355, Bishop Wyvil of Salisbury hired a champion for a high-profile suit against the Earl of Salisbury over the seisin of Sherborne castle. The case nearly came to blows before the two men reached an agreement. The bishop’s tomb brass celebrates his legal prowess by depicting him sitting in

⁷⁴ Frederick Pollock & F.W. Maitland, *The History of English Law before the Time of Edward I*, 2nd ed., vol. 2 (1898, reprint; Clark, NJ: The Lawbook Exchange, 2007), pp. 47-56.

⁷⁵ M. T. Clanchy, *From Memory to Written Record: England 1066-1307*, 2nd ed. (Oxford: Blackwell, 1993), p. 36.

the newly-acquired castle while the gate is guarded by his champion, who bears a pick and shield.⁷⁶

On the criminal side, English courts continued to recruit approvers in the fourteenth and fifteenth centuries to accuse their partners in crime and convict them by battle if necessary. However, judicial duels became less and less common, as those whom the approvers accused more often chose to be tried by a jury. In 1326, the sheriff of London executed 41 approvers, but he only needed to stage two battles.⁷⁷ By the fifteenth century, I can find only two cases where approvers fought at all. The first one was an appeal of robbery struck at Tothill Fields in 1441, while the second was the celebrated duel between Thomas Whitehorne and James Fisher in 1456.⁷⁸ The last approvement appears to have occurred in 1470. It was decided by a jury.⁷⁹ Battles between approvers and the men they accused were never officially forbidden. The practice simply faded away as defendants increasingly chose to entrust their fate to juries.

The decline of trial by battle in criminal suits was not a linear one, however. The Hundred Years War produced numerous cases of crimes committed during campaigns overseas, beyond the normal jurisdictions of English courts. As Chapter Two discussed, the English Court of Chivalry came into being in the middle of the fourteenth century in order to handle such matters. These developments led to a small resurgence in English judicial

⁷⁶ Edward Kite, *The Monumental Brasses of Wiltshire* (London: Edward Kite, 1860), pp. 16-7 & plate 1. See also, pp. 249 & 251, *supra*.

⁷⁷ M. J. Russell, "Trial by Battle and the Appeals of Felony," *Journal of Legal History* 1:2 (1980), p. 154.

⁷⁸ For the first fight, see *Year Books, De termino Michaelis, anno xix, H. VI* (London: Richard Tottel, 1555), fol. xxxv, and *A Chronicle of London from 1089 to 1483*, ed. Nicholas H. Nicholas & Edward Tyrell (London: Longman *et al.*, 1827), p. 128. For the second one, see *William Gregory's Chronicle of London* in *The Historical Collections of a Citizen of London in the Fifteenth Century*, ed. James Gairdner, Camden Society, New Series 17 (London: Camden Society, 1876), pp. 199-202. See also, p. 135, *supra*.

⁷⁹ *Year Books of 10 Edward IV and 49 Henry VI (A.D.1470)*, ed. N. Neilson, Selden Society 47 (London: Bernard Quaritch, 1930), pp. 121-4.

duelling, comprising nine cases struck between 1380 and 1409.⁸⁰ The appellants and defendants in these suits were almost all military men and their disputes involved acts of treason, which were hard to prove in any manner except by battle. Their battles paralleled the many formal deeds of arms fought outside the courts of law in this period. As Charles V pursued a strategy of avoiding pitched battle with English forces on the Continent, frustrated knights sought out their peers in the opposing armies to prove their prowess in individual contests. A wave of such deeds of arms began around the same time as the revival of judicial duelling, during the English campaign of 1380-1381.⁸¹ There is also something of this spirit in the late case of Jean Bolomer and Bertrand Usana, two burghers of Calais. Usana's crime was not a physical act, but rather treasonous slander against the crown and a denunciation of the iniquity of Englishmen in general.⁸² The old adage that deeds, and not words, made duels was beginning to crumble.

The Many Last French Duels

A smaller resurgence in late fourteenth-century duels is also discernable on the Continent. The last four months of the year 1386 saw three high-profile wagers of battle. In September, Gérard de Mortagne, who was known as Espierre, faced Gilles, the lord of Chin and Busignies in Hainault, before the Duke of Lorraine at Nancy. The cause of their dispute is unknown, but Malcolm Vale has speculated that it was probably related to the warfare that had raged the previous year in the Flemish countryside where both knights lived.⁸³ The duke

⁸⁰ This revival has been discussed in some detail by M. J. Russell in "Trial by Combat in the Court of Chivalry," *Journal of Legal History* 29:3 (2008), pp. 345-9.

⁸¹ On this subject, see Steven Muhlberger, *Deeds of Arms: Formal Combats in the Late Fourteenth Century* (Highland Village, TX: Chivalry Bookshelf, 2005), especially Chapter 5.

⁸² Russell, "Court of Chivalry," p. 349. See also pp. 129-30, *supra*.

⁸³ Malcolm Vale, "Aristocratic Violence: Trial by Battle in the Later Middle Ages," in *Violence in Medieval Society*, ed. Richard Kaeuper (Woodbridge: Boydell, 2000), p. 168.

halted the encounter on the field. In December, two Breton knights, Robert de Beaumanoir and Pierre Tournemine, fought before the Duke of Brittany at Nantes over an appeal of murder. A description of the charges has survived, along with a detailed agreement about the armour and weapons that Tournemine would be permitted to use.⁸⁴ Beaumanoir eventually defeated his opponent, who was dragged to the gibbet and hanged.

The most famous of the three cases is the battle between Jean de Carrouges and Jacques Le Gris, fought before the Parlement of Paris at the end of 1386. Carrouges, a Norman knight and a veteran soldier, accused the squire Le Gris of raping his wife while he was away on campaign. After many delays and lengthy legal arguments before the king and Parlement, it was decided that the case met all the criteria of the statute of 1306: the crime was a capital one, the truth of the matter could not be determined by any other means, and Le Gris was “publicly and notoriously defamed and suspected.”⁸⁵ The two men fought a bitter battle on December 29th, and Carrouges killed Le Gris before the eyes of the spectators.⁸⁶ It was the last judicial duel authorized by the Parlement of Paris.

The three cases have much in common. In each instance, the combatants were noblemen and their duels drew spectators from far afield. They may indeed each have been aware of the other two cases and striven to outperform the others. As members of the nobility, these men would also have had the right to wage private wars against one another. The fact that they agreed to have their disputes arbitrated and settled in the courts brought prestige to the king and the two dukes who arbitrated the suits and contributed to the growing centralization

⁸⁴ Documents relating to this case may be found in Guy-Alexis Lobineau, *Histoire de Bretagne*, vol. 2 (Paris: François Muguet, 1707), pp. 663-76.

⁸⁵ “...et erat dictus Jacobus de ipsis publice et notorie diffamatus et suspectus.” Paris, Archives Nationales, X 2 A 11, in *Collection des chroniques nationales françaises du treizième au seizième siècle*, ed. J. A. Buchon, vol. 10 (Paris: J. Carez, 1825), p. 511.

⁸⁶ For a detailed account of the trial and duel, see Eric Jager, *The Last Duel: A True Story of Crime, Scandal, and Trial by Combat in Medieval France* (New York: Broadway Books, 2004), especially pp. 106-85.

of legal jurisdiction. However, noblemen did not have a complete monopoly on judicial duels, even at this late date. As we have seen, a little over a year later, in 1388, two peasants from Normandy were granted a day to fight before the *bailli* of Normandy with the permission of the king. Their dispute involved a case of rape very similar to that of Carrouges and Le Gris and the two men would have fought a duel had third parties not intervened in the case and arbitrated an accord.⁸⁷ While judicial duels and duelling were increasingly regarded as an aristocratic privilege, they did not become an exclusively noble activity during the Middle Ages.

While the case of Carrouges versus Le Gris was the last judicial duel authorized by the Parlement of Paris, it was not the last trial by battle in French-speaking lands, or the last one in France. Depending on how strictly one defines a judicial duel, it may not even have been the last one in Paris. There were, in fact, several last duels. In 1397, Gérard d'Estravayer, a Savoyard noble, accused another nobleman, Otho III de Grandson from Vaud in what is now Switzerland, of poisoning and killing the Red Count, Amadeus VII of Savoy. The suit was heard in the court of Savoy, but because the new count, Amadeus VIII, was still a minor, the Duke of Burgundy oversaw the case and the duel was fought just over the Burgundian frontier in Bourg-en-Bresse. Otho, who is perhaps better known as a poet who attempted to popularize Saint Valentine's Day as a festival of courtly love, lost the duel and his life.⁸⁸

It seems as if the major magnates of the French realm, including the king and the Parlement of Paris, having established their right to oversee duels with these late fourteenth-century precedents, were no longer anxious to exercise their prerogative. At the Parlement,

⁸⁷ Louis-Claude Douet d'Arcq, *Choix de pièces inédites relatives au règne de Charles VI*, vol. 2 (Paris: Ch. Lahure, 1864), pp. 133-4. See also pp. 113 & 136, *supra*.

⁸⁸ The case and its surrounding circumstances are described in some detail in Claude Berguerand, *Le duel d'Othon de Grandson (1397): Mort d'un chevalier-poète vaudois à la fin du Moyen Age* (Lausanne: Université de Lausanne, 2008). See also p. 116, *supra*.

several gauntlets were thrown at the end of the fourteenth and beginning of the fifteenth centuries, but the court did not find that battle lay in any of the suits.⁸⁹ As judicial combat became less and less of a real possibility, its utility as an incentive for negotiations diminished. Charles VI further restricted the practice in 1409. A Breton knight, Guillaume Bariller, and the seneschal of Hainault, Jehan de Cornouaille, who was a brother in law of the king of England, had agreed to hold a deed of arms at Lille simply to demonstrate their prowess. The king ordered their combat to be moved to Paris, but when the knights happily complied, he ended their battle on the cusp of engagement and issued an ordinance proclaiming that henceforth no one in the kingdom of France was to undertake a wager of battle or a deed of arms unless it was judged by the king or the court of Parlement.⁹⁰

The court of Burgundy, for all its chivalric splendour, was not much more inclined to permit judicial battles. A lone case occurred in 1431. A courtier of Duke Philip the Good named Maillotin de Bours accused another knight, Hector de Flavy, of conspiring to abandon the Duke in favour of King Charles. Hector had allegedly tried to convince other knights to accompany him and schemed to seize the duke's treasurer or some other wealthy prisoner in order to pay for his expenses. The plan had not, however, been carried out when Maillotin personally arrested Hector. It was yet another example of a fifteenth-century treason trial that revolved around words rather than deeds. The two knights fought at Arras with much pomp and ceremony, but the Duke halted their duel before any blood was drawn and he

⁸⁹ See Henri Morel, "La fin du duel judiciaire en France et la naissance du point d'honneur," in *Mélanges Henri Morel* (Marseille: Presses Universitaires d'Aix Marseille, 1989), pp. 223-6.

⁹⁰ Jean Juvénal des Ursins, *Histoire de Charles VI, roy de France* (Paris: A. Desrez, 1841), pp. 443-4. According to Monstrelet, he merely forbade frivolous combats. *La chronique d'Enguerrand de Monstrelet*, ed. L. Douet-D'Arcq, vol. 2 (Paris: Ch. Lahure, 1858), p. 6.

personally oversaw their reconciliation.⁹¹ The allegations of treason do not appear to have alarmed him.

In this context, the showdown between Jacotin Plouvier and Mahiot Coquel in 1455, described in the introduction to this dissertation, may be seen as a late attempt by a town to establish the stature and independence of its council. The town of Valenciennes was trying to claim for itself a right which was increasingly restricted to the courts of powerful sovereigns. It was a collective bid to acquire a prestigious reputation for the urban court. The tactic was only moderately successful. While the council did indeed establish its right to hold judicial duels, the glory of the occasion was tempered by the distaste expressed in contemporary reports such as those of Olivier de La Marche and Mathieu d'Escouchy.⁹²

Survival in Treatises and Customals

As the actual practice of judicial combat faded into oblivion in the French world, it experienced a surge of interest from late medieval writers, who wished to preserve the rules of the procedure. Honorat Bovet discussed the fine points of judicial duelling around 1386 in his treatise on the law of arms, *The Tree of Battles*, produced at roughly the same time as the duel of Carrouges and Le Gris.⁹³ His work was based in part on an earlier treatise by the Bolognese scholar Giovanni da Legnano, who had attempted to compensate for the lack of Roman and canon law on trial by battle by studying and commenting upon the ancient laws

⁹¹ *Chroniques d'Enguerrand de Monstrelet*, ed. J.A. Buchon, vol. 5 (Paris: J. Carez, 1826), c. CIII, pp. 344-9.

⁹² "...et en verité, c'est chose abominable de le recorder, et sambloit à plusieurs y estans, que c'estoit [faire contre] nostre Foy;" *Chronique de Mathieu d'Escouchy*, ed. G. du Fresne de Beaucourt, vol. 2 (Paris: Jules Renouard & Co., 1863), c. CXXXIII, pp. 304-5. "Tout ce combat parut un chose trop ignoble à la cour de Bourgogne." *Collection complète des mémoires relatifs à l'histoire de France*, vol. 10: *Les mémoires de messire Olivier de La Marche*, vol. 2, ed. M. Petitot (Paris: Foucault, 1825), c. XXXII, p. 501.

⁹³ Honorat Bovet (Honoré Bonet), *L'Arbre des batailles d'Honoré Bonet*, ed. Ernest Nys (Brussels: C. Muquart, 1883), pp. 217-36, 243-5.

of the Lombards.⁹⁴ Despite Bovet's dependence on foreign law, his treatise was reproduced many times and came to be regarded as an authority on matters of judicial duelling. He was followed and closely emulated around 1410 by Christine de Pisan in the *Livre des fais d'armes et de chevalerie*.⁹⁵ Shortly before 1437, Jean de Villiers de L'Isle-Adam produced a detailed treatise on duel procedure for the duke of Burgundy. This work was incorporated into a second treatise by Olivier de La Marche, who had personally witnessed the battle between Plouvier and Coquel in Valenciennes and wished to leave a record of the custom for future generations. These last two treatises, often combined with a third one by Hardouin de la Jaille, also enjoyed great popularity and survive in numerous manuscripts.⁹⁶ They discuss matters about which earlier sources have little to say, such as the exact dimensions of the lists and the clothing of the combatants. The existence of these writings should not be regarded as a testament to the ubiquity of judicial duels in the late fourteenth and fifteenth centuries, but rather as an indication that the custom was disappearing from living memory.

In most parts of France, trial by battle was never explicitly abolished. It simply dropped out of legal customals as they were revised and codified into written law. In 1459, not many years after the duel of Plouvier and Coquel, Duke Philip the Good issued a revised edition of the customs of Burgundy which dropped all references to trial by battle. Other regions retained the theoretical right to hold duels until later dates. In Brittany, the procedure did not disappear from the customal until the revision of 1539, while Normandy did not remove it

⁹⁴ Giovanni da Legnano, *Tractatus de bello, de represaliis et de duello*, ed. Thomas Erskine Holland (Oxford: Oxford University Press, 1917), pp. 175-94.

⁹⁵ Christine de Pisan, *The Book of Deeds of Arms and of Chivalry*, ed & trans. Sumner Willard & Charity Cannon Willard (University Park, Pennsylvania: Pennsylvania State University Press, 1999), lib. 4, cc. VII-XIV, pp. 197-215.

⁹⁶ Bernard Prost, introduction to *Traité du duel judiciaire, relations de pas d'armes et tournois*, ed. Bernard Prost (Paris: Léon Willem, 1872), pp. v-xvi.

until the revision of 1583.⁹⁷ Perhaps not coincidentally, this was the same period when redactions of customary law were coming to be adopted as official statutes. A procedure grounded in oral tradition and self-help was at odds with the literacy and professionalism that had come to characterize the practice of law.

However, the increasing preference for written statutes also helped to enshrine in law the French kings' right to hold trials by battle. Philip the Fair's ordinance of 1306 had never been repealed. Disputants occasionally made requests to the French monarch to be allowed to settle their quarrels with a duel. These requests were always denied, but nevertheless continued to occur on rare occasions and even began to become more frequent in the early sixteenth century.⁹⁸ Increasingly, the nature of the conflicts revolved not around serious crimes but around derogatory words and wounded reputations, which litigants attempted to shoehorn into the definition of treason. The spirit of the times, which encouraged men to shape their own reputations as gentlemen, also made them very sensitive to sleights to their carefully fashioned images.

From Judicial Duels to Extra-Judicial Duels

Some of the impetus for reviving the judicial duel came from outside France. In the Italian peninsula, extra-judicial duels were already on the rise. Much of the region had been a war zone since 1494, as French, Spanish and Imperial forces fought for supremacy. The possibility for Italian aristocrats and military men to rise or fall suddenly had produced a

⁹⁷ Henry Charles Lea, *Superstition and Force* (1866), reprinted as *The Duel and the Oath*, ed. Edward Peters (Philadelphia: University of Pennsylvania Press, 1974), p. 231.

⁹⁸ Henri Morel describes several of these cases in "La fin du duel..." *op. cit.*, pp. 194-206.

lively culture of duelling as men sought to protect or increase their honour.⁹⁹ It eventually led the Church to issue a still stronger condemnation of duelling at the Council of Trent in 1545, excommunicating not only the duellists themselves, but also those princes who granted them a field for their endeavours, and all seconds and even spectators.¹⁰⁰ Nevertheless, the duelling culture of Italy would certainly have left an impression on the many French gentlemen-soldiers who served there.

The royal policy towards judicial duels changed with the ascent to the throne of Henri II. In 1547, not long after his coronation, he took the unusual step of granting a duel to Guy Chabot, the seigneur de Jarnac, and François de Vivonne, the lord of La Chataigneraie. Jarnac had accused La Chataigneraie of spreading rumours at the royal court that the former had been having sexual relations with his own stepmother. La Chataigneraie, in turn, petitioned the king, writing that Jarnac was guilty of the capital crimes of incest and adultery and requesting that he be granted a field on which to hold a duel. The dispute played out not in front of the Parlement of Paris, but before the king and his private council. The council initially rejected the request, but with the coronation of Henri, who counted La Chataigneraie as a favourite, it abruptly granted the first duel to occur in Paris in more than a century.¹⁰¹ The two men fought with swords and shields, and Jarnac won the occasion with an unusual cut to his opponent's hamstring. Despite winning the duel, his reputation did not precisely improve. To this day, the French expression *coup de Jarnac* means a dirty trick.

⁹⁹ Steven C. Hughes dissects this phenomenon in more detail in "Soldiers and Gentlemen: The Rise of the Duel in Renaissance Italy," *Journal of Medieval Military History*, vol. 5, ed. Clifford Rogers, Kelley DeVries & John France (Woodbridge: Boydell, 2007), pp. 99-152.

¹⁰⁰ *Decrees of the Ecumenical Councils*, ed. Norman P. Tanner, vol. 2 (London: Sheed & Ward, 1990), Concilium Tridentinum, session XXV, caput XIX, p. 795.

¹⁰¹ Morel, pp. 178-83.

Two years later, King Henri II was presented with yet another request for a judicial duel. Jacques de Fontaines, the seigneur de Fendilles, publicly accused Claude Daguerre, the baron of Vienne-le-Châtel of having made a homosexual pass at him. It was Daguerre, however, who challenged Fendilles to a duel for spreading the accusation. While sodomy was a capital crime at the time, slander was not. Nevertheless, a precedent had been set by Jarnac and La Chataigneraie, and the king was not able to reject the challenge out of hand. This time, he referred the case to the Duke of Bouillon, who was both the marshal of France and technically the sovereign lord of Sedan. The combatants fought in the marshal's sovereign territory at Sedan and Fendilles eventually requested mercy, conceding the duel to Daguerre.¹⁰²

With this case, the judicial duel had made an important transition to the extra-judicial duel of honour. Duels were now fought, as Steven Hughes neatly puts it, over “dignity rather than property and insult rather than injury.”¹⁰³ The practice had escaped the courts of law and would soon escape even the oversight of authorities. Ordinances of 1566, 1578 and 1579 forbade gentlemen to settle quarrels with weapons in public and entreated them to have their disputes overseen by competent authorities.¹⁰⁴ Nevertheless, extra-judicial encounters with rapiers had become popular. By 1580, Montaigne could remark on the subject of a duel “I wish someone would explain to me these laws of honour, which so often seem to shock and trouble those of reason.”¹⁰⁵ The idea that duelling was opposed to rationality, a controversial position in the twelfth century, had become a passing aside which required no elaboration.

¹⁰² *Ibid.*, 186-9.

¹⁰³ Hughes, p. 101.

¹⁰⁴ François Billacois, *Le duel dans la société française des XVIe-XVIIe siècles* (Paris: École des Hautes Études en Sciences Sociales, 1986), p. 147.

¹⁰⁵ “*Je voudrais qu’on me fist raison de ces loix d’honneur qui vont si souuent choquant et troublant celles de la raison.*” Michel de Montaigne, “La poltronnerie est mère de la cruauté,” *Essais de Montaigne*, ed. le Général Michaud, vol. 2, lib. 2, ch. XXVII (Paris: Firmin Didot, 1907), p. 576.

At last, in 1599, the Parlement of Paris issued an ordinance explicitly outlawing duelling, classing it as a crime of *lèse-majesté*.¹⁰⁶ The French formal duel had completed its journey from a legal procedure to an extra-legal crime.

Long Twilight of the English Judicial Duel

Meanwhile, despite the fact that English and French law had been evolving along rather different paths, the practice of trial by battle declined and disappeared at much the same time and the same rate in England as it did in France. The last judicial duel fought on English soil was the contest between the approver Thomas Whitehorn and James Fisher in 1456 over an accusation of robbery. This battle occurred just one year after the duel of Plouvier and Coquel at Valenciennes. English witnesses reacted much the same way the Burgundian ones had. As one chronicler put it, “hyt ys to schamfulle to reherse alle the condyscyons of thys foule conflycte.”¹⁰⁷

As in France, there were attempts to revive trial by battle in the sixteenth century. In 1548, one year after the duel of Jarnac and La Chataigneraie in Paris, a judicial duel occurred in Scotland. An English commander, William Grey, succeeded in taking a castle near Haddington. When the garrison surrendered, he pardoned all the defenders except for the anonymous individual whom he had heard insulting the name of Edward IV from the castle walls. Suspicion fell on one man named Newton, but he in turn accused another soldier, named Hamilton, and challenged him to a judicial duel. Lord Grey acceded to the request. It is perhaps not coincidental that the commander had been serving in France the previous year and had probably heard about the duel in Paris. Newton succeeded in defeating and killing

¹⁰⁶ Billacois, pp. 147-8.

¹⁰⁷ William Gregory's *Chronicle of London*, in *The Historical Collections of a Citizen of London in the fifteenth century*, ed. James Gairdner, Camden Society (London: Camden Society, 1876), p. 200.

Hamilton. The outcome appears to have satisfied Lord Grey but, as with many of the late combats, the chroniclers were not impressed. “There were gentlemen present that knowing as they tooke it for certeine, how Newton was the offender (although fortune had fauoured him in the combat) would gladlie haue ventured their liues against him man for man, if it might haue béene granted,” Holinshed wrote.¹⁰⁸ This case is somewhat unusual in that the battle was fought in Scotland between Scotsmen but overseen by an English military court operating under English law.

Another battle nearly occurred in 1571. Thomas Paramour attempted to resuscitate the now-abandoned wager of battle, challenging Simon Lowe to a duel when the latter brought a writ of right against him for a manor in the Isle of Harty. Unexpectedly, the Court of Common Pleas granted the wager and the parties had to be reconciled by Queen Elizabeth herself. The two men’s champions actually met at Tothill Fields in London before a crowd of thousands, but after much pomp and circumstance, probably for the purpose of satisfying the antiquaries who had sweated over the preparations for staging such battles, officials dispersed the crowd and no combat occurred.¹⁰⁹

Unlike the situation in France, English law permitted trial by battle to remain a theoretical possibility long after it had been dropped in practice. In the religious and civil tensions of the 1630s, some litigants looked to forgotten historical practices in order to prosecute difficult cases. In 1631, Donald Lord Rea appealed David Ramsey in the Court of Chivalry for treason. Rea alleged that, while both men were conversing aboard Ramsey’s ship off the coast of Elsinore, Ramsey had allegedly urged him to join a conspiracy to

¹⁰⁸ Raphael Holinshed, *Chronicles of England, Scotland and Ireland*, vol. 6 (London: 1587), p. 993. I am indebted to the research of M. J. Russell for uncovering the history of English trials by battle in the seventeenth century and afterward. See “Writ of Right,” *op. cit.*, pp. 126-9.

¹⁰⁹ James Dyer, *Les Reports des Divers Select Matters and Resolutions des Reverend Judges & Sages del Ley*, etc. (London: Richard & Edward Atkins, 1688), pp. 301-2.

overthrow the government of Charles I. The only way to prosecute such a case, where the treasonous words had been spoken outside the realm and the only witness was Rea himself, was to revive the Court of Chivalry's cognizance of criminal appeals. A battle was duly pledged, but the king called it off six days before it was scheduled to occur and Ramsey was later acquitted.¹¹⁰ In 1638, yet another wager of battle was accepted, this time between one Ralph Claxton and Richard Lilburn (father of the English Civil War pamphleteer John Lilburn) concerning the manor of East Thickley in Durham.¹¹¹ The suit dragged on for several years and prompted petitions from both parties to the British parliament, begging to expedite it. In 1640, it spurred the House of Commons to consider a bill to abolish trial by battle, but both the case and the bill bogged down in a series of delays and all parties seem to have forgotten about it in the confusion of the subsequent war.¹¹²

The subject of trial by battle was not broached again until the nineteenth century, although there were a number of celebrated cases in the later eighteenth century where the widows of murdered men resorted to rare appeals of murder in order to prosecute their husbands' killers.¹¹³ Following these cases, the British House of Commons considered the process of appeal when they discussed measures to reform the justice system in the rebellious colony of Massachusetts Bay after the famous Boston Tea Party. It was proposed that the appeal procedure (in the older sense of a private prosecution) should be formally abolished. However, several Members of Parliament argued in favour of retaining it. They felt that giving the crown a complete monopoly on the ability to launch a prosecution in the Americas

¹¹⁰ T.B. Howell, *A Complete Collection of State Trials*, vol. 3 (London: Longman *et al.*, 1816) pp. 425-520, especially 474-520; Russell, "Court of Chivalry," pp. 353-6.

¹¹¹ John Rushworth, *Historical Collections of Private Passages of State, Weighty Matters in Law, Remarkable Proceedings in Five Parliaments*, etc., vol 2 (London: D. Brown, etc., 1721), pp. 789-91.

¹¹² Russell, "Writ of Right," p. 128. George Neilson, *Trial by Combat* (1890; reprint, Union, NJ: The Lawbook Exchange, 2000), pp. 326-8.

¹¹³ *Reports of Cases Argued and Adjudged in the Court of the King's Bench*, etc., ed. James Burrow, 2nd ed., vol. 5 (London: E. and R. Brooke, 1790), pp. 2646-57, 2798-2802.

would set an undesirable precedent. Englishmen had possessed the right to launch private appeals for centuries and the ancient right should not be taken away without careful study of the consequences. In the end, the clause forbidding private appeals was not adopted.¹¹⁴

The issue finally came to a head in 1817 with the case of *Ashford v. Thornton*. Abraham Thornton was put on trial in Dublin for the murder of Mary Ashford. Because he had made a full confession of the deed, the prosecution brought no witnesses. However, Thornton's lawyer successfully challenged the admissibility of the confession and the defendant was acquitted. Seeking to obtain justice, Mary's brother, William Ashford, launched a private appeal of murder against Thornton in 1818. Unexpectedly, the defendant came to court carrying a pair of gauntlets. He threw one of them down and challenged Ashford to decide the case by battle. Much legal argument ensued, but it was finally decided that Thornton was entitled to decide whether a duel should occur and Ashford did not fall into any of the categories which would allow him to appoint a champion. The appellant was forced to withdraw his appeal, lest he become Thornton's next victim. The case drew much public attention and probably inspired Sir Walter Scott to include a trial by battle in his novel *Ivanhoe*.¹¹⁵

When an appeal similar to that of Ashford arose in 1819, the parliament of Great Britain finally moved to abolish the appeal. After centuries of delay and debate, a bill to abolish trial by battle passed first, second and third readings in the House of Commons in a single

¹¹⁴ Great Britain, House of Commons, *Report of the Committee of the Whole Received, Amendment Proposed by Mr. Wallace, Debate, Mr. Wallace's Amendment Withdrawn*, etc., May 4, 1774, in *American Archives*, Ser. 4, vol. 1, ed. Peter Force (Washington, D.C.: M. St. Clair Clarke & Peter Force, 1837), pp. 120-24.

¹¹⁵ Gary R. Dyer, "Ivanhoe, Chivalry, and the Murder of Mary Ashford," *Criticism* 39:3 (1997), pp. 383-408; Mark Schoenfield, "Waging Battle: *Ashford v. Thornton*, *Ivanhoe*, and Legal Violence," in *Medievalism and the Quest for the "Real" Middle Ages*, ed. Clare A. Simmons (Abingdon, Oxon.: Frank Cass & Co., 2001), pp. 61-86.

night.¹¹⁶ According to the legislation, “appeals of murder, treason, felony and other offences, and the manner of proceeding therein, have been found to be oppressive; and the trial by battle in any suit is a mode of trial unfit to be used; and it is expedient that the same should be wholly abolished”.¹¹⁷ At last were realized the dreams of Avitus of Lyon, Agobard, Peter the Chanter and the many other critics and reformers of the judicial duel.

The demise of trial by battle was thus a very slow process with its origins in the earliest days of the practice. It is difficult to attribute it to any single factor. The theological objections of Peter the Chanter and the Fourth Lateran Council to the concept of the *iudicium dei*, so influential in the abolition of the ordeals of fire and water, had a less immediate impact on judicial duels, which produced winners and losers regardless of whether anyone believed a miracle had occurred. Litigants, too, were content to forgo half-drowning or picking up scorching objects when alternative forms of proof became available. The desire to resolve suits by single combat, however, had deeper roots in the human psyche, especially among the nobility. Settling disputes through ritualized violence was not just a cultural peculiarity of medieval Europe. It can also be found (albeit in less legal and regulated forms) in most other times and places in human history; indeed, it is not unique to humans, nor even to mammals. Therefore it is not entirely surprising that attempts to abolish trial by battle met with a certain amount of anxiety and resistance, and the practice was subject to periodic revivals.

Nevertheless, as time passed and alternative forms of legal proof became more common, the occasions on which a judicial duel could be rationalized became fewer and fewer. The

¹¹⁶ 59 George III, c. 46.

¹¹⁷ *Ibid.*

growing use of documents to record transfers of land and chattels made it increasingly possible to settle property disputes by referring to written evidence. The study of Roman law unearthed precedents for unusual legal problems. Likewise, the development of the jury in England and the inquest on the Continent provided means to resolve complicated and perplexing cases. However, to the very end of the Middle Ages and beyond, some men took comfort in the fact that if the ingenuity of medieval jurisprudence failed and their suit ground to an impasse, they would always have a means to force a resolution. Even when trial by battle was effectively dead, the desire among certain classes of men to enforce their right to respect by facing their enemies with weapons did not disappear. Extra-judicial duels provided outlets for disputes over honour well into the nineteenth century.

Conclusion

The judicial duel between Jacotin Plouvier and Mahiot Coquel which opened this dissertation illustrates some of the ways in which real trials by battle often diverged from their fictional counterparts in chivalrous literature. Participants in medieval judicial combat were not usually knights in shining armour; rather, they were more likely to be commoners in greased leather. Their battles were not elegant fencing bouts but rather desperate struggles, usually with clubs, fingernails and teeth. While chivalric culture adopted the judicial duel as its own and the military aristocracy came to consider it their right, they never quite managed to monopolize the procedure while it remained a judicial process.

In other ways, the duel of Plouvier and Coquel is unusual. The majority of suits in which trial by battle was proposed ended in accords between the parties rather than combat. This was the point of the procedure. It was a means to put pressure on litigants in order to force negotiation and compromise. By the time Plouvier and Coquel faced one another in 1455, the law courts of France and England had developed other means to resolve difficult cases and the judicial duel was a rare curiosity on the verge of disappearing from legal practice. While many litigants were no doubt happy that it was no longer a real risk, the last years of

its fading also produced a genre of nostalgic legal treatises dedicated to keeping its memory alive.

To understand why people like Coquel and Plouvier would choose such a dangerous way to settle a lawsuit, we must first abandon some of our preconceptions about their thought processes and about the workings of medieval justice systems themselves. While religious faith undoubtedly played a role in most litigants' decisions to offer and accept trials by battle, it would be a mistake to assume that such decisions can be explained as simple-minded confidence in the will of God. Most of the surviving criticism of judicial duelling came from ecclesiastical sources. From the end of the twelfth century onward, it was the Church itself which promoted the idea that judicial ordeals, both unilateral and bilateral, were a form of superstition contrary to both scripture and the observable order of nature. Nevertheless, the condemnation of the Church did not have the same effect on judicial duels as it had on the unilateral ordeals. While the ordeals of hot iron and cold water disappeared soon after they were forbidden by the Fourth Lateran Council in 1215, the judicial duel survived. The fact that the procedure did not disappear at this point demonstrates that it did not require faith in the judgement of God in the same way that the ordeals of hot iron and cold water did. Belief in divine intervention may have been a justification for trial by battle in medieval minds, but it was not the entire reason why the practice existed.

Medieval judicial processes also differed from their modern counterparts in significant ways. Modern jurisprudence is heavily concerned with the concepts of innocence and guilt (or liability in civil cases). It devotes much effort to reconstructing past events through gathering and comparing evidence found in documents, testimony and physical traces. Our present-day entertainment media frequently have storylines in which even the most baffling

mysteries are solved using these methods. However, medieval justice did not originally work from the assumption that mere mortals could always discover that which was past or hidden. Often courts turned their attention not to questions of innocence and guilt but to ones of honour and shame. While they could not always uncover the objective facts of a case, they were well equipped to study the subjective perceptions of the community. The process of a trial by battle demonstrated to litigants the level of support they enjoyed among their peers and their neighbours. It found ways to fit conflicting individuals back into the social order or to eliminate them, either by persuasion or by force. For both the plaintiff and the defendant, the prospect of shaming themselves before their peers, or possibly suffering injury, or even death and hell, were powerful incentives to reach a compromise and make peace. This was the value of the procedure to those who participated in it.

Only from the thirteenth century onward, when French and English courts began to acquire personnel devoted to evidence-gathering and forensic methods for analysing their findings, did their focus shift from honour and shame to innocence and guilt. As this change occurred, the occasions for fighting in the lists gradually grew fewer, until at last the judicial duel became nothing more than a memory and a trope for romance.

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