Estafilade

Iudicio et Ferro:
The Tools of the Wager of Battle

by Martin Reznick 2001

I take it up; and by that sword I swear,
Which gently laid my knighthood on my shoulder,
I'll answer thee in any fair degree
Or chivalrous design of knightly trial;
And when I mount, alive may I not light,
If I be traitor or unjustly fight.

Mowbray, *Richard II*, 1.1.78-83

Quia transivit in rem judicatam, & judictum inviolabiliter observari debet.

Ordinance of Philip the Fair, Paris, 1306

Trial by combat, known as la gaige de bataille, was one of the most widespread yet peculiar judicial institutions of the Middle Ages. It is so old and omnipresent that it seems to have arisen everywhere at once. Even early scholars of medieval law and jurisprudence recognized the antiquity and universality of the custom. The laws of the ancient Franks, Lombards, and Burgundians contain numerous provisions for judicial combat.[1] Contemporary medieval scholars often legitimized the history of trial by battle by performing an exegesis of the story of Cain and Abel. The scholars argued that the brothers, lacking any legal recourse to resolve their conflicting claims, agreed to take their chances on the field in single combat. Those unconvinced by this rather creative interpretation of the fourth book of Genesis need to look no farther than Livy to uncover the roots of the wager of battle. In Book 27, during a gladiatorial exhibition sponsored by Scipio, several Spaniards decided to expedite their civil suits by engaging in judicial combat. Despite the protests of the presiding Roman general, they permitted only Mars to settle their conflicts:

> Nec alium deorum hominumve quam Martem se iudicem habituros esse.[2]

Several modern scholars have posited their own explanations for the development of judicial combat and have traced its history in exacting detail. The most convincing theory was posited by Huizinga, who argues in Homo Ludens that judicial combat proceeds from a fundamental need to transcend and escape from inner barbarism. It is "an appropriate substitute for war, a concise proof, in agonistic form, of the superiority of one of the parties."[3] Since judicial combat was such a ritualized, formal pursuit, it was considered a legitimate legal means to the settlement of a dispute. Huizinga sees this as a fundamentally ludic though entirely serious element of culture, and "one of the strongest incentives to civilization."[4]

Rather than rehearse both Huizinga's theories in detail and the responses to them by other scholars, I will examine one aspect of legal violence of particular interest to the historical fencing community: the arms and armor of judicial combat. Laws, chronicles, and cartularies that discuss the implements of the wager of battle survive predominantly from England, France, and Germany. I will compose brief miniatures of

the wager of battle, gleaned from the more reliable sources, highly variable in time and place.

France furnishes perhaps the most comprehensive legal documents on judicial combat. Philip the Fair issued an ordinance in 1303 at Tolouse, where private warfare was particularly common, interdicting *guerras, bella, homicidia, villarum et domorum incendia, aggressiones vel invasiones agricolarum... provocationes etiam ad duellum et gagia duellorum*.[5] This text was ultimately supplanted by the Paris ordinance of 1306, which became the definitive legal treatise on judicial combat. This document permits the wager of battle under certain circumstances, and prescribes the rituals for its legal enactment.[6]

The ordinance contains detailed rules governing the equipment used in the wager of battle, including the weapons carried into the ring, the kinds of permissible armor, and even a prohibition against sorcery and witchcraft. The rules apply both to mounted combat and to combat on foot. The ordinance describes the weapons of the judicial duel explicitly:

> Et pource que il est de coutume que l'appellant & le deffendant entrent au champ, portans avex eux toutes leurs armes, desquels ils entendent offendre l'un autre, & eux defendre, partans de leurs hostels a cheval, eux & leurs chevaux houssez et teniclez, avec paremens de leurs armes, les vifieres baissees, les escus au col, les glaives au poing, les epees & dagues chaintes, & en tous estats & manieres qu'ils entendront eux combattre, soit a pied ou a cheval...
>
> (And since it is the custom that the plaintiff and the defendant come into the camp bearing with them all of their weapons and armor, which they intend to use against the other, or to defend themselves, leaving from their camps on horse, they tether up the horses and cover them in blankets bearing their blazon, wearing lowered visors, gorgets, glaives in their hands, scabbarded swords and daggers, and in all states and manners in which they intend to attack each other, be it on foot or horse...)

This ordnance governs only judicial duels between members of the aristocracy in which the participants are heavily loaded with weapons and armor. The weapons and armor employed were virtually the same for both the appellant and the defendant. The weapons were also often the same when champions representing the lower classes clashed in the courts. In the property contest around 1100 between one Engelardus and the monks of St. Serge of Angers, the champions fought it out only with shields and staves (scutis et baculis).[7] In 1315, Philip Augustus decreed that the staves employed by champions may not exceed three feet in length.[8]

Many English sources also mandate the weapons required for the appellant and the defendant, equally emphasizing the of parity between both combatants. A seminal letter from Thomas, Duke of Gloucester and Constable of England to King Richard II, sets the standard for English judicial duels:

> Than he schall awarde them poynets of armes otherwise callid wepenes, ayther of them schal have, that is to say, longe swerde schorte and dagger, so that the appellant and defendaunt, fynde sufficiaunt surete & plegges that echon of them schal come at this seyde day...
>
> A. de K. thou swerest that thou ne haste ne schalte have mo poyntes on the ne on thi bodi w'in these listes but thei that ben assignid by the courte that is to say, "longe swerde schorte swerde and dagger nor non other knyf litill nor mekill ne non other instrument ne engyn of poynte..."[9]

Judicial duels between pecunious members of the aristocracy also tended to be fought with equal armaments. An uncommonly good representation of the foot duel between Sir John Astley and Sir Philip Boyle before Henry VI is particularly instructive.[10] The warriors are armed with two-handed poleaxes: Astley wields a poleaxe with a triple pointed spike. Boyle sports a bec de faucon (falcon's beak), with a weighted hammer on one side and a curved, sharpened hook on the other. Both the combatants and the men-at arms are fully armored: the men-at-arms wear the large elbow pieces often figured in period brasses and effigies, and the combatants themselves wear massive visored basinets, the customary headgear for such encounters. The fifth article of the challenge, which calls for the combat on foot, reads as follows: *"...I may not recover hit wtynne tyme resonable an twe schal have a doe e seide batayle a fote eithir of us armyd at oure volunte et a faculte for to have axe spere swerde & daggere as hit is a bove side."*[11]

The responsibility to make sure that the weapons of each combatant were in compliance with the law and with whatever principles of fairness agreed on by both parties was discharged by the Justice of the Peace. The regulations for a Justus of Pees, in Lord Hastings' manuscript collection, set down several procedures to ensure that the duels proceed fairly and equally. The justice "may take þe lengthe of þe sayde speris wt a vise" in order to make sure that both weapons were of equal length.[12] A good Justus was obligated to commit these regulations to memory; therefore, present in the manuscript collection is a poem called the Abilment for the Justus of the Pees, in which all of the regulations governing the equipment required for mounted combat are explicated in a form conducive to memorization. Of greater interest to fencers are the unique plates in which a servant arms a foot combatant for a judicial duel.[13]

A warrior's sabatons, or foot defenses, were attached first, affixed to Spanish arming shoes with small laces. Next the leg greaves were fitted, to which was attached a kind of breech mail, which protected the lower abdomen both in front and from behind. On top of the breech of mail the servant would affix the tonletis, a mail skirt of horizontal strips which protect the lumbar regions. The breastplate, arm greaves, gauntlets, and helm complete the costume.

The knight, whose servant is preparing him for battle, already wears his sabatons, greaves, and hanscement, the jacket worn beneath the breastplate. The servant is currently lacing up the breech of mail. Still on the arming board are the tonletis, the breastplate, a globular basinet helm, vambraces with elbow protectors, and rerebraces, and gauntlets. Next to the board are two long-hafted poleaxes: one with an axe blade, spike, and hook, the other with a wide voulge blade.

It would be quite incorrect to suggest that rational standards of equality in arms were upheld everywhere. The very concept of the judicial duel seems to render appeals to equality quite irrelevant. Since the judicial duel relieves human judgment of the responsibility of deciding between two parties, there is no fundamental need for equality in arms. God is able to sort out right from wrong regardless of the weapons employed by the dueling individuals. This mode of thinking permitted staggering inequality in the institution of the wager of battle in particular regions.

In judicial duels settling criminal cases, the appellant was almost universally permitted to choose the weapons and armor of the contest in early law. It was the defendant's obligation to furnish his own equipment equal to the appellant's. Lea summarizes early criminal law thus: "When the principals appeared personally, it would seem that in early times the appellant had the choice of weapons, which not only gave him an enormous advantage, but enabled him to indulge any whims which his taste or fancy might suggest."[14] This inequality was exacerbated in conflicts between men of upper and lower classes: wealthy combatants were able to force poorer defendants to spend astounding sums of money on horses and armor, financially ruining them before the combat even began.

Germany presents us with even more striking examples of inequality of arms in the wager of battle. A vellum manuscript c. 1400 written by the German fencing master Paulus Kall contains quite a bit of text and numerous woodcuts on the German institution of judicial combat.15 The Germans explored several different kinds of weapons in order to settle civil and criminal cases.

Perhaps the most bizarre and infamous form of German judicial dueling was employed to settle domestic disputes between husbands and wives. Figure 2 in Kall's manuscript depicts a man immersed in a pit up to his waist, holding a short staff in his right hand, his left hand bound to his side. Opposite him is a woman clad only in a chemise bound by a strip passing beneath her legs, whose right sleeve extends beyond her hand *(ein dunne Elle)* into a bag containing a stone, her only weapon of attack.[16] Although there is little evidence to indicate that this mode of dueling persisted past 1200, Clephan argues that it likely persisted well into the 15th century.[17]

Kall's manuscript also features several other judicial dueling models in which the combatants are armed equally. In one figure the two duelists fight with *shilts*, dueling shields rimmed with numerous sharp burrs and projections. The fighters are unarmored: they wear grey tunics and hoods, but their arms, legs, and faces are bare. The attendant details in the figures, namely the presence of entourages, biers, and confessors, indicate that this type of duel was fought predominantly by members of the upper classes. Another common species duel was fought with swords or spiked clubs and *der Hut*, a fedora-shaped shield varying considerably in size. German aristocrats frequently fought in full plate and mail with the *streit-axt (bec de faucon)*, a two-handed battle axe with a hammer on one side of the shaft and a pick on the other. Finally, there are several woodcuts of blossfechten with two-handed swords, which Clephan mischaracterizes as, "clumsy and unwieldy weapons for striking and parrying, but could not be employed effectively at close quarters."[18]

The sources for judicial combat are numerous: over twenty manuscripts in the Ashmolean collection in Oxford yield narratives and pictures of judicial combat, as does Talhoffer's widely-read manual of defense. Despite many similarities across time and space, the institution of the wager of battle existed in no static, monolithic form. Philip Augustus' numerous ordinances and the variability of English dueling traditions found in Lord Hastings' collection reveal the wager of battle to be a dynamic, ever-changing practice, receptive to legal, philosophical, and even aesthetic influences. Its omnipresence and mysterious, autocthonic origins thus defy meaningful generalization.

FOOTNOTES

1 Henry C. Lea, *Superstition and Force: Torture, Ordeal, and Trial By Combat in Medieval Law* (London, 1870), 91.

2 Livy, Ab Urbe Condita, Lib. xxvii cap. xxi. *"They will have no god nor man as judge save Mars."*

3 J. Huizinga, *Homo Ludens* (London, 1970), 113.

4 Huizinga, 123.

5 *Ordonnances des Rois de France de la Troisieme Race, ed. J.E. Laurière, i* (Paris, 1723), 390-2.

6 Ordonnances, 335-441.

7 *Cartulaire de L'Abbaye de St. Serge, ed. Yves Chauvin, Memoire dactylographie soutenu devant la Faculte des lettres de Caen*, 2 vols., (Caen, 1969), vol. i., no. 244, 285-288.

8 Lea, 134.

9 Viscount Dillon, *On a MS. collection of ordinances of chivalry of the fifteenth century, belonging to Lord Hastings*, in Archaeologia LVII, 1901, 64.

10 Viscount Dillon, 37.

11 Viscount Dillon, 38. My emphasis.

12 Viscount Dillon, 39.

13 Viscount Dillon, 45.

14 Lea, 135.

15 R. Coltman Clephan, *The Medieval Tournament* (Dover, 1995), 158.

16 A full explication of the Kall manuscript can be found in a paper by R. L. Pearsall, *Some observations on judicial duels, as practised in Germany, in Archaeologia, XXIX* (1840), 348.

17 Clephan, 158.

18 Clephan, 160.