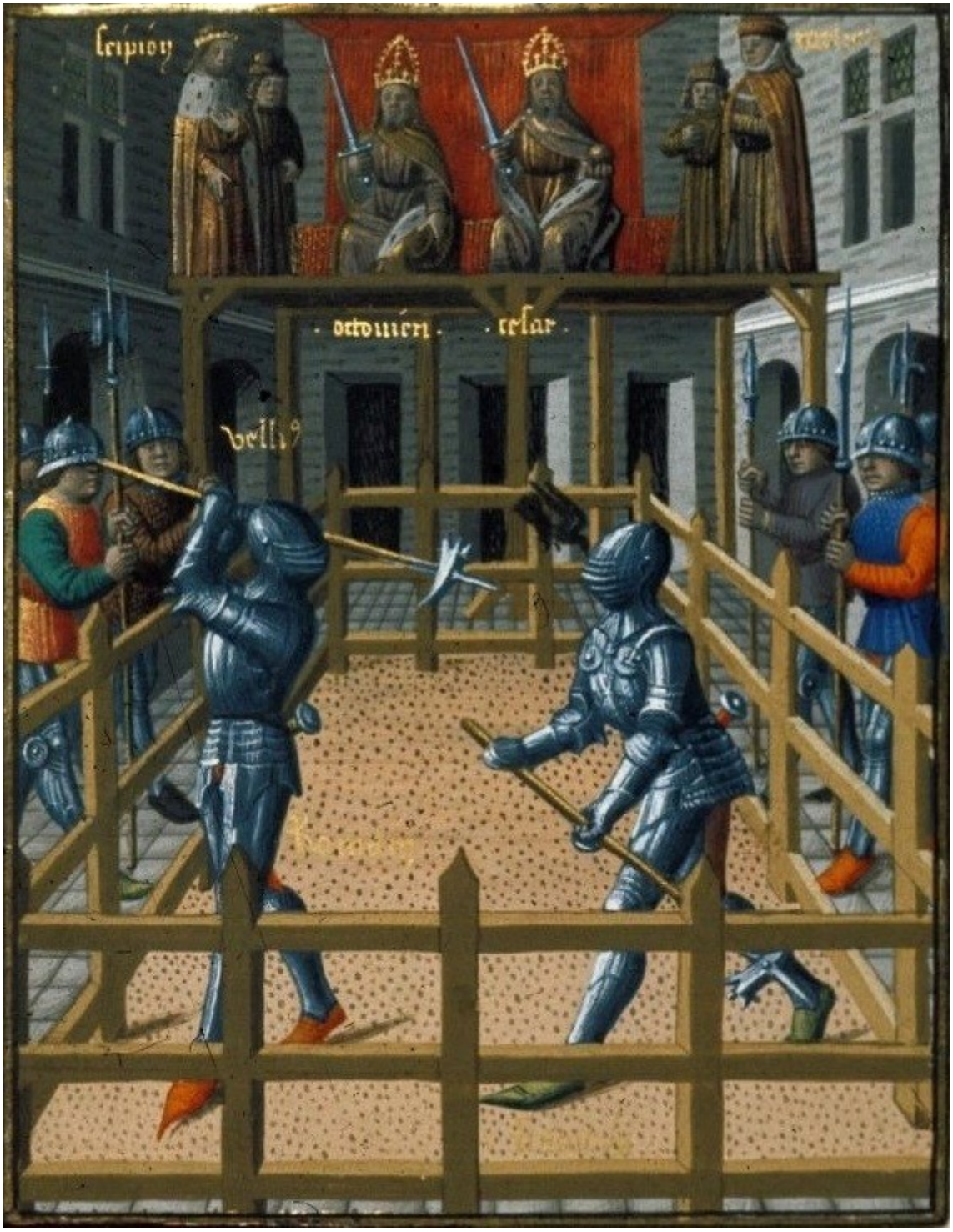

Dangerous undertakings

Trial by combat in the Burgundian Netherlands

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MA (research) Thesis

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22 June 2015

29000 words

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Introduction

'Do your duty!'[1]

After a marshal had cried these words, there was no turning back. One would be standing in a closed field, surrounded by armed guards. There would be another combatant at the opposite end. No one would be able to come in and interfere. This would likely not be one's most urgent concern, for everyone was aware of the fact that only one person would leave the field with his life, limbs, honour and immortal soul intact. This would be an ordeal by combat, a violent judgement of God. A judgement that would have to be faced all alone. Such a judicial duel, in which two litigants would be pitted against one another to settle their case, seems alien to the modern observer, yet it was an important part of medieval legal customs. The combats themselves were few and far between. Even so, it was never far from people's minds, as it was an integral part of medieval legal practices.[2] It was a much loved motive in knightly romances. The combined efforts of clerics, kings and burghers proved insufficient to definitively abolish the custom and it proved to be remarkably resilient until well into the sixteenth century.[3] This was in no small part due the changing nature of the phenomenon which existed for almost a millennium in various forms. This thesis will focus mainly on the later days of the trial by combat, in regions under the influence of the dukes of Burgundy.

Trial by combat went by a host of different names during its millennium-long existence, among which we may count *duellum, certamen, conflictus* in Latin or even *monomachia* in Greek, c*amp* in Middle Dutch and *gaige de bataille* in Middle French. The term *gaige de bataille* deserves some explanation. The term refers to the pledge to hold a *bataille* at a later time or to the token offered by the claimant to the defendant on this occasion.[4] However, in fifteenth-century treatises, *gaige de bataille* seems to refer to the procedure in its entirety, from the pledge to the actual combat

1 'Faites vos devoirs!'Olivier de la Marche, 'Livre d'advis de gaige de bataille', in: Bernard Prost (ed.), *Traités Du Duel Judiciaire: Relations De Pas D'armes Et Tournois* (Paris 1872), 39 and Monique Chabas, *Le duel judiciaire en France (XIIIe-XIVe siècles)* (Saint Sulpice de Favières 1978), 280.

2 Chabas, *Duel*, 14, 15.

3 Robert Bartlett, *Trial by Fire and Water. The Medieval Judicial Ordeal* (Oxford 1986), 126 and Henri Morel, 'La fin dud duel judiciaire en France et la naissance du point d'honneur', in: *Revue historique de droit Francais et étranger* 42 (Paris 1964) 574-639, 582.

4 Sarah Neumann, *Der gerichtliche Zweikampf: Gottesurteil- Wettstreit- Ehrensache* (Ostfildern 2010), 36 and Ariella Elema, *Trial by battle in France and England* (Toronto 2012), 12.

itself.[5] This thesis will therefore use *gaige de bataille* as a suitable term to describe a trial by combat, rather than *bataille.* The essence of such a duel was to settle a dispute between two individuals or parties by means of a highly ritualised and officially sanctioned combat. This combat would often take place in the context of a legal suit. This thesis will assume that modern definitions often fail to capture the pluriformity of such phenomena and that adhering to period terms prevents confusion of definitions. It will often use the terms trial by combat or judicial duel to refer to what is known as a *duellum, camp* or *gaige de bataille* in primary sources.

The first known mention of judicial combat in a legal document can be found in the L*ex Burgundionum Gundobada,* which was put to writing in the late fifth century or the early sixth century.[6] Many other *Leges* mention duelling as valid way to settle a dispute, but only the *Lex Burgundionum Gundobada* accords it the status of a judicial ordeal.[7] The period from roughly 800 to 1215 was in many ways the heyday of judicial combat. Much of the groundwork for the relative uniformity of duelling customs was laid by the Carolingian kings during the ninth century. Charlemagne seems to have actively promoted the *duellum* as a judgement of God. In one of his *Capitularia* he hints at his preference for the *duellum* over the swearing of oaths: 'better that they fight in the field with clubs than that they commit perjury.'[8] Whereas earlier forms of the duel were meant serve as a way to simply settle a dispute, the Carolingian *Capitularia* saw the duel as a way to provide evidence as to who was in the right. German scholars have referred to this distinction with the respective terms *Entscheidungsmittel* and *Beweismittel*.[9] This distinction will play an important role in this thesis.

Although other ordeals do not feature prominently in this thesis it would be unfitting to gloss over them. Whereas trial by combat was a bilateral ordeal, unilateral ordeals enjoyed a great popularity during most of the high middle ages.[10] In such ordeals the defendant would be subjected to bodily harm from hot iron, boiling water or submersion in a well or river. The physical reactions to these torments would reveal either the guilt or innocence of the accused. Another bilateral ordeal existed under Carolingian kings: the ordeal of the cross. The two litigants had to stand facing each

5 De la Marche, 'Livre d'advis', 2.
6 Bartlett, *Trial*, 103, 104.
7 Ibidem, 103.
8 '(…) melius est, ut in campo cum fustibus pariter contendant quam periuriam perpetrent.' *Capitularia Regum Francorum* I. Alfred Boretius and Victor Krause eds. (Hannover 1883), 217.
9 Bartlett, 114.
10 Ibidem, 42.

other with arms outstretched. The first to lower his arms lost the suit. Louis the Pious abolished the custom, as it mocked the suffering of Christ.[11] The unilateral ordeals suffered a quick demise at the hands of clerical protests that followed the fourth Lateran Council in 1215. From the second halve of the thirteenth century onward, almost no unilateral ordeals can be found in legal sources.[12]

Trial by combat similarly came under attack during the thirteenth century. Not only the church disapproved of the custom. Burghers gained exemption in large numbers and many monarchs ought to abolish it.[13] Despite these efforts, the trial by combat did not simply disappear. New rules and regulations limited the cases in which it was to be allowed and monarchs sought to impose a tighter grip on it than ever before. The fourteenth century witnessed a number of judicial combats regardless. Although the number of cases from the fifteenth century is rather limited, it still had its place in legal texts and discourse on violence. Furthermore, the closing decades of that century saw a renewed interest in trial by battle. Combats took place once again and, more interestingly, several treatises were written on the subject. Of these, Olivier de la Marche's *Livre d'advis de gaige de bataille* is best known among scholars. As such, this final chapter in the history of trial by combat leaves us with quite a few questions unanswered.

This thesis will look at trial by combat during the fifteenth century through the lens of De la Marche's *Livre d'advis*, asking the following question: for what reasons did people engage in the trial by combat during the fifteenth century in Burgundian lands? To properly answer this question, it will seek to address several aspects of the theme with its sub-questions. What was the legal status of trial by combat? The second question will address the attitude to the *gaige de bataille* among the Burgundian nobility: what was the aristocratic discourse on trial by combat? And finally, did the combats that took place fit into this legal and discursive framework? This thesis will largely limit itself to trial by combat as described by De la Marche, although for the purpose of comparison, a few excursions will be made to later judicial combats. Chronologically, it is limited to the period between roughly 1380 and 1525. Writing for Philip the Fair, De la Marche mainly described combats that were witnessed by his predecessors. This thesis will largely follow this example.

[11] Bartlett, 9, 10.
[12] Ibidem, 34.
[13] Ibidem, 126.

Relatively soon after its definitive disappearance in the 16th century, the trial by combat was once again placed in the centre of attention. In 1586 Marcus Vulson de Colombière published *La vrai theatre d'honneur,* which bought into the growing popularity of the Formal duel of honour in France. It contained some originally medieval treatises on tourneys and judicial combat, among which De la Marche's.[14] During the eighteenth century, trial by combat was viewed mainly through the lens of the enlightenment, which abhorred its violent as well as its religious character. A trial by combat was an ultimately irrational method of proof, which Diderot and other enlightened thinkers were glad to be rid of. Nineteenth century romanticism sparked a renewed interest in all things medieval, the trial by combat included. It features in a short novel by Heinrich von Kleist, for instance, as well as in Wagner's *Lohengrin.* At the same time we see an increasing scholarly interest in the subject. Bernard Prost published his collection of treatises on medieval duels in 1872.[15] In the Netherlands, P.C. Molhuysen published a paper in 1857.[16] A short excerpt from a fourteenth century chronicle concerning a trial by combat in Brabant was also published separately by J.F. Willems.[17] On one hand, these works seem to be fascinated with the otherness of the trial by combat. On the other hand, their views on trial by combat are very similar to those of the thinkers of the enlightenment.

During the twentieth century, scholars offered some new perspectives. Johan Huizinga presented two markedly different views on trial by combat during his career. In *Waning of the middle ages,* he presents the survival of the trial by combat in the fifteenth century as part and parcel of the Burgundian yearning for more chivalrous times.[18] In *Homo ludens* he takes a different approach. Playfulness is a distinctly human cultural quality according to Huizinga. Single combat is therefore a playful ritualised fight. Trial by combat, with its rules, regulations and rituals fits Huizinga's theory well.[19] Another well known 20th century scholar who greatly influenced thinking about duelling in general was Norbert Elias. His theory of civilization only became popular after WWII, but it has led to several influential works on the decline of violence. Some of Elias' disciples view the duel as an

14 Bernard Prost, 'avant-propos', in: Bernard Prost (ed.), *Traités Du Duel Judiciaire: Relations De Pas D'armes Et Tournois* (Paris 1872), vi.

15 Ibidem, passim.

16 P.C. Molhuysen, 'De vuurproef en geregtelijke tweekamp in de veertiende eeuw', in: *Bijdragen voor vaderlandse geschiedenis en oudheidkunde* 2, no. 1 (Arnhem 1857) 159-174.

17 J.F. Willems, 'De Leuvensche kampvechter ten jare 1236', in: J.F. Willems (red.), *Belgisch museum voor de Nederduitsche tael- en letterkunde en de geschiedenis des vaderlands* 1 (Gent 1837) 26-32.

18 Johan Huizinga, *Herfsttij der middeleeuwen* (Amsterdam 2009), 129-132.

19 Johan Huizinga, 'Homo Ludens. Proeve eener bepaling van het spel-element der cultuur' (1938), in: Idem *Johan Huizinga, Verzamelde werken V (Cultuurgeschiedenis III)* (Haarlem 1950) p. 26-246, 120, 121.

intermediate phase in the civilizing process. Pieter Spierenburg, for example, has been working with Elias' theory for most of his career. In *A history of murder* he views the formal duel as a phase between the blood-feud and the criminalisation of personal violence. Monique Chabas wrote a thesis on the trial by combat in France from a mainly judicial point of view. Her thesis points to the decline of violence, as she describes how the trial by combat was gradually replaced by more rational means of proof.[20] Francois Billacois published a large volume on the duel in France in the sixteenth and seventeenth centuries, focussing on its restriction by the growing power of the state. Much the same could be said of Robert Bartlett, whose monograph on the medieval ordeal focusses almost exclusively on the disappearance of the custom under pressure from clerics, burghers and kings.[21]

In the past ten years, trial by combat specifically has attracted a lot of attention. In 2004, Eric Jager published a heavily romanticised account of a judicial duel that took place in 1386.[22] In 2010 Sarah Neumann published her thesis on trial by combat. Although she tries to present a complete history of trial by combat, the centre of gravity remains in German speaking territories.[23] A year later Simon Smith published a short work about judicial duels in literature, making the case that these have a strong connection to reality and serve as social commentary at the same time.[24] In 2012 Ulrike Ludwig, Barbara Krug-Richter and Gerd Swerhoff published a collection about the duel in the broadest sense, containing several contributions about the trial by combat, single combat at the Burgundian court and the *Fürstenzweikampf*.[25] In the same year Ariella Elema defended her doctoral thesis on trial by combat. It devotes much attention to the role of honour in judicial combats, an aspect that has been somewhat neglected until now.[26] At the same time, the growing popularity of historical European martial arts has led to an increased interest in medieval fight-books, fencing masters and professional champions, to which the publication of a typology of fight-books and an issue of *Das Mittelalter* about medieval fencing masters in 2014 can attest.[27] Most of

[20] Pieter Spierenburg, *A history of murder: personal violence in Europe from the Middle Ages to the present* (Amsterdam 2008) and Chabas, *Duel*.

[21] Francois Billacois, *Le duel dans la société Francaise des XVIe-XVIIe siècles. Essai de psychosociologie historique* (Paris 1986) and Bartlett, *Trial*.

[22] Eric Jager, *The last duel. A true story of crime, scandal and trial by combat in medieval France* (London 2004).

[23] Neumann, *Zweikampf*.

[24] Simon Smith, *De grieven van Galyas. Over een gerechtelijk duel in Die Riddere metter Mouwen* (Münster 2010).

[25] Ulrike Ludwig, Barbara Krug-Richter and Gerd Swerhoff, 'Zugriffe auf das Duell. Zur Einleitung', in: Ulrike Ludwig, Barbara Krug-Richter and Gerd Schwerhoff (eds.), *Das Duell. Ehrenkämpfe vom Mittelalter bis zur Moderne* (Konstanz 2012) 11-25.

[26] Elema, *Trial by battle*.

[27] S. Boffa, *Les manuels de combat. 'Fechtbucher' et 'Ringbucher'* (Turnhout 2015) and Christian Jaser and Uwe Israel,

these recent works have in common that they see trial by combat as a cultural praxis. The editors of *das Duell* phrase this approach perhaps most succinctly: 'Ziel ist es, die Spezifik des Duells als kultureller Praktik im Kontext sich wandelnder Wertesysteme zu erfassen'.[28]

This thesis will not break radically with the approach taken by these recent publications. Approaching trial by combat as a cultural praxis still has left some angles of research untouched and this thesis hopes to fill one such small gap. Elema's thesis focusses mainly on France and England, only considering trial by combat in Burgundian lands briefly.[29] Malte Prietzel's article in *Das Duell* deals with Burgundian court combat, as does Catherine Emmerson's analysis of De la Marche's work.[30] Unfortunately, neither devotes much attention to Olivier de la Marche's *Livre d'advis* as a source for trial by combat in Burgundy. This thesis will examine trial by combat during the long fifteenth century, roughly from 1380 to 1525 by looking at legal codes and the value systems of the Burgundian court. Subsequently, it will confront the legal texts and discourse found in De la Marche's work with those combats that took place before the dukes of Burgundy. Trial by combat as a cultural praxis underwent some serious changes. This thesis will argue that the increasing role of honour in judicial duels gradually changed the custom from a *Beweismittel* to an *Entscheidungsmittel* once again, moving it away from its judicial origins. Ultimately, trial by combat became a precursor to the early modern formal duel of honour.

The first chapter will present a short biography of Olivier de la Marche, an overview of the *Livre d'advis de gaige de bataille,* its intended audience and its publication. This chapter will demonstrate that the treatise was meant to codify the disappearing knowledge of trial by combat and that this was an often used method of didactics at the Burgundian court. The second chapter will focus on the legal situation of trial by combat during the fifteenth century. The legal situation of the duel remained quite favourable throughout this time. Although many urban authorities had prohibited the trial by combat, the 1306 ordinance by Philip IV of France left ample room for nobles to come before a high court for a trial by combat. The third chapter will look at the

'Einleitung. Ritualisierte Zweikämpfe und Ihre Akteure' in: *Das Mittelalter* 19, 2 (Berlin 2014) 241-249.

28 Ulrike Ludwig, Barbara Krug-Richter and Gerd Swerhoff, 'Zugriffe auf das Duell. Zur Einleitung', in: Ulrike Ludwig, Barbara Krug-Richter and Gerd Schwerhoff (eds.), *Das Duell,* 14.

29 Elema, *Trial by battle*, 312.

30 Malte Prietzel, 'Schauspiele von Ehre und Tapferkeit. Zweikämpfe in Frankreich und Burgund im Späten Mittelalter', in: Ulrike Ludwig, Barbara Krug-Richter and Gerd Schwerhoff (eds.), *Das Duell. Ehrenkämpfe vom Mittelalter bis zur Moderne* (Konstanz 2012) 105-125 and Catherine Emmerson, *Olivier de La Marche and the Rhetoric of 15th-century Historiography* (Woodbrigde 2004), 189-222.

nobility's discourse on violence. Using the *Livre d'advis* as its main source, it will try to establish how the nobility viewed trial by combat. The final chapter will pit our conclusions about the legal situation and discourse against the accounts of judicial combats that took place before the dukes of Burgundy.

Chapter 1

The *Livre d'advis*: Publication and Audience

The question how widely the *Livre d'advis* was read, seems to be little more than a side note to this thesis at first. However, if we want to understand its value as a source on trial by combat this question becomes somewhat more important. In order to find out what De la Marche tried to achieve by writing this treatise we should find out to whom it was addressed and who commissioned it. Was it simply meant as a part of Philip the Fair's education to be a good ruler? Or did De la Marche have other motivations for writing a treatise on trial by combat?

Contents

First, a short description of the work itself seems to be in order. De la Marche himself divides it into three distinct parts. The first part can be considered a general introduction to the theme. De la Marche addresses Philip the Fair by his full titles, after which he explains what a *gaige de bataille* is and why it should be avoided whenever possible. We are presented with some theological and legal arguments against the custom and with the tragic demise of Otto of Grandson, who lost his life in a trial by combat he didn't have to undergo in the first place. Furthermore, Olivier de la Marche admits that a *gaige de bataille* may be unavoidable at times and he therefore sets out to demonstrate for what reasons rulers have permitted such duels in the past. He writes at length about the exploits of Philip the Good, both in his capacity as 'prince and judge' and as a combatant himself.[31] The second part of the *Livre d'advis* consists of an earlier treatise by Jehan de Villiers, lord of L'Isle-Adam. De la Marche has copied it verbatim. This treatise provides the practical framework necessary for holding a trial by combat. It details the rules, regulations and rituals, as well as the material requirements such as the arena, the galleries, arms, armour, remounts and food.[32] The final part of the *Livre d'advis* consists of separate pieces of advice to the prince. De la Marche cites Bartolus of Sassoferato's conditions that a trial by combat has to fulfil before it can be allowed. He also presents a few problematic theoretical cases and explains what a judge should decide in these cases and why. Finally, throughout the final part of his treatise, De la Marche reminds his readers that a trial by combat is not to be undertaken lightly.[33] Armed with this

[31] De la Marche, 'Livre d'advis', 1-28.
[32] Ibidem, 28-41.
[33] Ibidem, 41-54.

knowledge, we may now examine the relationship between the treatise's author, his patron and his audience.

The author

In philology, this triangular schematic is often used to display the relationship between the author, the patron and the audience. Before we can make any claims about this relationship, we should find out who the author, patron and audience were in the first place. To start with the first and easiest of the three: who is the author of the treatise? On the first page, Olivier de la Marche identifies himself as the author of this work. All sources unanimously agree that he did indeed write the *Livre d'advis*.[34] Olivier de la Marche was born in 1425 or 1426 in La-Marche-en-Bresse, in Southern Burgundy. In 1439 he entered the service of Philip the Good as a page. In the 1443 campaign to conquer Luxembourg, De la Marche got his first taste of combat. After this campaign he would spend most of his time with the duke's itinerant household in the Burgundian Netherlands. Not long after, De la Marche appears as *écuyer* on the ducal payrol. Several more promotions followed. After the wars with Ghent had come to an end, De la Marche first came into contact with Georges Chastellain, who would become something of a historiographical mentor to De la Marche. In 1461 De la Marche was promoted to *maitre d'hotel.* His involvement in the political, diplomatic and military affairs of the duke only grew when Charles the Bold succeeded his father in 1467. Charles appointed De la Marche as commander of his first company of ordinance, which would later be converted into the ducal guard corps. After Charles ignominious defeats and his death in 1477, De la Marche's military days were behind him. His role at court became that of experienced advisor to first Mary of Burgundy, and later her son Philip the Fair. It is to this period that we owe most of the works written by De la Marche.[35] In writing his practical treatises such as the *Livre d'advis,* he mainly makes use of his extensive experience at the Burgundian court. During his time in service to the dukes, he had witnessed a large number of tournaments, heard stories of Philip the Good's duelling exploits and even witnessed an actual trial

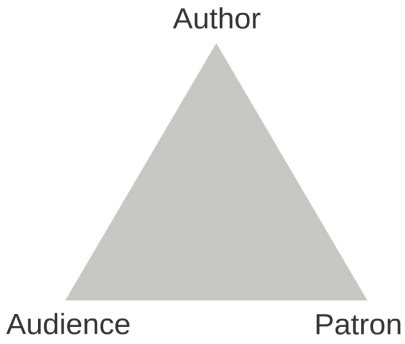

Image 1: author, audience and Patron

[34] Alistair Millar, *Olivier de la Marche and the court of Burgundy, c. 1425-1502* (Edinburgh 1996), 161.
[35] Ibidem, 1-47.

by combat between two commoners in Valenciennes in 1455. Few people could boast such a great amount of experience of the workings of the Burgundian court as Olivier de la Marche, who served under four consecutive dukes.

The patron

The patron presents us with a slightly bigger problem. Did De la Marche himself come up with the idea to write a treatise on trial by combat or was it commissioned by Philip the Fair? Let us first look at the treatise itself. The work is dedicated to Philip. The address mentions all Philip's titles, while the following paragraph sums up some of the other works written by De la Marche. Most of these are also dedicated to the Burgundian dukes. This paragraphs suggests that the idea to write a treatise on judicial combat originated with De la Marche himself:

'I have decided to put to writing what a trial by combat is and how the prince and judge should conduct it according to reason and fairness.'[36]

In the text itself, there are almost no clues that anyone other than De la Marche came up with the idea to write the *Livre d'advis*. This is relevant, as in another treatise, *Advis des grand officiers que doit avoir un roi,* he has no qualms with admitting that the work was written on the request of Maximilian of Habsburg.[37] However, considering the possible motivations for writing the *Livre d'advis* adds more weight to this conclusion. The first thing to keep in mind is the fact that Olivier de la Marche was appointed as tutor for the young Philip in 1485. Why De la Marche was the best candidate for the job is not clear, but it will likely have had something to do with his lifelong experience with the workings of the Burgundian court. In 1485, Philip was liberated from his captivity in Ghent and moved into the household that his great-aunt Margaret of York was leading.[38] Chances are that she selected Philip's would-be mentor from the courtiers that were present there. The exact circumstances of De le Marche's promotion will have to be discussed at another time, however. As tutor to the prince and one of the court's most experienced courtiers, De la Marche's oeuvre contains a large number of practical treatises. Such works seem to have been the standard method of didactics at the Burgundian court. A similar work exists for the daily

[36] 'je suis delibéré de mectre par escript quelle chose c'est que d'ung gaige de bataille, comment le prince et le juge s'y doit conduire selon raison et bonne equité', De la Marche, 'Livre d'advis', 2.

[37] Millar, *Olivier de la Marche,* 161.

[38] Hans Smit, 'Aartshertog Filips de Schone en de staten en steden van Holland en Zeeland', in: Raymond Fagel, Jac Geurts en Michael Limberger, *Filips de Schone, een vergeten vorst (1478-1506)* (Maastricht 2008) 11-25, 15.

rituals of the Burgundian court, which was written by Eleanor de Poitiers. The previously mentioned *Advis des grand officiers que doit avoir un roi* can be considered a didactic treatise, as can *Advis au roy des Romains Maximilian premier donné l'an 1491, touchant la manière q'on se doit comporter a l'occasion de rupture avec la France*, in which De la Marche tries to redirect Maximilian's attention back to his son's lands and its troubles with the French king. A final work in this category is the *Épistre pour tenir et célebrér la noble feste de la Thoison d'or*, in which the ceremonies surrounding a chapter of the of Order of the Golden Fleece are described in minute detail.[39] Although the practical uses for such treatises are obvious, it should be noted that De la Marche also had other motivations for writing them. For instance, he used these works to present himself to both Maximilan and Philip. In the introduction to the *Livre d'advis*, De la Marche mentions other works that he had previously written for Philip. He also points out to his reader that a motivation for writing this treatise is to make himself useful in his old age.[40] This is of course no unusual trope among courtly writers, so this may be taken with a grain of salt.[41] It would be interesting to apply Greenblatt's theory of self-fashioning to the *Livre d'advis*, but this would exceed the space available here. To observe that De la Marche was very successful as a courtier will have to suffice for now. In his years as tutor to Philip the Fair, De la Marche received regular pensions and several lordships for his efforts.[42]

This leaves us with another question: why the *gaige de bataille*? And why does this matter surface during Philip's reign? It seems that at the end of the fifteenth century, there was a renewed interest in duelling. Whether this renewed interest was also practical in nature remains to be seen. Even so, it was accompanied by the publication of several treatises about trial by combat and duels from the late fifteenth century onward. In 1483, Hardouin de la Jalle wrote a treatise similar to De la Marche's, after a trial by combat had taken place in Nancy the year before.[43] In Italy and Germany, fencing masters like Pietro Monte and Hans Talhoffer wrote at length about trial by combat and duelling.[44] This interest in the trial by combat significantly increased during the 16th century. One of the most notable duelling treatises of this time, *le vrai theatre d'honneur* by Marcus Vulson de la Columbière included the works by Hardouin de la Jalle and Olivier de la

39 Millar, *Olivier de la Marche* 159, 171, 294.
40 De la Marche, 'Livre d'advis, 2.
41 Seth Lerer, 'English humanist books: writers and patrons, manuscript and print, 1475-1525 by David R. Carlson', in: *Huntington library quarterly* 56, no. 4 (Berkely 1993) 399-408, 402.
42 Millar, *Olivier de la Marche,* 48, 49.
43 De la Marche, 'Livre d'advis', 136.
44 Sydney Anglo, *The martial arts of Renaissance Europe* (London 2000), 211.

Marche.[45] Treatises on trial by combat and duelling were perhaps not so prolific that we could class them as a genre, but at the closing of the fifteenth-century, they were certainly not uncommon.

The audience

That brings us to what might be the most problematic point in the triangle: the audience. To whom was the *Livre d'advis* addressed? Who had access to it? As before, it is best to first look at the text itself. In his treatise, De la Marche addresses his pupil Philip the Fair 28 times. If we would assume that its only goal was to educate the prince in Burgundian customs surrounding the *gaige de bataille*, this would provide a sufficient answer. And yet the text brings up some ambiguous points that need to be addressed. Firstly, de la Marche often mentions 'le prince ou le juge' as the arbiter of a trial by combat. This short phrase can be found seventeen times throughout the treatise. Possibly the prince and the judge might be the same person, but the wording seems to suggest that it could also be two different individuals. This is not entirely unthinkable. Presiding over a trial by combat may have been a princely prerogative, but many urban privileges stipulated that if a judicial combat was to take place, it should be conducted without external interference. De la Marche witnessed such a case from up close in 1455, when the burghers of Valenciennes stood on their dignity in order for a judicial combat between two commoners to be held.[46] Apart from this, there are several fragments in which De la Marche seems to address a larger audience. For instance, there is the following fragment:'And for this reason, young noblemen (...)'[47] and 'Thus, noble and non-noble men, who read this letter or hear it being read aloud (...).'[48]. It appears that De la Marche envisioned a broader audience than just his princely pupil. His grave tone and his aversion of trial by combat is one of the treatise's defining characteristics. It could very well be read as a call to all young nobles to eschew the custom.

An analysis of the copies that have been handed down may serve to enhance our understanding of its audience and impact. The *Livre d'advis* was not printed until 1586. From the fifteenth and sixteenth centuries, there remain six manuscript copies. The original has unfortunately been lost. Of these manuscripts three stem from Philip's reign.[49] One copy likely ended up in the ducal library. The other two may have come into possession of some of the court's most powerful nobles. It is

45 Prost, 'avant-propos', vii.
46 Neumann, *Zweikampf*, 62.
47 'Et pour ce, jeunes nobles hommes (...)' De la Marche, 'Livre d'advis', 4.
48 'Or, messeigneurs nobles et non nobles, qui lirez ou orrez ceste épistre (…). De la Marche, 'Livre d'advis', 47.
49 Prost, 'avant-propos' vii.

likely that Philip of Cleves owned a copy, for instance.[50] The question how broad the audience beside Philip the Fair was, stretches the limits imposed on this thesis. However, as De la Marche addresses a broader audience and copies were disseminated among courtiers, it is highly likely that others did in fact read the *Livre d'advis* or heard it being read aloud.

It is likely that the treatise remained in the ducal library after De la Marche's death in 1502. Charles V was certainly familiar with the works of his father's mentor and it is not entirely unlikely that he read the *livre d'advis*.[51] On three occasions, he challenged his arch-rival Francis I to a duel to settle their differences.[52] A further important point in the dissemination of the treatise was the first printed edition, that Jean Richer published in Paris in 1586. It is unknown which manuscript he used. The *Livre d'advis* als gained a considerable popularity after it was republished in Marc Vulson de Colombière's *vrai theatre d'honneur,* which was printed in 1648. During the 17th century, it was manually copied several times, but the quality left much to be desired. During a period of about 200 years, the treatise was largely ignored, until Bernard Prost republished it in 1872. He based his edition on the older manuscripts wherever possible.[53]

The *Livre d'advis* was written by Olivier de la Marche. It is likely that it was either his own initiative to write the treatise or that it was commissioned by Philip the Fair. There is little doubt that it was a part of De la Marche's tutorship of Philip. However, it is also highly likely that other courtiers should also be counted among its audience.

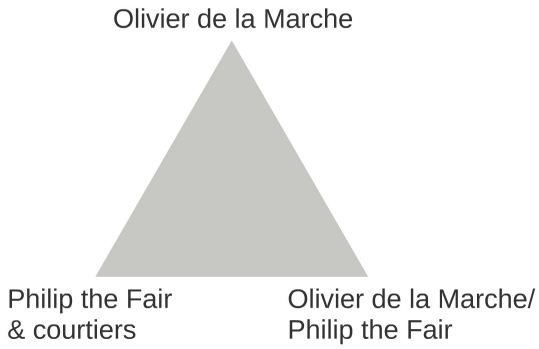

Image 2: author, patron and audience of the Livre d'advis

50 Millar, *Olivier de la Marche,* 162.
51 Ibidem, 279, 288-290.
52 Birgit Emich, 'Körper-Politik. Die Duellforderungen Karls V.' in: Ulrike Ludwig, Barbara Krug-Richter and Gerd Schwerhoff (eds.), *Das Duell. Ehrenkämpfe vom Mittelalter bis zur Moderne* (Konstanz 2012) 197-211, 197.
53 Prost, 'avant-propos' vii, viii.

Chapter 2

Ordonnance: trial by combat in late medieval law

By the time that Olivier de la Marche wrote his *livre d'advis de gaige de bataille,* trial by combat seemed to be a disappearing phenomenon. Much of the scholarly literature on the subject considers the fourteenth and fifteenth centuries to have witnessed the rapid decline and ultimate end of a custom that was once widely practised.[54] Should we then consider De la Marche's work on the subject as a swan's song of the *gaige de bataille*? A thorough but ultimately anachronistic treatise on an outmoded subject? Huizinga might agree with this idea. This first chapter will look at the purely judicial side of the equation by asking what laws were still in place that would allow a trial by combat to take place during the fifteenth century. To give this particular subject the attention it deserves, this chapter will examine the law codes that were still in place in De la Marche's time. However, it will first give an overview of what challenges the trial by combat was facing in a legal sense. Philip IV's ordinance of 1306 will play an important part in this chapter. The astute observer will notice that the custom changed relatively little since then. This is precisely what this chapter will argue.

Opposition

Not everyone was equally enthusiastic about judicial combat. There had been a few voices of dissent in the early middle ages. Especially the clerical orders of society were not convinced that it was a foolproof method of finding the truth.[55] Opposition to ordeals and trial by combat specifically became much more vocal from the twelfth century onwards. From this time onwards, opposition no longer originated solely in clerical circles. The first kernels of urban communes began to stir and demand exemption from the *duellum* for their citizens, while at the same time royal power sought to assert itself and monopolise the exercise of justice. While the church had mustered mainly practical arguments against the *duellum* before, now it sought to develop an advanced set of theological refutations of ordeals in general, and trial by combat specifically. Firstly, clerical writers began to distance themselves increasingly from acts that involved the shedding of blood.[56] It is one of the pillars of the constitutions of the fourth Lateran council of 1215

[54] Chabas, *duel*, 11.
[55] Neumann, *Zweikampf*, 39, 40 and Bartlett, *Trial,* 104, 116.
[56] Bartlett, *Trial* 104, 116.

that seek to impose stricter discipline on churchmen.[57]

These arguments, along with other papal rulings strengthened the church's resolve to abolish the custom. Another often heard argument was the idea that to ask the Lord to intervene in earthly judicial matters was sacrilegious, because the idea that God would come to micromanage justice at a mere mortal´s bidding was considered irreconcilable with his almighty nature.[58] On a very practical level, both Innocent III and Gregory IX barred clerics from taking part in trail by combat. Although they did not expressly forbid the other orders of society to fight in a *duellum*, they did seek to undermine its legitimacy as a *iudicium dei* by limiting clerical involvement and by providing theological arguments against the custom.

A second group that was quite consistently against trial by combat as a legal custom, consisted of burghers of small communes that would grow into the well-known cities of the high and late Middle Ages. From the twelfth century onward, these communes grew powerful enough to be able to win a series of privileges from the local rulers.[59] These privileges are known as city rights and one notable characteristic of most cities that managed to win these rights, was that they monopolised justice not only within their own precincts, but also over all their citizens that were accused outside the city.[60] In their exercise of justice, the citizens of the communes saw no place for trial by combat and many of the known city rights stipulate that no citizen may be forced to undergo a trial by combat. Their aversion of the duel as a means of proof undoubtedly had its roots in the fact that most of the inhabitants of the cities were not as well versed in the use of weapons as their betters. It goes without saying that nobles tried to exploit this weakness wherever possible by challenging well-meaning tradesmen and merchants to a trial by combat to acquire wealth and possessions. As soon as they were able, therefore, the townsmen acquired exemptions from the ordeal of combat.

This development seems to have started in several places at the same time. The communes of the Low Countries give us a very early example in the form of Huy, which gained the exemption as

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57 *Constitutiones Concilii quarti Leteranensis una cum Commentariis glossatorum,* Antonius Garcia y Garcia ed. (Vatican City 1981), 66.

58 Bartlett, *Trial,* 118

59 Wim Blockmans en Peter Hoppenbrouwers, *Eeuwen des onderscheids: een geschiedenis van middeleeuws Europa* (Amsterdam 2004), 270-273.

60 Ibidem.

early as in 1066.[61] Towns in Flanders were the first to gain exemptions on a larger scale.[62] It took some time for the regions to the north to gain similar privileges as the towns in Flanders. From the early thirteenth century onward, these developments accelerated rapidly. Between 1200 and 1400 most large towns in the Low Countries managed to gain an exemption of the trial by combat in one way or another.[63] Zeeland presents and interesting case. Its cities' charters expressly forbid citizens to take part in a *duellum.* This was the case in Middelburg, Zierikzee, Domburg and Westkapelle[64.] Adding to the early and quite vehement prohibitions, Philip the Fair was asked to reaffirm the *keuren* of Zeeland in 1496, stating, among others:

'Item, that nobody, whoever he may be, shall challenge another to trial by combat, nor accuse anyone of a crime with the intention to prove it with a duel. And this is on pain of life and goods'.[65]

It is clear that during the twelfth and thirteenth centuries, many nascent towns managed to acquire exemption from trial by combat for their inhabitants. This did not spell the end for the custom in an urban context though. Although some privileges expressly forbade citizens to have anything to do with judicial combat in any way, others didn't go that far. Most towns in Holland and Brabant allowed their citizens to fight a *duellum* if both parties agreed.[66] Some towns held privileges that maintained trial by combat as part of certain legal cases for a very long time. An infamous example would be the liberties of Valenciennes. This city was known during most of the high and late Middle Ages as a sanctuary, where those accused of manslaughter could seek refuge from the law. The only way to challenge the sanctuary, was to fight a judicial duel against the fugitive. In 1455, this by then ancient privilege would involve two lower class men in the power politics of the duke of Burgundy and the Flemish cities. Their quarrel would be ended in a gruesome way, for all to see.[67] However, these were exceptions that proved the rule. Burghers may not have dealt judicial combat the death blow, but their preference for other modes of proof led to the rapid devaluation of trial by combat as a part of regular judicial processes. The custom came to be viewed more and more an aristocratic privilege.

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61 Ph. Godding, *Le droit privé dans les Pays-Bas Meridionaux du 12e au 18e siècles* (Brussels 1987), 434.
62 Godding, *Droit privé,* 434.
63 Cornelis van Alkemade*, Behandelinge van 't kamp-regt: d'aaloude en opperste regts-vordering voor 't hof van Holland, onder de eerste graaven* (Delft 1699), 111, 112, 113.
64 Ibidem.
65 'Item, dat niement wie hy sy den anderen sal mogen beroupen te campe, noch niemendt eeneghe cryme anleggen, ende dat by campene willen proeven. Ende dat op verbeurt van live ende van goede'. Ibidem, 115.
66 Ibidem, 110-112.
67 Neumann, *Zweikampf,* 61-65.

There is a third group that during the thirteenth century made an effort to limit the use of the *duellum*: monarchs. In the ninth century, Carolingian kings had declared to be ardently in favour of trial by combat. Four centuries later, things had thoroughly changed. In France, England and the Holy Roman Empire, monarchs attempted to severely limit the *duellum* or abolish it from this time onward.[68] In France, Louis IX abolished the duel altogether in 1256 and replaced it with and inquisitional hearing based on testimonial evidence. This, however, did not go down all too well with the French nobles and knights, who had seen the right to a trial by combat as one of their ancient privileges.[69] The following poem speaks volumes:

'Gentlemen of France, you are greatly dismayed.
I say to all those who are born to fiefs,
you are no longer free, by God's aid.
Your liberties are disappearing
For you are judged by inquisitional hearing."[70]

Protests remained vocal throughout Louis' reign and of his successors Philip III and Philip IV.[71] In the early years of his reign, Philip IV remained strongly in favour of the prohibition, repeating it on several occasions. In 1306, however, he was forced to lift the ban under pressure from the nobility.[72]

The Ordinance of 1306

However, there is another side to this story. The ordinance of 1306 made far reaching changes to the procedure that would precede a *gaige de bataille.* It severely limited the cases in which a trial by combat was allowed and it placed control of the whole procedure in the hands of the parliament of Paris and the king.[73] It would also prove to be the template for later descriptions of the procedure to be followed for a *gaige de bataille*. It is therefore interesting to compare Philips ordinance with the rules laid down in the *Livre d'advis*.

68 Neumann, *Zweikampf,* 42-49.
69 Chabas, *duel,* 40.
70 'Gens de France, mult estes ebahis./Je dis à tous ceux, qui sont nez de fiefs,/Si m'aït Dex, franc estes vous mes mie./Mult vous à l'en de fanchise esloigniez,/Car vous estes par enqueste jugiez.' Raoul van Caenegem, *La preuve dans le droit du moyen age occidental*, 32 And Elema, *Trial by combat,* 303.
71 Chabas, *duel,* 114.
72 Ibidem.
73 Ibidem, 164

Philip's ordinance did more than simply cancel out earlier prohibitions of trial by combat. It sought to regulate every aspect of the custom, from the cases in which a trial by combat was warranted, to the exact words to be spoken by the marshal who was to lead the proceedings. It is this almost extreme measure of regulation that makes the ordinance stand out from *coutumiers* and other legal texts.[74] This might have been an important factor contributing to its success: it was still considered to be the most authoritative text on the subject almost two centuries after it was issued. It starts by listing a set of conditions that need to be met before a trial by combat could legally take place. [75] These conditions presented some serious barriers to gratuitously challenging others to a trial by combat. Firstly, in order for a *gaige de bataille* to be admissible, the claimant should prove that the crime actually took place and that it was committed with criminal intent. Secondly, the crime should be so serious that it would be punishable by death. In effect, this limited the custom to cases of murder, treason, rape, arson and poisoning. Larceny was the exception. It was punishable by death, but it was no longer considered to be a valid cause for a *gaige de bataille*. A third condition is that the crime can only be proven by a judicial combat. If any alternative way of proof were available, no combat would have to take place. This means that a *gaige de bataille* was only admissible in cases where the defendant's guilt or innocence could not be sufficiently established by the inquisitional hearing that used witnesses' testimonies.[76] Lastly, the defendant should be under serious suspicion of having committed the crime. What follows is a long list of procedural regulations. A few of these are quite interesting, as they show to what extent Philip's ordinance was meant to strictly regulate a custom that, counter to central authority as it was, would not be so easily stamped out. For example, for a *gaige de bataille* to be admissible, the case had to come before the king personally:

'(…)thus the aforementioned claimant should say that he cannot offer proof by testimony, and in no other way than with [the defendant's] body against his, or that of his proxy in the lists, as gentlemen and wise men should, in my presence as judge and souvereign prince.'[77]

In essence, a trial by combat could henceforth only take place in the presence of the king of France. Another thing of note is the fact that the ordinance of 1306 is almost solely aimed at

[74] Phillippe de Beaumanoir, *Coutumes de Beauvaisis* III. Georges Hubrecht ed. (Paris 1974),164-167.
[75] Chabas, *Duel,* 273.
[76] Ibidem,134, 135.
[77] '(...) adonc ledit appelant doit dire qu'il ne pourroit prouver par temoins, ne autrement que par son corps, contre le sien, ou par son advoüé en champ clos, comme gentilhomme et preud'homme doit faire, en ma présence comme juge et prince souverain.' Ibidem, 274.

gentilhommes. To fight in the lists, the arena of a trial by combat, to prove ones case was from now on considered to be something that only noblemen were worthy of doing. The Parliament of Paris did adjudicate a few combats between non noble adversaries, but these seem to have been a minority.[78] Fighting in the lists effectively meant that the two combatants would meet on horseback or foot, fighting each other with the most advanced knightly arms and armour available.[79] This was a far cry from the highly ritualised combats with club and shield that we find in Carolingian *Capitularia*[80] This form of judicial combat did not simply pass away into obscurity. It still thrived outside of the French sphere of influence. Several fifteenth century fightbooks from Southern Germany give detailed description of not only the procedures to follow when conducting such a trial by combat, but also show some of the techniques that fencing masters could teach their clients to improve their chances.[81] Even within the regions that followed Philip's ordinance, this more archaic form of trial by combat would still rear its head in exceptional cases, as happened in Valenciennes in 1455.[82] A later chapter will devote more attention to this particular case.

A final thing of note about the 1306 ordinance is the way in which it sought prevent the public from interfering with the combat. It provides a list of five prohibitions that are meant to help the king and his men maintain public order during a *gaige de bataille*.[83] Three of the five commands and prohibitions attempt to prevent fighting men, be they knights or common soldiers, from disturbing the procedure. It is not difficult to imagine the risks of a combat between two nobles who had a large group of family and followers. Forbidding anyone other than the officials guarding the field to bear arms, to be mounted or to enter the lists reduced the risk of escalation, while at the same time giving the royal officials a better chance of maintaining order if the situation should get out of hand after all. The last two prohibitions are aimed at the general public, that an event as spectacular as a trial by combat would attract:

'Furthermore, the king our lord commands and forbids anyone to speak, to make signs, to cough, to spit, to cry

78 Chabas, *Duel*, 152.
79 Malcolm Vale, *War and chivalry: warfare and aristocratic culture in England, France and Burgundy at the end of the middle ages* (Athens, Ga. 1981), 100-128.
80 *Capitularia* I, 439.
81 Hans Talhoffer, *Fight earnestly*. Jeffrey Hull ed. (Kansas 2007), 328-332.
82 Bartlett, *Trial,* 110.
83 Chabas, *Duel,* 276.

or do anything similar, on pain of losing life and goods'.[84]

Anyone who has ever been to a modern sports match, will recognise the riotous and impassioned behaviour described above. A trial by combat would almost always attract a large crowd that was not necessarily interested in the course of justice. More often than not, most spectators came to see the spectacular show of two knights fighting *à l'oultrance.* In 1431 in Arras, a trial by combat attracted some 45.000 spectators; almost three times the total number of inhabitants of the town.[85] Did Philip wish to stress that a *gaige de bataille* was a grave and religious affair? Or did he take considerations about public order into account as well? This at least would explain the rather draconian punishments for disturbing the combat by shouting or waving. Ultimately though, all five prohibitions are good examples of the way in which Philip IV tried to tightly regulate a custom that was viewed by the nobility as an ancient privilege and by the townspeople as a form of entertainment.

The ordinance in later treatises

Philips ordinance would have a far greater reach and longevity than its author could foresee. It would eventually be used to conduct *gaiges de bataille* outside France's border and it would remain in regular use until the first half of the fifteenth century.[86] Because of its inclusion in the *livre d'advis de gaige de bataille*, it influenced thinking about trial by combat during the 16th century as well. How extensive was this inclusion in De la Marche's work? For moral guidance on the permissibility of a trial by combat, Olivier de la Marche mostly looks to the clerical writings on the subject. To provide his pupil with a practical guide on the *gaige de bataille*, De la Marche includes an earlier work by Jehan de Villiers, lord of L'Isle-Adam in his *Livre d'advis.*[87] This work was originally written at the request of Philip the Good between 1422 and 1432 and is largely based on the 1306 ordinance.[88] The resemblance is at times uncanny, although at other times there seems to be no link to the original ordinance at all. The list of requirements for a trial by combat to be admissible, for example is closely related to that of the 1306 ordinance. Let us make a comparison:

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84 'Aincois le Roy nostre sire vous commande et défend, que nul ne parle, ne signe, ne tousse, ne chrache, ne crie, ne fasse aucun semblant quel qu'il soit, sur peine de perdre corps et avoir.' Ibidem, 276.

85 Evelyne van den Neste*, Tournois, Joutes, pas d'armes dans les villes de Flandre à la fin du moyen age (1300-1486)* (Paris 1996), 148.

86 Chabas, *Duel,* 118-122.

87 De la Marche, 'Livre d'advis' 28-41.

88 Ibidem, 28.

Ordinance by Philip the Fair, 1306:	Jehan de Villiers, 1429 as recorded in Olivier de la Marche's *livre d'advis de gaige de bataille*:
“Premièrement, nous voulons et ordonnons, qu'il soit chose notoire, certaine et évidente, que le maléfice soit advenu. Et ce signifie l'acte, ou il aperra évidemment homicide, trahison ou autre vray-semblable malefice, par évidente suspicion.	“ La première, que il soit chose notoire, certaine et évidente que le faict imposé par l'appellant contre l'appellé soit advenu, combien qu'il ne soit point certain que l'appellé ait commis le délict: si comme j'ay mis sus à ung aultre qu'il a tué mon frère, il convient que il soit chose certaine que mon frère soit mort de mort violente, ou aultre semblable cas.
Secondement, que le cas soit tel que mort naturelle en deust ensuivir, excepté cas de larrecin, auquel gaige de bataille ne chiet point. Et ce signifie la clause parcoy peine de mort s'en deust ensuivir.	La seconde, que le cas dont l'appel vient soit tel, que peine de mort s'en doibve ensuyvir, excepté larrecin, en quoy gaige ne peult estre receu.
Tiercement, qu'ils ne puissent estre punis autrement que par voye de gaige. Et ce signifie la cause en trahison reposte, si que celuy qui l'auroit fait ne se pourroit defendre que par son corps.	La tierce, que le cas soit advenu en trahyson ou en repost, tellement, qu'il en puist estre prouvé par tesmoingz ne aultrement que par voie de gaige.
Quartement, que celuy que on veut appeller soit diffamé du fait, par indices, ou presomptions semblables à vérité. Et ce signifie la cause des indices”.	La quatriesme, que celluy que l'on veult appeller soit diffamé du faict par renommée, indices et présumpcions semblables à voir.”

Image 3: comparison of the 1306 ordinance and the treatise by Jehan de Villiers.

The similarities between these formulations seem to suggest that Jehan de Villiers based his treatise largely on the 1306 ordinance or on a later copy. His description of the how the combatants are to enter the lists is notably different from the 1306 ordinance in wording, but describes roughly the same actions and rules. Both texts have the heralds cry out at three occasions before the combat starts. In the 1306 ordinance, these cries serve to separate the ceremony into three disctinct parts[89] In Jehan de Villiers' text, they all take place when the two champions enter the arena.[90] In his text, the *requetes et protestations* play a far more significant role than in the 1306 ordinance. Much like the cartels of later duels of honour or the *chapitres* of a

[89] Chabas, *Duel,* 276-280.
[90] De la Marche, *Livre d'advis',* 34,35.

pas d'armes, the champions proclaim the conditions and rules under which the combat is to be fought out.[91] In 1306, most of these *requetes et protestations* are meant to ensure that the champions will fight on an equal footing. Two of the six points try to ensure that no heretical incantations, evil arts, or illegal weapons will be used. Another two discuss the maximum duration of the combat and forfeiture in case one party fails to show up in time. The final few points discuss practical matters. They should indicate whether the combat will take place on horseback or on foot, for example.[92] In Jehan de Villiers' rendition of the custom, a cartel should have the same points. He gives much more attention to the logistics. All his newly added points have something to do with remounts, arms and armour and the availability of sufficient fodder for the champion's horses.[93] The last important element of the ceremony before the actual combat, involves the champions swearing oaths in front of a priest, the Holy Book and whatever relics are available. Three oaths are sworn. The wording of the oaths seems to differ between our two sources, but the order in which they are taken does not. The first oath involves both champions separately swearing to stand for the righteous cause, while holding their hand on a bible. They swear their second oath on the holy relics in front of the priest. The final oath is sworn by both champions simultaneously, looking one another in the eye with their right hands held by the marshal.[94] If at this point no one confesses and gives up, a life and death struggle is inevitable. The final paragraph determines that the trial by combat is over when either one champion gives up and confesses his guilt or when he is thrown out of the lists, alive or dead. The loser is delivered to the representatives of the law to face summary justice. His arms and armour are given directly to the marshal and his other goods come to the crown.[95]

Trial by combat was certainly still a legal possibility during the fifteenth century. Despite the fact that canon and civil law forbade it and the fact that most urban privileges created almost insurmountable obstacles to holding a trial by combat, it was still enshrined in many law codes. Even de efforts of monarchs could not fully root out the custom, as long as the nobility considered it to be one of its prerogatives. With the ordinance of 1306, Philip IV of France gave in to his nobles' demands. The ordinance did place control over much of the legal procedure and the combat in the hands of the king. We may conclude that Jehan de Villiers likely had access to Philips

91 Vale, *Chivalry,* 76, 165 and Spierenburg, *Murder*, 71-73.
92 Chabas, *Duel,* 276, 277.
93 De la Marche, 'Livre d'advis' 32-34.
94 Chabas, *Duel,* 278, 279 and De la Marche, 'Livre d'advis', 37.
95 De la Marche, 'Livre d'advis', 40.

ordinance and used it as a base for his own treatise on the formalities of a *gaige de bataille*. While some fragments seem to have been copied, others convey similar information in a very different wording. The overall ceremony led by Philip the Good is not essentially different from one led by Philip of France though. Jehan de Villiers made a few amendments, possibly to suit his patron, and Olivier de la Marche has copied this work to use it in his own treatise about trial by combat.

Chapter 3

Selon raison et bonne équité: Burgundian aristocratic discourse on violence

Having considered the laws concerning the *gaige de bataille*, it is now time to look at the discourse on duelling among the Burgundian elite and how this is reflected in the *livre d'advis*. The previous chapter has shown that the laws and customs had barely changed from 1306 onwards. De la Marche himself has a strong opinion the judicial duel and combat in general, which permeates his treatises and his memoires. This chapter seeks to address these opinions and the place they hold within the late fifteenth century discourse on the *gaige de bataille*. It will examine De la Marche's view on the use of deadly force in single combat, on duelling as a noble prerogative and his admonitions against engaging in trial by combat too lightly.

Violence

One of the issues De le Marche has with the *gaige de bataille* is the fact that those who engage in such combats put their goods, their titles, their lives and their immortal souls in peril.[96] Losing could even have grave consequences for later offspring, for the loss of titles did not only affect the person who lost the combat, but also any children he might beget after the combat.[97] Throughout his treatise, De la Marche warns of the dangers of deadly violence that often accompanies the *gaige de bataille*. At the same time he paints the courtly mock combats, the *pas d'armes,* in an altogether more favourable light. Whereas he tries to dissuade his readers from undertaking a trial by combat, in his memoires he seems to be actively encouraging them to undertake a *pas d'armes.*[98] Why did De la Marche do this?

This analysis of the *pas d'armes* and the *gaige de bataille* will focus mainly on the level of violence. It will consider when and how a combat would end and what level of violence was deemed suitable by Burgundian courtly writers. The conditions under which a trial by combat would be concluded are relatively simple. There were three possible outcomes: the death of one combatant was the first, most obvious conclusion. Exiting the ring, either deliberately stepping out, accidentally falling out or being thrown out was also an admission of defeat. Even though Jacotin

96 De la Marche, 'Livre d'advis', 40.
97 Ibidem.
98 Emmerson, *Rhetoric*, 201.

Plouvier had dealt Mahiot Coquel several lethal blows in the ring, the picked up his corpse and threw it out of the ring to finish the combat.[99] Finally, simply giving up and surrendering was always a possibility. This last outcome almost never occurred, as only the gravest cases were judged by means of a trial by combat. In these cases, as the ordinance of Philip IV dictated, defeat would swiftly be followed by a summary execution.[100] A notable exception is the combat that took place near 'Haustredam' in Holland before Philip the Good. Having vanquished his foe, messire Souplenville asked the duke that Henry Lallement's life would be spared. The duke granted this favour, but had Lallement banished and forbade him him from ever bearing his coat of arms again.[101]

During a *pas d'armes*, the knight who had taken the initiative for the event, also known as the *entrepreneur*, would usually guard a certain passage, where he would challenge all knightly comers.[102] In Burgundian sources, we see that such a passage might very well be allegorical in nature. In the *pas d'armes de la dame sauvage*, which took place in Ghent in 1470, the *emprenneur* Claude de Vaudray challenged other knights to venture out into the wastelands called *Yeunesse,* where they were to perform feats of arms to impress the *dame sauvage*.[103] Such events with an allegorical theme allowed the event to become a highly organised piece of courtly theatre, for which the Burgundian Netherlands were known.[104] A *pas d'armes a plaissance* would often continue for a predetermined number of strokes. Sometimes the cartels stipulated a number of options for the *venans,* allowing him to choose the weapons, the number of strokes or giving him the option to fight part of the combat on foot.[105] For example, the *pas d'armes de la dame sauvage* was fought with a single lance stroke and up to seventeen strokes with the sword. If one or both combatants would have been borne to the ground or if one of the combatants lost his weapon, the fight would come to an end.[106] The *pas d'armes* differed from the trial by combat in another important aspect in the sense that the *entreprenneur* would take on all comers for a certain period of time, which would differ between events. Many a *pas d'armes* was terminated prematurely

[99] Olivier de la Marche, *Memoires* II. Henri Beaune and J. d'Arbaumont eds. (Paris 1884) 406.
[100] Neumann, *Zweikampf,* 102 and Chabas, *Duel,* 194, 202.
[101] Ibidem and De la Marche*,* 'livre d'advis', 20, 21, 46, 47.
[102] Vale, *War and Chivalry,* 67, 68.
[103] Olivier de la Marche*, '*Traicté D'untournoy tenu à Gand par Claude de Vauldray, Seigneur de l'Aigle, l'an 1469', in: Bernard Prost (ed.), *Traités Du Duel Judiciaire: Relations De Pas D'armes Et Tournois* (Paris 1872), 58-60.
[104] Millar*, Olivier de la Marche,* 53.
[105] Vale, *War and Chivalry*, 67.
[106] De la Marche, 'Traicté', 60-65.

because the *entreprenneur* had taken too many injuries to continue taking on fresh opponents.[107]

A *pas d'armes à l'oultrance* would, as the name implies, be fought until one combatant could no longer fight on.[108] As the weapons used were usually not blunted or otherwise made safer for mock combat, there was a very real risk of injury in such combats. The cartels that were published by the *entreprenneur* proscribed some rules and regulations about the level of violence as well.[109] We get a gleaning of these rules when the Portugese knight Baltasin de Galiot faces Philippe de Ternant in *armes de plaissance*. Galiot's horse bardings are covered in spikes and he has to be admonished severely to remove them before the combat. Both the general unwritten rules of court combat and the *entrepreneur's chapitres* do not allow such a thing. [110] His adversary wears his sword *comme on le porte à la guerre communement* and as a consequence, during the combat it falls to the ground.[111] As Galiot takes advantage from this, the whole situation sparks some controversy among the gathered courtiers who were watching. De la Marche later uses this episode to inform his courtly readers of the 'unwritten' rules of fair play during the *pas de armes*.[112]

In Burgundian court combats, the duke or the patron of the tournament would always have the authority to stop a combat when he deemed that the danger to a participant was becoming too great.[113] He would have a *baston* in his hand during the fight. It has been speculated that this might be the function of the arrows and staves we see in some of the portraits from the Burgundian period and especially those made under the rule of Charles the Bold.[114] When thrown into the field, the *baston* would become the sign for the field guards to step in and separate the combatants.[115] Especially a *pas d'armes à l'oultrance* would often come to an end in this way. Interestingly, Philip the Good would also use this authority to end a judicial combat on one occasion. In the judicial combat in Arras in 1431 between Hector de Flavy and Maillotin de Bours, the duke threw down his *baston* and had the two combatants separated. Both agreed that they would abide by the judgement of the Duke.[116]

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[107] Vale, *War and Chivalry*, 75
[108] Ibidem, 70.
[109] See for example De la Marche, 'Traicté', 60-65.
[110] De la Marche*, Memoires* II*,* 77.
[111] Emmerson, *Rhetoric,*199.
[112] Ibidem, 201-203.
[113] Ibidem, 85.
[114] Ibidem.
[115] Ibidem.
[116] De la Marche, 'Livre d'advis', 21.

Catherine Emmerson has shown that De la Marche also uses the word *baston* to refer to the axes and other weapons that the combatants used in instances of potentially lethal violence, whereas he uses different terminology to describe the weapons used in *armes de plaissance* and tourneys. The word *baston* is the term he uses to describe weapons in the *livre de l´advis,* both in the sense of actual cudgels and of knightly weapons such as lances, pollaxes and swords. In his description of the *pas de fontaine des pleurs,* Jacques de Lalaing fights two of his challengers with such intensity that spectators believe they are fighting *comme mortelz enemis*. It is precisely in these instances that De la Marche describes the pollaxes used in the combat with the word *bastons.* Similarly, the weapons used by Plouvier and Coquel in Valenciennes in 1455 were also *bastons,* although here the weapons were in actual fact long staves or cudgels. One may be forgiven to think that the word *baston* simply refers to weapons with long wooden hafts. However, in the case that a commoner wishes to fight a *gaige de bataille* against a nobleman, De la Marche seems to think that the prince should take care that the claimant is knighted and that he presents himself at the lists with a nobleman's *bastons* and armour. [117] It seems therefore that de La Marche seems to reserve the word *baston* for a weapon that is used with lethal intent.[118]

Although we have seen that Olivier de la Marche at times acknowledges the value of a *gaige de bataille*, he remains adamant in his disapproval of lethal violence. It may very well be this aspect of the trial by combat that prompts him to dissuade his readers from undertaking such a dangerous thing. De la Marche's disapproval of lethal violence does not only limit itself to the *gaige de bataille.* In his *memoires* he describes a number of combats *a plaissance* as praiseworthy undertakings. He is however quite critical of those who, by their knowledge or not, break the unwritten rules of the *pas d'armes* and of those who appear to be using the *pas d'armes* to settle their quarrels with deadly force. An indication for this strong link between deadly force in the *gaige de bataille* and in the *pas d'armes* seems to be a lexicological equivalence between the different uses of the word *baston*. A *baston* can refer to a common cudgel, to a knight's pollaxe or even to a complete set of knightly arms. The thing these *bastons* have in common in De la Marche's writings, is the idea that they are to be used with lethal intent.

[117] Emmerson, *Rhetoric*, 205, 206.
[118] Ibidem.

The social stratification of combat

Another aspect of the *gaige de bataille* that seems to be of great importance to De la Marche is the social status of the combatants. Although the issue has been discussed on several occasions before, the nobility or ignobility of certain types of combat deserves a separate section. De la Marche's emphasis on the social status of the combatants is part and parcel of the level of violence of the combat.[119] To some extent, the *Livre d'advis* and the *Memoires* provide great examples of the late medieval discourse on noble versus non-noble violence. The combat that took place in 1455 in Valenciennes will provide an excellent case study to demonstrate how De la Marche thought about commoners engaging in a trial by combat.

First, it should be noted that there had been a clear distinction between noble and non-noble judicial combats for several centuries before De la Marche wrote his treatise. Under the Carolingian kings, judicial combats were fought by the two litigants in person, using only a shield and a wooden club.[120] As we have noted before, this Carolingian mode of combat remained the norm for several centuries, with the infamous combat in Valenciennes largely following the same lines.[121] Around the turn of the eleventh century, however, the ideals of knighthood became more important for nobles to aspire to. Fighting on horseback with the lance and in full armour was perhaps one of the most distinctive features of the knightly ethos.[122] It comes as no surprise that knights were very eager to fight their *duella* in their chivalric panoply, rather than with weapons so pedestrian as a cudgel and a shield. When en how exactly this development took place is not fully clear, but when Galbert van Brugge recounted the events following the murder of the Flemish count Charles the Good in 1127, the practice had already become so commonplace that it was hardly noteworthy any more.[123] In the fifteenth century, most judicial combats were fought in this way.

For De la Marche and his contemporaries, combat was something that had a noble quality to it. In principle, only noblemen were considered fit to use arms, but at the same time combat also had an ennobling effect. In the last section of the *Livre d'advis,* De la Marche lists a few qualities that may ennoble a man. Military service to the prince is one of these:

[119] Neumann, *Zweikampf,* 64.
[120] *Capitularia* I, 417.
[121] De la Marche, *memoires* II, 405.
[122] Blockmans en Hoppenbrouwers, *Eeuwen des onderscheids,* 166.
[123] Bartlett, *Trial*, 111.

'Fourthly, the practice of arms as a man-at-arms and serving the prince valliantly in wair, this point ennobles a man.'[124]

Another way in which a man may be raised up from a low station to become a nobleman, is by fighting a judicial combat. Normally, a commoner would not be able to challenge a noble to a judicial duel. In the *Livre d'advis,* De la Marche mentions one specific situation in which a low-born man may challenge a noble to a trial by combat. When a commoner wishes to accuse a noble of high treason, the cases touches upon the prince's safety and honour. As such, the noble has to answer for the accusation by a *gaige de bataille*. His lowly adversary, the prince's champion, would be ennobled and receive a set of knightly arms and armour (and presumable some training in their use as well). [125]

While De la Marche allows for the possibility of social advancement through the practice of arms, he is certainly not fond of the idea of commoners fighting each other. He was no exception among Burgundian courtly writers. The judicial duel of 1455 in Valenciennes made this abundantly clear. From Georges Chastellain, Matthie d'Escouchy and Olivier De la Marche we have some vivid descriptions of the duel. The general consensus seems to have been that the combat was ugly, violent and utterly disgraceful.[126] Mathieu d'Escouchy chooses to emphasize the political process that preceded the combat itself. Although this thesis will devote quite some space to this subject in a later chapter, it is worth mentioning that D'Escouchy appears to underline the fact that only the duke, his son and the nobility seem to strive for justice in this case. The townspeople from Valenciennes are concerned with their own privileges, a good entertaining fight and similarly pedestrian motivations.[127] The nobles have to look on helplessly as the commoners allow a murder to take place in the presence of the duke.[128] Georges Chastellain does his best to recreate the horrifying moments of the combat itself. The fight was decided quickly. After Jacotin Plouvier had managed to turn the tide of the combat, he brutally ended the fight. Jacotin held down his adversary. Meanwhile, coquel managed to grab hold of one of Jacotin's fingers with his teeth. Jacotin then gouged out Coquel's eyes, who then promptly cried out for mercy.[129] However, this

[124] 'Quartement, suyvir les armes en estat d'omme d'armes, et servir le prince valeureusement en vaillance et continuacion de guerre, ce point anoblist l'omme.' De la Marche, 'Livre d'advis', 45.
[125] Ibidem, 44.
[126] Neumann, *Zweikamp,* 61.
[127] Ibidem, 64.
[128] De la Marche, *memoires* II, 406.
[129] Chastellain, Georges, *Oeuvres de Georges Chastellain* III. Joseph Marie Bruno Constantin Kervyn de Letterhove ed.

was not enough for Jacotin:

'Jacotin took the two arms of Mahienot and turned them backwards, two, three, four times, to completely break them and with his knees in his [opponent's] back, he broke the spine, saying, « Confess, traitor, confess that you have murdered my relative, confess », and Mahienot said, « I confess » and Jacotin, who had already gouged out hjis eyes and broken his spine, said : « Speak loudly, traitor, so that everyone may hear you, say that you murdered him, cry it loudly », and Mahienot cried : « I did it, I did it »And blindly, he cried out these words loudly : « O my lord of Burgundy, I have served you so well in your war against Ghent ! O my lord, by God, I pray for your mercy, save my life ».'[130]

The final moments of Mahiot Coquel are absent from Chastelain's chronicle. From D'Escouchy and De la Marche we learn that Jacotin picked up Mahiot's already broken body and threw it out of the lists. He died shortly after and was then summarily hanged at the gibbet for his crime.[131] Such extreme violence must have horrified the onlookers. An eerily similar thing happened in London in 1456, when Thomas Whythorne, a peddler turned approver, testified against James Fisher. The latter challenged the peddlers testimony by demanding a trial by combat. In his chronicle, William Gregory is about as disdainful of the custom as the Burgundian chroniclers. Among the *condyscyons of thys foule conflycte* was that whoever died in the combat was to be denied a Christian burial, similarly to those who commit suicide.[132] The *fyuchtynge of thes ij poore wrecchys* is concluded as follows:

And then the false peddler cast down the innocent man down to the ground and bit him in his member, so that the innocent man cried out. Gathering his strenght, the innocent man gut up on his knees and took the false peddler by the nose with his teeth and put his thumb in his eye, so that the peddler cried out and begged for mercy, for he was false unto God and unto him."[133]

(Brussels 1864), 48, 49.

130 'Jacotin prist les deux bras de Mahienot et les tourna à devant darrière, deux, trois, quatre fois, jusques à tout les derrompre, et saillant et bondissant des genoux sur les dos, lui rompit l'eschine, disant: "Cognoy, traître, cognoy que tu l'as murtruy mon parent, cognoy-le", et Mahienot dist: "Je le cognois", et Jacotin alors qui tousjours foulloit en ses yeux ou lui rompoit l'eschine, dist: "parle haut, traître, affin que l'on t'oye, dis que tu l'as murtruy, crie haut", et Mahienot crioit: "Je l'ay fait, je l'ay fait". Et aveuques ce mot cria tout haut: "O monseigneur de Bourgogne, je vous ay si bien servi en vostre guerre de Gand! O monseigneur, pour Dieu, je vous prie mercy, sauvez-moy la vie.' Ibidem, 49.

131 De la Marche, *memoires* II, 406.

132 William Gregory, 'William gregory's chronicle of London', in James Gairdner (ed.), *The historical collections of citizen of London in the fifteenth century* (London, 1876) 55-239, 200, 201.

133 'And thenn the fals peler caste that meke innocent downe to the grownde and bote hym by the membrys, that the sely innocent cryde owt. And hy happe more thenne strengythe that innocent recoveryd up on hys kneys and toke that fals peler by the nose with hys tethe and put hys thombe in hys yee, that the peler cryde owte and prayde hym

The extreme violence of both these cases left quite a deep impression on those who remained to write about them. Chastellain's description of the event in Valenciennes may be the most explicit and disturbing one, but the descriptions by d'Escouchy and De la Marche are quite graphic as well. From all three chroniclers, we get the feeling that things were not resolved as they should have been.[134]

Olivier de la Marche devotes a relatively large amount of attention to the ceremony before the combat. This is a distinct feature of most his works. He is well known for his detailed descriptions of the courtly ceremonies, the rules and regulations of the *pas d'armes* and the rituals surrounding the *gaige de bataille*.[135] Interestingly, when describing the combat in Valenciennes, he puts his own style upside down. In this case the description of the rituals of combat give an example of how things are not supposed to go. The whole ritual to prepare Plouvier and Coquel for their combat becomes a sort of parody of the ceremony that is proscribed in Philip IV's ordinance. What is in itself a *moult belle serimonie*, is turned on its head by the fact that it is conducted by the common people. There is no prince to act as judge, and no clerics can be found willing to administer the oaths on the relics.[136] However, it does not get much worse than this:

'Then each was given a shield painted vermilion, with a cross of Saint George; and they had to carry their shields with the point up, and I was told that when the most noble man of the world would fight at Valenciennes, he would have no other advantage, other than the fact that the point of his shield would be facing down and that he could carry it like a nobleman should."[137]

Apart from a minor difference in the way a noble was allowed to carry his shield into combat, he would fight under the same circumstances as a commoner. Few nobles would have found the thought of being sewn into a leather suit and smeared with pig fat in order to fight with a cudgel to be very appealing. For De la Marche, combat should be an ennobling affair.[138] The franchises of Valenciennes on the other hand turn combat into a socially degrading activity. This reversal of the

of marcy, for he was fals unto God and unto hym.' Ibidem, 202.

134 Neumann, *Zweikampf,* 65.

135 Emmerson, *Rhetoric*, 192, 193. Millar, *Olivier de la Marche,* 157-172.

136 De la Marche*, Memoires* II, 403, 404.

137 'Et tantost leur fut apporté à chascun ung escu peint vermeil, à une croix de Sainct George; et leur furent baillez escuz la pointe dessus, et me fut dit que quant le plus noble homme du monde combatroit à Valenciennes, il n'auroit aultre advantaige, sinon que la pointe de son escu seroit en bas, et pourroit porter son escu comme ung noble homme le doit porter.' Ibidem, 405.

138 De la Marche, 'Livre d'advis', 45.

natural order can only be redeemed in one way: a *pas d´armes* between two thoroughly noble men at arms:

'The two noblemen appeared before the duke in their coats of arms, and they fought valiantly, without committing any fouls and then they left the lists; and it was said that God had sent these tow noblemen to honour Valenciennes, and people held the opinion that the combat between Jacotin Plouvier and Mahuot [brought] more shame than honour, because of the murder comitted in the presence of the prince".[139]

Although Philips court was a place where the knightly arts were still eagerly practised in play, in earnest and sometimes even in a *gaige de bataille*, it was much less sympathetic to commoners engaging in combat. Matthieu d'Escouchy, Georges Chastellain and Olivier de la Marche are critical of the trial by combat that took place in Valenciennes in 1455 in three respects. Firstly, their motivation for holding a trial by combat are quite unsavoury. Secondly, the brutality of the combat was shocking to observers, as a noble duel was not supposed to end in such wanton bloodshed. And finally the magistrates of Valenciennes turned the imagery of court combat upside down and made combat into a socially degrading activity. In short, commoners did not know how to conduct a trial by combat *selon raison et bonne équité.*

A book of advice

De la Marche expresses his utmost disapproval of the *gaige de bataille*. According to him it is a barbaric custom, devised by the devil in order to tempt and capture the souls of both victors and vanquished alike. According to 'the authorities and clerics', the victor commits a manifest murder of a fellow christian, while the vanquished is guilty of swearing a false oath at the very least.[140] De la Marche is therefore at pains to dissuade his audience from such dangerous undertakings:

'And for this reason, young noblemen, I write, I cry, I admonish you with all my might to flee and eschew such dangerous undertakings, as much as possible and search in you quarrels and vendettas the road of law and justice; God will be with you, for who is most reluctant to participate in such destruction, has more honour in this case."[141]

[139] 'Les deux nobles hommes se comparurent parez de leurs cottes d'armes, et se combatirent chevalereusement, sans faire grant foulle l'ung sur l'aultre, et ainsi se partirent icelles d'armes; et disoit on que Dieu avoit envoyé ces deux nobles hommes pour faire honneur à Valenciennes, et tenoit on la bataille faicte entre Jacotin Plouvier et Mahuot plus honte que honneur, à cause du murdre perpetré en la presence du prince.' De la Marche, *Memoires* II, 406, 407.

[140] De la Marche, 'livre d'advis', 4.

[141] 'Et pour ce, jeunes nobles hommes, je escripz, je crie, je admoneste tant que je puys, que vous fuyez et eschevez

However, things are not so simple as they appear from the quote above. Rather than being a 54 pages long exposé on the evils of the judicial duel, the *Livre d'advis* appears to be more like a handbook for those asked to serve as judge. In the next paragraph, De la Marche acknowledges that a trial by combat is sometimes permissible and necessary in legal cases where nothing can be proven by testimonies.[142] What then should we make of his warnings against the trial by combat? That Olivier de la Marche genuinely believed that the *gaige de bataille* was wasteful and dangerous to everyone involved is highly likely. Despite its rarity at this time, the judicial combat had not yet fully disappeared from either collective imagination or judicial reality. De la Marche may have feared that his attempt to preserve the knowledge of the procedures for holding a trial by combat could set off a new fashion for duelling among the 'young men in whom vigour and boiling blood is dominant'.[143] Perhaps his frequent admonitions against engaging in a *gaige de bataille* stem from a desire to impress upon his readers the necessity of prudence and reason in such matters.

On several occasions in his treatise, De la Marche stresses that a *gaige de bataille* should always be a last resort. We see this sentiment in the treatise by Jehan de Villiers for example. The conditions that have to be fulfilled before a trial by combat is allowed to take place stipulate among others that the crime cannot be proven by testimonial evidence.[144] In the third part of the *Livre d'advis,* De la Marche cites Bartolus of Sassoferrato on trial by combat. Bartolus also provides a list of requirements that a trial by combat should meet. One of these requirements is indeed that the crime cannot be proven by another method.[145] This list serves to underline the fact that most authorities considered the trial by combat to be a last resort, an *ultimaratio*.[146] Finally, De la Marche himself explicitly states the idea that a trial by combat may only take place if justice would otherwise be unable to run its course:

'And it seems by all these examples that God, when justice is marred by faulty evidence, wants that this is revealed by the inconvenience of the trial by combat.'[147]

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telles dangereuses emprises, tant qu'il vous sera possible, et quérez en voz querelles et vengences la voie de droit et de justice; et Dieu sera pour vous, car qui plus fuyt d'entrer en tel destroit, plus a d'honneur en ceste partie.' De la Marche, 'livre d'advis', 4.

142 Ibidem, 11.

143 'jeunes hommes èsquelx cuidier, verdeur et sang bouillant domine.' Ibidem, 2, 3.

144 Chabas, *Duel*, 273 and De la Marche, 'livre d'advis', 30.

145 De la Marche, 'livre d'advis', 41, 42.

146 Neumann, *Zweikampf,* 37, 38.

147 'Et semble, par tous ces examples, que Dieu veult, quant justice est mucée par faulte de preuve, qu'elle soit

As such we may reach the conclusion that Olivier de la Marche feels that the trial by combat should be avoided when possible. It should only be employed when 'faulty evidence' stands in the way of the truth.

Furthermore, Olivier de la Marche seems to be very much concerned with the equality of the two combatants.[148] For him it is important firstly that the judge should make sure that the claimant is not significantly stronger that the defendant. Secondly, he should make sure that the claimant is not a sanguine brawler who often challenges others to duels. Thirdly, the defendant should be healthy in body. If the defendant has limbs missing or senses not functioning properly, the claimant is to be similarly handicapped, although the more desirable course would be to simply disallow the combat.[149] Fourthly, the defendant should not suffer from any hidden diseases that may hinder him. Fifthly, the judge should make sure that the claimant is as noble a man as his adversary. We have already seen that a commoner who challenged a knight on the charge of *lèse majesté,* was to be knighted in order to act as champion for the prince.[150] And finally, the judge should take note if the defendant is a cleric or not. Clerics were generally exempt from the *gaige de bataille,* except for two cases: if a cleric was charged with *lèse majesté,* he would have to fight. Similarly, if a cleric had been ordained after the supposed crime had taken place, he would not be allowed to appeal to his clerical privileges.[151] De la Marche seems to be obsessed with the equality of the combatants. He is not entirely strange in this respect, as many other commentators place a similar emphasis on this aspect.[152] According to the 1306 ordinance, the weapons would be checked before the trial and both litigants would have to swear that they did not carry any concealed weapons, nor had their weapons enchanted by dark arts, nor carried any magical items on their person that could tip the balance in their favour.[153] No person under 20 year of age or over 60 could be forced to fight a judicial duel. Otto of Grandson could have refused to fight, given his age, but his honour dictated that he should fight anyway.[154] Furthermore, most commentators agreed that any physical handicap should be accounted for as well. When the Polish king Kasimir III challenged John the blind, king of Bohemia, the latter responded that he would accept the

réveillée et faicte par l'inconvénient de gaige de bataille.' De la Marche, 'livre d'advis', 19.

148 Ibidem, 42-44.

149 Ibidem, 43.

150 Chabas, *Duel,* 153 and De la Marche*, livre d'advis*, 44.

151 De la Marche, 'Livre d'advis', 44.

152 Bartlett, *Trial*, 110, 111.

153 Chabas, *Duel*, 276-279.

154 De la Marche, 'Livre d'advis', 6, 7.

challenge, on the condition that his opponent would have his eyes put out as well.[155] In stressing the importance 'leaving nothing to chance, but the combat itself', De la Marche was hardly exceptional.

How then did De la Marche really feel about the *gaige de bataille*? Are we to believe that he and other courtly writers were firmly against the practice? Or does the elaborate treatise on the subject suggest that De la Marche was actually in favour of the duke judging judicial combats again, like he did in old times? The truth, as is often the case, is somewhere in the middle. A *gaige de bataille* had to be fought in a noble manner and preferably be terminated before anyone lost their life. De la Marche felt that the *gaige de bataille* was a dangerous undertaking, but also one that had its uses. Combats that were undertaken for other reasons, such as personal honour, financial incentives or political motivations, were to be avoided at all costs. Similarly a trial by combat between two commoners was not praiseworthy. In cases where justice could only run its course through a duel, it was justifiable means. In any case, great care had to be taken that both combatants would start on an equal footing. By writing this treatise, De la Marche likely hoped to dissuade his young readers from engaging in a trial by combat all too lightly or for the wrong reasons. He also likely hoped to have given his pupil the means to conduct a trial by combat *selon raison et bonne équité,* should it ever come to that.

[155] Neumann*, Zweikampf*, 171.

Chapter 4

Shouting in the desert: the discrepancy between the norm and reality

As we have seen in the previous chapters law codes, *coutumiers* and courtly treatises would, theoretically at least, allow a trial by combat to take place. However, there were certain conditions and many unwritten rules to follow. This following chapter will shift the thesis' focus from theory-heavy legal and normative sources to more practical sources, such as chronicles and descriptions of judicial combats. This chapter will therefore examine to what degree these combats deviated from the norm. Firstly it will consider those combats that were fought as an *ultimaratio*. Secondly, this chapter will look at the role of honour in the trial by combat. Did notions of honour play a role in late medieval judicial duels? And how does judicial combat relate to the later duel of honour? Finally, this chapter will look at the role of the duke in adjudicating and presiding over the *gaige de bataille*. What role did the Burgundian rulers play in a trial by combat and how did they turn the custom to their advantage? Few of the judicial combats that took place during the fifteenth century complied with both the legal codes and the discourse that was discussed in the previous chapter. Normative sources saw the trial by combat as a *Beweismittel,* while in reality it had become an *Entscheidungsmittel* once again.

The pursuit of justice

The first angle this chapter will explore is the trial by combat as an *ultimaratio.* The normative sources that we have examined in the previous two chapters considered the trial by combat as a *Beweismittel,* and only approved of its use when all other methods had proven ineffective. Only a few of the judicial combats that are described in the *Livre d'advis* fall into this category. The case described below is quite well-known and would be best described as a judicially sanctioned *crime passionel*. In 1386 the Norman knight Jean de Carrouges fought a duel to the death against his former friend, the squire Jacques le Gris.[156] At the time it quickly became a well-known story. The duel features quite prominently in Froissarts *Chroniques* and from there made its way into several other works, the most notable being De la Marche's.[157] It was cited by Diderot as proof of the irrationality of the ordeal and in Eric Jager's modern adaptation *The last duel,* it has become an object of fascination and the symbol of a time when honour and determination could still lead to

[156] Jean Froissart, *Chroniques* XII. Joseph Marie Bruno Constantin Kervyn de Letterhove ed. (Osnabrück 1967), 30.
[157] De la Marche, 'livre d'advis', 16.

justice.[158]

The first thing to consider, is that judicial combats were rarely allowed by the Parliament of Paris at this time. According to Monique Chabas, between 1306 and 1404 within its jurisdiction there were about fifty cases where a *gaige de bataille* was requested. 28 of these cases were considered inadmissible, in twelve cases an accord was reached during the procedure and the remaining ten were allowed by the parliament. Of the 28 refusals, fourteen cases had come before lower jurisdictions first. Eight of these were allowed by these lower jurisdictions, but refused by the Parliament of Paris.[159] As we can see, the Parliament of Paris allowed only one fifth of all demands for a trial by combat. Almost no duels were allowed after 1329.[160] It should be noted though, that we have very little information on what exactly the local jurisdictions did. Apart from the fourteen cases from lower jurisdictions that were reviewed by the Parliament of Paris, there is only anecdotal evidence of judicial combat outside the parliament's influence. Especially the Burgundian duke Philip the Good would play an instrumental role in some of the more well-known judicial duels of the fifteenth century. All in all though, it seems quite clear that actual judicial duels became rarer and rarer during the fourteenth century. The 1386 case is therefore quite unique, in the sense that the Parliament of Paris at this time would generally not agree to a demand for a trial by combat.

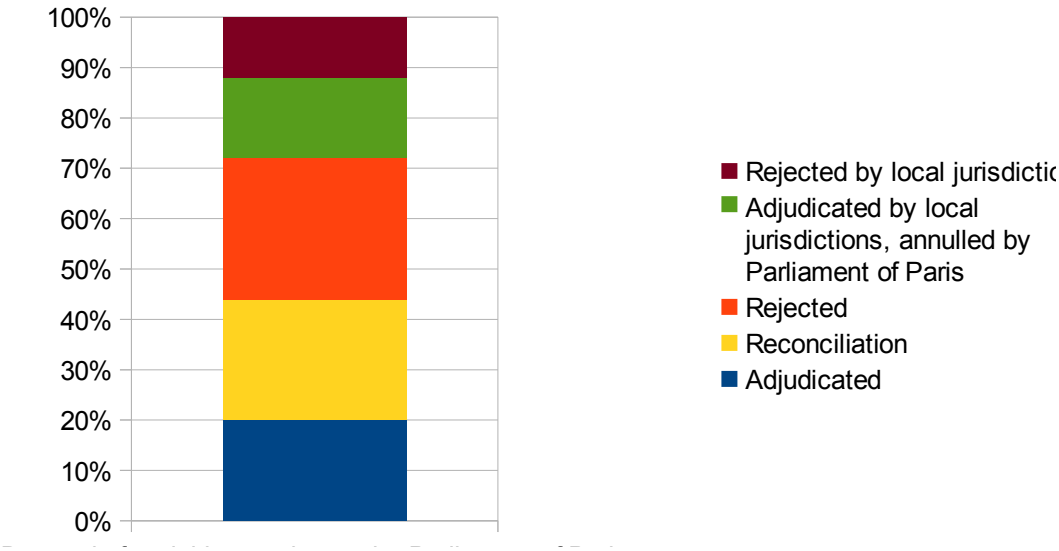

Image 4: combats adjudicated by the Parliament of Paris.

[158] Eric Jager, *The last duel*, 1, 2.
[159] Chabas, *Duel*, 184, 185.
[160] Ibidem, 186.

And yet, in 1386 the Parliament of Paris sanctioned a duel to take place. Jean de Carrouges, a knight from Normandy had a long standing enmity with his former friend, the squire Jacques le Gris. Carrouges was jealous of the many favours that count Pierre d'Alencon conferred upon Le Gris. Although a formal reconciliation was mediated by the the count, some ill feelings must have persisted, because the next time we hear of both noblemen, Carrouges had accused Le Gris of having raped his young wife Margueritte.[161] Froissart says the following about the case:

It happened (And this is at the heart of the matter) that the devil through perverse and diverse temptations entered the body of Jaquet le Gris, who was still with the count his lord, for he was his counselor. He moved him to commit a great evil, for which he had to pay later; but the evil he had done, could not be proven, nor would he ever confess. This Jaquet le Gris cast his thought on the wife of lord Jehan de Carouge. For he knew well that she inhabited the castle of Argentiel without many servants".[162]

Froissart manages to capture the essence of the case in this short excerpt. Jean de Carrouges wife claimed that she was raped by Jacques le Gris. No witnesses were at hand though, as the story goes that she lived quite a modest and solitary life while her husband was away. Furthermore, Jacques le Gris vehemently denied his guilt.[163] A such, a regular case with an inquisitional hearing would have little chance of ending favourably for Carrouges and his wife. This did not prevent them from trying. Carrouges pleaded his case with the count of Alencon, who rejected his complaint and forbade Carrouges from taking the matter to court elsewhere. Defying his master's command, Carrouges came to Paris to state his case before the Parliament of Paris and to request a trial by combat.[164]

After an arduous and difficult deliberation, the Parliament allowed Carrouges' request and Jacques le Gris took up the glove that Carrouges had offered him. This meant that Le Gris took up the challenge and that skill at arms would determine the fate of the three individuals involved in this drama.[165] Olivier de la Marche presents this as a case in which a trial by combat was the only

[161] Jager, *The last duel,* 36-38, 218.
[162] 'Advint (vecy la question du fait) que le deable par temptation perverse et diverse entra ou corps de Jaquet le Gris, lequel se tenoit delés le conte son seigneur, car il en estoit souverain conseillier. Si se advisa d'un moult grant mal a faire, si comme depuis il le compara; mais le mal qu'il avoit fait, ne peult oncques estre prouvé sur luy, ne oncques ne le voult recongnoistre. Ce Jaquet le Gris jetta sa pensee sur la femme a messire Jehan de Carouge. Si sçavoit bien qu'elle se tenoit ou chastel d'Argentiel entre ses gens petitement accompaignie.' Froissart, *Chroniques* XII, 31.
[163] *Chronique du religieux de Saint-Denys.* M.L. Belaguet, ed., (Paris 1839), 462-466.
[164] Froissart, *Chroniques,* 35.
[165] Ibidem, 36.

possible way for the aggrieved party to pursue justice:

'And if it wasn't proved by trial by combat, the terrible crime would have gone unpunished and justice would not have been done.' [166]

Both combatants were noble men of honour and their quarrel was a lawful one according to the 1306 ordinance. A date for the trial by combat was set and officials began their preparations in earnest. The trial would take place on the 27th of November. The appointed date was closing in rapidly, when the king of France received word that a trial by combat was about to take place. At that time he was directing the preparations for an invasion of England from the shores of Flanders. He sent word to Paris that the combat was to be postponed for a month, so that the king and some of his most prominent nobles would be able to attend the spectacle. As this request could hardly be refused, the combat would take place on the 29th of December. In the meantime, the two combatants were confined to their mansions in the city and they gathered friends, family and public figures to their cause.[167]

On the 29th of December in the year 1387, at the crack of dawn the citizens of Paris made their way to the Abbey of Saint-Martin-des-Champs outside the city walls. It would be here that the case would come to a bloody conclusion. If the ordinances of Philip IV were followed, the combatants would have entered the lists, declared their names and had their cartels read aloud.[168] Margueritte was also present, in a litter draped with black cloth. If her husband would be overcome in combat, she would share his fate and be burned as a false accuser.[169] The combatants then proceeded to their pavilions, to await the rest of the ceremony. In turn, Carrouges and Le Gris would have been asked to step forth to swear their oaths. They would have sworn the last oath simultaneously, whilst looking each other in the eyes. Having successfully sworn the oaths, without having second thoughts, the battle was now inevitable. The two combatants went to their pavilions, mounted their horses and dropped their visors.[170] At the last cry of the marshal, the battle was joined:

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[166] 'et, s'il n'eust esté approuvé par gaige de bataille, l'énorme cas demouroit sans pugnicion, et justice non faicte en ceste partie.' De la Marche, 'Livre d'advis', 15.
[167] De la Marche, 'Livre d'advis', 15.
[168] Chabas, *Duel,* 276, 277.
[169] Froissart, *Chroniques* XII, 37.
[170] Chabas, *Duel,* 278-280.

And so jousted the champions, but they achieved nothing. After their joust, they dismounted and prepared for combat and fought bravely, and Jehan de Carrouge was hurt in his thigh, which caused an uproar among his supporters; but he held out so valiantly that he managed to throw his opponent to the ground. He put a sword though his [opponent's] body and killed him on the field and then asked if he had don hist duty, and the people responded: « Yes. »'[171]

Despite the stern admonitions against making noise during the *gaige de bataille*, the crowd could not help itself. When Carrouges asked if he had done his duty, it roared out its approving answer. The king treated Carrouges generously, giving him a lump sum, a yearly pension and an appointment as a royal chamberlain.[172] It appears that after all the ordeals Jean de Carrouges and his wife Marguerite have been through, justice has triumphed at last. It is not difficult to imagine why Olivier de la Marche considers this to be a judicial combat that was held *selon raison et bonne équité.*

Ulterior Motives

Despite the fact that this particular case ticks all the boxes of a properly conducted trial by combat by De la Marche's standards, it should be pointed out that the protagonists themselves were quite sceptical and calculating in their approach to the duel. The trial against Le Gris was certainly not Carrouges' first encounter with a legal court. In trying to enlarge his estates, he had already conducted a few legal cases for ownership of certain plots of land. Although ultimately Carrouges managed to win these proceedings, the count of Alencon intervened and forbade the sale of the land to Carrouges. Embittered, he blamed his failure to increase his holdings on the influence that Jacques le Gris had with Pière D'Alencon.[173] This may have been an important reason for Carrouges to take up his crusade to kill le Gris in a trial by combat, although the knight eager to avenge his ravaged wife would be slightly more appealing to romantically inclined souls.

It is clear that Carrouges' choice to press for a trial by combat was very much calculated. Directly after he had returned from fighting in Scotland and his wife had told him what had happened in his

[171] 'Si jousterent les champions de premiere venue, mais riens ne se fourfirent. Aprés leurs joustes, ils se misrent a piet et en ordonnance pour parfaire leurs armes, et se combatirent moult vaillamment; et fut de premier messire Jehan de Carrouge navré en la cuisse, dont tous ceulx qui l'aymoient, en furent en grant effroy; mais depuis il se porta si vaillamment qu'il abaty son adversaire a terre. Si luy bouta une espee ou corps et le occist ou champ, et puis demanda se il avoit bien fait son devoir, et on luy respondi: "Oyl." ' Froissart, *Chroniques*, 38.

[172] Froissart, *Chroniques* XII, 37.

[173] Jager, *Last duel*, 34, 35.

absence, he gathered all his own supporters and those of his wife's family to him. Together, this party pressed the charge of rape at the court of count Pière d'Alencon. Any hopes of getting a satisfactory ruling from this lower jurisdiction were shattered by the count, who was not at all amused at the troublesome Carrouges claiming that his favourite at court was a rapist.[174] Since it was well known that Carrouges was envious of le Gris in many respects, appearances were against him from the onset. According to Froissart, the count dismissed the complaint, stating that Margueritte had probably dreamed the rape. Furthermore, he forbade Carrouges from taking the matter to court elsewhere.[175] Carrouges disobeyed his lord and went to Paris to take his case to the Parliament there. His decision to plead for a trial by combat seems to be a very calculated one, as he was aware that a regular court case by inquest would likely have the same embarrassing outcome as his attempt to get le Gris convicted by the count of Alencon. Pressing for a trial by combat was a way to circumvent this judicial procedure. His attempt to persuade the parliament to allow a trial by combat was likely inspired by the knowledge that this was a viable escape from his position as the legal underdog. A trial by combat would even the odds between him and le Gris. Furthermore, the prospect of carrying out the sentence personally on the field of combat may have been an appealing thought as well.

This does not sufficiently explain why le Gris took up the glove. We can get a gleaning of his motivations from the notes made by his lawyer le Coq. What strikes us, is that the lawyer was not fully convinced of his client's innocence.[176] Le Gris displayed some odd behaviour during weeks in which the legal hearings took place. According to Jean le Coq, his client had asked him if he had any doubts about him, 'for he had seen him thinking'.[177] Le Coq will not have been the only one who had doubts about le Gris. The squire who stood witness to the fact that Le Gris was at Alencon when the rape allegedly happened was himself convicted of a rape in Paris during the legal proceedings.[178] This severely hampered the case Le Coq was trying to make. Furthermore, Le Gris was a cleric of a minor order, so he had the option to appeal to a trial by canon law, which did not recognise the duel. Doing this, however, would close the door on the possibility to demand indemnities from Carrouges in case his accusations were proved false.[179] So was Le Gris playing

[174] Froissart, *Chroniques* XII, 35.
[175] Ibidem.
[176] Jean le Coq, *Quaestiones Iohannis Galli.* Margueritte Boulet ed. (Paris 1944), 111.
[177] Ibidem.
[178] Ibidem, 99.
[179] Ibidem, 110.

along with the ceremony, hoping that the trial by battle would be disallowed by the Parliament? Or did he really feel that the duel was a chance to settle the matter once and for all in an honourable way? Were both protagonists driven by altogether more human emotions, such as envy, revenge and an uncompromising sense of honour? Or were they altogether more sceptical in their outlook, trying to use the trial by combat to their own advantage? In the words of Jean le Coq: 'no one really knows'.[180]

The role of honour

A comparison is often made between the trial by combat and the later duel of honour, with some scholars maintaining that there is no clear link between the two, while others see a lot of continuity between the two phenomena.[181] The prevailing view seems to be that the duel of honour was a 16th century innovation from Italy that took Europe by storm and provided hotheaded young men an alternative to the blood Feud.[182] This section will demonstrate firstly that the irregular duels of honour had been taking place for some time when the formal duel spread from Italy in the 16th century. Secondly, it will demonstrate that honour played an important role in judicial combats. This role increased during the fifteenth century, eventually turning the custom into a judicially sanctioned duel of honour.

Firstly, what is honour exactly and how does it relate to duelling? Various definitions exist for a duel of honour. Unfortunately, most definitions seem to accommodate the early modern duel, to the exclusions of all other forms of duelling that share certain key characteristics and might very well be called duels of honour.[183] Honour and its penchant shame have always been closely interrelated, even in today's society. However, rarely has this been more true than during the Middle Ages, when honour and a good name had profound social and economic implications. Medieval men and women often acted quickly and decisively when their good name was called into question.[184] Many academic studies still adhere to the gendered division of male honour and

[180] '(…) non fuit unquam scita veritas super ille facto.' Jean le Coq, *Quaestiones*, 112.

[181] Bartlett, *Trial*, 126. Vale, Chivalry, 175 and Henri Morel 'la fin du duel judiciaire' in *Revue historique de droit français et étranger 42* (Paris 1964), 574-639.

[182] Claude Gaier, *Armes et combats dans l'univers medieval* II (Brussels 2004), 209. Spierenburg, *Murder,* 71-73.

[183] Encyclopedia Brittanica. *Duel of honour* http://www.britannica.com/EBchecked/topic/173064/duel, (accessed on 05-06-2015) and Enzyklopeadie der Neuzeit. *Duell.* http://referenceworks.brillonline.com/entries/enzyklopaedie-der-neuzeit/duell-a0817000?s.num=0&s.f.s2_parent=s.f.book.enzyklopaedie-der-neuzeit&s.q=duell (accessed on 05-06-2015).

[184] De Waardt, Hans, 'Inleiding: naar een geschiedenis van de eer', in: *Leidschrift 12:2* (1996): 7-18, 7.

female shame introduced by anthropologists such as Julian Pitt-Rivers in the 1960's.[185] A more useful concept is provided by the term *renommée,* as presented by Claude Gauvard. According to Gauvard, honour is dependant on one's *bonne renommée*, which can be damaged by evil deeds or accusations of such actions. When accused of a crime, to save face one had to give the allegation the lie, thereby implying that those who uttered it were liars. This often led to a spiral of violence.[186] Insults and allegations could very well diminish once honour. This section assumes that duelling, both judicial and extra-judicial, could restore one's sense of honour. In essence, a duelling society requires that men who identify with it have a strong sense of honour, that offensive words or actions might diminish it, and that this sense of honour is intricately linked with violence. As such I will consider any combat a duel of honour that is fought because one person defends his honour from attack by another. Whether or not the combat is fought in secrecy is not of great importance, nor is the legal status of this combat. This definition is much broader and thus opens up new roads for this research that would otherwise have remained closed.

For instance, it becomes possible to look at earlier forms of the duel of honour. The first one we should consider is the knightly duel. Apart from the trial by combat, the tourney and the *pas d'armes*, knights could theoretically fight duels that fell outside all previously mentioned contexts. Such combats often served to affirm and increase the honour of the knights involved. The chivalric novel had made such encounters an essential part of knightly identity.[187] In the moral guidelines that are nowadays referred to as the code of chivalry, one of the highest values was prowess.[188] Honour was intricately linked to prowess, as in the chivalric view of the world prowess was the way to acquire and maintain honour. Richard Keauper states that honour drove knights to claim to have the greatest prowess and that in turn drove them to fight anyone who would dispute this claim.[189] In (grieven van Galyas). The question remains whether the world presented in the chivalric novel was in any way reflected in the real world. Most authorities on the concept of chivalry seem to agree that the chivalric novel should be read with care, but is not wholly divorced from reality.[190] Real world attitudes informed literature and literature in turn informed real world attitudes.

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185 Julian Pitt-Rivers, 'Honour and Social Status', In: J.G. Peristiany ed. *Honour and Shame: The Values of Mediterranean Society* (Chicago 1966) 9-39.
186 Claude Gauvard, *Crime, etat et societe en France à la fin du Moyen Age* II (Paris 1991), 60, 63, 76, 705. 715-717.
187 Gaier, *Armes,* 209. Richard Keauper, *Chivalry and violence in medieval europe* (Oxford 1999), 131
188 Keauper, *Chivalry*, 130.
189 Ibidem, 149.
190 Ibidem, 33.

The previously mentioned tourneys and *pas d'armes* would provide an outlet for the knightly desire to display prowess. Geoffroy de Charny advises his readers to undertake any feat of arms they can possibly find.[191] Matters of honour might actually be settled with a *pas d´armes*. At Smithfield in 1467, Antoine the bastard of Burgundy fought Anthony Woodville lord Scales. The challenge was issued a few years before and both combatants were eager to fight after so long a wait.[192] The combat itself was exceptionally hard fought and the officials had great difficulty to separate Scales and the Bastard. They tried to continue fighting even after King Edward IV had thrown his baton into the lists.[193] A similar thing happened in 1468 in Bruges, when a melee threatened to get out of hand and the duke himself had to step in to end the combats.[194] In the *pas de la fontaine des pleurs*, Jacques de Lalaing faced several opponents, among whom were Claude Pietois and Gaspard de Dourtain. These fights seemed to be *luites de mortelz ennemis* to the spectators.[195] The *pas d´armes* at times gave noblemen a way to experience their romantic ideals of combat in real life.

To what extent nobles would and could engage in single combat outside the regulated and documented realm of the *tournoy* and *pas d´armes* is difficult to establish exactly. One view among scholars is that the extra-judicial formal duel was a purely sixteenth century innovation.[196] Although this assertion is certainly backed up by historical evidence, it must be said that irregular duels had been taking place for a long time when the trial by combat disappeared. The problem here is one of data, unfortunately: there are only snippets of information to be gathered from the sources and the distinction between a duel and a simple brawl between two people is hard to make. There have been some attempts to quantify the occurrences of illegal violence in late medieval cities in Burgundy. An article by Pière Henry Bas examines remission letters for example, and compares the injuries that were described in them with the parts of the body that were targeted most often in late medieval fencing treatises.[197] Although this is essentially a valid approach, there are some possible criticisms. For instance, this approach tells us very little about the context in which the acts of violence took place. We cannot accurately tell the difference

[191] Vale, *Chivalry*, 65.
[192] Ibidem, 76-78.
[193] Ibidem.
[194] Ibidem, 86, 87.
[195] Emmerson, *Rhetoric,* 204.
[196] See for instance Spierenburg, *Murder*, 71.
[197] Piere Henry Bas, 'The true edge: a comparison between self-defence fighting from German 'fightbooks' (fechtbücher) and the reality of judicial sources (1400-1550), in: *Acta Periodica Duellatorum 1* (2013) 181-197.

between a street brawl and a duel. Exhaustively researching the occurrence of extra-judicial duelling in the late middle ages likely offers enough work to fill several academic careers, so it unfortunately has no place in this thesis. We shall have to content ourselves with a few gleanings of such duels before the sixteenth century.

There are a few interesting glimpses from Italy, for example, where the duel of honour is traditionally thought to have originated. The fencing master Fiore Furlano de'i Liberi mentions he has fought several duels with jealous competitors:

'And I was always on guard of fencing masters and their scholars. For by the envy of these masters I had to fight with sharp and pointed swords in nothing but an arming doublet and a pair of chamois gloves, all because I did not want to practice with them and wanted to share nothing of my art. And this has happened five times. And five times I had to fight without my relatives and without my friends, having nothing to trust in except my art, in me, Fiore, and in my sword.'[198]

If he is to be believed, he personally fought five irregular duels. He much prefers fighting in the lists and encourages his students to stay away from such unsafe duels.[199] This did not mean that he encouraged his students to stay away from duels over matters of honour though. Fiore's most famous exploit was helping Galleazo da Mantova prepare for his feat of arms against the French Marshal Boucicault, who had claimed that the Italians did not know how to fight.[200] Similar martial ties between Northern Italy and France existed at this time. Philip the Bold commissioned an anonymous Milanese fencing master to write a treatise on pollaxe-fighting around the year 1400.[201] Fiore's misgivings about illegal duels without witnesses and without the knightly trappings are shared some 80 years later by fencing master Pietro Monte. In his *De singulari certamine sive dissensione*, Monte condemns those fights 'in some narrow apartment, with daggers or swords by

198 'E maximamente me ho guardado da' magistri scrimiduri e de' soi scolari. E loro per invidia zoé li magistri m'àno convidado a zugare a spade d' taglio e de punta in zuparello da armare senza altra arma salvo che un paio de guanti de camoza e tutto questo è stado perché io non ho vogliudo praticare cum loro né ho vogliudo insignare niente de mia arte. E questo accidente è stado V volte che sono stado requirido. E V volte per mio honore m'à convegnudo zugar in loghi strany senza parenti e senza amisi non abiando speranza in altro che in dio in l'arte e in mi fiore e in la mia spada.' Fiore Furlano de'i Liberi, *Fior de Bataglia*. Matt Easton and Eleonora Durban eds. http://wiktenauer.com/wiki/Fiore_de%27i_Liberi (Accessed 18-06-2015).

199 Fiore Furlano de'i Liberi, *Fior de Bataglia*. http://wiktenauer.com/wiki/Fiore_de%27i_Liberi (Accessed 18-06-2015).

200 Ibidem and Condottieri di Ventura, *Galleazzo da Mantova*. http://www.condottieridiventura.it/index.php/lettera-m/1450-galeazzo-da-mantova (Accessed 18-06-2015)

201 Wiktenauer, *La jeu de la hache.* http://wiktenauer.com/wiki/Le_Jeu_de_la_Hache_(MS_Fran%C3%A7ais_1996) (Accessed 16-06-2015).

ruffians in their shirt-sleeves'.[202] The term *in camisia* would regularly surface in 16th century discourse on duelling.[203] The knightly duel seemed to have been the morally preferable mode for most commentators. The conclusion that early duels of honour were indeed widespread is somewhat tentative, due the fragmented nature of the sources and the fact that the best documented ones are mostly Italian. More research would be required to state this with any certainty, but it seems that extra-judicial duels of honour took place at least a century before traditional historiography has assumed until now.

Honour played an important part in judicial combats. Ariella Elema has amply demonstrated this in her thesis. Matters of honour lay at the heart of many cases and recourse to judicial combat could serve to redeem one's good name[204]. The following paragraphs will examine the role of honour in some of the judicial combats described by Olivier de la Marche. Honour plays a role in almost all judicial combats in the *livre d'advis*. According to Jehan de Villiers' treatise, the defendant had to be *diffamé du faict par renommée, indices et présumpcions semblables à voir.* Simply put, that the defendants honour was called into question by the allegation was a *sine qua non* for a trial by combat to take place. In the *Livre d'advis*, there are some judicial combats in which the loss of honour seems to be the central concern, rather than the crime that prompted that loss of honour in the first place.

Olivier de la Marche mentions a quite famous *gaige de bataille* that took place between Otto of Grandson and Girart d'Estavayer in 1398. When the renowned knight Otto of Grandson fell into disfavour at the court of count Amadeus of Savoye, he resolved to make for the court of the king Richard II of England.[205] He must have felt that doing a moonlight flit was beneath him though, so he let a herald challenge anyone who would dare to face him to a *gaige de bataille*. De la Marche says the following:

'But he was such a brave knight, that he would not depart without doing his duty to defend his honour and het left certain articles, by which he offered to fight one, two or more of those who would question his honour, threw down his token and made sure that his articles and chapters were places in the hands of a herald.'[206]

202 Anglo, *Martial arts,* 277.
203 Ibidem.
204 Elema, *Trial*, passim.
205 De la Marche, 'Livre d'advis, 6.
206 'Mais il etait chevalier de si grant cueur, qu'il ne voulut point partir sans se mectre en son debvoir de son honneur

Otto of Grandson provides us with a rare and interesting case, as he challenges any who would dare question his honour to a trial by combat. Although this was not a legal course of action at this time (nor was it ever), the general consensus seems to have been that this was the honourable and therefore right thing to do.[207] When, after quite a long time, Girart d'Estavayer took up the glove to challenge the man whose squire he had been, he accused him of disloyalty and questioned his honour, adding a few more words that were apparently so offensive that De la Marche does not wish to repeat them.[208] Although the pretext for this *gaige de bataille* makes it a duel of honour in the purest sense of the word, it is treated as a judicial duel in its adjudication and execution.

Olivier de la Marche mentions two other *gaiges de bataille* that took place during the reign of Philip the Good. One of these judicial combats dealt with an unpaid ransom, while the second one concerned a treasonous act that ultimately never took place. A third *gaige de bataille* was disallowed at the last moment by Philip. This case was also concerned with an unpaid ransom. In the year that Philip gained the county of Holland, he presided over a trial by combat near 'Haustredam'. This reference is unfortunately very vague and problematic. The year could be 1428, but 1433 is just as likely as it was only then that Philip officially claimed the county.[209] 'Haustredam' presents another problem. It could refer to both Amsterdam and Rotterdam.[210] The combat was fought between a certain De Soupplenville, belonging to the Armagnac faction, and the Burgundian Henry Lallement. Soupplenville claimed that Lallement had been his prisoner of war and had failed to pay his ransom. Under the law of arms, such cases could sometimes be decided with a trial by combat.[211] Lallement denied the charge and Philip ordained that a combat was needed to sort the matter out. After a fierce fight, Lallement was vanquished.[212]

In 1431 in Arras another combat took place and this one is much better documented. Nearly 45.000 men and women came to the town to watch the *gaige de bataille*.[213] Hector de Flavy and Maillotin de Bours fought each other over a charge of treachery. De Flavy, who adhered to the

garder et deffendre, et laissa certains articles pour sa descharge, par lesquelz il offroit de combatre ung, deux ou pluseurs de ceulx qui le vouldroient charger de son honneur, jecta sons gaige, bailla ses articles et chapitres, qui furent mis es mains d'ung officier d'armes.' Ibidem, 5, 6.

207 Ibidem, 8.

208 Ibidem, 6.

209 De la Marche, 'livre d'advis', 20.

210 Wim Blockmans, *metropolen aan de Noordzee: de Geschiedenis van Nederland 1100-1560* (Amsterdam 2010), 398.

211 Maurice Keen, *The laws of war in the late middle ages* (Oxford 1965), 41.

212 Ibidem and De la Marche, 'livre d'advis', 20, 21, 46, 47.

213 Van den Neste, *Tournois*, 148.

Armagnac faction was accused by De Bours of the Burgundian party of having plotted to abduct chancellor Rolin. De Flavy would have offered him a share in the ransom if he would help him seize the chancellor. De Bours told the court he refused. Hector de Flavy on the other hand accuses Maillotin de Bours of the same crime. There was some controversy about the permissibility of a combat in this case, since the crime had ultimately not been committed. However, because of gravity of the accusation and because the accusation had seriously damaged both knights' honour, Philip allowed a combat to take place.[214] The two met in the lists in Arras. The fight when on for a long time. Impressed with their skill at arms and unwilling to let such excellent noblemen murder each other, the duke decided to stop the fight. He had the two combatants separated and ordered them to return to their lodgings. At a banquet the following day both noblemen were seated at a place of honour at the duke's table. He ordered them to swear a solemn oath never to take up arms against one another again. At the same time he pardoned both knights for the crimes they were accused of.[215] As such the *bonne renommée* of both Hector de Flavy and Maillotin de Bours was restored.

The third case is perhaps the most interesting. In the fall of the year 1428 two noblemen from the county of Holland would engage in a trial by combat. Jan van Neck accused Adriaen van Treslong of defaulting on a ransom owed to him. Treslong denied the charge and maintained that he was not taken prisoner at all. A date was therefore set for a trial by combat to settle the matter. So far the similarities with the case between Lallement and Souplenville are striking. Alarmed by local nobles who feared that the *camp* would disturb the brittle peace in Holland, Philip issued a decree to cancel it. He also mandated Johan van Vyanen end Roland van Uutkerke to mediate an accord between the two parties. The case became very problematic when the decree failed to reach Adriaen van Treslong in time. When he arrived in Bruges for the *camp,* his adversary was nowhere to be found. This caused further friction between Treslong and Neck, as the former tried to save his face with *gevairden ende singeryen*, impugning Neck's honour. From correspondence between the mediators and Philip the Good, we learn that that this awkward situation required a lot of effort to resolve. Ultimately, Jan van Neck received a *huescheyt,* a small gift or favour in exchange for dropping the charges.[216] Both Adriaen van Treslong and Jan van Neck went to great lengths to protect their good reputation and their honour.

[214] De la Marche, 'Livre d'advis', 21.
[215] Enguerrand de Monstrelet, *Chroniques* V. J.A. Buchon ed. (Paris 1826), 349.
[216] *De rechtspraak van den graaf van Holland* III. Mr. Th. H. F. van Riemsdijk ed. (Utrecht 1934), 225-233.

Almost thirty years after the publication of De la Marche's work, a trial by combat took place before Charles V. In 1522 he presided over a combat in Valadolid between two young noblemen from Zaragossa. [217] The event was recorded by an anonymous nobleman from Holland, whose account was then used by Van Alkemade in his history of the judicial combat under the counts of Holland.[218] The issue was between two young noblemen who had a row as a result of a game of dice. Pedro Torellio en Hieronimo Anka had already tried to settle the matter with an extra-judicial duel of honour, armed with just a sword and a cloak. Anka had apparently won that encounter, after which the two former friends were reconciled on the condition that neither of them would ever speak of the events of that night.[219] This was not to last, because soon the duel had become the subject of gossip. Torellio accused Anka of having broken his pledge of silence. Anka then had no other option than to give this accusation the lie. Both noblemen petitioned Charles V to hold a trial by combat, to judge the veracity of the claims made by Torellio on one hand and by Anka on the other. Charles allowed the combat to take place and ordained that it should take place on the 29th of December in Valladolid.[220] Interestingly, the ceremony follows the general guidelines of Philip IV's ordinance. It is not unthinkable that De la Marche's *livre d'advis* was used to reconstruct a custom that had slipped from living memory, as we have already seen that a copy likely resided in the ducal library that had passed to Charles.[221] Apart from the pomp and circumstance, the *gaige de bataille* between Torellio and Anka has further similarities with those described by De la Marche and other Burgundian writers. Following the example of his forbear Philip the Good, Charles uses his *baston* to end to combat and separate the fighters. Given the intensity of the fight, Charles ruled that honour was satisfied and that Torellio and Anka should be once more reconciled.[222] Was Charles deliberately trying to emulate Philip the Good's resolution of the *gaige de bataille* between Hector de Flavy and Maillotin de Bours in Arras in 1431? This case is particularly interesting, because like the duel between Otto of Grandson and Girart d'estavayer, this is a duel of honour that is governed by the rules and regulations, by the pomp and circumstance of a *gaige de bataille*.

In France in the early 16th century, we see a very similar development. While Francis I was

217 Van Alkemade, *Behandelinge,* 219, 223.
218 Ibidem.
219 Ibidem, 221.
220 Van Alkemade, *Behandelinge*, 223.
221 Ibidem, 223-230.
222 Ibidem, 232.

vehemently opposed to the trial by combat and duelling in general, his son Henry II was much more inclined to allow his nobles to settle their differences *en champ clos*.[223] Although many quarrelling nobles did not ultimately face each other on the field, there were at least two well known *gaiges de bataille* that were followed through to the end. The first was the famous combat between La Chataigneraie and Jarnac in 1547, which gave rise to the expression *coup de Jarnac*, which endures to this day. However, the most remarkable about this combat is not that is was concluded with a foul trick, but that it was treated as a *gaige de bataille* while having the characteristics of a duel of honour.[224] Although the cases revolved around an accusation of incest, the ultimate issue over which La Chataigneraie and Jarnac fought was the fact that both accused the other of lying about it. Similarly in the second *gaige de bataille*, which took place two years later, Daguerre and Fendilles did not cross their swords over the insult which started the quarrel between the two noblemen. The *point d'honneur* in this case was the fact that Fendilles had given Daguerre the lie and that only a duel could wipe away the indelible stain on his honour.[225] Although this episodic revival of the *gaige de bataille* was short lived, it certainly has many similarities with the upcoming new discourse on duelling that started spreading from Italy from the early 16th century and possibly earlier.[226] The trial by combat was no longer a real trial at this point. Instead it had become a form of officially sanctioned duel of honour.

Honour played a vitally important role in trial by combat. It was only allowed in cases that touched upon the defendant's honour. Furthermore, in many of the combats described by De la Marche, honour is the driving force for either the defendant, the claimant or both. The later judicial duels that took place before Charles V and the French king Henri II were barely disguised and judicially sanctioned duels of honour. We can therefore conclude that the *gaige de bataille* moved ever further away from its judicial origins. Most of the combats described in the *Livre d'advis* did not serve to determine which side in a legal suit was in the right. Rather the duels functioned to maintain or restore the combatant's honour and to decide which of the two would have to bear the legal consequences of the duel. In this respect, the *gaige de bataille* changed from a *Beweismittel* to an *Entscheidungsmittel*.
We have already noted that trial by combat underwent some drastic changes between the

223 Morel, 'Fin', 578.
224 Ibidem, 585, 586.
225 Ibidem, 582
226 Ibidem, 582, 590, 591, 606.

ordinance of Philip IV and the moment of its eventual disappearance. So far, this thesis has looked at these changes from the perspective of its disappearance from legal process and of the increasing role of honour. There is one final aspect to the *gaige de bataille* as it is described by Olivier de la Marche: the role of the prince. Previous chapters have already described the importance of the prince as judge. A repetition of that observation would be quite unnecessary. It would be better to explore the various ways in which princes have tried to use the *gaige de bataille* to their benefit, in the capacity of judge, or indeed as combatants, or sought to gain a tighter control over its use. The *livre de l'advis* provides us with more than a few interesting cases of rulers who employed the *gaige de bataille* in one way or another.

We would do well to remember, however, that the fact that the Burgundian dukes sought to use trial by combat to their advantage is not an isolated phenomenon. Rulers have been intimately involved with the adjudication and conclusion of the *duellum* since its earliest beginnings, as we have seen in the previous chapters. The dukes of Burgundy took measures that would ultimately lead to a more centralised state.[227] This had consequences for the *gaige de bataille* as rulers on one hand tried to extend their control over the practice and effectively limit its use. Other monarchs had also tried to employ the trial by combat as a way to strengthen and centralise their power. In the county of Holland, for example, judicial combat became an effective means to centralise the exercise of justice under the counts of the Bavarian dynasty. In accordance with a privilege granted by countess Margaretha in 1346, no man could be forced to face a trial by combat.[228] This did not stop the counts from maintaining quite a large staff of champions and fencing masters, for the lawful refusal to be tried by battle in cases of murder or breach of peace did mean that the defendant had to submit to a procedure called *een waarheid bezitten.* This meant that the case was to be ultimately tried by the court in The Hague.[229] This measure freed Hollanders from the obligation to submit to a trial by combat , while at the same time strengthening central judicial authority. It should be noted though, that when faced with the choice between either a trial by combat or being judged by the central court, most defendants chose a third way by coming to an amiable settlement with the local bailiff.[230] The centralising effect of this measure should not be overstated.

[227] Blockmans, *metropolen*, 472, 480 and Robert Stein, *De Hertog en zijn staten: de eenwording van de Bourgondische Nerderlanden, ca. 1380-1480* (Hilversum 2014), 14-15.
[228] Molhuijsen, 'Vuurproef', 166, 167.
[229] Ibidem, 167.
[230] Ibidem.

More relevant to the *livre de l'advis* is the ordinance of Philip IV from the year 1306. In many ways, this document has set the stage for the *gaige de bataille* in subsequent centuries. One innovation of the ordinance that is especially important is the increasing reliance on the king as a judge. Although technically, lower jurisdictions could still employ the judicial duel, in effect it was almost always referred to the parliament of Paris and thus to the king.[231] Whereas judicial combat used to be a local affair, during the 14th century it became more and more a form of centralised justice. Furthermore the presence of the king became increasingly important. When Jean de Carrouges was to face Jacques le Gris in the *champs clos*, the combat had to be postponed for a month to allow the king to be present at the combat.[232]

Being a shrewd politician is perhaps one of the most defining character traits of Philip the Good. It should therefore come as no surprise that he managed to use the trial by combat for political gain on several occasions. As we have already seen, Philip was present at a number of judicial combats during his reign. In 1428 and 1431, he presided over two combats between noblemen.[233] The first *gaige de bataille* followed a dispute over ransom, while the second dealt with a case of supposed high treason: the abduction of chancellor Rolin that ultimately never took place. Both the nature of the cases and the political climate in which they came before the duke were significant to the question why Philip decided to settle these matters by means of a judicial duel.

In both cases, the combat took place between a member of the French (Armagnac) and a member of the Burgundian party.[234] At this time, when the enmity between the two branches of the house of Valois would occasionally erupt into open violent conflict, the territory that fell within the jurisdiction of the Parliament of Paris was divided between the dauphin Charles VII, the English infant king Henry VI and Philip the Good. Furthermore, the dauphin did not control Paris and could therefore not preside over the Parliament.[235] Cases that might have been brought before the king in less troubled times now came before lower jurisdictions, such as the Court of Burgundy. Souplenville came to Burgundy to challenge Lallemant, quite simply because taking the matter

231 Chabas, *Duel*, 185, 186.
232 Froissart, *Chroniques* XII, 35.
233 De la Marche, 'livre d'advis', 20, 21.
234 Ibidem.
235 Lexikon des Mittelalters, *Charles VII.* http://apps.brepolis.net.ezproxy.leidenuniv.nl:2048/lexiema/test/Default2.aspx (accessed on 10-05-2015).

elsewhere would not likely have had any result. At the same time, usurping the king's authority over cases that would normally come before the Parliament was something that suited Philip very well at this time. Although it would be some decades before a Burgundian duke would start dreaming of ruling a kingdom separate from France, Philip would not have minded expanding his authority in this way.[236] Furthermore, the expertise needed to conduct a trial by combat properly was demonstrably available at Philip's court, as his chamberlain Jehan de Villiers, lord of L'Isle-Adam had written a treatise on the subject on his behalf.[237] We can speculate that Philip commissioned the treatise in order to pursue his interest in conducting judicial combats at his court. Unfortunately, to claim this with any certainty would require more research. It is quite certain that L'Isle-Adam was familiar with ordinances on the *gaige de bataille* and that Philip likely used his expertise to conduct the two combats that took place with him as prince and judge.[238] Interestingly, after the diplomatic tables were turned in 1435 with the Treaty of Arras, no more judicial combats took place before Philip the Good. It seems that the period between 1422 and 1435 offered Philip a chance to increase his prestige as ruler at the expense of the French dauphin by presiding over a *gaige de bataille*. During these years, Philip was in a position where he had both the ambition and the ability to do so.

On the other hand, we might suspect that when a *gaige de bataille* came before a lower jurisdiction, the duke might perceive it as a threat to his authority. We unfortunately have very little information about demands for trial by combat from Burgundian lands that were turned down, apart from the combat between Adriaen van Treslong versus Jan van Neck that was disallowed on the request of the local nobility, the only source on this subject deal with the combat that took place in 1455 in Valenciennes.[239] Mahiot Coquel and Jacotin Plouvier. Both men were burghers from Tournai. Coquel got involved in a love affair with a local girl. Her father did not approve of Coquel's intention to marry her and the whole thing came to a head one day at the fish market in the city centre of Tournai. During a chance encounter, Mahiot Coquel murdered the father out of spite for his refusal to marry his daughter.[240] Leaving his former life behind, Coquel fled Tournai and came to the well known sanctuary Valenciennes. According to ancient custom, those guilty of manslaughter could come to the town and remain safe beyond the reach of any

[236] Blockmans, *Metropolen,* 451 and Stein*, Hertog*, 10.
[237] Bernard Prost, 'avant propos', viii-x.
[238] De la Marche*,* 'Livre d'advis', 28-41.
[239] *Rechtspraak* III, 225-233.
[240] Neumann, *Zweikampf,* 62.

jurisdiction trying to convict them. There was a catch though. The asylum would only be granted if the fugitive would swear an oath that the deed had been done in self defence. If anyone at any time would maintain that it was not self defence, a *gaige de bataille* would follow to prove who was in the right.[241] We have seen that burghers would only undergo a trial by combat in exceptional cases. It did survive in some ancient and immutable customs and the events in Valenciennes in 1455 are a prime example.

As it happened, someone did indeed step forth to challenge Coquel's claim that he had killed in self-defence. Jacotin Plouvier, a relative of the murdered man, ran into Coquel on the streets of Valenciennes. According to Mathieu d'Escouchy, Plouvier started to vehemently threaten Coquel. Fearing for his life, Coquel in turn went to the town's magistrates to complain of Plouvier's aggression.[242] This put the magistrates in an awkward position. Apparently it did not happen often that anyone would challenge the legitimacy of an asylum, once granted. Now that it had happened, the council had little choice but to call Plouvier to court to answer for his threats, otherwise the municipal franchises would become completely worthless. This meant that the council would be favouring Coquel from the onset, as anything that would prove that his asylum was granted falsely would reflect badly on the town's privileges.[243]

When *ceux de la loi,* the magistrates had opened the session, Plouvier stated his qualms with Coquel and with the fact that he was given asylum in Valenciennes. He stated that Coquel had not comitted the murder *de beau faict* but *par aguet*, that is to say, not in self-defence but in ambush. The judge then warned Plouvier that he could not maintain this claim, unless he was prepared to back it up *a l'escu et au baston*. Plouvier remained undeterred and threw down his token, probably a glove, and formally repeated his charges. As it lay on the floor, Coquel tried to talk his way out of the trial by combat, but it was to no avail. Ultimately, Coquel had to pick up the token or lose the case and be tried for murder.[244] He chose what seemed to offer him the best chance of success: the trial by combat. After the trial had been adjudicated in this way, both Coquel and Plouvier were taken into custody to await the day of the *gaige de bataille*. The city council favoured Coquel, as he was perceived to fight for both his own safety and the town's franchises.[245] As Plouvier had first

[241] Ibidem, 63.
[242] Neumann, *Zweikampf,* 63.
[243] Chastellain, *œuvres* III, 42, 43.
[244] Neumann, *Zweikampf,* 63.
[245] Ibidem and De la Marche, *memoires* II, 404.

caused trouble by threatening Coquel and secondly by insisting on a trial by combat, the magistrates saw him as a serious threat to their privileges. The city therefore agreed to cover all expenses made by Coquel, even going as far as paying for a fencing master to prepare him for the trial.[246]

As we have seen above, this particular *gaige de bataille* took place because of the tenacity of the claimant and the precarious political climate of the 1450's. Especially this political climate is of interest here, as this case touched upon the duke's authority as much as on that of the burghers of Valenciennes. The men of the law, or town magistrates had notified the duke that a trial by combat was to take place in Valenciennes. They realised that they were treading on thin ice and feared for the reaction of the ducal authorities, should they have conducted the *gaige de bataille* outside their knowledge.[247]

The magistrates' fears became a reality when word of the combat reached Charles the Bold, count of Charolais. Upon hearing from it, he tried to stop the combat from taking place. His father Philip the Good intervened and ordained that the combat should be allowed to take place according to the towns customs.[248] There was the Ghent revolt to consider. As mentioned above, two years previously it had taken Philip all the force he could muster to strike down that revolt. It had come at a high cost to both the town and the nobility: the losses were high. The peace that had been made after Ghent had submitted and was pardoned by the Duke, was a watchful one. The Ghentenaars were resentful of the fact that their privileges had been culled. Rubbing another town the wrong way with regard to its liberties would not be a wise move at that time. Philip recognised that a compromise had to be made. The combat could take place according to the towns own customs and judged by the magistrates alone. Philip and his court would be present though, the security of the lists would be partly provided by noblemen and after the *gaige de bataille* was finished, two nobles would also fight a *pas d'armes.*[249]

Philip's involvement with trial by combat did not contain itself to the above mentioned cases though. On two occasions, his involvement was far more direct as he was to be a combatant in a

246 Neumann, *Zweikampf,* 63.
247 Ludovic Nys, A. Salamagne, *Valenciennes aux XIVe et XVe siècles. Art et histoire* (Valenciennes 1996), 84.
248 Neumann, *Zweikampf,* 63, 64.
249 De la Marche*, Memoires* II, 404, 406, 407.

gaige de bataille against another ruler. The first time around, in 1425, Philip challenged Humphrey of Gloucester to fight a *gaige de bataille* to settle the conflict that was sparked by their claims on the counties Holland, Zeeland and Hainault.[250] The second challenge issued by Philip was addressed to William of Saxony.[251] It is a well-known trope among medievalists that such combats between rulers ultimately never took place. Huizinga mentions this in *Homo Ludens:*

'When in the late Middle Ages we see a solemn and highly organised single combat, by which two kings or monarchs will settle their quarrel, then the theme 'pour éviter effusion de sang chrestien et la destruction du peuple' stands out. And yet the ancient image of a legal suit that is lawfully settled in this way, is reflected in this custom that is clung on to. For it had become a display of international pomp and vain ceremony, but the ancient form and the seriousness with which it is undertaken, betray its origins in ancient and sacred customs.' [252]

In the past decades, there have been some papers on these *Fürstenzweikämpfe* though, that seem to indicate that they were more than a royal folly or a yearning for more chivalrous times. Werner Goez gives three reasons for the prevalence of challenges for judicial combats among the crowned heads of Europe: First, there is the literary example. In chansons de gestes, Arthurian romances and embellished histories, the judicial combat between rulers often plays a central role. A second reason is the merging of kingship and knighthood. Again a certain influence of literature might be at work here. Finally, the idea that a ruler was a human manifestation of his lands, a *pars pro toto* as it were, made it easy to equate a large-scale war with a duel.[253] According to Birgit Emich, the *Fürstenzweikampf* is a prime example of *körperpolitik,* or body politics.[254] This idea sees the physical body of a ruler as an object that can be applied to engage in politics. Holding a king hostage is one example, a ruler pitting his body against that of another ruler to end a war is another.[255] Central to this idea is that a ruler's body might achieve much more than that of one of his subjects. A lowborn soldier does not decide the fate of nations when he fights in single combat

[250] De la Marche, 'livre d'advis', 22.
[251] Ibidem.
[252] 'Wanneer in de latere Middeleeuwen telkens sprake is van een luisterrijk en plechtig in alle bijzonderheden reeds voorbereid tweegevecht, waardoor twee koningen of vorsten hun 'querelle' zullen gaan beslechten, dan staat het motief 'pour éviter effusion de sang chrestien et la destruction du peuple' uitdrukkelijk voorop. Toch ligt de oude voorstelling van een rechtszaak, die op deze wijze wettig wordt beslist, nog wel degelijk in de zoo taai vastgehouden zede opgesloten. Het was reeds lang een internationale fraaiigheid, een ijdel ceremonieel geworden, maar de gehechtheid aan dien vorm, en de ernst, waarmee men hem pleegt, verraden nog de herkomst uit oude heilige gebruiken.' Huizinga, *Homo Ludens*, 121.
[253] Werner Goez, 'Über Fürstenzweikämpfe im spätmittelalter', in: *Archiv für Kulturgeschichte 49* (1967), 135-163, passim.
[254] Emich, 'Körper-Politik', 203, 204.
[255] Ibidem.

or is taken as prisoner of war. An important nobleman might. A king certainly does.

Emich uses the concept of *Körperpolitik* to demonstrate that the challenges issued by Emperor Charles V not only served a very clear political purpose, but that they succeeded to a remarkable degree at furthering the political processes of peace and war.[256] In her case study, Emich demonstrates that Charles used the challenges he issued to Francis to mobilize the body politic of his empire and more specifically the Spanish Cortes. Showing his determination to risk life and limbs for the common good, he managed to convince the Cortes to support his endeavour together with an eventual military campaign, should this prove necessary.[257] The French Estates however, had a more modern Italianate conception of the duel in mind, when they forbade Francis from taking up the challenge. In their view, the kings body could not simply be equated with the political body of the state. The matter between Charles and Francis was a duel of honour to them and not a *gaige de bataille* of two political bodies.[258] In this sense, the challenges issued by Charles had an important effect, as they strengthened support for Charles, whilst weakening Francis'.

Using the concept of *Körperpolitik*, we can now look at the challenges issued by Philip the Good and ask what they ultimately accomplished. Let us start by looking at the conflict between Philip and Humphrey of Gloucester over the rights to the counties of Holland, Zeeland, Hainault and the siegneurie of Friesland. In its roots, the conflict was between two noblemen from Holland.[259] It became much more complicated when John IV of Brabant called in the help of Philip and Jacqueline of Bavaria remarried and took the duke of Gloucester, Humphrey Lancaster for her new husband.[260] Although more is to be said about this many-sided conflict, from the viewpoint of the trial by combat it becomes interesting from the moment that Humphrey sends a letter to Philip in the hope of dissuading him from mounting a military campaign to Holland. Therein, he presents some arguments to change Philips mind about the campaign and ultimately about his support to John:

'For this reason, high and powerful prince, my beloved cousin, I pray that you consider well what has been said above, that is to say I requested you to contemplate the refusal of the other party [to come to a treaty], our close

256 Emich, 'Körper-Politik', 202.
257 Ibidem, 210.
258 Emich, 'Körper-Politik', 210.
259 Blockmans, *Metropolen*, 391,.
260 Ibidem, 394.

family ties, the peace treaty which I have not broken by doing anything against you and the the aforementioned actions of my adversaries.' [261]

In his reply, Philip addresses some of these arguments. According to Philip, John's refusal to come to a treaty has to with the fact Humphrey is trying to gain possession of Jaqueline's lands, while the papal curia has not yet decided on the legitimacy of the annulment of her marriage to Jan.[262] Although Humphrey might not have personally affronted Philip, he feels that the trespasses against John of Brabant counted as an affront to himself. Philip has a problem though: the Anglo-Burgundian alliance. There was a serious threat of an armed conflict between Philip and Humphrey, a great nobleman of England and brother of the duke of Bedford, who acted as regent to the young king Henry VI at this time. That this endangered the alliance speaks for itself. Philip's response is to use his body as a political tool. He gives the duke of Gloucester an ultimatum: either he should take back those words and claims that are an affront to Philips honour, or he must be prepared to defend them with his body.[263] Philip also proposes several potential judges to settle the matter. One of these is the John, duke of Bedford, who would be an excellent mediator in this case between his brother and an important ally.[264] In a further letter, Humphrey of Gloucester accepts the challenge and preparations are subsequently made. In 1425, the matter came before Bedford, who took council in Paris. He and his councillors concluded that there was no judicial ground for the *gaige de bataille* to take place.[265] Meanwhile, both Humphrey of Gloucester and Philip of Burgundy had already mobilised an army to seize towns in Holland. As an attempt to prevent further violence, the proposed combat between the two dukes failed to achieve its goal. The combat brought matters before a judge with authority however, and even though the duke of Bedford did not allow the combat to take place, he returned to England to have a word with his brother about his campaign in Holland:

'But the aforementioned duke [Bedford] first passed through and stayed at Dourlans and Saint-Pol, and went through Therouanne to Calais and England, to punish and correct his brother Honfroy, duke of Gloucester for the

[261] 'Pour ce haut et puissant prince,mon très cheret très aimé cousin je vous prie très à certes que ce qui dessus est dit, vous veuillez bien considérer: c'està savoire que j'ai fait à votre contemplationet requête, le refus de l'autre partie laprochaineté de lignage, le traité de paix que n'ai fait à l'encontre d'aucune chose du votre, et lesdits entreprises de mes adversaires.' Monstrelet, *Chroniques* V, 100.

[262] Ibidem, 103.

[263] Ibidem, 104.

[264] Ibidem.

[265] Ibidem, 138.

actions he had undertaken against the duke of Burgundy.' [266]

The second case is more problematic. The situation was quite similar to the one described above, with a territorial dispute giving rise to a full-scale war between two powerful rulers who decided to back one side or another. The duchess of Luxembourg, Elisabeth of Görlitz had ceded her territories to William of Saxony in 1439, but the Saxon's compliance with the terms of the deal left much to be desired. Elisabeth subsequently turned to her uncle Philip of Burgundy, whom she appointed as heir in 1442. This set off a war in Luxembourg, which was fought between the local Saxon forces, led by Ernest, count of Gleichen and the Burgundian forces who were spearheaded by Cornille, a bastard son of Philip.[267]

When the war effort of both sides seemed to have very little effect in settling the conflict in favour of one side or the other, a conference was called up in October 1443 in Florange.[268] De la Marche in his mémoires records an oration by Philip and the reply of the Saxon representatives. In short, Philip declined the Saxons' offer to take his army to Saxony to fight a conclusive battle there, on account of the great distance. He makes a counter offer to undergo a similar trial by battle in Luxembourg. Alternatively, he challenges his opponent William in person to a *gaige de bataille* in order to decide who has the best rights to the duchy.[269] The Saxon emissaries respond that their lord is too young to undertake such a combat, as he is only 18 years old at that time. According to De la Marche, the conference had very little further effect and the war continued as before.[270] A further attempt was made to hasten the resolution of the conflict, when the herald Le Quesnoy went to the count of Gleichen to offer him the chance to fight Jehan d'Estampes, Cornille the bastard of Burgundy, Jacques de Lalaing, Guillaume de Vauldrey or Hervé de Meriadet.[271] The count refused the offer as best as he could. His reputation as an honourable knight was above reproach, so a refusal to duel would not ruin his reputation.[272] The war for the duchy would ultimately be settled by the capture of the city of Luxembourg through a ruse on the night of the

266 'Mais ledit duc par avant étoit passé et logé à Dourlans, et de la à Saint-Pol, et par Therrouenne s'en alla à Calais, et de là en Engleterre, pour blamer et corriger son frère Honfroy, duc de Glocestre, des enterprises qu'il avoit faites contre le duc de Bourgogne.' Ibidem, 141.
267 De la Marche, *Memoires* II*,* 2-4.
268 Ibidem, 23.
269 Ibidem, 27.
270 Ibidem, 29.
271 Ibidem, 34.
272 Ibidem.

21st of November.[273] It is difficult to say what the challenge issued by Philip achieved exactly, because in this case, neither primary sources nor modern scholarship points to any tangible effect. We can say, however that the Saxon party in this conflict took great pains to avert the challenges issued by the Burgundians. Doing so limited the possibilities for diplomacy and mediation by the Holy Roman Emperor and made sure the conflict would continue as an open war, where the Saxon party had a distinct advantage with winter closing in.[274] With the road of the political duel closed, the Burgundians had to make a military move. Luckily for them, their surprise assault on Luxembourg achieved a clear result where Philip's challenges had failed.

It seems quite clear that rulers had a vested interest in the *gaige de bataille*. Using Philip the Good as a case study reveals that his involvement with single combat consisted of many different aspects. When the chance presented itself, Philip tried to increase his prestige at the expense of his rival the dauphin of France. In another case, he reluctantly agreed to let Valenciennes stage a trial by combat when the town's privileges called for it. As such Philip only allowed a *gaige de bataille* as long as it did not undermine his own authority. As a combatant himself, he challenged his opponents in a territorial quarrel on two occasions. Rather than being a prime example of Huizinga's 'international pomp and vain ceremony', these combats likely served a political purpose. They were a deeply political act. Philip was very well aware of how to best make use of them.

Conclusion

Trial by combat underwent serious changes between the ordinance of Philip IV of France and the writing of the *Livre d'advis*. The first conclusion would be that the number of combats that was truly judicial, is quite low. Whenever a *gaige de bataille* took place that fell squarely within the boundaries of a judicial procedure, it was often a last resort: a way for claimants to circumvent the regular procedures when the cards were stacked against them. Even in such cases, the combatants went to great lengths to press home any possible advantage. Quite interestingly, the *gaige de bataille* increasingly became a matter of honour. Although honour seems to have played a part in most judicial combats, the amount of combats that revolved around the claimant's besmirched honour is remarkably high during the fifteenth century. Accusations of a crime could damage one's *bonne renommée* and such accusations had to be given the lie. Trial by combat was one way to

[273] Ibidem and Fritz Richter, *Der Luxemburger Erbfolgestreit in den Jahren 1438-1443* (Trier 1889), 65, 66.
[274] Ibidem.

solve such a situation. Although normative sources thought of the *gaige de bataille* as a *Beweismittel*, in reality it was becoming more of an *Entscheidungsmittel*. After the publication of the *livre d'advis*, it likely played a part in continuing and fostering this development. Lastly, the *gaige de bataille* was often a highly political affair. Some monarchs sought to win prestige or undermine a rival by presiding over a judicial combat. In other cases, issuing a challenge to another ruler was not only a highly chivalrous act that was approved of in court culture, but also a very political move that on some occasions could serve to resolve a dispute between rulers. The combats never took place, of course, but often they opened the way for a diplomatic solution. These combats followed the discourse and rhetoric of the *gaige de bataille,* but often served to force a break in political stalemates. The lasting popularity of the *Fürstenzweikampf* is another indication that the trial by combat had become more of an *Entscheidungsmittel* than a *Beweismittel.*

Conclusion

The *Livre d'advis* provides a lot of information on the trial by combat during the fifteenth century. As such this thesis has used the treatise as its main source, to help answer the question why people engaged in trial by combat in the Burgundian Netherlands. Firstly, the matter of the law codes and regulations for the *gaige de bataille* have been addressed, followed by a chapter on the rhetoric and discourse on trial by combat in works by De la Marche and other writers at the Burgundian court. The final chapter has demonstrated that the trials by combat held before the dukes of Burgundy rarely lived up to the norms of legal texts and treatises.

It is important to consider the dissemination of the *Livre d'advis*. It was primarily written for a courtly audience in general and for Philip the Fair in particular. It targets the 'prince and judge', which would be Philip himself in most cases. The treatise is also aimed at others, who might be called upon to judge a theoretical trial by combat and at those courtiers who might take the risk and undertake a *gaige de bataille* themselves. The treatise was circulated to some extent within the Burgundian court, as Philip held a copy in the ducal library. Additionally, it is highly likely that other courtiers like Philip of Cleves owned a copy.

Although a trial by combat had become an increasingly rare occurrence at the start of the fifteenth century, it was still a legal possibility in most Burgundian territories. Despite vehement opposition from the clergy and the burghers of the many cities in the Burgundian Netherlands, trial by combat was still a theoretical possibility in many legal cases. At the same time, the Burgundian court adhered to the rules and regulations put forth by ordinance that was published by the French king Philip IV in 1306. This ordinance was a concession to those French nobles who saw the *gaige de bataille* as one of their noble privileges. Through the treatise written by Jehan de Villiers, lord of l'Isle-Adam, the 1306 ordinance would become the standard set of rules and regulations that the Burgundian dukes used when judging a trial by combat. It is to this treatise that De la Marche looks when trying to provide the *prince et juge* with a practical framework to properly coordinate a *gaige de bataille* when necessary. These points considered it does not seem so strange that De la Marche and several others devoted a treatise to the trial by combat at the end of the fifteenth century. Although it had become a rare event, the *gaige de bataille* was still a theoretical possibility. With the last real *gaige de bataille* some decades in the past, De la March thought it

worthwhile to devote a treatise to the subject.

The discourse surrounding the *gaige de bataille* as presented in the *Livre d'advis* is quite interesting. The treatise reflects the attitudes of the nobility to violence in several ways. We can also get a few gleanings of De la Marche's personal opinion on the *gaige de bataille* from several fragments of the treatise. The *Livre d'advis* reflects the discourse of violence among the Burgundian nobility in the sense that it feels that violence should be ordered and conducted by nobles. De la Marche speaks favourably of the *Pas d'armes* and disapproves of the *gaige de bataille*. When a *pas d'armes* becomes a *lute de mortelz enemis* however, the distinction between *pas d'armes* and *gaige de bataille* fades. Violence should also be a strictly noble affair. Along with other chroniclers of the Burgundian court at that time, De la Marche writes disapprovingly of the *gaige de bataille* that took place between two commoners in Valenciennes in 1455. To De la Marche, the whole affair is a disgraceful inversion of noble attitudes to combat. Finally, De la Marche provides some pieces of advice to his audience. From such remarks we may conclude that De la Marche may have been opposed to the custom, but saw its merits in a select few cases. When the pursuit of justice was impossible without resorting to the *gaige de bataille*, its undertaking was an acceptable evil. Regardless, it should not lightly be undertaken, the combatants should fight in a noble manner and with a 'prince and judge' present to prevent unnecessary bloodshed.

Although in the decades preceding the writing of the *Livre d'advis* no officially recorded judicial duels took place*,* the treatise provides us with valuable information on those duels that took place during the reigns of the early Valois dukes of Burgundy. Especially the exploits of Philip the Good receive a lot of attention. If we combine this information with some accounts of *gaiges de bataille* that took place after De la Marche wrote the *Livre d'advis*, we can see a few clear trends. Primarily, the *gaige de bataille* drifted ever further away from its judicial roots. The ordinance of 1306 had limited the cases in which a trail by combats was allowed to those that could entail the death penalty for the defendant. This raised the stakes of a *gaige de bataille* considerably and as such, it was rarely undertaken. De la Marche gives us a few examples, however, where the claimants had no option to pursue their case other than to undertake a *gaige de bataille*. Most other judicial combats described by De la Marche could be classed as duels of honour. The combat between Otto of Grandson and Girart d'Estavayer is perhaps the most striking example. When looking at later

gaiges de bataille, this increased emphasis on the honour of the combatants seems to have become the norm, as the cases that were judged by Philip the Good illustrate. In the early sixteenth century judicial combat had become an officially sanctioned and regulated duel of honour. By this time, the *gaige de bataille* is no longer in any way a *Beweismittel*. Finally, De la Marche devotes some space in his treatise to princely involvement with the trial by combat. Philip the Good is a great case study for the way in which rulers sought to use the *gaige de bataille* to their benefit. On one hand Philip judged judicial combats as a way to undermine the authority of the French king, while at the same time trying to limit judicial combats that would undermine his own. The *gaige de bataille*, when undertaken by the duke himself, would prove to be an effective diplomatic strategy in some cases. In others however, it remained largely ineffectual. The lasting popularity of this aspect of the *gaige de bataille* seems to suggest that such duels had become a means to settle a dispute, rather than a legal custom. As such, we may conclude that the *gaige de bataille* had drifted quite far from its judicial roots. At best, a trial was held for the purpose of a duel, rather than the other way around.

So why did people undergo judicial duels in the fifteenth century? The legal codes did very little to stop two litigants who were willing to fight. Aristocratic discourse on violence dictated that trial by combat was to be a noble affair, only to be employed as a last resort and rarely to end in lethal violence. The *Livre d'advis* was not only written to codify the disappearing knowledge of trial by combat, but also to discourage any type of duel that did not fall within this discursive framework. The reality was quite different however. Combatants were cynical about the judgement of God: they would rather seek every possible advantage to favourably settle their legal suits. Honour seems to have been an important motivation for undertaking a *gaige de bataille*. Similarly, monarchs used the rhetoric of the trial by combat their advantage in their territorial disputes for much the same reasons as individuals would in their legal suits. It is somewhat ironic that the *Livre d'advis* seems to have had the opposite effect to what De la Marche intended. Ultimately it may have been understood as a didactic and cautionary work by Philip the Fair and his court. However, the one documented case in which one of Philips descendants presided over a trial by combat was an obvious duel of honour, which was merely legitimised by bringing it before a tribunal headed by Emperor Charles V. It is almost symptomatic of the latter days of the judicial duel. Rather than a trial by combat, it had become a combat by trial.

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