5. Proposing the Ordeal and Avoiding It: Strategy and Power in Western French Litigation, 1050–1110

Every strategy of confrontation dreams of becoming a power relationship.

---Michel Foucault

Introduction

In around 1060, a francus called Bunghole became entangled in a lawsuit with the abbey of Saint Vincent of Le Mans when, with the support of his lord, Richard of Loupflouère, he challenged the monks' right to a tithe in the village of Puizieux. In response, abbot Hugh arranged a meeting to discuss the dispute in the court of count Roger of Montgomery at Laerizon. There, in the count's absence, Bunghole offered to support his challenge against the monks by undergoing the ordeal of hot iron. On the barons' advice, abbot Hugo accepted the offer. But when he and the barons returned to Laerizon at the time appointed for the ordeal, both Bunghole and his lord Richard were absent. The barons, judging Bunghole's challenge unjust, decided that the disputed tithe "belonged fully and quietly to Saint Vincent." Even so, when Richard later quitclaimed the same tithe to the abbey, the monks reciprocated by including him in their prayers.

Bunghole's decision to avoid an ordeal was not unusual. In one way.

2. Pertinera.
3. P 769 (1056–68). For a key to the abbreviations used in the notes, see the end of this essay.
4. The following modern discussions of trial by ordeal are particularly important for the present argument: even though none of them focuses on cancelled ordeal cases: Dominique Barthélémy, "Diversité des ordalies médiévales," Revue Historique 230 (1988), 3–24; Barthélémy, "Présence de l'aven dans le déroulement des ordalies (10e–12e siècles)," L'aven:
or another, participants in recorded lawsuits involving western French monasteries between 1090 and 1149 usually avoided the unilateral ordeal of hot iron or boiling water, as well as the bilateral ordeal of battle, and they commonly did so even after an ordeal had been proposed.⁸ The reason, however, for examining cancelled ordeals—that is, ordeals proposed but then avoided—is not just that they evidently outnumbered completed ones, but also that they sometimes illuminate distinctive political strategies of confrontation in late eleventh-century litigation and, by extension, the micro-economies of shifting power relations that underlie court hearings.⁹

Treating the study of medieval politics broadly as the study of power relations, I follow Foucault in assuming that “the analysis of power relations cannot be reduced to the study of a series of institutions, not even to the study of all those institutions which would merit the name ‘political.’”¹⁰ Instead, if “power relations are rooted deep in the social nexus” and are not simply “reconstituted above society as a supplementary structure,”¹¹ then the study of them should not only cover the domain of politics, as conventionally defined, but should also focus, as Foucault argues, on many


After the present article was completed, the cases discussed from the Vendômois (from MB, MV, and TV) were treated more fully by Dominique Barthélémy, whose thorough, hard study of dispute-processing in the eleventh- and twelfth-century Vendômois supplements my own. See La société dans le comté de Vendôme dans le comté de Vendôme au XIIe siècle (Paris, 1993), pp. 625–626.

³. Between 1040 and 1149, for example, proposals to hold ordeals are mentioned only about 50 times in almost 500 disputes recorded in A, C, MB, MP, MS, MV, N, TV, or V. Although there are significant differences between unilateral and bilateral ordeals (Barlett, Trial, pp. 2, 113–121 and among different kinds of unilateral ordeals (Barthélémy, “Diversité des ordelles”), different kinds of ordeals are still worth studying concurrently for certain purposes (Hyams, “Trial,” pp. 92–93).


⁶. “The Subject and Power.”
could be started in different ways at different junctures of a lawsuit and could bring the case to several different outcomes, including definitive judgments, compromise settlements, and renewed litigation and feuding. The process could be influenced, moreover, by many kinds of participants at a placitum (or court hearing), including the judges (on whom previous scholarship mainly focuses); the litigants; and even witnesses, probands, and onlookers. All of these participants could try to use the ordeal process to alter the procedural and political possibilities of a lawsuit, even though none of them could ever control the process fully. The ordeal was such a versatile instrument, I argue, partly because in western French monastic litigation it was not restricted to a narrow range of legally defined cases, and was, in fact, proposed in lawsuits that were distinguished less by the evidentiary or substantive legal issues they raised than they were by the political intensity with which they were contested. Finally, the ordeal process was flexible because it did not necessarily result in an ordeal ritual, which could be cancelled at many different junctures of the process by any of those people whose participation was essential.

Having suggested that the ordeal process left room for political as well as for legal strategizing, I shall then suggest that proposing the ordeal, accepting it as proof, and, finally cancelling it were all tricky and dangerous but potentially effective bargaining plays that different participants in a court hearing could use as instruments of self-empowerment to move an unusually protracted and embittered lawsuit toward a politically favorable and workable settlement. I shall also argue, however, that these plays worked differently—and took on different meanings—in different political contexts. Sometimes, for example, they were executed from positions of great strength; at other times, they were acts of desperation. Sometimes they worked, and sometimes they backfired.

Although the reconstruction of these strategies is inevitably a speculative enterprise, we can control our own speculations somewhat by noting that what is a hermeneutic exercise for us was, for the participants, a matter of power: in the first instance, the power of an individual litigant, judge, or witness to secure the political support of others in a lawsuit by imposing on them his or her interpretation of the conflict; second, the power of lords over property or peasants or conversely, the power of peasants to be free of certain seigneurial powers; and finally, the power of judgment that medieval people sometimes attributed—somewhat unceasingly, I think—


15. The place designated for the ordeal was not always identical with the one where the initial placitum was held, e.g., A 404. The same agreement also specified what the ordeal would test.
option of cancelling the ordeal, in which case either one party would default or else the two of them would make a concord. If the ordeal ran its full course, the judges would terminate the lawsuit with a judgment favoring one party or the other, unless the ordeal's outcome was disputed, in which case the lawsuit would probably end in compromise, or unless the loser disputed the judgment based on the ordeal, in which case the conflict would simply begin all over again.

If trial by ordeal can be represented, for certain purposes, as an "instrument," then it was a very versatile one that could be used by a variety of people playing different roles in a lawsuit. In a region where no ruler monopolized the legitimate use of force, no one fully controlled the use of this recognized instrument of legitimation. The judges could either tell one party to undergo a unilateral ordeal or decide that the two parties or their champions should fight a battle. In addition, either party, his witness, or his warrantor could propose to support an oath by means of either a unilateral ordeal or a battle against the opposing party. Among the litigants and witnesses who proposed orals, moreover, we find people occupying different social positions, including abbots and other monks, knights, peons or servants, a priest, and a craftsman; as well as free people; and one woman as well as many men. Further complicating the procedural and political dynamics of the ordeal process was the fact that not everyone who proposed the ordeal was obliged to undergo it personally. Because an alleged colibet had to undergo the ordeal himself whereas monks, knights, and lords could do so by proxy, the status of the person proposing an ordeal significantly influenced the proposal's meaning.

The process of initiating an ordeal was also flexible and unpredictable because there was no single time during a placitum when this maneuver had to be executed. The lay litigant could propose an ordeal when first stating his claim; or else a monk or warrantor could make the proposal when responding. Later on, either the litigant or the litigant's witness could also propose the ordeal during subsequent exchanges between the opposing parties. The judges, too, could propose an ordeal after hearing the arguments of both sides. Even after a judgment, the losing party or even the judges could still propose an ordeal to test the judgment's justice. Whenever it was made; the proposal marked the dramatic highpoint

After invading land at Drèche that Rainahus the Young had previously given to Noyers, Notre de Drèche offered at a placitum to prove by ordeal that he held the land fairly; N 146. In separate disputes with I a Triniter, Petrus Calicerteus (TV 160) and Landricus de Foulwe (TV 157) each undertook to support his claim by battle. See also discussions below of MV 159, A 157, 387, MS 157.

After Hamelicus de Langais justified his challenge about some vineyards in the Arnsus by alleging that the monks of Mansiern were holding them without his authorization, even though they formed part of a field held from him, the monks responded that a man of theirs would prove by the ordeal of hot iron that the vineyards formed part of their allot at Chastan: MD 10. In a dispute with Girardus son of Hubertus de Beaugency over the property of two former serfs of Mansiern who were descanted from an arcani of Girardus's wife's grandfather, the monks undertook battle: MD 10. In a placitum held in Vendeuvre, monks of the same abbey undertook battle with Telbaltus de Venemonde over some vineyards: MD 9. In the dispute between the lord of Malicourn and Saint Auby, the abbot of Saint Auby proposed an ordeal when responding to Waldinus's claim that because the monks had acquired their property in Arthez from his ancestor, they should acknowledge him as their lord with respect to these holdings: A 131, discussed below.

See the case of Constantinus de Aquaduratus (A 180), discussed below.

See the case of Girardus de Stbhaco Polum (A 387), discussed below.

In a dispute between Martinus Ewigilis Canem and Saint Auby over property at Montreuil-Bellay, Wido son of Laurentius, whom Abbot Archebaldus brought to the court of Beaufort, offered to prove by battle that Martinus had previously owned the land. In a dispute between Mansiern and the monks of Montreuil-Bellay, offered to prove by battle that Martinus had previously owned the land. See also the case of Martinus (A 153), discussed below. For a case in which an ordeal was proposed by a witness whom the monks had not brought to court and whose support they had not counted on, see V 35.

After Malranus, brother of Archebaldus, had seized a mill from Noyers, the monks contended at a placitum that Archebaldus had given it to them with the approval of Malranus, from whom Archebaldus had previously bought the mill (ara) for the mill of Malranus. Because Malranus asserted, however, that he had not sold, but had merely mortgaged, the mill to Archebaldus, and had never approved his brother's gift to Noyers, it was decided, probably by the judges, that Malranus should prove his allegations about the mill by battle; N 14. At another placitum, it was decided that Landricus should prove his claim to some vineyards and other lands held by the monks of Noyers at Beaufort: N 14. See also discussions below of MB 126, 404, and A 388, where a litigant who failed to present proof that he had previously offered to provide was later ordered by the judges to undergo an ordeal.

See Boukhus's case (A 203), discussed below.
of a placitum, but because it could be made at different junctures of such meetings, the dramatic rhythms of ordeal cases varied substantially.

Although trial by ordeal sometimes played a role in halting a dispute, it was both a potentially costly procedure for all participants and a highly uncertain one, which could not, by itself, bring peace. Even a victorious litigant sometimes incurred significant costs, including a reward for his champion or proband, gifts to a recalcitrant loser and his kin, and even the trouble of waging or enduring renewed hostilities. The loser’s costs, moreover, were potentially greater than those he would have incurred in making even an unfavorable concord, since he risked losing his claim forever, incurring shame and dishonor, becoming liable for various fines, and forgoing the concessions such as money and prayers that lay litigants often received when they made concords with monks.

If the costs of a completed ordeal were potentially significant for all participants, its benefits were questionable. When both parties had the will and political resources necessary to sustain a protracted conflict and when the court lacked the power to enforce its decisions, a legally definitive judgment based on an ordeal might be less valuable than a politically workable settlement. In theory, trial by ordeal injected certainty into an otherwise unpredictable disputing process by insuring that the case would be decided by God’s judgment; in practice, it might only intensify the uncertainties of litigation.

Given these costs and uncertainties, why did anyone ever propose an ordeal? Were they simply following established rules of legal procedure? Or were conventions of pleading flexible enough to leave room for political strategizing? If the ordeal were simply a legally regulated mode of proof, then the most obvious hypothesis is that people proposed it simply because the law required them to do so. This hypothesis needs careful consideration since the ordeal is represented in eleventh-century records of monastic litigation as a means of achieving one of at least four different legal purposes. It could be proposed to prove a statement of “fact,” on which the judges could then base their judgment; to prove concurrently a factual statement and a normative conclusion based on that statement; to test a disputed claim about the legal implications of an uncontested fact; and finally, to establish in more general terms which litigant had “right” on his side. The simplest cases are the ones in which an ordeal was proposed for the explicit purpose of resolving a factual disagreement. When Sibilla initiated a dispute about a mill held by the monks of Marmoutier on the grounds that her father had given it to the monks without her consent, and when the monks responded that Sibilla had, in fact, approved her father’s gift, an ordeal was proposed, presumably by the judges, to resolve this factual dispute. Similarly, when Walthinus, lord of Malicornax, challenged properties of Saint Aubin in Arthusé on the grounds that the monks had acquired them from his ancestors, the abbot proposed, as he had previously done in another placitum, an ordeal to prove the veracity of a charter allegedly showing that his community had received the disputed properties from kings of France. In a lawsuit between Mauritius and Marmoutier about a serf named Heredanus whom Mauritius’s father Cichlomin had previously given to Saint Martin, Mauritius asserted that “he had not approved the gift of his father,” while Heredanus’s brother Godercetus eventually “prepared himself to make law, to hear judicium that Mauritius had approved the gift of his father.”

Whereas these cases show that one legal reason for holding a trial by ordeal was “to reveal a specific fact” to which the law could then be applied, a lawsuit between Marmoutier and Constantinus de Runay illustrates another motive to the oath. 44 Published formulae—which seem more appropriate to criminal than to civil cases—never make distinctions of this kind. Instead, they simply represent the ordeal as a means of distinguishing an innocent (innocens) man from a guilty (culpabilis, or obdrusus) one (Formularii Merovingic et Carolini novi, ed. Karl Zeehner, MGH 411 [1926], 568), as well as truth from falsehood (Zeumer, p. 610). Several texts also suggest that soliciting God’s judgment was a means of learning about “veritas” (Zeumer, p. 614), because God was the “vindicatrix uterrum commoditatum” (p. 608).

41. See A 94.
42. W 73.
43. See MB 93.
44. See the Saint Flour case mentioned above and discussed in White, “Inheritance.”
45. On the actions incurred by the loser of a battle, see, e.g., La mort le roi Artù: roman du xiiie siècle, ed. Jean Frappier (Geneva and Paris, 1964), ch. 84, line 40 (p. 106).
a second legal rationale for the ordeal. Here, a battle was scheduled (and actually held) to test not only the factual allegation of the monks' witness Fulbertus that when he had held the mill of Ranay, he had never paid the custom that Constantius was now demanding from the monks—who had succeeded Fulbertus as tenants of the mill—but also Fulbertus's normative contentions that by right, he ought not to have done so and, by implication, that the monks ought not to pay this rent to Constantius. Another case involving the same abbey shows that an ordeal could be proposed for a third legal purpose: to establish the legal implications of an uncontested factual allegation. After marrying an aedilin of Saint Martin, a free man named Stephanus Dog-Leg became a serf of Marmoutier. "But when she died and he took as his wife another woman who was free, he denied that he was a serf of Saint Martin and undertook to do battle with the monks about this matter." Instead of arguing that Stephanus had misrepresented the facts of his case, the monks evidently maintained that he had drawn the wrong juridical conclusion from them. In their view, his remarriage to a free woman did not make him free. Finally, a case involving the abbey of Noyers shows that a fourth purpose could be attributed to trial by ordeal. When Othoetus de la Montée proposed to undergo an ordeal in his dispute with the abbey of Noyers, he did so in order to prove that "the monks had no right to the land" he claimed. Here, God was asked to assess only a general legal conclusion whose legal and factual bases went unspecified.

Nevertheless, although the cases just considered clearly specify legal purposes that the ordeal could serve and therefore constitute important evidence about what was sayable about the ordeal at a placentum, they do not rule out the possibility that ordeals were proposed for other purposes that no participant in a lawsuit would openly avow at a court hearing. In fact, there are several reasons for not excluding this possibility, and thus for skepticism about the hypothesis that both trials by ordeal and proposals to hold them served only judicial functions. First, even if everyone involved in the disputing process firmly believed that trial by ordeal was a potentially legitimate and effective means of ascertaining God's judgment, no experienced participant in a lawsuit could have disentangled the process of predicting the legal outcome of a lawsuit in which an ordeal might be held from the process of assessing the political climate in which it would be proposed and possibly held. Instead, he would surely have understood the crucial bearing of human politics, as distinguished from God's judgment, on the outcome of the disputing process. He would have known that a unilateral ordeal could be rigged; that because its physical outcome might be open to conflicting interpretations, friendly judges were preferable to hostile ones; that he could not necessarily count on the opposing litigant's willingness to accept an unfavorable judgment based on defeat in a duel and, finally, that even if he himself were fully prepared to act on the unshakable conviction that trial by ordeal would actually lead to a just outcome, others, including his own supporters, might view it differently. Given the crucial significance of such essentially political considerations, no one could have proposed an ordeal with much confidence that it would actually serve its alleged juridical function.

Second, a purely juridical model of trial by ordeal cannot fully explain why the ordeal was proposed only in certain cases and not in others. The most obvious answer to this question is that participants in the total sample of monastic lawsuits generally followed a procedural rule that restricted the use of ordeals to limited classes of disputes raising distinctive evidentiary or substantive issues. Thus, trial by ordeal may have been legally necessary or permissible, for example, "only when other ways of discovering the truth were not available." But in several well-documented cases, ordeals were proposed at least partly for the purpose of resolving normative, not factual, questions; in other cases cited, ordeals were proposed when one litigant simply challenged the other's oral or documentary evidence. In fact, since the alleged purpose of many ordeals was to support the testimony of people claiming to have direct knowledge of a crucial factal issue in a lawsuit, one can argue that, frequently, the legal purpose of an ordeal was not to supplement the available evidence but to strengthen some of it.

To account for some of the case evidence, one could argue that the procedural rule followed in our cases permitted ordeals not only when the written or oral evidence was utterly lacking, but also when it was somehow defective and therefore in need of corroboration. But when a litigant or warrantor concluded his opening narratio by proposing an ordeal, he could...
Proposing the Ordeal and Avoiding It

knew even less than modern historians do about how such cases usually proceeded and were repeatedly thwarted in their sincere efforts to settle lawsuits by ordeal, hardly anyone—and certainly not an experienced abbot, bishop, or lay lord—could ever have proposed an ordeal with any confidence that it would actually be held. A decision to propose an ordeal must be sharply distinguished from a decision to hold one.

If a proposal to hold an ordeal was not strictly regulated by legally binding rules of evidence and was made by people who did not necessarily want to settle a lawsuit by this means, then it cannot be treated simply as a legal move that a litigant, his supporter, or a judge was sometimes legally required to make either to achieve a legal victory or render a just judgment. In addition, if people proposed the ordeal in order to gain an advantage in a lawsuit, then to treat it solely as a means of meeting the "needs" of lordship or community is, at best, misleading. An alternative hypothesis is that a proposal to hold an ordeal was understood as both a legal move in a lawsuit and a political bargaining ploy or strategy of confrontation. This hypothesis is speculative, but surely no more so than the underlying assumption of previous writers that the ordeal was either a "reassuring and peace-creating method of solving social problems" or "a way of obtaining a judicial result in peculiarly intractable cases." Instead of proposing the ordeal because they were obliged to propose it, believed in it, or thought it would bring peace, they proposed it because, as William Miller puts it, "the ordeal was there to be used in a pinch" by participants in what Hyams terms "quasi-political" episodes.

What kind of pinch? Although it is difficult to show, without circular argumentation, that ordeal cases were unusually embittered but not so embittered as to make war the only way of settling them, there is certainly evidence to support this conclusion. For one thing, the mere fact that these lawsuits had arisen out of "columnes" that monks had chosen to contest, instead of "lumping it," and that were not subsequently settled by negotiation or mediation before a placitum was arranged, suggests that they were both lengthy and hotly contested. Just as "a judicium actually performed meant obstinate litigants, a quarrel that might yet revive," a placitum

55. Although the finding that some ordeals were proposed to answer disputed questions of fact while others were proposed to resolve broader issues of right may show only that the ordeal served one kind of judicial function in some cases and another judicial function in others, the same evidence may indicate that, at least in certain cases, the outcome of an ordeal was potentially open to several different interpretations. Unless every participant in an ordeal was somehow bound to interpret its outcome in accordance with the stated purpose of the ordeal, then the ordeal could sometimes be construed either as a means of ascertaining God's judgment on the truthfulness of a specific oath sworn on behalf of a litigant or as a method of determining how God judged the justice of that litigant's cause. If so, then the ordeal must have been seen as a tremendously ambiguous ritual, not simply because a unilateral ordeal, at least, could be rigged or could yield an ambiguous physical outcome, but also because the normative significance of even a clear outcome of a unilateral or bilateral ordeal was open to conflicting interpretations. Even if everyone acknowledged that God spoke through an ordeal, who could be sure precisely what he had said about a complex lawsuit? Imaginary ordeal cases in several Arthurian romances (e.g., Frappier, La mort le roi Artur; and various versions of the Tristan story) are constructed in such a way to suggest that medieval story-tellers were acutely conscious of the problems involved in interpreting the outcomes of ordeals. This issue is treated but not satisfactorily resolved in Hyam's R. Muir and R. Howard Bloch, "Further Thoughts on the 'Mort Artur,'" Modern Language Review 21 (1976), 46-50; and R. Howard Bloch, Medieval French Literature and Law (Berkeley, CA, 1972), chapter 4.

56. For example, charter in the collections cited on p. 122 record many disputes that turned on the question of whether a lay challenger had approved his kinman's or his feudal tenant's gift to an abbey. But ordeals were proposed in very few of these cases.
actually held meant disputants who had already spurned or avoided opportunities to make peace. In addition, accounts of these lawsuits frequently mention the length of the dispute, the lay litigant's vehemence in pressing his claim, angry altercations, damores, and excommunications, and, finally, the most confrontational forms of secular “self-help,” including the seizure of land and movable property, burning, and homicide. Some of the disputes involved multiple hearings in different courts; others were ones in which courts were reluctant to intervene and had trouble summoning the lay parties. Furthermore, many such disputes were really segments of “extended cases,” some of which related to long-term economic changes, while others involved either repeated disputes between an abbey and a single contentious litigant or successive representatives of the same kin group, or else a conflict with an abbey that had arisen out of an intense dispute among laymen.

At a placitum convened to discuss a dispute, no one would even consider proposing an ordeal unless he believed that by so doing he could attain a more favorable outcome than he could reach simply by arguing for his case, presenting oral and written evidence to support his claim, or proposing a compromise settlement. In lawsuits in which ordeals were proposed, there were sometimes good reasons for seeking an alternative to these routine procedures of dispute processing not only because these lawsuits had previously been hotly contested, but also because the meetings where they were discussed were themselves marked by discord. A miles called Fulcratus showed such vehemence and violence in challenging the ricardatus of some allods given to the abbey of La Trinité that a placitum was arranged, and in their dispute with Tebaldus of Védôme, the monks of Marmoutier proposed a battle only when they had been “provoked to this.” When attending a meeting at Varenne about a dispute with Saint Aubin over vineyards that Constantius Adsquadritus had given to the abbey, Constantius’s kin gathered “many powerful men” to join the meeting with them, presumably because they expected trouble, and initially contested Constantius’s efforts to warrant his gift to the monks. At La Pélérine, the monks of Saint Aubin agreed to a battle with Girandus de Blanchefort only after he “strongly contested” the words of their witness, whom they knew to be telling the truth. Similarly, in a dispute between Marmoutier and Mauritian son of Gelduinus over various serfs at Fontine- tum, the monks’ witness “prepared himself to make law, to bear judicium” only after Mauritian had “resisted” his testimony and after “a great struggle on both sides” ensued. A “great alteratio” broke out at a placitum when a man of Marmoutier named Benedictus Blanchardus said he was ready “to bear the hot iron” in order to disprove the claim of Godericus of Blois to Engelricus auctor. The intensity of the same abbey’s dispute with Hamelinus of Védôme over a serf called Guarinus is revealed in the fact that after the monks had won a victory by having their man Ecus offer to undergo an ordeal, Hamelinus then initiated another questionable columnum, this one concerning Guarinus’s mother Helena.

As several previously cited examples suggest, a distinctive feature of many placita where ordeals were proposed was a sharp dispute between the opposing parties about a specific fact, along with one party’s insistence on using an ordeal to validate his own version of critical events. When Mauritius son of Gelduinus claimed Hermannus from Marmoutier on the grounds that he had not approved his father’s gift of this serf to the abbey, Hermannus’s brother Godervetus “rose up, making himself a witness that Mauritius had granted [Hermannus] to Saint Martin” when Gelduinus had given him; and “when Mauritius contested this, Godervetus prepared himself to make law, to bear judicium that Mauritius had approved the gift of his father; and ... there was a great struggle on both sides.” The ratio of
willingness to make peace, but also threatened to reintroduce violence, in ritualized form, into a *placito* where the ritual of adjudication had briefly replaced the violence of self-help as a method of dispute processing.

For all these reasons, a proposal to hold an ordeal can be interpreted as a strategy of confrontation, as a means of issuing a political threat, designed to put an adversary on the defensive. In the simplest cases, a proposal to hold an ordeal, when made by a litigant or litigant's supporter, was meant to break a political and legal impasse in the case by intimidating the opposing party to the point where he would either default or accept a relatively unfavorable compromise; when made by a judge, the proposal could be a signal to one party or the other that he had nothing to gain and everything to lose by continuing his suit. In either case, however, if the second litigant rightly or wrongly interpreted the proposal to hold the ordeal as a bluff or if he wished, for some other reason, to continue the ordeal process, then he could accept the proposal to hold the ordeal, leaving his adversaries and the judges with the problem of deciding whether he was merely bluffing and would sooner or later cancel the ordeal process. Even though the proposal was intended to be read as a “theatrical device” of self-righteous self-dramatization, there must have been times when the proposer's audience read it as an act of stupidity or desperation. Finally, because the ordeal process that the proposal initiated was so flexible that it allowed for different sequences of responses and subsequent moves and gave all the participants room to change their tactics, and because no participant's public posture ever coincided with his actual intentions, the relationship between the initial proposal to hold an ordeal and the final outcome of the lawsuit is sometimes difficult to fathom. The ordeal process could vary, depending on such factors as the proposer's social position and legal role in the case, the type of ordeal he proposed, the legal and factual issues raised by the case, the experience and skill of the litigants and judges, and, above all, the political strength and cohesiveness of the proposer's party relative to that of other groups involved in the case.

The considerations involved in deciding whether to propose an ordeal or how to meet an adversary's proposal were so complex that people facing these choices must have resorted to improvisation. As we have seen, com-

---

84. MS 101.

85. Brown, however, thinks that “the ritual itself was . . . peace-creating” (“Society,” p. 311).


victions governing the use of ordeals in civil cases were so flexible that no one could be certain whether such a proposal would be made, who might make it, what form it would take, or where, once made, it might lead. What made such proposals disquieting was not that everyone either believed or doubted that the ordeal could reveal the truth, but that no one could be sure how the case would now proceed. Would the ordeal ever be held? If held, what outcome would it have? And how would that outcome be interpreted? In a battle, unless the champions could be identified in advance and were clearly unequal in skill and strength, no one could be sure who would win. The unilateral ordeal was even more unpredictable not only because the ritual itself was open to tampering, but also because its outcome was sometimes disputed. Finally, either a battle or a unilateral ordeal might serve as the basis for a judgment that the loser would ignore. In practice, an ordeal's outcome might not be any more predictable than that of a modern jury trial, which experienced practitioners commonly regard, in Miller's words, as "a crapshoot." But the ordeal differed profoundly from other games of chance because even a clear outcome would not necessarily bring victory. For all these reasons, participants in lawsuits may well have believed that the best way of controlling the ordeal was to avoid it whenever they could.

Like a proposal to hold an ordeal, a decision to avoid one could be made at several different junctures of a lawsuit. Sometimes the proposal was immediately rejected in favor of another method of settling the dispute. On other occasions, the parties reached agreement during the interval between the first plausus and the day set for the ordeal. A third possibility was that one litigant would simply fail to appear for the ordeal. Finally, if both parties appeared for it, one or both of them could initiate its cancellation before it began or even after it had commenced.

Because monastic scribes did not preserve records of their abbey's most ignominious defeats in litigation, it is hardly surprising that in most recorded cases, it was the lay litigant who avoided the ordeal. But scribes still recorded cases in which the monks avoided battles or unilateral ordeals. In many cases, one party's proposal to hold an ordeal was sooner or later followed by the other's decision to avoid or cancel it. But just as frequently, the party who had proposed the ordeal eventually backed out of it. In two other cases, the decision to avoid the ordeal was mutual. When judges, rather than litigants, proposed an ordeal, monks as well as lay litigants sometimes avoided it.

Why did lay people and monks avoid trial by ordeal? Although the reasons they supposedly gave for doing so vary from case to case, several of them appear so frequently and accord so well with accounts of agreements reached in other lawsuits as to suggest that the process of withdrawing from an ordeal, like the process of proposing one, was stylized, even ritualized. Once a lawsuit had been transposed into a new key by a proposal to hold an ordeal, it would remain in that key until one or both parties could effect another modulation by sounding a familiar sequence of chords. To shift the image, in a society where posturing was an integral part of political life and where dramatic changes in posture were acceptable and sometimes even obligatory, people could stop the ordeal by assuming the proper postures. This conclusion implies, in turn, that a litigant's public justification for avoiding an ordeal need not have coincided with his real reasons for doing so. Any more than a litigant's or judge's proposal to hold an ordeal communicated a sincere wish to employ this procedure. The same conclusion also implies that experienced participants in lawsuits knew, even before anyone proposed the ordeal, that this procedure, if proposed, could be aborted. For all participants, therefore, the subtlety of the lawsuit was just as important as the text.

Certain passages purporting to explain why particular litigants avoided ordeals point toward the comforting conclusion that trial by ordeal was really an effective method of dispute processing because widespread belief in its efficacy as a divinely sanctioned test of truth deterred litt-

98. The commonplace that the outcome of battle was uncertain appears in TV 57.
80. A 335, 387; MS 11, 101, 103; N 147, 151; V 311.
81. MF 159; N 484; V 297.
82. A 404; MB 16, 26; N 149; V 769. Lawsuits in which monks defaulted may well have gone unrecorded.
83. MB 126; MS 53, 101, 127; MV 9; N 144, 120; TV 157, 189, 237.
84. A 189, 203, 383, 404, 428; MB 16, 26; MV 159; MS 11, 101, 103, 127; N 24, 146, 141, 484, 519; TV 37, 189, 237; V 597, 755.
gants from pursuing unjust causes to the bitter end. According to a scribe of Noyers, "when the probi homines acting on behalf of Saint Mary were ready for the battle... Malamnus, acknowledging before the many people present that he had not undertaken battle rightfully, gave up the challenge he had unjustly undertaken."104 Similarly, after undertaking battle against the same abbey to support a claim to free status, Thevinus and Amalvius first acknowledged before the day of battle that "they had undertaken [battle] wrongly" and then restored themselves to the lordship of Saint Mary.105 Landricus gave up his challenge against La Trinité of Vendôme because, knowing it to be unjust, he did not dare to fight the monks' champion.106 Just before a battle with a champion of the same abbey, Fulcrandus decided that it was wrong to litigate about God's land, especially when he knew his claim to be unjust. Impelled by the fear of God, he gave up his challenge.107

Fears of a similar kind supposedly led Othertus the Shoemaker to avoid an ordeal that he himself had proposed to undergo in support of his claim to some vineyards held by Noyers: "When Othertus came to swear and to undergo judicium and saw that the... monks were intent on receiving this proof, then, fearing that on account of the disinheritance of the church [of Saint Mary], from which he wished to take away property, the holy mother of God would be opposed to him, and being terrified of swearing God's word on the relics of the same church, he did not wish to undergo judicium. Instead, he gave up the vineyards and lands about which the quarrel had arisen, so that they would be held by the monks." Even though this passage emphasizes, as the primary reason for avoiding an ordeal, the litigant's fear of supernatural retaliation by his monastic adversary's patron saint, it also suggests, at least implicitly that he also avoided this procedure in the belief that if he followed it by swearing "God's word," he would be revealed as a perjurer.108

Whereas the conventionalized passages just cited all suggest that people avoided the ordeal in the belief that it would reveal the truth about an oath, other common and equally conventionalized passages about avo-

104. N 34.
105. N 484.
108. N 114. The same belief may also explain both the failure of litigants or plaintiffs to appear for ordeals and last-minute decisions to avoid the procedure: see A 385, 388; MS 197, 192.

110. A 137, see also 144.
111. MS 152.
112. M 116.
114. TV 189.
Not every litigant, however, could gain something tangible by avoiding the ordeal, and even when he did so, the extent of his gains would vary. The outcomes reached after ordeals were cancelled were sometimes discernibly influenced by the relative strengths of the two parties' bargaining positions. Because the only litigants who received nothing at all when they avoided the ordeal were either free people who defaul ted rather than undergo the ordeal personally or by proxy or alleged serfs who could have proved their free status only by undergoing the ordeal themselves, there are certainly grounds for thinking that litigants with hopelessly weak cases avoided ordeals simply because they feared the physical process of undergoing the ordeal or the judicial, political, and religious consequences of losing it. Whereas these litigants withdrew from ordeals in an effort to cut their losses, others who exercised the same procedural option under different political circumstances may have done so in the belief that their bargaining position, though weaker than that of their adversary, was not so weak as to prevent them from gaining anything at all from litigation. When an ordeal was cancelled at the monks' initiative or by mutual agreement, the payment made to the lay litigant in return for his quittance to the monks was usually considerably higher in value than it was when he initiated cancellation of the ordeal.

Within limits, there may also have been a rough correlation between how strong a free litigant considered his bargaining position to be, how long he would persist in his suit, and how favorable an outcome he could secure for himself. Alleged serfs were clearly in a distinctive position, because as parties to disputes in which compromise was evidently unthinkable, they probably had less to lose by pursuing a lawsuit all the way to a judgment based on an ordeal. Up to a point, the longer a free litigant pursued his claim the better his chances would be of achieving a favorable outcome. If he immediately rejected a proposal by the judges or the monks to hold an ordeal, he might well get nothing and would certainly go empty-handed if he defaulted by failing to appear for a scheduled ordeal.
If he initially agreed to a proposed ordeal, the monks might well propose a compromise, especially if he actually appeared for the ordeal. However, a litigant who obstinately pursued a claim instead of picking an opportune time to compromise could lose everything he had been trying to gain by unduly prolonging the lawsuit.

The cancelled ordeal process assumed many different forms because, like the completed ordeal process, it involved "a myriad of variables," including when the proposal to hold the ordeal was made, who made it, what type of ordeal was proposed, whether it was offered or demanded, who bore the burden of undergoing it, what the ordeal was supposed to prove, where it was to be held, who cancelled it, when it was cancelled, and what form the cancellation took. Cases in which the judges proposed the ordeal, for example, differed significantly from those in which the proposal was made by a monastic or lay litigant; cases in which a litigant proposed the ordeal at the outset of a placitum differed from those in which the judges or one of the parties proposed the same procedure only after the lawsuit had been extensively debated. Lawsuits in which battle was waged differed from those in which a unilateral ordeal was proposed.

Although the cancelled ordeal process assumed so many different forms that virtually every example of it followed a distinctive course, it is possible to divide examples of the process into a few groups by focusing on three critically important procedural variables. First, was the proposal to hold the ordeal made by the judges or by one of the litigants? Second, did the proposal induce the litigant who did not make it to avoid the ordeal and accept either an adverse judgment or a compromise? Third, was the ordeal cancelled before or after it commenced? In the first set of cases discussed below, the judges’ proposal to hold an ordeal sooner or later induced one of the litigants to abandon his claim (Raoldus, Galterius, Wálcherinus). In a second set of cases, after one litigant proposed an ordeal his adversary decided to settle the case by compromise (Hugo, Othertius, and the relatives of Constantius). In a third set of cases, however, after one party’s proposal to hold an ordeal was accepted by the other party (Radulius, Buighole, Petrudius), the first party sooner or later avoided the ordeal and then either defaulted or made a compromise with the other party. In one final case, a litigant who had accepted his adversary’s proposal to hold an ordeal cancelled the ordeal after it was underway (Ginadhuis).

In interpreting the procedural moves made in these examples of the cancelled ordeal cases, it is important to consider not only the many procedural options that were open to the participants and the legal issues, both substantive and evidentiary, that were explicitly raised in the lawsuit, but also such factors as the "identity of the parties [and judges], their past relations, their relative status, and their respective skills in negotiating the ordeal process. Although we will never know for certain why the judges, the litigants, and the litigant’s supporters acted as they did in any particular case, we can assume that their actions were the products of strategies that were based, for better or worse, on their own assessments of the political context of the lawsuit. Certain litigants, for example, were probably confident that by proposing an ordeal they or the judges could intimidate their adversaries into accepting unfavorable judgments or settlements, while other litigants may have believed that their only hope of winning a case lay in successfully undergoing the ordeal. Judges of important courts in major centers of power such as Angers were probably more successful in using the ordeal as an instrument of power than were the judges of lesser courts. Certain litigants were probably successful in predicting how a cancelled ordeal case would proceed, while others may well have stumbled through the process without any clear sense of where it would lead. Speculative as such assumptions are, they provide our only means of explicating lawsuits whose procedural twists and turns are otherwise opaque.

In several cancelled ordeal cases, the judges apparently used a proposal to hold an ordeal as means of intimidating a litigant into avoiding the ordeal and either defaulting or accepting a compromise. It is probably no accident that these lawsuits were all settled in Angers, rather than in some outlying lordship of the region. When Raoldus of Laigné, a village lying about 24 kilometers southeast of Angers, travelled to Angers to confront the monks of Saint Aulhin at a placitum in the court of bishop Gaufridus, he probably had little hope of winning his claim to some land in Alleuds (4 kilometers closer to Angers than Laigné) which he had previously seized from the monks on the grounds that "it pertained to his right." The meeting had taken a long time to arrange, probably because Raoldus was reluctant to attend it; when it finally convened, he and five supporters faced four monks and five monastic famuli in the presence of nine clerics.


and nineteen laymen, who were there to act as judges or witnesses. After the abbot had made his complaint about Roaldus's unjust invasion of the monks' property, Roaldus may have displayed some uneasiness about his chances of securing a favorable judgment when he said he would make no response to the abbot's complaint unless the bishop first promised to do right to him in his dispute with the monks. Roaldus’s caution was probably warranted since many of the judges were close associates of his monastic adversaries. After the bishop made this promise, the judges first listened to Roaldus’s narration of his claim and the abbot's response and then deliberated on each part of what was evidently a complex case. They then decided that the monks ought not to enter into further litigation about land that was known to have been given to them long ago. Having resolved the legal issues in the dispute to their own and the monks' satisfaction, the judges still had to confront the political problem of inducing the lesser lord to accept their judgment. Roaldus protested it; in response, bishop Gaufridus and archdeacon Marbodus both undertook to swear on the gospels that the judgment was just and in accord with “ancient custom.” This proposal neither mollified nor cowed Roaldus, who continued to protest. Finally, two of the lay judges, Babinus de Raices and Girardus, son of Andrefredus, declared: “Our lord bishop and lord archdeacon Marbodus wish to show by swearing that the judgment that we, along with them, made is right. We laymen wish to do the same by fighting, if there is anyone against whom we should prove this.” Upon hearing this challenge, Roaldus and his five supporters apparently wanted to prove by fighting that the judges had judged the case falsely. But none of them spoke. In theory, Roaldus could still have undergone a battle to support a claim of false judgment. But at that moment, he was faced with a practical political problem, surrounded as he was by more than two dozen powerful men who were now openly supporting his adversaries. He must have realized that it would be politically inexpedient (and possibly dangerous as well) to accept a duel with Babinus or Andrefredus, whose proposal to hold a bilateral ordeal had clearly intimidated him, just as they had presumably intended for it to do.¹¹¹

Under slightly different circumstances, a knight called Galterius of Meigné was intimidated by the prospect of undergoing a unilateral ordeal proposed by the judges, and defaulted rather than appearing for it. Galterius had initiated a challenge about some land at Noyau, which the monks of Saint Aubin had received as a gift from Albericus of Vihiers and his wife Adela and had allegedly held for a long time. At the court of the same bishop Gaufridus who judged the monks' lawsuit with Roaldus, Galterius was interrogated about his claim, not by the judges, by the bishop, or by archdeacon Marbodus (who was also present), but by Albericus, who was evidently assuming an obligation to warrant his and his wife's gift to Saint Aubin. When, in reply to Albericus's questioning, Galterius said that in return for a horse he had received the disputed land at Noyau from Albericus's ancestor, also named Albericus, the judges declared that he should prove this allegation by the ordeal of hot iron. When someone (perhaps Galterius himself) asked where the ordeal would be held, the response came, not from the judges, but from Albericus, who continued to exercise his influence on the court's proceedings by proposing to hold the ordeal at his own estate in Vihiers, about twenty kilometers south of Angers. Doubtless unserved both by the substance of Albericus's proposal and by the judges' deference to the monastery’s wantonness, Galterius was not yet ready to abandon his claim completely but still began to excuse himself, indicating that he did not dare go to Vihiers for the ordeal. But instead of thereby inducing the judges to name another site for the judicium, they had proposed, Galterius merely secured from Albericus a promise of safe-passage to Vihiers and back. By now, Galterius should have seen that his lawsuit was doomed. But instead of giving in at once and seeking something by way of compensation for his claim, the land at Noyau, Albericus agreed to go to Vihiers. At the appointed time for the ordeal, Albericus expressed his confidence about its outcome by saying to abbot Girardus of Saint Aubin: "Send whomever of your monks you wish to see the ordeal and to see how I shall acquit your land to you." Meanwhile, Galterius and the three friends who had associated themselves with his columnia simply decided, not surprisingly, to spare themselves a trip to Albericus's estate, with the result that no one appeared to undergo the ordeal at Vihiers. Although their decision to default may have been due to their conviction that the ordeal would reveal the injustice of what they now knew to be a spurious claim, it can be attributed to a more general and well-grounded fear that, in one way or another, the journey to Vihiers would turn out badly for them.¹¹²

Like Roaldus of Luigné and Galterius of Meigné, Walcherus of Briou was intimidated, in a dispute with Saint Aubin, by the judges' proposal that he undergo an ordeal. But he gave up less quickly than did the other two

¹¹¹ A 203 (1082-1101).
¹¹² A 404 (1082-93).
litigants. According to Walicherius, a vineyard the monks held at Brion lying about thirty kilometers east of Angers, pertained to him per parent-
giunum. When he and the monks attended a *placitum* in the village, the judges asked him how he knew that the disputed vineyard pertained to him. He responded that at a subsequent *placitum* a man named Auffridus would legally warrant the vineyard, as Auffridus was obliged to do. But when, at the appointed time, Auffridus, though present, somehow failed to warrant the land, the judges decided that Walicherius should prove his claim "per
judicium." Porch because Walicherius did not dare to undergo the ordeal, the judges judged his claim to be unjust. Even though Walicherius then protested what he represented as an unjust judgment, his fear of undergoing the proposed ordeal ultimately proved fatal to his case when, with support from his lord, Gaufridus of Brion, he revived his claim in Angers. There, in the audiotorium of Saint Aubin, he again narrated his claim to the vineyard at Brion. A man of Saint Aubin from Brion responded by citing Walicherius’s previous failure at Brion to prove the same claim by ordeal. The judges at Angers therefore judged his claim to be unjust.134

In each of the three cases just considered, the judges' proposal to hold an ordeal, made late in a *placitum*, served to intimidate a litigant who was doggedly pursuing a claim with inadequate support. Any one of these litigants could have undergone the ordeal, but each of them must have realized that victory in this process would be either impossible or useless. In three other lawsuits, a litigant's proposal to hold an ordeal also seems to have worked effectively, since the other litigant responded sooner or later by avoiding the ordeal and proposing a settlement. In a dispute with Saint Aubin over a mill and a weir on the Loire near Les Ponts-de-Cé, Hugo, the nepos and heir of Teschelina, came to the court of bishop Gaufridus and offered to prove the justice of his claim by the ordeal by hot iron. The abbot of Saint Aubin, however, rejected Hugo's offer, proposing instead to give him 100 *solidi* if he would surrender his claim. Hugo accepted this compromise and, along with his wife, later received the privilege of confraternity at Saint Aubin. Attributing the abbot's decision to settle the case by compromise rather than by ordeal to his desire for peace, the abbey's

scribe failed to indicate why his pacifism was not manifested earlier in the
case.135 In a dispute with Noyer, Othbertus de la Montée offered to
prove by ordeal that the monks had no right to the land he claimed. Instead of simply accepting the offer and awaiting the outcome of the ordeal, the abbot and monks made a concord with Othbertus, allegedly because they had doubts about accepting proof by ordeal from such a man and were
yielding to the advice of their friends and the "good men" participating in
the *placitum* as third parties.136

In another Saint Aubin case, after various relatives of Constantius
Adquadratus had initiated a challenge about some vineyards that
Constantius had previously given to the monks, the two sides met to discuss the dispute in the presence of Heudo, lord of Blazon. First the monks' adversaries explained their claim. Then Constantius willed his gift to Saint Aubin by declaring himself ready to show by an ordeal undergone by his man that after the death of his father, he had bought the disputed vineyards fully and quietly and had worked them, so that he could do with them as he preferred, whether by selling or giving them away for his own soul, without any just contradiction of challenge by any of his kin. Eventually, after Constantius's man had sworn an oath at his lord's command, Constantius's relatives made a concord with the monks. Accepting from Constantius 25 *solidi*, which they divided among themselves, they all surrendered their challenge.137

Whereas the lawsuits just considered suggest that proposing the ordeal
was often an effective means of inducing the litigant who had not proposed
it to avoid the ordeal and either default or make a compromise, several
other cases show that this tactic was not foolproof. If the proposal to hold
the ordeal were accepted, the case could proceed in many different ways,
several of which are illustrated by the following cases. In two cases (Radul-
fus and Martius), the lay litigant whose proposal to hold the ordeal was
accepted by the monks later decided to cancel it and make a compromise
with the monks. In a third case (Bunghol), although the lay litigant who
had proposed the ordeal lost his case when he failed to appear for it, the
monks later made a compromise with his lord. In a final case (Petrudis),

---

133. The text reads "perjudicium contra mortuum." On the type of ordeal proposed here, see Bongers.
134. A 388 (1082-1086).
135. A 117.
136. N 147 (1087).
137. A 189 (1060).
litigant whose proposal to hold an ordeal was accepted withdrew from the procedural at the last possible moment.

To support his claim that the monks of Saint Aubin were obliged to provide him with unusually opulent hospitality whenever he and his men visited Angers, Radulfus Toarcus angrily attended a plica at Beaugency. Here he undertook battle to prove that the abbey owed him the hospitality he claimed under an agreement he had previously made at Beaugency with two monks of the monastery. To fight on his behalf, Radulfus designated a familia called Haimaricus Maltipetit, who had allegedly witnessed the disputed agreement and would uphold, by oath, Radulfus's claims about it. The monks, however, presented as their own champion a man of the abbey, who had allegedly witnessed the same agreement and would prove against Haimaricus that "what Radulfus said was false." The battle never took place. While Haimaricus and the monks' champion were confronting one another, "the good men who had convened from each side began to denounce Radulfus, saying that he was demanding an unjust and evil thing from the monks." Clearly, Radulfus was still entitled to pursue his claim by insisting that the battle be held. But because he had supposedly been "convinced" by the arguments of the "good men" and by "the testimony of his own conscience," he gave up his claim on the understanding that the monks would grant him and his wife the privilege of confraternity and would render him, on his visits to Angers, as much charity as they customarily rendered to their own visiting brothers. Having overplayed his hand at the outset of the meeting, Radulfus salvaged something from the lawsuit by avoiding the ordeal.

In cases such as Roldus's, it appears that one party or his supporter proposed an ordeal in the hope that his adversary would avoid it and either abandon his claim completely or accept a relatively unfavorable settlement. But when the second party called the first party's bluff, the latter avoided the ordeal and accepted a settlement less favorable than he had hoped for. The same sequence of tactical maneuvers is also illustrated by an early twelfth-century dispute between Saint Aubin and Martinus Evigilans Canon. Abbot Archembaldus of Saint Aubin came to the court of Berlaius, lord of Montreuil-Bellay, to discuss, among other things, Martinus's challenge to some rocks and a small parcel of land suitable for building houses, all of which the monks supposedly held by a gift or gifts from Berlaius. Accompanying the abbot was Wido son of Laurentius, who first testified that Martinus had previously granted the disputed property to Saint Aubin and then offered to prove this allegation by battle. When Martinus, however, denied Wido's allegations and agreed to fight him, the abbot, for the sake of peace, proposed an agreement that was relatively favorable to Martinus. The abbot gave him 30 solidi and one of the disputed rocks on condition that he would sell it to no one but the monks. Only then did Martinus surrender his entire claim with the approval of his nepos, Paganus Beraki. On the same occasion, Berlaius and his son Giraldus agreed that if a burg were established in any part of the disputed property, the men belonging to it would have the same "liberty" and "custom" as Berlaius had previously granted to the men of another burg at Franchis Villa. Here a small dispute is clearly linked to a larger one.

Whereas Radulfus may have proposed an ordeal because he was arrogantly overconfident about his chances of winning his case against Saint Aubin, Bunghole may have done so either because he expected the proposal to be rejected, in which case he could have gained something from a compromise, or because he saw no other way of gaining anything from what he knew to be a weak claim. Once the ordeal had been scheduled by the judges, who revealed their hostility to Bunghole's case when they advised abbot Hugo to accept Bunghole's proposed proof, Bunghole, like Galerius de Meigné, may have seen no point in appearing for an ordeal he felt certain of losing. However, the fact that Bunghole's lord Richard later secured something from Saint Vincent's in return for surrendering his claim suggests that the tactics of proposing an ordeal could be more complex than the preceding argument suggests. Perhaps Richard's plan had been for Bunghole to take the lead in aggressively prosecuting the claim to the tithes so that he himself would not be so deeply implicated in the suit as to prevent him from subsequently making a deal with the monks.

If certain litigants or witnesses proposed the ordeal because they were stupidly overconfident or because they were so wily that their maneuvers now seem almost incomprehensible, others may have done so out of sheer desperation. In around 1090, a woman called Plautus offered to prove by the ordeal of hot iron that her son Vitalis was not the serv of Marmoutier. This unusual lawsuit formed part of a prolonged conflict between one of the most powerful abbots of medieval France and a small peasant kin.
threatened to kill Otgerius unless he married her, but for a long time he spurned their threats. He finally married Amelia after her kin agreed to give him the land of Cré in matrimonium. At present, according to Giraudus, because there was no survivor from the gens of either Otgerus or Amelia to take the land, he himself and his kin were claiming it, “because it moves from us and ought to revert to us.” An unnamed woman testifying on the monks’ behalf then asserted that Giraudus’s narratio was false, because, she said, the disputed land of Cré had belonged to Saint Aubin before Amelia’s marriage to Otgerus, who did not, in fact, accept it with his wife in matrimonium. “What I say, I saw,” she said, “and for that I am a witness.” Giraudus strongly contested the woman’s story. But the monks, who allegedly knew that her words were true, undertook battle against Giraudus and his kinsman Hubertus. They accepted the duel, which was to be held in the “court” of the abbey of Saint Pierre de Bourgueil. The abbot and his people appeared there for the battle at the appointed time, as did Giraudus, his kin, and his lord Raherinus. After the customary preliminaries, including the swearing of oaths, the champions began to fight. But when Giraudus and his associates saw that the fight was going badly for their man, they stopped it and made a compromise with the monks. In return for quittance of the disputed land at Cré to Saint Aubin, Giraudus was allowed to become a brother of the abbot and monks of the abbey. He also received the privilege of confraternity at the monastery of Bourgueil, which the abbot of this community granted him out of love for the abbot and monks of Saint Aubin. Because Giraudus could probably have made a more favorable settlement with the monks if he had simply avoided the battle and instead made a compromise with them, his case suggests that there were risks involved in accepting battle. Nevertheless, the fact that the monks were willing to compromise with him at all instead of pressing for legal victory also shows that a litigant of some standing did not risk everything by accepting a battle.

In later eleventh-century western France, both proposals to hold ordeals and measures taken to avoid them appear primarily as instruments of power, as tricky, dangerous bargaining plays that litigants, their supporters, and judges might use to achieve what they considered favorable

---

141. MS 127 and 108.