

# ISSA Proceedings 2006 - Legal Arguments For Political Violence: The Assassination Of The Duke Of Orléans (1407)



*Die ich rief, die Geister*

*Werd ich nun nicht los.*

Johann Wolfgang Goethe, *Der Zauberlehrling* (1797)[i]

## 1. Introduction: Conflict and Assassination

The early 15th century in France was characterised by a power vacuum created by recurrent bouts of madness suffered by King Charles VI. The chief contenders for filling this vacuum were Louis, Duke of Orléans, brother of the king; and his cousin John the Fearless, Duke of Burgundy (Calmette 1964, pp. 103 ff.; Vaughan 2002, pp. 29ff).[ii] In spite of occasional protestations and oaths of cousinly love, the conflict between Louis and John had proceeded to the stage of iconographic induration: the Duke of Orléans had adopted the emblem of a knotty stick, with the motto *“je l’ennuie,”* which literally means “I vex him,” but can also be read as a gambling term, “I challenge him.” The Burgundian in turn had embraced the image of a plane, together with the Flemish device *“Ic houd,”* which literally means “I hold,” but also has a gambling connotation: “I accept [the challenge]” (Huizinga 1984, p. 211).[iii]

When a prolonged political propaganda campaign, designed to discredit Louis in the eyes of the people, and to deprive him of his influence at court, proved unavailing, John resorted to sterner measures. He hired a band of thugs and had Louis killed in a dark street in the Marais district of Paris on 23 November 1407 (Monstrelet 1857, pp. 154ff.; Pintoin 1841, pp. 730ff.). Having previously examined the political arguments and propaganda aimed at defending the Duke of Burgundy against the charge of having assassinated the Duke of Orléans (Hohmann 2003), I now propose to examine the legal arguments surrounding these events.

## 2. *Designing a Defence for the Duke of Burgundy*

In his approach to the case, John of Burgundy ranged successively over all three main levels of the rhetorical *stasis* or *status* system, developed in antiquity to analyze and lay out for use the options available to a legal defendant. **[iv]** When the news of the assassination first broke, he at first implicitly denied any involvement in the deed (*status coniecturalis*, issue of fact) by ostentatiously participating in the funeral ceremonies for his dead cousin Louis, with whom he had celebrated a public reconciliation a few days earlier. John, clad in mourning clothes, held one of the four corners of the drape covering the coffin, and cried and moaned in a show of grief, together with the other relatives of the king's dead brother (Monstrelet 1857, p. 160).

A period of speculation over the identity of the author of this assassination was ended on Friday of the same week, soon after the funeral for the late duke, when John of Burgundy, threatened with a search of his house in Paris, where the assassins had found refuge, admitted to his uncle, the Duke of Berry, and to Louis of Anjou, King of Sicily, that he had ordered the murder. At this point he used an excuse (*status qualitatis*, issue of quality) by claiming that in ordering the deed he had succumbed to temptation from the devil (Monstrelet 1857, p. 162). This may strike a modern audience as a bit of a stretch, but it should be noted that contemporary records show that this excuse was used in nearly ten percent of the successful applications for royal letters of remission at the time (Gauvard 1991, p. 430). **[v]** On Saturday, the Duke of Burgundy, in spite of his general reputation for fearlessness (he had earned his honorific of *sans peur* at the battle of Nicopolis in 1396 [Champion 1911, p. 4]), thought it wise on this occasion to leave Paris speedily and stealthily in order to escape possible arrest (Monstrelet 1857, p. 164).

But John of Burgundy soon regained the initiative. With his advisers, he began to compose and publish a detailed explanation of his action (Monstrelet 1857, pp. 171ff.; Schnerb 1988, pp. 78ff.), and some three and a half months after the assassination, on 8 March 1408, he appeared in the hall of the king's residence in Paris (the Hôtel de Saint-Pol) to offer his justification to the Dauphin of France (the king was too ill to attend), the assembled nobility, members of the University of Paris, as well as "a numerous body of the citizens of Paris and people of all ranks." (Monstrelet 1840, p. 61; Monstrelet 1857, p. 178). This time, the duke relied primarily on the *status definitionis* (issue of definition), by claiming that his deed was not punishable homicide, but the deserved punishment of a traitor and a defensible act of tyrannicide. As so often in history, violence was thus justified as

a means of preventing violence: the basic defence offered was that the Duke of Burgundy had ordered the assassination to protect king and kingdom against Louis' plans to kill the legitimate monarch and to seize power illegally (Géruzez 1836, pp. 127ff.; Munier-Jolain 1896, pp. 43ff.). By presenting his defence to this special assembly, rather than to the *Parlement de Paris* (Autrand 1981), the highest court of the realm, the duke also implicitly invoked the fourth level of the stasis system, the *status translationis* (issue of procedure), effectively claiming that he, as a peer of France, could be judged only by the king, not by the ordinary courts.

A further implicit element of his case was fear: his audience was intimidated by the enthusiastic popular support that had been evinced when the duke re-entered Paris after his cautionary absence, and by the multitude of armed men he had brought with him (Monstrelet 1857, pp. 176f.; Pintoin 1841, pp. 752ff.). This none too subtle *argumentum ad baculum* was in addition reinforced by the elaborate security precautions accompanying the assembly in the Hôtel de Saint-Pol: all audience members had to enter through a single door and were searched; and when John the Fearless finally appeared, he was sure to make all aware that under his richly embroidered outer garment he was wearing armour (Ehlers 1999, pp. 137ff.).

### 3. *Jean Petit's Arguments*

The duke did not speak himself; the defence was presented by Jean Petit, since 1405 Doctor and Professor of theology at the University of Paris, whom John the Fearless had employed as an adviser since 1406. The speech has survived in a number of different separate manuscripts, and in the chronicle of Enguerrand de Monstrelet; though he belonged to the Burgundian party in the ensuing civil war between the followers of duke John and the supporters of the house of Orléans, who became known as the Armagnacs, this chronicler nevertheless has also transmitted to us in full the replies made by advocates on behalf of the widowed Duchess of Orléans about six months later. **[vi]**

As he repeatedly emphasised in his speech, Jean Petit was not a lawyer. His oration has the form of a medieval thematic sermon, **[vii]** rather than that of a classical legal defence speech. But the form of the thematic sermon is that of a syllogism, familiar to lawyers as the basic traditional logical form of a legal argument (Feteris 1999, pp. 26ff.). A major premiss lays out the legal norm to be applied, which links certain legal consequences with certain required factual antecedents. The minor premiss then states that these factual antecedents have

occurred in the present case, and the conclusion asserts that the specified legal consequences thus apply.

Being a theologian, Jean Petit starts his argument in his first article with a biblical theme: "Covetousness is the root of all evil" (St. Paul, 1 Timothy 6:10) (Monstrelet 1840, p. 63; Monstrelet 1857, p. 184). But he quickly moves to the concept of high treason, which he treats in his second article as one of the possible consequences of covetousness, and as the greatest crime deserving the most severe punishment (Monstrelet 1840, p. 64; Monstrelet 1857, p. 187). So the legal core of Petit's defence case is the concept, derived from Roman law, of the *crimen laesae maiestatis* (French: *crime de lèse-majesté*) or *crimen maiestatis imminutae*, often abbreviated as *crimen maiestatis* or simply *maiestas* (Mommsen 1899, pp. 537ff.). This concept refers to the superior dignity and venerability of public office holders, which is violated by attacks on them. The *crimen laesae maiestatis* was initially instituted in the Roman republic as a way of safeguarding plebeian magistrates, who did not enjoy the protection against political violence afforded to patrician office holders by virtue of the fact that they were also regarded as religious functionaries and thus as sacrosanct. Later, the concept of *maiestas* was expanded to cover all offences against the state, including *perduellio*, i.e. war-related treason in the narrower sense. After the demise of the Roman Empire, the use of the concept was restricted to the Holy Roman Emperor (*imperator*), who claimed to have assumed the authority of the ancient Roman emperors. But since the 13th century, the French king was recognised as *imperator in regno suo* (emperor in his kingdom), and thus attacks on him could clearly be seen as a violation of *maiestas* (Guenée 1992, p. 191). A not insignificant problem was presented by the fact that Louis of Orléans had not yet openly attacked his royal brother. But Jean Petit argued that Louis had already committed covert attacks; and it was also well established in Roman law that in the case of serious crimes, especially against the state, the planning and the attempt were sufficient to deserve punishment (Mommsen 1899, pp. 97f.).

In the third article of his major premiss, Petit cites the biblical examples of Lucifer, Absalom, and Athaliah to prove that covetousness could easily lead to disloyalty and treason, which then deserved severe punishment (Monstrelet 1840, pp. 67ff.; Monstrelet 1857, pp. 195ff.). But in his fourth article, he introduces yet another basis for his justification of Duke John's assassination of Louis of Orléans: the concept of *tyrannicidium* (tyrannicide) (Monstrelet 1840, pp. 70ff.; Monstrelet 1857, pp. 203ff.). In fact, he claims very broadly that "it is lawful for any subject,

without any particular orders from anyone, but from divine, moral, and natural law, to slay, or to cause to be slain, such disloyal traitors" (Monstrelet 1840, p. 71; Monstrelet 1857, p. 206). This is a remarkable extension of such a right, which previous authorities, if willing to consider it at all, had tended to restrict to the people as a collective, or to formally instituted magistrates (Coville 1932, pp. 179ff.; Black 1992, pp. 148ff.; Schmale 1997, pp. 269ff.; van den Auweele 2000, pp. 49ff.). Because of his position at the University of Paris as a Doctor and Professor of Theology, it would be easy to conclude that in his speech Jean Petit legitimised tyrannicide and killing in the interest of the state in the name of the Faculty of Theology (thus Ehlers 1999, p. 138). But this was not the case, which is shown not merely by the University's later repudiation of his position, but also by the speech itself. In a rather curious move in the introduction, Jean Petit not only emphasises that he speaks only because he has been commanded to do so by the Duke of Burgundy, whose commands he cannot refuse, but he also notes that he might well be asked whether it would not be proper that such a defence should be presented by a lawyer rather than a theologian, to which he replies, rather surprisingly, that it certainly is not proper for him "who is neither a lawyer nor a theologian," and he continues "were I a theologian, it might become a duty under one consideration, namely, that every doctor of theology is bounden to labour in excusing and justifying his lord, and to guard and defend his honour and good name, according to the truth, particularly when his aforesaid lord is good and loyal, and innocent of all crimes" (Monstrelet 1840, p. 63; Monstrelet 1857, pp. 183f.). Since everybody in the audience knows that Jean Petit is in fact a theologian (he had received his doctorate in the subject on 15 May 1405), his counterfactual assertions to the contrary can only mean that he is not on this occasion speaking in that capacity, that he is acting as a servant of the duke rather than as a scholar; and he may well be respecting a specific wish of the faculty of theology not to be associated with his appearance on behalf of the duke (Coville 1932, pp. 209f.). Beyond that, these remarks are eerily reminiscent of the liar's paradox, for even as Jean Petit asserts the theologian's duty to speak the truth, he violates that duty and negates its applicability to himself by falsely denying that he is a theologian. The attentive listener or reader can hardly escape the conclusion that the speaker's relationship to the truth is somewhat disturbed here, and his veracity not beyond question.

Moreover, in his extensive study of this case, Bernard Guenée (1992, pp. 192ff.) has found the use of the concept of *tyrannicidium* in Petit's argument puzzling, since that concept does not fit the facts of the case very well, and so it has to be

reinterpreted in ways that approximate it very closely to *maiestas*. To begin with, Louis had not yet seized power illegally, which was the core of the concept as defined by St. Gregory, on whom Petit relied (Monstrelet 1840, p. 70; Monstrelet 1857, p. 203). It is true that this definition also referred to the unjust exercise of power, and it could be argued, and Petit did so to some extent, that the Duke of Orléans had on various occasions abused the lawful authority entrusted to him by the king. But the core of John the Fearless' defence was clearly that by his deed he had prevented Louis from seizing power illegally. Nowhere is this more apparent than in the widely disseminated iconic representation of the assassination, which shows the Lion of Burgundy mortally striking a Wolf representing the Duke of Orléans (a wordplay, since the French word for wolf, *loup*, invokes the first syllable of the name Louis), who is trying to grasp the crown of France (Hohmann 2003, p. 512). This confirms that Louis was not yet a full-blown tyrant, because he had not yet made himself king, and the authorities cited by Petit do not support the notion of a *preventive* tyrannicide. Punishing an *attempted* seizure of power is much more readily encompassed by the *crimen laesae maiestatis*, which does after all include planned or attempted treason against the sovereign.

It should also be noted that the concept of *tyrannicidium* sorely lacked a solid *legal* foundation. Jean Petit implicitly acknowledges this when he supports the claim of justified tyrannicide first by theological authorities such as St. Thomas Aquinas and John of Salisbury (undergirded further by, among others, St. Peter) (Monstrelet 1840, p. 71; Monstrelet 1857, pp. 206f.), then by moral philosophers such as Cicero and Boccaccio (Monstrelet 1840, pp. 71f.; Monstrelet 1857, pp. 207f.), and finally by three examples of the Bible: Moses' slaying of the oppressive Egyptian overseer, Phineas' killing of Zimri, and the defeat of Lucifer by the archangel St. Michael (Monstrelet 1840, p. 74; Monstrelet 1857, pp. 214f.). In the Douët-d'Arcq edition of the speech, Petit begins his philosophical references with a mysterious "Anaxagoras Philippus" (Monstrelet 1857, p. 207) who fortuitously expresses a position on tyrannicide consonant with Petit's own. Other texts show that this is a garbled version of a reference to "Aristotle's *Politics*", but that work, while generally hostile towards tyrants and showing some sympathy towards the idea of tyrannicide, does not contain such an emphatic endorsement of that concept. One may surmise that Jean Petit relied on a gloss in a collection of abstracts here, rather than on the original work (Coville 1932, p. 216); but the fact remains that the partisan advocate, having found a supportive reference, was

apparently not inclined to check its accuracy. Another example for his tendency to improve his sources rhetorically is provided by a quotation from St. Gregory's *Moralia*, where Petit adds to a definition of "tyranny" some words including attempted tyranny in the ambit of the term (Coville 1932, p. 220), which is of course very important here because, as noted before, Louis of Orléans had not openly seized power.

As if to hide a rather weak point, Petit refers to legal authorities only in the middle of his case for the concept of tyrannicidium. Significantly, he here again emphasises that he is no lawyer, that his legal studies are limited and a thing of the distant past, and he does not produce specific citations. Moreover, the three legal points he makes do not specifically address the idea of tyrannicide and can thus be used as support only by means of rather forced analogies and *a fortiori* arguments: He refers to the punishment of deserters and destroyers of chivalry, thieves and highway robbers, and thieves found in a house at night (Monstrelet 1840, p. 72; Monstrelet 1857, pp. 208f.).

So, given these difficulties, why indeed did Jean Petit give the problematic concept of tyrannicidium such a prominent place in his pleading on behalf of John the Fearless? I would like to suggest that there are at least two answers to this puzzle posed by Guenée. I propose to show that the reasons for Petit's choice of legal arguments have to be understood from the perspective of his overall rhetorical strategy and its relationship to both the legal and (even more importantly) the political posture of the case.

#### 4. *Rhetorical Functions of the Use of tyrannicidium*

First, the legal point: maiestas or treason is an offence against the *state* or the *sovereign*. Consequently, it is primarily incumbent upon *them* to prosecute and punish traitors. But no such prosecution had been instituted against the Duke of Orléans. This is a big problem for Jean Petit's case; how big it is we can judge from the fact that he is prepared to sail very close to the wind in dealing with it, when he suggests that a (hypothetical) king might be unable to punish the offender "from weakness of intellect or want of force" (Monstrelet 1840, p. 73; Monstrelet 1857, p. 213). Charles VI was not present when Petit delivered this speech, but his oldest son and heir apparent was, and all other members of the audience were also well aware of the actual king's fragile mental health and tentative grip on power, and thus Petit's remark could be seen as a thinly veiled and highly offensive reference to his lord and sovereign. But by defining the offender as a tyrant, the daring monk suggests a specific remedy: tyrants may of

course be slain by private citizens as a matter of self help, without any formal governmental authority, and that is a point emphasised by Petit in his three biblical examples: Moses, Phineas, and St. Michael all acted without any specific permission or command from higher authorities (Monstrelet 1840, p. 74; Monstrelet 1857, p. 214).

But even more significant for our understanding of Jean Petit's rhetorical strategy is the realisation that his speech was but another piece in a long-term political campaign by John of Burgundy against Louis of Orléans, begun already by John's father, Philip the Bold. And a very important part of that campaign had been the characterisation of Louis as a tyrant (Hohmann 2003, pp. 510f.). Thus Petit was able to build on and reinforce the already widely accepted notion that Louis was indeed a tyrant who deserved to be deposed and, if necessary, killed. By defining Duke John's act as tyrannicide, his defence also shifted the focus from the damage done to state and sovereign to the oppression of the people, whose support John would need if he wanted to tighten his grip on power, because the majority of elite power holders had supported the king's brother, which helped to precipitate John's ultimate decision to resort to assassination.

Jean Petit's speech was delivered to a large crowd including citizens of Paris, and it was given in French. The Latin that would have been appropriate if the learned had been the primary audience was reserved for some of the more technical (and often less persuasive) portions of the oration. Moreover, his arguments were widely disseminated in other parts of France as well. And this wider popular audience was now told again and again that Louis was indeed a tyrant. In the fourth article of his major premiss, Jean Petit used the term "tyrant" and its cognates well over twenty times (Monstrelet 1840, pp. 70ff.; Monstrelet 1857, pp. 203ff.). This was followed by a long list of the supposed offences of the Duke of Orléans against the king and his family. These accusations ranged from witchcraft and poisoning to attempts to burn the king, make alliances with his enemies, turn the queen against her husband, induce the pope to act against the king, and prolong the schism of the Church, to efforts to raise armies and lay taxes weighing heavily upon the people (Monstrelet 1840, pp. 75ff.; Monstrelet 1857, pp. 217ff.).

Neither here nor in the minor premiss (Monstrelet 1840, pp. 77ff.; Monstrelet 1857, pp. 223ff.) does Petit offer much supportive proof for his allegations. Instead he relies on the repetitive effect of first listing the offences hypothetically at the end of the major premiss, and then immediately asserting their actuality at



the beginning of the minor. Moreover, he can rely on the fact that the people have long been exposed to rumours “confirming” the truths of these accusations (Hohmann 2003, p. 511). Most importantly, he concludes the litany of Louis’ transgressions with the accusations that weigh most heavily on the minds of the people and need no proof for them because they are confirmed by their prolonged experience: the Duke of Orléans’ prominent role in imposing military burdens and heavy taxes on the people of France (Monstrelet 1840, pp. 77, 80; Monstrelet 1857, pp. 222, 241). That this strategy could work quite well, certainly in addressing a popular audience in Paris, is shown by the fact that even before Jean Petit’s speech, the good people of that city had rather welcomed the news of Louis’ death. The chronicler tells us that “the Parisians were not well pleased with the Duke of Orléans, for they had learnt that he was the author of all the heavy taxes that oppressed them, and began to say among themselves in secret ‘the knotty stick is smoothed’” (Monstrelet 1840, p. 56; Monstrelet 1857, p. 165), this of course a reference to the war of emblems between the two Dukes (Huizinga 1984, p. 211).

One day after Petit’s speech, on 9 March 1408, John the Fearless obtained an audience with the king and a royal pardon (Famiglietti 1986, p. 68; Vaughan 2002, p. 72). But this was not to last very long.

### *5. Defending the Duke of Orléans*

The reply to Jean Petit’s speech on behalf of John of Burgundy was given by a spokesman for the widowed Duchess of Orléans a little more than six months later, on 11 September 1408, in the Great Hall of the Louvre in Paris, to an audience quite similar to that addressed earlier by Jean Petit, now including the queen, but again not the king himself. The speaker on this occasion was the Abbé of Cerisy, **[viii]** but the chronicler tells us that he was given the text to be read by the Duchess, and nowhere is there any claim that the speaker is the author. It does appear likely that the speech was drafted primarily by Guillaume Cousinot, who was one of the advocates at the Parlement of Paris (Delachenal 1885; Gaudry 1977) and an adviser to the Duchess, and later became the Chancellor of the new Duke of Orléans; he delivered a subsequent recital of the legal demands of the Duchess in person, and we may surmise that the abbé was chosen as a speaker to counteract the religious authority of the advocate employed by John the Fearless. **[ix]**

It is interesting to note that while this reply predictably emphasises that the Duke of Burgundy acted without proper authority outside the established legal process

(Monstrelet 1840, pp. 90f.; Monstrelet 1857, pp. 271ff.), it does not question the legal status of the charge of tyrannicide. So rather than challenging the substantive normative underpinnings of Jean Petit's accusations, it proceeds to deny their factual basis (Monstrelet 1840, pp. 104ff; Monstrelet 1857, pp. 313ff.). In the process, the defence of the Duke of Orléans gets caught in a rhetorical trap of sorts by following the order of the charges chosen by the wily monk; consequently, the reply ends on a not very convincing denial of Louis' only too notorious involvement in financial improprieties, costly military burdens, and heavy taxes (Monstrelet 1840, p. 110; Monstrelet 1857, pp. 332ff.).[x]

At this point, John the Fearless was no longer in Paris; he had left the city in order to come to the aid of his brother-in-law John of Bavaria, Bishop of Liège, who was confronted with a revolt by his flock (Monstrelet 1857, pp. 257f.). And so this time, the Duke of Burgundy's opponents were able to prevail and to have the Duke of Orléans exonerated (Monstrelet 1857, p. 348). But proceedings against John the Fearless came to nothing when news of his great victory at Liège reached Paris, which he soon re-occupied (Monstrelet 1857, pp. 387ff.). Later, the royal pardon for him was renewed in a grand ceremony at Chartres, and at the command of the king, the children of Louis of Orléans forgave him as well, and yet again a lasting peace was sworn that did not last (Monstrelet 1857, pp. 390ff.)

## 6. *Conclusion: Aftermath and Reflection*

I will conclude with a brief summary of some subsequent vagaries of Jean Petit's defence of tyrannicide (Coville 1932, pp. 251ff; Guenée 1992, pp. 249ff.). Petit replied to the defence mounted by the supporters of Orléans with a "Second Justification of the Duke of Burgundy" written in 1409, and he attempted to improve on this somewhat prolix and diffuse document by a more concentrated tract entitled "Against the Builders of Sepulchres", published in 1410, in which he compared the defenders of Duke Louis with those who built ornate sepulchres for the prophets in order to pretend that they venerated those whom they had in fact rejected. But in all these propaganda efforts, Jean Petit continued to express reservations about his own activities (Coville 1932, pp. 271f.). He died on 15 July 1411.

After his death, his justification of the personal use of violence against tyrants was virulently attacked by the Chancellor of the University of Paris, Jean Gerson, who had earlier been a supporter of the Burgundian cause, but changed sides after 1413, probably not coincidentally soon after Burgundian control of Paris had collapsed in August 1413 (Coville 1932, pp. 413ff.). Somewhat ruefully, Gerson

justified his new-found zeal for the condemnation of Jean Petit by quoting Cicero: *inter arma silent leges* (surrounded by weapons, laws are silent) (Coville 1932, p. 438).

Gerson's campaign of counter-persuasion succeeded in 1413-1414, when a "Council of the Faith" called in Paris condemned the doctrine, not without some manipulative help by Gerson, who was very much the initiator and a dominant presence (Coville 1932, pp. 439ff.). On 25 February 1414, Jean Petit's "*Justification du duc de Bourgogne*" was solemnly burned in front of the cathedral of Notre-Dame in Paris (Vaughan 2002, p. 196).

But the decision expressed by this spectacle was overturned not much later by the somewhat more official Council of Constance in 1416, which ultimately declared the issue to be a secular matter open to debate, requiring an examination of circumstances in individual cases by lawyers, rather than being resolvable by theologians on the basis of general religious doctrines. **[xi]** This outcome was undergirded by a stalemate of conflicting interests: The Teutonic Knights wanted to keep the concept of tyrannicide available in case it might prove useful against the Polish King Ladislas, while the Polish delegation not surprisingly pleaded for a condemnation of Petit's position. The English doctors were not amenable to such a step because their own current king Henry V owed his position to the fact that his father Henry IV had been brought to power by the murder of Richard II. And John the Fearless used his influence (and bribes) to prevent a condemnation of Jean Petit (Coville, 1932, pp. 503ff.; Guenée 1992, pp. 251ff.).

In France, Jean Petit's doctrine was soon rehabilitated, only to be turned against its supposed beneficiary (Schnerb 1988, pp. 200ff.; Guenée 1992, pp. 277ff.; Vaughan 2002, pp. 276ff; Schnerb 2005, pp. 671ff.). On 29 May 1418, the Burgundians regained control of Paris yet again, and both the University and the Parlement quickly recanted their support of the decision of the Council of the Faith of 1413-1414 that had condemned and burned the propositions on tyrannicide attributed to Jean Petit: time again to quote Cicero on laws surrounded by arms. But then not much later, on 10 September 1419, the future Charles VII (Vale 1974; he had become the Dauphin of France in 1417, after the successive deaths of his two older brothers [Famiglietti 1986, p. 177]) laid a trap for the ascendant John the Fearless who loomed as a large stumbling block on Charles' way to the throne. The deed was done when the dauphin and John met on the bridge across the Yonne near its confluence with the Seine at Montereau, to the Southeast of Paris and East of Fontainebleau. The Duke was cut off from his

own supporters, surrounded by followers of the dauphin, and killed in a manner reminiscent of the slaying of Louis of Orléans, a little less than twelve years earlier. There has been some controversy over the role of the future king in these events, but the emerging scholarly consensus no longer doubts that he was centrally involved (Vaughan 2002, pp. 276ff.; Schnerb 2005, 671ff.). His father Charles VI certainly accepted this as fact when he used the assassination of John the Fearless as a justification for his (ultimately unsuccessful) attempt to disinherit the future Charles VII and to institute Henry V of England as his successor in the treaty of Troyes on 21 May 1420 (Ehlers 1999, p. 146). The former champions of tyrannicide were now aggrieved victims of that idea, and a Burgundian propaganda campaign ensued which tried to undermine the growing power of the dauphin Charles (Guenée 1994, pp. 45ff.). Moreover, the assassinated duke's son and successor Philip had inscriptions commemorating the foul deed put up in Montereau, Paris, Ghent, and Dijon; and, to ensure an even wider dissemination and stronger propagandistic effect of the grisly tidings, also in major centres of pilgrimage: Rome, Jerusalem, and Santiago de Compostela (Ehlers 1999, p. 145; Bonenfant 1999).

The next century saw yet another such reversal of positions when the Huguenot scholar François Hotman initially attacked (from exile in Switzerland) the French king Charles IX for his involvement in the St. Bartholomew's Night Massacre of 1572; in 1573 Hotman published a pamphlet entitled *De furoribus Gallicis (On the French Outrages)*, in which he declared that the king had forfeited the loyalty of his subjects and should be deposed. And in 1579 an anonymous work (ascribed to "Junius Brutus," possibly a member of court circles in Navarre) entitled *Vindiciae contra tyrannos (A Vindication [of the rights of citizens] against Tyrants)* was published in Basel, asserting that tyrants could be justly killed by anyone (Allen 1961, p. 331). But when Henry III recognised the Protestant Henry of Navarre (the future Henry IV) as his legitimate successor in 1584, Huguenot scholars began to reject the *Vindiciae* they had so recently hailed, and Hotman himself declared that resistance against Henry of Navarre would be a sin (Allen 1961, p. 337). Which did not discourage François Ravallac, who killed Henry IV on 14 May 1610, justifying his act as tyrannicide against a Protestant usurper, disregarding the king's conversion to Catholicism in 1593. And yet again, the shadow of the learned monk, though only dimly perceived, was raised and reburied: After the king's assassination, the Parlement of Paris demanded that the Faculty of Theology institute proceedings to revive the condemnation of Jean Petit's

doctrines that had been expressed in 1413, and thereby to undo their hasty rehabilitation, by both the University and the Parlement of Paris, which had occurred in 1418. The Faculty of Theology complied on 4 June 1610 (Coville 1932, pp. 568ff.).

Is there a lesson in all of this for our own time? Contemplating these controversies, we are reminded, if such a reminder is needed, of the dialectical ambiguity and rhetorical fungibility of propositions and arguments in contexts saturated with power politics. **[xii]** And certainly these events, just like Goethe's poem *Der Zauberlehrling*, also makes us aware yet again that once we invoke a general empowering formula, we cannot control its use so as to guarantee that it will work only in our favour. Or, to put it more specifically, those who would claim and justify the right to strike pre-emptively may be wise to remember that in consequence they could well find themselves pre-emptively struck.

## NOTES

**[i]** The spirits whom I called - I cannot now dismiss: Johann Wolfgang Goethe, *The Sorcerer's Apprentice* (1797).

**[ii]** For the wider European political background of this conflict see Ehlers 1999, pp. 131ff.; on the conflict between Armagnacs (supporters of the house of Orléans) and Bourguignons (supporters of the house of Burgundy) see Schnerb 1988; on the period in general see Tuchman 1979; on the general history of France during that time see Denieul-Cormier 1980, Beaune 1991, Duby 1991, and Kerhervé 1998; on the history of Burgundy see Cope 1987 and Schnerb 1999; on conditions in Paris during the period see Favier 1974.

**[iii]** Ehlers 1999, p. 137 points out that (somewhat ironically in its French translation: *Je maintiendrai*) this motto is now a component of the royal Dutch coat of arms.

**[iv]** For an overview of stasis/status theory and further references see Hohmann 2001.

**[v]** The exact figure is 8.8% (Table 22). It should be noted, however, that the intervention of the devil was prominently cited in the justifications for the letters of remission only in 3.0% of the cases: as the first reason in 1.5% and as the second reason in another 1.5% (Gauvard 1991, p. 431, Table 23b). On violence in general in the period see also Gauvard 2005.

**[vi]** In studying these speeches, I have consulted, in addition to the 1857 edition, the manuscript fr. 5733 in the Bibliothèque nationale de Paris, which Guenée

identified as the best text for the justification of the Duke of Burgundy (Guenée 1992, p. 315, n. 56). But for ease of reference for the English-speaking reader, I also cite the 1840 London edition in referring to the speeches; Johnes' translation is incomplete and occasionally also inexact, but these shortcomings do not affect the passages relevant for this paper. The collaborators of Jean Petit, the different versions of the speech, as well as various summaries of it that were circulated in the 15th century, are discussed in detail by Coville 1932, pp. 117 ff., 133 ff., 169 ff.); see also Willard 1969.

**[vii]** On medieval sermons see Longère 1983; on theological disputations in the Middle Ages see Basan, Fransen, Wippel et al. 1985.

**[viii]** Monstrelet names as the speaker the "abbé de Saint-Fiacre", but this is mistaken: there was no such position, and the speaker is correctly identified in other sources as Thomas du Bourg, 27th Abbé of Cerisy (Coville 1932, p. 228)

**[ix]** Coville 1932, pp. 230ff. discusses the different surviving texts of the speech; as with Jean Petit's speech, he regards some isolated texts as more reliable than that transmitted by Monstrelet; but in this instance, too, the differences are not relevant for the discussion in this paper. Coville is less skeptical than others about the actual authorship of the Abbé of Cerisy, and parts of the speech remind him of the eloquence of Jean Gerson; but he admits that no definite ascription of authorship is possible (pp. 246 ff.).

**[x]** Even Alfred Coville, who shows that most of Jean Petit's accusations are not securely grounded in the historical evidence (Coville 1932, pp. 299 ff.), does admit that Louis of Orléans did indeed commit financial abuses, which were not merely invented (though they may have been exaggerated) by Jean Petit (pp. 362 ff.). Coville's argument (pp. 362 f.) that the Duke of Burgundy also received royal largesse, specifically for his military expedition to Turkey and the ransom for John the Fearless after the battle of Nicopolis (won by the Turks) is not quite persuasive in this context, since these were legitimate military expenditures, rather than funds supporting the duke's lavish lifestyle.

**[xi]** It is therefore not quite correct when Schmale (1997, p. 269) asserts that Jean Petit's teachings were condemned by the Council of Constance. For details see Coville 1932, pp. 522 ff.

**[xii]** On the political uses of history in the events surrounding the assassination of Louis of Orléans see Dequeker-Fergon 1986.

## REFERENCES

Allen, J.W. (1961). *History of Political Thought in the Sixteenth Century*. London:

Methuen.

Autrard, F. (1981). *Naissance d'un grand corps de l'État. Les gens du Parlement de Paris, 1354-1454*. Paris: Publications de la Sorbonne.

van den Auweele, D. (2000). Over de grenzen van de macht. Denken over tyrannicide van de twaalfde tot de vijftiende eeuw. In: T. Verschaffel (Ed.), *Koningsmoorden* (pp. 49-69). Leuven: Universitaire Pers Leuven.

Bazan, B.C., G. Fransen, J.W. Wippel, et al. (1985). Les questions disputés et les questions quodlibétiques dans les facultés de théologie, de droit et de médecine. *Typologie des sources du Moyen Age occidental* 44-45. Turnhout: Brepols.

Beaune, C. (1991). *The Birth of an Ideology. Myths and Symbols of Nation in Late-Medieval France*. F.L. Cheyette (Ed.). S.R. Huston (Tr.). Berkeley: University of California Press.

Black, A. (1992). *Political Thought in Europe 1250-1450*. Cambridge: Cambridge University Press.

Bonenfant, P. (1999). Du meurtre de Montereau au traité de Troyes. In: P. Bonenfant, Philippe le Bon: *Sa politique, son action* (pp. 105-336). A.-M. Bonenfant-Feytmans (Ed.).

Calmette, J. (1964). *Les grands ducs de Bourgogne*. Paris: A. Michel.

Champion, P. (1911). *Vie de Charles d'Orléans (1394-1465)*. Paris: H. Champion.

Cope, C. (1987). *The Lost Kingdom of Burgundy. A Phoenix Frustrated*. London: Constable.

Coville, A. (1932). *Jean Petit: la question du tyrannicide au commencement du XVe siècle*. Paris: Picard.

Delachenal, R. (1885). *Histoire des avocats au Parlement de Paris 1300- 1600*. Paris: Librairie Plon.

Denieul-Cormier, A. (1980). *Wise and Foolish Kings. The First House of Valois 1328-1498*. Garden City, N.Y.: Doubleday & Co.

Dequeker-Fergon, J. M. (1986). L'histoire au service des pouvoirs. L'assassinat du duc d'Orléans. *Médiévales*, 10, 51-68.

Duby, G. (1991). *France in the Middle Ages 987-1460. From Hugh Capet to Joan of Arc*. J. Vale (Tr.). Oxford: Basil Blackwell.

Ehlers, J. (1999). Ludwig von Orléans und Johann von Burgund (1407/1419). Vom Tyrannenmord zur Rache als Staatsraison. In A. Demandt (Ed.), *Das Attentat in der Geschichte* (pp. 131-148). Frankfurt a.M.: Suhrkamp Taschenbuch Verlag.

Famiglietti, R.C. (1986). *Royal Intrigue. Crisis at the Court of Charles VI, 1392-1420*. New York: AMS Press.

Favier, J. (1974). *Paris au XVe siècle, 1380-1500*. Paris: Hachette.

- Feteris, E. (1999). *Fundamentals of Legal Argumentation*. Dordrecht: Kluwer Academic Publishers.
- Gaudry, J.A.J. (1977). *Histoire du barreau de Paris depuis son origine jusqu'à 1830*. Vol. 1. Repr. of 1864 ed. Genève: Slatkine-Megariotis Reprints.
- Gauvard, C. (1991). "*De grâce especial*". *Crime, état et société en France à la fin du Moyen Âge*. Vol. 1. Paris: Publications de la Sorbonne.
- Gauvard, C. (2005). *Violence et ordre public au Moyen Age*. Paris: Picard.
- Géruzez, M. (1836). *Cours d'éloquence française*. Vol. 1. Paris: G. Angé et Cie & A. Cherbert.
- Guenée, B. (1992). *Un meurtre, une société. L'assassinat du Duc d'Orléans 23 Novembre 1407*. Paris: Gallimard.
- Guenée, B. (1994). Les campagnes de lettres qui ont suivi le meurtre de Jean sans Peur, duc de Bourgogne. *Annuaire-bulletin de la Société de l'histoire de France*, 509 [for 1993], 45-65.
- Guenée, B. (2002). L'opinion publique à la fin du Moyen Age d'après la "Chronique de Charles VI" du Religieux de Saint-Denis. Paris: Librairie Académique Perrin.
- Hohmann, H. (2001). Stasis. In T.O. Sloane (Ed.), *Encyclopedia of Rhetoric* (pp. 741-745). New York: Oxford University Press.
- Hohmann, H. (2003). Rhetoric, Dialectic, and Political Persuasion in the Case of John the Fearless, Duke of Burgundy (1408). In F.H. van Eemeren et al. (Eds.), *Proceedings of the Fifth International Conference of the International Society for the Study of Argumentation* (pp. 509-513). Amsterdam: SIC SAT.
- Huizinga, J. (1984). *The Waning of the Middle Ages*. Repr. of 1924 ed. New York: St. Martin's Press.
- Kamm, G.A. (1911). *Der Prozess gegen die "Justificatio Ducis Burgundiae" auf der Pariser Synode, 1413-1414*. Diss. Universität Freiburg. Roma: Tipografia "Roma" Armani & Stein.
- Kerhervé, J. (1998). *Histoire de la France: la naissance de l'État moderne 1180-1492*. Paris: Hachette.
- Longère, J. (1983). *La prédication médiévale*. Paris: Études Augustiniennes.
- Mommsen, T. (1899). *Römisches Strafrecht*. Leipzig: Duncker & Humblot.
- Monstrelet, E. de. (1840). *The Chronicles of Enguerrand de Monstrelet*. T. Johnes (Tr.). Vol. 1. London: William Smith.
- Monstrelet, E. de. (1857). *La Chronique d'Enguerran de Monstrelet. En deux livres avec pièces justificatives. 1400-1440*. L. Douët-d'Arcq (Ed.). Vol. 1. Paris: Mme. Ve. Jules Renouard.



- Munier-Jolain, J. (1971). *La plaidoirie dans la langue française*. Vol. 1. Repr. of 1896 ed. Genève: Slatkine Reprints.
- Pintoin, M. (1841) *Chronique du Religieux de Saint-Denis contenant le règne de Charles VI de 1380 à 1422*. M.L. Bellaguet (Ed. & Tr.). Vol. 3. Paris: L'Imprimerie de Crapelet.
- Schmale, W. (1997). *Archäologie der Grund- und Menschenrechte in der frühen Neuzeit. Ein deutsch-französisches Paradigma*. München: Oldenbourg.
- Schnerb, B. (1988). *Les Armagnacs et les Bourguignons. La maudite guerre*. Paris: Librairie Académique Perrin.
- Schnerb, B. (1999). *L'État bourguignon 1363-1477*. Paris: Librairie Académique Perrin.
- Schnerb, B. (2005). *Jean sans Peur. Le prince meurtrier*. Paris: Éditions Payot & Rivages.
- Tuchmann, B.W. (1979). *A Distant Mirror. The Calamitous 14th Century*. New York: Ballantine Books.
- Vale, M. (1974). *Charles VII*. London: Eyre Methuen.
- Vaughan, R. (2002). *John the Fearless. The Growth of Burgundian Power*. Woodbridge: Boydell Press.
- Willard, C. (1969). The manuscripts of Jean Petit's justification: some Burgundian propaganda methods of the early fifteenth century. *Studi francesi*, 13:2:38, 271-280.