

Legal Practice and the Written Word in the Early Middle Ages

Frankish Formulae, c. 500–1000

ALICE RIO



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LEGAL PRACTICE AND THE WRITTEN WORD IN THE EARLY MIDDLE AGES

Legal formularies are books of model legal documents compiled by early medieval scribes for their own use and that of their pupils. A major source for the history of early medieval Europe, they document social relations beyond the narrow world of the political elite. Formularies offer much information regarding the lives of ordinary people: sales and gifts of land, divorces, adoptions, and disputes over labour as well as theft, rape or murder. Until now, the use of formularies as a historical source has been hampered by severe methodological problems, in particular through the difficulty of establishing a precise chronological or geographical context for them. By taking a fresh look at Frankish legal formularies from the Merovingian and Carolingian periods, this book provides an invaluable, detailed analysis of the problems and possibilities associated with formularies, and will be required reading for scholars of early medieval history.

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The decision to turn my PhD research into a book came somewhat late in the day, so that some parts of it will already have been published elsewhere: [chapter 9](#) was published separately as an article ('Freedom and unfreedom in early medieval Francia: the evidence of the legal formularies', in *Past & Present* 193 (2006), 7–40), and appears here only with some minor adjustments; the discussions of the formularies of Angers and Marculf in [chapter 4](#) appeared in a similar state in the introduction to the translation of these two texts published with Liverpool University Press

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(*The Formularies of Angers and Marculf: Two Merovingian Legal Handbooks*, Translated Texts for Historians 46 (Liverpool, 2008)); I also formulated some of my more general points in a previous article in the *Festschrift* for Jinty Nelson ('Charters, law codes and formulae: the Franks between theory and practice', in P. Fouracre and D. Ganz, eds, *Frankland: The Franks and the World of Early Medieval Europe* (Manchester, 2008), 7–27).

ABBREVIATIONS

<i>BHL</i>	<i>Bibliotheca Hagiographica Latina</i>
<i>CCL</i>	<i>Corpus Christianorum Series Latina</i>
<i>CLA</i>	<i>Codices Latini Antiquiores</i> , ed. E.A. Lowe (Oxford, 1935–71)
<i>C.Th.</i>	<i>Codex Theodosianus</i> , ed. T. Mommsen and P.M. Meyer (Berlin, 1905)
Kölzer DM	T. Kölzer, ed., <i>Die Urkunden der Merovinger</i> , MGH <i>Diplomata regum Francorum e stirpe merovingica</i> (Hanover, 2001)
<i>MIÖG</i>	<i>Mitteilung des Instituts für Österreichische Geschichtsforschung</i>
<i>MGH</i>	<i>Monumenta Germaniae Historica</i>
<i>MGH Capitularia</i>	ed. A. Boretius, <i>Capitularia regum Francorum</i> , MGH <i>Leges</i> II, 2 vols (Hanover, 1883–97)
<i>MGH Formulae</i>	ed. K. Zeumer, <i>Formulae Merovingici et Karolini aevi</i> , MGH <i>Leges</i> V (Hanover, 1886)
<i>NA</i>	<i>Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde</i>
<i>PL</i>	<i>Patrologia Latina</i> , ed. J.-P. Migne, 221 vols (Paris, 1841–64)
<i>SK</i>	D. Schaller and E. Könsgen, <i>Initia carminum latinorum saeculo undecimo antiquiorum</i> (Gottingen, 1977)
<i>TRHS</i>	<i>Transactions of the Royal Historical Society</i>
<i>ZSSRG</i>	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte:</i> <i>GA Germanistische Abteilung</i> <i>RA Romanistische Abteilung</i>

INTRODUCTION

Legal formulae are in an unusual position among early medieval sources. Their study peaked early. It was begun in earnest by the beginning of the seventeenth century, and formulae elicited fairly steady scholarly interest from then on. The nineteenth century was, in historiographical terms, their golden age: rival editions were published, Eugène de Rozière's work was quickly followed and superseded by Karl Zeumer's *Monumenta* edition, and there was a flurry of debate and controversy regarding dating and editing work, in which French scholars usually reached conclusions diametrically opposed to those of their German counterparts.¹ Fustel de Coulanges relied heavily on formulae as a source in his *Monarchie franque*, and his work can in some ways be said to represent the only serious attempt to use them comprehensively in a general history on the same level as, for instance, the law-codes or narrative histories.² By the 1930s, formulae looked set to become established as a source for the Frankish kingdoms that could not be dispensed with.

Curiously, however, their use declined sharply thereafter. Modern historians have in general been far less sure about exactly what it is that formulae can really tell us, or indeed whether they can be useful at all, and they are now mostly relegated to footnotes, as back-up for points already made on the basis of different sources.³ This decline is especially

¹ E. de Rozière, *Recueil général des formules* (Paris, 1859–71); K. Zeumer, *Formulae Merovingici et Karolini Aevi*, MGH *Leges* V (Hanover, 1886). On Franco-German antagonisms, see, for instance, the controversy over the dating of Marculf, which was the object of a debate between Zeumer and Tardif as drawn-out as it was venomous (see below, [chapter 4](#), p. 84, n. 38).

² N.D. Fustel de Coulanges, *La monarchie franque*, *Histoire des institutions politiques de l'ancienne France* vol. 3 (Paris, 1888), *passim*, but especially pp. 23–4; see also, for instance, *ibid.* pp. 29, 190, 214, 406, 409, 415–16, 420, 499.

³ With some exceptions, such as the important articles by I.N. Wood, 'Disputes in late fifth- and sixth-century Gaul: some problems', in W. Davies and P. Fouracre, eds, *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986), 7–22 and I.N. Wood, 'Administration, law and culture in

obvious in the level of attention they receive in textbooks. Until the mid-twentieth century textbooks on the period always devoted a section to them, typically including an inventory of the evidence and a few words on the genre.⁴ Formulae then became an increasingly obscure source as the twentieth century progressed, and they are hardly represented at all in modern textbooks. Perhaps the most extreme example is Robert Fossier, who, in a 1999 book entitled *Sources de l'histoire économique et sociale du Moyen Âge occidental*, baldly stated that 'formularies, being mere frameworks to be filled in at a later date, can only be useful in the field of diplomatic'.⁵

This rather startling reversal of fortune for a source that had once been considered important partly has its roots in the change in the way we approach our sources. Whereas nineteenth-century scholars had been happy to shape their view of the medieval world to fit the available evidence, depending on a relatively straightforward assessment of its reliability or otherwise, the sensitivity to the difficult relationship between text and reality that is the hallmark of modern research places a much heavier demand on our sources. We now view texts as self-conscious constructions: where earlier scholars had looked only to evaluate the informative content of a source, we now look for discourse, textual strategies and power relationships. Historians are now keenly conscious of the need to understand first and foremost what a text is for and how it works: its

Merovingian Gaul', in R. McKitterick, ed., *The Uses of Literacy in Early Medieval Europe* (Cambridge, 1990), 63–81; P. Fouracre, '"Placita" and the settlement of disputes in later Merovingian Francia', in Davies and Fouracre, *The Settlement of Disputes in Early Medieval Europe*, 23–43; P. Geary, 'Extra-judicial means of conflict resolution', in *La giustizia nell'alto medioevo (secoli V–VIII)*, Settimane di studio del centro italiano di studi sull'alto medioevo 42 (Spoleto, 1995), vol. 1, 569–601; O. Guillot, 'La justice dans le royaume franc à l'époque mérovingienne', in *La giustizia nell'alto medioevo (secoli V–VIII)*, vol. 2, 653–731.

⁴ The classic synthesis on formulae is H. Brunner, *Deutsche Rechtsgeschichte* vol. 1 (Leipzig, 1906, 2nd edn), pp. 575–88; see also H. Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien*, 2nd edn by H.-W. Klewitz (Berlin/Leipzig, 1931), vol. 2, pp. 225–41. T. Sickel, *Acta regum et imperatorum Karolinorum digesta et enarrata. Die Urkunden der Karolinger*, vol. 1: *Urkundenlehre* (Vienna, 1867) also includes a discussion of some formularies (pp. 112–25). R. Buchner, *Deutschlands Geschichtsquellen im Mittelalter: Vorzeit und Karolinger. Beiheft: Die Rechtsquellen* (Weimar, 1953), pp. 49–55, is still the most recent general overview on the subject.

⁵ R. Fossier, *Sources de l'histoire économique et sociale du Moyen Âge occidental: questions, sources, documents commentés* (Turnhout, 1999), p. 44: 'simples cadres qu'on remplira ensuite, [les formulaires] n'apporteront de données que dans le seul domaine de la diplomatie'. In the same vein, see also R. Schröder, *Lehrbuch der deutschen Rechtsgeschichte*, 6th edn by E.V. Künssberg (Berlin, 1922), p. 294: 'Der Wert der Sammlung [the *Collectio Flaviniacensis*] ist den wesentlichen nur ein literarhistorischer' (cited in P. Depreux, 'La tradition manuscrite des "Formules de Tours" et la diffusion des modèles d'actes aux VIII^e et XI^e siècles', in P. Depreux and B. Judic, eds, *Alcuin de York à Tours: Écriture, pouvoir et réseaux dans l'Europe du Haut Moyen Âge* (Rennes/Tours, 2004), 55–71, p. 56, n. 13).

use, its context of production, what kind of project it was part of. The idea that we should never take anything for granted when it comes to evaluating the purposes and representativeness of a source, even when it purports to be straightforward, had its greatest impact on historians' reading of written law. This was revolutionised in an even more dramatic way than our reading of literary texts, the ulterior motives and deliberate distortions of which had always to some degree been a concern to scholars. The limits imposed by the codes' prescriptive nature are now emphasised, and historians no longer take them as a straightforward reflection of society: they are now examined more in relation to what they can tell us about royal power, or what value system they convey.

This has had a strong impact in the decline of formulae as a source. Their heyday was associated with the deep interest in law and legal texts characteristic of nineteenth-century German scholarship. As a result, formulae have essentially been approached from the angle of legal and institutional history. It is symptomatic in this respect that interest in them should have been curiously concentrated, along with technical studies of the manuscript tradition,⁶ on the problem of the replacement of lost documents and the *appennis* procedure, almost to the exclusion of any other subject.⁷ Historians have been most interested in using formulae as evidence for legal structures, or for the information they can give us on those directly involved in the technical aspects of drawing up documents and their level of professionalisation, and not for what they can tell us about the stories of the people these documents were drawn for. As far as formulae are concerned, it is assumed, perhaps a little too pessimistically, that these stories are beyond all hope of recovery. As a result the potential of formulae as a source for social history has remained largely untapped.

The need to determine context, both of production and of use, is the most significant obstacle. In this respect formulae are at a unique disadvantage due to their non-specific nature. A large proportion of what

⁶ See W. Bergmann, 'Die Formulae Andecavenses, eine Formelsammlung auf der Grenze zwischen Antike und Mittelalter', *Archiv für Diplomatik* 24 (1978), 1–53; W. Bergmann, 'Verlorene Urkunden nach den *Formulae Andecavenses*', *Francia* 9 (1981), 3–56; Depreux, 'La tradition manuscrite des "Formules de Tours"'.
⁷ K. Zeumer, 'Über den Ersatz verlorener Urkunden im fränkischen Reiche', *ZSSRG GA* 1 (1880), 89–123; L. Gobin, 'Notes et documents concernant l'histoire d'Auvergne. Sur un point particulier de la procédure mérovingienne applicable à l'Auvergne: "l'institution d'*apennis*"', *Bulletin historique et scientifique de l'Auvergne* (1894), 145–53; and, most recently, C. Lauranson-Rosaz and A. Jeannin, 'La résolution des litiges en justice durant le haut Moyen-Age: l'exemple de l'*apennis* à travers les formules, notamment celles d'Auvergne et d'Angers', in *Le règlement des conflits au Moyen-Age, XXXIe Congrès de la SHMES (Angers, juin 2000)* (Paris, 2001), 21–33; W. Brown, 'When documents are destroyed or lost: lay people and archives in the early Middle Ages', *Early Medieval Europe* 11 (2002), 337–66.

historians usually like to find in a source is simply unobtainable from them because, in a bid to give them general value, scribes removed all names of the persons involved, and most places and dates. Even when the point of origin is securely identified and dated, which is extremely rare, the shelf-life of any collection remains unknown. Formulae therefore have a loose anchorage in space and time, and historians have been reluctant to rely on them, some even rejecting them entirely, explicitly or in practice. The problem partly stems from a tendency to approach formulae from the perspective of charters, to which historians have turned with renewed enthusiasm since the discrediting of laws and legal material as evidence for social history. Comparison with charters, with their wealth of specific, localised information, has led to a very unfavourable view of formulae, which lack such information almost completely. As a result, formulae tend to be treated as poor cousins of charters: the general opinion seems to be that although they often contain interesting information, it is made virtually useless because it cannot be tied down to a specific time and place in the way that charters can. Formulae are thus usually approached only as a second-rate source, and have become something historians turn to in the absence of the documents they would have been based on (or the documents that would have been based on them): the *placita* and charters we wish we had, but do not. As a result, despite their continued copying and reworking down to the tenth century, formulae tend to be studied as evidence for the Merovingian period, for which we lack these actual documents almost completely, far more than for the Carolingian period, for which our surviving record is more extensive. The idea that the study of formulae and that of charters should go hand in hand is so dominant in the historiography as to have remained unquestioned, and all in all, it seems fair to say that historians have been less interested in formulae as a distinct source in their own right than in the lost actual documents of which they preserve a trace. And yet surely it is interesting in itself that such collections of models were devised and used at all. Somehow we must allow a place for them in the medieval world that produced them.

The methodological adjustment which heralded a new departure in our understanding of so many other medieval sources has thus left formulae in something of a limbo. Like other sources, they have become the object of increased suspicion. Although diplomatists continue to use them for their own purposes,⁸ historians, now wary of overconfident

⁸ See for instance T. Kölzer, ed., *Die Urkunden der Merovinger*, MGH *Diplomata regum Francorum e stirpe merovingica* (Hanover, 2001).

generalisation and alive to the risks of making assumptions on the meaning and purpose of even the most outwardly utilitarian of early medieval sources, have expressed doubt as to whether they were really used in the way they purported to be, or even whether they were used at all: no one is quite sure of the context in which they should be considered, whether in terms of when, where, or how.⁹ In this sense there has been a profound rethinking of the way formulae work as a source, but essentially in a negative sense: the stripping away of prior assumptions has made historians more keenly aware of their deficiencies as a source, but these assumptions have not yet been replaced with anything more positive. Formulae have thus been rather hard done by, and in most modern work they have remained relatively under-exploited. This looks to be about to change: formulae currently seem to be on the verge of a revival, and more articles are being devoted to them, in particular with the important work of Warren Brown.¹⁰ But there has been no general reappraisal in any language of their nature as a source or of the manner in which they should be approached, and the possibilities and problems involved in their use by historians have not yet been re-examined systematically in the light of the developments in the field of early medieval history of the past fifty years. The aim of this book is to attempt precisely such a systematic study, and to propose a methodology which could allow us to approach these texts in a more fruitful way. I hope to demonstrate that formulae offer great possibilities when given the proper attention.

⁹ Brown, 'When documents are destroyed or lost', pp. 339–40.

¹⁰ Brown, 'When documents are destroyed or lost'; Depreux, 'La tradition manuscrite des "Formules de Tours"'; D. Liebs, 'Sklaverei aus Not im germanisch-römischen Recht', *ZSSRG RA* 118 (2001), 286–311; Lauranson-Rosaz and Jeannin, 'La résolution des litiges en justice durant le haut Moyen-Âge'; see also the unpublished PhD thesis in legal history by A. Jeannin, *Formules et formulaires: Marculf et les praticiens du droit au premier Moyen Âge (Ve–Xe siècles)* (Lyon, 2007). See also A. Rio, 'Freedom and unfreedom in early medieval Francia: the evidence of the legal formularies', *Past & Present* 193 (2006), 7–40; A. Rio, 'Les formulaires mérovingiens et carolingiens: tradition manuscrite et réception', *Francia*, 35 (2009), 327–48; A. Rio, *The Formularies of Angers and Marculf: Two Merovingian Legal Handbooks* (Liverpool, 2008).

PART I

Formulae, Charters and the Written Word

Chapter 1

ORALITY AND LITERACY IN FRANKISH SOCIETY

Dexterous Ghost handed over the gourd and Skilful Beast produced the vase. When they gave them both to Monkey he gave them his imitation gourd. The exchange had now been made, but Monkey wanted it to be final, so he plucked a hair from under his navel, blew a magic breath on it, and turned it into a copper coin. 'Boys,' he said, 'take this coin and buy a sheet of paper.' 'Why?' they asked. 'We'll write a legal contract for the exchange of your two man-holding treasures for my sky-holder,' said Monkey. 'We each need a written agreement to prevent later regrets with the passage of time.' 'But there's no brush or ink here to write a contract with,' said the two little devils. 'Let's swear an oath instead.' 'What sort of oath?' asked Monkey. 'We exchange our two man-holding treasures for your sky-holder,' said the devils, 'and if we ever have any regrets may we be struck by pestilence in all four seasons.' 'I certainly won't have any regrets,' chuckled Monkey. 'If I do, may I too be struck with pestilence in all four seasons.' Having sworn this oath he leapt up, his tail in the air.

Wu Cheng'en, *Journey to the West* (tr. W.J.F. Jenner), ch. 33

A dilemma common to all historians of pre-modern societies is that they are inevitably dependent on written sources, while at the same time facing deep unease as to how far it may be legitimate to rely on them: if writing and the written word can be shown to have only remained marginal to a given culture, any hope of building a representative picture on the basis of the writings it produced would be severely compromised. This issue of representativeness is crucial to judging how far it may be legitimate to extrapolate and generalise from the available evidence. On the other hand, the degree of centrality or marginality of the written word is itself bound to remain in doubt, precisely because it cannot be supplemented by alternative, predominantly oral systems, since by definition no trace of them survives unless mediated through the written word: the choice between maximalist and minimalist evaluations of the extent

of the use of the written word therefore rarely avoids boiling down in some sense to an article of faith. Following one or the other approach fundamentally alters our understanding of the world we are studying, and of how much we can ever hope to know about it.

This is an especially important problem for social history, since its vocation is to encompass society from the widest possible perspective, and it is therefore especially vulnerable to distortions created by literary texts, which were always produced by persons benefiting from both leisure and education: for early medieval Francia, this means mostly men, mostly churchmen, and mostly members of the elite. Their writings present limits beyond obvious considerations of conscious bias: much they reconstructed to fit their particular understanding of their own world (usually characterised by an unsympathetic attitude to the lower echelons of society); much also simply fell below their notice. Founding social history on such accounts may be likened to trying to reconstruct British social relations in the inter-war period exclusively on the basis of the writings of Evelyn Waugh or P.G. Wodehouse. Even saints' lives, which could place their characters in a more diverse social milieu, tend to present large sections of society, such as women or the poor, only as passing stereotypes. Attempts at generalisation are therefore always bound to be hindered by the unavoidable problem that we cannot access the vast majority of Frankish society in its own words.

Documentary sources, on the other hand, are potentially more promising in this respect. Charters, when they can be shown to be authentic, offer us a chance to access less fundamentally distorted data, since their context of production was by definition the same as that of the actions they described, and, whatever symbolic and ideological purposes they may also have served, their essential purpose was to define these particular actions in such a way as to reduce any risk of ambiguity to a minimum. Admittedly, they too give us an interpretation of events rather than a straightforward description: this would for instance be a problem if, as has been argued, traditional documentary practices followed rules that were formally too archaic, restrictive or formulaic to give a representative account of what had taken place.¹ This is an important point, to which I will return; but although formal idiosyncrasies of this kind do present us with a difficulty, they do not create an insuperable obstacle, since these documents were after all still clearly acceptable to their

¹ As has been argued, regarding formal charters, by D. Barthélemy, *La société dans le comté de Vendôme de l'an mil au XIV^e siècle* (Paris, 1993), pp. 19–64; D. Barthélemy, *La mutation de l'an mil a-t-elle eu lieu? Servage et chevalerie dans la France des Xe et XI^e siècles* (Paris, 1997), pp. 30–56. See chapter 5 below, pp. 175–7.

intended users, which implies that they did more or less manage to communicate the essence of what it was that these users wanted to put across. Although they undoubtedly held their own share of ideological baggage and creative interpretation, the *raison d'être* of documents was nevertheless to give a detailed contemporary record of particular agreements, which, although they were not put in participants' own words, were at least verified by them: it remains therefore the case that a document was defined by the event it recorded to a much greater extent than a literary text.

Documentary sources, like any other, obviously still have their own limits; the question is where to situate them. In terms of their ability to reflect the realities of Frankish society at large, the main questions are who used them, and what for: that is, how representative this evidence is of the whole range of the population, and of the whole range of transactions made. If most people used them to record most of their transactions, documents could constitute evidence wide-ranging enough to allow broad analyses of social relations; if only a few people used them, or if they were used only in exceptional circumstances, they would again pose problems on a similar scale to literary sources. This issue is deeply entangled in the wider debate over the fall of the Roman empire, and the extent of continuity from the late antique to the early medieval world: that is, the question of how far the disappearance of a complex system of government, relying extensively on the written word to fulfil its major secular functions, such as administration, law and taxation, may have entailed a reduced demand for the written word and a marginalisation of its use across the board. The possibility of a retreat of the written word into ecclesiastical spheres, long put forward as one of the fundamental changes marking the break from late antiquity to the early middle ages, forms an important part of this question.

WHO USED DOCUMENTS, AND WHAT FOR? THE EVIDENCE OF CHARTERS

The question of who used written documents essentially relates to the social status of users, as well as whether they were lay or ecclesiastical. The basic fact that documents were written down, and written in Latin, could have created two obvious possible obstacles to their access by a large proportion of the population: this brings us into the much-debated areas of language and literacy.

The extent of literacy in this period has been the object of much discussion, precisely because it is so crucial to evaluating the impact and

representativeness of the surviving written evidence.² The issue is clouded by a significant distortion in patterns of survival, since most manuscripts and charters only survive through ecclesiastical libraries and archives. If lay people also owned libraries and archives, these did not benefit from the same level of institutional continuity as those of religious houses, and would therefore have had a much lower chance of being preserved. In the case of documentary evidence, this means that the vast majority of surviving examples only deal with the business of the church: the question is whether this reflects a real imbalance in the use of documents between the lay and ecclesiastical spheres, or whether it is essentially a trick of the light resulting from accidents of survival. Some historians have concluded from the relative scarcity of surviving books and documents that can be shown to have been owned by lay people that the written word in this period was merely a sickly remnant of the Roman and Christian tradition, only kept up by churches, far removed from lay concerns, and so unable to shed much light on the wider world.³ This view was put forward most forcefully by Michael Richter, but there are a number of problems to his treatment, many of which have been pointed out since.⁴ Although this approach could in a way be considered hyper-critical, it is so only of written sources, while at the same time relying on a number of unwarranted assumptions in order to boost the case for alternative oral systems, for instance in defining 'barbarian' identity and the written word as mutually exclusive even after the formation of the successor-states, without providing much by way of supporting evidence apart from an estimation that the barbarian kingdoms produced fewer written sources than the Roman empire (a point which is itself debatable: although we certainly do not have as many early medieval sources as we would like,

² J. Goody and I. Watt, 'The consequences of literacy', in J. Goody, ed., *Literacy in Traditional Societies* (Cambridge, 1968), 27–68, constituted an important starting-point for this debate; for medieval history, the way was opened by Michael Clanchy's *From Memory to Written Record: England 1066–1307*, 2nd edn (Oxford, 1993).

³ M. Richter, "'Quisquis scit scribere, nullum potat abere labore.'" Zur Laienschriftlichkeit im 8. Jahrhundert', in J. Jarnut, U. Nonn and M. Richter, eds, *Karl Martell in seiner Zeit* (Sigmaringen, 1994), 393–404; M. Richter, *The Formation of the Medieval West: Studies in the Oral Culture of the Barbarians* (Dublin, 1994): '[written sources were] of rather marginal importance to much of early medieval life, the output of the expertise of some individuals and groups possessed of no great social prestige' (p. viii); 'writing was throughout the early medieval centuries the domain of a small circle of specialists for rather narrowly circumscribed purposes' (p. 262). For a similar argument, see also F.L. Cheyette, 'The invention of the state', in B.K. Lackner and K.R. Philip, eds, *Essays in Medieval Civilization: The Walter Prescott Webb Memorial Lectures* (Austin, 1979), 143–76, at pp. 149–56.

⁴ See, for instance, M. Innes, 'Memory, orality and literacy in an early medieval society', *Past & Present* 158 (1998), 3–36, at pp. 7–8; M. Innes, *State and Society in the Early Middle Ages: the Middle Rhine Valley (400–1000)* (Cambridge, 2000), pp. 111–12 and 117–18.

they are not significantly fewer than those available from the Roman period for the same regions). After all, stressing that oral modes were important, as they certainly were, does not amount to proving that written modes were not. In the opposite corner, historians such as Rosamond McKitterick, Janet Nelson and the 'Bucknell group' have argued the case for the centrality of literacy and written forms to lay government and administration of property long before the twelfth century (put forward as a watershed in the development of states' reliance on written forms in Michael Clanchy's own ground-breaking study, which had accordingly tended to downplay early medieval literacy).⁵ The evidence of charters, as well as that for the dissemination of laws and capitularies, is fundamental to this maximalist evaluation. Rosamond McKitterick's study of the St Gall archive in particular, which preserves an exceptional number of original charters, highlighted the presence, alongside charters produced within and dealing with the affairs of that monastery, of charters relating to lay people, and of documents written by lay scribes apparently working independently.⁶ These rare surviving examples are echoed in frequent references to the reliance on written documents by lay people in the Carolingian capitularies and in surviving records of dispute settlements.⁷ All this strongly indicates that the interests of the lay elite stood on very similar grounds to those of ecclesiastical elites: all were concerned with securing rights over property, and all therefore had a vested interest in availing themselves of the added source of legitimacy provided by written documents.⁸

This still leaves us with the question of how far down the social scale this interest in using documents would have reached: Janet Nelson's

⁵ R. McKitterick, *The Carolingians and the Written Word* (Cambridge, 1989); McKitterick, *The Uses of Literacy in Early Medieval Europe*. In the latter volume, see especially J.L. Nelson, 'Literacy in Carolingian government', 258–96. For the Bucknell group, see Davies and Fouracre, *The Settlement of Disputes in Early Medieval Europe*, and *Property and Power in Early Medieval Europe* (Cambridge, 1995). Clanchy, *From Memory to Written Record*. On literacy among the lay elite, see also P. Wormald and J.L. Nelson, eds, *Lay Intellectuals in the Carolingian World* (Cambridge, 2007).

⁶ McKitterick, *The Carolingians and the Written Word*, pp. 77–134; on one particular section of the St Gall archive identified as having originally belonged to a layman, see K. Bullimore, 'Folcwin of Rankweil: the world of a Carolingian local official', *Early Medieval Europe* 13 (2005), 43–77; P. Erhart and J. Kleindinst, eds, *Urkundenlandschaft Rätien*, Forschungen zur Geschichte des Mittelalters 7, Österreichische Akademie der Wissenschaften phil.-hist. Klasse, Denkschriften 319 (Vienna, 2004), pp. 28–30 and 83–90, and nos 11–37, pp. 167–219.

⁷ Nelson, 'Literacy in Carolingian government'; Davies and Fouracre, 'Conclusion', in Davies and Fouracre, *The Settlement of Disputes in Early Medieval Europe*, 207–40.

⁸ For recent work showing a comparable situation in Italy and Catalonia respectively, see M. Costambeys, *Power and Patronage in Early Medieval Italy: Local Society, Italian Politics and the Abbey of Farfa, c. 700–900* (Cambridge, 2007), especially pp. 27–8; A. Kostó, 'Laymen, clerics, and documentary practices in the early middle ages: the example of Catalonia', *Speculum* 80 (2005), 44–74.

example of freedmen holding *cartae* in order to prove their free status suggests it was far from being an exclusively elite concern.⁹ Nelson's argument that non-elite persons may have been able to access the written word through 'passive' or pragmatic literacy, limited to the recognition of a fairly restricted number of particular words or phrases essential to the understanding of the basic content of a document, could explain how such a wide reach might have been possible even among the less educated.¹⁰ But it is not essential to the argument for a wide impact of the written word to establish that these freedmen should have been able to read their own *cartae*: since documents recorded agreements made both publicly and orally, and were in turn read out to the participants once they had been written down, one would not necessarily have had to be able to read in order to use them.¹¹ This links in with the relatively recent historiographical emphasis on a 'weak thesis' for literacy, which puts less stress on the opposition between the written word and other modes of communication, such as orality or gestures, and more on the interplay between them.¹² In the case of charters, orality and literacy were clearly highly complementary.¹³ As Patrick Geary has put it, charters and *placita* 'not only record agreements, transactions, or donations. They are also records of performances. Moreover, they are scripts for future performances.'¹⁴ This oral dimension of written documents does not imply, as Richter takes it to, that written texts were 'dead letter':¹⁵ rather than an all-out struggle in which one mode of communication must inevitably win against the other, it shows the profound interdependence between the written and the oral. The main issue in evaluating the impact of written documents in this period therefore paradoxically relates less to how many people were actually literate, and more to how many could take an active part in legal proceedings and understand

⁹ Nelson, 'Literacy in Carolingian government', p. 262; cited by P.J. Geary, 'Land, language and memory in Europe, 700–1100', *TRHS*, 6th series, vol. 9 (1999), 169–84, at p. 169.

¹⁰ Nelson, 'Literacy in Carolingian government', pp. 269–70. On 'pragmatic' literacy, see M.B. Parkes, 'The literacy of the laity', in D. Daiches and A. Thorlby, eds, *Literature and Western Civilization: The Mediaeval World* (London, 1973), 555–77; Clanchy, *From Memory to Written Record*, pp. 236 and 247.

¹¹ Innes, *State and Society*, p. 118: 'The ability to read, still less to write, a charter did not need to be widespread for the written word to play a central role in legal practice.'

¹² B. Stock, *Listening for the Text: On the Uses of the Past* (Philadelphia, 1996), pp. 5–6; R. Finnegan, *Literacy and Orality: Studies in the Technology of Communication* (Oxford, 1988).

¹³ Nelson, 'Literacy in Carolingian government', pp. 266–7; McKitterick, ed., *The Uses of Literacy*, pp. 320–1; see also Innes, 'Memory, orality and literacy', especially at pp. 3–10 and 35–6. For a similar point regarding literacy, orality and the use of documents in medieval Japan, see J. Fröhlich, *Rulers, Peasants and the Use of the Written Word in Medieval Japan: Ategawa no sho, 1004–1304* (Bern, 2007).

¹⁴ Geary, 'Land, language and memory', p. 175.

¹⁵ Richter, *The Formation of the Medieval West*, p. 73.

written documents when they were read out to them. The accessibility (or otherwise) of the language used in documents would have played a more crucial role in this respect than their written form.

The Latin used in documents from this period, in particular the Merovingian period, is on average considered 'bad' (or even 'very bad') in terms of classical grammatical standards. The main question is whether such unclassical elements reflected changes in the spoken language and a shift to forms closer to early Romance, or if they were due to scribes having to learn Latin as a foreign or dead language, of which they had an increasingly poor command, in which case deviations from classical grammar would on the contrary constitute evidence for an ever-widening gap between written and spoken language. After the brief influence of the school of thought championed by Muller and his students, which saw documents as providing an accurate reflection of changes in the spoken vernacular,¹⁶ the 1950s saw a growing consensus in the opposite direction, emphasising the archaism of the language of documents. Early medieval Latin in general was defined as a learned language bearing virtually no relation to current spoken usage, and all the more unwieldy and inaccessible as it was not even fully grasped by the educated elite: according to this view, scribes, despite their best efforts, proved consistently unable to meet the high standard of Latin for which they strove, and their efforts resulted in a language that was at the same time archaic and decadent, too far removed from both oral forms and classical norms to function as an adequate tool of communication for anyone.¹⁷ Since the 1980s, however,

¹⁶ H.F. Muller, 'When did Latin cease to be a spoken language in France?', *The Romanic Review* 12 (1921), 318–34; H.F. Muller, *L'Époque mérovingienne: Essai de synthèse de philologie et d'histoire* (New York, 1945); L.F. Sas, *The Noun Declension System in the Merovingian Period* (New York, 1937); M.A. Pei, *The Language of the Eighth-century Texts in Northern France: A Study of the Original Documents in the Collection of Tardif and Other Sources* (New York, 1932).

¹⁷ D. Norberg, *Manuel pratique de latin médiéval* (Paris, 1968), pp. 29–31. For a similar view, see also E. Löfstedt, *Late Latin* (Oslo, 1959); C. Mohrmann, 'Les formes du latin dit "vulgaire": essai de chronologie et de systématisation de l'époque augustéenne aux langues romanes', in *Actes du premier congrès de la FIEC* (Paris, 1952), 207–20; C. Mohrmann, *Latin vulgaire, latin des chrétiens, latin médiéval* (Paris, 1956); C. Mohrmann, 'Le latin prétendu vulgaire et l'origine des langues romanes', in *Centre de Philologie Romane* (Strasbourg, 1961), 90–8; A. Ernout, 'Du latin aux langues romanes', *Revue de Philologie* 43 (1969), 7–14; see also J. Vielliard, *Le latin des diplômes royaux et des chartes privées de l'époque mérovingienne* (Paris, 1927); R. Falkowski, 'Studien zur Sprache der Merowingerdiplome', *Archiv für Diplomatik* 17 (1971), 1–125. From the historians' point of view, see, for instance, the account given by Pierre Riché in 1962: 'Contrairement à ce qu'on a longtemps pensé, le latin qu'il [le notaire royal] écrivait n'était pas celui que l'on parlait ordinairement... on constate que les notaires, du moins ceux de la première moitié du VII^{ème} siècle, faisaient de grands efforts pour se rapprocher du latin classique. À lire les actes, la première impression peut être déplorable, car leur graphie n'est plus classique. Mais en fait, on ne relève pas plus de fautes que dans les textes littéraires de la même époque. Les philologues ont même remarqué chez eux le goût d'une certaine recherche, des mots rares et archaïques, de

debates among philologists have become concerned less with technical grammatical deviations or 'mistakes' (such as the unorthodox early medieval approach to case-endings, which had been taken as a sign of scribes' loosening grip on Latin), and have focused more on how understandable this language would have been in practice, and to whom.¹⁸ Grammatical changes or simplifications, radical though they may have been, should not necessarily be seen as hampering communication, or as inevitably resulting in an incoherent system: the recent loss of the subjunctive in spoken modern English is a rather extreme instance of grammatical change from a philological point of view, but no one would suggest that it has had any severe consequences in terms of communicative ability. Language is now no longer viewed as a fixed monolith determined by either the ability or inability to use it, but as a fluctuating whole encompassing different usages and functions, depending on register, audience and desired effect, and on what was intended to be communicated to whom: the emergence of sociolinguistics, pioneered by Roger Wright and Michel Banniard, has highlighted the distinction between horizontal and vertical communication, with Latin speakers and writers varying their level of language, ranging from classicising to near-Romance forms, according to whether they were addressing members of their own learned social and cultural sphere or were intending to put their meaning across to a wider and socially more diverse audience.¹⁹ Language, like literacy, is a form of

l'étymologie savante' (P. Riché, *Éducation et culture dans l'Occident barbare, VIe–VIIe siècles* (Paris, 1962), pp. 284–5).

¹⁸ G. Calboli, 'Il latino merovingico, fra latino volgare e latino medioevale', in E. Vineis, ed., *Latino volgare, latino medioevale, lingua romanze, Atti del Convegno della S.I.G., Perugia 28–29 marzo 1982* (Pisa, 1984), 63–81; G. Calboli, 'Aspects du Latin mérovingien', in J. Herman, ed., *Latin vulgaire – Latin tardif, Actes du premier colloque international sur le latin vulgaire et tardif (Pécs, 2–5 septembre 1985)* (Tübingen, 1987), 19–35; G. Calboli, 'Bemerkungen zu einigen Besonderheiten des merowingisch-karolingischen Latein', in M. Iliescu and W. Marxgut, eds, *Latin vulgaire – Latin tardif III, Actes du troisième colloque international sur le latin vulgaire et tardif (Innsbruck, 2–5 septembre 1991)* (Tübingen, 1992), 41–61; J. Herman, 'Sur quelques aspects du latin mérovingien: langue écrite et langue parlée', in Iliescu and Marxgut, eds, *Latin vulgaire – Latin tardif III*, 173–86.

¹⁹ R. Wright, *Late Latin and Early Romance in Spain and Carolingian France* (Liverpool, 1982); R. Wright, ed., *Latin and the Romance Languages in the Early Middle Ages* (London/New York, 1991); and the articles collected in R. Wright, *A Sociophilological Study of Late Latin* (Turnhout, 2002); M. Banniard, *Viva voce: communication écrite et communication orale du IVe au IXe siècle en Occident latin* (Paris, 1992); M. Banniard, 'Language and communication in Carolingian Europe', in R. McKitterick, ed., *The New Cambridge Medieval History*, vol. 2: c. 700–c. 900 (Cambridge, 1995), 695–708; M. Banniard, 'Niveaux de langue et communication latinophone', in *Communicare e significare nell'alto medioevo*, Settimana internazionale di Studio 52 (Spoleto, 2005), 155–208; M. Banniard, 'Diasystèmes et diachronie langagières du latin parlé tardif au protofrançais', in J. Herman and L. Mondin, eds, *La transizione dal latino alle lingue romanze. Atti della tavola rotonda di linguistica storica. Università Ca' Foscari di Venezia, 14–15 giugno 1996* (Tübingen, 1998), 131–53; M. Banniard, 'Seuils et frontières langagières dans la Francia romane du VIIIe siècle', in J. Jarnut, U. Nonn and M. Richter, eds, *Karl Martell in seiner Zeit* (Sigmaringen, 1994), 171–91;

technology, and an important instrument of power and control: rather than simply considering it as being affected only by the basic grammatical competence of its users, what needs to be ascertained is whether the Latin found in charters was intended as a language of exclusion, in which case it would only have been empowering for the educated elite, or as a language of communication, intended to be understood by most people, in which case it would have been empowering for a larger section of population.²⁰

This more nuanced approach may help us to make sense of the odd mixture of archaism and dynamic novelty which is a common feature of the language of documents of this period. The reason why the same body of evidence could be used by both sides of this debate to arrive at drastically different conclusions may be that documents did not stick to a single level of communication. Those scholars who saw the language of documents as essentially conservative and archaic tended to concentrate on formal introductions (*arengas*), which usually contained fairly standard statements of motivation (such as, at least for gifts to the church, Christian charity and the concern for salvation) or affirmations of the aptness of the action being taken. These passages were intended to confer to the transaction what Josef Herman has called 'the legalising, sanctifying dignity of the written tradition':²¹ they were therefore characterised by a highly conservative and often deliberately difficult style, and may sometimes not have been all that well understood even by the scribes who copied them. None of this, however, would have had a significant impact on the understanding of the essence of the agreement recorded in the document. By contrast, the language used in the main text to describe the essential content of the transaction (the part towards which 'passive' or 'pragmatic' literacy would have been oriented) tends to be much simpler, and shows an emphasis on facilitating understanding and communication: the downsizing of the case system, for instance, seems to have gone hand in hand with a greater use of prepositions in order to clarify the meaning of particular sentences. Boundary-clauses in particular were sometimes written in the vernacular.²² Such vernacular elements

M. Banniard, 'Le latin mérovingien, état de la question', in M. Goulet and M. Parisse, eds, *Les historiens et le latin médiéval* (Paris, 2000), 17–30. See also R. McKitterick, 'Latin and Romance: an historian's perspective', in Wright, ed., *Latin and the Romance Languages*, 130–45; McKitterick, *The Carolingians and the Written Word*, 7–22.

²⁰ See M. de Jong, 'Some reflections on mandarin language', in E. Chrysos and I.N. Wood, eds, *East and West: Modes of Communication. Proceedings of the First Plenary Conference at Merida, The Transformation of the Roman World 5* (Leiden, 1999), 61–9.

²¹ Herman, 'Sur quelques aspects du latin mérovingien', p. 177.

²² Geary, 'Land, language and memory', pp. 175–84. This is also the case for Anglo-Saxon charters.

may suggest that documents could have been translated when needed, which would have a particularly important impact on our understanding of the use of Latin documents in regions in which the spoken language was not Romance. Latin documents are certainly equally widely attested in Germanic-speaking Eastern Francia and Celtic-speaking Brittany: indeed, some of the best surviving evidence for the use of documents by lay people comes from Alemannia, which suggests language may not have been so significant a barrier.²³ Apart from the possibility that these texts were translated orally, we should not underestimate the possibility of a relatively widespread basic practical knowledge of Latin, geared specifically towards understanding the essential sections of such documents. Although one might have expected documents to have become less accessible, even in western regions, after the eighth century, when it has been argued Latin emerged for the first time as a learned language distinct from Romance vernaculars, the Carolingian reforms, which had a wide impact in forcing Latin back towards more classical usages in literary texts, in fact seem to have had little discernible impact on the language of documents, except in terms of spelling. Although the language of documents certainly cannot be described as 'popular', or as charting in any exact way the transformations of the spoken language, it nevertheless essentially remained geared towards clarity and communication.

The written form of documents and their use of Latin would therefore not necessarily have constituted insuperable obstacles for a large number of people to have access to them, and, judging from the rare surviving examples of charters relating to the transactions of lay people, as well as from references in capitularies to other types of document less likely to survive (such as freedmen's charters of manumission), it is possible to infer a relatively wide use of written documents. It must still be admitted, however, that although all this indicates that many people *could* use legal documents, the problems of survival affecting the corpus as a whole leave us with frustratingly little hard evidence that they actually did so, or that they did so on a regular basis. Our hopes for the ability of written documents to illuminate concerns representative of a large section of the population are further blighted by the small range of subjects documented in surviving charters, which almost always deal with transfers of or disputes over land. This concentration on landed property, of course, inevitably privileges evidence relating to the elite rather than to a wider section of the population. Land was clearly a central

²³ As shown by McKitterick, *The Carolingians and the Written Word*, pp. 77–134, for Alemannia, and W. Davies, *Small Worlds: The Village Community in Early Medieval Brittany* (London, 1988), pp. 136–8, for Brittany; see Nelson, 'Literacy in Carolingian government', p. 270.