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# When documents are destroyed or lost: lay people and archives in the early Middle Ages

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*In this paper, I discuss some largely unexplored evidence about lay archives in early medieval Europe. This evidence consists of a set of formulae from late Roman, Merovingian, and Carolingian Gaul, and from Carolingian Bavaria. According to these formulae, lay men and women in these regions from the sixth to the ninth centuries kept documents in private archives because they regarded documents as vital to the security of their property holdings. The manuscripts in which the formulae survive indicate that lay people continued to keep archives throughout the ninth century and into the tenth. They also suggest, however, that by the end of the eighth century traditions about how lay people used and stored documents were being preserved and maintained to a large degree by churches and monasteries.*

## Prologue

This essay has three dimensions. Most immediately, it deals with some evidence that lay men and women in early medieval Europe kept documents in private archives. In the process, it explores how to draw information about early medieval society from some very complex sources, namely formula collections. Finally, it reflects a more general interest in how the people who compiled our sources decided what information from their own pasts to preserve and how to preserve it, and thus how their decisions affect what the sources tell us.

## Introduction

It is an old and tenacious commonplace that very few lay men and women in the early Middle Ages could read and write. To summarize the older standard narrative (and perhaps caricature it): as late Roman traditions of lay education atrophied and then perished, the flame of literacy was kept alive by Christian clergy and monks. When lay people needed writing for

something, they asked clerics to produce books and documents for them and to read them out loud. Only in the high Middle Ages did lay people begin again to read and write in any numbers, as the practical needs of a growing business class and developing government bureaucracies made literacy important.<sup>1</sup>

This story has not been tenable for quite some time now. The work of Rosamond McKitterick and others has shown quite clearly that many lay people in the early Middle Ages – or at least lay members of the aristocracy – used the written word to communicate with each other, to record their pasts, and to carry on the business of family and government. McKitterick in particular, in her well-known book of 1989, has made a strong case that writing pervaded all levels of both lay and clerical society during the Carolingian period.<sup>2</sup>

Our picture of lay literacy in the early Middle Ages is, however, limited by meagre evidence. Documents or books demonstrably written or used by lay men or women are few and far between; history and the accidents of survival have favoured sources written by clerics and monks for the very simple reason that churches and monasteries as institutions, with their libraries and archives, have tended to survive longer than lay families. Moreover, much of the evidence that does survive for lay written culture in the early Middle Ages is Carolingian. The number of surviving texts of all kinds increases drastically when one looks at the late eighth and ninth centuries. This makes it tempting to assume that the widespread interest in writing during this period reflected peculiarly Carolingian conditions, especially the Carolingian court's interest in educational reform, rather than the early medieval norm.

In this essay, I want to talk about one body of sources that can take us outside the image created by the bulk of the surviving evidence and tell us

This narrative is still deeply entrenched in the profession, at least implicitly. For example, the special research project on pragmatic literacy in the Middle Ages at the University of Münster, which ran from 1988 to 2000, focused on the spread of practical literacy from the late eleventh century onward; see H. Keller, 'Träger, Felder, Formen pragmatischer Schriftlichkeit im Mittelalter. Der neue Sonderforschungsbereich 231 an der Westfälischen Wilhelms-Universität Münster', *Frühmittelalterliche Studien* 22 (1988), pp. 388–409, as well as the annual reports on the project in the same journal through volume 34 (2000). This focus is echoed by some Anglophone investigations of pragmatic literacy; see, for example, *Pragmatic Literacy, East and West, 1200–1330*, ed. R. Britnell (Woodbridge, 1997). Cf. R. McKitterick, 'Introduction', in R. McKitterick (ed.), *The Uses of Literacy in Early Medieval Europe* (Cambridge, 1990), pp. 1–10, at p. 2. R. McKitterick, *The Carolingians and the Written Word* (Cambridge, 1989), esp. Chapter 6. See also McKitterick (ed.), *Uses of Literacy*, esp. McKitterick, 'Conclusion', pp. 319–33 and I. Wood, 'Administration, Law and Culture in Merovingian Gaul', pp. 63–81; W. Davies and P. Fouracre, 'The Role of Writing in the Resolution and Recording of Disputes', in W. Davies and P. Fouracre (eds), *The Settlement of Disputes in Early Medieval Europe* (Cambridge, 1986), pp. 207–14. For a sharp dissent from some of McKitterick's views on lay literacy in the eighth century see 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), pp. 393–404.

more about lay use of writing: the early medieval formula collections.<sup>3</sup> Formula collections are groups of model documents and/or letters that have had enough information removed from them (such as specific names, places, or dates) to make them generic (although in many cases I think that information was removed to protect the identities of real people; some formulae tell very strange stories that cannot be generic no matter how hard they try).<sup>4</sup> The early medieval formula collections cover a broad span of time: from late antiquity to the early tenth century.<sup>5</sup> The document and letter forms they contain were apparently copied and collected as models for notaries, scribes, or students to use or adapt when drawing up their own documents or letters, or for students or even schoolboys to read or copy out as case studies.<sup>6</sup>

In sharp contrast to the surviving charters from the period (that is, documents preserved in archives or cartularies that refer to particular transactions among specific people), the formula collections do not deal exclusively with churches, clerics, and their affairs. Far from it: they in fact contain a host of formulae covering various sorts of procedures in which no church or cleric was involved. The sheer number of such formulae suggests that many laymen in the early Middle Ages actively relied on written documents to do such things as secure, alienate, or pass down property, get married or get divorced, settle disputes, and otherwise regulate the business of their lives.<sup>7</sup>

However, the formulae are problematic sources to say the least. They consist of disembodied narratives written down for future use. By their very nature, they have been taken out of context; they may have been copied and recopied decades and even centuries after the procedures they describe were actually used, in locations far removed from the place where the original document or formula might have been produced. It is therefore hard to tell exactly where and when the

<sup>3</sup> On the early medieval formula collections in general see R. Buchner, *Deutschlands Geschichtsquellen im Mittelalter. Beiheft: Die Rechtsquellen* (Weimar, 1953), pp. 49–55; *Lexikon des Mittelalters* (Munich, 1987), s.v. 'Formel, -sammlungen, -bücher', pp. 646–55.

<sup>4</sup> See, for example, the Tours formula no. 28 discussed below.

<sup>5</sup> Formula collections disappear from Europe in the early tenth century, not to reappear until the twelfth, when they look very different. See the literature cited in n. 3 above.

<sup>6</sup> Buchner, *Rechtsquellen*, p. 50 argues that the compiler of a formula collection had the job of selecting the most important legal transactions from the mass of possible ones and documenting them with the most typical charters. The practical worth of the collection was determined by how well the compiler had fulfilled this task. This leaves out the possibility that the compiler chose texts based on the quality of their writing, how exemplary rather than typical their content was, or any of a number of other criteria. Cf. the glossary to Davies and Fouracre (eds), *Settlement of Disputes*, s.v. 'Formula' and 'Formulary', p. 271; Wood, 'Administration, Law and Culture', pp. 64–5. The suggestion that some formulae might be idiosyncratic case studies is my own, which I hope to develop further in a future article.

<sup>7</sup> See McKitterick, *Written Word*, p. 25; Wood, 'Administration, Law and Culture', pp. 64–5; P. Classen, 'Fortleben und Wandel spätrömischen Urkundenwesens im frühen Mittelalter', in P. Classen (ed.), *Recht und Schrift im Mittelalter* (Sigmaringen, 1977), pp. 13–54, at p. 15.

picture they project of an active lay use of documents might actually have applied.<sup>8</sup>

I do not want to tackle here everything that the formulae have to say about lay people and documents; the task would be simply too great. I want instead to focus on what they have to say about lay archives. I use the word 'archive' in its loosest possible sense, to mean a collection of documents kept by someone to record his or her activities, rights, claims, etc. I intend it to cover everything from the large and systematically organized repositories of records that a powerful aristocratic family might have maintained (and that powerful churches and monasteries certainly did) to the small bundle of documents that a minor landowner and his wife might have kept in a chest at the foot of their bed.<sup>9</sup>

Lay people certainly kept archives during the early Middle Ages, but it has been very hard to say anything much about them. The direct evidence for their existence consists only of remnants of lay archives, remnants that have survived because they were later incorporated into the archives of a church or monastery. One of the most important of these is a small collection of documents from the Vorarlberg region of Rhaetia (western Austria) that deal with the affairs of a Carolingian *scultauis* (local official) named Folwin. This collection ended up in the archive of the monastery at St Gall. Similar traces of early medieval lay archives have survived from Burgundy, Catalonia, England, and Italy.<sup>10</sup> Indirect evidence for lay

<sup>8</sup> Cf. McKitterick and Wood as n. 7 above.

<sup>9</sup> Many dictionaries (for example, *The Oxford English Dictionary* or *The Merriam-Webster Dictionary*) assign the term 'archive' a public, institutional character, which is only just given the term's roots in the Greek word for government building (*archeion*). The looser definition I have chosen to follow, i.e., 'archive' as any collection of important documents or information, frequently appears as a secondary meaning, or in some cases (for example, *The Random House College Dictionary*) as the primary one. 'Archive' seems to me to serve my purposes better than 'dossier', which connotes a set of documents put together to deal with a specific subject such as a particular property holding or a particular claim in a dispute.

<sup>10</sup> On the Folwin archive see McKitterick, *Written Word*, pp. 109–11; H. Fichtenau, *Das Urkundenwesen in Österreich vom 8. bis zum frühen 13. Jahrhundert* (Vienna, 1971), pp. 38–45; Katherine Bullimore, 'Carolingian Women and Property Holding in the St. Gall Archive 700–920', Ph.D. thesis, University of York (2001), pp. 91–8 and 'Folquin of Rankweil: The World of a Local Official', forthcoming. On other traces of lay archives in the St Gall records see J.L. Nelson, 'Literacy in Carolingian Government', in McKitterick (ed.), *Uses of Literacy*, pp. 258–96, at p. 276. On the remnants of lay archives absorbed into the archives of the monastery at Cluny and other institutions in the Mâconnais see A. Déléage, *La vie rurale en Bourgogne jusqu'au début du onzième siècle*, 3 vols (Macon, 1941), I, 240 and n. 8; G. Duby, *La société aux XI<sup>e</sup> et XII<sup>e</sup> siècles dans la région mâconnaise* (Paris, 1953), p. 9. Nelson, 'Literacy in Carolingian Government', p. 276 discusses documents that Count Eccard of Mâcon bequeathed in his will along with the property they concerned to Fleury in 876. For the substantial evidence of lay archives in early medieval Catalonia see P. Bonnassie, *La Catalogne du milieu du X<sup>e</sup> à la fin du XI<sup>e</sup> siècle. Croissance et mutations d'une société*, 2 vols (Toulouse, 1975–76), esp. I, 26; I am indebted on this point to Fredric L. Cheyette and esp. Adam J. Kosto, 'Lay Archives in Medieval Catalonia' (paper presented at the International Medieval Congress, Leeds, 8 July 2002). For a discussion of early medieval charters originally held by lay landholders in Anglo-Saxon England that ended up in monastic hands see S.E. Kelly (ed.), *Charters of Abingdon Abbey*, 2 vols (Oxford, 2000), pp. cxxxi–cliii; I thank Catherine Cubitt for the reference. Among the dossiers of lay charters that survive

archives survives in several early medieval law codes, such as the Burgundian Law of Gundobad, the Frankish Ripuarian Law, and the Laws of the Alemans and Bavarians, that allow lay people to use documents to guarantee certain rights and protect certain kinds of transactions. Similar provisions in Carolingian legal texts extend this evidence into the ninth century.<sup>11</sup>

The formula collections can help us say more about lay archives in the early Middle Ages. They tell us where they existed, when they existed, where people kept them, what they kept them for, and how their use and storage of archives varied over time and place. This information comes from a set of formulae that deal – perhaps paradoxically – with the destruction of lay archives, that is, what lay people did when some disaster destroyed not an individual document but an entire collection of them. These formulae, and the ways that they have been transmitted to us, allow

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from early medieval Italy is a collection concerning one Toto of Campione and his father, spanning the period 721–844. See A.R. Natale, *Il Museo diplomatico dell'Archivio di Stato di Milano*, vol. I, pt. 1 (Milan, 1968), nos. 5, 6, 8, 12, 15, 16, 18, 19, 20, 21, 25, 29, 33, 35, 39, 43, 77. The charters from this collection up to the year 799 are also reproduced in A. Bruckner and R. Marichal (eds), *Chartae Latinae Antiquiores. Facsimile-edition of the Latin Charters prior to the Ninth Century*, pt. XXVIII, Italy IX (Zurich, 1988), nos. 844, 845, 846, 847, 848, 849, 851, 852, 853, 854, 855, 856, 858, 860. A similar collection from the late ninth century, concerning the Italian *sculdassius* [sic] Peter of Niviano, is discussed by François Bougard, *La Justice Dans Le Royaume D'Italie De La Fin Du VIII<sup>e</sup> Siècle Au Début Du XI<sup>e</sup> Siècle* (Rome, 1995), pp. 168–70. I thank Patrick J. Geary for both Italian references. An interesting exception to this survival pattern consists of the famous texts written on slate tablets unearthed in the countryside near Salamanca in Spain. Stemming from the Visigothic period, these texts include records of legal transactions involving lay people. See Roger Collins, 'Literacy in Early Medieval Spain', in McKitterick (ed.), *Uses of Literacy*, pp. 109–33, at p. 118 and n. 42.

<sup>11</sup> The *Lex Gundobada*, which stems from the first half of the sixth century, mentions charters as an alternative to witnesses for securing gifts, sales, or the manumission of unfree persons. See K.F. Drew (trans.), *The Burgundian Code* (Philadelphia, 1972), LX/2, pp. 65–6; LXXXVIII, p. 80; Continuation, XCIX, p. 85. The code also assumes that wills and records of court proceedings were written; see XLIII/1, p. 51 and the Preface, p. 19. LI/1, p. 52, refers to a specific case in which a father tried to cut his son out of his inheritance by giving his property to someone else via a written title. The *Lex Ribuaria* (from the mid-seventh century with a later redaction in the eighth century) similarly permits documents for some kinds of transactions, including dowries, inheritance in the case where someone lacks heirs, and freeing unfree persons. See T.J. Rivers (trans.), *Laws of the Salian and Ripuarian Franks* (New York, 1986), 41/1, p. 186; 50/1, p. 190; 59/1, 3–4, p. 193; 60/1, p. 194; 61/1, 5, pp. 195–6; 62/1–8, pp. 198–9; 63, pp. 199–200. The *Lex Alamannorum* (early eighth century) ties the use of written instruments to transactions involving a church, including some that might leave a lay person with a document, such as receiving a benefice or gaining possession of church property; see T.J. Rivers (trans.), *Laws of the Alamans and Bavarians* (Philadelphia, 1977), I, p. 66; II/1, 2, pp. 66–7; XVII, pp. 72–3. It also states that unfree persons could be (but did not have to be) freed via a charter; see XVI, p. 72. The *Lex Baiuvariorum*, in addition to requiring documents for gifts to churches, mentions them a few times in the context of general property transactions as an alternative to witnesses; see Rivers (ed.), *Laws of the Alamans and Bavarians*, I/1, p. 118; XVI/2, p. 160; XVI/15–16, p. 163. In the Carolingian period, law courts required written *cartae* of manumission as proof of liberation for freedmen; freedmen were referred to as *cartularii*, that is, people whose status was guaranteed by a charter. Moreover, freedmen had to leave a written will to avoid having their property pass to the fisc. On these and other legal requirements for lay people to have documents see McKitterick, *Written Word*, pp. 60–73; Nelson, 'Literacy in Carolingian Government', pp. 262–3.

one to draw several more or less safe conclusions. First, the formulae and the culture of lay document use that they reflect were not simply survivors from an earlier world in which they had meant something; at least some lay men and women really did keep practical documents in archives right through the early Middle Ages. People copying formulae for a variety of purposes evidently felt it important throughout the period to include copies of formulae dealing with the destruction of lay archives in their collections; lay archives were something they considered comprehensible and relevant. Furthermore, for most of the period and in most of the regions covered by the collections, lay people kept their archives in their homes. The formulae do not tell us whether or not the people who kept these archives could read the documents in them. They do indicate clearly, however, that the archives were important; the people who kept them considered them vital to the security of their property holdings. The evidence for this is strongest in the regions west of the Rhine, where one would expect Roman traditions of lay education and documentary use to have been maintained. However, the interest in lay archives is not exclusive to the west; lay people east of the Rhine also kept archives.

Finally, the formulae suggest that the relationship between lay and clerical documentary use was a complicated one that varied over time and place. While lay people throughout Europe from late antiquity on used documents in a pragmatic way and stored them in personal archives, I shall argue that by the late eighth century churches and monasteries were playing a major role in preserving traditions about how lay people interacted with documents, in producing the documents that lay people used, and – at least in some regions – in storing lay archives.

## Methodology

I have explored the formulae along two paths. One leads through the standard published edition of the formulae, the *Formulae merowingici et karolini aevi*, edited by Karl Zeumer and published by the *Monumenta Germaniae Historica* in 1886.<sup>12</sup> Zeumer's edition reflects the interests of his age and of the *Monumenta* project as a whole. Zeumer sifted through the surviving manuscripts containing formulae and identified discrete formula collections. Using the tools of linguistics and diplomatic, he sought to find out as exactly as possible when and where the collections had been originally compiled, to restore them as closely as possible to their original form, and to make these restored collections accessible to scholars. Zeumer's extremely careful and thorough work resulted in an edition

<sup>12</sup> *Formulae merowingici et karolini aevi*, ed. K. Zeumer, *MGH legum sectio 5* (Hanover, 1886). For Zeumer's editorial method, see the introductions and apparatus to the individual formula collections and the literature cited in n. 13 below.

that contains a series of formula collections, named in Latin after their place of origin, their original compiler (when known) or the first scholar to discover them, that span the period from the early sixth century to the late ninth century.

With Zeumer's edition as my guide, therefore, I shall follow the history of the formulae dealing with the destruction of lay archives, in order to draw conclusions about lay archives from the perspective of the people who originally created the formulae and included them in their collections. There is, however, another path that I shall also take: that laid out by the surviving manuscripts themselves.

Zeumer appears to have been more or less uninterested in the manuscripts *qua* manuscripts. In his introductions to the individual formula collections in his edition, he lists the manuscripts he has drawn on and gives them a rough date (such as 'ninth century'). Sometimes, but not always, he describes some of the manuscripts' other content. He almost never discusses provenance. He made his lack of interest in the manuscripts even clearer in the series of preliminary articles he published in *Neues Archiv* in the years leading up to the publication of his edition. In these articles, Zeumer gets as quickly as possible to the date, origin, and original composition of the formula collections and to the original texts of the formulae themselves, relegating the manuscripts in which the texts survive to cursory introductory sketches.<sup>13</sup>

The manuscripts, however, have a great deal to say in their own right. The surviving manuscripts containing early medieval formulae all date from the eighth to the early tenth centuries; the vast majority come from the ninth century. They indicate when, where, and in what context someone considered it important to copy a formula. They reveal which formulae from a given source a copyist felt were worth copying and which he abandoned because they were either not relevant to his purposes or because he no longer understood them. The manuscripts also show copyists ordering and reordering formulae, mixing formulae from one source with formulae from other collections or copying them alongside completely new formulae. Moreover, variations between formulae copied from the same source in different manuscripts reveal individual scribes adapting the formulae (or not) to fit their own particular circumstances. In short, looking at the manuscripts adds

<sup>13</sup> K. Zeumer, 'Ueber die älteren fränkischen Formelsammlungen', *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 6 (1880), pp. 9–115; 'Ueber die alamannischen Formelsammlungen', *Neues Archiv* 8 (1883), pp. 473–553; 'Neue Erörterungen über ältere fränkische Formelsammlungen', *Neues Archiv* 11 (1886), pp. 311–58. Even in articles dealing directly with manuscripts, Zeumer – despite highly skilled and detailed manuscript descriptions – directs his interest towards what the manuscripts can tell him about the most original form of the formula texts they contain. See, for example, 'Ueber Fragmente einer Formelhandschrift des IX. Jahrhunderts', *Neues Archiv* 8 (1883), pp. 601–5; 'Die Lindenbruch'sche Handschrift der Formelsammlung von Flavigny', *Neues Archiv* 14 (1889), pp. 589–603.

another layer of evidence to my discussion of when, where, and how a particular formula might have been relevant.

### Lay archive formulae from the perspective of the *MGH*

The earliest set of lay archive formulae appears in a formula collection from the city of Angers, in western Gaul, compiled in the late sixth century.<sup>14</sup> Not surprisingly, given when and where they were produced, the formulae are steeped in the language of late antiquity, and the procedure they outline is based on late Roman law. The procedure was designed to produce a document that replaced the contents of a lost archive, a document called an *appennis* because it had to be hung up for public display (*apensa*).<sup>15</sup>

Three Angers formulae deal with lost lay archives. Two describe witnesses coming to verify the loss of an archive; the third has the victim asking for confirmation of his property holdings.<sup>16</sup> The witness testaments tell the following story: a man and his wife (or, in one version, a man alone) have had their house broken into during the night by evil men. The robbers not only damaged the house but also carried off various property and all of the couple's (or man's) documents. The next day, the victim(s) summon local judges and neighbours to verify the disaster and to affirm a written notice to this effect. This notice would enable them/him to seek an *appennis* in the city of Angers.<sup>17</sup>

The appeal for confirmation starts with the programmatic statement that anyone who had suffered loss at the hands of thieves, robbers, arsonists, etc., should go to the rectors of the city or to the curia of the province and make a public declaration of his injury.<sup>18</sup> It then describes

<sup>14</sup> The Angers formulae: 'Formulae Andecavenses', in Zeumer (ed.), *Formulae merovingici et karolini aevi*, pp. 1–25; Zeumer, 'Ueber die älteren fränkischen Formelsammlungen', pp. 91–5 and 'Neue Erörterungen', pp. 315–34; Buchner, *Rechtsquellen*, pp. 50–1.

<sup>15</sup> See K. Zeumer, 'Ueber den Ersatz verlorener Urkunden im fränkischen Reiche', *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Germanistische Abteilung, I (1880), pp. 89–123. There is no direct reference to this procedure in the Codes of Theodosius or Justinian or in the Visigothic summary of late Roman law (the *Lex Romana Visigothorum* or 'Breviary of Alaric'). However, one of the Auvergne formulae apparently refers to a lost decree of the emperors Honorius and Theodosius as its legal basis (see n. 37 and n. 40 below). Justinian does give evidence in specific cases for the general legal principle that lies behind the procedure, i.e., that if witnesses testified to the existence of a lost document and/or its content the authorities were justified in issuing a new document confirming someone's legal rights. See Zeumer, 'Ueber den Ersatz verlorener Urkunden', p. 90.

<sup>16</sup> Angers no. 31: 'Incipit appennis' [*sic*] (witness testament); no. 32: 'Incipit item appennis' [*sic*] (appeal for confirmation); no. 33: 'Incipit noticia ad appenno firmare' (witness testament).

<sup>17</sup> Angers nos. 31 and 33. No. 31 has a man and his wife suffering destruction by night at the hands of evil people; it is unclear whether the lost documents were stolen or destroyed. No. 33 says that a man had his *casa* in a certain *villa* broken into by night and that all of his documents and moveable property had been carried off.

<sup>18</sup> Angers no. 32: 'Quicumque ad latrunculus, sceleratorebus, sediciosus seu incendiarius in qua provincia vi aut damnum pertulerit, oportit hoc eidem rectores civium seu curialis provinciae, in qua perpetratum fuerit perhibitur, palam ostendere et publica denonciacionem manifestare.'

how the victim (now a man alone) takes his witness testament to Angers, where he presents it to an assembly headed by the local count and bishop. The testament is read out loud; the witnesses appear and orally verify its contents. The assembly then issues a document confirming the victim's property holdings and his right to pass them on to his heirs. Two copies of this *appennis* are drawn up, one to be kept by the victim and the other to be displayed in the city's public forum, presumably so that the document's contents would be publicly known.<sup>19</sup>

The most important elements of this story for my purposes are these: in late sixth-century Angers, a lay married couple and/or a single man are described as having archives which they kept in their homes. The archives contained a complicated and extensive array of documents; the formulae list specifically named documents covering everything from property holdings, gifts, sales, and exchanges to legal judgments, dowry, the status of slaves, etc. All these documents appear as formulae elsewhere in the Angers collection or in other formula collections.<sup>20</sup> The people concerned considered the lost documents crucial to the security of their property. The whole point of the exercise described by the formulae was to get a document affirmed by the civic authorities in Angers that confirmed the victims' property holdings and secured their right to pass these holdings to their heirs.

The Angers formulae clearly reflect the horizons of people living in or around a late Roman or early Merovingian city in western Gaul. The next set of formulae, in contrast, gives us a glimpse of a different world; rather than a citizen appealing to his local civic authorities, there is a royal follower appealing to a Merovingian king. These formulae appear in Book I of the famous formulary of Marculf, compiled somewhere near Paris around the year 700.<sup>21</sup> The story they tell, which plays out over two

<sup>19</sup> *Ibid.*: 'Quod ita et fecit, ita ut duo appennis quoequalis ex hoc adfirmatus accipiat, unum, quem ipsi apud se retineat, et alium, quem in foro publico suspenditur.' Fichtenau also sees a requirement for general publicity reflected in this and other Angers formulae, as well as in later charters, in the opening phrase *Dum non est incognitum* and the like: *Urkundenwesen*, p. 80.

<sup>20</sup> Angers no. 31 lists (with the given spellings) *strumenta ... vindicionis, dotis, conposcionalis* (= *compositionalis*), *contullicionis* (= *epistola contulitionis*: a document arranging property rights between a husband and a wife for the case that one survives the other), *pactis, conmutationis, convenencias* (= *convenientias*), *securitatis, vacuaturias* (= *evacuaturias*: a document cancelling a previous document), *iudicium et noticias*. No. 32 adds *caucionis, cessionis, donacionis, oblecacionis*, as well as *reliquas res quam plures*. All of these document names are matched by formulae in the Angers collection, with the exception of the *compositio, contulitio, pactus, donatio, and oblegatio*. The *contulitio* appears in the Tours formulae ('Formulae Turonenses', as n. 28 below, no. 17); the *oblegatio* appears in *ibid.* no. 6. For examples of the *compositio* (or *epistolam conposcionalem*) see *ibid.* no. 16, Book II of Marculf's formula collection (as n. 21 below) no. 16, and the Lindenbrog formulae ('Formulae Salicae Lindenbrogianae', in Zeumer (ed.), *Formulae merovingici et karolini aevi*, pp. 265–84) no. 16. *Pacti* and *donationes* appear throughout the formula collections; see Zeumer's keyword index to his edition.

<sup>21</sup> Marculf: 'Marculfi Formulae', in Zeumer (ed.), *Formulae merovingici et karolini aevi*, pp. 32–106; Zeumer, 'Ueber die älteren fränkischen Formelsammlungen', pp. 13–41, 'Neue Erörterungen', pp. 338–58 and 'Zur Herkunft der Markulfischen Formeln. Eine Antwort an G. Caro',

formulae, follows a pattern similar to the previous ones.<sup>22</sup> A group of country dwellers (*pagenses*) writes a letter to a king and the mayor of his palace stating that a certain man had lost his house in a fire.<sup>23</sup> The fire consumed all of his property and documents. The witnesses affirm the loss and ask that the king confirm the victim in the possession of all his property. The scene then shifts to the royal court.<sup>24</sup> The man (now named a *fidelis*) informs the king that his house had been burned down by the king's army – or, as the formula gives the option, the army of some other king – and that with the house had gone his documents. He presents the witnesses' letter and asks the king to confirm his property holdings. The king orders a written precept, a *pancarta*, to this effect to be drawn up.<sup>25</sup>

Here too a layman is represented as having an archive that he kept in his home. There are some interesting differences from the Angers formulae, however. For one, the archive is simpler. It focuses entirely on property: in the first place, property given to the *fidelis* by the king. This would explain why the victim appealed to the king for confirmation. Zeumer suggests that property holders began going to the king for confirmation of lost documents when they had property scattered widely enough to need protection from a higher authority. However, this formula, and the similar formulae in other collections (see below), specifically refer to royal gifts; it seems more obvious to suggest that the formulae covered cases where the victim had received a gift of property from the king or was holding a royal benefice.<sup>26</sup> The list also covers property acquired by gift, sale, cession, exchange, and inheritance.<sup>27</sup> The second notable difference from the Angers formulae is that here the *appennis* procedure has vanished; there is no requirement for the king's precept to be displayed publicly.

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*Neues Archiv* 30 (1905), pp. 716–19; H. Zatschek, 'Die Benützung der Formulae Marculfi und anderer Formularsammlungen in den Privaturkunden des 8. bis 10. Jahrhunderts', *Mitteilungen des Österreichischen Instituts für Geschichtsforschung* XLII, no. 4 (1927), pp. 165–267; W. Levison, 'Zu Marculfs Formularbuch', *Neues Archiv* 50 (1935), pp. 616–19; Buchner, *Rechtsquellen*, pp. 51–2; Ian Wood, 'Teutsind, Witlaic and the History of Merovingian *precaria*', in W. Davies and P. Fouracre (eds), *Property and Power in the Early Middle Ages* (Cambridge, 1995), pp. 31–52, at p. 44. For a later edition with accompanying French translation see *Marculfi Formularum Libri Duo*, ed. A. Uddholm (Uppsala, 1962).

<sup>22</sup> Marculf Book I, nos. 33 and 34.

<sup>23</sup> *Ibid.*, no. 34: 'Relatione paginsium ad rege directa'.

<sup>24</sup> *Ibid.*, no. 33: 'Preceptum, quorum ab hostibus vel alio modo fuerint instrumenta incensa'.

<sup>25</sup> See Zeumer, 'Ueber den Ersatz verlorener Urkunden', pp. 110–22; O. Guyotjeannin, J. Pycke, and B.M. Tock, *Diplomatique Médiévale* (Turnhout, 1993), p. 106; M. Parisse, P. Pégeot, and B.M. Tock (eds), *Pancartes monastiques des XI<sup>e</sup> et XII<sup>e</sup> siècles: table ronde organisée par l'ARTEM, 6 et 7 juillet 1994, Nancy* (Turnhout, 1998).

<sup>26</sup> Zeumer, 'Ueber den Ersatz verlorener Urkunden', pp. 110–11.

<sup>27</sup> 'Tam quod per regio munere perciperat, quam et quod per vindictiones, donationes, cessiones, commutationes titulum vel de alodo parentum in quocumque loco in regno nostro aliquid possedebat.'

Formulae telling similar stories show up again in collections from the Auvergne and from Tours dated to the mid-eighth century and in a collection from Sens from the late eighth century. These formulae also assume that lay men and women kept archives of documents that were intended to secure their property holdings and that they stored these archives at home.<sup>28</sup> The formulae evoke both the late antique tradition represented by the Angers formulae and the later tradition represented by Marculf. Interestingly enough, in some cases they mix them up: one formula in a collection will follow one tradition while another in the same collection will follow the other. None of these formulae, however, is a direct copy of any earlier formula. Each differs from the others and from those that came before in length and content enough to indicate that while they share a set of common assumptions about procedure, and sometimes use similar language, they were generated independently.

For example, one of the formulae from the Tours collection clearly harks back to the Angers tradition. It bills itself as an *appennis* and states that the witnesses had come together so that the victim might have an *appennis* issued for him in Tours, one copy of which would be hung up in the city's public forum. The formula begins, however, with a unique (and somewhat bizarre) story about how to lose an archive, a story that not only appears in none other of these formulae but also indicates just how important at least one layman thought his documents were. A certain someone, 'out of fear of that man who had in this year come to Tours with hostile intent and had done many evil things', had gathered his documents, taken them out to a certain villa of his, and buried them – whereupon they rotted and were lost.<sup>29</sup>

In contrast, the second lost archive formula in the Tours collection follows the broad outlines of the Marculf formula that describes a king issuing a confirmation of property to a *fidelis* who had lost his archive in a fire.<sup>30</sup> Like its companion, however, this Tours formula also displays significant idiosyncrasies in language and detail. The layman's archive fell victim to the depredation of the king's army, the army of some other king, or 'the negligence of some other men'. The victim had lost not one house but several; in this case, his documents appear to have been

<sup>28</sup> Auvergne: 'Formulae Arvernenses', in Zeumer (ed.), *Formulae merovingici et karolini aevi*, pp. 26–31, no. 1ab; Tours: 'Formulae Turonenses vulgo Sirmondicae dictae', in *ibid.*, pp. 128–65, nos. 27 and 28; Sens: 'Formulae Senonenses', in *ibid.*, pp. 182–226, nos. 38 and 46.

<sup>29</sup> Tours no. 28: 'Idcirco non habetur percognitum, qualiter homo nomine ille per timorem illius, qui Turonus civitatem anno presente hostiliter venit et multa mala ibidem perpetravit, strumenta sua de loca denominata vel de diversis facultatibus suis subtus terra in villa illa misit, et ibidem computruerunt et perierunt.'

<sup>30</sup> Tours no. 27. Zeumer in his apparatus to this formula suggests that it was derived from its counterpart Marculf I, no. 33.

distributed among several properties – perhaps the individual properties that they covered.<sup>31</sup>

The Tours collection contains one other very interesting formula regarding a lost lay archive that differs from any of the others. The formula, which looks like a letter form, survives in only one manuscript.<sup>32</sup> It too has a layman keeping an archive in his home. It describes, however, not a formal procedure for getting written confirmation after the archive had been destroyed but rather a plea for intercession. After the victim's home had been set on fire by evil men, the victim writes to the 'bishop of the city, his abbots, or those entrusted with public authority'. He asks that if his property rights were ever challenged, they intercede on his behalf with the king, who would see justice done.<sup>33</sup>

The Sens collection contains two lost archive formulae. Here too, one evokes Marculf while the other evokes Angers. The latter begins by advertising its 'Roman-ness'. This 'notice which is called an *apennis* [*sic*]' begins: 'The custom of noble Romans advises and right reason decrees, that whosoever has his house destroyed by fire, should receive, in place of a series of documents, a testamentary charter which is called an *appennis* [*sic*].'<sup>34</sup> Nevertheless, the very next line shatters the illusion. It slides into the characteristic opening of the so-called *placitum* report, that is, the narrative form for reporting the actions of judicial courts that dominates the late Merovingian and Carolingian periods: a count is in session together with many other persons for the purpose of hearing the cases of many people and settling them with right justice.<sup>35</sup> The formula does not mention any written testament from witnesses; a judge and the victim's neighbours testify in person to the victim's loss. In addition, the formula says nothing about its having to be hung up anywhere for public display; the title *appennis* is here apparently serving only as a traditional label.

<sup>31</sup> 'Ante hos annos exercitus noster, aut illius regis, vel per negligentiam alicuius hominis, in loco nuncupante illo domos suas vel res quam plures, una cum strumenta cartarum in ... cendium fuisset concrematum.'

<sup>32</sup> Tours Additamenta: 'Additamenta e codicibus formularum Turonensium', in Zeumer (ed.), *Formulae merovingici et karolini aevi*, pp. 159–62, no. 7; Paris, Bibliothèque Nationale (BN), Lat. 4405 (9c. – see n. 79 below).

<sup>33</sup> 'Ideo supplico te, vir apostolicae [*sic*], civitatis illius pontifex, domne episcopo, cum tuis venerabilibus abbatibus vel vos, qui de parte publica curam vel sollicitudinem habendi positi estis, ut, si se dederit usus causandi adversariorum inimicorum meorum intra Dei et vestris intercedentibus verbis, dominicis auribus intueantur, ut per suum regimine nostra in omnibus declaretur iusticia.'

<sup>34</sup> Sens no. 38: 'Relatum, que dicitur apennis: Mox nobilium Romanorum adsuevit et ratio iure deposcit, ut, se cuiuscumque domus igne cremetur, pro seriam scripturarum cartolam relatione, que dicitur apennis, recipiat.'

<sup>35</sup> 'Quamobrem, cum quadam die inluster ille comis ad multorum causas audiendum vel recta iudicia terminandum una cum plures personis resedentes, ibique veniens homo alicus nomen illo suggerit ...' On the *placitum* form and the scholarship on it see W. Brown, *Unjust Seizure: Conflict, Interest, and Authority in an Early Medieval Society* (Ithaca, NY, 2001), p. 110 and n. 50; Fichtenau, *Urkundenwesen*, p. 75 and n. 11.

Although the appeal formula from Sens fails to mention a written witness testament, there is one in the Sens collection. It follows the Marculf tradition, in that it is addressed from a group of *pagenses* to a king. Nevertheless, it is quite brief – much briefer than its counterpart in Marculf – and written very differently. Particularly interesting, it gives us a brief glimpse into the possible mechanics of the witnessing procedure. In contrast to the other formulae, which bill themselves as the collective testimony of the witnesses, in this case there was apparently someone involved – possibly a notary – who collected the testimony and drafted the testament. According to the second-person plural voice narrating the formula, the judge and the neighbours from the *pagus* ‘said and testified to us, that they had come there to see and that it had actually happened thus; therefore we presume to suggest to you, lord, and bring to your attention what we know’.<sup>36</sup>

The Auvergne collection contains only one lay archive formula. This formula rests on very old foundations indeed – old enough that Zeumer originally thought to date it and the collection it is in to the first half of the sixth century rather than the mid-eighth.<sup>37</sup> Yet it too differs markedly from any of the others and contains signs of specific adaptation. To begin with, there is no witness testament, only an appeal for confirmation. According to this appeal, a man and his wife who lived ‘in the city of Auvergne’ – presumably Clermont – had their charters destroyed at the villa where they lived through the ‘hostilities of the Franks’.<sup>38</sup> Their lost archive was as complex as that in the Angers formulae; in a unique twist, however, it also contained documents that had been entrusted to the couple by others.<sup>39</sup> The formula refers to the old *appennis* procedure, but with a difference; the couple say that they had hung their statement on the door of the church in Clermont or in the public marketplace for three days before asking for confirmation, as laid down by a decree of the emperors Honorius and Theodosius and as directed by the curia, the king, the

<sup>36</sup> Sens no. 46: ‘Quia et ille iudex vel vicini paginsi ipsius taliter nobis dixerunt vel testimoniaverunt, quod ad huc videndum accesserant, et sic vero et actum aderat: proinde, domni, suggerere presumimus et quod exinde cognovimus vobis innotuimus.’

<sup>37</sup> Auvergne no. 1ab. On the dating of the collection, and Zeumer’s reconsideration of his own earlier conclusions, see Zeumer, ‘Ueber den älteren fränkischen Formelsammlungen’, pp. 95–7 and ‘Neue Erörterungen’, pp. 334–7; Buchner, *Rechtsquellen*, pp. 52–3; C. Lauranson-Rosaz, *L’Auvergne et ses marges (Velay, Gévaudan) du VIII<sup>e</sup> au XI<sup>e</sup> siècle. La fin du monde antique? (Le Puy-en-Velay, 1987)*, p. 213, n. 409.

<sup>38</sup> Auvergne no. 1a: ‘Ob oc [sic] igitur ego ille et coiives mea illa conmanens orbe Arvernis, in pago illo, in villa illa, dum non est incognitum, qualiter cartolas nostras per hostilitatem Francorum ... ibidem perdimus.’

<sup>39</sup> The formula lists letters (*epistolae*) describing specific property the couple owned, documents of sale (*venditio*), judgements (*iudicium*), briefs (*brevis*), notices (*notitium*), dowry documents (*spondium*), documents concerning personal status (*conculaciones* – according to J.F. Niermeyer, *Mediae latinitatis lexicon minus* (Leiden, 1976), these were charters through which a lord abandoned his claim to children born of a serf by a free woman) and ‘others’ (*alias stromentas*). In addition, the archive contained documents *qui nobis commendatas fuerunt*.

court notaries, or other 'people of the *castrum*'.<sup>40</sup> The victims ask the *defensor* of the city and the men of the curia to attach their seals and subscriptions to this document that had been hung up (*apensa*). One copy of the document would be deposited in the city's *gesta municipalia*.<sup>41</sup>

Despite the evident antiquity of his model, the person who compiled the Auvergne collection nevertheless felt compelled to make it fit the reality of his world. Accordingly, he described the city of Clermont as the *castrum Claremunte* or 'citadel of Clermont' – a phrase that does not appear in late antiquity but does in mid-eighth century sources.<sup>42</sup> Seen in this light – as well as in the light of similar adaptations in other formulae in the collection<sup>43</sup> – the phrase 'hostilities of the Franks' would appear to be a concrete reference to a mid-eighth century event; the couple concerned had lost their archive in the context of the Frankish king Pippin's campaign of 760–761 to reconquer Aquitaine and with it the Auvergne.<sup>44</sup>

These eighth-century formulae, then, are not simple fossils. Some of them do contain a great deal of archaic late Roman language and refer back to late antique procedures, but the language they use and procedures they describe are subtly (or not so subtly) different each time. Others follow the Marculf tradition and thus reflect the world of the late Merovingian kingdoms. Even these, however, blend older and more recent elements in ways that are hard to understand fully. Which of the two traditions gets invoked does not depend on time or place; what we are getting is not an image of linear development but rather glimpses of different situations. Each formula appears to represent the particular circumstances of its production or the priorities of the person who included it in the collection, even while that person was drawing on or echoing earlier procedures or traditions.

I conclude, therefore, that in late antique Gaul and the West Frankish kingdoms up to the end of the eighth century, the formulae dealing with lost lay archives were relevant to the environments in which the formula collections were produced. In other words, lay men and women had collections of documents that they considered vital to the security of their

<sup>40</sup> 'Ista principium Honorio et Theodisio [*sic*] consilibus eorum ad hostio sancti illo, castro Claremunte per triduum habendi vel custodivimus. seu in mercato publico, in quo ordo curie duxerunt aut regalis vel manuensis vestri aut personarum ipsius castri ...' On the translation of this passage see Zeumer, 'Ueber den Ersatz verlorener Urkunden', p. 90 and p. 95.

<sup>41</sup> Auvergne no. 1b.

<sup>42</sup> Auvergne no. 1a; Zeumer, 'Neue Erörterungen', pp. 334–7.

<sup>43</sup> Zeumer as n. 42 above discusses the appearance of the 'decidedly Frankish' word *alode* in Auvergne nos. 2a, 3, 4, and 6, the Carolingian-era phrase *in pago Arvernico* in no. 6, and stylistic similarities between no. 3 and formulae in the Marculf and Tours collections.

<sup>44</sup> Zeumer, 'Neue Erörterungen', p. 336; on Pippin's campaign see B.S. Bachrach, *Early Carolingian Warfare: Prelude to Empire* (Philadelphia, PA, 2001), pp. 207–45. Note that in contrast to the works cited in n. 37 above, Wood, 'Administration, Law and Culture', p. 64, holds to an early sixth-century dating for the formula, according to which the phrase 'hostilities of the Franks' would refer to King Theuderic's attack on Clermont in the mid-520s.

property holdings and kept these collections in their homes or villas. This picture holds until we reach the Carolingian period and a formula contained in the collection known as the Carolingian Marculf Formulae.<sup>45</sup> This formula catapults us east of the Rhine and provides very interesting evidence for a different kind of lay archival practice.

The Carolingian Marculf collection consists of a set of formulae drawn mostly but not exclusively from Marculf and reworked to fit the realities of the Carolingian period. Zeumer dates the collection to the end of the eighth century, primarily because several formulae in it use language that can only refer to Charlemagne prior to his imperial coronation in 800.<sup>46</sup> Where the formulae originated is unclear; the two surviving manuscripts are both later and stem from Paris and Salzburg.<sup>47</sup> In addition, a fragmentary list of formula titles from Regensburg appears to refer to the collection.<sup>48</sup>

The collection contains the by now familiar pair of formulae concerning the loss of a lay archive: first the witness testament, then the appeal for royal confirmation of property holdings. The witness testament is almost literally copied from the Marculfian original; it has a group of *pagenses* testifying to a king about the destruction by fire of a layman's archive. The only significant difference is that the testimony is directed not at a king and his mayor of the palace, but rather a king and a *princeps*. This is a clear nod in the direction of early Carolingian realities.<sup>49</sup> The important formula is the royal precept. This formula only appears in the Salzburg manuscript. It too is adapted from Marculf, but the changes are more significant. The title gives it away: 'Order of the King Concerning a Monastery Burned by Fire'.<sup>50</sup> Despite the title, this formula does *not* deal with the loss of a monastery's archive. It quite clearly concerns a lay archive that was kept at a monastery. A lay *fidelis* comes to the king and reports that an army had invaded 'his monastery' and burned it down.<sup>51</sup> All of the monastery's property had been destroyed, along with all of the layman's documents. The formula then launches into a description of the

<sup>45</sup> 'Formulae marculfinae aevi karolini', in Zeumer (ed.), *Formulae merowingici et karolini aevi*, pp. 113–27.

<sup>46</sup> Zeumer, 'Ueber die älteren fränkischen Formelsammlungen', pp. 41–50; Buchner, *Rechtsquellen*, p. 54.

<sup>47</sup> Leiden, Universiteitsbibliotheek, Voss. Lat. O. 86 (1<sup>st</sup> 1/2 9c.); Munich, Bayerische Staatsbibliothek, Clm 4650 (late 9c.). See nn. 69 and 71 below.

<sup>48</sup> 'Formularum codicis S. Emmerami fragmenta', in Zeumer (ed.), *Formulae merowingici et karolini aevi*, part III, pp. 467–8; see the literature given in n. 70 below.

<sup>49</sup> Form. Marc. Kar. no. 19 (derived from Marculf I, no. 34): 'Suggerendo piissimo atque precellentissimo domno illo regi, vel principi illo ...'

<sup>50</sup> Form. Marc. Kar. no. 22 (derived from Marculf I, no. 33): 'Preceptum regis pro monasterio igne cremato.'

<sup>51</sup> 'Igitur fidelis noster N. clementiae regni nostri suggestit, qualiter ante hos annos monasterium illius ignis exustio concremasset, vel quod exercitus illius tota huius monasterii aedificia ad integrum pervasisent vel depredassent sive per incendium concremassent ...'

archive's contents that matches the Marculfian original word for word. It refers among other things to documents covering property that the layman had inherited; this only strengthens the conclusion that what we are looking at here is a layman using a family monastery to house his personal archive. The archive was crucial to the security of the layman's property holdings; following the Marculf original exactly, the king reviews a written testament from witnesses and orders that the victim continue to hold whatever property he had held by virtue of the lost documents. In short, everything about the formula is the same as its counterpart in Marculf save for the location of the archive. A lay royal *fdelis* had an archive of documents that protected his property rights; he kept the archive not at home, however, but rather at his own monastic foundation.

What to make of this information? It is impossible to say whether it represents some kind of long-term development, that is, whether in the long stretch from the sixth century to the ninth, lay men and women gradually stopped keeping their archives at home and instead stored them in their monasteries. If so, it would fit with a larger suggestion, that Wendy Davies and Paul Fouracre in particular have made, that churches and monasteries may have gradually come to replace the *gesta municipalia*.<sup>52</sup> In this particular case, I am sceptical. The Sens formulae are from roughly the same date, yet they still assume that lay people kept their archives at home. I suspect that this last formula represents a Bavarian phenomenon, that is, that some Bavarian landholders around 800, at least in the world of the scribe who wrote the formula, were keeping their archives in their family monasteries. The formula appears only in a Bavarian manuscript, a manuscript that moreover contains other Frankish formulae that have been altered to fit Bavarian conditions as well as formulae that are native to Bavaria (see below).<sup>53</sup> Lay landholders in Bavaria were certainly founding family monasteries and churches in the eighth and ninth centuries in which they could have stored their archives. The best documented of these is the monastery founded by a wealthy aristocratic kindred in 763 at Scharnitz (and later moved to Schlehldorf), a monastery whose history is visible in the charters of the cathedral church at Freising.<sup>54</sup>

<sup>52</sup> Davies and Fouracre, 'The role of writing', p. 209 suggest that in the absence of fixed government centres, churches and monasteries could serve the interests of rulers and lesser lay patrons by serving as archives. Cf. Fichtenau, *Urkundenwesen*, pp. 77–9, who suggests that churches in the west were beginning to take over the functions of the *gesta municipalia* already in the late sixth century, based *inter alia* on the analogous behaviour of civic magistrates and church officials in the Angers formula collection. See also McKitterick, *Written Word*, p. 24, n. 5 and pp. 89, 125.

<sup>53</sup> See the discussion of Munich, Clm 4650, at nn. 71 and 82 below.

<sup>54</sup> See Brown, *Unjust Seizure*, pp. 34–5, 42–4, and 76–81; J. Jahn, *Ducatus Baiuvariorum. Das Bairische Herzogtum Der Agilofinger* (Stuttgart, 1991), pp. 408–48. On evidence for other family monasteries in Bavaria prior to the Carolingian conquest see Jahn, *Ducatus, passim*, esp. pp. 119–20 on the monastery at Kübach-Rothalmünster and p. 288 on the foundation at Otting.

Whatever the case, the lay-archive-in-a-monastery formula does indicate that lay archives were not simply an artefact of the West. Someone in Bavaria felt it necessary to include a formula concerning a lost lay archive in his formula collection. It lay within the realm of possibility, therefore, that lay people in this eastern region might keep archives that they regarded as vital to the security of their property holdings.

I cannot generalize from this evidence about other parts of Europe east of the Rhine, however. Not only do we have no lost lay archive formulae from, say, Fulda or Lorsch; no formula collections at all have survived from any eastern region except for Bavaria. The explanation for this difference, if it does not depend on the accidents of manuscript survival, may lie with traditions of document use surviving in Bavaria from the Roman period, and with the Frankish influence over Bavarian documentary practice that is visible by the end of the eighth century.<sup>55</sup> Early medieval Bavaria partially overlapped with the old Roman provinces of Noricum and Rhaetia.<sup>56</sup> A single eighth-century charter fragment containing late Roman language apparently not mediated through any other charter tradition (the Rottachgau fragment) suggests that a continuous documentary tradition may have survived in the region from late antiquity.<sup>57</sup> Starting in the 730s, a vibrant charter tradition emerges in the Bavarian churches and monasteries, a tradition that shows Frankish influence by the later part of the century. Some of this influence was transmitted via formulae. Language from some of the Frankish formula texts in the Salzburg manuscript our formula survives in, appears in charters from the eastern Bavarian monastery at Mondsee starting in 799. These texts were very likely copied or adapted from a late eighth-century manuscript brought to Salzburg from the Frankish monastery of St Amand by its abbot, the Bavarian Arn, Bishop and later Archbishop of Salzburg (bishop in 784, archbishop from 798 to 821).<sup>58</sup> In addition, after Charlemagne conquered Bavaria in 787–794 the Frankish *placitum* form for recording the actions of judicial assemblies shows up in judicial records from the churches at Freising and Passau.<sup>59</sup> In short, while a Bavarian scribe may have modified our formula to match his needs by placing a layman's archive in a monastery, Bavarian landholders may have inherited

<sup>55</sup> On the development of the Bavarian charter tradition see P.J. Geary, *Phantoms of Remembrance: Memory and Oblivion at the End of the First Millennium* (Ithaca, NY, 1994), pp. 90–6; Fichtenau, *Urkundenwesen*, pp. 11–37; Brown, *Unjust Seizure*, pp. 19–21.

<sup>56</sup> Brown, *Unjust Seizure*, p. 12; R.J.A. Talbert (ed.), *Barrington Atlas of the Greek and Roman World* (Princeton, 2000), maps 12 and 19.

<sup>57</sup> Fichtenau, *Urkundenwesen*, pp. 12–13.

<sup>58</sup> Fichtenau, *Urkundenwesen*, pp. 33–4; H. Wolfram, *Salzburg, Bayern, Österreich. Die Conversio Bagoariorum et Carantanorum und die Quellen Ihrer Zeit* (Vienna, 1995), pp. 186–7; Buchner, *Rechtsquellen*, pp. 53–4. On Arn of Salzburg's Bavarian heritage and career path see Brown, *Unjust Seizure*, pp. 103–4.

<sup>59</sup> Brown, *Unjust Seizure*, p. 111.

the culture of document use that the formula reflects from their region's Roman past, from their contacts with the Franks, or both.

Despite its peculiarities, the Bavarian lay-archive-in-a-monastery formula does help illuminate further our picture of lay documentary practice in Europe in general. I shall argue that the formula represents one of several pieces of evidence indicating both that lay Europeans continued throughout the ninth and early tenth centuries to store documents in archives, and that in the same period lay documentary culture depended heavily, if not exclusively, on churches and monasteries. The other evidence supporting this argument comes from the manuscripts.

### Lay archive formulae from the perspective of the manuscripts

The formula collections as edited by Zeumer give us one map in space and time of lay archives. They reveal that from Angers in the sixth century to Paris, the Auvergne, Tours, Sens, and finally Salzburg in the eighth century, there was an interest in including, within formula collections, formulae about the destruction of lay archives. Although these formulae often drew on archaic language and procedural traditions, they nevertheless reflect a connection with a living world of lay document use.

Zeumer's edited formula collections, however, are in a certain sense phantoms. They have been reconstructed from a set of manuscripts that for the most part date to a much later period.<sup>60</sup> Thirteen extant manuscript codices or fragments of codices contain copies of the lay archive formulae. These manuscripts date from the late eighth century to the early tenth century.<sup>61</sup> Most of them are West Frankish; several come from the area between Angers, Tours, and Bourges in the south to Paris in the north, that is, Neustria. Not all of them are western, however; a couple of important ones are Bavarian, from Salzburg and Regensburg.<sup>62</sup> The

<sup>60</sup> I have been able to examine several of these manuscripts personally. To supplement my observations, and in cases where I was unable to see the manuscripts (or microfilmed copies of them), I have drawn on observations by Bernhard Bischoff, Rosamond McKitterick, and Hubert Mordek, as well as on information from Zeumer's formula edition and from library catalogues.

<sup>61</sup> Copenhagen, Kongelige Bibliotek, Coll. Fabr. 84 (9c.); Fulda, Hessische Landesbibliothek, D1 (late 8c.); Leiden, BPL 114 + Paris, BN Lat. 4629 (early 9c.); Leiden, Voss. Lat. O. 86 (1<sup>st</sup> 1/2 9c.); Munich, Clm 4650 (late 9c.); Paris, BN Lat. 2123 (late 8 or early 9c.), 4405 (9c.), 4409 (late 9c.), 4627 (late 9 or early 10c.), 4697 (9c.), 10756 (9c. this manuscript consists of several originally separate codices bound together, two of which contain relevant formulae); Warsaw, Biblioteka Uniwersytecka, 1 (formerly Quart. 480; 1<sup>st</sup> 1/2 9c.). In addition, Munich, Bayerische Staatsbibliothek, Clm 29585(2) (9c.), a set of manuscript fragments from Regensburg, contains a list of formula titles, some of which overlap with the Form. Marc. Kar.; one of these titles is relevant.

<sup>62</sup> The manuscripts whose origins I could determine were produced in the following places or regions: Fulda, D1 – Angers or Tours; Leiden, BPL 114 + Paris, BN Lat. 4629 – Bourges; Leiden, Voss. O. 86 – area around Paris; Munich, Clm 4650 – area around Salzburg; Paris, BN Lat. 4409 – N. France; BN Lat. 4627 – Tours; BN Lat. 4697 – France; BN Lat. 10756 – the two relevant manuscripts bound into this codex are both West Frankish, and one comes from Tours; Warsaw, 1 – Tours. The Regensburg fragments mentioned in n. 61 above are Bavarian, most

manuscripts may tell us more about how interest in the lay archive formulae developed over time and space. I want now, therefore, to look at how these formulae fit into the purposes behind the construction of the manuscripts in which they survive.

It will certainly come as no surprise to find out that the manuscripts vary a great deal from one another both in content and in character. I have classified them into several rough groups. First are those primarily concerned with legal principles or procedure, either secular or sacred. They contain in addition to formulae copies of law codes like the Roman Law of the Visigoths (*Lex Romana Visigothorum*) or the Salic Law. Typical of the group is the manuscript containing the only surviving copy of the Angers formula collection, which is now in Fulda.<sup>63</sup> The manuscript was written in the late eighth century, somewhere around Angers or Tours. It is mostly taken up with a badly garbled copy of the *Lex Romana Visigothorum*; the Angers formulae occupy roughly the final quarter of the manuscript. It was plainly designed to be a practical reference book in an area that still relied on Roman law; it is small and handy, with clear red rubrics that make it relatively easy to find things.<sup>64</sup>

Some manuscripts in this group deal with church law; they include such texts as excerpts from canon law, church council acts, writings of the church fathers, etc. One example from the late eighth or early ninth century surrounds formulae from Marculf and Tours with council acts, canons, a pseudo-Augustinian text, some sayings of Theodore of Canterbury and writings of Leo the Great, in addition to a late antique list of the

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likely from the area around Regensburg. I could not determine a place or region of origin for the following manuscripts: Copenhagen, Coll. Fabr. 84; Paris, BN Lat. 2123 and 4405. For the literature on the manuscripts see the specific references to them below.

<sup>63</sup> Fulda, D1. Also belonging to this group are Paris, BN Lat. 4697 (the Auvergne formulae and excerpts from the *Lex Romana Visigothorum*; see Zeumer's notes to the Auvergne formulae, p. 26 and Gustav Haanel (ed.), *Lex Romana Visigothorum* (1849; repr. Aalen, 1962), p. LXXIII), BN Lat. 4409 (excerpts from Isidore of Seville's *Etymologies* on laws, citizenship, and the degrees of kinship, the *Lex Romana Visigothorum*, a list of the Frankish kings, a glossary, the *Lex Salica*, and the Tours formulae; see Zeumer's notes to the Tours formulae, p. 131; H. Mordek, *Bibliotheca Capitularium Regum Francorum Manuscripta. Überlieferung und Traditionszusammenhang der fränkischen Herrschererlasse*. MGH, Hilfsmittel 15 (Munich, 1995), pp. 463–6; McKitterick, *Written Word*, p. 49 and p. 60), BN Lat. 4627 (catechism questions, Sens formulae, miscellaneous formulae, the *Lex Salica*, a late Merovingian king list, Marculf's formulae; see Zeumer, notes to Marculf's formulae, pp. 34–5; Mordek, *Bibliotheca Capitularium*, pp. 482–5; McKitterick, *Written Word*, p. 45 and p. 48).

<sup>64</sup> Fulda, D1 contains 185 numbered pages and measures 19 × 12.5 cm (writing area: 14.5–16 × ca. 8.5 cm), with 19–20 lines per page. On six pages in between the *Lex Romana Visigothorum* and the Angers formulae (fol. 133r–136v) are copied an excerpt from Isidore of Seville's *Synonyma* and a fragment of a sermon. See B. Bischoff, *Die südosideutschen Schreibschulen und Bibliotheken in der Karolingerzeit*, I: Die bayerischen Diözesen (Wiesbaden, 1974), p. 258; *Die illuminierten Handschriften der hessischen Landesbibliothek Fulda*, ed. C. Jakobi-Mirwald (Stuttgart, 1993), pp. 24–6; Haanel (ed.), *Lex Romana Visigothorum*, pp. LXXIV–LXXV. I was able to examine this manuscript in August of 2000; my thanks to the staff at the Hessische Landesbibliothek Fulda.

cities of Gaul, a list of the ages of the world up to Charlemagne and excerpts from Isidore of Seville's *Etymologies* concerning weights, measures, and geometry.<sup>65</sup>

Three of these manuscripts, containing formulae from Tours, Sens, and Marculf's collection, were evidently written in the context of a concerted effort to produce legal manuscripts, carried out at Tours in the 820s and 830s under the direction of Fridugis, Abbot of St Martin at Tours and chancellor to the emperor Louis the Pious from 819–832. Rosamond McKitterick and Bernhard Bischoff have identified a coherent group of legal texts from this period that fall paleographically and codicologically within the Tours writing tradition. McKitterick goes so far as to use the term *leges scriptorium*: 'these legal codices reflect the activity of a small group of scribes presided over by the royal *cancellarius* and associated with the royal court, possibly actually located at the court itself'.<sup>66</sup> Evidently, then, the Tours lay archive formulae were interesting to people participating in a court-sponsored effort to copy out legal handbooks.

The second of my rough groups consists of what look to have been schoolbooks. These manuscripts are often hard to separate from the first group because they can contain similar texts; they also, however, contain material that would not necessarily be useful for legal or notarial purposes but would be important for students or schoolboys to know. A good example, a manuscript now in two pieces kept in Leiden and in Paris respectively, was produced in or around Bourges sometime between 750 and 825. It contains not only the *Lex Romana Visigothorum*, the Salic Law and the Ripuarian Law, a group of formulae including some Marculf, and a selection of Carolingian capitularies but also a discussion of orthography (including Isidore of Seville's *De Orthographia* from the *Etymologies*), Isidore's treatment of the degrees of kinship from the *Etymologies*, a series of theological and philosophical questions, an excerpt from Alcuin of York's *On the Virtues and Vices*, some Latin poetry, and notes on the

<sup>65</sup> Paris, BN Lat. 2123; see Zeumer, notes to Marculf's formulae, p. 35 and Paris, Bibliothèque Nationale, *Catalogue générale des manuscrits latins*, Tome II (Nos. 1439–2692), ed. Ph. Lauer (Paris, 1940), pp. 329–30. See also Warsaw, 1 (the *Lex Romana Visigothorum*, the *Lex Salica*, Tours formulae, Isidore of Seville's *De Legibus* from the *Etymologies*, canon law and church council acts, a few scattered letter forms and a collection of synonyms); Zeumer, notes to the Tours formulae, p. 131; McKitterick, *Written Word*, p. 49 and 'Zur Herstellung von Kapitularien: Die Arbeit des Leges-Skriptoriums', *Mitteilungen des Instituts für Österreichische Geschichtsforschung* 101 (1993), pp. 3–16 at p. 10.

<sup>66</sup> Warsaw 1, Paris, BN Lat. 4627 and BN Lat. 10756 belonged to the products of this *leges scriptorium*; see McKitterick, *Written Word*, p. 49 and p. 57 and 'Zur Herstellung von Kapitularien', pp. 10–12; Mordek, *Bibliotheca Capitularium*, pp. 482–3. On the *leges scriptorium* in general see McKitterick, *Written Word*, pp. 57–9 (for the quotation above) and 'Zur Herstellung von Kapitularien', pp. 10–16; B. Bischoff, 'Die Hofbibliothek unter Ludwig der Fromme', in *Mittelalterliche Studien. Ausgewählte Aufsätze zur Schriftkunde und Literaturgeschichte*, III (Stuttgart, 1981), pp. 170–86; Mordek, *Bibliotheca Capitularium*, p. 422–3.

lengths of the days and nights in the twelve months of the year.<sup>67</sup> One of the manuscripts produced by the Tours *leges scriptorium*, now kept in Warsaw, contains a collection of synonyms and thus may also have been a schoolbook; another that begins with a list of catechism questions may have been one as well.<sup>68</sup>

One manuscript, from Paris in the early ninth century, is really hard to categorize because it contains an apparently random mixture of things. This is the Paris manuscript of the Carolingian Marculf formulae discussed above, which includes the witness testament about a destroyed lay archive from Marculf Book I but not the lay-archive-in-a-monastery formula. In addition to the formulae the manuscript contains the Book of the History of the Franks, the Salic Law, and religious texts such as prayers and masses. It could have been a schoolbook; it could also, as McKitterick has suggested, have been a layman's personal miscellany.<sup>69</sup>

The last group, consisting of two manuscripts, contains primarily formulae. They are both Bavarian:<sup>70</sup> one is the late ninth-century codex from Salzburg that contains the lay-archive-in-a-monastery formula, the other is the set of fragments from Regensburg that contains, along with some complete formulae, the list of formula titles from the Carolingian Marculf collection.<sup>71</sup> It is evident in these cases that the manuscripts were put together to do what most scholars have always assumed formula collections were put together to do: provide models for documents to be used in practice. The Salzburg manuscript, for example, contains

<sup>67</sup> Leiden, BPL 114, which was originally bound together with the now separate Paris, BN Lat. 4629. See Zeumer, notes to the Marculf formulae, p. 34, Mordek, *Bibliotheca Capitularium*, pp. 502–7; B. Bischoff, 'Panorama der Handschriftenüberlieferung aus der Zeit Karls des Großen', in *Mittelalterliche Studien*, III, 17, and McKitterick, *Written Word*, p. 49.

<sup>68</sup> Warsaw, 1 (see nn. 65 and 66 above); Paris, BN Lat. 4627 (see nn. 63 and 66 above). McKitterick, 'Some Carolingian Law-books and Their Function', in P. Linehan and B. Tierney (eds), *Authority and Power. Studies on Medieval Law and Government Presented to Walter Ullman on his Seventieth Birthday* (Cambridge, 1980), p. 17, has suggested that when a legal collection includes the sections on laws from Isidore's *Etymologies*, as do Warsaw, 1 and Paris, BN Lat. 4409, it implies that the collection had an educational purpose.

<sup>69</sup> Leiden, Voss. O. 86: Zeumer, notes to the Form. Marc. Kar., p. 113 and 'Ueber die älteren fränkischen Formelsammlungen', pp. 41–50; McKitterick, *Written Word*, pp. 47, 49 and 59.

<sup>70</sup> Unless one counts the two parts of Paris, BN Lat. 10756 that contain formulae from Marculf and Tours; since these were originally not bound together it is possible that they too were copied as free-standing formula collections. See Zeumer, notes to Marculf's formulae, p. 35; McKitterick, *Written Word*, p. 57; B. Bischoff, 'Ein wiedergefundener Papyrus und die ältesten Handschriften der Schule von Tours', in *Mittelalterliche Studien*, I (Stuttgart, 1966), pp. 6–16, at p. 10, n. 32.

<sup>71</sup> Salzburg: Munich, Clm 4650 – see Zeumer, notes to the Form. Marc. Kar., p. 113 and 'Ueber die älteren fränkischen Formelsammlungen', pp. 41–50; *Katalog der lateinischen Handschriften der Bayerischen Staatsbibliothek München. Die Pergamenthandschriften aus Benediktbeuern*, Clm 4501–4663, ed. G. Glauche (Wiesbaden, 1994), s.v. Clm 4650; Bischoff, *Schreibschulen*, II, 201–2. Regensburg: Munich, Clm 29585 (2) – see Zeumer, notes to 'Formularum codicis S. Emmerami fragmenta', pp. 461–3 and 'Ueber Fragmente einer Formelhandschrift des IX. Jahrhunderts', *Neues Archiv* 8 (1883), pp. 601–5; Bischoff, *Schreibschulen*, I, 258. I was able to examine both of these manuscripts in September of 2000; my thanks to the staff at the Bayerische Staatsbibliothek in Munich.

formulae from three different sources: the so-called *Formulae Salicae Lindenbrogianae*, a group of formulae that stem from the homeland of the Salian Franks and reached their final form in the late eighth century;<sup>72</sup> the Carolingian Marculf collection; and a group of original formulae from Salzburg. It also includes a few letters by Alcuin. As I noted above, it is likely that the first two collections were brought to Salzburg from St Amand at the end of the eighth century by Arn of Salzburg; it is around that point that language from the *Formulae Salicae Lindenbrogianae* first appears in Bavarian charters.<sup>73</sup> The Salzburg manuscript, like the Angers manuscript discussed above, was clearly designed to be a practical handbook. It too is small, neatly written, and clearly labelled.<sup>74</sup>

My point is this: from the evidence of the manuscripts, it appears that formulae concerning destroyed lay archives were considered to be relevant in the late eighth through the early tenth centuries in several contexts: in codices covering both secular and sacred legal theory and practice, in school texts, in miscellanies, and in collections of document forms.

The objection might be raised at this point that the lay archive formulae were simply copied wholesale with the formula collections they were in. This was certainly true in some cases, but not in all. Several manuscripts indicate that their copyists made choices about which formulae to copy and which to leave out. In only a very few cases do the collections as reconstructed by Zeumer survive complete in any one manuscript. In these cases, such as the manuscript containing the Angers collection, any processes of choice or selection in the formulae remain invisible.<sup>75</sup> Most of the manuscripts, however, contain bigger or smaller chunks of a collection, often placed next to or even mixed in with pieces of another collection, or with completely original formulae. In these cases, the copyists apparently made deliberate choices about what material from what source fitted their particular needs. For example, the Leiden/Paris manuscript of Marculf (the school book from Bourges mentioned above) contains Book I of Marculf's formula collection complete but only parts of Book II, and those in a different order from the original and mixed in with some formulae from Bourges.<sup>76</sup>

<sup>72</sup> 'Formulae Salicae Lindenbrogianae' as n. 20 above; Zeumer, 'Ueber die älteren fränkischen Formelsammlungen', pp. 44–50; Buchner, *Rechtsquellen*, pp. 53–4.

<sup>73</sup> Buchner, *Rechtsquellen*, pp. 53–4; Fichtenau, *Urkundenwesen*, pp. 33–4; Wolfram, *Salzburg, Bayern, Österreich*, pp. 186–7.

<sup>74</sup> The codex measures 13.5 cm × 10.5 cm (writing area: 11 cm × 8–8.5 cm) and contains 18 lines per page. See n. 64 above.

<sup>75</sup> Fulda, D1; see n. 64 above. Paris, BN Lat. 4627 and the Marculf part of BN Lat. 10756 contain Marculf's collection complete (in the latter case without Marculf's preface), while Warsaw, 1 contains all of the Tours collection; see nn. 59, 63, 65 and 66 above.

<sup>76</sup> Leiden, BPL 114 (originally bound with BN Lat. 4629); see n. 67 above. Similarly, BN Lat. 2123 contains Book I of Marculf complete but not Book II. Moreover, the Marculf formulae are blended in with some of the Tours formulae (nos. 1–32, but in a different order from that given by Zeumer; the copyist included the heading for no. 33 but placed a different formula

Similarly, the manuscripts containing the Carolingian Marculf collection only selectively draw on Marculf; evidently, the person (or persons) who originally sought to produce a formula collection more suited to Carolingian realities saw only some of the Marculf formulae as fitting his purposes.<sup>77</sup>

These examples reveal copyists selecting or leaving out groups of formulae. Sometimes, however, they went so far as to choose specifically whether or not to copy the formulae about destroyed lay archives. In a legal manuscript produced around Tours in the 820s or 830s (a product of McKitterick's *leges scriptorium*), the first six folia contain pieces of the Tours formula collection. The lay archive formulae are not among them.<sup>78</sup> In contrast, another ninth-century manuscript contains only the lay archive formulae from Tours and no others.<sup>79</sup>

Scribes could not only make choices about which formulae were relevant to their codices but could also alter older formulae to make them relevant. The best example of this process at work is the Salzburg manuscript containing the Carolingian Marculf collection.<sup>80</sup> As I mentioned above, the manuscript contains formulae from three sources: the *Formulae Salicae Lindenbrogianae*, the Carolingian Marculf collection, and a group of native Salzburg formulae. The Lindenbrog formulae in the Salzburg manuscript were adapted to fit specifically Bavarian conditions; they do not quite match their counterparts in the other surviving manuscript of the collection, a ninth-century legal manuscript now in

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underneath it) and formulae from another source into a composite collection that starts with Marculf's preface (with the dedication changed from Marculf's original Bishop Landeric to one Aeglidulf) and index (which naturally does not match the collection's contents) – see above n. 65. The other manuscripts containing Tours formulae also reflect this phenomenon. Only Warsaw, 1 contains Zeumer's Tours collection complete. All of the other manuscripts (the Tours part of BN Lat. 10756, BN Lat. 2123 and BN Lat. 4409) break off at no. 32 or 33 (BN Lat. 10756 breaks off at 33, but no. 31 is missing; see my comments on BN Lat. 2123 above; BN Lat. 4409 ends at no. 33, but since a couple of formulae are blended there are actually 32 headings). Two other manuscripts, Vatican City, Biblioteca Apostolica, reg. Lat. 852 and Paris, BN Lat. 4405, contain only a few of the Tours formulae – see nn. 78 and 79 below.

<sup>77</sup> Munich, Clm 4650 and Clm 29585(2); Leiden, Voss. O. 86. Of the 32 formulae in the collection (as published by Zeumer), 22 are drawn from Marculf's collection. Seventeen come from Book I, one comes from Book II, and four come from the supplements. Moreover, the formulae that are drawn from Marculf do not appear in Marculf's original order. Finally, three of the formulae in the Carolingian Marculf collection (two from Marculf Book I and one not from Marculf) do not appear in Clm 4650. See Zeumer, notes to the Form. Marc. Kar., pp. 113–14 and 'Ueber die älteren fränkischen Formelsammlungen', pp. 41–50 (where he explains the missing formulae in Clm 4650 by scribal carelessness).

<sup>78</sup> Vatican, reg. Lat. 852. The bulk of the manuscript (fols 7–99) contains a copy of the *Lex Romana Visigothorum*. The Tours formulae appear on fols 1–6 in a different hand than the rest of the manuscript. See Zeumer, notes to the Tours formulae, p. 132; McKitterick, *Written Word*, p. 57.

<sup>79</sup> Paris, BN Lat. 4405 contains only the two lay archive formulae from Tours plus Tours Additamenta 7 (which appears nowhere else). See Zeumer as n. 78 above and 'Ueber die älteren fränkischen Formelsammlungen', p. 51.

<sup>80</sup> Munich, Clm 4650.

Copenhagen.<sup>81</sup> For example, many of the formulae change characteristically Frankish words to other words or phrases, presumably to make them more comprehensible to Bavarians.<sup>82</sup> For my purposes, the most telling example from this manuscript is the Carolingian Marculf formula that describes a layman keeping his archive in a family monastery. In this case the copyist took a formula from Marculf and altered it in quite deliberate and specific ways. Plainly in his environment, lay followers of the king had archives with which they secured their property holdings, but kept them in their family monasteries.<sup>83</sup>

In other words, by the time we get to the period when the formula manuscripts were written – the eighth, ninth, and early tenth centuries – the lay archive formulae were not just anachronisms artificially kept alive by copyists blindly copying older models. Some copyists *decided* whether or not to include the lay archive formulae in their collections. When they did so, they sometimes altered them to make them better fit their particular circumstances.

Is there any direct evidence that the lay archive formulae were actually used? Yes, there is, but the surviving charters and diplomas that show scribes drawing on the formulae, or on procedures similar to those described by the formulae, were all written for clerical recipients and concern clerical or monastic archives. Zeumer discusses a number of royal diplomas, spanning the period from the late seventh to the end of the ninth century, that have kings confirming ecclesiastical and monastic property holdings covered by the contents of lost archives. Some of these diplomas draw on the Marculf formula.<sup>84</sup> Moreover, an early tenth-century document from Nîmes shows a bishop reaching back to a formula very similar to the Auvergne lay archive formula in a case concerning a lost document; the language makes it very clear that his scribe was drawing on the late antique *appennis* tradition. According to the document, Ugbert, bishop of Nîmes, had lost a charter by which one Adalard and his wife Elizabeth had given the cathedral at Nîmes one half of an estate at Tramiaco. The bishop had entrusted the document to a priest named Lambert who had died without returning it. Bishop Ugbert and his advocate Ictor appealed to a *missus* of Count Raimund, named Fredolo, to

<sup>81</sup> Copenhagen, Kongelige Bibliotek, antiquae collectionis no. 1943, 40, 9c. See Zeumer's notes to the *Formulae Salicae Lindenbergianae*, pp. 265–6 and 'Ueber die älteren fränkischen Formelsammlungen', pp. 44–50.

<sup>82</sup> Zeumer, 'Ueber die älteren fränkischen Formelsammlungen', pp. 45–8. Zeumer discusses among other examples the word *wadriscapis*, a word that apparently had something to do with water. The word is localizable to the area around the lower Rhine, Maas, and Scheldt. In contrast to the Copenhagen manuscript, the Salzburg manuscript uses the word only three times. In most of the formulae where the Copenhagen manuscript uses it, the Salzburg manuscript replaces it with other words or phrases having to do with water, for example: 'puteis vel fontibus, aquarum ausibus, aquarum decursibus, aquarum oportunitatibus'.

<sup>83</sup> Form. Marc. Kar. no. 22; see above at n. 50.

<sup>84</sup> Zeumer, 'Ueber den Ersatz verlorener Urkunden', pp. 110–22.

confirm the cathedral's possession of the property. Their appeal begins by referring to the ancient right of someone in such a position to appeal to his civic authorities (*curiales*) for redress, and states that the victim should have his appeal hung up for public display for two to three days. The *missus*, Fredolo, is referred to as *auctor et defensor*; he ends up confirming the *plancturia et appensa*. It is in an accompanying document, in which witnesses testify before the assembly to the contents of the lost charter, that we learn that Fredolo was Count Raimund's *missus* and that the members of the 'curia' were his judges.<sup>85</sup>

The only surviving document addressed to a lay recipient that might possibly refer to a lay archive comes from the year 663. In that year, a Duke Sichelmus sent a *relatio* to three *maiores domus sacri palatii*. The duke asked the mayors to tell the king that in the plundering and destruction of the monastery at Bèze the monastery's charters had been lost; he requested that the king confirm the monastery in its possession of the property that had been given it by 'good men'. In response, King Clothar III issued a precept, not to the abbot of Bèze, but to Duke Sichelmus. The precept stated that Abbot Waldalenus of Bèze had delivered Sichelmus's *relatio*; it went on to confirm the monastery in possession of all of the property given to it by its founders. These founders were one Duke Amalgarius and his wife, who were the parents of Abbot Waldalenus and possibly also of Duke Sichelmus – who in this case would have been acting as the head of the founding family. It is plain that the duke and the abbot were watching out for their family's property interests; the lost documents and the property they covered were treated as much as an affair of the family as of the monastery per se. However, it is unlikely that we are dealing here with a lay archive that had been stored at a monastery. This case is different from that presented by the Carolingian Marculf formula discussed above in that the property is clearly the monastery's, even if it has been cached there by the founding family.<sup>86</sup>

Nevertheless, the processes of selection, omission, and deliberate alteration visible in the formula manuscripts suggest that if lay archives no longer existed in the world outside the formulae – that if documents and archives had become the exclusive prerogative of churches and monasteries – copyists would have been perfectly capable of changing the formulae accordingly, or of abandoning the formulae completely if they were no longer important. Given the specific choices about, and

<sup>85</sup> *Cartulaire du Chapitre de l'église cathédrale Notre-Dame de Nîmes*, ed. Eugène Germer-Durand (Nîmes, 1874), nos. 32 and 33 (928?), pp. 56–7. See P.J. Geary, 'Die Provence zur Zeit Karl Martells', in Jarnut, Nonn, and Richter (eds), *Karl Martell in seiner Zeit*, p. 382, n. 5. For the specific similarities in language between Nîmes no. 32 and the Auvergne *appennis* formula (as well as for an argument that the case really dates from 922) see Zeumer, 'Ueber den Ersatz verlorener Urkunden', pp. 90–4 and pp. 109–10.

<sup>86</sup> Zeumer, 'Ueber den Ersatz verlorener Urkunden', pp. 112–13.

changes in, the formulae concerning destroyed archives that some scribes made, certainly someone somewhere would have produced a formula about the destruction of a clerical archive if that had been the only arena in which the procedure was relevant. But no such formula survives in any of the manuscripts; the formulae all concern lay archives. This indicates that lay archives still existed. Lay men and women still considered written documents crucial to securing their property holdings and still kept them in centralized locations (where they were vulnerable). Copyists who included the formulae in their collections, whether they were producing a sourcebook for legal theory and procedure, a school text, or a source of model documents, still felt that lay archives were comprehensible elements of the world around them. Moreover, this is not just true of the west; the Salzburg manuscript and the Regensburg fragments tell us unequivocally that east of the Rhine laymen also kept archives, at least in Bavaria in the ninth century.

### Conclusion

What neither the formulae nor the manuscripts tell us explicitly is exactly how these archives were important to lay people. Was it the archives' content or simply their existence as symbols of rights or claims that made them worth keeping, protecting, and at need replacing? Could the people who kept them necessarily read the documents in them; that is, were they necessarily literate?<sup>87</sup>

There is plentiful evidence that documents in early medieval Europe could be important to people in ways that did not require them to read. For example, in Anglo-Saxon England before the ninth century, it appears that lay people valued charters not for their content but rather for their symbolic role in a set of rituals that effected and guaranteed property transactions. The Alemannian and Bavarian law codes suggest a similar symbolic function for documents when they mandate that gifts of property to a church be consummated by placing the charters recording the gifts on the church altar.<sup>88</sup>

The lay archive formulae project an image of lay people as at least possessed of what Nelson has called 'passive' or 'pragmatic' literacy, that is, they were familiar with procedures that required documents and were

<sup>87</sup> Nelson, 'Literacy in Carolingian Government', p. 258, points out that since 'written' is an aspect of things, while 'literate' refers to people, it is essential to distinguish the 'use of the written word' from 'literacy'.

<sup>88</sup> Kelly, 'Anglo-Saxon Lay Society', pp. 43–6 and *Charters of Abingdon Abbey*, pp. cxxxi–cliii; *Lex Alamannorum* (as n. 11 above), 1/1; *Lex Baiuvariorum* (as n. 11 above), 1/1; cf. *Lex Ribuariorum* (as n. 11 above), 62/5. For an example of a Bavarian sealing a gift of property to a church by placing the gift charter on the church altar see *Die Traditionen des Hochstifts Freising*, ed. T. Bitterauf, 2 vols (Munich, 1905), no. 7, I, 33–4. Cf. McKitterick, Conclusion to *Uses of Literacy*, pp. 319–20; Fichtenau, *Urkundenwesen*, 59–60.

able to find notaries or scribes to draw up documents.<sup>89</sup> Even if they could not read or write Latin like true *litterati*, they thought it important that documents be produced and that they be drawn up in the right way.<sup>90</sup> The best evidence for this kind of relationship with documents appears in the Sens formula for a witness testament, in which a notary writes up the witnesses' testimony. Everyone involved in the witnessing process thinks a document is necessary, but the notary is needed to produce it.<sup>91</sup>

At the same time, the formulae do indicate that written documents were intimately bound up with oral memory, and with oral and symbolic communication. The symbiotic relationship between writing and speech is highlighted by the various ways that witness testaments are used in the formulae. In the Angers *appennis* formulae, for example, the witnesses come to the assembly and present their written testament to the bishop, count, and other venerable men who were presiding 'for rereading' (*ad relelegendam*).<sup>92</sup> It is not clear whether this means that the heads of the assembly read the document to themselves or had it read out loud. In any case, they interrogated the witnesses about what they had seen and extracted an oral statement backing up their written testament. The Marculf, Tours, and Carolingian Marculf formulae say only that the written witness testaments were presented to the king and his court; they do not reveal how the information in them was processed.<sup>93</sup> The Sens formulae, however, again have the witnesses coming to testify in person to the victim's loss – this time with no mention of a written testament at all (although, as I noted above, there is a formula for one in the Sens collection).<sup>94</sup>

The way the formulae describe property points up the fluid boundary between oral memory, written memory, and symbolism. All of the formulae are vague about the property covered by the contents of the lost archives; they refer to it with phrases such as 'whatever he was seen to have possessed up until the present'.<sup>95</sup> They thus rely on the word of the

<sup>89</sup> Nelson, 'Literacy in Carolingian Government', pp. 269–71.

<sup>90</sup> On the meaning of *litteratus* in this period see McKitterick, Introduction to *Uses of Literacy*, p. 3.

<sup>91</sup> Sens no. 46.

<sup>92</sup> Angers no. 32.

<sup>93</sup> Marculf I, no. 33: 'unde relatione bonorum hominum manibus roborata, qualiter ipsis ita cognitum sit, ut suggestit, nobis protulit recensendam'; Tours no. 27: 'unde relatione sub testificatione bonorum hominum cognovimus recensendam'; Form. Marc. Kar. 22: 'unde et relatio pagensium nobis id ipsum innotuit, quod ita se hac de causa veritas haberetur'.

<sup>94</sup> See above at n. 36.

<sup>95</sup> For example, Marculf I, no. 33: 'quod ad presens cum aequitatis ordine quietus possedit, deinceps in iurae et dominatione eius confirmare deberemus ... ; quicquid memoratus ille tam in terris, domibus ... iustae et rationaliter usque nunc ubicumque in regno nostro possidere videtur ...'. The vague descriptions of property in these formulae raise the distinct possibility that the formulae could reflect staged disputes, that is, disputes deliberately staged to get written confirmation from a civic or royal authority of whatever the victim claimed – or wanted – to be his property holdings. Such a staged dispute would, of course, require the cooperation of the witnesses. This idea was suggested to me by Jay Rubinstein.

victim and the memory of witnesses to actually define the victim's property rights. They suggest, therefore, that the content of the written confirmation was less important than its simple existence as a symbol of what people had said and what people remembered.

The manuscripts that contain these formulae give a similar impression that documents functioned in a grey zone between written and symbolic communication. The fact that the lost-archive formulae were copied in the first place indicates that the copyists thought documents concerning lay affairs were essential and that it was important to have models of them. Moreover, the copyists in at least some cases felt the content of the documents to be important enough that they updated their formulae to reflect contemporary conditions, most notably in the case of the Bavarian lay-archive-in-a-monastery formula. Nevertheless, these same formulae frequently retain outdated terminology and procedures, suggesting that their exact content was less important than the fact that they contained the right legal language. They were designed, therefore, to function as much as symbols that things had been done properly as they were records of what had taken place. The best example of this phenomenon would be the Auvergne lay archive formulae, which, while they can be dated to the eighth century, contain language that reaches back deep into the sixth.<sup>96</sup> In this respect, the formulae are similar to many modern legal documents, in which the language is often convoluted and archaic to the point of being incomprehensible to everyone outside the legal priesthood; the very fact that they use the proper language and follow time-honoured forms helps to guarantee their validity.

The manuscripts also have something to say about who considered documents concerning lay affairs to be important during the period in which the manuscripts were produced, that is, between the late eighth and the early tenth centuries. We only know about the lay archive formulae at all, as well as about the whole world of lay document use that the formula collections open up, because someone decided that it was necessary to copy the formulae down. This process of collecting and copying the formulae was institutional and seems to have been carried out to a large degree by churches and monasteries. In some cases we do not yet know exactly where or by whom a given formula manuscript was produced; paleography and codicology can only narrow these manuscripts' origins to a particular region or to a particular regional handwriting tradition. The evidence in several cases, however, does point towards ecclesiastical or monastic scriptoria. The Salzburg manuscript that contains the lay-archive-in-a-monastery formula, for example, was most likely produced at the scriptorium of the monastery of St Peter at Salzburg, while the Leiden/Paris manuscript that mixes Marculf with Bourges formulae

<sup>96</sup> Auvergne nos. 1a and 1b. Cf. the charter from Nîmes discussed above at n. 85.

probably stems from the church of St Stephen in Bourges.<sup>97</sup> The formula manuscripts that were produced by the Tours *leges scriptorium* in the second quarter of the ninth century appear to reflect an impulse towards producing legal handbooks that emanated from the Carolingian court. Nevertheless, they were produced by scribes working under the direction of the abbot of the monastery of St Martin at Tours.<sup>98</sup>

The whole business of remembering how laymen interacted with documents, and of selecting which procedures or traditions governing that interaction were important to preserve or change, thus became caught up in the larger process of gathering up, selecting, altering, and copying out formulae that took place from the western to the south-eastern regions of Europe north of the Alps from the late eighth to the tenth century. This process depended heavily on churches and monasteries. It is difficult to give a global explanation for why it took place. As we have seen, the formulae survive in manuscripts that were produced in a variety of places for a variety of purposes that extend beyond simply preserving model documents; it would be a mistake to treat the formula collections in isolation and try to find a single explanation for their existence.<sup>99</sup> Nevertheless, the manuscripts suggest that the task of preserving and updating traditions about how lay people interacted with documents was becoming the business of institutions such as churches, monasteries, or the royal court – and that churches and monasteries were almost always involved.

It would be too much to argue that by the end of the eighth century churches and monasteries had become the sole producers of the documents that lay people needed. McKitterick, in her study of the scribes who wrote the St Gall charters (which span the eighth, ninth, and early tenth centuries), has documented a wide variety of people who wrote out documents for various kinds of customers, both clerical and lay. Many of these were indeed clerics, ranging from priests in the service of a count, to people in the lowest clerical orders producing charters in villages and hamlets. A significant number, however, did not explicitly label themselves as clerics, but rather as *cancelarii* or *notarii* in ways that suggest a scribal function outside an ecclesiastical or monastic framework (in this case that of the monastery at St Gall). One scribe explicitly identified himself as a *laicus*.<sup>100</sup> Nevertheless, it might not be too much to suggest, based on the evidence of the formula manuscripts and of the Bavarian lay-archive-in-a-monastery formula, that in the late eighth, ninth, and tenth

<sup>97</sup> Munich, Clm 4650 and Leiden, BPL 114 + Paris, BN Lat. 4629 (see above nn. 67 and 71); Fichtenau, *Urkundenwesen*, p. 36 and the introduction to the 'Formulae Bituricensis', in Zeumer (ed.), *Formulae merovingici et karolini aevi*, pp. 166–81, at p. 167.

<sup>98</sup> See above n. 66.

<sup>99</sup> As does, for example, Buchner, *Rechtsquellen*, p. 50.

<sup>100</sup> McKitterick, *Written Word*, pp. 77–134 and esp. pp. 115–17.

centuries churches and monasteries were heavily involved in the tasks of preserving and updating traditions about how lay people used documents, of producing those documents, and, in some cases, of storing them.<sup>109</sup>

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