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DOCUMENTS, ARCHIVES, AND PROOF AROUND 1700*

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ABSTRACT. *Jean Mabillon's* De re diplomatica, *whose importance for diplomatics and the philosophy of history is well recognized, also contributed to the seventeenth-century European debate over the relationship among documents, archives, and historical or juridical proof. This article juxtaposes early works on diplomatics by Mabillon, Daniel Papebroche, and Barthélémy Germon against German* ius archivi *theorists including Rutger Ruland and Ahasver Fritsch to reveal two incommensurate approaches that emerged around 1700 for assessing the authority of written records. Diplomatics concentrated on comparing the material and textual features of individual documents to authentic specimens in order to separate the genuine from the spurious, whereas the* ius archivi *emphasized the* publica fides *(public faith) that documents derived from their placement in an authentic sovereign's archive. Diplomatics' emergence as a separate auxiliary science of history encouraged the erasure of archivality from the primary conditions of documentary assessment for historians, however, while the* ius archivi*'s privileging of institutional over material criteria for authority foreshadowed European state practice and the evolution of archivistics into the twentieth century. This article investigates these competing discourses of evidence and their implications from the perspective of early modern archival practices.*

. . . saepe quod in foro probavit judex, in museo condemnat litteratus.[1]

And often, what the judge approved in court, the scholar condemns in his study.

Quoniam tota vis Archivi, ac ejusdem Scripturae dependet ab authoritate ejus, in cujus postestate Archivum est.[2]

Consequently, the entire force of an archive, and of its records, depends on the authority of him in whose power the archives are.

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[1] Quoted in Jean Mabillon's *De re diplomatica* (Paris, 1681), p. 239 (cited henceforth as *DRD*), from Daniel Papebroche, 'Ad tomum II Aprilis propylaeum antiquarium circa veri ac falsi discrimen in vetustis membranis', in *Acta sanctorum Aprilis*, II: *Quo medii XI dies continentur* (Antwerp, 1675), p. xvi, who in turn was quoting a letter he received from the Jesuit Alexander Wilthemius.

[2] Nicolaus Mylerus, *De principibus & statibus imperii Rom. Germ. eorumvè praecipuis juribus succincta delineatio* (2nd edn, Stuttgart, 1658), p. 372.

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I

In the second edition of his *Handbuch der Urkundenlehre* – a high-water mark for the discipline of diplomatics published in 1912 – Harry Bresslau reviewed the standard narrative of the discipline's founding. Central to his account was Dom Jean Mabillon, the late seventeenth-century Benedictine monk whose *De re diplomatica libri VI* of 1681 refuted the 'hypercritical' assertions – insightful in method, but untempered by Mabillon's prudence, according to Bresslau – that the Jesuit Daniel Papebroche had published in 1675.[3] Mabillon proposed a general method for assessing the authenticity of ancient charters and provided a treasury of exemplary specimens in the *De re diplomatica*'s pages, an accomplishment, in Bresslau's estimation, that 'assures Mabillon for all time one of the most distinguished places of honour in the history of the sciences'.[4] Despite critical attacks by George Hickes and Barthélémy Germon in the early eighteenth century, Mabillon's insights and thoroughness, 'which the work of the coming generations standing on his shoulders has only insignificantly expanded', became the cornerstone for the insightful diplomatic assessment of documents, modern as well as medieval.

This foundational narrative of how diplomatics emerged as a discipline is often recapitulated within the field, while the connections among legal thinking, antiquarianism, and historiography in the early modern period have been the focus of superb studies by authors ranging from Arnaldo Momigliano to Donald Kelley.[5] This article will review the origins of diplomatics from a somewhat different perspective, not in order to debunk the classical story, but rather to address its significance to a related field, namely the history of archives. A reading of Papebroche, Mabillon, and Germon in juxtaposition with a contemporary but little-known group of German tracts expounding a novel theory of a *ius archivi*, I argue, helps illuminate not only the peculiar disciplinary divisions between historiography and diplomatics that emerged in the eighteenth century, but also why historians in general, and early modern European

[3] Harry Bresslau, *Handbuch der Urkundenlehre für Deutschland und Italien* (2nd edn, 3 vols., Leipzig, 1912–31), I, pp. 11–29. Papebroche is the form of the author's name most often found in the anglophone literature; van Papenbroeck, Papebrock and Papebroch also occur.

[4] Bresslau, *Handbuch*, I, p. 27.

[5] Foundational works on jurisprudence and historiography in this period include Donald R. Kelley, *The foundations of modern historical scholarship: language, law and history in the French Renaissance* (New York, NY, 1970); J. G. A. Pocock, *The ancient constitution and the feudal law: a study of English historical thought in the seventeenth century* (2nd edn, Cambridge, 1987); Barbara J. Shapiro, *A culture of fact: England, 1550–1720* (Ithaca, NY, 2000); and Notker Hammerstein, *Jus und Historie: Ein Beitrag zur Geschichte des historischen Denkens an deutschen Universitäten im späten 17. und im 18. Jahrhundert* (Göttingen, 1972). Arnoldo Momigliano addressed Mabillon's work, though not primarily the *De re diplomatica*, in 'Mabillon's Italian disciples' (originally published 1966), in idem, *Essays in ancient and modern historiography* (Oxford and Middletown, CT, 1977), pp. 277–93. Most recently, see Thomas Wallnig et al., eds., *Europäische Geschichtskulturen um 1700, zwischen Gelehrsamkeit, Politik und Konfession* (Berlin, 2012).

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historians in particular, have addressed so little attention to archives – which are, after all, where they pursue much of their own research.

As Francis X. Blouin and William G. Rosenberg observe in their recent study, 'the scholar's encounter with the archives – so fundamental to historical understanding – has rarely been examined in any informed way'.[6] Equally, the history of archives – how they were formed, how contemporaries understood their collections, and how they were used for purposes other than scholarship – has long remained a sparsely populated field. Even as historians refined their turn to original documents in the nineteenth century with ever more powerful techniques for interpreting the documents and texts they encountered *in* archives, they paid only cursory attention *to* archives as historical phenomena. This set of circumstances emerged after, and in part because of the way that diplomatics was defined in the debates around 1700. The separation of historical from juridical truth suggested in this article's opening epigram from Alexander Wilthemius captures one turning point in how historians understood evidence. In particular, privileging the *document* and identifying it with the Renaissance idea of the *source*, as Mabillon's diplomatics did, helped erase the *archive* (particularly in its medieval and early modern sense as a juridical treasury) as an object of historical analysis and critique. At the same time, the identification of archival authenticity with state sovereignty by the *ius archivi* theorists – exemplified in the second epigram above – foreshadowed the modern heterogeneous archive as a site of valid information for states' political and juridical contestations. The triumph of provenance as the organizing principle for the custodial archive that prevailed in the late nineteenth and twentieth centuries, moreover, effectively institutionalized the *ius archivi* in the form of archival authority.[7] Recent technological transformations in archivistics and changing understandings of history – notably post-colonial and feminist approaches critiquing the formation of archives that silenced their subjects – have undermined the circumstances governing this long lacuna on the history of archives.[8] In the last few years, new studies have begun to emerge that employ historical methods resting on sources and archives, but simultaneously

[6] Francis X. Blouin and William G. Rosenberg, *Processing the past: contesting authority in history and the archives* (Oxford, 2011), p. 3.

[7] Using 'authority', here, in the technical sense that emerged in the twentieth century. See Blouin and Rosenberg, *Processing*, p. 127, for a definition; as they conclude (p. 137): 'Historicizing the nature of historical narration demands a corresponding historicizing of the essentialism of documents, as well as archival practices.'

[8] Critical theory appropriated the term archive in the 1970s and 1980s, particularly in Jacques Derrida's *Archive fever: a Freudian impression* (Chicago, IL, 1996). For a perspective from archival science, see Brian Brothman, 'Declining Derrida: integrity, tensegrity, and the preservation of the archives from deconstruction', *Archivaria*, 48 (1999), pp. 64–89. Post-colonial and feminist historians have been most explicit in developing a critical theory of archivality, e.g. Laura Ann Stoler, *Along the archival grain: epistemic anxieties and colonial common sense* (Princeton, NJ, 2009).

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challenge archival evidence by turning these critical methods on archives themselves.[9]

The article will begin with a brief review of early modern developments in how records in general, and particularly *instrumenta* (formal legal documents), could serve as evidence. The law of proof in effect in much of Europe increasingly incorporated Roman practices as they were re-imagined in the twelfth and thirteenth centuries by the Glossators and canonists, and continued to evolve throughout the early modern period. In parallel, late medieval and Renaissance thinkers developed new models for deploying documents as sources (*fontes*) in historical arguments, a process greatly accelerated during the debates triggered by the Protestant Reformation. Both legal and historical thinking took distinctive forms in the different national traditions, moreover, producing a tapestry of positions about the reliability of documentary evidence in various contexts.[10] In the seventeenth century, a series of erudite *bella diplomatica* broke out over ecclesiastical and political history across Europe, provoking a great deal of original thinking. Contemporary intellectuals rehearsed their interpretive differences in heated debates over authority and scepticism, debates that found their high point in Pyrrhonist attacks on the possibility of any secure historical knowledge.[11]

The second section of the article will turn to a new legal category that emerged around 1600 in the Holy Roman Empire, the *ius archivi*. First developed in the context of practice before the imperial courts, the *ius archivi* explained to litigants, commissioners, and judges how to decide which documents deserved credence when sovereignty and privileges were at stake. The authors involved, including Rutger Ruland, Nicolaus Mylerus, and most notably Ahasver Fritsch, who published his *Tractatus de iure archivi et cancellarie*[12] in 1664, drew on the neo-Roman legal category of *publica fides* (public faith) to authorize the archival holdings of the petty principalities that many of them

[9] An interdisciplinary literature involving archival scientists and historians has begun to emerge, including Blouin and Rosenberg, *Processing*; Francis X. Blouin and William C. Rosenberg, eds., *Archives, documentation, and institutions of social memory* (Ann Arbor, MI, 2006), and in the work of Eric Ketelaar, e.g., *The archival image: collected essays* (Hilversum, 1997). Further examples may be found in two special issues of *Archival science*: 'Towards a cultural history of archives' (7, 4 (2008)); and 'Archival knowledge cultures in Europe, 1400–1900' (10, 3 (2010)).

[10] The literature is extensive. See Anthony Grafton and Suzanne Marchand, eds., 'Proof and persuasion', *History and theory*, Theme Issue 33 (1994); and more generally Donald R. Kelley, *Versions of history from antiquity to the Enlightenment, 1450–1800* (New Haven, CT, 1991).

[11] Markus Völkel, '*Pyrrhonismus historicus' und 'fides historica': Die Entwicklung der deutschen historischen Methodologie unter dem Gesichtspunkt der historischen Skepsis* (Frankfurt-on-Main, 1987); Jean-Louis Quantin, 'Reason and reasonableness in French historical scholarship', *Huntington Library Quarterly*, 74 (2011), pp. 401–36: Carlo Corsetti, *Guerre diplomatiche e storiographia moderna* (Rome, 1992) was not available to the author.

[12] Ahasver Fritsch, *Tractatus de iure archivi et cancellarie* (Jena, 1664). The tract was republished in 1690 and again in Jacob Wencker, ed., *Collecta archivi et cancellariae jura* (Strasbourg, 1715), pp. 13–49, to which all citations refer.

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served. Not the examination of documents by scholars, they claimed, but rather the proper categorization of the archives where documents were located should be the key determinant of documents' legal authenticity.

The third section of the article will turn to the better-known dispute over the authenticity of documents in France and the Franco-imperial borderlands that began with Daniel Papebroche's dismissal of some allegedly Merovingian charters in Trier, but took on enormous importance for subsequent developments through the publication of Mabillon's *De re diplomatica* in 1681. Mabillon offered an explicitly antiquarian and scholarly method for determining how authentic documents from the past could be distinguished from the many false ones, and provided extensive specimens of hands, seals, signatures, and textual features that served, in effect, as a portable archive of authenticity. The science of diplomatics that grew out of Mabillon's work and culminated in Bresslau's *Handbuch* made the individual charter or diploma the object of meticulous, deeply informed analysis of every aspect of its material and textual form by scholars who judged whether it was authentic, a forgery, or contained a combination of genuine and spurious elements.

Mabillon's work generated a range of critical responses, most importantly the French Jesuit Germon's sceptical *De veteribus regum francorum diplomatibus* of 1703.[13] Mabillon responded to his critics with a *Supplementum* to his magnum opus in 1704, which was followed in 1708 by an anonymous French-language dialogue, the *Histoire des contestations sur la diplomatique*, that laid out the various participants' positions.[14] The course of these debates is well known to specialists, who have addressed them in terms of their implications for diplomatics and the philosophy of history.[15] When viewed together, however, both the obscure *ius archivi* and Mabillon's much better-known diplomatics also illuminate the diverse ways thinkers at the turn of the eighteenth century understood evidence from archives.

[13] Barthélémy Germon, *De veteribus regum Francorum diplomatibus, et arte secernendi antiqua diplomata vera à falsis, disceptatio* (Paris, 1703). Theodor von Sickel observed that Germon's work was reprinted three times in its first year: *Lehre von den Urkunden der ersten Karolinger (751–840)*, 1: *Urkundenlehre* (Vienna, 1867), p. 39. On the English antiquarian George Hickes's response: Alfred Hiatt, 'Diplomatic arts: Hickes against Mabillon in the Republic of Letters', *Journal of the History of Ideas*, 70 (2009), pp. 351–73.

[14] Jean Mabillon, *Librorum de re diplomatica supplementum* (Paris, 1704) (cited henceforth as *DRD-S*); *Histoire des contestations sur la diplomatique avec l'analise de cet ouvrage composé par le R. P. Dom. Jean Mabillon* (Paris, 1708; 2nd edn, 'Naples', 1767). All quotations are from the 1767 edition, after reviewing both editions. The *Histoire* is anonymous, but library catalogues attribute it either to Jacques-Philippe Lallemant (c. 1660–1748) or to Gilles-Bernard Raguet (1668–1748).

[15] See Quantin, 'Reason and reasonableness'; Mark Mersiowsky, '"Ausweitung der Diskurszone" um 1700: Der Angriff des Barthélémy Germon auf die Diplomatik Jean Mabillons', in Wallnig et al., eds., *Europäische Geschichtskulturen*, pp. 447–84; and Jean Leclant, André Vauchez, and Daniel Odon-Hurel, eds., *Dom Jean Mabillon, figure majeure de l'Europe des lettres* (Paris, 2010).

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II

The use of documents to provide proof of specific and legally binding acts, especially on the part of rulers and magistrates granting privileges to others, was a constant and a constantly evolving feature of European law and politics from late antiquity.[16] Roman precedents continued to shape such practices long after formal Roman authority collapsed, especially after the Western recovery of Roman law codes in the high middle ages. Equally influential in practice was the Roman enshrinement of the *tabellio*, the forerunner of the notary, as a potent guarantor of evidentiary authenticity. The late Roman *tabellio* was a government official who received, authenticated, and kept records in a public archive, the *tabularium*.[17] Records produced from the *tabularium* during litigation enjoyed special authority as evidence, which later came to be known as *publica fides*.[18] Such documents, known as *instrumenta authentica* or *instrumenta publica*, were still open to challenge in court, but the party challenging them bore the burden of proving that they were flawed.[19]

The collapse of Roman administration undermined the operation of this system of public authentication, but left behind vocabulary and concepts that never vanished entirely from legal practice. Particularly in Italy, the civil notarial tradition survived, revived in the eleventh century by urban authorities interested in ensuring that contracts could be enforced and property defended.[20] Elsewhere in Europe, however, it was the recipients of documents (who were not generally public authorities in the Roman sense) who became the primary preservers of legal proofs in their own archival treasuries, a practice that emerged as early as the sixth century among monasteries founded by the barbarian kings or seeking their protection. Foundations such as St Denis near Paris thus possessed original *instrumenta* from the Merovingian and Carolingian

[16] R. C. Van Caenegem, 'Methods of proof in Western medieval law', in idem, *Legal history: a European perspective* (London, 1991), pp. 71–114, provides an overview; see also Société Jean Bodin, *La preuve* (4 vols., Brussels, 1963–5).

[17] On Roman archives, Ernst Posner, *Archives of the ancient world* (Cambridge, 1972); and Ségolène Demougin, ed., *La mémoire perdue: à la recherche des archives oubliées, publiques et privées, de la Rome antique* (Paris, 1994).

[18] Petra Schulte has recently asserted that the term *publica fides* was not used in this sense before the mid-eighteenth century. Her argument underplays both ongoing public-law understandings of the *fides* of *publica instrumenta* as well as the appearance of the specific term *publica fides* in the *ius archivi* literature of the seventeenth century. Petra Schulte, '*Fides Publica*: Die Dekonstruktion eines Forschungsbegriffes', in Petra Schulte et al., eds., *Strategies of writing: studies on text and trust in the middle ages* (Turnhout, 2008), pp. 15–36.

[19] In medieval canon law, proof was characterized as '*probatio probata* if the proof was derived from a public instrument, but as *probatio probanda* in case the instrument was a private writing'. Robert A. Willett, *The probative value of documents in ecclesiastical trials (De fide instrumentorum)* (Washington, DC, 1942), p. 2.

[20] Laurie Nussdorfer, *Brokers of public trust: notaries in early modern Rome* (Baltimore, MD, 2009); Hagen Keller and Thomas Behrmann, eds., *Kommunales Schriftgut in Oberitalien: Formen, Funktion, Überlieferung* (Munich, 1995).

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dynasties, which they preserved long after these kings' own archives – if they had any – were lost.

In the later middle ages, the chancelleries and archives of monarchies, churches, and communes across Europe appropriated the public faith possessed by the *tabellio*'s records kept in a public archive, though incompletely. A complex science of proofs emerged, documented by the sixteenth century in extensive compendia such as Giuseppe Mascardi's *Conclusiones probationum omnium* and Giacomo Menochio's *De praesumptionibus, coniecturis, signis & indiciis*, which provided detailed guides to how courts should approach witness testimony, documents, and various other sources of evidence in deciding what had been proved by the parties.[21] Such compendia gave many examples, but provided few general principles for establishing (or rejecting) any particular document's veracity. In practice, simply coming from a public archive conveyed authority upon many documents. As Denis Godefroy, an important late sixteenth-century French commentator on Justinian put it summarily, 'Documents produced out of public archives provide public testimony.'[22] Even though the nature of archives had changed fundamentally since antiquity, such commentaries show that the vocabulary of public faith in public instruments remained potent throughout the early modern period. The reality for public law contestation as well as for the antiquarian *bella diplomatica* of the seventeenth century, however, was that many old documents – particularly the oldest and potentially most significant ones – could *not* provide the kind of provenance that would have justified giving them a priori public faith.

Both Justinian's code and early modern jurist's handbooks also recognized that false *instrumenta* were possible. Indeed, the corrupt notary willing to falsify the record for passion or pay was a stock figure of abuse, and the same commentaries that defined public and private instruments also provided sensible rules to prevent forged records from gaining unauthorized force.[23] These rules' focus was particularistic, and left most decisions about which documents to admit to judges' discretion.[24] Signs found within actual documents, such as witness signatures, seals, and the proper textual forms took on growing importance in the commentaries, since most documents lacked the guarantees of the *tabellio* and *tabularium*.[25] In effect, early modern

[21] Giuseppi Mascardi, *Conclusiones probationum omnium, quae in vtroque foro versantur* (3 vols., Venice, 1609), to which citations refer; the first edition was published from 1584 to 1588. Giacomo Menochio, *De praesumptionibus, coniecturis, signis, & indicijs* (Cologne, 1587).

[22] Dionysius Godefroy, *Corpus iuris civilis in quatuor partes distinctum* (Frankfurt-on-Main, 1663), bk 2, cols. 277–83. See also Willett, *Probative value*, p. 31.

[23] Attacks on notaries are vividly evoked in Kathryn Burns, *Into the archive: writing and power in colonial Peru* (Durham, NC, 2010).

[24] Notably, Mascardi asserts in his *Conclusiones*, II, pp. 134–6 (conclusio DCCXL, par. 6), that 'Probationes omnes sunt arbitrariae', that is, subject to the freely willed discretion of the court.

[25] See Willett, *Probative value*, pp. 9–12, 31. Relevant passages appeared in 'De probationibus' (*Codex*, bk IV, tit. 19) and 'De fide instrumentorum' (*Codex*, bk VI, tit. 21; *Digest*, ch. XXII, tit. 4).

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civil and canon lawyers possessed a good practical sense but little theory about how to distinguish genuine instruments from spurious ones.

III

The political contexts in which old charters were deployed had important consequences for discussions of proof as they intensified in the seventeenth century, nowhere more than in the German lands. Germany's division into a fragmented, often inconsistent tapestry of semi-sovereign political entities meant that interactions with the monarchy – the Holy Roman Emperors – took place largely in the Empire's various courts. All German polities that enjoyed imperial liberty (*Reichsfreiheit*) owed it to their fiercely guarded privileges from former lords or past emperors. Roman law principles gained some traction in the German lands in the fifteenth century, but the complexity of the jurisdictional fabric as well as suspicions that the Roman law was excessively friendly to the Habsburg rulers calling themselves Roman emperors slowed and complicated its application. By the end of the sixteenth century, Roman law was acknowledged as the *ius commune*, the common law, but applied only when territorial statute or specific privileges did not supersede it. Roman law principles penetrated into civil and public law largely owing to the custom of referring difficult cases to university law faculties for consultation. Since these faculties were hotbeds of Roman law jurisprudence, neo-Roman procedure became more familiar through such consultations, a process that accelerated in the seventeenth century when university-trained chancellors and judges became the norm even in the Empire's smaller territories.[26]

A particularity of the German context was that jurists played a leading intellectual role not only in the evolution of law, but also in debates over historical knowledge. The structure and complexity of the political terrain gave jurists strong incentives to use historical evidence in their debates over the emerging Romano-German public law (*ius publicum Romano-Germanicum*), which regulated relations among the emperors and the imperial estates in the seventeenth century. Key figures included Christian Thomasius, Samuel Pufendorff, and especially Hermann Conring, whose voluminous publications not only 'reduced the right of the Roman emperor to rule the world to a historical absurdity' but also developed innovative approaches to assessing the authenticity of documents.[27] Meanwhile, university-educated administrators in the provinces sought to fit Germany's complex legal realities into the Roman law categories they had been taught. Drawing on the advice found in widely

[26] On Roman law in Germany, Michael Stolleis, *Reichspublizistik und Policeywissenschaft, 1600–1800* (Munich, 1988); and Gerald Strauss, *Law, resistance and the state: opposition to Roman law in Reformation Germany* (Princeton, NJ, 1986).

[27] On Conring see Michael Stolleis, ed., *Hermann Conring (1606–1681): Beiträge zu Leben und Werk* (Berlin, 1983). The quotation is from Constantin Fasolt, 'The limits of history: an exchange', *Historically Speaking*, 6 (2005), pp. 5–17, at p. 7.

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circulated handbooks such as Veit Seckendorff's *Teutscher Fürsten-Staat*, they understood their obligations to include careful management of instruments and other written documents:

> it follows from [chancellors'] service that in matters of governance they should diligently read, weigh the information and writings or instruments that lie in the princely archives and repositories or which arrive daily in the chancellery and are gathered there, and then faithfully report on or produce from them what they contain, and what pertains to the issue at hand.[28]

The petty to medium-sized states these men served wrangled constantly over their borders, privileges, and control of trade and populations in regional and imperial courts. As Michael Stolleis notes, this group of functionaries also provided the authors for a flood of practically oriented publications on the Empire's law.[29]

Among these publications were a number of tracts outlining a *ius archivi*, which defined 'proof by archive' (*probatio per archivum*) as a method equivalent to the more traditional Roman law proofs by witness testimony, instruments, and so forth.[30] A first coherent treatment of the issue appeared in a chapter of Rutger Ruland's 1604 handbook, *Tractatus de commissariis*, on the practice of legal delegation.[31] In 1658, Nicolaus Mylerus included the *ius archivi* among the regalian rights enjoyed by German imperial territories in his *De principibus & statibus imperii Rom. Germ … succincta delineatio*.[32] Mylerus defined the *ius archivi* as a set of procedural rights, resting on sovereignty, that guaranteed the legal validity of the instruments found in princely and urban archives. A few years later, Ahasver Fritsch's more ambitious *Tractatus de iure archivi et cancellariae* reached similar conclusions, but reframed them in a way that further elevated the importance of a document's provenance over most of its physical or textual characteristics.[33] Fritsch drew directly on neo-Roman law in

[28] Citing here from the 1660 edition: Veit Ludwig von Seckendorff, *Teutscher Fürsten-Stat* (Frankfurt-on-Main, 1660), p. 58.

[29] Stolleis, *Reichspublizistik*, p. 255.

[30] The literature on the *ius archivi* is limited: Udo Schäfer, 'Authentizität: Vom Siegel zur digitalen Signatur', in idem and Nicole Bickhoff, eds., *Archivierung elektronischer Unterlagen* (Stuttgart, 1999), pp. 165–81; Friedrich Merzbacher, 'Ius Archivi: Zum geschichtlichen Archivrecht', *Archivalische Zeitschrift*, 75 (1979), pp. 135–47; and Thomas Vogtherr, 'Archivtheorie und Archivpraxis im ausgehenden 17. Jahrhundert: Ahasver Fritsch, Jacob Bernhard Multz von Oberschönfeld, und Georg Aebbtlin', in Reiner Cunz, ed., *Fundamenta Historiae: Geschichte im Spiegel der Numismatik und ihrer Nachbarwissenschaften* (Hanover, 2004), pp. 403–9. Ernst Pitz takes a wider perspective in 'Beiträge zur Geschichte des Ius Archivi', *Der Archivar*, 16 (1963), pp. 279–86. For a non-German context, Elio Lodolini, 'Giurisprudenza della Sacra Rota Romana in materia di archivi (secc. XIV–XVIII)', *Rassegna degli archivi di stato*, 42 (1982), pp. 7–33.

[31] Rutger Ruland, *Tractatus de commissariis, et commissionibus camerae imperialis quadripartitus* (Frankfurt-on-Main, 1604), to which citations refer; a second edition was published in 1617, another in 1667.

[32] Mylerus, *De principibus*, pp. 368–72.

[33] On Fritsch, see Vogtherr, 'Archivtheorie', pp. 403–4, and the *Allgemeine Deutsche Biographie* (58 vols., Leipzig, 1875–1912), VIII, pp. 108–9.

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attributing to the archive of a *tabellio* – a term that he and the other *ius archivi* thinkers unhesitatingly extended to secretarial officials like themselves – a critical role in establishing whether a document was an *instrumentum* that should rightly enjoy public faith. The principles behind the *ius archivi* were thus uncontroversial: what is revealing, rather, is how the authors stretched Roman principles to adapt them to the circumstances of smaller German states.

The *ius archivi* refined and extended the definitions of certain key terms, beginning with the word archive itself, so as to enhance the authority of the princes its authors served. The first step was to specify what a real archive was, and, most importantly, who was authorized to maintain such an institution. From Ruland on, these authors traced the etymology of the word archive, and noted that in Roman law, 'an archive, popularly called a public depository, is where public instruments are deposited and guarded'.[34] The emphasis on public deposition led to a more consequential point: not all collections of documents were archives, regardless of whether the individual documents found in them were authentic. As Fritsch's contemporary Nicholas Christoph Lyncker put it, 'private cabinets (*privata scrinia*) do not merit the name archive, since they lack public faith'.[35] Only a magistrate with sovereign authority, they argued, could provide the public faith that transformed mere collections into archives. Fritch and his colleagues thus assimilated modern rulers' archives to the *tabularium* of Roman law by deploying the new and potent concept of sovereignty, which promised those rulers possessing it a wide-ranging authority over all legal matters.[36]

The importance of granting many German chancelleries and their repositories the status of public archives is emphasized by the amount of detail that Ruland and his successors put into specifying which magistrates possessed the *ius archivi*. This was a complex question in Germany, where political authority had leaked from the emperors to many lesser political units co-existing under the empire's umbrella. The second-longest chapter of Fritsch's *Tractatus* dedicated six pages explaining 'To whom the *ius archivi* applies'.[37] Counts in the Empire and imperial cities enjoyed the right, he argued, even if they did not call their chief administrators chancellors; so did the Hanseatic as well as imperial towns. In contrast, any city whose laws required approval by a prince was excluded, as were colleges, universities, and – controversially, if not

[34] Ruland, *De commissariis*, pp. 139–41 (pars II, bk 5, ch. 3), 'De etymologia & definitione archiui'; Fritsch, *Tractatus*, p. 15.

[35] *D. Nic. Christoph Lynckeri jcti. celebratissimi, dissertatio de archivo imperii* (Jena, 1686), reprinted in Wencker, ed., *Collecta*, pp. 82–109, at 85. Among the authorities Lyncker lists is Mabillon's *DRD*, bk 3, ch. 5.

[36] Ruland, *De commissariis*, p. 177 (pars 2, bk 5, ch. 4), refers to Bodin in his discussion of 'Quinam jus archivi habeant'. On the legal implications of sovereignty: Helmut Quaritsch, *Souveränität: Entstehung und Entwicklung des Begriffs in Frankreich und Deutschland vom 13. Jahrhundert bis 1806* (Berlin, 1986).

[37] Fritsch, *Tractatus*, ch. 3, 'Quibus jus archivale competat', pp. 19–25.

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surprisingly for a Protestant – the church.[38] Imperial knights enjoyed the *ius archivi* for their associations, but individual knights lacked it. These fine distinctions closely echoed the institutional structure of the Empire as a whole.

The next step, complementary to the first, was to expand the range of public instruments that true archives could deliver to the courts. Fritsch made sweeping claims for what should be included in an archive:

> What has been discussed so far, and experience itself make it clear that the necessity and utility of archives is great in any polity. Many have an interest, truly, that the archive be correctly established. For this it is required, among other things, that it be perfect, that is, that in it every type of document and written monument is placed, the memory of which might have any public or private utility.[39]

The longest chapter of Fritsch's *Tractatus* followed up on these broad claims under the heading 'Concerning faith in archival proofs' ('De archivali probationis fide').[40]

A major distinction that Fritsch dismissed, surprisingly, was the one between instruments that were public or private. Echoing a claim already found in Godefroy and Mascardi,[41] Fritsch asserted:

> we conclude … that the instruments brought by the parties that are found in a public archive and are authentic – even if they are in themselves private – are said to take on a public character … Thus the primary conclusion: documents (*scripturae*) produced from a public archive, even if they might not be public themselves, routinely generate complete confidence, and prove fully.[42]

As Ernst Pitz has observed, this move responded to a major gap in the legitimation of the German states, namely that their privileges and authority rested largely on medieval sealed charters, which according to neo-Roman law belonged among private, not public documents.[43] The wholesale upgrading of private charters deposited in sovereign archives that Ruland, Fritsch, and their successors attempted therefore represented an important step in re-establishing in Roman law terms the legitimacy of the German princely states that these authors served.

Once the question of private versus public status had been resolved for the contents of sovereigns' archives, other limitations on the authority of documents could also be overcome. Archival authority applied, the *ius archivi*

[38] Ibid., pp. 20–2. Here, Fritsch took the opposite position from Mabillon (see below), who accorded episcopal archives full public faith, and even claimed it selectively for monastic archives.

[39] Ibid., p. 33.

[40] This expression directly echoes the topic in Justinian and many early modern tracts known as 'De fide instrumentorum'.

[41] See Dionysius Godefroy, *Praxis civilis, ex antiqvis et recentioribvs avthoribvs … collecta* (Frankfurt, 1591), p. 1539; Mascardi, *Conclusiones,* I, p. 15 (conclusio CXXVIII).

[42] Fritsch, *Tractatus*, pp. 38–9.

[43] Pitz, 'Beiträge', p. 284, esp. n. 30, showing that university jurisconsults generally treated sealed charters as private testimony.

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theorists argued, even when documents were missing their seals, existed as copies, or were fragmentary. Fritsch listed authorities who affirmed the question 'whether copies found in a public archive, by the power of the archive possess the same faith as authentic instruments', though he hesitated to allow archival provenance to substitute for *all* other requirements for authenticity.[44] His contemporary Johannes Schilter's brief 'Probatio per Archivum' was bolder: 'the power of proof also extends to transcripts or copies, even if the original no longer exists, as long as its antiquity is agreed on'.[45] Fritsch and Schilter concurred, in any event, that 'documents produced from an archive require no other extrinsic proof, nor recognition of the seals'.[46] Even official documents in private possession still deserved greater faith than other private documents.[47] Only documents seized by force should have no effect if used as testimony against their rightful possessors, according to these thinkers – a provision equally useful against external rivals and rebellious subjects.

The *ius archivi* thinkers also recognized several external conditions, drawn primarily from the law of notaries, that an archive had to fulfil if documents produced from it were to enjoy *publica fides*.[48] Mylerus, for example, required that 'an official should preside over the archive', that instruments had to be 'stored among other authentic documents', and that the officials in charge should validate the documents' authenticity with their signatures.[49] Fritsch investigated such conditions systematically in the *Tractatus*, but in the end dismissed them:

> It seems to us, in conclusion, that the previously listed requirements are not all precisely necessary for public faith in an archive … Normally, just one of these requirements seems sufficient by itself, that an archive is well maintained in a public place without suspicion by someone who enjoys the *ius archivi*.[50]

Sovereignty's umbrella thus transformed a wide variety of documents in archives into legally untouchable public testimony. In effect, the *ius archivi* replaced the papyrus or parchment *objects* at the centre of medieval legal and early modern antiquarian attention with *institutionalized* records authorized, partly or completely, by the sovereign power of their possessor.

It is only fair to note that the *ius archivi* drew little attention at the time, and has since enjoyed scarcely any analysis. Ruland and Mylerus were prolific producers of practical works without being juristic luminaries, while Fritsch is

[44] Fritsch, *Tractatus*, pp. 45, 46.

[45] Johannes Schilter, 'Probatio per archivum', in Wencker, ed., *Collecta*, pp. 50–1.

[46] Fritsch, *Tractatus*, p. 48. Schilter, 'Probatio', p. 51, uses nearly identical language. Recognition was a technical term for a notary's validation of his sign found on an instrument; see Mascardi, *Conclusiones*, II, pp. 326–7, who accepted for older notarial documents that location in an 'archiuio publico' was sufficient to establish authenticity.

[47] Fritsch, *Tractatus*, p. 49, citing Ruland among his authorities.

[48] Notably, these restrictions came largely from the law of notarial practice and authenticity, as demonstrated by comparison of the rules these thinkers cite with Nussdorfer, *Brokers*, pp. 9–31.

[49] Mylerus, *De principibus*, p. 371.

[50] Fritsch, *Tractatus*, pp. 40–1.

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known primarily for his spiritual poetry, not for his ideas about archives. Still, these thinkers' efforts to establish that archival documents' authority depended not on their material features but rather on their institutional context reveals an important approach to assessing documents that flourished during the seventeenth century.

IV

Debates over historical method after the Reformation and during the *bella diplomatica* of the seventeenth century also put old documents into question in various ways, including their utility as historical evidence and the forensic authenticity so important to the *ius archivi* theorists. More and more charters circulated in published form, both as polemical dossiers issued during the hot controversies of the Thirty Years War and in expansive and equally polemical histories of kingdoms, domains, and cities, thus creating new incentives on all sides to impugn spurious records. Antiquarians, meanwhile, busily collected and published diverse historical material relevant to the assessment of documents, including coins, inscriptions, and chronicles. Erudite scholars like Joseph Scaliger proved in their treatises that critical analysis resting on close observation could decipher complex issues of chronology and events in the past, while also revealing the spuriousness of texts such as the works of Dionysius the pseudo-Areopagite or the Etruscan forgeries of Annius of Viterbo. In the field of history, philosophical investigations offered diverse approaches to determining the truth, while others produced comprehensive studies on topics of broad interest.[51]

The Jesuits in Douai and later Antwerp who decided to produce a systematic history of the Catholic saints provide an ambitious example of such erudition. In the course of their *Acta sanctorum* project, the Bollandists scoured the libraries and archives of Europe for evidence of the saints' holy lives and deaths. The Bollandists had every reason to care about the authenticity of the records they collected – even when their care annoyed various orders whose saints turned out to be less than convincingly documented – so that their *Acta* could stand fast against the heretics.[52] During a debate over the authenticity of a Trier charter attributed to the Merovingian king Dagobert, the Bollandist Daniel Papebroche published in 1675 his 'Propylaeum antiquarium', an 'antiquarian

[51] The literature on these themes is extensive: see n. 5 above; Alfred Hiatt, *The making of medieval forgeries: false documents in the fifteenth century* (London and Toronto, 2004); and the work of Anthony Grafton, e.g. *Forgers and critics: creativity and duplicity in Western scholarship* (Princeton, NJ, 1990). On Mabillon, Blandine Barret-Kriegel, *Jean Mabillon* (Paris, 1988), p. 57, notes: 'the era of the antiquarians was not simply marked by a revolution in taste; it was also marked by a revolution in historical methods … The turn back to antiquity through the collation of vestiges, traces, diplomas, and documents had been inaugurated by philological Humanism.'

[52] Jan Marco Sawilla, *Antiquarianismus, Hagiographie und Historie im 17. Jahrhundert: zum Werk der Bollandisten* (Tübingen, 2009).

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introduction concerning the distinction of the true from the false among old parchments'. In addition to scrutinizing specific Merovingian documents, this treatise offered general principles for how to distinguish authentic charters from spurious ones. Papebroche's method involved the systematic comparison of a charter under review with other specimens whose authenticity was secure (although, as it turns out, his own primary specimen in this case was itself a fabrication),[53] while setting a very demanding standard for authenticity. A genuine charter, he argued, would correspond in all significant ways, both material and textual, with valid specimens. Any deviation – say, a date expressed in an anachronistic form, use of inappropriate writing materials, or language not corresponding to the period – sufficed to demonstrate that a charter was spurious. Papebroche consequently concluded in the Propylaeum that a high proportion of the oldest surviving documents in northern Europe, especially the Merovingian ones, were in fact not genuine.[54]

Papebroche recognized that his claims would be controversial, and took several precautions to defend his enterprise, such as mentioning the encouragement that Pope Alexander VII had expressed for the Bollandists' critical approach, and noting that Caesare Baronio had rejected the Donation of Constantine without threatening the church's authority.[55] He also quoted a letter from his colleague Alexander Wilthemius, cited above, on the legal validity of spurious charters. Given this context, Papebroche's repetition of Wilthemius's claim that 'what the judge approved in court, the scholar may condemn in his study', can be read in two ways. On one hand, Wilthemius's view supported Papebroche's claim that he did not seek to undermine authentic legal privileges. By offering an approach that treated some historically spurious charters as conveying legally authentic contents, Papebroche sought to forestall critics who believed his method represented a threat. On the other hand, the effect of this distinction was to drive an epistemological wedge between the work of jurists and historians. Claiming that a document condemned by the historian might still function as proof in a court implied that different standards of truth applied to different disciplines. In 1675, this distinction may have seemed a useful precaution to Papebroche, something that could free historians to follow

[53] The charters in question are reviewed exhaustively in Theo Kölzer, *Studien zu den Urkundenfälschungen des Klosters St. Maximin von Trier (10.–12. Jahrhundert)* (Sigmaringen, 1989).

[54] Papebroche, 'Propylaeum', p. 1. Léon Levillain offers a masterful review of Papebroche's argument in 'Le *De re diplomatica*', in *Mélanges et documents publiés à l'occasion du 2e centenaire de la mort de Mabillon* (Paris, 1908), pp. 195–252, esp. 200–9. The Carmelite order attacked Papebroche, and eventually persuaded the Toledo Inquisition to put the *Acta sanctorum* on its Index in 1695, an action that Mabillon protested in Rome. Bernard Joassart, 'Les Mauristes et les Bollandistes: une même approche de l'érudition?' in Leclant Vauchez, and Odon-Hurel, eds., *Dom Jean Mabillon*, pp. 567–85.

[55] As Papebroche, 'Propylaeum', p. 1, observed, '[Baronio] did not believe that in doing so, he had detracted anything from the church's rights, for which the proof is sufficient in its ancient and just titles of possession.'

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their sources without threatening the established order. From the other end of modernity, however, its consequences require more careful reflection.

The most significant response to Papebroche's essay appeared in Mabillon's *De re diplomatica*, published six years later in 1681.[56] This folio volume, divided into six books, is dedicated to Jean-Baptiste Colbert, Louis XIV's chief secretary and a man fascinated by written information. Mabillon's dedication addressed the danger that Papebroche's essay represented:

> From this a huge confusion has been born: almost entirely false judgements about true instruments, among inane conjectures about false ones; scarcely any reverence of, nor hardly any authority for quite holy documents, unless perhaps on the part of the more impartial and most erudite, who have purged their spirits of the prejudices of the hypercritical.[57]

The *De re diplomatica* countered such alleged errors in several ways. The first was to reject the rigorous stance taken by Papebroche, which had led him to dismiss almost all charters from the Merovingian and Carolingian periods as spurious. However, Mabillon also sought to avoid the position that only the authority of the church could establish authenticity for questionable documents. Rather, Mabillon's second goal was to refine the essentially philological method suggested by Papebroche so that it could produce more measured distinctions among true and false documents, distinctions that took full account of historical, chronological, numismatic, and material evidence as well as the formal features of the documents. The great bulk of the *De re diplomatica* was dedicated to this enterprise.[58]

Significantly, Mabillon also invoked the juristic concept of public faith when possible.[59] He argued explicitly that the papal and episcopal archives were indeed public in the legal sense, even for the earliest periods, and that cartularies and polyptychs from them, like original charters from public archives, therefore provided authentic testimony. He also proposed that although monastic archives could not themselves be called public, they might

[56] See Jean Boutier, 'Étienne Baluze et les "Règles générales pour discerner les anciens titres faux d'avec les véritables"', in idem, ed., *Étienne Baluze, 1630–1718: érudition et pouvoirs dans l'Europe classique* (Limoges, 2008), pp. 315–34. Boutier cites a letter from Mabillon to Thierry Ruinart of 25 May 1679 in which Mabillon announces his intention to refute the false rules of 'Père Pagebrogue'.

[57] *DRD*, sig. a iir.

[58] The significance of Mabillon's *De re diplomatica* for diplomatics and historical philosophy has long been recognized, but other implications of his work need to be researched further, including his extensive use of images and his participation in the French crown's collection and organization of political knowledge. Barret-Kriegel, *Jean Mabillon*, takes important steps in the latter direction, and Jacob Soll discusses Mabillon in the context of Colbert's use of intellectuals for political projects in 'Entre bibliothécaire et agent d'information: Baluze au service de Jean-Baptiste Colbert', in Boutier, ed., *Étienne Baluze*, pp. 79–92; and in Soll, *The information master: Jean-Baptiste Colbert's secret state intelligence system* (Ann Arbor, MI, 2009), esp. pp. 121–3.

[59] Mabillon deals with this question most explicitly in *DRD-S*, pp. 3–4 . See the discussion below.

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still contain documents carrying public faith as well.[60] Provenance from a public archive thus remained one criterion in his assessment of documents, though it lacked the categorical quality that it possessed both in the juristic commentaries and for the *ius archivi*. The essence of Mabillon's ultimately philological method lay in the comparison of documents in *all* of their characteristics, rather than searching for a single feature that could disqualify them (as Papebroche did), or for a single source of authentication that could guarantee them (as the *ius archivi* did). To enable this method, the *De re diplomatica* contained an archive of specimens labelled as indubitably authentic on the basis of Mabillon's decades of study and his order's unparalleled holdings of very early charters. Seals, signatures, subscriptions, verbal formulae, materials, inks, and hands all received detailed treatment. Mabillon thus provided readers with abundant evidence about what authentic Merovingian and Carolingian documents should look like. His approach found immediate resonance among scholars, who have continued to develop the comparative method through the discipline of diplomatics ever since (Fig. 1).[61]

Mabillon took a moderate position among his peers in two respects. In assessing actual charters, he adopted neither the hypercritical position of the sceptics nor the a priori acceptance of documents by authority that traditionalists demanded. His moderation on this point has been widely recognized.[62] He also took a moderate position on the more abstract question of the authority of rulers and the utility of their archives. Here, he rejected the sharp separation between legal and historical authenticity that Wilthemius had proposed, which effectively freed the state to set its own standards of proof in disregard of historical evidence. But he did not assume a complete unity of legal and historical truth, either, calling instead for a prudent assessment of documents that took into account both historical circumstances, such as long possession, as well as material features, even if imperfect. Rather than treating the absence of a signature or survival only in a cartulary as grounds to negate the legal validity of titles, Mabillon saw flawed documents as contributing to the legitimacy of possession even when their authenticity was dubious. It was this position that led the English scholar George Hickes to describe the *De re diplomatica* as 'nothing less than a manual for the defence, rather than the prosecution, of forgeries'.[63]

[60] Ibid., p. 241. Mabillon accepts that only episcopal archives can be called public in general (p. 239).

[61] Mabillon's influence on diplomatics in France is traced by Paul Bertrande, 'Du *De re diplomatica* au *Nouveau traité de diplomatique:* réception des textes fondamentaux d'une discipline', in Leclant, Vauchez, and Odon-Hurel, eds., *Dom Jean Mabillon*, pp. 605–19. See also Mersiowsky, '"Ausweitung"'; and Christian Albertan, 'Bénédictins et Jésuites devant la question historiographique dans la première moitié du XVIIIe siècle', in Leclant, Vauchez, and Odon-Hurel, eds., *Dom Jean Mabillon*, pp. 89–101.

[62] See Quantin, 'Reason and reasonableness'.

[63] Cited from Hiatt, 'Diplomatic arts', p. 364.

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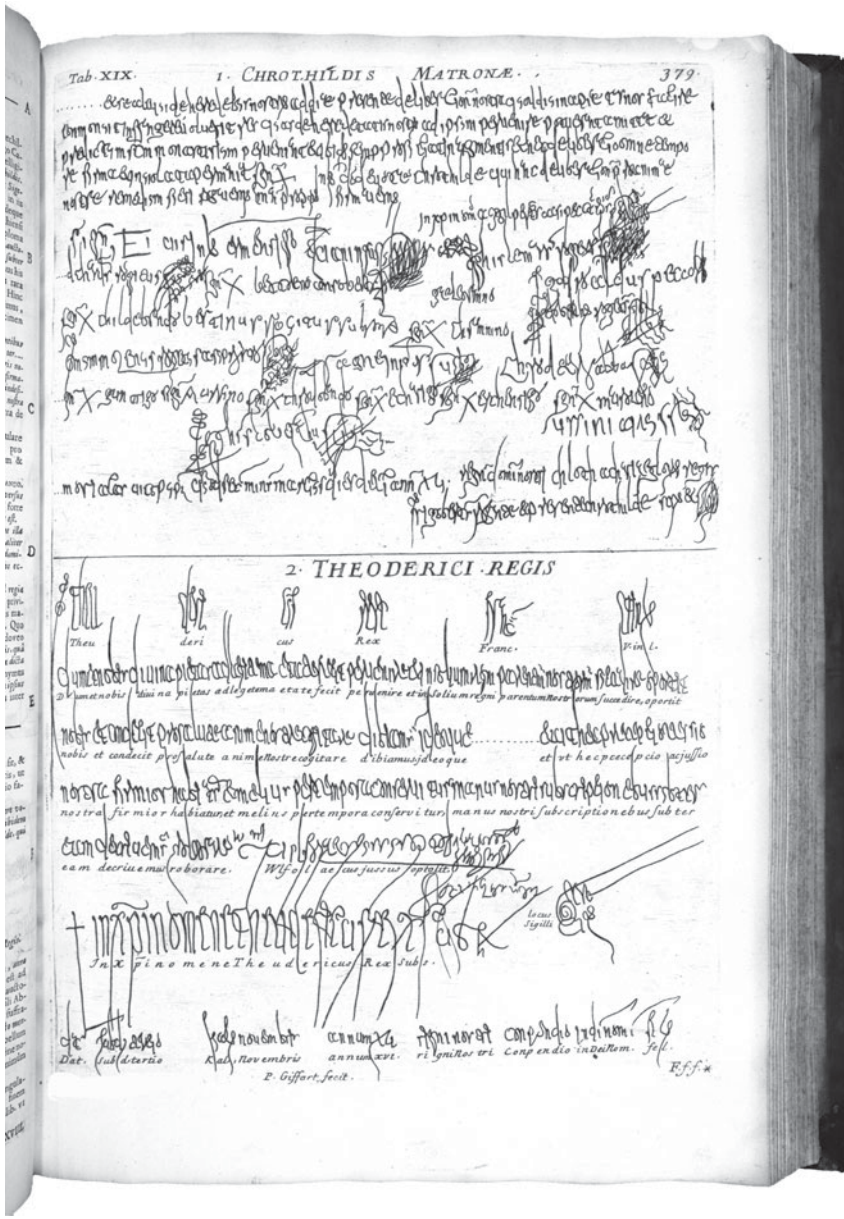


Fig. 1. Two Merovingian charters as reproduced in *De re diplomatica*. Mabillon provided specimens for comparison that he described as indubitable, thus offering key tools for assessing the authenticity of further documents according to his method (Paris, 1681), p. 379. Photo Courtesy of the Newberry Library.

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Mabillon's magnum opus drew criticism as well as praise immediately after its publication, but a more energetic debate emerged around 1700, most notably with the publication of Barthélémy Germon's *De veteribus regum Francorum diplomatibus* in 1703.[64] Germon's lively tract criticizing Mabillon drew considerable attention, judging by its multiple editions and by a popular French-language discussion of the issues, the *Histoire des contestations sur la diplomatique* published in 1708. Germon laid out seven points on which he found the *De re diplomatica* unpersuasive, but all of them revolved around one issue: Mabillon could not prove that his specimen charters, the heart of his comparative method, were themselves authentic. Without indubitable specimens, however, it was entirely possible that forgeries were validating further forgeries.[65] For Germon, the lack of repositories characterized by public faith from the earliest periods represented a critical problem that Mabillon's method could not overcome. 'Bring me charters from public *tabularia*, or at least from those that have been constantly protected from the perfidy of forgers', Germon demanded.[66] His point was not that all Merovingian charters were *falsae*, but rather that since none of them were indubitable, no subset of them (including Mabillon's) could serve as paradigms for validating further documents.[67]

Germon's first points questioned the surviving hoards of early charters. He observed that papyrus – the material substrate of many Merovingian charters – was unlikely to survive for nearly a thousand years, as Mabillon maintained, since even stone buildings from that period were long gone. The autograph specimens crucial for Mabillon's method had existed only in one exemplar, or at most two, and the ravages of time and the disinterest of monastic archivists had surely destroyed nearly all. Moreover, that same disinterest had allowed forgers many opportunities to introduce spurious charters in place of authentic ones, as all experts, including Mabillon, admitted.

In his following four objections, Germon insisted that no secondary signs, such as hands, seals, paper, and so forth, could overcome the doubts engendered by the promiscuous intermingling of genuine and spurious

[64] See Mersiowsky, '"Ausweitung"', for a detailed discussion of the Mabillon–Germon debate, generally supporting Mabillon's arguments; and Hiatt, 'Diplomatic arts', pp. 351–2, for a concise overview of early responses to Mabillon. Early critics included the royal historiographer Adrien de Valois (1607–92), who addressed Mabillon tangentially in his bitter attacks against the Jesuit Pierre-François Chifflet (1592–1682).

[65] Germon was not the only one making such arguments. In 1705, for example, Jacob Friedrich Reimmann published an essay to the same effect about coins entitled 'De necessitate scepticismi in studio genealogico' in 1705 (discussed in Völkel, *'Pyrrhonismus Historicus'*, pp. 178–9 n. 45).

[66] Germon, *De veteribus*, p. 41. As on other issues, the *Histoire des contestations* elaborated considerably, with even greater emphasis on *foi publique*, e.g. pp. 12–13: 'Finally – and this is most worthy of attention – we have in the public archives many charters of the youngest race [of kings], after St Louis, which cannot be reasonably contested . . . But public depositories scarcely furnish us with a single act older than St Louis: to judge the truth of titles much older than this king, it has been necessary to draw on the archives of particular houses (*maisons particulieres*), which provide the rule for others.'

[67] Germon, *De veteribus*, pp. 8–9.

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charters in monastic archives, which lacked the public faith that could provide certainty. Any quality that Mabillon could identify, forgers could also have identified and made use of themselves: 'Therefore neither the use of bark or Egyptian papyrus, nor the multiple names of subscribing witnesses, nor the royal seals placed on the earliest charters are sure signs of truth, since, indeed, all of these are shared equally between false and true diplomas.'[68] Germon here identified a real problem in the detection of forgeries, as later studies have shown. More surprising, though, was his turn back to public faith as the only reliable guarantor of authenticity.

Germon was careful to explain how sacred and profane books might have survived this difficult period, since failing to do so would have put both scripture and the patristic corpus in doubt. 'The fortune of books and of instruments must have been greatly different. For what pertains to books, they could not all perish at one time since many copies of them are held.'[69] In the French rendition of the debate, the *Histoire des contestations*, Germon's defender, the Conseiller, expanded on this point by claiming a novel kind of public faith for old books:

> But a book, being written for the public (*pour le public*), is multiplied as much as possible. Instead of one, or maybe two copies of a charter that one retains, there are hundreds and hundreds of copies of a book that one seeks to scatter … It is necessary, he said, to compare manuscripts not with the charters buried in the archives of monasteries and confided to the care of a single person (*un particulier*), but with those instruments preserved under public faith (*foi publique*).[70]

This passage, along with Germon's assertion that *publica fides* was the only sufficient guarantee for specimen documents, demonstrates the on-going vitality of the concept even as understandings of the public changed.[71]

Archives – divided into the authenticating public and the dubious private – thus played a critical part in Germon's attack on Mabillon's method. This became visible in his seventh and final point of critique. Here, Germon maintained that 'the repositories (*scrinia*) from which [Mabillon's specimens] are plucked increase and confirm our suspicions'.[72] The archive of St Denis was his target, here, since Mabillon cited more ancient charters from it alone than from all other monasteries together.[73] Germon pointed out that the lists of

[68] Ibid., p. 46.

[69] Ibid., p. 19, after noting, 'Nor by these conclusions do you undermine ancient sacred and profane books, even if believed to have been of papyrus, bark or parchment, of which very many nevertheless survived and are in every hand.'

[70] *Histoire des contestations*, pp. 16–17.

[71] Discussions of the public sphere in the late seventeenth and early eighteenth centuries were launched by Jürgen Habermas's *The structural transformation of the public sphere* (orig. 1962; English trans. Cambridge, 1991), and show no signs of abating. Habermas's references to Roman law do not invoke public faith in the specific neo-Roman law sense used here.

[72] Germon, *De veteribus*, p. 16.

[73] Ibid., p. 94. Germon's sarcastic tone was recognized by contemporaries, as noted in the *Histoire des contestations*, e.g. p. 9.

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Merovingian charters produced by different scholars working at St Denis differed, and that Mabillon presented more such charters than were found either in a 1625 catalogue by Jacques Doublet or in an anonymous medieval cartulary originally from the ninth century.[74] Germon's insinuation was that Mabillon had either forged additional exemplars, or at least failed to recognize some very recent forgeries interpolated since 1625 – an implication that infuriated Mabillon.[75]

In 1708, Mabillon issued a *Supplementum* to the *De re diplomatica* that defended his method against Germon's attack by addressing two themes: trust in expertise, and trust in archives. Mabillon began his defence by reiterating the damage that an excessively critical approach could do: 'Those who seek to lessen the faith and authority of old diplomas and instruments, it seems to me, just as they introduce a great bane into letters, so they violate and pervert both public and private law.'[76] Mabillon insisted that such evils could be avoided by calling on experienced experts like himself:

> Not simply guided by my own cleverness and judgement, nor by the occasional inspection of a few documents, nor by rashly prescriptive examination, nor by the reading of a few days did I begin this work: rather, I entered on my studies and this work by long practice and daily experience over the course of some twenty years, while reviewing and scrutinizing ancient books and archives, and reading collected editions of old instruments.[77]

His critics claimed that no argument could indubitably distinguish true from false charters, but Mabillon maintained that he could, 'just as an experienced goldsmith can often tell true from false gold simply by touch, the painter an original painting from a copy, or a connoisseur of numismatics the genuine from the spurious on a single glance'.[78] Rather than the black-and-white world of the jurist, Mabillon here appealed to the judgements of experience as warrant to authenticate his essential specimens.

The second guarantee of authenticity that Mabillon's *Supplementum* invoked was the continuity of archives. Germon and the other critics sharply distinguished genuine archives from the mere chests held by private actors, but Mabillon demurred. 'First, I deny that false or interpolated instruments are so common in monasteries or churches, as my opponents accuse.' Indeed, he noted, 'our ancestors' care for archives was great, since the entire fortune of families was contained in them', and maintained in consequence that certain

[74] Doublet's collection appeared as *Histoire de l'abbaye de S. Denys en France* (Paris, 1625).

[75] *Histoire des contestations*, p. 67, puts the question more directly: 'Where did all those Merovingian charters from the archives of Saint-Denis come from, which were not there in the ninth century, and which Doublet found there in the sixteenth; which were not there in the time of Doublet, and which Père Mabillon found there sixty years later?' Mabillon responded to the discrepancy in *DRD-S*, p. 7.

[76] *DRD-S*, p. 1.

[77] Ibid., p. 2.

[78] Ibid. Here, Mabillon seems to be equating diplomatics with the art of connoisseurship, which was also emerging at this time. I thank Bronwen Wilson for bringing this point to my attention.

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monasteries had indeed provided consistent and lasting care for the documents still found in their archives.[79] Among these, none had done a better job than St Denis, which held precious Merovingian royal instruments whose sheer reality – 'the fact stands firm'[80] – Germon could not deny.

Mabillon also sought to show that Germon's book hid a more acid scepticism than was immediately visible by turning against him his assertion that only public archives could provide authentic specimens. As Mabillon pointed out, the public archives Germon alluded to actually suffered from the same defect as other monasteries' archives: 'But I fear that no one can identify any public archive in which certain false or interpolated diplomas are not mixed among the genuine.'[81] Questioning one paradigmatic specimen could only lead to demands for another specimen, on and on: 'The same problem would apply to the third, the fourth, and for more: thus, the matter would stretch out into infinity.'[82] The seeming modesty of Germon's claims, according to Mabillon, thus concealed unbridled Pyrrhonism: 'Indeed, if we should accept the logic of such arguments, it's all over with the authority of any kind of diploma or instrument, whether having to do with far away ancient times, or with later and more recent affairs.'[83] Still, Germon had identified an irrefutable weakness in Mabillon's method, and Mabillon in the end had to concede that his method could provide only moral, rather than metaphysical certainty.[84]

V

Two possible responses thus emerged during the debates over documentary authority in the late seventeenth century: a turn to authenticating documents primarily through their institutional status, as proposed in the *ius archivi*, and a turn to philological examination of individual documents, as proposed by the founders of modern diplomatics. These corresponded, to a certain extent, to disciplinary approaches from law and from historiography. The theory of proof by archive proposed by Ahasver Fritsch and his colleagues gave not the document but the repository and its institutional position a decisive role in the law of proof. Whereas the diplomatists eagerly catalogued seals, subscriptions, and hands, the *ius archivi* actively denied that such material details necessarily mattered for the authority of a document from a sovereign archive. What Wilthemius had proposed defensively – that a document might retain legal force even if its form or content had been proved false historically – was stood on its head by Mylerus, Fritsch, and Schilter: for them, historical detail could

[79] Ibid., pp. 2, 5 respectively.

[80] Ibid., p. 6, in emphatic language: 'Verum de quaestione facti hìc agitur. Factum constat', Mabillon declares ('Truly we are dealing here with a question of fact. The fact stands firm').

[81] Ibid., p. 4. [82] Ibid., p. 3. [83] Ibid., p. 4.

[84] Ibid. Here, Mabillon shows his familiarity with the debates over scepticism and Pyrrhonism that raged during his lifetime. Quantin, 'Reason and reasonableness', explains the issue of moral certainty.

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not detract from the institutional and legal authority that sovereignty provided. The discipline of diplomatics emerging in the Low Countries and France, in contrast, concentrated the full power of its erudition on individual documents, relegating archival provenance to secondary status.

Each possibility had significant implications, both for how the consolidating states of eighteenth-century Europe approached the mountains of documents they possessed, and also for further evolution in the forms and in the use of the medieval *archivum* and its modern successor, the heterogeneous state archive. The assumptions made explicit in the *ius archivi* treatises correspond to practices of governance through information that characterized most European states in the eighteenth century and beyond. Diplomatics' concentration on documents, not archives, meanwhile, and the resulting division of labour between historiography and diplomatics, made it easier for historians to imagine that the records they drew on provided authentic, though incomplete, conduits to past truth rather than representing the products of mutable historical processes that had taken place in chancelleries and archives.

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