

Testamentary Publication and Proof and the Afterlife of Ancient Probate Procedure in Carolingian Septimania

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Difficulties in the chronology of the reception of revived Roman juridical ideas in Languedoc in the twelfth century have raised a few eyebrows. Just what sort of legal traditions were current in Languedoc and Catalonia before the Gregorian revolution reached their shores? Testamentary charters in the ninth through twelfth centuries give a wealth of prosopographical and procedural detail on a large cadre of judges whose educational tradition and range of intellectual authority have not been fully explored.¹ This preliminary study suggests some aspects of a tradition--a testamentary tradition--in which they can be placed.

The issue of the survival of Roman forms and requirements in medieval testamentary law has already been studied in depth, along diplomatic and legal lines, by generations of scholars from Henri Auffroy to Ulrich Nonn.² However, just as those who study Roman law have come increasingly to respect

¹ A more wide-ranging study of the testamentary tradition has been prepared as this author's dissertation, 'The Will and Society in Medieval Catalonia and Languedoc, 800-1200' (Ph.D. diss., Harvard, 1995). A complementary discussion of the Catalan judges and probate charters of the tenth to twelfth centuries constitutes one segment of a forthcoming joint article: N. L. Taylor, A. J. Kosto and P. Benito i Monclús, 'Three Typological Approaches to Catalonian Archival Evidence, Tenth-Twelfth Centuries', forthcoming in *Anuario de Estudios Medievales*.

² H. Auffroy, *Évolution du testament en France des origines au XIIIe siècle* (Paris 1899); U. Nonn, 'Merowingische Testamente: Studien zum Fortleben einer römischen Urkundenform im Frankenreich', *Archiv für Diplomatik* 18 (1972) 1-129.

the importance of vulgar or customary law as a complement to the codifications, so it seems that testaments can be fruitfully studied as a facet of custom and procedure as much as a barometer for maintenance or corruption of idealized codes. The present study therefore abandons any analysis of the formulae or dispositions of testaments themselves. The actual execution of a testament, in the transfer of property from the testator to the beneficiary, is similarly ignored in order to focus on one distinct element of the process: the juridical authority and ceremonial context of posthumous testamentary publication and proof.³

1. Probate Procedure: Late Empire to Early Middle Ages

1.1. Roman Habits

Classical testamentary forms are concisely described in the *Handbuch* of Max Kaser.⁴ The typical testament was a closed, sealed and secret document whose contents were revealed after the testator's death in some formal *apertura* before the sealing witnesses as well as certain authorities. The *Lex Julia vicesimaria* of the early principate prescribes the payment of an estate duty of five percent to the office of the *praetor* under whose authority the opening and verification of the testament was performed.⁵

³ To dispel confusion, it should be noted that 'publication' here refers not to the event in Classical law in which the testator presents his own will to his witnesses, but rather that time after the testator's death when the testament is opened and read aloud.

⁴ M. Kaser, *Das römische Privatrecht*, 2d ed., 2 vols. (Munich 1971) 1.105-9, 678-95; 2.477-97. P. Voci, *Diritto ereditario romano*, 2 vols. (Milan 1956-1960) is the fundamental in-depth study.

⁵ Kaser, *Römische Privatrecht* 1.692 etc.

More detailed provisions for testamentary publication appeared in the later Imperial codes, and were carried forward via the *Breviarium Alaricianum*. An edict for the city prefect at Constantinople in 397 stated that testaments (and other documents) were customarily published *apud officium censuale*, and required that they must remain accessible there and could not be moved.⁶ The *interpretatio* added for Alaric's *Breviary* adds that in regions outside Rome, testamentary deposit occurred locally 'apud curiae viros'.⁷

In the third century Paulus had commented most extensively on what must have been customary practice for posthumous testamentary authentication and recitation *in foro vel basilica*.⁸ He distinguished the two elements which I have seen fit to call *proof* (authentication by witnesses before magistrates), and *publication* (recitation of the testament to a general assemblage of interested parties). Both elements were integral and apparently incorporated in the same event.

1.2. Ravenna and Gaul: the Sixth Century

Concrete evidence of probate practice comes from late fifth- and early sixth-century Ravenna, with a set of papyrus fragments containing transcripts of six testamentary openings.⁹ Jan Olof Tjäder's reconstructed formula for the text

⁶ *Codex theodosianus* 4.4.4 (Constantinople, 26 September 397): *Codex theodosianus*, ed. P. Krueger and T. Mommsen, 2 vols. in 3 parts (Berlin 1905) 1.2.171.

⁷ A more voluble edict from Ravenna in 413 also implies imperial interference in municipal control over testaments. *Codex iustinianus* 6.23.19 (Ravenna 18 February 413): *Corpus iuris civilis*, ed. P. Krueger, T. Mommsen, R. Schoell and W. Kroll, 3 vols. (Berlin 1872-95) 2.254-5.

⁸ *Pauli sententiae* 4.6.1-3: *Lex romana visigothorum*, ed. G. Hänel (Leipzig 1859) 402-5.

⁹ *Die nichtliterarischen lateinischen Papyri Italiens aus der Zeit 445-700*, ed. J. Tjäder, 3 vols. (Lund 1954-1982) 1.190-217; 410-419.

memorializing such an event (based on the proving of the testament of Caelius Aurelianus, bishop of Ravenna, in 521) consists of an announcement of the receipt of the sealed testament by the magistrate, interrogation of the witnesses, and, finally, the opening of the document and its recitation. This closely corroborates the procedure described by Paulus, and provides concrete evidence that publication and proof were normally memorialized in a new charter or transcript. For Gaul, literary notice of this testamentary publication in the sixth century comes in a passing reference by Gregory of Tours who described the reading of the testament of Saint Nizier (Nicetius) by a judge at the forum in Lyons in April 573.¹⁰

1.3. The Formularies and the *Gesta municipalia*

Evidence for the functioning of municipal judicial institutions in the fifth through seventh centuries is embarrassingly sparse. One routine function of the municipal curia was to authenticate transactions (including testaments) and incorporate them into the public record in the form of the *gesta municipalia*.¹¹ It is logical to look there for evidence of the testamentary probate process first described by Paulus. Scattered surviving charters and formulary texts do yield clues in this context.

¹⁰ Gregory of Tours, *Liber vitae patrum* 8.5, ed. B. Krusch, in *MGH SSRM* 1.2 (Hannover 1885) 695; trans. E. James as *Lives of the Fathers*, 2nd ed. (Liverpool 1991) 55: 'When the period fixed by Roman law before a dead person's will could be read out in public had come to an end, the testament of this pontiff was brought to the forum where, before the crowds of people, it was opened and read out by the judge'.

¹¹ On the *gesta municipalia* see I. Wood, 'Disputes in late fifth- and sixth-century Gaul: some problems', in *The Settlement of Disputes in Early Medieval Europe*, ed. W. Davies and P. Fouracre (Cambridge 1986) 12-14; also L. Musset, *The Germanic Invasions* (New York 1975) 200; and W. Goffart, *The Le Mans Forgeries* (Cambridge 1966) 130.

One such document is the testament of Widerad, founder of the Burgundian monastery of Flavigny, perhaps dated to 717, which has parallels in a (roughly contemporary) sample in *Marculf's* formulary; another, rather older example is from the *Visigothic* formulary, (compiled 612-621 in Córdoba).¹² The Visigothic formula testament contains a commendation to the scribe, entrusting him with the enregistration of the testament 'apud curiae ordinem gestis publicis'.¹³ Widerad's testament also embeds reference to these testamentary publication procedures: Widerad entrusted his testament to a notary Aldofred and a separate *legatarius*, Amalsind, who was to have the testament incorporated into the *gesta municipalia rei publicae*; however, the testament was also to be conserved in the charters of the church of Flavigny (and this of course is why it has survived).¹⁴

Another sample document from the *Formulae visigothicae* actually describes the publication and enregistration of a testament in the city of Córdoba. The *prosecutor*, an agent chosen by the dead testator, was to come before the urban *principales* (in three days) and request that the document be read and inserted into the public record (two synonyms for this are *gestis*

¹² Widerad: *Cartulary of Flavigny*, ed. C. Bouchard (Cambridge 1991) no. 1. *Formulae visigothicae* 21. All formulary texts cited are from *Formulae merovingici et karolini aevi*, ed. K. Zeumer. MGH *Formulae* (Hannover 1882-1886); Nonn, 'Merowingische Testamente' 53.

¹³ *Form. visigothicae* 21: '... ita ut post transitum meum die legitimo hanc voluntatis meae epistolam apud curiae ordinem gestis publicis facias adcorporare'. The scribe is also the person to whom the document is commended--the person who, as Recceswinth's law would state, must take physical custody of the testament and ensure the final transmission of the document to the heirs after its publication. Apparently this custodian is also the guarantor of formal publication of the document.

¹⁴ *Cart. Flavigny*, 1: '... testamentum meum condidi, quem Aldofredo notario scribendum commisi, ut, quando dies legitimos post transitum meum advenerit, recognitis sigillis, inciso lino, ut legis decrevit auctoritas, per inluster vir Amalsindo, quem in hac pagina testamenti nostri legaterium institui, gestis reipublicae municipalibus titulis ut ab ipsis eius persecutione muniatur, et in carta basilice Sancti Preiecti quam ego edificavi conservandum decrevi ...'.

municipalibus adcorporare and *publicis monumentis haerere*).¹⁵ Again, distinct phases of reading and enregistration seem to satisfy two separate legal requirements. Samples from the Frankish formularies reinforce the image and custom of incorporation of a private act into the *gesta municipalia*, but with less specific reference to testaments; some formularies include separate mandates defining the relationship of the author of the act with the *mandatarius* who is to procure the act's publication and incorporation into the *gesta*.¹⁶

1.4. The Visigothic Codes

In the Visigothic kingdom, at least, we have other direct evidence for vibrant probate activity in the seventh-century *Liber iudiciorum*, the most explicit of the Germanic law codes to discuss testaments, and the only one to deal with testamentary publication or proof.¹⁷ Book 2 of the *Liber iudiciorum* includes a series of titles concerning the proving of both written testaments and oral wills, procedures reminiscent of the late Imperial custom as practiced at Ravenna and the municipal customs alluded to in the formularies. One obvious difference is the time limit, six months from death, in which testamentary proof

¹⁵ *Form. visigothicae* 25: "... "Et quia mihi ... commissit, ut post transitum suum apud gravitatem vestram eam adpublicarem et gestis publicis adcorporarem, proinde quia die isto die tertia quod ab hac luce fata migravit, spero honorificentiam vestram ut eam vobis ingranter recensere mandetis". Suprascripti [principales] dixerunt: "voluntas domnissimi ill. ... recensendam suscipiatur et legatur, ut agnita possit in acta migrare". Ex officio curiae est accepta et lecta. ... [The *prosecutor* then said] "Rogo gravitatem vestram, ut haec quae acta vel gesta sunt, publicis haereant monumentis". Suprascripti [principales] dixerunt: "Quae acta vel gesta sunt, huic corpori contineantur inserta".

¹⁶ Such groups include *Form. andecavenses* 1, *Form. arvernenses* 2; *Form. turonenses* 1-3; *Form. bituricensis* 6, 15; *Cartae senonicae* 39-40, ap. 1. It is probable that the *mandatarii* and *prosecutores* are in some sense the precursors of the executors--the *elemosinari*--who appear in Frankish and Gothic testamentary documents from the ninth century onward.

¹⁷ In *Leges visigothorum*, ed. K. Zeumer. MGH Leges nationum germanicarum 1 (Hannover 1902).

must occur, as opposed to the three- to five-day custom quoted by Paulus. It would be rash, however, to take the acceptance of a longer time frame as indicative of a distinct tradition or a corruption of the Roman style: such adjustments fall well within the prerogative of interpreters of a living law; and the fundamental elements of procedure remain the same.

The probate guidelines of the *Liber iudiciorum* may be summed up thus: all written testaments are to have a public reading or publication, presided over by a priest and by the witnesses, within six months of the death of the testator. In addition, testaments must be proved by oaths sworn by the witnesses in front of a judge; customarily, witnesses must also sign a memorandum of these oaths.¹⁸ A new distinction of the *Liber iudiciorum* is the introduction of an ecclesiastical element with the use of priests in the publication process. While the post-Classical municipal curia was presided over by magistrates or judges,¹⁹ the *Liber iudiciorum* assumed that clerics--*sacerdotes* and *episcopi*--would preside over publication, while judges--*iudices*--would be involved in proof.²⁰ The code's emphasis on categorization of testamentary forms for evidentiary purposes, and the elaborate discussion of oaths, suggests that the jurists in the seventh century continued to regard these matters seriously, and

¹⁸ Other kinds of testament had to be submitted to examination by a judge or bishop; in one case the testimony of unfree witnesses is admissible only upon authentication by a bishop as well as a judge. *Liber iudiciorum* 2.5.13.

¹⁹ *Pauli sententiae* 4.6.1. The Ravenna publication formula: Tjäder, *Nichtliterarischen lateinischen Papyri*, 1.196-7.

²⁰ *Liber iudiciorum* 2.5.12-14, 2.5.16.

that the probatory oaths were becoming the most important element of the process.

2. The *Condiciones Sacramentorum* and Probatory Oaths

2.1. Oath Memoranda in the Formularies

The idea of the importance of oaths in the probate process is also reflected by a distinct type of document which appears with some frequency in the formularies: memoranda of sworn oaths. The earliest, and perhaps most elaborate, is from the Visigothic formulary; it presents a generic form of memorandum of a collective oath with the incipit *condiciones sacramentorum*, sworn by witnesses to an unspecified legal act.²¹ This type of document--a generic, subscribed memorandum of sworn testimony in a judicial proceeding--may have been in general use in the Visigothic kingdom in the sixth and seventh century, if one accepts as evidence of its use various passages of the *Liber iudiciorum* in which it is mentioned, three formulary samples and a fragmentary concrete example which survives carved on slate.²² Most importantly, the passages in the code governing testamentary procedure state repeatedly that such *condiciones* are to be written and signed at the proving of a testament.²³ Similar oath memoranda appear in the Frankish formularies, and it

²¹ *Form. visigothicae* 39: 'Scimus inter ill. et ill. hoc et illud in tempore illo actum fuisse'. See also *Diplomática hispano-visigoda*, ed. A. Cañellas López (Zaragoza 1979) nos. 221-2.

²² Zeumer, in the annotations to the *Formulae*, noted its appearance several times in *Liber iudiciorum* 2.4 ('On Witnesses and Testimony'), particularly where the oaths are to be used in the resolution of disputes. *Formulae merovingici et karolini aevi* p. 592 n. 1.

²³ '... eiusdemque iuramenti condicionem tam suam quam testium manu conroborent'; 'coram iudice condicionibus factis iuraverint ...' (*Liber iudiciorum* 2.5.12).

is tempting to think that they might have been used under similar circumstances for testamentary proof before the municipal curia in Gaul.²⁴ However, each of the Frankish oath memoranda is tailored to some other type of testimony; none of the oaths is connected with the witnesses of a testament, nor with the authentication of any charter.

2.2. The Carolingian Period

Nonetheless in Septimania and Catalonia these memoranda, the *condiciones sacramentorum*, become the backbone of surviving evidence for a testamentary probate custom which began in the early Carolingian period and was still vital in Catalan law at the close of the twelfth century. A significant number of these *condiciones sacramentorum* survive from the Narbonnais in the Carolingian period, suggesting notarial and juridical continuity with Visigothic traditions. Between 791 and the mid tenth century over twenty-five charters of sworn testimony with the incipit '*Condiciones sacramentorum*' are to be found in Languedoc and Catalonia, in Narbonne and Elne, and, south of the Pyrenees, Empúries-Besalú and Ausona.²⁵ The earliest such charter dates from 791, from Saint-Pierre de Caunes above Narbonne.²⁶

²⁴ *Form. andecavenses* 10-11, 15; *Form. turonenses* 31, 40; *Cartae senonicae* 21 and *recentiores* 2.

²⁵ Many of these charters exhibit both Frankish and Visigothic influences; one can imagine them written by Visigothic-trained scribes and *iudices* serving under Frankish *missi* in the Carolingian *mallus publicus*. The *condiciones sacramentorum* formula for testimonial memoranda was also revived in western Hispanic principalities in the tenth century, but not, as it appears from the surviving documents, for testamentary publications. Early examples survive from 911 and 919 in or near Valpuesta (Castile) and from 927 at Santoña on the coast of Vizcaya. Roger Collins has noted the shared characteristics, as well as the divergence, between legal charters, including the *condiciones*, in León and Catalonia in the ninth and tenth century: "'Sicut Lex Gothorum Continet': Law and Charters in 9th- and 10th-Century León and Catalonia", *English Historical Review* 100 (1985) 489-512. The *condiciones sacramentorum* were superseded in Castile-León by other

Among all these examples of the *condiciones sacramentorum* before the mid-tenth century, only one, a document from Narbonne in 821, uses this form for proof of a will.²⁷ In it, the sworn testimony of the witnesses, and the fact that the written *condiciones sacramentorum* memorialized the proof of the will, must have been intended as fulfillment of the prescription in the Visigothic *Liber iudiciorum* for the validation of an oral testament.²⁸ Its form and content are typical of the other *condiciones*. The protocols identify the presiding authorities, a *vicedominus* and *iudices*, and the person bringing the action (a priest who was *advocatus* for the monastic beneficiary), and the executor or *elemosinarius* of the deceased (in later cases it is simply the *elemosinarii* who are said to have brought the action). The witnesses swear, in the first person, an oath containing both a profession of Catholic faith and testimony that the will as presented is accurate and reflected the testator's true desires. The witnesses underscore the solemnity of the oath by recording that they are touching the altar (whose naming localizes the charter) and the 'condiciones' themselves-- probably the very parchment in which the scribe had already drafted the proceedings or a *Vorakt* for them.

formulae around the mid tenth century, at exactly the same time that the form enjoyed a major revival in Catalonia in the context of testamentary publication.

²⁶ C. Devic & J. J. Vaissete, *Histoire générale de Languedoc*, rev. ed., ed. Molinier et al., 16 vols. (Toulouse 1872-1904) 2, *preuves*, 10; see also J. Mabillon *De re diplomatica* (Paris 1681) 396 (partial transcription and facsimile of (now lost) original). Under the judicial authority of count Magnarius of Narbonne, testimony is heard about property of the new monastery of Caunes.

²⁷ *Histoire générale de Languedoc* 2, *preuves*, no. 57, re-edited from Mabillon, *De re diplomatica* 513. Validation of the bequest of Adalaldus Maimon to Saint-Pierre de Caunes, 31 March 821 at the church of Saint-Julien in Narbonne.

²⁸ *Liber iudiciorum* 2.5.12.

While none of the surviving *condiciones sacramentorum* from between 821 and 957 concerns testamentary proof, there is other evidence of the continuity of ceremonies of testamentary proof and publication in this period. Nearly a hundred documents survive from these years in which testamentary executors formally surrender individual legacies to beneficiaries of testaments or post-obitum bequests. While these are strictly donation charters, many of them refer to the proving of the original testament or will--the ceremony, endorsed by the proper authority, from which the executors derive their right to custody of the property transferred. One document of 927 states:²⁹

Know then that the late count Miró commended to us the responsibility for his bequests in his last will, as is written in his testament, which he signed by his own hand and had corroborated by witnesses, *as was declared in the judgment which was corroborated by the judges.*

2.3. Tenth-Century Revival of the *Condicionēs sacramentorum*

For some reason, no testamentary *condiciones sacramentorum* survive between 821 and 957, although these ancillary documents show that the ceremonial process continued in much the same fashion as before. Beginning abruptly in 958, surviving oath memoranda for testamentary proof mushroom in

²⁹ Houghton Library, Harvard University, Collection Joan Gili (accession no. *91M-37), provisional no. 1. Ed. and trans. N. Taylor, 'An Early Catalonian Charter in the Houghton Library,' forthcoming in the *Harvard Library Bulletin*. 'Certum quidem et manifestum est enim quia commendavit nobis condam Miro comes suam helemosinariam ad extrema voluntate sicut in ipso testamento insertum est, quod manibus firmavit et testibus corrobaverit, et in ipso vinditio [iudicio?] resonat quod a iudicibus corroboratum est...' Similar acts refer more tersely to a 'iudicium' and its 'condiciones'.

number. In fact, after 950, almost all surviving *condiciones sacramentorum* are for the purpose of testamentary proof, whereas in the earlier century and a half all but one had recorded non-testamentary testimony. The newer testamentary *condiciones*, while retaining the same dispositive nature of an oath transcript, recorded a hybrid sacred and judicial event: the ceremony's presiders included a priest and a *iudex*; in addition, they included the text of the complete testament, copied verbatim or paraphrased.

The earliest tenth-century example is from Agde, in October of 957 or 958, where, under the authority of the bishop and two *iudices*, witnesses appeared and swore to the contents of the will of a woman named Inginilda.³⁰ The Agde document invokes Roman law by name and echoes Roman practice in some features (such as the fact that only ten days had elapsed since the death of the testator, harking back more to the Late Antique limit of five days than to the *Liber iudiciorum*'s allowance of six months). Within three years, other examples appear linking the Narbonnais with the area south of the Pyrenees. Virtually all (but not the early Agde charter) conform precisely to the form of the *Condicionēs sacramentorum* from the Visigothic formulae and invoke testamentary procedural provisions of the *Liber iudiciorum*. Twenty-eight such testamentary publications have been found between 958 and 1000; this trickle widens to a flood after the Millennium with 350 charters in the eleventh century

³⁰ *Cartulaire du chapitre d'Agde*, ed. O. Terrin (Nîmes 1969) lxxx-lxxxi. The document opens with a variant phrase: 'Notitia sacramentorum ...' Cf. *Form. andecavenses* 10bis and 11bis ('Notitia sacramenti...'). No other examples or parallels for the ten days' limit survive.

and 300 in the twelfth.³¹ The flood of such charters was never more than a trickle North of the Pyrenees, and there they all but disappear after the Millennium. However, there is an early example from Béziers, in 983, which invokes the 'lex Gotorum' by name.³² Only twenty-five years and eighteen kilometers separate this from the document of Agde in 958, which invoked Roman law by name. It is provocative to speculate how the Roman and Romano-Visigothic traditions interacted here in the later tenth century.³³ Despite the differences in documentary form, and the disparity of the legal authorities cited, the coincidence of time favors a suspicion that they are part of the same shared tradition of testamentary proof and publication.

3. Conclusions

Can the disparate evidence of the codes (Roman and Visigothic), the formularies, the scarce documents and literary notices, support the idea of a continuous tradition of testamentary proof and publication from the late Empire to the Carolingian era? Paulus had assumed a fairly widespread practice by which testaments were both read and proved before a municipal curia and

³¹ Cf. the formulary exemplar, the *columnellum*, of the Ripoll formulary, compiled 960/980. M. Zimmerman, 'Un formulaire du Xe siècle conservé à Ripoll', *Faventia* 4.2 (1982) 25-86; esp. p. 35.

³² *Cartulaire de Béziers (Livre Noir)*, ed. J. Rouquette (Paris 1918) no. 44.

³³ Again the difficulty is to identify customs as either 'Roman' or 'Gothic' based on choice of terms. Elisabeth Magnou-Nortier discusses the word *gadium* as a synonym for *testamentum* or *elemosina* (pious legacy), in a few tenth-century documents from Béziers, as indicative of the Frankish ancestry of persons in whose testamentary documents it is found. One would expect such word choice to be more a scribal predilection than that of the testator. *La Société laïque et l'Église dans la province ecclésiastique de Narbonne (zone cispyrénéenne) de la fin du VIIIe à la fin du XIe siècle* (Toulouse 1974) 235. Georges Boyer avoids this in his discussion of the synonyms for 'testamentary executor' appearing in the Toulousain, 'La nature juridique de l'exécution testamentaire dans le très ancien droit toulousain (X - XIIIe siècles)', *Recueil de l'Académie de Législation* 1 (1951) 2-15, esp. 3-5.

enregistered with municipal *gesta*. From the late Empire we have references in the codes and the Ravenna papyri for this practice at least in the capitals of Constantinople and Ravenna. The compilers of the *Breviary* assumed continuity of these traditions more generally in municipal curiae. From Lyons to Angers to Córdoba the municipal curiae were alive in the sixth and seventh century, and testaments must routinely have been incorporated into the *gesta municipalia*. In the seventh century the Visigothic legislators re-emphasized testamentary procedure with ambitious standards for proof, perhaps supplanting municipal magistrates with judges under royal and comital control and including clerics in the customary procedure.

The eighth century brought significant changes. In Iberia the Islamic invasion disrupted judicial activity on the level of the realm, and surely on the municipal level as well. If municipal magistracies survived in Frankland through this period, all we have of them in the eighth century is the formularies' evidence of the *gesta municipalia*, which may have been in decline. Georges Chevrier suggested that a rupture in institutional continuity in Burgundy, and particularly in testamentary procedures, came with the advent of the Carolingians as lords and administrators.³⁴ In the Narbonnais, however, the Carolingians may have been the saviors, not the destroyers, of such traditions: after liberating the Goths from Islamic deprivations, they fostered the survival

³⁴ G. Chevrier, 'Remarques sur la liberté de disposer en Bourgogne', *Mémoires de la Société pour l'Histoire du Droit et des Institutions des anciens pays bourguignons, comtois et romands* 14 (1952) 245, quoted by J. Gaudemet, 'Survivances romaines dans le droit de la monarchie franque, Ve-Xe siècles', reprinted in *La formation du droit canonique medieval* (Aldershot 1980) 183.

of local (i.e. Visigothic) judicial and notarial customs with the veneer of a Carolingian administrative presence. The local *iudices* who were so numerous in the judicial documents of the Narbonnais from the late eighth century through the early tenth century (and in Catalonia through the twelfth century) have no parallels elsewhere in the Carolingian empire--save perhaps in Lombardy--and their origins have not satisfactorily been explained. It is to them we should turn in an effort to better understand the provocative survival and continuity of the customary procedure of testamentary publication and proof in the post-Carolingian centuries.