Writing has a history. We know that story: how the ancient Mesopotamians etched marks on clay tablets, the Egyptians drew figures on walls, the Phoenicians invented a phonetic system of signs, and the Greeks added vowels. We know how the Latin alphabet originated, how its various scripts developed and were copied first in lead as movable type and then in electrical charges fired within our computers. We know, too, the story of the material vehicles that carried writing: the history of texts from those cuneiform tax records of Mesopotamia to the electronic correspondence of the early third millennium. And we know something about writers, especially those who had the good fortune to work after the birth of the author. While literary figures may loom largest in our history of writers, more humble users of quills and pencils have also found a place, as historians have sought evidence about the literacy and education of past societies. Writing’s history has been a tale of technique and of expression—indeed, a triumphant tale recounting how technology progressed and the power of expression spread ever more widely.¹ This book contributes to the well-known story of writing and writers a type of text, the legal document, and its maker, the notary, which the tale has not yet been able to accommodate.

Notaries originated in medieval Europe in those Mediterranean societies peculiarly situated at the intersection of quickened urban commerce and rediscovered Roman law.² Their role in certifying contracts made them useful to Italian merchants, and fledgling communes in Italy borrowed them to make their unprecedented acts seem legitimate. But notaries were thought necessary to such transactions only because of the new forms of public authority and the new appreciation of written evidence elaborated in the medieval law faculties. So the notaries’ historic trajectory was tied not just to the development of a commercial economy but to the fortunes of a specific legal tradition. In Anglo-American law, the notary was, and is, an insignificant functionary.³ Notaries are still important today in countries where
the influence of Roman or civil law has been strong: Scotland, France, Spain, Belgium, the Netherlands, and many parts of Latin America.

This genealogy may help to explain why notaries and their documents are absent from the history of writing in the English language but not why they fail to appear in studies of literate culture elsewhere. It is rather our approach to the history of writing, with its emphasis on technique and expression, that acts to exclude vast domains of writing activity and written artifacts from historical inquiry. We take the written record for granted, as if its necessity was self-evident and its form unimportant. Yet every time historians discuss their sources, they tacitly acknowledge that the uses and modes of documentation vary greatly across time and space. What is recorded in writing depends not only on technical skills and cultural conventions but also on the structures and imperatives of religion, government, economics, and law. If we were to ask why some records survive and some do not or how nonwriters regarded and accessed writing services or why people chose one kind of record over another, the document would appear to us in its true light as an enigma rather than a given. If we were to ask such questions of those cultures where law and jurisprudence endowed the writing of a particular profession with special force, we would need to put that profession at the center of an investigation of writing practices. That is the notary’s place in this study.

But first we must widen the lens with which we view writing practices in the past, and here we can learn much from the lively fields of book history and print culture. These have launched new questions about the messages conveyed by such physical data as format, page layout, and marginalia and have probed publishing and distribution circuits for insight into normally hidden dimensions of cultural history. A fresh perspective that sees the book as a material object has invigorated the study of literary texts, enhancing our knowledge of their writers and readers, of how they circulated, and the varied uses to which they were put. We now look at books as much more than the sum of their contents, finding in them clues to a rich range of behavior, attitude, and practice.

As a physical artifact, writing can boast of a distinguished and indeed much longer tradition of expert attention than can the printed book. To medieval jurists, handwriting analysis was one of the canonical methods of establishing proof, and later graphological students opened up vistas not only on crime but also on character. All those concerned about detecting forgery had to inspect the quality of ink, parchment, and paper, and scrutiny of the physical manuscript was fundamental to the modern disciplines of paleography, diplomatics, and codicology. So it is not so much that writing processes and vehicles have been ignored as that our focus has been too narrow. Establishing chronology, finding the best and earliest version of a
text, or looking for the author’s hand make a lot of sense if we are reading works of literature but are not necessarily pertinent to the vast quantity of writing produced for other purposes. Indeed, the very scale of our object of inquiry, the written document, even if we limited its range to the early modern period or to one country or city, would argue for a different methodology. Like scholars of print culture and the history of the book who also approach an enormous body of anonymous evidence, the historian of the document must ask broad questions about why, how, and by whom it has been shaped, used, and regarded over time. These are the questions that I seek to answer for Rome between 1300 and 1700, a place in which the history of the notarial document and the notary remains oddly confused and obscure, but which could be equally fruitfully explored in other cities, countries, or continents with notarial regimes. Looking at the creation and use of records as something that demands explanation rather than something that goes without saying illuminates significant, often unspoken, assumptions about power in the past. As I hope to show in the Roman case, to do this we need to bring the history of the written artifact and the history of its artisans together and to bridge the professional gap between scholars of the Middle Ages and early modernists.

The notary is hardly an unknown or unstudied figure in Italian historiography, especially in the past forty years as social historians began discovering the riches available in the notarial archives. Who could ignore the immense plunder of these sources, both the notaries’ records for their private clients and their transcripts of court proceedings and institutional governance? And who, stowing away this booty, could fail to wonder about the men who had done all that writing? Some Italian scholars, particularly medievalists, did more than wonder. Building on the findings of an earlier generation of paleographers and diplomatists who had traced the origins of the notarial document, they chronicled the rise of the notarial profession in twelfth- and thirteenth-century Italy. They charted the efforts of notaries to organize themselves in corporate bodies and exposed the active collaboration by judges, jurists, and communal governments in securing their special status. Their research left no doubt that, as a writer endowed with credibility (fides) by public authority, the notary in Italy was a product of the Middle Ages. Having established the crucial question of how Italian notarial documents came to possess this quality of public trustworthiness, however, medievalists perhaps understandably lost interest in the subject.

Nor have Italian specialists in the early modern period neglected the figure of the notary. They have investigated in particular the ambiguous status of the profession as Italian society became increasingly aristocratic, but they have generally been more interested in the notary’s clients than the notary himself, and they have not been at
all curious about the notary’s activity as a writer. In their defense, these historians have concentrated on what the notary wrote rather than the fact of his writing, quite understandably dazzled, if not overwhelmed, by the vast quantity of these documents and the minute details of every aspect of early modern life they reveal. They have eagerly sought to peer through the notary’s texts to the social, economic, and political realities they record, largely indifferent to the processes by which the texts themselves were produced and preserved.

The writing of notaries was authoritative. Known as scriptura publica, public writing, it was a creation of political power. Yet the notaries who produced it sold it to make a living and held various degrees of proprietary rights over the records they had penned. They combined aspects of public officials and, at the same time, self-employed professionals. The notary stood at a curious junction between what we would call the private and the public spheres, though such terms would be anachronistic in the medieval and early modern world. He was a broker of public trust.

The case of the notary fits interestingly, though uneasily, into the history of the professions. In this book, I use the modern term profession when discussing the collective experiences and organizational life of Roman notaries in the late medieval and early modern periods, but perhaps the traditional term for those who earned a living in the same occupation, arte, would be more apt. This was not a group defined in this period by academic credentials or a robust sense of vocation, though as a result of state initiative some did become a corps of limited membership and similar privileges. While the corporate profile of at least some of the Roman notaries did grow more distinct as they were assimilated into a previously decentralized judicial apparatus, many men who continued to identify themselves as notaries did not share in these changes. The foremost student of the modern notary in Italy is reluctant to describe his subject’s ambiguous fusion of state official and free agent as a profession until the twentieth century, and I think his caution is justified.

Because of the notary’s close relationship with authority and because the political landscape of early modern Italy was so fragmented, any detailed study of the notary’s writings before 1860 must be local. Although common legal notions underpinned his activity, city statutes, guild regulations, princely ordinances, and local formularies governed the specific mechanics of his craft, and in Italy each of these varied from one place to another. In medieval Florence, the guild of lawyers and notaries rather than the state controlled the profession; in early modern Venice, the state set up the notaries’ association and then completely dominated it. The notaries and notarial documents of Rome have their own distinct history, not quite like those historians have chronicled in Genoa, Milan, Venice, or Florence, to say nothing of the countryside of Sicily or Lombardy. The uses made by clients and tribunals of
notarial acts and rival forms of evidence also differed from place to place, conforming to the needs of a specific economy, society, political regime, and system of justice. To take just one example, Venice rejected the legal system in use elsewhere in Italy because of its commitment to a government run by aristocratic amateurs rather than trained lawyers. Naturally, documentary culture in Venice reflected this decision. Because deep cultural and political structures underlay Italy’s regional diversity, focusing on a kind of writing, scriptura publica, in a given historical setting reveals a great deal about broader social and institutional processes. The questions of what public writing was and of how it was produced in Rome between the late Middle Ages and the early modern period cut to the heart of the transformation of this city between 1300 and 1700.

Yet acknowledging the necessity of local studies of record keeping does not mean giving up more far-reaching insights, not just into history but also into historical method. Historians, like lawyers, take the notion of evidence for granted, forgetting that what a given tradition defines as evidence is itself a historical construction dependent on specific cultural, political, technological, and social practices. It is useful to step back occasionally and explore that process of historical construction so that we understand better our most cherished categories and assumptions. In the case of notarial documents, we still need to ask the basic questions, What made them different from other kinds of writing and why did people go to notaries? To reply that they were a form of legal evidence begs questions of why and how and under what circumstances—questions to which I hope this book will contribute some answers.

Historians also privilege the archives. Perhaps nothing is more sacred to the profession than its reverence for the documentary remains of human activity. The importance to researchers in various countries of what scholars generally think of when they think of notarial documents, acts drawn up for clients, ignoring for the moment judicial writings, is unquestioned. In Italy, the few such acts that survive from the medieval period have been published in full and exhaustively studied, beginning with the earliest cartulary of Giovanni the Scribe in Genoa (1154–66). In the fourteenth century, the number of extant volumes in the various archives of the peninsula’s former states begins to grow, and by the fifteenth century in many cities they already exceed the compass of an individual scholarly career. The Florentine archives, for example, house more than twenty thousand volumes of notarial acts dating from before the mid-sixteenth century alone. Everywhere the surviving series then increase exponentially. Roman notarial archives, which as we shall see got off to a slow start, hold more than thirty thousand volumes dating from the fourteenth to the nineteenth century. Notarial records of civil and criminal judicial
proceedings would, of course, add to this number. It is difficult for a historian not to genuflect before such a massive archive.

Yet the full story of scriptura publica cannot be written from the notarial archives alone. Just as the notarial act is not a “total” record of any given transaction and, indeed, can misrepresent the true nature of what actually happened in an exchange, surviving notarial archives may well distort our picture of what notaries were really doing. In Rome, for example, working just from archival holdings and finding in them rich collections of contracts and wills, we would quite reasonably suppose that clients went to notaries impelled simply by the disinterested desire to record their agreements and last wishes. Knowing that an equally vast archive of notarial writing for clients’ lawsuits has all but disappeared, however, restores balance to the picture of the notary’s output and nuances our reading of clients’ motivations in seeking out notaries. They might have taken the first step, which gives us the extant archive, as a precaution against the legal challenges of the lost archive.

Moreover, the archive cannot explain its own existence, which may have much to say about the interests of those in power or the reasons why people used or avoided notaries. Nor can the notarial records themselves tell us how they came into being or what their effects were or even how they competed against other types of evidence, written or unwritten. Of course, there is no question of the value of going directly to the sources and of handling the material object itself. Indeed, the thousands of extant notarial volumes in the Roman archives deserve more attention, not less, for they have many more secrets to reveal not only about their clients but also about the notaries and their documents. Nevertheless, if we are asking questions about the process of documentation as a historically specific cultural practice, we must look for answers beyond the notarial archive. In this book, legal treatises, city and papal laws, account records, parish registers, and criminal trials have helped to shed light on what notaries were doing and how and why they were doing it.

The notaries of Rome are difficult to find when our story begins in the fourteenth century, but they were there and actively working, and over time their profile becomes more distinct and their writings better preserved. While it is essential to trace their evolution and the changes in political power that underpinned it, the core of this study is the physiognomy and practices of the profession that emerges in the late sixteenth and early seventeenth centuries with the sale of notarial offices. I have focused in particular on those notaries who served the inhabitants of Rome rather than the papal Curia or ecclesiastical officials because they were the most numerous and had the widest range of activity and clientele. Consistent with the historic division in the Papal States between spiritual and temporal government, there is a pronounced secular bias to this account in which the papacy usually plays the role of
the state. We will be chiefly following the notaries associated with the lay munici-
pal government headquartered on the Capitoline Hill, men who wrote for private
clients and sometimes for the judges of Rome’s secular courts, where Roman law, not
canon law, prevailed. The Capitoline notaries operated only in the civil sphere,
because in the Middle Ages local notaries were not trusted to take impartial testi-
mony in criminal prosecutions and the foreign magistrates who presided over crimi-
nal courts brought along their own record keepers. The chronological limits of this
study respect the earliest surviving evidence, which dates to the mid-fourteenth
century, and another documentary landmark in the early eighteenth century when
the papacy makes its own extensive survey of the notaries and notarial records in
Rome. Within the period 1300 to 1700, however, the most intensive transformations
occur between 1550 and 1650, a fact reflected in the sources and in the argument of
this book.

Our discussion begins with the theorists of the notarial document, the medieval
jurists and early modern lawyers and magistrates who defined scriptura publica and
who articulated its special character as writing. Public credibility, publica fides, the
essence of the notary’s art, drew on ancient Roman legal principles alchemized in the
new law faculties of twelfth- and thirteenth-century Bologna. With their unprece-
dented debates about the nature of evidence, legal writers put into circulation the
key concepts and terms that unified a notion of the notary and his activities across
diverse local institutions and customs. In the second chapter, we consider the nota-
tories of Rome in their manifold varieties and destinies as the city’s center of power
shifted from the municipality to the papacy over the course of the fourteenth to
seventeenth century. Pope Sixtus V reduced the vaguely defined Capitoline notaries
to thirty venal officeholders in 1586, at the same time giving them the opportunity to
create their first significant professional organization. Over the next seventy-five
years, this new institution gradually found its footing in the political, legal, and
social landscape of baroque Rome, struggling against the odds to forge collective
bonds and preserve its members.

If the probative value of the notary’s documents owed much to the jurists, it owed
an equal share to the second major source of law in Italy, statute—that is, the
particular ordinances of professional corporations, cities, and princes. Of all early
modern texts, notarial acts bore the closest relationship to public authority, which
influenced not only their uses but also their material form. The evolution of Rome’s
laws shaping the two main types of notarial writing, business acts for private clients
and judicial acts for civil tribunals, from 1363 to 1612 is the subject of the next
chapter. Then we examine the preservation of notarial writings, one of their decisive
advantages in the competition with other forms of evidence. Notarial archives came
late to Rome, in 1507, 1562, and 1625, and they arrived in the fragmented and piecemeal way that characterized so many institutions in the papal capital. Both their successes and their failures are eloquent, however, telling us much about the play of forces engaged in making and keeping Roman documents.

The notary’s ambiguous position between public power and private enterprise meant that, while he was privileged to manufacture a unique commodity, he also had to sell it to live. The fifth chapter looks closely at the basic unit of scribal production, the notary’s household and office, as it operated in seventeenth-century Rome. It focuses on the business of writing, from purchasing a Capitoline notarial post and hiring employees to finding, and keeping, clients. In the final chapter we explore the tensions raised by the dramatic changes to Rome’s documentary regime, especially between 1550 and 1650, as they surface in the late seventeenth century. The book concludes in the early 1700s with an internally generated assessment of the new disciplines that had been imposed on notarial writing over the course of the early modern period. The house-by-house investigation of the notaries’ offices and the inspection of the city’s two main notarial archives ordered by Pope Clement XI in 1702 affords us the chance to reflect on what the efforts of the state had accomplished and where they had failed.

The conceptual resources, material forms, political interests, and economic forces that went into the making of notarial documents in early modern Rome have something to teach us about the broader history of writing, both as object and as technique. We must cast our nets widely if we wish to understand what gives written artifacts their power. But we will catch very little if we do not also peer closely at the particularities of time and place in which writing practices operate.