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Notary José Antonio Márquez González.

DECALOGUE OF THE FUNCTION OF NOTARY
ASSOCIATIONS

Notary José Adrián Negri

I) TO OBTAIN, FROM GOVERNMENT POWERS, LAWS, DECREES, REGULATIONS, RESOLUTIONS OR COURT DECISIONS FOR THE NOTARIAT TO HAVE A HEALTHY, STABLE AND DISCERNING ORGANIZATION IN ORDER TO ENSURE PERFECT INSTITUTIONAL STABILITY, EITHER AT PRESENT OR IN THE FUTURE.

II) TO CONSTANTLY OVERSEE SUCH INSTITUTIONAL ORGANIZATION TO AVOID THAT TODAY'S CAPRICIOUS INTERPRETATION, APPARENTLY HARMLESS, BE THE FIRST SYMPTON OF DECAY.

III) TO COMPLY AND REQUEST COMPLIANCE, WITHOUT INDULGENCE AND TOLERANCE AND LEAVING ASIDE PERSONS OR INTERESTS, WITH THE FUNDAMENTAL PRINCIPLES OF THE NOTARIAL ORGANIZATION, WHICH ARE THE ONLY GUARANTY OF STABILITY, GRADUAL IMPROVEMENT AND DURATION. NO MATTER HOW LITTLE WE CONCEDE TODAY, IT COULD BECOME AN UNFORTUNATE PRECEDENT TOMORROW.

IV) TO SPREAD THE KNOWLEDGE OF THE HISTORY AND PHILOSOPHY OF THE NOTARIAT, AS THE BEST WAY TO AVOID INSTITUTIONAL AGGRESSIONS AND EXTEMPORIZATION.

V) TO TIRELESSLY PROMOTE THE LEGAL-NOTARIAL CULTURE, AND EVEN THE GENERAL CULTURE, AMONG NOTARIES, IN AN ATTEMPT TO IMPROVE THEIR SPIRITUAL LEVEL AND TECHNICAL CAPACITY.

VI) TO ADVISE THE GOVERNMENT POWERS ON NOTARIAL MATTERS, TO CONTRIBUTE TO A MORE EFFICIENT AND CORRECT FUNCTION, FASTER PROCEEDINGS, MORE ACCURATE ACTS, MORE UNIFIED PROCEDURES AND FAIRER INTERPRETATIONS.

VII) TO MAINTAIN, KEEP AND DEMAND STRICT COMPLIANCE WITH RULES ON PROFESSIONAL ETHICS; AND TO CALL ON THEMSELVES AND OTHERS TO SHOW THEIR HIGHEST RESPECT FOR THE NOTARIAL FUNCTION AND THE INSTITUTION.

VIII) TO KEEP AND INCREASE CORDIALITY AMONG COLLEAGUES TO ITS HIGHEST LEVEL, WORK OUT THEIR DIFFERENCES WITH AN OPEN SPIRIT, AND PUNISH WITH JUSTICE AND HUMAN UNDERSTANDING, BUT WITHOUT ANY TRACE OF COWARDICE OR INDULGENCE, ALL PUNISHABLE MISTAKES OR FAILURES.

IX) TO SUPERVISE STRICT COMPLIANCE BY NOTARIES WITH LEGAL OR REGULATORY PROVISIONS GOVERNING THE PRACTICE OF THE PROFESSION, TRY TO SMOOTHLY RESOLVE ANY SMALL, INVOLUNTARY OMISSIONS OR IRREGULARITIES, AND SEVERELY PUNISH ANY IMPROPER ACT THE COMMISSION OF WHICH DIRECTLY AFFECTS THE GOOD NAME OF THE INSTITUTION.

X) TO SERVE AS A UNION REPRESENTATIVE IN DEFENSE OF THE NOTARIES' RIGHTS AND COMMON INTERESTS.

* Presented by Notary José Adrián Negri at the First Argentine Seminar of Notaries held in the City of Cordoba in 1944. When referring to such Decalogue, he stated that “... The Association means everything in terms of Institutional Progress, because the Association is, ultimately, the union heading towards its true destiny...”; “...the function of Notary Associations must be based on PRINCIPLES, which I have tried to summarize in this DECALOGUE...”

EDITORIAL

60 years have passed since the foundation of the International Union of Latin Notaries at that memorable Congress held in Buenos Aires in October 1948.

Back then, the undertaking seemed hard. Europe was beginning its recovery, after the 1940-45 world war. In such a complex environment, a group of highly intelligent and visionary colleagues came up with the magnificent idea of bringing together all notaries of Latin origin, mainly in Europe and America.

We have no doubt of the success of the initiative taken by the 19 founding countries; today, the Latin Notariat has spread and the Union is formed by 76 countries, thus becoming the pride of four continents. Over 3,000 million people live in the States where the Latin Notariat operates.

In this last year, the great financial and bank crisis that has spread throughout the world, one of the causes of which was the lack of controls and regulations in the mortgage market, has showed the advantages of our “Latin Notariat” system against the so-called “title insurance” of countries whose legal system is based on the Common Law.

During all these years, the Union’s work has been fruitful and productive: it has demonstrated to the world the importance of the notarial activity as a guaranty for the fairest application of the law and circulation of documents.

We are certain that the Union will continue its work and that future anniversaries will find us in a better world, with more freedom, justice and legal certainty.

The Director

1. WORDS OF THE PRESIDENT OF THE UINL

This magazine's Director, Notary Enrique J.H. Garbarino, had an interesting conversation with the President of the International Union of Notaries, Notary Eduardo Gallino, for the International Notarial Review (RIN). During such conversation, they talked about current issues of the international Notariat, especially the challenges faced by the UINL at these times of global crisis.

RIN: At this time of financial crisis, when legal certainty is being questioned so intensely, which are the institutional challenges that the UINL led by you is facing?

Not. E.G: There are two kinds of challenges. There are challenges that are addressed in a negative way, in terms of reaction, in response to external initiatives attempting against notaries, such as the conclusions of the Darrois report, which tend to the unification of the legal professions of lawyers and notaries in France, with the proposal to create a “lawyer’s act”, that is, an instrument with a certain authenticity value bearing an unnotarized signature, thus enabling lawyers to participate in real estate transfers, etc.; or, otherwise, initiatives damaging their work, denying legality control or diminishing the value of the notarial public instrument by comparing it to others of lower hierarchy, etc. Other challenges are addressed in a positive way, in the sense that they are our strict responsibility, such as disclosing and informing the authorities and, mainly, the public in general, about the benefits of progress, development and social peace and the adoption of a documentary legal system such as ours, of the Latin type, which situation has revealed in connection with the current economic crisis, but has not been adequately informed by us till now.

RIN: How is the UINL facing the current situation?

Not. E.G: With absolute confidence and optimism; not only because of the verifiable benefits obtained from compliance with principles and goals of the Latin-type notariat in our societies, which is further evidenced by the extraordinary expansion process of our Union worldwide, but also because of the acknowledgment of its advantages by other legal systems, such as the common law, though in an incipient manner. This does not mean that we could ideally convert the Anglo-Saxon world, which operates based upon its own

idiosyncrasy and culture, but that comments have been made and opinions have been issued by highly authorized legal, political and economic experts in favor of our system.

RIN: Are UINL's relationships with international organizations going through a good period?

Not. E.G.: The International Union of Notaries has over forty representatives in several international organizations, and the relationship with those whose activities and goals are more directly related to the notarial activity has improved. A positive example is the international financial entities and, especially, the World Bank. This institution's opinions about the Notariat in its first "Doing Business" reports were unfavorable, but today it seeks our opinion for the preparation of its surveys. Another example is the forthcoming participation, through the Foundation for Continental Law, at the International Monetary Fund's offices in Washington, next May, in the Conference on "Continental Law and the Global Financial Crisis: Contributions Towards a Better Regulation", which situation was unthinkable a short while ago.

RIN: Have you noticed that in some Union member notariats the notary's social role is being revalued?

Not. E.G.: I am absolutely convinced of that, which is one of the pillars of our administration. The Notariat needs men of "science" with an excellent scientific education; men with "conscience", who strictly comply with the notarial deontology and ethics principles; and men with "social responsibility", that is, with a service-oriented attitude, in particular, towards those who are more economically and culturally deprived. The survival of the Notariat is based on these three aspects, with more and more sensitivity and demand as regards the third one.

RIN: Which are the highlights of your administration and what would you wish to accomplish by the end of it?

Not. E.G.: The first challenge faced by us was to work under totally new operating regulations, as a result of the adoption of the new Bylaws and General Regulations at the

beginning of our Legislature, which led us to an adjusting period that has not been totally completed.

RIN: We intended to create, and created, over ten working teams with specific goals, resources and deadlines, which have begun to bear fruits that form part of the permanent and tenacious work of the continental and intercontinental Commissions of our Union.

Not. E.G: A personal wish, not so easy to fulfill, is our initiative to create the Commission of Asian/Pacific Affairs, since most of our future is being built in that region, as well as the addition of at least two new members to our organization. There are over ten countries that have applied for admission to our Union and are intensely working to comply with the required minimum standards. We hope they will be able to comply with them shortly.

RIN: Finally, knowing that, since very young, you were actively involved in the institutional life of your Notary Public Association, as a member of different study groups, what is your message to the young notaries of the 76 UINL member countries?

Not. E.G: A very simple message: that with willpower, vocation, education, perseverance and high doses of common sense, the future of our profession and our institutions is essentially in our own hands. The new generations have the great responsibility of rising to the challenge, and those of us who have been here longer have the responsibility of passing our experience with the clear understanding that it will not always be useful in the current scenario.

2. INSTITUTIONAL EVENTS

2.1. UINL MANAGEMENT BOARD MEETING, BRUGES, BELGIUM, FEBRUARY 6-7, 2009.

The meeting of the UINL Management Board was held in the city of Bruges, Belgium, on February 6-7-2009, to discuss topics concerning the UINL.

2.2. GRAND VIENNESE BALL OF JURISTS, VIENNA, AUSTRIA, FEBRUARY 21, 2009

The traditional “Juristenball – Grand Viennese Ball of Jurists” was held on February 21, at the Hofburg Imperial Palace, in Vienna.

2.3. III INTERNATIONAL SCIENTIFIC SEMINAR ON CIVIL, AGRICULTURAL AND FAMILY LAW, CUBA, FEBRUARY 24-26, 2009

The III International Scientific Seminar on Civil, Agricultural and Family Law was held in Santiago de Cuba, on February 24-26.

2.4. MEETING OF THE HUMAN RIGHTS COMMISSION OF THE UINL, GENEVA, SWITZERLAND, MARCH 1-3, 2009

The meeting of the Human Rights Commission of the UINL was held in Geneva, Switzerland, on March 1-3, 2009.

2.5. FIRST PLENARY MEETING OF THE COMMISSION OF AMERICAN AFFAIRS OF THE UINL, MARCH 26-28, 2009, LIMA, PERU

The first Plenary Meeting of the Commission of American Affairs of the UINL was held in the City of Lima, Peru, on March 26-28, 2009.

The meeting of the Commissions was held on the 26th, while the Plenary Meeting took place on the 27th and 28th.

2.6. 4TH UNIVERSITY TRAINING SESSION OF THE AFRICAN NOTARIAT, YAOUNDE, CAMEROON, APRIL 20-25, 2009

It was held by the Commission of African Affairs of the UINL (CAAf) and the Chamber of Notaries of Cameroon, with the participation of the Superior Council of French Notaries and the Association of Francophone Notaries, on April 20-25.

The following topics were discussed:

I. The Notary and Alternatives to Solve Conflicts.

* Mediation.

- * Conciliation.
- * Arbitration.

II. Intangible Property.

- * Goodwill.
- * Art funds.
- * Commercial Lease.

III. Notarial Deontology and the Legal Certainty Requirement.

FORUM: “Notaries’ Collective Guarantee.”

2.7. GENERAL MEETING OF THE COMMISSION OF AFRICAN AFFAIRS (CAAf) OF THE UINL, APRIL 21st, 2009

The General Meeting of the Commission of African Affairs (CAAf) of the UINL was held in Yaoundé, Cameroon, on April 21st.

2.8. XV NATIONAL CONGRESS ON REGISTRY LAW, APRIL 21-23, 2009, AND II INTERNATIONAL FORUM, APRIL 23-25, SANTA FE, REPUBLIC OF ARGENTINA

The XV National Congress on Registry Law was held on April 21-23, 2009, in Santa Fe, Argentina, as well as the II International Forum, on April 23-25, 2009, both organized by *Universidad Notarial Argentina*.

The following topics were discussed at the XV National Congress on Registry Law:

I. CO-OWNERSHIP PROPERTY.

- I.1. Situations contemplated and not contemplated by Law 13,512.
- I.2. Registration in different jurisdictions under local regulations.

II. CLAUSES FOR REAL ESTATE REGISTRATION PURPOSES.

- II.1. Legal situations to be registered.
- II.2. Effects of the failure to request the registration of contract clauses that affect the right of ownership.

II.3. Publicity of official registries – Publicity of marginal notes on notarial instruments by notaries or registrars.

III. CORPORATE REGISTRATION.

III.1 Publicity of commercial registries and public notices:

- a) National Law of Public Registry of Commerce. Contents and applicable registration principles.
- b) Location.
- c) Determination of relevant requirements for document qualification.
- d) Accumulation of requirements. Terms for registration.
- e) Registration of inhibitions with commercial registries.
- f) Publicity of public notices. Benefit of prior publications under section 10 of the Business Companies Law.

III.2. Corporate control and supervision:

- a) Controlling authorities. Relation with registrations.
- b) Prior administrative consent for the incorporation of stock corporations not contemplated by section 299. Critical assessment of its benefit.
- c) Corporate police power. Sanction regime.
- d) Critical assessment of section 6 of the Business Companies Law.

In turn, at the II International Forum, the topic discussed was “REGISTRATION INACCURACIES.”

- 1. Registration inaccuracies. Several types. Importance.
- 2. Effects with respect to third parties.”

2.9. XXI CONFERENCE OF EUROPEAN NOTARIES, SALZBURG, AUSTRIA, APRIL 23-24, 2009

The XXI Conference of European Notaries was held on April 23-24, 2009, in the City of Salzburg, Austria. The main topic discussed was “European Authentic Act and European Certificate of Inheritance”.

2.10. PLENARY MEETING OF THE COMMISSION OF EUROPEAN AFFAIRS (CAE), CRETE, GREECE, MAY 8-9, 2009

The first Plenary Meeting of the Commission of European Affairs (CAE) was held on May 8-9, in Crete, Greece.

2.11. 105th CONGRESS OF FRENCH NOTARIES, LILLE, FRANCE, MAY 17-20, 2009.

The 105th Congress of French Notaries was held this year in the City of Lille, France, on May 17-20.

2.12. UINL MEETINGS, JUNE 11-13, LONDON, UNITED KINGDOM

The UINL meetings were held in London, United Kingdom. The meetings of the Commissions, the Management Board and the General Council took place from the 11th through the 13th. The venue was the Renaissance Chancery Court Hotel.

2.13. 5TH INTERNATIONAL FORUM ON THE ELECTRONIC APOSTILLE PILOT PROGRAM (E-APP) AND DIGITAL AUTHENTICATION, HELD BY THE UINL-HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW, JUNE 13, 2009, LONDON, UNITED KINGDOM

As a corollary of the UINL meetings, on June 13, 2009, the 5th International Forum on the Electronic Apostille Pilot Program (E-APP) and Digital Authentication was held by the International Union of Notaries and the Hague Conference on Private International Law.

This was the first event organized in Europe. The venue was the Renaissance Chancery Court Hotel in the City of London.

2.14. GENERAL ASSEMBLY OF THE CONFERENCE OF NOTARIATS OF THE EUROPEAN UNION (CNUE), ANNECY, FRANCE, JUNE 18-20, 2009

The General Assembly of the Conference of Notariats of the European Union (CNUE) was held in Annecy, France, on June 18-20, 2009.

2.15. FIRST BINATIONAL MEETING OF ECUADOR-PERU ON CONTRACT AND NOTARIAL LAW, MACHALA, ECUADOR, JUNE 26-28, 2009

The First Binational Meeting of Ecuador and Peru on Contract and Notarial Law was held in the City of Machala, Ecuador, on June 26, 27 and 28, 2009. The following topics were discussed:

- * THE NOTARY AND LEGAL CERTAINTY: Preventive notarial work; legal certainty vs. economic certainty. The notarial form. The notary's responsibility; types of responsibility. Filing of notarial records. The Notary and the US title insurance.

- * REGULATION OF THE CONSTITUTION AND THE ORGANIC CODE ON THE JUDICIAL BRANCH IN THE NOTARIAL ACTIVITY: Notary's responsibility under the New Legal Order in Ecuador.

- * ASSESSMENT OF REFORMS TO THE PERUVIAN NOTARIAL LAW.

- * NOTARIAL CONFIRMATION, NOTARIAL IDENTIFICATION. UNITY OF ACT. NOTARIAL ACTS OF VOLUNTARY JURISDICTION.

- * TRANSFER OF TITLE TO REAL ESTATE NOT REGISTERED IN ECUADOR AND PERU; Scope of application of Section 709 (EX728) of the Civil Code of Ecuador.

- * REAL ESTATE REGULARIZATION IN PERU. ADVERSE POSSESSION BEFORE A NOTARY.

- * POWERS OF ATTORNEY FOR INTERNATIONAL CIRCULATION AND LEGALIZATION SYSTEMS: Powers of attorney granted in accordance with the Washington Protocol, the Panama Convention and where no international treaty exists; legalization by consulate and Apostille. NOTARIAL INTEGRATION IN SOUTH AMERICA: Legal systems worldwide.

- * ILLEGAL IMPERSONATION AND THE NOTARY'S RESPONSIBILITY REGARDING PUBLIC DEEDS AND NOTARIAL ACTS. EXISTING ELECTRONIC MEANS TO IDENTIFY A PERSON.

* TAXABLE PERSONS. The notary's situation. The Notary as a taxable person in their capacity as taxpayer and liable for third parties' payments.

* PURCHASE AGREEMENT FOR REAL AND PERSONAL PROPERTY. PERSONS AUTHORIZING THE AGREEMENT. SPECIAL TREATMENT FOR THE EXECUTION OF ACTS AND AGREEMENTS FOR PROPERTY IN THE ECUADOR-PERU BORDER.

2.16. PLENARY MEETING OF THE PERMANENT NOTARIAL OFFICE OF INTERNATIONAL EXCHANGE – ONPI – OF THE UINL, BUENOS AIRES, ARGENTINA, JULY 3, 2009

The Plenary Meeting of the Permanent Notarial Office of International Exchange – ONPI – of the UINL was held in the City of Buenos Aires, Argentina, on July 3, 2009, at the Notary Public Association of the City of Buenos Aires, Argentina, to discuss several matters related to the operation of its different divisions.

2.17. IV INTERNATIONAL NOTARIAL MEETING HELD BY THE COMMISSION OF AMERICAN AFFAIRS (CAA) OF THE UINL, JULY 8-11, 2009, SAN JOSE DE COSTA RICA, COSTA RICA

The President of the Commission of American Affairs (CAA) of the UINL, Notary Alfonso Zermeño Infante, has convened, together with the President of the Costa Rican Institute of Notarial Law, Guillermo Sandí Baltodano, the IV International Notarial Meeting on Notarial Law, to be held in the City of San Jose de Costa Rica, Costa Rica, on July 8-11, 2009. The main topic to be discussed at the meeting will be: “GOVERNING PRINCIPLES OF THE NOTARIAL ACTIVITY”.

2.18. 26th INTERNATIONAL CONGRESS OF NOTARIES, MARRAKECH, MOROCCO, OCTOBER 3-6, 2010

The 26th International Congress of Notaries will be held on October 3-6, 2010, in Marrakech, Morocco.

FOR MORE INFORMATION ON THE ABOVE EVENTS: www.uinl.net.

3. CURRENT EVENTS

3.1. UN: CREATION OF THE PEACEBUILDING COMMISSION

The Peacebuilding Commission has been created as a new intergovernmental advisory body of the United Nations that supports peace efforts in countries emerging from conflict. Furthermore, it is a key addition to the capacity of the community in the broad peace agenda.

The main purposes of this Commission are:

- 1) Bringing together all relevant actors to obtain resources, such as international financial institutions and donors, national governments and troop contributing countries;
- 2) Marshalling resources; and
- 3) Proposing integrated strategies for post-conflict peacebuilding and recovery and, where appropriate, highlighting any gaps that threaten to undermine peace.

The concurrent resolutions of the General Assembly and the Security Council establishing the Peacebuilding Commission also provided for the establishment of a Peacebuilding Fund and Peacebuilding Support Office that, together, constitute the peacebuilding structure of the United Nations.

Source: www.un.org.

3.2. EUROPEAN UNION: 2009 - EUROPEAN YEAR OF CREATIVITY AND INNOVATION

2009 is the European Year of Creativity and Innovation. Under the motto: “Imagine, Create and Innovate”, the purpose is to raise awareness of the importance of creativity and innovation for personal, social and economic development. The goal is to encourage policy debates to promote an European increased creative and innovating potential to effectively address changes and opportunities related to globalization. There will be campaigns, events and initiatives in Europe, both nationally as well as regionally and locally.

Source: www.europa.eu.

3.3. NEW LIMITED LIABILITY COMPANIES LAW IN THE RUSSIAN FEDERATION.

The federal law No. 312-FZ, which comes into force on July 1st, 2009, provides for amendments to Part I of the Civil Code of the Russian Federation and other laws. Such law introduces substantial changes to legislation governing limited liability companies, as well as amendments to the notarial law, by providing that the notary is liable for both the damages caused and the rejection of his involvement.

For more information: www.uinl.net.

3.4. VIOLENCE AGAINST WOMEN IN AFRICA

At the initiative of the Sector for Social and Human Sciences of UNESCO, the Second Forum of Ministers for Women's Affairs of the Great Lakes Region and a Policy Dialogue on "Strategies for Combating Violence against Women" were held on June 2-4, 2009, in Mombasa, Kenya. The progress of the project to establish a Women's Research and Documentation Centre for the Great Lakes region was evaluated, by examining the implementation of the Action Plan adopted at the first Ministerial Meeting held in Kinshasa (Democratic Republic of Congo) in July 2008.

The purpose of the Centre is to promote protection and respect for women rights and gender equality in the Great Lakes region. In addition to UNESCO and the governments of the countries concerned, other partners involved in this project are the United Nations Fund for Population Activities, the Economic Commission for Africa and the African Development Bank.

Source: www.portal.unesco.org

3.6. FRANCE: NOTARIAL CODE

The first Notarial Code was published by LexisNexis Litec Editions in an effort to put together texts that are of the interest of the Notariat, but are frequently dispersed and hard to access.

It was prepared with the collaboration of the Superior Council of French Notaries and Jean-François Pillebout, PH in Law, honorary notary and scientific director of *JurisClasseur Notarial* and *Revista Fiscal-Notarial*, and addresses, among others, the following topics: profession organization, notaries' rights and obligations, discipline, education and training and fee regime. The title is "Notarial Code 2009", LexisNexis Litec Editions.

Source: Notaires Vie professionnelle, Janvier-février 2009-N° 273

ERRATA

In RIN No. 114, page 38 of the Spanish edition, 96 of the French edition and 154 of the English edition, it is informed that the Schengen Agreement was signed in Schengen, Luxembourg. Such information is corrected as follows: "The agreement was signed on a boat, on the riverside of Moselle, in front of the Luxembourgian villa of Schengen, where the borders of Germany, France and Luxembourg meet. Due to its highly symbolic nature, this was the place chosen for the meeting of the foreign Chiefs of State."

4. LEGAL NOTARIAL ISSUES.

4.1. EUROPEAN AUTHENTIC ACT: European Parliament Resolution of December 18, 2008, with recommendations to the Commission on the European Authentic Act (2008/2124(INI))

The European Parliament,

- having regard to Article 192, second paragraph, of the EC Treaty;
- having regard to the Commission's Communication of May 10, 2005, entitled "The Hague Program: Ten priorities for the next five years. A Partnership for European renewal in the field of freedom, security and justice" (COM (2005)0184);
- having regard to the comparative study on authentic instruments conducted by the Committee on Legal Affairs;
- having regard to Articles 39 and 45 of its Regulation;
- having regard to the report of the Committee on Legal Affairs (A6-0451/2008);

- A. Considering that, in its above communication on The Hague Program, the Commission mentions, among its priorities, the need to guarantee an authentic European area of civil justice, especially as regards the recognition and enforcement of judicial decisions; that, with the purpose of strengthening mutual trust in the European Union, the Program stated that continued implementation of the principle of mutual recognition was an essential priority in the coming years and a specific means of protecting the rights of citizens and guaranteeing their exercise across borders in Europe;
- B. Considering that The Hague Program provides that continued implementation of the principle of mutual recognition must be an essential priority that should be completed by 2011;
- C. Considering that the movement of citizens within the European Union is steadily increasing; that there is a consequent rise in the number of legal situations concerning two or more member States;
- D. Considering that, in its above communication on The Hague Program, the Commission recognized that, in the field of civil justice, one key aspect that needs to be addressed is the recognition of public documents; that, in this respect, it is necessary and urgent to promote the recognition and enforcement of authentic acts, as defined in the Unibank judgment¹;
- E. Considering that the inconsistent approach taken by the community legislation of the different sectors of this field is not satisfactory²;
- F. Considering the need to protect European citizens in their family and property relationships across the borders;
- G. Considering that companies have more and more branches abroad and intra-community activities that result in an increased movement of authentic acts related to the organization and operation of companies;

¹ Judgment of the Court of Justice of European Communities dated June 17, 1999, in the case C-260/97 Rec. 1999, p. I-3715.

² Council Regulation (EC) No. 44/2001 (OJ L 12, of 01/16/2001, p. 1); Council Regulation (EC) No. 2201/2003 (OJ L 338, 12/23/2003, p. 1); Council Regulation (EC) No. 805/2004 (OJ L 143, 04/30/2004, p. 15).

- H. Considering that it is essential to establish a clear and complete legal framework for the European Union to guarantee citizens and economic operators the certainty and predictability of legal situations and transactions established by delegates of public authority;
- I. Considering that the creation of an actual European legal area lies, as regards litigation matters, in the cross-border recognition of judicial decisions made in a jurisdiction or by an administrative authority and, as regards non-litigation matters, in the cross-border recognition of authentic acts established by a judicial authority or by public officials appointed to authenticate legal documents;
- J. Considering that existing regulations on the mutual recognition of judicial decisions apply to authentic acts as they are issued by public authorities;
- K. Considering that the essential characteristic of an authentic act is its evidentiary value, higher than that of a private document, and that such evidentiary value, which must be accepted by a judge, is usually established by member State legislations due to the trust placed in acts drawn up, in the context of legal transactions, by a public official authorized to authenticate documents who has been appointed for that purpose by a public authority³;
- L. Considering that a prerequisite for the evidentiary value of an authentic act is the recognition of its authenticity, in that it emanates from a public official authorized to authenticate acts or from a public authority; that mutual trust in the legal systems of member States justifies the fact that authentication procedures will only be applicable in the future when serious doubts arise regarding the veracity of the document;
- M. Considering that respect for the legislation of the member State where the act is to be produced for use entails, however, the certainty that recognition of the evidentiary value does not mean that the foreign authentic act enjoys a greater evidentiary value than national authentic acts in that member State, given its recognition in the member State in which it is to be produced; that the material scope of application of the regulation requested should cover an essential part of civil and commercial law, except for certain clearly defined matters;

³ Opinion of General Counsel La Pergola, dated February 2, 1999, in the above cited Unibank case, paragraph 7.

- N. Considering that differences in the structure and organization of public register systems in the real estate field, as well as differences related to the nature and scale of the public trust placed in them, mean the exclusion of the transfer of real property rights from a future community instrument, given the close correlation between the method of drawing up an authentic act and its entry in a public register;
- O. Considering that, as regards the recognition of judicial decisions in the European Union, such exclusion corresponds to attributing exclusive competence to the courts of the place where the real property is situated, for all remedies relating to real property rights, and to the courts of the territory where the public register is kept, for all remedies relating to the validity of entries in such public register⁴;
- P. Considering that the concept of authentic act does not exist in Common Law systems, in particular, in the Law of England and Wales or in Nordic countries; that, although in England and Wales there are solicitors who act as notaries public and scrivener notaries, these jurists are not authorized to produce authentic acts but to certify signatures and, consequently, when adopting any legislation on European authentic acts, actions should be taken to ensure that there is no confusion in this respect; that, in turn, all precautions should be taken to ensure that authentic acts cannot be used in countries where such acts cannot be made by nationals of those countries to avoid procedures provided by the legal orders of such countries (for example, the grant of probate); that, in addition, in order to inform legal professionals of member States where authentic acts do not exist, a suitable information campaign should be initiated by the Commission, using all efforts to ensure that Common Law legal professionals are aware of the work done by Civil Law public officials and the potential advantages for their clients – in particular, in terms of legal certainty– of using authentic acts in transactions which they propose to conclude in countries where such instruments are used; that this highlights the need, often expressed by the Committee on Legal Affairs of the European Parliament, for networks of law professionals, information campaigns and common material and training, which should be promoted by the Commission;
- Q. Considering that the regulation requested may not apply either to matters relating to the applicable law contemplated by other community instruments or to questions

⁴ See Article 22, paragraphs 1 and 3, of Regulation (EC) No 44/2001.

relating to the competence, organization and structure of public authorities and officials, including the authentication procedure, which come under the jurisdiction of member States;

1. Believes that mutual trust in Law, within the Community, justifies the future abolition of procedures for checking the veracity of authentic acts in cross-border matters; considers that this recognition of an authentic act for purposes of being used in the requested member State may only be denied in case of serious and grounded doubts as to its authenticity, or if its recognition is contrary to public order in the member State requested;
2. Requests the Commission to submit to the Parliament, based on Article 65(a) and the second indent of Article 67, item 5, of the EC Treaty, a legislative proposal to establish the mutual recognition and enforcement of authentic acts;
3. Stresses that this recognition may not imply giving a foreign act greater effect than a national act would have;
4. Wishes that the regulation requested be applied to all authentic acts in civil and commercial matters, excluding those related to real property that must or may be subject to entry or mention in a public register;
5. Specifies that the regulation requested should not apply either to matters relating to the law applicable to the subject matter of the authentic act or to questions relating to the competence, organization and structure of public authorities and officials, including the authentication procedure;
6. Verifies, in this context, that the recommendations detailed in the attached annex comply with the principles of subsidiarity and proportionality and the fundamental rights of citizens;
7. Considers that the proposal requested will not have any financial implications;
8. Instructs its President to forward this Resolution and the recommendations detailed in the attached annex to the Commission and the Council, as well as to the Governments and Parliaments of member States.

ANNEX

DETAILED RECOMMENDATIONS ON THE CONTENT OF THE PROPOSAL REQUESTED

1. Mutual trust in Law within the Community justifies the future abolition of procedures for checking the veracity of authentic acts in cross-border matters.
2. The recognition of an authentic act for purposes of being used in the requested member State may only be denied in case of serious and grounded doubts as to its authenticity, or if its recognition is contrary to public order in the member State requested.
3. The European Parliament requests the Commission to submit to it, based on Article 65(a) and the second indent of Article 67, item 5, of the EC Treaty, a legislative proposal to establish the mutual recognition and enforcement of authentic acts.
4. The act subject matter of the legislative proposal should apply to all authentic acts in civil and commercial matters, excluding those related to real property that must or may be subject to entry or mention in a public register. This act should not apply either to matters relating to the law applicable to the subject matter of the authentic act or to questions relating to the competence, organization and structure of public authorities and officials, including the authentication procedure.

4.2 “GLOBAL FINANCIAL CRISIS AND THE LATIN NOTARIAT”

By Notary Águeda Crespo

INTRODUCTION:

In the American continent, ever since the Hispanic conquest, the legal order was understood as a large set of rules or precepts aiming at regulating all possible relationships among people. This system consisted of large codes or different types of compilations to which many isolated laws had to be added. On the one side, there was the PARTIDAS (Parts), which was a legal and doctrinal work comprehensive both of state and canon law.

On the other side, the 1567 Spanish RECOPIACIONES (Compilations) were still in effect, as well as those of the Indies of 1805, including provisions issued at very different times that, notwithstanding, coexisted in America and were applied on a case-by-case basis.

Such legal order further included several ORDENANZAS (Ordnances) to maintain legal stability. However, the original changing reality of Spanish colonies caused the promulgation of rules to address new circumstances or problems.

Even after our emancipation from Spain in 1810, codes, compilations and ordinances from the Hispanic times were still being partially applied, with the addition of new laws. Some of them were simple laws, regulating partial aspects of the political or social life of the colonies.

Only by the second half of the XIX Century did a strong vocation to create a new national law appear.

This renovating spirit born in France, together with the Napoleonic codes, resulted in an imitative and creative task.

Consequently, certain institutions disappeared, such as slavery or the indigenous regime, while others were created, which came as a novelty to us, such as legal entities, banks, and transport and communication media. It is in this period that the law is divided into branches, following the European example.

In Argentina, our legislative history may be divided into five stages, in the understanding that there is a line of continuity between each of them and their separation is not always accurate or categorical.

1) Prior to the discovery of America:

Except for the north-west area of the current national territory that was a part of the Inca Empire, which civilization is known by all of us but will not be described herein given the extension of its development, the rest of the territory was occupied by nomadic natives who, consequently, had a particular concept of private property: “They did not own the land—the land owned them”. They had a respect for things that differed from today’s idea: mountains, rivers, plants, animals and human beings were part of the earth and worthy of

the same respect. Today we would call them “ecologists”. This was not the only remarkable characteristic of this civilization; honoring one’s word was very important. Conflicts were generally resolved with the participation of mediators and both parties’ witnesses. Old witnesses had an essential role in this process. There are pictographic antecedents, but no written codices have been kept and customs were passed from one generation to the other.

2) From the discovery of America or, more precisely, from the establishment of the first settlements in what is known today as the national territory, to 1810:

In this period, the above mentioned Hispanic law was in effect, that is, the Parts (Partidas) of Alfonso X, the Compilations (Recopilaciones) of Spain and the Indies, as well as the Ordinances (Ordenanzas) and local provisions issued by the representatives of the crown.

3) From 1810 to 1853, year in which the National Constitution was sanctioned, a Law of the Land (Derecho Patrio) was applied, which is the sum of the Hispanic law and several local but nonetheless important provisions, such as human rights, abolition of slavery, foreigners’ civil rights, freedom of press, etc. It was the beginning of the national law.

4) From 1853 to the sanction of the Civil Code in 1871, the country went through a rich period in terms of legal debates on essential subject matters for the organization of the Republic. There was a voluntary embracement of other legal cultures. Due to the ideological influence of certain countries of prestige or with scientific and technical perfection, the Nation began a period of great originality. The source of inspiration for our National Constitution was the United States Constitution. In the meantime, our Civil Code was being drafted, using as a source not only the Napoleonic Code but also the works of many French jurists who are quoted in the comments on or notes to the Code sections.

5) From the sanction in 1871 of the Civil Code drafted by Mr. Dalmacio Velez Sarsfield to this date, the Argentine law developed national characteristics that endowed it with a unique individuality, regardless of the fact that it still is a combined product of several migrating cultures from around the world that so generously have been received in our country since the beginning of its history. Please remember that our Civil Code was later the source of inspiration for other Latin American codes.

Back to the influence of the French Law, to give an example other than the Napoleonic Code, in the notes to our Civil Code, Domat has been quoted 9 times and Pothier not less than 228 times; therefore, some local jurists sustain that Pothier is known by the Argentines as well as the tango.

This is a summary of the history of our contract law. However, the development of our national law of Roman origin was not so smooth.

Common Law in Latin America.

In my opinion, there were three key moments in the Argentine history that strengthened the sense of belonging to the Roman or civil law and, in such three moments, specific attempts and risks existed to change the course and implement the Common Law, either totally or partially, which situation would have significantly changed the way we execute contracts.

I. British Invasions of Buenos Aires (the first in 1806 and the second in 1807).

In the XVIII Century, many projects were conceived in the United Kingdom to occupy the political and economic center of Buenos Aires. In the early XIX Century, due to the weakness of the Spanish government, Buenos Aires was regarded by England as a potential conquest, so that England could expand its empire and, in a certain way, deal with the threat of the Napoleonic power.

Early in 1806, the British recovered the port of Cape Town, which was occupied by the Dutch –then allies of Napoleon-. After such victory, while in Cape Town, Commodore Home Riggs Popham received news of the Battle of Trafalgar, Ulm and Austerlitz, and decided to launch from such city the invasion of Buenos Aires.

General Beresford and his troops disembarked in June 1806, near the city of Buenos Aires, whose inhabitants watched them with surprise and indifference, while the Spanish Viceroy Sobremonte was fleeing to the city of Cordoba, in the interior of the country.

Without any initial resistance, Argentina was a part of the British empire for 46 days. The British believed that by accepting religious ideas and putting an end to the trade restrictions imposed by Spain, there would be no social riot.

The people of Buenos Aires knew that the Spanish authorities were too weak to expel the British. However, there was a combination of factors that the invaders failed to see: they underestimated the local capacity to fight back and overestimated their own capacity to extend the occupation. Their intention was to deploy from Buenos Aires to the rest of Latin America, Uruguay, Chile, etc.

A city of 40,000 inhabitants without actual threats for many years appeared to be defenseless. The people watched as a treasure of tons of silver was being taken from Buenos Aires, carried through the center of the city and finally shipped to the Bank of England.

According to English historians, it was easy to get in but hard to get out, “suddenly they were all enemies, the resident Spaniards, the local people (criollos), Indians, mestizos and black slaves.”

Finally, the flag of the 71 Highlanders Regiment was retained in Buenos Aires and is still on display in a museum.

After expelling the invaders, the city recovered its quiet life, but this feeling of strength was one of the things that made them think about the possibility of becoming independent from Spain.

The second British invasion occurred in 1807, with more troops and the decision to previously invade the neighbor city of Montevideo. This time, however, Buenos Aires was more organized and the British invasion was rapidly repelled.

Different languages, customs and religions were key factors for the people to oppose to this new colonialism and repel the advance of Great Britain into the Viceroyalty of Rio de la Plata.

Though this expansionist policy could not be consolidated by the army, it would exert its influence through commerce.

Our involvement in the legal world would not have been the same if the outcome had been different.

Anyway, as previously stated, this was the starting point of the emancipation from Spain in 1810 and the declaration of Independence in 1816.

II. Another crucial but more subtle moment, that many historians have failed to detect, was the controversy between two distinguished personalities of the XIX Century in Argentina: Dalmacio Vélez Sarsfield, the author of the Argentine Civil Code (1871), and Juan Bautista Alberdi, mentor of the National Constitution of 1853.

Many spirited debates were held in the Buenos Aires society to decide upon the course to be taken.

The United States of America had a great influence on our Constitutional Law and the federal system of government; in fact, the US Constitution was the main source of the Argentine Constitution of 1853.

On the other hand, the main source of our Civil Code was the Napoleonic Code and the French jurists quoted in the notes to many sections of our Code, as previously stated.

Alberdi and Vélez Sarsfield, two XIX Century highly respected jurists, did not share the same criterion:

Alberdi said: "... A unique Civil Code for the Republic of Argentina means to include centralism and unitarism in a Federal Constitution... Since the United States are today worthy of such respect, Why don't we follow the example of their discretion in terms of civil legislation?"

The codification –he sustained- is not in harmony with the economic needs of the time, the obsession with codes comes from the emperors. England does not have a single code and there is hardly an interest that is not contemplated by the legislation. Many founders of the Republic did not hide their admiration for the Anglo-Saxon case-law and the US legal scholars' doctrine.

Our Roman, Hispanic and French tradition finally prevailed in this debate, which is evidenced by our Civil Code.

The course taken would have been different if the current sustained by highly respected men, who advocated the "Anglo-American" stance in our civil legislation, had succeeded.

III. Finally, new types of contracts introduced in the country after the influence of the “globalization of contracts” caused certain contractual disorder.

By the end of the XX Century and the beginning of the XXI Century, though our contract system was definitely established in our society, the Argentine government then in office adopted the economic theories applied in the United States of America, which resulted in a great crisis that seriously endangered legal certainty in the country. By applying a globalized financial model, the world trade and its entities many times attempt to unify the types of contracts, without complying with legal institutions and customs of each country. The manner in which investments are implemented and made in each country constitutes an obstacle for multinational companies’ investments. Faced with this scenario, “global investors”, which consist of many investors of countries whose legal system is based on the Common Law, intend to introduce their business, financial and even real estate methods into the country of destination. When a country gives in to such external pressure, as it happened in Argentina at the end of the last century, the result is that an institution as dear and essential to our people as the Notariat has to face possible permanent changes. In fact, in our country, the notarial activity was deregulated by decree, attempts were made to implement a securitization system and our real estate-registration system was questioned by international insurance companies, by constantly lobbying and even attending, through their “local” employees, our notarial congresses to advertise and “recommend their advantages”.

Specifically, contracts, such as leasing or trust agreements, were added to the Argentine legislation but later adapted to our applicable laws.

Many times, it is the national governments who facilitate such interference, by adopting economic policies that were specifically conceived to only achieve “fast earnings for investors”.

I don’t want to end without referring to the recent global financial crisis that began in the United States, and the famous subprime mortgages:

Insights:

LATIN NOTARIAT AND THE GLOBAL FINANCIAL CRISIS

I have always wondered why the Latin Notariat has not been acknowledged in Common Law countries as a fundamental tool for the economic development of society.

As most UINL member notaries, we have witnessed the unexpected fall of US finances and the subsequent bank crisis throughout the world. This ratifies our conviction that we should stay on the right side.

However, this crisis, this destruction of confidence worse than the great depression in 1929 and, according to some economists, worse than the blow to capitalism in 1873, will unfailingly affect us.

After reading the express recognition made of our Latin-type system and the criticism on the mercantilist mortgage system so in fashion in the last years in the northern country, clearly described in the book: “The Subprime Solution: How Today’s Global Financial Crisis Happened and What to Do About It”, by Professor Robert J. Shiller of Yale and Princeton Universities, I decided to write again about this subject matter.

Moreover, I believe it is necessary to remember that the word “SUBPRIME” used by Professor Shiller was chosen the United States word of the year in 2007, in reference to a type of loan of the US financial market. “Subprime mortgages or loans” are considered of high risk by borrowers. This means that the borrower would normally not qualify for a bank loan, for instance, for their level of income. Notwithstanding, certain banks and financial entities decided to grant such loans despite the risk, at an interest rate higher than the market rate.

The characteristics of these loans are the following:

Most subprime loans are instrumented as mortgages.

Financial entities have a maximum limit of high risk loans determined by the Federal Reserve, though this limit may be exceeded by other intermediary entities that may acquire, through an assignment of creditor’s rights by the banks to third parties, the right of repayment of subprime loans, in exchange for the payment of a lower interest rate to the financial entity. The interest rate on a subprime loan is higher than the average interest rate applicable to similar loans granted to creditworthy clients, ranging from 1.5 to 7 additional points.

The system for granting loans in the United States is based on the assessment of the individual or the company applying for the loan. In this manner, those who exceed 850

points in such assessment are granted prime loans at a low interest rate and with several benefits. Those who are rated between 650 and 850 points are considered creditworthy and the applicable interest rates are within the national average. Those who are rated below 650 points are considered of high risk and may be granted subprime loans, at higher interest rates and higher bank fees.

In 2002, the subprime loan volume of financial entities in the United States accounted for 7% of the mortgage market. In 2007, it was 12.5%.

Subprime loans, as any other loans, may be negotiated by the banks with other companies, so that they may be assigned in exchange for the payment of a lower interest rate. The benefit obtained by the financial entity from such assignment is to secure a fast repayment of the loan. Companies acquiring subprime loans intend to benefit from the difference between the amount paid to the financial entity and the amount they are effectively entitled to receive from the debtor.

The problems arising from the lack of repayment of subprime loans in the local economy and the global economy are determined by three factors:

The total volume of subprime loans with respect to the total volume of loans granted.

The number of loans granted to third parties through the assignment of creditor's rights and the companies holding the same. When the burden of subprime loans falls onto the banks, the risk affects the financial market; when it falls on other companies, the risk affects different economic sectors or, otherwise, the most important sectors.

The impact on the global economy depends on the foreign companies, financial or otherwise, that have acquired subprime loans.

As previously stated, these loans were mostly mortgage loans, in which the interest rates applied were higher than those charged to creditworthy clients. This means that, if a person had the need or urgency to obtain a loan but was unable to repay it, these loans would be indiscriminately granted and, moreover, insistently promoted.

A cruelty of the system, part of the real estate bubble existing in the United States. Default on obligations caused a lack of liquidity in US banks, which extended to the rest of the world, given that such lack of liquidity was affecting other banks as well, as a result of the shortage of cash flow. The lack of liquidity inspires distrust in the interbank world and, consequently, banks refrain from lending money, directly affecting people. This is called by many economists the "butterfly" effect, for its beautiful and short life, or bubble.

Professor Shiller, when referring to the US economic crisis, states the following in his book: “ANOTHER POSSIBLE DEFAULT OPTION WOULD BE A REQUIREMENT THAT EVERY MORTGAGE BORROWER HAVE THE ASSISTANCE OF A PROFESSIONAL AKIN TO A CIVIL LAW NOTARY. IN GERMANY, FOR EXAMPLE, THE CIVIL LAW NOTARY IS A TRAINED LEGAL PROFESSIONAL WHO READS ALOUD AND INTERPRETS THE CONTRACT AND PROVIDES LEGAL ADVICE TO BOTH PARTIES BEFORE WITNESSING THEIR SIGNATURES. THIS APPROACH PARTICULARLY BENEFITS THOSE WHO SEEK COMPETENT AND OBJECTIVE LEGAL ADVICE. THE PARTICIPATION OF SUCH A LEGAL FIGURE IN THE MORTGAGE LENDING PROCESS WOULD MAKE IT MORE DIFFICULT FOR UNSCRUPULOUS MORTGAGE LENDERS TO STEER THEIR CLIENTS TOWARD SYMPATHETIC LAWYERS, WHO WOULD NOT ADEQUATELY WARN THE CLIENTS OF THE DANGERS THEY COULD BE FACING.”

The statements of Hernando de Soto are true when he says that no country will avoid the effects of the economic crisis, because today economies’ are all interconnected. However, the question is WHERE did this crisis start? And WHY? It is in the answers to these questions that the cause of such lack of responsibility can be found, as well as the lack of respect for citizens who, when they “need a loan”, fail to find the correct, proper word of advice from an independent professional of law who is not hired by the same lending entity.

This lack of respect for the rights of Man is unquestionable. Again, quick profits are prioritized over the social awareness that mortgage loans should have. I recall a phrase of a prestigious British writer, G.K. Chesterton, who said that: “General theories are everywhere condemned; the doctrine of the Rights of Man is dismissed with the doctrine of the Fall of Man.”

When will those responsible for guiding the destiny of nations and, especially, of the wealthiest nations, understand that everything has a cost that is paid by another citizen also living in this globalized world, and that consequences are also global? As we are used to the globalization of losses but never of profits, we will certainly be affected by this financial bubble. This crisis management will mainly lie in the hands of national leaders, both inside and outside the notariat.

The promotion of the work of the Latin-type Notariat, through the UINL, began to be expressly acknowledged among those who train jurists and economists under the “Common Law”.

Again, let's quote Jean Baptiste Lacordaire (1802/1861): “BETWEEN THE STRONG AND THE WEAK, IT IS FREEDOM THAT OPPRESSES AND LAW THAT LIBERATES”.

Not only did the French Revolution take place in the XVIII century, but also the United States Revolution of 1776, which sustained the same principles. We should remember that Adam Smith not only wrote about economy in “Wealth of Nations”, but is also the author of “Theory of Moral Sentiments”, in which he refers to virtues such as prudence, justice, benevolence and solidarity that, ultimately, means to guard and protect the “human person”.

Paradoxically, today in the United States, with its Anglo-Saxon legal system or Common Law, “preventive justice” is practically not applied, and there is no full notarial involvement in the execution of contracts. When a conflict arises, it is resolved at a later stage with the involvement of lawyers. Furthermore, in these cases, the economically strongest party to a contract, who hires the best law firms, has more chances of securing the best defense at trial and, therefore, of being the winning party. Many are excluded because of this system. Nowadays, the United States do not stand out as a leader in the defense of human rights. When analyzing how a legal system works within a certain context, it is not enough to limit such analysis to the interpretation of its objective law, as established by the principles of the applicable law. We must extend such analysis to the application of such “concrete law” to the citizen, the “precipitate of the abstract rule into the concrete legal right of the person” (Von Ihering).

What is then the role of the notary?

We are the guardians of public faith, we guarantee legal certainty. Citizens expect us to protect the dignity and value of each human being. There are then several aspects to consider. However, if we are convinced that our Latin-type notarial system guarantees a fair application of laws, then, in our daily work, we must stress the importance of “advising”

both parties, with equality and impartiality, and pay special attention to “preestablished clauses” and “adhesion” contracts. Atilio Alterini sustains that “all modern tendencies in terms of contracts are only valuable if they fully respect the human person” and quotes the current Civil Code of Brazil, which in its section 421 provides: “The freedom of contract shall exist depending on, and within the limits, of the social role of the contract.”

Beware: many new contractual techniques are being introduced in violation of rights, attempts are made to modify legal concepts and real estate registration systems, in order to adjust them to the business practices of companies or corporations and adapt them to the legislation of their countries of origin. Many times, these amendments are supported by our own rulers. We have seen with perplexity our own national governments, with an alleged Roman education, facilitate such interference, by approving economic policies that were specifically conceived only to achieve “quick profits for investors”. These investors, who believe that “time is money”, do not want to waste time in establishing a legal business that will have to be thoroughly and objectively examined to discover all interests at stake and make it much clearer to understand. Who benefits from this? Safety in a negotiation should not be confused and adjusted for the convenience of investors’ safety. Safety means certainty in the interrelation and integrity of all parties’ rights and obligations.

The notarial activity is not inconsistent with market economy, as stated by the advocates of the Anglo-Saxon system; quite the opposite. In market economy, a notary is required as guarantor of legal certainty and regulator of different interests at stake. This mission is acknowledged in several European countries that are constantly trusting notaries with new activities, as in the case of Germany, where a notary is considered as the “engine of the economic development”.

We ratify the statements made in previous works: The World Bank has considered that the notarial involvement constitutes a BOTTLENECK, an obstacle to investments. It further added that notaries are an unnecessary burden. They seem to be right: Yes, we are a BOTTLENECK, an obstacle to unscrupulous investments.

* The way investments are implemented and made in each country constitutes for multinational companies “a unchangeable dogma”. It is in this scenario that “global investors”, consisting of investors of countries whose legal system is based on the Common Law, intend to introduce their business, financial and even real estate methods into the country of destination. Everything that becomes an obstacle in their economically

calculated schedule, or is different from their hegemonic thoughts, “must be updated”, “must be changed”. It is a bottleneck.

* The notary has an essential role between the global advance of mercantilism over human rights and equity in legal relationships. A brief review of the history of contracts, the notariat and the rights of man, as well as of the constant threat that hangs over both of them, allows us to remember our fundamental principles, which encourage us to carry out our profession in compliance with higher values, for the common good. It is not only what we do for a living.

It seems that the advantages of our legal system go beyond the borders of our “civil law world” and begin to be expressly acknowledged among those who train jurists and economists under the “Common Law”.

I believe that this express acknowledgement of our Latin Notariat, on the 60th anniversary of its creation, by Professor Robert Shiller, an economist graduated from such an important US university, is an important event and should make the Latin Notariat proud, and especially those of us who have always sustained that the “social function of the notary” is our distinguishing characteristic.

* The author is Secretary of the UINL Human Rights Commission.

The RIN expresses its gratitude for the contribution of Notary A. Crespo.

5. SPEECHES

5.1 LECTURE BY MR. ALDO PIGNANELLI¹ AT THE ACADEMIC COLLOQUIUM HELD BY THE PUBLIC NOTARY ASSOCIATION OF THE CITY OF BUENOS AIRES, ARGENTINA, ON APRIL 13-14-2009*

In January 2007 I delivered a lecture in the city of Toluca, invited by the president of the Notary Association of Mexico. It was a very good experience. In Mexico, the notariat has an unbelievable social, political and economic importance. Several governors of federal

states of Mexico are notaries. The function is so important that they even act as mediators in family conflicts.

And, of course, in Mexico the Latin system works, and very well, in opposition to the Anglo-Saxon system. However, as you know, there is great pressure –at least there was before this crisis- to change the Latin system, not only in Argentina but in all Latin America, part of Canada and Europe, and adopt the Anglo-Saxon system.

I found very interesting the proposal made to me by the president of the Buenos Aires Notary Association to analyze both systems after the global crisis: What is going on with legal certainty and what happened to high risk mortgage and note securitization not only in the United States but also worldwide. This international crisis has two or three elements worth mentioning. We will analyze what happened.

First of all, great leverage existed. Leverage is when somebody has an asset and this asset is repeatedly offered as a guaranty. In the Argentine bank system, under the Central Bank regulations, a person is not allowed to leverage on their own property as collateral for loans more than 7 times. For example, if a bank has an equity of 10 million pesos, it may borrow or grant loans up to a maximum of 70 million pesos.

In the United States we noticed that, when the crisis blew up, banks –not so much commercial banks that are regulated by the Federal Reserve system, but investment banks- leveraged their equity up to 70 times. In Europe it was worse. There is no difference in Europe between investment and commercial banks, which managed to leverage their equity up to 90 times. Therefore, people often ask me: “How come, if the crisis originated in the United States, today people save in dollars rather than in Euros?” Well, it is very simple: Europe is doing worse than the United States, because the global crisis originated in high risk mortgages in the United States but, through securitization and derivatives, it not only affected the US market but also European and Asian markets. Therefore, today the crisis is global.

However, this crisis originated in a country that has an Anglo-Saxon rather than Latin deed registry system. Then, we may wonder about the relationship between the crisis and these systems. Actually, what we are dealing with is a crisis of high risk mortgages, mainly

residential mortgages. In the United States, the crisis was related to the families that made mortgage payments and, at some point, fell behind on such payments. This happened through a process of mortgage securitization known as “derivatives”: notes and mortgages are “derived” to different markets.

This facilitates fraud and lies. Why? Because there is no record or system. Since, in the Anglo-Saxon system, certifications may be issued by any attorney and there is no concentration as in the Latin system, the *light* provisions of the US government caused the existence of a “Madoff”. Madoff is responsible for a system that blew up under the Anglo-Saxon and not the Latin model. Madoff committed fraud and lied because there was no control of the number of documents and the times the same promissory note or instrument was *securitized*.

We have had our quota of Madoff’s, but they were not so important, not so large, and the State was able to stop them at once. We experienced fraud, during the Tequila crisis, which was never perpetrated against Banco Ciudad and Banco Nación, through a bank that has already been shut down, Medefin. This institution tried to separate mortgages from mortgage notes and, in order to obtain money, to transfer mortgages to Banco Nación and mortgaged notes to Banco Ciudad.

This was uncovered by a notary. When we were consulted on this issue, the notary said “No, but this has already been assigned: it has been notified and assigned, they are disposing of it”. In the Anglo-Saxon system, there is no notice or certification of the assignment of loans. Otherwise, this would not have occurred.

Actually, this crisis that erupted in the middle of last year began in the 80’s, with the boom of the purchase of houses and the rise in prices. Why? Because loans could be easily transferred to third parties, thus allowing the original mortgagee to rapidly recover the money and lend it again. This is what I was saying before about leverage.

In light of the construction boom and the consequent rise of the US economy, in the 90’s provisions were drastically modified by the government of the United States. In half of the federal states of such country, there were usury laws limiting interest rates, with a control system over transactions such as mortgage loans. However, as a result of market pressure

and the construction boom, the so-called “item q” of the Federal Reserve, whereby the Federal Reserve controlled such type of transactions, was eliminated. The anti-usury law was repealed, limits to interest rates were eliminated and, by doing so, a death trap was created, that is, a variable or floating rate of exchange, which did not previously exist in the United States.

By eliminating this regulation, certain non-banking sectors granting mortgages began to request credit insurance from debtors. Debtors, in turn, would purchase insurance against an interest rate increasing above a certain level; insurance companies would cover any interest rate differential. That is why AIG went down; an insurance company that the United States government had to rescue. Why did it have to be rescued? Because 80 percent of mortgagors in the United States was insured by AIG, because 90 percent of US vehicles was insured by AIG, and because 60 percent of life insurance of US people was insured by AIG. However, AIG’s crisis originated in high risk mortgages.

Monetary authorities in the United States began to amend regulations, allowing the assignment of mortgages without any control, including those ending up in Europe, Asia and even Latin America. That is when big and little “Madoff’s” appeared, committing fraud and telling lies, taking advantage of the Anglo-Saxon system where there was no control of mortgages and mortgage notes and *light* measures were adopted by the Federal Reserve.

I remember how Alan Greenspan, the famous and formerly untouchable president of the Federal Reserve, personally criticized me, in Basle or Washington in 2002, for what we had done in Argentina. Today, everybody blames him. I do not know if he was so good until 2004 or so bad after 2004; history will judge. However, what I do remember is that he was once asked why the market was not regulated; they saw the crisis coming.

No economist, no financial expert forecasted the magnitude of this crisis. Someone warned about indebtedness, leverage and derivatives, but nobody anticipated their magnitude. Why? Because they had not, and still do not have, the accurate information that we did have in Argentina. Because the Latin system was humbly doing its job, and the Anglo-Saxon system was not.

Markets failed to self-regulate: they neither “self” nor “regulated”, directly blew up. However, I was indeed judged in 2002. I was severely criticized for our country’s default on public debt, pesification and the rescue of banks. Criticism was very strong in the United States. We were criticized by Anglo-Saxons, who told us “All of this happened because you are Latin Americans.”

A paradox of fate is that today we are being consulted by Anglo-Saxons about our experience in 2002 to overcome a crisis without the fiscal cost they are paying today. I believe it happened because we had a control system and notification worked. Sometimes you need simple solutions to big problems.

Derivatives were created, thus beginning a new financial business established by non-banking sectors. Business was done with cash flow instead of mortgage security. Derivates were based on a large number of mortgages, without selling mortgage security but mortgage payments. Not only mortgages were affected, but also road tolls, credit cards, automobile pledges; in other words, it began to operate on a wide scale. Why? Because in the United States, as stated before, regulations were amended, the limit to interest rates was eliminated, there was an excess of liquidity in the system and a very low interest rate for a long time. This created a bubble, which was the mortgage bubble.

Let me give you an example of such magnitude: Madoff committed a fraud of 50 billion dollars, which accounts for one half of the Argentine foreign debt. In other words, a single person defrauded an equivalent to half the debt. Argentina was in default in 2002, but proposed a payment plan. Madoff is in jail and the money is gone. I believe they found 100 million dollars in a tax haven, but 50 billion dollars have disappeared and nobody was paid, and that is a very complicated issue.

But what happens with the magnitude of the crisis? Nobody knows exactly its volume. The Monetary Fund estimated that defaulted loans nearly duplicate the world GDP, two years of work for the world to repay this deep crisis. Some people talk of 50 billion dollars; for North American people, trillions. To have an idea: the world GDP amounts to 50 billion dollars, of which 14 billion correspond to the United States, 25 percent; the other 25 percent corresponds to the whole Europe; and the remaining 50 percent, to the rest of the world, including China, Russia and Brazil. This means that it is two or three times the

world GDP. Our crisis of 2002 (a default of 100 billion dollars) was one third of the GDP, in comparison to two or three times that of the United States and Europe.

The biggest problems began with the variable rate of exchange. Half the states of the United States were unable to forecast the financial fraud, simply because there were no historical antecedents, so much so that, in one of the states where Madoff committed more fraudulent acts, there is no anti-fraud law. No wonder he chose that place.

I stated that problems began with high risk mortgages and variable interest rates. This caused a market reaction against risk. What does it mean? Well, from then on, the market turned around, withdrew and no longer granted loans. Today, the international crisis is mainly due to the disappearance of credit: there is no credit in the international trade, after being the boom of the world economy during the last 10 years. It reduced by more than 30 percent. In Argentina, exports fell by 35 percent, while imports fell further; in China, for example, exports went down by more than 20 percent; and in Japan, by 47 percent. That is why the Japan economy collapsed by 11 percent: such effect was not seen since the Second World War. Why is this happening? Because there is an aversion to risk, the market has turned around, it refuses to grant loans and begins to be more demanding. And where is that money going? It takes shelter in US Treasury bonds. Why? Paradoxically, the economy that originated the crisis is doing better than that of Europe or Japan. It is not doing good, but better than other economies. Since the Second World War, the United States is the economy that conveys more certainty, at least to these credit and financing sectors.

The boom of mortgage securitization lowered down requirements for loans. There was such a need to place funds that requirements from debtors were drastically reduced for all the above reasons: in the United States, laws were amended to soften regulations. This caused a boom of fraud and lies. In other words, light laws, states eliminating controls and the government's failure to control facilitated the existence of many "Madoff's". Because there are indeed many "Madoff's". Finally, the elimination of these elements and the lack of an adequate registration and control system facilitate fraud and lies.

Somehow, the reaction of the monetary authorities, not only of the United States Federal Reserve but also of the European Central Bank or the Bank of England, shows the

consequences of a wrong and late reaction. In a financial crisis, you have to react and take actions the day before; the day after is too late. Therefore, from now on, regulatory authorities should modify prudential regulations. They should analyze the notary system: whether the Latin system is better than the Anglo-Saxon to avoid new crises.

There is an increased aversion to risk, but most difficulties relate to the instruments used without control. In addition, leverage was used in a manner that goes beyond any reasonable business transaction. The worse is that we do not know how many times these transactions were assigned, or to where, since it was made internationally. There was no control, and the financing market ended up being wounded to death.

This is, somehow, a summary of the reasons why the global crisis occurred and the Madoff's appeared. I believe that we, who support the Latin deed registry system, with much authority, have to promote legal, regulatory and registration measures to change this situation worldwide.

There is a subject matter to which I always refer in my lectures at universities. I was once invited to participate in a seminar on culture at Harvard University. There is a book by Lawrence Harrison, *Culture Matters*, which discusses the reasons why Anglo-Saxon countries are better than Latin countries. He refers to a moral issue and a culture of progress against a culture of regress; he even deals with the religious problem: Protestant countries are more developed than countries that sustain Catholic, Apostolic and Roman religion.

The most important thing is that Anglo-Saxons would sustain that all systems, including the deed registry system, are better than the Latin system, due to cultural and mentality reasons. They could be more progressive, more Anglo-Saxon, but we Latin Americans have more culture, more religiousness and more respect for human beings. Consequently, this issue of the Anglo-Saxon system and the Latin System is not only your problem, as notaries, but also a social problem concerning the type of world we are dealing with because, as we are functioning now, and as well said by the Brazilian president Lula at the G-20 meeting, it is not fair for Anglo-Saxons to make Latin Americans suffer.

Thank you very much and I am at your disposal.

* The Academic Colloquium was held to commemorate the 143 Anniversary of such Public Notary Association. The following topics were discussed: “Global Crisis. Legal Certainty. Notarial Act. Title Insurance.”

ALDO RUBÉN PIGNANELLI

Aldo R. Pignanelli was President of the Central Bank of the Republic of Argentina in 2002. Previously, he served as Vice President and Director of such bank since 1997, in which positions he actively participated in the Administrative, Operations and Control and Resources Management Commissions.

He held the position of Director of Banco de la Provincia de Buenos Aires (1987-1989), Advisor-Undersecretary of the Undersecretariat of Municipal Affairs of the Province of Buenos Aires (1989-1991), and Financial Advisor to the Board of Directors of Banco de la Provincia de Formosa (1992-1997). In 1996, he served as Financial Advisor to the Interamerican Development Bank. He further acted as Secretary of Economy of the Municipality of Moreno between 1986 and 1987.

Before working in the public sector, Mr. Pignanelli accumulated wide experience in the private sector, as Financial and Economic Advisor and holding other relevant positions (General Manager, Chief Financial Officer) in leading companies of diverse sectors, such as food, pharmaceutical, industrial hardware or automobile import and distribution.

Aldo R. Pignanelli graduated from the School of Economic Sciences of Universidad de Buenos Aires in 1974. He took several specialization courses in Financial Management, Costs, Planning and Control, and Public Finance.

He delivered several lectures and taught courses on Economy and Finance at Ben Gurion University in Israel, Bank of England, Universidad Di Tella, Universidad Nacional de Rosario, Banco de Cordoba, Universidad Nacional de Entre Rios, Universidad Nacional de La Plata-Master in Banking Administration, Stock Exchanges of Santa Fe and Buenos Aires, among others. In addition, he was an invited lecturer at the XXVIII National Congress of Mexican Notaries.

At present, he provides economic and financial advice to companies related to the industrial, banking, insurance, health, construction and public service sectors.

6. HISTORICAL ISSUES.

6.1. “THE NOTARY, A VECTOR OF MEMORY!” by ALAIN MOREAU.

**Culture is people's soul,
archives are their memory!**
A.M.

July 3, 1194 – It is the reign of Philip II, King of France, better known as Philip Augustus!

In permanent conflict with his subject Plantagenêt, King of England, as those who preceded and succeeded at the head of State, he was the object of a constant struggle against the hereditary enemy, as it has repeatedly occurred throughout the history of France. He recovered the regions of Berry, Auvergne and several fortresses.

In this constant confrontation, the forms of which varied with time, not all combats were equally important. There was a combat against Richard the Lion Heart, in Fréteval, current town of the district of Vendôme (Loir et Cher). The outcome was not favorable to the French army, who was able to take revenge in Bouvines (1214), with extremely serious consequences for the State's administration that caused the disappearance during the conflict not only of a part of the royal treasure but also, and especially, of the official seal and all royal archives, which were usually transported to where the king was. This proved to be a good lesson since, back then, Philip Augustus decided that “from now on, government resources will be left at the Louvre.” (1)

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The recollection of this fatidic event naturally leads to two questions:

- Archives, Why?
- What are archives?

The answer to the first question just lies in the above maxim of this paper. Archives are the memory of people, of all peoples. They faithfully keep, provided at least a minimum attention is given to their preservation, not only everything related to the set of components, both large and small, of every nation, but also what refers to international relationships, either good or bad. Simply referring to the archives of our *quai d'Orsay* (Ministry of Foreign Affairs of France), as well as those of overseas territories, perfectly illustrates the veracity of this statement.

In the course of history, everyone –from Stalin to Hitler- who tried to forge or modify this essential element of the collective personality fortunately failed in an overwhelming manner. As regards those, like Pol Pot, who tried to annihilate it, failure was even greater, with a mixture of horrible and ridiculous elements.

However, let's agree that, without diminishing the quality of all other archives, the most consistent part of the archives is formed by written documents. This makes it at least more difficult to have access to archives of cultures with no written instruments or whose works are undecipherable or have nearly disappeared. In addition, this highlights the importance of oral tradition and, consequently, of the corresponding compilation, which is illustrated by the maxim: "When an old person dies, a library burns down!"

The answer to the second question is easy. In effect, just read again the definition, needless to say excellent, of section L 211-1 of the Code of Patrimony: "An archive is a set of documents, bearing any date, having any form and stored in any means, that is produced or received by any legal person or individual and by any public or private organization or entity in the course of its activity."

Consequently, archives are the storage of memory, collective memory, and the sum of individual recollections.

They further constitute, as well as notarial acts –public documents- in particular, the footprints of those who have been forgotten in history, the people who, over time, have built the structure of each nation!

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It is advisable that we try to briefly remember what happened after the battle of Fréteval, as well as the previous events and the changes suffered through the centuries by the archival institution. It is necessary to outline such antecedents to be able to discuss this subject matter and, in addition, because it cannot be ignored by notaries.

Therefore, the notion of archive is as old as civilization. There is ample evidence of it, since the ancient times to the present. In Iraq, for example, until the recent events, there were many storehouses with boards, classified and filed in the old Mesopotamia, while many others remain undiscovered. Egypt cannot be mentioned without one thinking about papyrus. Athens had State archives. Also in Rome, the tabularium was the place, since 78 BC, where government-related documents were gathered.

There are less written footprints in the High Middle Ages of the Western Civilization, except as regards ecclesiastical matters. This is due to several reasons, such as, for example, the importance given to testimony and gestures, the lack of education with the consequent forbidden access to written documents, wars and invasions, forged deeds that were hard to detect, etc. On the contrary, in Byzantium, Justinian (527-565) ordered that archives be kept and protected both in the capital city and in the provinces.

We cannot deny that, back then, the quite rustic system to take an oath, which is still in effect in the Anglo-Saxon system, even when it is more and more questioned, modified or replaced for being considered inadequate for the growing complexity of our society and modernity, was the standard procedure, though detrimental to the expansion of the archive. It was the appropriate procedure according to the social context. In year 1258, Saint Louis had chosen the supremacy of testimony that, at that time, was considered a sign of progress from, for example, the ordeal by trial. Only after the Ordinance of Moulins (1566), pursuant to section 54 that later became section 1341 of the Civil Code, was the system inverted to determine that “written documents prevail over testimonies”, in response to the desire of many eminent jurists. Wasn’t Loisel who said that “the more evidence you produce, the more you prove your case”!

Since 1539, another document had an impact on the development, both in quantity and quality, of archives: the Ordinance of Villers Cotterets.

Its famous section 111 provided that legal documents – including public instruments- had to be written in French. Some of its provisions had a remarkable impact on the future of archives: the improvement of the contents of minutes (including the prohibition to use the famous “etc.” by notaries), preliminary minutes, drafts of records of civil state, among others.

However, long before the sanction of these Ordnnances, a large number of notarial archives were kept, sometimes written in the vernacular language, since “after the XIV Century, notarial archives became extremely important” (1), and other sources were less numerous.

This situation is even more significant for investigation purposes, considering that in other places there were many old archives that had been kept in good condition. A visit to the storehouses of Florence is sufficient example of it.

These two Ordnnances of Moulins and Villers Cotterets are actually a sign of the evolution of the society that caused their existence and where education was improved, especially in the urban areas, simultaneously with the rise of bourgeoisie and the prolegomena of the State’s access to modernity.

A consequence of the above is the growing production of archives, sometimes stored in special storehouses. The Parliament of Paris, since 1313, had taken the initiative with the creation of the OLIM, that is, registers containing its written decisions. In other countries, such as Spain, the centralization of archives began in the XVI century. In France, on the contrary, the responsible persons (ministers, diplomats, etc.) continued to be in possession of the archives, which caused a lack of continuity sometimes regrettable, as in the case of diplomatic negotiations.

Sometimes, the most eminent governmental officials became aware of this and tried to keep an ordered archival method. In this manner, Mazarino bequeathed his archives to Colbert “for the same to be used by the State”. In line with this idea, Louvois established custody of war archives. Since 1669, ministers were forced to leave their documents to the King. As a consequence of this evolution, at the end of the Old Regime there were many governmental archive storehouses, but very dispersed.

And then the Revolution came.

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At this point, it is convenient to recall the influence of ideas of the feudists, jurists experts in feudal law. Their ideas are accepted, not from a feudal law viewpoint but from an archival perspective.

The following concepts are attributed to them:

- nationalization of archives,
- hierarchical arrangement of documentary funds; and
- their selection and protection.

The science of diplomatics was also interested in archives, their preservation and maintenance. Pursuant to such science, and in accordance with Mabillon (in “De Re Diplomatica”), they were “public treasures” and “public archives could only be created by whoever, in the legislative power, had a right similar to a Notary’s right of creation.” (2)

Diplomatics, an accessory science of history, originated as a result of such ideas and the essential role of Mabillon, to study documents, letters, diplomas, public and private instruments, verify their authenticity and eventual forgeries and, together with paleography and sigillography, decipher their contents to facilitate access to such instruments, without leaving aside the archival element.

All this information and principles will lead us to the creation of the National Archives.

oOo

The Declaration of Human Rights was drafted, with the collaboration of several notaries, in July/August of 1789, simultaneously with the creation of the Assembly’s Archives Division, under the responsibility of the renowned Armand Gaston Camus (1740/1804).

A member since 1785 of the Academy of Inscriptions and Fine Arts, known for his literary works at the time when the Consulate became the “Custodian of General Archives”, he had an essential role in the creation of the National Archives. Without mentioning other aspects of his life, it is necessary to say that he was one of the four legislators in mission, together with the Minister of War, Beurnonville, who were handed over to the Austrians by Dumouriez in March 1793; two of the four prisoners were notaries: Quinette and Bancal

des Issarts. We wonder if, perhaps during their captivity, which lasted until November of 1795 (they were released upon their exchange for the future duchess of Angulema, after peace was signed in Basle where the preliminary documents were negotiated by another notary, Goupilleau), they discussed the preservation of documents, considering such notaries' experience. (3)

On September 7, 1790, the Assembly's Archives became by decree the "National Archives". In 1795, the "meter prototype" and the "kilogram prototype" were stored in a vault. On October 26, 1796, the Department Archives were created, with basis in the Department capital.

However, it is not enough to create structures, they have to be operational. To that end, former feudists and religious men, mainly Benedictines, were called. Until 1801, they devoted to a selection and classification task, though with some unfortunate destructions, applying the principles and methods already defined.

In 1807, after some ups and downs, the Hôtel de Soubise was bought to store documentary funds and set the new administration, both of which are currently functioning in this spectacular building, whose aesthetics matches the prestige of the archival institution.

In the meantime, in 1804, Camus' successor, Pierre Claude François Daunou (1761-1840), was appointed. He was a former professor of philosophy and theology, a priest who had sworn the Civil Constitution, a member of the Convention but not a regicide, and one of the promoters of the law creating the Institute of France. He was elected as a member of the Council of Five Hundred and held a position in the Tribunal until 1802. He was in office until 1815, before becoming a liberal deputy at the Restoration, and was later made a Peer of France in 1839, after regaining his post in the Archives in 1830.

During the Directory era, Napoleon, who hardly missed anything, became interested in the Archives, which he visited in 1810. He instructed the design of an "Archives Palace" located at the current Trocadero. The cornerstone was placed in 1812, but the works were never continued... We already know what happened!

Since 1811, at Daunou's initiative, the archives of the Empire were centralized and a "Systematic Chart" was established. In 1815, given that the project of the "Archives Palace" had been discontinued, a huge number of documents taken by the Empire from the Vatican, in Italy, Spain and other places, were restored.

Another event had a significant impact on the future of the archival institution: the creation in 1821, confirmed in 1829, of the French National School of Archivists (École des Chartes). A breeding ground of talent and high erudition, it provided the country with the necessary elite to best handle its archives. Among the courses taught, paleography is very important, since it allows us to read and interpret documents inherited from the past, sometimes from a very distant past.

As time went by, other actions were taken with respect to archives. Without making a complete but annoying enumeration, some actions are worth mentioning, besides the purchase of real estate and the construction of dependent facilities that contributed to the current appearance of the place.

In 1855, the administration was restructured by an imperial decree; in 1867, the museum was created. After the fires intentionally set during the Commune period, which caused the archives of the State Council to burn down in 1871, as well as the City Hall -Hôtel de Ville- (destruction of the Civil Register) and other institutions, a methodical inventory of documentary funds began.

The issue of the communicable nature of documents came up, which was later addressed by a decree of May 14, 1887, as well as the construction, with many complications, of reading rooms and areas for investigators. On February 23, 1897, the "Department Archives were unified in a single Division of the Archives of France, the National Archives." (4)

On March 14, 1928, a law was sanctioned authorizing Paris to have the custody of the National Archives, and the province, of the Department Archives and the records of notarial instruments dating back one hundred and twenty five years, with the prior authorization of the notary office for communication purposes. At that point, a significant step had been taken regarding the destination of such public documents, which was

preceded by much uncertainty. For a long time, they were usually considered the notary's property. Nowadays, experts, including notaries, believe that it is an incorrect determination. Anyway, we should understand the reasoning of each period. The apparent ambiguity of this matter already existed with the Ordinance sanctioned in Amiens by Phillip IV, also known as the Fair, in July 1303. Among the function attributes, it is established (section 12) that the notary's "registers or books of records" should be carefully kept; in case of change of domicile, they could not be transferred without "the authorization of their superiors". On October 10, 1370, in a letter of Charles V (1338-1380), it is indicated that, upon the death of royal notaries, their registers and books of records are to be handed over to the king, who will receive the profits of copies already issued, except for the portion to be distributed to heirs.

Section 173 of the Ordinance of Villers Cotterets requires notaries to faithfully keep registers and books of records for contracts and "diligently store them."

The famous section first of Law 25 of *Ventoso* year XI (March 16, 1803), which is the best definition known to this date of the notarial activity, provides that notaries must keep custody of their records. Section 22 provides that "notaries are not allowed to dispose of any record". Title III of the Law of September 29-October 6, 1791, regulated the custody and maintenance, though with some inconsistency that was probably simulated to hide the unspoken but real solution to the transfer issue! Just analyze the contents of the different sections to be convinced.

A sentence passed on February 5, 1869, by the Seine Tribunal orders the return to a Parisian notary of some records of historical value that were to be sold at a public auction and had "disappeared" from such notarial office during the Reign of Terror. (5)

Based on the analysis of the different actions taken throughout the centuries, it is clear that the notary was never considered by the public authority as the sole owner of the records. However, we are facing a "non spoken" situation with a disproportionate yet evolutionary approach that, consequently, requires an explanation. And we all know that things that go without saying are better said!

This will be, among others, one of the merits of the Law of January 3, 1979, known as the “Favier Law”. Its section 3 explicitly mentions records and registers of public archives. Freedom of consultation is dated back one hundred years (section 7). The same term is established for the transfer of archives to storehouses by the regulatory decree of December 3, 1979 (section 17). (6)

This rule finally put an end to a problem that had lasted centuries and turned the spoken words or indirectly or clumsily made statements into clear affirmations.

The decree law of June 17, 1938, addressed the issue of the destination of private archives, before the definition, destination and method of an eventual classification were contemplated by Title III of the “Favier Law”.

Meanwhile, other actions were taken. The first action, taken in 1958, refers to the transfer of the national archives (previously subject to the Ministry of Interior and later to the Ministry of Public Education) to the Ministry of Cultural Affairs, of which Malraux was in charge.

In 1979, the contribution of archives from overseas territories of France continued (they were later transferred in 1986 to the city of Aix). In 1988, Jean Favier, the General Director since 1975, presided the opening of the CARAN (Center for the Reception and Investigation of National Archives), which was created in response to the growing demand for public access. In 1993, the Center of Archives for the Workplace was created in Roubaix, while the Fontainebleau Center had already been established.

It should be highlighted that, in the province, the desire to modernize custody places, promoted by Jean Favier and continued by the current administration, led to the construction of several department archival centers, with a functional and at the same time aesthetic architectural design that is the pride of many Prefectures and the satisfaction of the increasing number of users.

These efforts were continued by successive directors, mainly the person currently in charge: Martine de Boisdeffre, State Advisor.

At present, the institution is structured as follows:

The DIRECTORATE OF ARCHIVES OF FRANCE has three goals:

- cultural management;
- scientific-technical control of the different areas;
- State function of an inter-ministerial nature.

To achieve such goals, it consists of several divisions and areas, such as:

- the supervisory board of archives;
- the division of national commemorations;
- the national heraldry commission;
- the divisions of:
 - o institutional and professional network;
 - o archival policy and inter-ministerial coordination;
 - o technological innovation and legal compliance;
 - o public
- the office of general and documentary matters.

On the other hand, there is a SUPERIOR COUNCIL OF ARCHIVES, created in 1988 to analyze the policy implemented on public and private archives, as well as their classification.

It consists of institutional members (Vice President of the State Council, Director of the Archives of France,...), general inspectors and chiefs of areas, as well as qualified persons appointed by Resolution of the Minister of Culture.

Several commissions were created within this Council to be each in charge of a specific area:

- selection of final archives;
- oral archives;
- scientific-technical archives;
- scientific policy of archives; and

- notarial archives.

The National Archives, historical assets and guardian of a central archive of Parisian notaries' deeds, are based in Paris, in the care of a director.

In each division, there is an "Archives Division Administration", in the care of an archivist graduated from the School of Archivists (École des chartes), who in turn reports to the Directorate of Archives of France and, regarding some matters, to the General Councils, as a result of the decentralization rules. In addition to the buildings where the divisions are located, as a consequence of the above construction/refurbishment policy, sometimes there are "dependent facilities", such as in Charente Maritime (Jonzac) or the region of Marne (Reims).

Both in the Provinces and in Paris, the different archival institutions, which are active and talented organizations, continuously organize entertaining cultural events.

Mention should be made of the existence of associations of "friends of the archives", which purpose is to give value to the archival institution in some departments (such as Haute Garonne or Charente Maritime) and in Paris (Friends' Company – actually association- of the Archives of France). They are similar to the International Council of Archives, which brings together the responsible heads of all countries and is one of the few NGO's with a privileged relationship with the UNESCO, given the goals pursued.

Finally, there are plans to build in Pierrefitte (next to Saint Denis, in the outskirts of Paris, with easy access by subway) a city of Archives to relieve the storehouses of the central headquarters of too much inventory and facilitate access to documents. The project is moving forward, apparently in an irreversible manner.

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This opening to the public, which was eagerly sought, inevitably leads to point out the remarkable talent and diversity of the men and women who are in charge of our memory.

In a non-restrictive manner, the following random examples are given:

- the only portrait of Joan of Arc of that time, drawn on the margin of a record;
- numerous legislative and regulatory documents, letters, State decisions;
- all types of minutes, from the High Middle Ages, of institutions and famous characters: marriage contracts, such as that of La Fayette and Bonaparte, wills, such as those of Suger, Napoleon and Victor Hugo, estimations and contracts, which were analyzed to explain their origin;
- other elements: medals and chips depicting the history of metals, blueprints and designs, such as those of Paris, Versailles and the Marly machine, portraits, engravings, prints, oil paintings, posters, photographs, journals and newspapers, etc.
- several diplomatic contracts and documents (held by the archives division in quai d'Orsay and its dependent facilities in Nantes);
- administrative documents corresponding to structures and individuals, including quite or very old instruments;

In addition:

- certificates of the civil register and related parochial records;
- private and corporate archives;
- judicial archives and notarial records;
- numerous historical objects and, filed in the famous “iron cabinet”, the Constitutions of France.

The sole purpose of this quite incomplete list is to stress the wealth of this property, which is kept not only in Paris but in all departments, and to encourage readers to frequently visit these places.

oOo

Before ending this work, we must point out the close relationship between archivists and notaries.

With the same or higher level of importance given to notarial records, which are a part of the documents stored, this proximity that, unfortunately, is quite often unconscious, at least by notaries, is one of the essential elements of the notarial activity.

This is because a notary writes, advises and suggests, without the power that allows a judge in a litigious matter to impose his will –on the contrary, he must be very careful not to impose his own will but that of the parties involved and help them, if necessary, to clarify such will– the notary, in his capacity as a magister in issues agreed by consensus, will always be associated with the creation of memory.

This is because, after transcribing and gathering multiple acts and contracts, he is in charge of their custody, before transferring them, at the appropriate time, to the archivists, the only persons qualified to continue, without time restrictions, with their preservation and to care for their maintenance and communication, thus becoming a mandatory partner –THE ONLY PARTNER IN THE CONTRACTUAL CONTEXT- as regards archives of or depending upon the State.

In this manner, a notary differentiates from a writer of private instruments, whose procedures can change and whose “production” gets usually lost with no recourse for decades or even months or years after being drafted, causing serious damages to the signatories.

In this as in any other context, his activity is so important that he is required not to fail! Fortunately, save for rare and regrettable exceptions, he does not fail!

Therefore, a notary participates in the continuous creation, pursuant to the Archives, and preservation of the collective memory of which he is, consequently, an essential vector.

Notes:

(1) Jean Favier.

(2) Dom de Vaines. Dictionnaire raisonné de diplomatique, 1774, Section on “Archives”.

(3) For more information, see “Les métamorphoses du scribe – histoire du notariat français,” by Alain Moreau, Chapter 4.

(4) Jean Favier.

(5) See “Les métamorphoses”. Work already mentioned. Chapter 4.

(6) A draft of bill currently being debated provides the reduction of such terms.

Bibliography:

Jean FAVIER, Les Archives « Que sais je » PUF.

Lucie FAVIER, La mémoire de l'Etat – Histoire des Archives Nationales – Fayard.

The author is a member of the Superior Council of the Archives of France.

The RIN expresses its gratitude for the contribution of Notary A. Moreau.

7. PUBLICATIONS

7.1 “DIVORCE BEFORE A NOTARY AND THE EVOLUTION OF INSTITUTIONS”

Guillermo CAM CARRANZA, Juan Bélfor ZÁRATE DEL PINO and Leonardo PÉREZ GALLARDO, Arco Legal Editores – Gaceta Notarial – Lima 2008, page 96. Summary: Notary José Antonio Márquez González.

Notary colleagues Guillermo Cam Carranza, Juan Bélfor Zárate del Pino and Leonardo B. Pérez Gallardo have united their talents and minds to write a new book entitled “*El divorcio notarial y la evolución de las instituciones*” [Divorce Before a Notary and the Evolution of Institutions], published by Arco Legal Editores and Gaceta Notarial, in Lima, 2008.

The book is the result of three different essays. The first essay, written by notary Guillermo Cam Carranza, *Consensual Separation and Subsequent Divorce through Notarial and Municipal Procedures*, reviews non-contentious proceedings for consensual separation and subsequent divorce under Peruvian law, by means of an explanatory analysis of what the author calls “formal obstacles in this matter”. Guillermo Cam sharply makes comments and suggestions to improve the reform text, which constitutes the core of his proposal. The proposed modified text is attached.

Juan Bélfor Zárate del Pino addresses the same subject matter in his essay *Consensual Separation and Subsequent Divorce in Municipalities and Notaries. An Alternative*. Zárate del Pino considers ecclesiastical objections, some attorneys’ comments and the scope of application of the rule, as well as consensual separation, requirements, proceedings and

municipal jurisdiction. He concludes that the notariat is undoubtedly entrusted with a serious responsibility, but is confident about the academic education and professional training of notaries.

Finally, Leonardo B. Pérez Gallardo analyzes what he refers to as *myths and taboos* of a divorce granted by a notary upon the mutual consent of the spouses. He describes the history of the institution in Cuba, reviews the relevant legal framework and analyzes different cases under the regime of the divorce deed, such as deferred exercise of parental rights and duties, transfer of real property in common ownership, partition of marital property, intervention of the justice department and effects of the divorce deed. He finally refers to the alleged risk of a divorce before a notary providing a very extensive bibliography of doctrine and legal texts.

The book has four attachments addressing, in order, the divorce under the Peruvian Civil Code, by Alfonso Rebaza González; express divorces, by Luis María López del Carril; divorce based upon the mutual consent of the spouses, by Henri Pallud and, finally, the legal regime of divorce and the project of divorce through municipal and notarial proceedings, by Alex Plácido Velaochaga.

What can we say about the book design? It is magnificent and very elegant. It has flaps in both front and back covers, with useful information about the authors and other collection titles. The cover is designed in blue and dark red, with a picture of an impressionist painting by Edgar Degas, *The Absinthe* (1876), currently in the Orsay Museum in Paris.

The book was edited by Miguel Angel Arévalo and Nelly Fernández del Castillo, which explains the absence of errata, the careful transcription and excellent format.

The RIN expresses its gratitude for the contribution of Notary José Antonio Márquez González.