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Les Notaires de France

The Italian notariat, as it developed under the influence of the teachings of the University of Bologna, was well received in France during the 11th century.

But the Italian system was soon modified to meet the specific requirements of French society. French kings did not accept the popes' or emperors' claims to have exclusive rights to commission *notarii*, either directly or through their delegates. They claimed to have a natural right to appoint their own *notaires*. As early as the middle of the 12th century, French kings independently commissioned *notaires royaux* (Notaries Public) and *notaires du roi* (Notaries serving in the king's chancery).

During these early times, the power of French kings, however, was restricted to their own domains. The possessions of the French monarchy were surprisingly small in the late 13th century. The Paris Crown controlled less than one-third of the total territory of France.

The *seigneurs*—feudal magnates of medieval France—ruled supreme in their fiefdoms and derived substantial revenue from their administration of law. They sold judgments, tax collector appointments, and

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notarial commissions. The feudal overlords for their realms created their own territorial Notaries (*notaires seigneuriaux*).

During the reign of Louis IX (+1270), a specific French Notariat was established. The King decided to separate the contentious from the non-contentious jurisdiction. Louis IX wanted to free his judges from such routine legal work that, he believed, could be handled outside his courts. In the framework of this judicial



reform, Louis IX commissioned *notaires* for the large court district of Paris. He bestowed these new Notaries with public faith. His Notaries were called *Notaires au Chatelet de Paris*. They worked out of the Paris courthouse, but independent of the *prevot*, the Chief Justice of the *Chatelet de Paris*, the Royal Supreme Court.

Competition from Judges and Scriveners

The new *notaires*, however, still needed the *prevot's* seal, known as the king's seal, to give their instruments legal effect. Notarial documents bearing the royal seal were effective throughout France. For the use of the King's seal, the Paris Notaries had to pay 50 per cent of their fees to the royal purse. The *Notaires au Chatelet de Paris* faced stiff competition from court scriveners and scribes, who shared fees with their judges rather than with the king.

In 1302 King Philip the Fair decided to protect his *notaires royaux* who paid him so well. Philip forbade court scriveners to engage in *quasi*-notarial practices. The *seigneurs* reacted and banned all except their own *notaires seigneuriaux* from drafting legal papers for non-judicial purposes. Territorial *notaires* were soon exclusively in charge of all non-contentious matters in non-royal domains, to wit in Burgundy, Brittany, Anjou, Bourbon, Artois, and Gascony. Their deeds were sealed by territorial (*seigneurial*) courts.

About this time France developed a document that became characteristic for French notarial practice: the instrument with executory power called *execution patee*.

Although French Notaries were not para-judges, they could, through notarial documentation, arrange automatic judicial enforcement of their instruments. A debtor in a notarial contract had irrevocably to agree to uncontested foreclosure, should he not meet his obligations.

No trial was necessary. Should the debtor default, the mortgagee submitted the notarial mortgage instrument, together with his *affidavit* of default, for enforcement to the court that initially had sealed the notarial mortgage. The court then rubber-stamped the foreclosure order without hearing further evidence. Equity was unknown in early French courts. But even this procedure was considered tedious, because notarial instruments executed in Paris had to be returned to the Court of Paris for enforcement.

All Fees to the King

As soon as central royal authority was strengthened in the mid-14th century, territorial Notaries, to the annoyance of the *seigneurs* who no longer could collect “their” share of notarial fees, became authorized to use the royal privy seal to authenticate their instruments nationally. They now split their fees with the king. Nevertheless, the Great Royal Seal remained reserved for the Paris *prevot* who, by now, had become the king’s chancellor.

In 1304, during the reign of Philip the Fair, the first *French Notaries Act* was passed. From now on, only the King could commission Notaries. In theory the *seigneurs* lost their privilege to commission territorial Notaries. In practice, however, the independent territorial princes continued to appoint their own *notaires* until the mid-15th century. Papal and Imperial Notaries also practised in France.

The *French Notaries Act of 1304* restricted commissions to free and literate property owners who had no criminal record. French *notaires* bought commissions from the Crown and, once paid for, the commission became personal

property to sell or, as was custom, to bequeath it to a son.

The Act prescribed that the *notaire* personally had to attend the draft of the basic protocol. A scrivener, the *notaire’s* employee, then re-wrote the protocol and brought it into the final form. The *notaire* checked the final copy and then read it aloud to the involved parties who usually could neither read nor write. Their signatures (crosses) had to be witnessed by two *notaires* and two lay persons. If a second *notaire* was not available to witness the execution, at least three lay persons had to attend to signing and delivery. The officiating *notaire* retained the original instrument. He issued exemplifications (*grosses*) to the parties.

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From 1304 on, *notaires* no longer could roam France. They were assigned specific districts where they could work. They could not legally practise outside their territory. The Act of 1304 also regulated the matter of archives of deceased *notaires*; the successor of a deceased *notaire* had to preserve his predecessor’s original documents.

Philip V, known as Philip the Tall, in 1315 established regional notarial societies (guilds), *Chambres des Notaires*. All Notaries within a certain court jurisdiction had to belong to such guilds, which had admittance prerogatives concerning candidates and disciplinary power over members. From now on, the Crown appointed French Notaries only upon the recommendation of guilds. French Kings Charles VII (+1437) and later Francis I (+1542) further regulated French notarial procedure.

Three Notarial Classes

By the early part of the 16th century, three classes of *notaires* had developed in France.

1. The *notaire locale* was entitled to draft instruments but could neither attend their execution nor issue exemplifications (*grosses*¹).
2. A *notaire tabellion* then checked

the draft and scripted a final copy. He kept the original and issued exemplifications, which were sealed with the royal seal.

3. A senior *notaire regionale* had power to perform all functions of the two junior classes. The *notaire regionale* practised at the seat of a Supreme Court. He employed *notaires locale* and scriveners of the various towns and villages within his court’s jurisdiction.

Francis I amalgamated the three classes. After 1530 a senior Notary, modelled on the *notaire tabellion*, drafted, attended, executed, and certified instruments and acts. Francis also created the *Office des Gardes et Scelleurs*, headed by a civil servant responsible for affixing the royal seal to notarial instruments submitted to him. From that time on, the seal tax was no longer shared with judges, but went straight into the royal coffers. Francis I confirmed the royal ordinance that a *notaire* was restricted to work only within his assigned district.

In 1575 King Henry III established a special bureau to receive original instruments of deceased *notaires*. The *Office des Notaires-Gardes-Notes* was headed by a registrar entitled to excerpt and exemplify instruments in his custody to parties who requested certified true copies of originals.

Individual Seals

In 1761 King Louis XIV finally granted a seal to each French Notary. Individual French Notary seals showed the royal coat of arms indicating authority. Thus the *Office des Gardes et Scelleurs* became redundant.

For more than 400 years, until the French Revolution of 1789, notarial commissions were bought from the Crown. The revolutionary Constituent Assembly changed the *status quo* in 1791. The king’s feudal rights, including the right to commission Notaries, was rescinded.

The Republicans now decreed that *notaires publique* were created by the civilian head of state. No longer could the office of a *notaire* be bought, sold, or inherited. French Notaries were from that time forward commissioned for life. After a *notaire* died or

vacated his office, the national government in Paris re-assigned the vacant seal. The number of *notaires* became fixed for each district. A new Notary could be appointed only when a notarial office was vacated.

The 1791 law proved to be imperfect; a new law, the mother of all modern Notary Acts, was proclaimed on the 25th *Ventose* of year XI² (according to the old calendar, the 16 March 1803).

Tribune Joseph Pierre Jaubert, during discussion of the new *French Notarial Act*, said: “The notarial profession will no doubt have many written rules. But the first and most essential of all qualities of a Notary should be *finesse*.”

Studies for the new *Notaries Act* were already commissioned by Napoleon, first consul, in 1802. His attitude toward women is reflected in the new law. The new *Notaries Act* was reformed giving expression to Napoleon’s belief that women require restraint.

Napoleon took constantly an earnest share in the deliberations of the jurists. The

new *French Notaries Act* was comprised of two chapters containing 69 subdivisions. The first chapter was headed *Des Notaires et des Actes Notaires*, the second was called *Regime du Notariat*. French *notaires* became public servants, officers of the courts.

The Act and subsequent legislation including the Civil Code, the *Code de Procedure*, granted French Notaries exclusive rights to draft all instruments of authentic character and probative force for extra-judicial use³.

French Notaries are liable for damages arising from malpractice, negligence, incompetence, or fraud.

Modern Notaries

Today the French *notaire* practises independent of the courts in all non-contentious matters. He deals with marriage contracts, separation agreements, property inventories of missing or deceased persons, property settlements,

and donations. He drafts last Wills and testaments and attends probate matters and estate administration. He deals with real estate conveyances and tax declarations, issues certificates of life for pensions and superannuations, administers oaths, and takes affirmations.

French Notaries are commissioned for life. Their commission expires only upon resignation, death, or termination by court order. Today each French *departement*⁴ has its own Society of Notaries. Membership is mandatory in the *Chambre des Notaires*, often also referred to as *Chambre de Discipline*. The *departemental* Society through its Board of Directors has disciplinary power to reprimand, fine, or suspend a member found guilty of infractions. Serious cases are referred to the courts.

A French *notaire* is commissioned to practise only in a notarial district that is identical to the court district in which he lives. A *notaire* residing in the city of Paris, the seat of a Supreme Court, has greater geographic jurisdiction than a *notaire* living in a town of Amiens, which is served only

by a County Court. A *notaire* practising in a village, such as Abbeville, served only by a Magistrate's Court, is restricted to practise within the magistrates' jurisdiction.

French Notaries are liable for damages arising from malpractice, negligence, incompetence, or fraud. To protect the public against notarial defaults, each Notary must contribute to his Society's insurance fund, an annual premium proportionate to the size of his district and practice.

Population determines the number of Notaries allowed to practise in a given district. The *French Notaries Act* provides that at least six Notaries, but not more than 12, serve a district of 100,000 inhabitants or more. A minimum of two but not more than five Notaries may officiate in a district with less than 100,000 residents.

Certificates of Fitness

The *French Notaries Act* regulates notarial education, training, and appointment. The *Chambre des Notaires* of the district in which a candidate applies to practise has to provide the applicant with a certificate of support, assuring the court that the candidate is morally, academically, and financially fit for office⁵.

Upon receipt of such certificate, a Minister of Justice representing the Head of State commissions the *notaire*, designates his practice district, and advises the local court of the new appointment. The district court registrar confirms that the appointee has contributed to the statutory insurance fund and swears him into office. The *notaire* is ready to practise as soon as he deposits a specimen signature with his professional society and the local court.

The French *Notaires'* status has changed little since the Act of 1803 prescribed functions, seal, and procedures. The schedule of fees increased in 1870⁶ when the *Code de Procedure* containing the schedule of minimum fees was amended by Imperial Order.

Monsieur Notaire, addressed in France as *maître*, is a respected, expensive⁷, senior member of his community, enviously eyed by other learned friends. French advocates (lawyers) would love to have access to the *notaires'* exclusive commercial activities,

but for nearly 200 years have been unable to enter the fortress of French notarial privileges.

Sources

1. Oesterley, *Das Deutsche Notariat*, (Goettingen, 1842).
Ibid. J. B. Loret, *Elemens de la Science Notariate*, Paris 1807, Vol. 1.
Ibid. Merlin, *Repertoire de Jurisprudence Paris* (1808), as quoted by Oesterley.
2. Hibbert, Christopher. *Napoleon*, (London, 2000).
3. Lockhart, John Gibson, *The History of Napoleon Buonaparte*, (London, 1829), Reprint 1906.

Footnotes

- ¹ Certified copies
- ² The revolutionary French government introduced a new calendar system. The 12 moon months were replaced (temporarily) by 10 months according to the decimal system.
- ³ The Commoners who ruled the Revolutions Legislative Assembly viewed advocates (barristers and solicitors) as members of the Royal establishment, politically untrustworthy and unworthy of sharing lucrative business.
- ⁴ A *departement* is a French government administrative area larger than a county but smaller than a Canadian province.
- ⁵ If the Society refuses to issue a Certificate of Fitness, an applicant has recourse to the national Minister of Justice who reviews the application and the statement of refusal of the local Society of Notaries.
- ⁶ Although I've written to the *Paris Chambre des Notaires* and requested information of amendments to the Act of 1803, (with correspondence written in French to ensure they understood what I needed), I've received no reply after writing twice.
- ⁷ There is little or no competition in a given notarial district. ▲

Dr. Hoeter was Secretary of The Society of Notaries Public from 1969 to 1986.

Quotations

Glory is fleeting, but
obscurity is forever.

History is the version of
past events that people
have decided to agree
upon.

In politics, absurdity is not
a handicap.

Never interrupt your
enemy when he is making
a mistake.

Take time to deliberate,
but when the time for
action has arrived, stop
thinking and go in.

The best way to keep one's
word is not to give it.

Victory belongs to the
most persevering.

[Medicine is] a collection
of uncertain prescriptions
the results of which, taken
collectively, are more fatal
than useful to mankind.

Napoleon Bonaparte

French General and Politician
(1769–1821)