



*Consejo Federal del Notariado Argentino - Federación.  
C.F.N.A.*

**International Union of Latin Notaries**  
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**Topic I: “Relevance of notarial principles in the XXI century”**

**National Coordinators:**

Notary Latino, Jorge Alberto

Notary Di Castelnuovo, Franco.

**International Coordinator:**

Notary Jörg Buchholz

**I.**



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#### **Conclusion**

The advance of new technologies produces social changes; this does not imply that the role of notaries must change, but that they must adopt them and adapt to this reality, without thereby altering the established functions and principles. The notaries of the future shall focus on their social responsibility and be willing to render more services to the community, which so demands and needs, helping to streamline different areas of the State (for example the judicial one, by means of the voluntary jurisdiction) and being proactive in the development of tools providing to the society what it expects from us.

This requires us to understand these technologies as indispensable tools that contribute to the development of our function and not as a threat to it. Not to recognize this would be to ignore or distrust of the usefulness, essence and goals of Latin notaries. As stated by Cavallé Cruz, “Decades ago there has been discussed the convenience or inconvenience of the typewriter at notarial offices, being the argument of those that rejected the new device that handwriting offered more guarantees of authenticity (as a result of this discussion we had to wait until the 50’s of the last century to start using typewriters, almost a century after it was invented) (...)”<sup>1</sup>.

It is towards society that we must direct the efforts to demystify the idea that we are obstacles to business transactions and that in lieu thereof we give them legal certainty, and that our qualified legal advisory prevents disputes, which adds economic value.

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<sup>1</sup> CAVALLÉ CRUZ, Alfonso; “Viabilidad de la matriz...”. Op. Cit.



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In this way the notarial profession, “born from social reality itself and the needs thereof”<sup>2</sup>, has ever since its origin set itself up as a technology and adequate and satisfactory solution to the social requirements of the different times. In light of this and understanding the notarial function on the terms described above, the notarial profession must, as an activity that is alive and in permanent motion on the basis of the social composition, culture and idiosyncrasy of each place, continue seeking to incorporate values that are fundamental to social relations, finding adequate responses to the demands of these times and, if possible, getting ahead of the problems of the future.<sup>3</sup>

Closely related to this is the concept developed by Tena Arregui on Liquid Law: liquid Law is the law that passively adapts to changing circumstances and that, rather than a stop, is an instrument or emanation of power which leads to disorder, arbitrariness and despotism. The “unpredictability” characteristic of liquid Law prevents Law from functioning as a stop to abuse, and to constitute in itself an instrument of abuse (and the fight for the Law becomes the fight with the Law). Therefore, a notable feature of this era of absence of Law is the excess of judgments and legal decisions. But if we go from the judicial to the legislative field, the picture is not much better ... During the era of solid Law, the controlling power was vested in the State, that exercised it through its classic instrument: the imperative rule. But during the era or liquid Law such function has been delegated, and the strong market players are reluctant to the imperative rule (...) strive for the non-existence of Law (...) No Law does not mean no rules. As a matter of fact, there are usually many. But they are liquid, they are performed one way or the other, or simply not performed ... we are before a new episode of the commented merger between Law and Moral, with the peculiarity that Moral has been previously

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<sup>2</sup> RODRÍGUEZ ADRADOS, Antonio: *“El Notario: función privada y función pública. Su inescindibilidad”*, *Escritos Jurídicos II*, Notaries Associations of Spain, General Council of Spanish Notaries, 1996, p. 217.

<sup>3</sup> For more information see: *“La tridimensionalidad del fenómeno notarial. Ensayo de una concepción integral”* (Notary DI CASTELNUOVO Franco), *“Nuevas tecnologías aplicadas a la función notarial”* (Notaries FALBO Santiago and DI CASTELNUOVO Franco; Di Lalla Ediciones-Fundación Editora Notarial; Buenos Aires, 2019).



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substituted by Economy (...) if in the no Law era no rules are needed, least of all we need someone controlling the enforcement thereof (...)”<sup>4</sup>.

This author concludes that the worst mistake a jurist can make is to accept without further ado the idea that the Law must “adapt to times”, when actually the principles inspiring the Law must not change: “the only adaptation admissible is that seeking to adjust rules to fight against the new forms of abuse and violence that may arise.”<sup>5</sup>

It is for this reason that the notaries association, as an institution, shall continuously work “to improve the standards of quality, efficiency and cost, for which it is fundamental to fully incorporate new technologies”<sup>6</sup>, but being very careful not to betray the trust that society has placed in us. We hope that we all conceive our function as a true service vocation that deserves and requires to be lived honorably and fully, with full dedication, in the conviction that we are all jointly and severally responsible for its future and for maintaining and improving the reputation and the glorious heritage passed on by those who preceded us, for the benefit of general interest<sup>7</sup>.

In this connection, Prats Albentosa states that “in the face of changes and the challenged posed by the evolution of technology, globalization, artificial intelligence, the principle *vigilantibus non durmientibus* (...) is applicable to notaries. Be concerned about change and be ready to offer solutions upon novelty, promptly. Society is not

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<sup>4</sup> TENA ARREGUI, Rodrigo, “Derecho Líquido. Reflexiones en torno a la Ley 41/2007 de Reforma Hipotecaria”, in *El Notario del Siglo XXI*, nº 25, May-Jun 2009, <http://www.elnotario.es/index.php/hemeroteca/revista-25/1604-derecho-liquido-reflexiones-en-torno-a-la-ley-41-2007-de-reforma-hipotecaria-0-2764456144314684>. See also LATINO, Jorge Alberto, “El sistema hipotecario, el notario y el consumidor a la luz de la crisis del año 2008”, Dir. CAVALLÉ CRUZ, Alfonso; LORA-TAMAYO, Isidoro, TENA ARREGUI, Rodrigo, General Council of Spanish Notaries and General Council of Argentine Notaries, 2018. [http://www.cfna.org.ar/documentacion/noveles/Monografia\\_-\\_Not.\\_Jorge\\_Latino\\_-\\_Becario\\_2017.pdf](http://www.cfna.org.ar/documentacion/noveles/Monografia_-_Not._Jorge_Latino_-_Becario_2017.pdf)

<sup>5</sup> TENA ARREGUI, Rodrigo, “Derecho Líquido ... ob. cit.

<sup>6</sup> BOLÁS ALFONSO, Juan, “Economía, competencia y función notarial”, published at *La reforma de la justicia preventiva*, a Seminar organized by the General Council of Notaries at the UIMP, Ed. Civitas, Madrid; 2004; p. 156.

<sup>7</sup> “Nuevas tecnologías aplicadas a la función notarial” (Notaries FALBO Santiago and DI CASTELNUOVO Franco; Di Lalla Ediciones-Fundación Editora Notarial; Buenos Aires, 2019).



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asking anything else from notaries (...) A clear and proper expression of a body of public officials related to the society to whom they have a duty to, especially in moments where a change is evident, although values survive without, for that reason, stop evolving.”<sup>8</sup>.

Finally, for all this to be possible, apart from the full commitment, dedication and endeavor of each of us, it is indispensable to have the active collaboration of collegiate notarial bodies at local, national and international level to promote, coordinate and develop the notarial function and, fundamentally, being the most important thing, to ensure and guarantee the ethics that must govern the exercise thereof.

In this way, the notarial function aligns to the superior values of the international legal system; serves *freedom*, as free is someone who consents knowing what that implies, since freedom requires confidence and implies being able to develop our wishes and our projects in the most reliable way possible, being able to become aware of and anticipate all that can affect or have an influence in the development and execution of our wishes, and thereby achieve the maximum possible social and economic development; serves *equality*, as it places the parties on an equal cognitive footing, solving original imbalances; serves *justice*, to the extent it is objectified in the positive rule, as it will not authorize anything contrary to it; and of course serves *legal certainty* and, along with it, *order* and *social peace*. The notarial function and therefore notaries help individuals to fully and freely develop their personality, being *human dignity*, in sum, the ultimate foundation of the notarial function.

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<sup>8</sup> PRATS ALBENTOSA, Lorenzo: “El notario y la tutela de los consumidores en el Mercado Único Digital Europeo”, *El Notario del Siglo XXI*, No. 75, September-October 2017. As an example of the possible answers, tools and solutions notaries can promote, we see as highly positive the application “*notaris ID*” developed by Dutch notaries and the proposed “Notarial Seal of Conformity” (NSC) guaranteeing consumers that the General Conditions for Contracting (GSC) used by the offeror (whether in the traditional or the digital market) comply with all legal requirements and standards and are not abusive, which generates confidence in consumers, what benefits commerce, the traffic of goods and services, and society as a whole. Along this same line are the systems preventing terrorism, money laundering and of guardianship of vulnerable people developed by notaries (see the excellent example of Spanish notaries).



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The future is dependent on how preventive legal certainty is valued. This valuation will result, to a great extent, from notaries themselves, their individual, collective and institutional conduct, their capacity to fully understand which is their function and how it must be exercised to achieve the purposes expected thereof, offering a maximum quality and efficient notarial service providing the best tools and solutions to that needs, for the benefit of common good.

In this way we will contribute to avoid globalization, suffocating information technology and the liquidity of postmodernity devouring the values and principles on which our civilization has been built, and will collaborate so that they can evolve at the pace of society.