



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

**International Union of Latin Notaries**  
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**Topic II: “The notary and the individual”**

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#### **Conclusion**

The so called *exercise of the legal profession*<sup>1</sup> is as broad as disperse in connection with the activities which – once selected according to the vocation or opportunity – each one starts to get used to doing every day<sup>2</sup>. From this point of view, the notary can well fit the description of *legal interpreter*, who in the words of *Rodolfo Vigo*, “...is a kind of mediator who communicates to others – advising, teaching or ordering – which are the acts that must be done or omitted or that may be done or omitted, according to the meaning accorded to certain behaviors, things, words or any other legal text<sup>3</sup>”. It is therefore sustained that the *knowledge of jurists* has as mission to *tell the law*, and therefore they are acknowledged an inventive, elaborative, creative, formulating or determining function of law, which requires legal interpretation<sup>4</sup>. Of all those who act as jurists, the notary is who, -even since its own historical origin - is *naturally formed and instructed to tell the law which it protects in peace*. In no event may the notary justify or promote conflict, which implies assuming that a document that is *notarially authorized* should protect the rights and values it contains in a special way.

The National Civil and Commercial Code, which currently governs our activity, features a series of interesting reflections. The notable legislative reform occurring in the Republic of Argentina may offer as result three types of institutions: a) the *new ones*, b) the *old or obsolete ones* and c) the *traditional ones*.

The notarial document must fit in and be based on any of them, which notarial document subsists, as we know, in the current legislation in the specific articles which have no reason to present to the notary any problems beyond those arising from a deep and meditated study thereof<sup>5</sup>. In this way:

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<sup>1</sup> Conf. Javier HERVADA, *Lecciones de Filosofía del derecho*, EUNSA, Pamplona, 1.990, p. 86. From here there arises that the legal profession mainly consists in the judge, the lawyer, the notary, the legislator and the law professor.

<sup>2</sup> Conf. Fernando M. TOLLER, *Sistema de citas y redacción en derecho*, Marcial Pons, Buenos Aires, 2.016, p. 34. Upon referring to the meaning of books and the library for the exercise of the legal profession, the author is referring much more widely to the *jurists* by including lawyers, consultants, judges, officers, legislators, notaries, professors, investigators and graduate and post-graduate students.

<sup>3</sup> Conf. Rodolfo Luis VIGO, *Interpretación constitucional*, LexisNexis-Abeledo Perrot, Buenos Aires, 2.004, p.16.

<sup>4</sup> Same as p. 23.

<sup>5</sup> The conference of Gabriel Ventura called *La Actividad Notarial en el nuevo Código Civil y Comercial* is truly illustrative. It is available at: <https://www.youtube.com/watch?v=memG2MXdDig> (Last access: 05/07/2019).



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- a) the *new institutions* deserve to be studied and argued in depth, so that their use starts as soon as possible and helps man to achieve in the best way the purpose of law which always is and will be justice, even if now there are offered ways to access to it with some excesses that pretend to be based on a new and confusing vision – or extension – of the *concept of freedom*<sup>6</sup>;
- b) the *old institutions*, those that are obsolete or no longer used, are those that will cease to exist naturally. However, the absence of the principal scenario is not and will not be an impediment to deprive them of their due importance. Same will be then used for historical and comparative studies, to substantiate new legal natures and contents, as part of the evolutions or involutions that law has had upon originally presenting them from positive law; and finally
- c) the *traditional institutions*, which are those which are still in full force, precisely because “traditional” entails the notion of security in continuity and of justice in what is assimilated as natural, and also because it follows the ideas, rules, customs and principles sustained from long ago, deserving to subsist due to its convenience for man and its significance for law.

The notarial institution clearly fits in the concept of tradition. Times alternate the comfort needs of man, and even on certain occasions there arises the concern regarding the possibility of changing the legal paradigm (for example, the derivation that is made towards the consolidation of the computer legal paradigm, already argued long ago from the iusphilosophy under the suggestive title of *decisive computer law*).

The concept of tradition is synonym of knowledge, which according to *Vallet*, is transmitted by family education<sup>7</sup>. The family is endowed with an enormous educational power, which is meant to transmit the knowledge of the past so that it can be used, and is effective, at present. If this is the case, we will finally have to understand that the notarial community is nothing but an extended family that lives and persists over time precisely because it rests on the lessons of the

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<sup>6</sup> It must always be taken into account that rights may not be claimed if before one does not present evidence of compliance with basic human duties.

<sup>7</sup> Vallet de Goytisolo, Juan (1972). *Algo sobre temas de hoy*. Madrid: Speiro. p. 231.



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ancestors who as from the First Argentine Notarial Congress (1917) have not stopped working for us to enjoy at present the well-deserved prestige the notarial institution has.