

French Notaries: History, Function, and Resources  
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When Americans seek out the services of a notary, a mere stamp on a document is generally all that is required. To be sure, American notaries must comply with state laws and regulations. In Washington, for example, the Department of Licensing lists the relevant legal resources: <http://www.dol.wa.gov/business/notary/nlaws.html>. The roots of the notary, however, stretch back to ancient Rome, and in many countries, notaries continue to perform fuller legal functions. In 2011, the Gallagher Law Library received a donation of material relevant to the notaries of one of these countries, France, where members of this profession are called *notaires*. This donation includes a two volume work dedicated to apostolic notaries, published in 1775, and several volumes of a journal with a broader perspective, whose publication began in 1808. A brief background of the French *notariat* (the word for the profession as a collective) and its history will shed light on the importance of these books as well as on their potential uses.



*Le Testament, A. de Caxi, etching, XIX<sup>th</sup> century*  
*From Notaires: la Plume et le Sceau*

*History:*

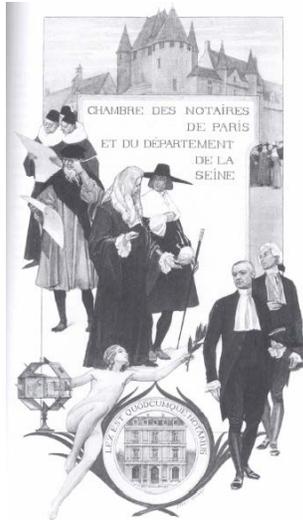
Notaries were an outgrowth of the movement towards a contractual society and have evolved in response to changing social contexts. The ancient Roman notary has been characterized as little more than a scribe. During that time, another profession, *tabelliones*, emerged. An “advanced class of scribes,” *tabelliones* drafted documents for private parties, as does the modern *notaire*. In France, Charlemagne offered the first official recognition of *notaires* in 803, establishing notarial offices at government seats. At that time, notarial duties included drafting voluntary agreements between parties and retaining records. Lords and bishops followed suit and instituted their own *notaires*. A century later, Otto I granted apostolic

*notaires* the power to act in civil matters, in addition to ecclesiastical affairs, a move not terribly appreciated by civil notaries, who complained to Phillippe in 1317 that less scrupulous others were encroaching on their territory.

A major development towards a stable notariat occurred in 1270, when Louis IX appointed 60 royal notaries attached to the jurisdiction of the Chatelet in Paris. Others were appointed to territories outside of Paris, their jurisdiction accordingly limited. Louis IX's move did much to retain power—both royal and commercial—in Paris, for many came to Paris to enter into a contract with a notary of the Chatelet. Feudal lords continued to appoint their own provincial notaries, whose tasks included writing notes of the judges and drafting voluntary agreements—a mixture of judicial and civil powers that later would become more clearly distinguished.

During the 15<sup>th</sup> century, the royals reversed the movement of Otto I and again separated apostolic and civil notaries. Charles VII opened the profession to the laity, and Charles VIII took matters one step further by excluding the clergy. In 1539, Francis I introduced a great many regulations: notaries were to draft documents in French rather than Latin, they were to meet moral qualifications, and their acts became enforceable throughout the country. Two years later, he permitted notaries to use clerks, enabling them to take on more business as commerce increased. Henry II in 1554 protected the notariat by forbidding other legal actors, such as judges and court clerks from performing notarial acts. The next king to exert a dramatic force on the notariat was Louis XVI, who in 1781 promulgated regulations for the nation-wide notariat. Even remaining areas of feudalism adopted these laws.

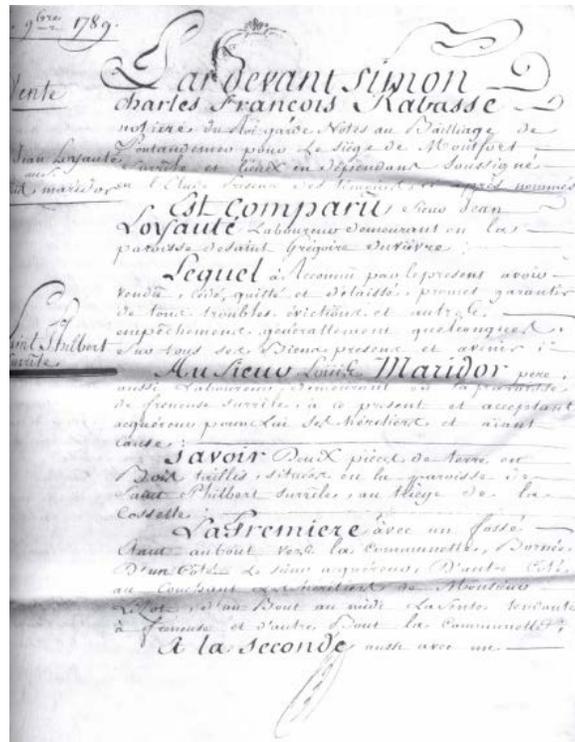
Ten years later, the French revolution was underway, and in 1791, a single law suppressed notarial offices, banished venality and heredity, and established the notariat anew as part of a reformed government. Now, notaries all exercised identical powers, but their jurisdiction was not as clear as it had been. The modern notariat found its birth in 1803 at the hand of Napoleon. The 25 ventôse, as the law is known, comprehensively addressed notaries. Notarial jurisdiction was settled as separate from the jurisdiction of justice (litigation), and notarial authority was ensconced as executory rather than judicial. Notaries' acts held self-executory authority and were self-proving. The number of notaries was strictly limited, reducing the amount of competition they face. This is the law that with a few changes remains in place today. You can find the 25 ventôse at Legifrance, an official French government website: <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=LEGITEXT000006070994&dateTexte=20110616>. A toolbox on the left side of the screen permits you to see how the text appeared at specified dates, to appreciate how the law has changed over the past two centuries.



*Illustration for the Chambre des Notaires de Paris et du département de la Seine, 1913  
From Notaires: la Plume et le Sceau*

*Functions:*

The brief historical account has already introduced some basic notarial duties. The notary drafts deeds and contracts voluntarily entered. These notarial acts are *actes authentiques*, in other words conclusive evidence, unless proved false. The French notary must also advise clients regarding their legal rights, and as the notary is responsible to both (or several) parties at once, must be impartial. The notary is a “disinterested counselor,” “protector of the interests of the inexperienced,” “the trusted sharer” of “family secrets,” and “the peacemaker,” roles not suited to traditional American conceptions of conflicts of interest. Of course, notaries who err are subject to discipline as well as negligence liability. As this description suggests, the notary has no role in litigation; those matters are left to the *avocats*, the lawyers. Several categories form the core notarial practice areas: family matters such as marriages, gifts, and wills; contracts and corporate agreements; property issues such as mortgages; and tax matters. To get a fuller sense of French notaries today, see the official web site, offering basic descriptions as well as links to governing bodies: [www.notaires.fr](http://www.notaires.fr).



Notarial act of sale, 1789  
 From *Notaires: la Plume et le Sceau*

*Apostolic notaries:*

The Church played an important role in the history of the *notariat*. In fact, one category of notaries exclusively dealt with church affairs: the apostolic notaries. Often appointed by bishops, their early duties included transcribing tribunal decisions and serving as tribunal archive. Apostolic notaries were required to take an oath, preserve secrecy of criminal actions, and refuse gifts from parties. They had more robust judicial roles, including recording testimony authenticating sentences. Apostolic notaries also played a role in ecclesiastical rites, such as the beatification process.

Some of their duties, however, more closely resembled those of civil notaries. For example, apostolic notaries drafted contracts for the Church and clergy as well as those who submitted themselves to Church laws while remaining laic. Often, their areas of expertise included the sacraments, widows, orphans, the poor, marriages, testaments, and inventories.

*Debate today:*

While some in the United States are calling for American notaries to adopt powers more like those of the French (see, for example, Reina), in France debate continues regarding several time-honored facets of the profession. At once, the *notariat* can be described as private and public; it “exercises a public monopoly in a private context.” Notarial offices may be purchased, and, notaries are often encouraged to develop other marketable skills, such as accounting, to supplement their income. Thus, significant state protections, for example capping numbers, buffer the *notariat* from many market effects, while at the same time the state provides wide latitude for notaries to compete with other commercial enterprises.

*Value of rare notarial resources:*

French law has changed dramatically on many subjects of notarial practice. For example, the *regime dotal*, the laws pertaining to the property the wife brought to a marriage, have disappeared, shaping a range of legal areas from family law to property law. Nevertheless, volumes from the birth of the French republic—and before—remain valuable. As one scholar notes, the notary's duty to conserve documents results in "a rich fund of materials for historical research." For example, some have studied statistical shifts in the kinds of work represented in the *Journal des Notaires et des Avocats*. Humanities scholars have found these archives fruitful as well, researching topics such as notarial mentions of early French drama (see, for example, Wright). Because notarial acts are so intricately bound up in everyday life, these records present an opportunity to learn much not only about notarial attitudes and practices over time but also about daily family life as well as larger economic shifts.

## **Gallagher Law Library's Volumes**

### ***Le Parfait Notaire Apostolique* by Jean-Louis Brunet**

Jean-Louis Brunet lived from 1688 until 1747. Brunet wrote several volumes on the themes of church governance and canon law. Although one dictionary of canon law notes that his opinions "do not always agree with those of the best canonists," it also declares "the worth of his learning" indisputable. A bibliographic entry describes Brunet as having died, like many scholars, without fortune but with respect.

*Le Parfait Notaire Apostolique* was first published in 1728. The Gallagher Law Library has a copy of the second edition, published in 1775. This volume includes five sections, which illustrate the varied duties:

- A discussion of the origin of notaries and the *notariat*
- Functions and duties of apostolic notaries, including topics such as the language in which to write different types of acts
- Acts concerning the sacraments, like the publication of banns
- Acts concerning ecclesiastical posts, such as the consecration of bishops
- Acts that issue from the papal jurisdiction, such as indulgences and beatification

### ***Journal des Notaires et des Avocats***

*Journal des Notaires et des Avocats* was first published in 1808 and continues to be published today under the title *Droit et Patrimoine*. The Gallagher Law library owns an incomplete set, spanning 1813 through 1910. The library's oldest volume, v. 5 from 1812, consists of "*Decisions Diverses*," a series of questions and answers about substantive law and procedures, followed by one table, an alphabetical subject index. By volume 141 in 1910, a number of additional materials appear at the end of the volume. Along with the alphabetical subject index, there is a list of studies and commentaries cited in the volume, a table of new legal expressions, a chronological table for the volume, references to the 5<sup>th</sup> edition of the *Dictionary of the Notariat*, and nominations of notaries. The topics listed in the subject indexes align with the common

notarial concerns: succession, gifts, marriage contracts, divorces, sales contracts, taxes, and notarial procedures.

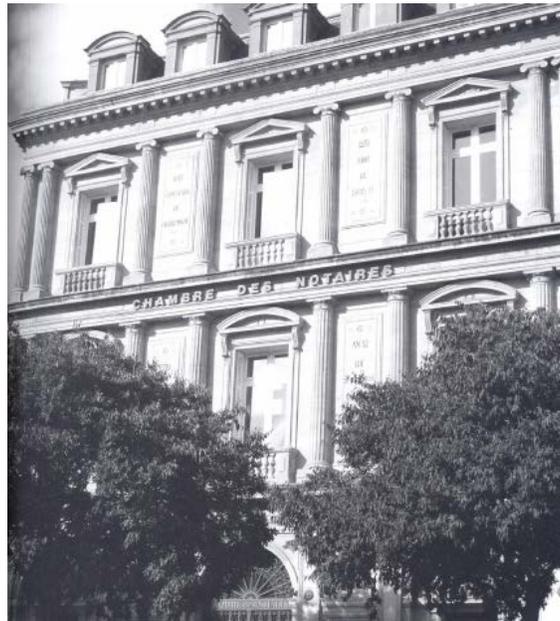
Here are some examples of questions presented and answered in these volumes:

Is it possible to insert in a marriage contract a clause that a wife separated from her husband may sell her property without his authorization? Article 817, v. 5, p. 69

Whether a joint user can claim harm to his interest for nonexercise of his rights, where this nonexercise is not his making but the result of the clearance of the part of the forest in which the rights resided. Article 7505, v. 41, p. 97.

Is a notarial act void, in particular an act of inter vivos gift, when the second notary signed the act outside the presence of the parties? Article 11,414, v. 63, p. 129

Whether the prohibition of marriage between an uncle and niece applies to a great uncle and great niece. Article 21900, V. 109, page 419



*The Chambre des Notaires de Paris  
From Notaires: la Plume et le Sceau*

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