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Notaries

Breaking the seals

A venerable profession is under pressure. About time

Aug 11th 2012 | from the print edition



Russell Cobb

THE change is modest, but this being Italy it amounts to a revolution. For decades the country's 5,000 notaries have grown rich from laws that limit their number. To cut waiting times the government is lifting the caps. It promises to mint 500 new notaries by December and 500 more next year.

Life is changing for notaries all over the world. Whereas they are losing their privileges in Europe, their authority is growing in Asia. Even America now sees the beginnings of a debate about their role. More is at stake than the fate of an obscure and little-loved profession. Notaries are important gatekeepers in many economies, in particular when it comes to establishing property rights—the bedrock of markets. At best, notaries are facilitators who, for instance, verify the identity of the signatories of contracts and the veracity of their statements. At worst, they are overpaid bureaucrats who delay the passage of simple transactions and bloat their cost.

Notaries are most powerful in continental Europe, where legal systems are based on civil law. By overseeing the creation of many common kinds of contracts, notaries there aim to reduce the likelihood of future costly legal battles. France's 9,000 *notaires* enjoy a monopoly over property conveyancing. Entrepreneurs in Germany must seek a seal from a *Notar* to set up a company. Dutch *notarissen* are responsible for 80 types of documents, like prenuptial agreements and wills. Rules commonly limit their total number, as in Italy. Most notaries are licensed to practise only in their local area. Governments generally fix their fees.

By contrast, notaries are unknown in many common-law countries, such as Britain and its former empire, which take a more freewheeling approach to contracts. America is the odd country out: although its legal system is based on common law, it boasts 4.8m notaries, many part-time. Yet these exist mainly to satisfy America's maddening appetite for stamps and seals, and have little in common with their highly qualified European namesakes. "They are butchers, bakers and candlestick-makers," scoffs a European notary.

Both traditions have their drawbacks. In Europe notaries' highly regulated work has made them the most prosperous of lawyers. Tax returns suggest that Italian notaries are paid better than any other

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professionals (though perhaps they are most honest about their earnings). A report in 2004 found that notaries made up 22 of Slovenia's 100 highest earners. French ones are the most privileged of all, says Gisela Shaw, an expert on the profession. They can compete with solicitors to provide legal services. They may sell their practice when they retire.

The perks are jarring but inefficiency does more harm. The World Bank has warned that poorly organised notariats can hinder growth. It takes 59 days to register property in France, longer than in Liberia, Cambodia and Congo. Until 2006 Italians needed a notary to buy a used car. A study carried out for the European Commission in 2007 found that house-buyers in countries with highly regulated notarial systems paid much higher legal fees than house-buyers abroad (see chart). They were also less satisfied with the service they received.



Despite these concerns, American authorities are considering whether aspects of the European model might help reduce property fraud. In 2008 a journalist stole the deeds to the Empire State Building with the help of a fake notary stamp. Peter Murray of Harvard Law School believes a European-style notariat that issued impartial advice would have tempered America's subprime crash. And squabbles over inheritance are more frequent in common-law countries, where wills are more casually drawn up, says Leon Verstappen of the University of Groningen.

With all that in mind, governments are trying to strike a better balance between caution and carelessness. Since 2007 South Korea, South Africa and nine other nations have cut the role notaries play in property or business registration. Portuguese once waited several months to see a notary—reforms there have helped shorten the time it takes to start a business from 11 weeks to seven days. In 2011 France gave common-or-garden lawyers the right to create binding documents similar to those endorsed by notaries. Holland's deregulated system is a popular model—in 1999 the government stopped capping the size of the notariat and abolished fixed fees. Price-comparison sites guide consumers to the cheapest deals.

Notaries of the world unite

The European Commission is also urging change. Notaries have commonly escaped EU rules liberalising other professions on the grounds that they are government officials. But in May 2011 the European Court of Justice ruled that notaries need not hold the nationality of the country where they practise. Mr Verstappen thinks laws that prevent notaries competing outside their local area could be next to fall.

Are the days of this venerable profession numbered? Don't bet on it. As domestic monopolies wither, notaries are looking abroad. Attempts to ease the movement of contracts and certificates across borders—a tiresome paper-chase—are hotly debated. European notaries would like the acts that they produce to enjoy greater recognition across the continent, but that could disadvantage citizens in Britain and nine other EU countries where the legal system can create no equivalent document.

Despite improvements in Italy and other European countries, the financial crisis has also slowed reform. Notaries' role in conveyancing makes them reliable tax collectors, so change is risky while money is tight. Some countries hold "Anglo-Saxon" deregulation responsible for the crisis; Russia's new civil code, which comes into force in September, grants its weak notariat greater authority. And Gulf states, now attracting many of the West's jobless graduates, consume limitless volumes of paperwork. Notaries' authority may be fading, but their fate is not yet sealed.

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