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ARTICLES

NOTARIES IN THE AMERICAN COLONIES

JOHN E. SETH*

I. INTRODUCTION

There are more than four million notaries public in the United States today.¹ Yet the origin and development of the office of notary in this country has never been carefully studied. The neglect of this area of historical study in legal literature is surprising and troublesome because both the origin and practice of notaries are deeply rooted in the law. Today, notarial practice is governed by statute, but historically it has been based on international law and the customs of the *Law Merchant*.² In the seventeenth and eighteenth centuries, the work of notaries in the American colonies involved mainly commercial and maritime matters; their records throw light on the legal practice of the period and furnish a primary source of colonial social and economic history.³

The development of the notarial office differed somewhat in each of the thirteen colonies, but, with the exception of New Netherland, all developed from the practice of seventeenth century

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1. Michael L. Closen, *Why Notaries Get Little Respect*, NAT'L L. J. 23 (Oct. 9, 1995).

2. 4 W.S. HOLDSWORTH, HISTORY OF ENGLISH LAW 60 (1924).

3. See generally GEORGE LEE HASKINS, LAW AND AUTHORITY IN EARLY MASSACHUSETTS (Archon Books 1968) (discussing the use of notarial records regarding colonial legal practice); BERNARD BAILYN, NEW ENGLAND MERCHANTS IN THE SEVENTEENTH CENTURY (Harvard University Press 1955) (discussing the use of notarial records regarding colonial social and economic history).

English notaries.⁴ The early colonists were Englishmen, born and educated in England and familiar in varying degrees with English law and customs.⁵ Separated from their homeland and faced with the problem of assuring that the legal documents they prepared (such as powers of attorney, bonds, and ship protests) would be accepted in England, in the other colonies and in other countries, they naturally followed the system they knew: a system developed in England to authenticate documents used in international commerce.⁶ Each colony, soon after establishment and as it became involved in trade, found it necessary to appoint a public official whose signature and seal on a document guaranteed its authenticity and assured its acceptance throughout the world.⁷ Since the time of the Roman Republic, that public official was known in the Western world as a "notary public."⁸

This Article begins with a brief world history of notaries from their origins in Rome in the first century B.C. to the position they held in England in the seventeenth century. Then, the Article traces the development of the office in the American colonies from the appointment of the first notary in 1639 to the adoption of the United States Constitution in 1789. Particular emphasis is placed upon the Massachusetts Bay Colony, which has the most complete set of extant records pertaining to notaries of any of the English colonies. New Netherland is treated separately as it was outside the development of notarial practice in colonial common law jurisdictions. But New Netherland is of great interest because of the light it sheds on seventeenth century Dutch notarial practice which was based on Roman law, and because of the contrast it presents to English notarial practice.

A full history of colonial notaries has yet to be written. Many relevant documents have disappeared while many others remain in manuscript form in state archives and private libraries. However, enough are available to trace in broad outline the development of the office. This Article is intended to offer a beginning in the exploration of early American notarial history

4. See generally HASKINS, *supra* note 3 and accompanying text.

5. *Id.*

6. *Id.*

7. See generally H.C. GUTTERIDGE, THE ORIGIN AND HISTORICAL DEVELOPMENT OF THE PROFESSION OF NOTARIES PUBLIC IN ENGLAND, CAMBRIDGE LEGAL ESSAYS 123 (1926) (discussing the origin of the office of notary public); C.R. CHENEY, NOTARIES PUBLIC IN ENGLAND IN THE THIRTEENTH AND FOURTEENTH CENTURIES (1972); N.P. READY, BROOKE'S NOTARY 1-17 (11th ed. 1992); Pedro Malavet, *Counsel for the Situation: The Latin Notary, A Historical and Comparative Model*, 19 HASTINGS INT'L AND COMP. L. REV. 389 (1996); Michael L. Closten & G. Grant Dixon, *Notaries Public from the Time of the Roman Empire to the United States Today*, 68 N.D. L. REV. 873 (1992).

8. READY, *supra* note 7, at 2.

and practice. It is hoped that it will serve as the foundation for further study of this long neglected field, and that further study may lead to the discovery of lost seventeenth and eighteenth-century notarial record books—something that would be of invaluable help to students of early American history.

II. A BRIEF HISTORY OF THE OFFICE OF NOTARY PUBLIC TO THE SEVENTEENTH CENTURY

The office of notary public originated during the Roman Republic, probably in the time of Cicero.⁹ Notaries were originally scribes who took notes, or *notae*, in shorthand. They were public officials who recorded and registered public and judicial proceedings, and were also engaged in drafting private documents such as wills, deeds, and contracts. These private documents were sealed before a magistrate and became public and authentic acts entitled to registration in the public archives.¹⁰ But more often, private documents were prepared by professional scribes known as 'tabelliones' who did not hold public office.¹¹ Documents prepared by *tabelliones* received a higher degree of respect than documents executed by private parties but did not have the status of official records.¹² In time, the acts of *tabelliones* were accorded the status of official records and were given full credit and authenticity.¹³

After the fall of the Roman Empire in the fifth century, local counts and bishops appointed notaries to act within limited geographic regions.¹⁴ Notaries acted as registrars of the courts of provincial governors and prepared deeds and other documents that were sealed by the courts, and so became authentic acts.¹⁵ Although notaries played an important role wherever Roman law persisted—in Italy, Spain and southern France—they were not widely known in northern Europe, except in ecclesiastical courts.¹⁶ In northern Europe, the customary law of the tribes that had settled these areas prevailed.¹⁷

In 803, Charlemagne, who had been crowned Holy Roman Emperor by the Pope three years before, ordered that his Royal Commissioners appoint notaries to accompany them on their circuits and that all bishops, abbots and counts be provided with notaries.¹⁸ By the tenth century, these notaries had fixed

9. *Id.* at 2-3.

10. *Id.*

11. *Id.*

12. *Id.*

13. READY, *supra* note 7, at 2-3.

14. *Id.* at 4.

15. *Id.*

16. CHENEY, *supra* note 7, at 6.

17. *Id.*

18. READY, *supra* note 7, at 4-5.

residences and were employed in recording judicial proceedings and preparing private deeds.¹⁹ During the twelfth century, the Pope and the emperors of the Holy Roman Empire appointed notaries.²⁰ These papal and imperial notaries had the right to practice anywhere in the Western world. "During the 12th century, notaries, or *tabelliones* (for the terms were then synonymous), began to assume the character and functions which, with slight changes, they have retained to the present day on the continent of Europe and elsewhere where Roman law prevailed."²¹ The connection between the medieval and modern notary is due chiefly to the revival of the study of Roman law at the University of Bologna in northern Italy in the twelfth century.²²

During the twelfth and thirteenth centuries, Roman law began to supplant customary law throughout northern Europe.²³ But in 1066 when William, Duke of Normandy, conquered England, Roman law was not known in Normandy outside ecclesiastical courts.²⁴ William introduced Norman feudal law, which was not influenced by Roman law.²⁵ English common law developed along different lines than the law on the continent; this is why English common law is said to "lie[] outside the mainstream of European legal development."²⁶ Under Roman law, written records of acts were essential for their validity, whereas under English common law, a symbolic public ceremony and the seals of the parties to the transaction were all that was necessary to assure validity.²⁷

In civil law countries, the notary has developed into a branch of the legal profession.

The notary in the typical civil law country serves three principal functions. First, he drafts important legal instruments, such as wills, corporate charters, conveyances of land and contracts Second, the notary authenticates instruments. An authenticated instrument (called everywhere in the civil law world a 'public act') has special evidentiary effects; it conclusively establishes that the instrument itself is genuine and that what it recites accurately represents what the parties said and what the notary saw and heard Third, the notary acts as a kind of public record office. He is required to retain the original of every instrument he prepares

19. *Id.* at 5.

20. *Id.*

21. *Id.* at 6.

22. *Id.*

23. CHENEY, *supra* note 7, at 6-7.

24. O.F. ROBINSON ET. AL., AN INTRODUCTION TO EUROPEAN LEGAL HISTORY 208 (1985).

25. *Id.*

26. *Id.*

27. *Id.*

and furnish authenticated copies on request, which usually has the same evidentiary value as the original.²⁸

The notary in England never became an integral part of the common law system. The first notaries appeared in England in the thirteenth century and were appointed by the Holy Roman Emperor or the Pope.²⁹ From the thirteenth to the sixteenth centuries, notaries gradually became more active in England, and "although notaries never attained such a high position in England as they did abroad, they became increasingly important figures in England during this period in the ecclesiastical and secular fields."³⁰ In the ecclesiastical courts, notaries prepared documents and kept records of court proceedings, and in secular matters, they prepared documents for use abroad in jurisdictions that recognized the probative value of notarial acts.³¹ With the English Reformation in the sixteenth century, the King assumed the right to appoint notaries in place of the Pope and delegated that authority to the Archbishop of Canterbury, but no change took place in the position or work of notaries.³²

III. NOTARIES IN ENGLAND IN THE SEVENTEENTH CENTURY

When the first English colonists came to America in the early seventeenth century, the legal profession in England was in the process of development and was largely unregulated.³³ Legal writing—drafting legal documents—was mainly in the hands of scribes and notaries.³⁴ Scribes were not professional lawyers, but in an age when most people were unable to read or write, they were literate men who were able to write private letters for clients and had acquired the skill to draft legal instruments such as wills, contracts, bonds, and petitions of various kinds.³⁵ In London, from 1373, they were required to be members of the Scribes Company, which oversaw their training and tried to maintain a monopoly on legal writing in the city.³⁶ Outside London, scribes were simply literate men with some knowledge of the law, often schoolmasters or clergymen.³⁷ Notaries, on the other hand, were public officers appointed by the

28. JOHN HENRY MERRYMAN, *THE CIVIL LAW TRADITION* 105-06 (1985).

29. READY, *supra* note 7, at 9.

30. *Id.* at 13.

31. *Id.* at 13-14.

32. *Id.* at 15.

33. THEODORE F.T. PLUCKNETT, *A CONCISE HISTORY OF THE COMMON LAW* 226 (5th ed. 1956).

34. C.W. BROOKS ET. AL., *NOTARIES PUBLIC IN ENGLAND SINCE THE REFORMATION* 8-11 (1991).

35. *Id.* at 8-11, 76-83.

36. READY, *supra* note 7, at 14.

37. BROOKS, *supra* note 34, at 8.

Archbishop of Canterbury and sworn to the faithful performance of their duties.³⁸

Notaries acted as registrars and deputy registrars in the ecclesiastical courts, which had jurisdiction over all matters having to do with marriage, divorce and testamentary affairs.³⁹ Notaries also acted as registrars in the courts of admiralty which dealt with maritime matters.⁴⁰ Both of these courts followed the procedure of Roman civil law.⁴¹

By the seventeenth century, two classes of notaries were in practice in England: ecclesiastical notaries, and secular or general notaries involved mainly with commercial matters and foreign trade.⁴² The latter drafted bills of sale and bottomry bonds for vessels, drew up bills of lading, chartered parties and powers of attorney for merchants in foreign trade, protested foreign bills of exchange that had been dishonored, and prepared ship protests which detailed the circumstances under which a ship or its cargo had been damaged.⁴³ The general notaries' acts were afforded full faith and credit in all nations. In London, general notaries—like scriveners—were required to be members of the Scriveners Company.⁴⁴

Such was the state of the notarial profession in England when the first colonists immigrated to America. The early colonists knew the notary as a record keeper in the ecclesiastical courts and as a public official who drafted and attested documents (mainly concerning maritime matters and international commerce) that would be accepted in all countries of the world.

IV. NOTARIES IN THE AMERICAN COLONIES

A. *The New England Colonies*

1. *Connecticut*

The first person in the American colonies to bear the title of notary public was Thomas Fugill. The Province of New Haven was established in 1638 and at the October 25, 1639 sitting of the General Court of the Province, Thomas Fugill was one of four men chosen "to assist the magistrate in all courts called by him."⁴⁵ The General Court also chose Fugill as

38. *Id.* at 25.

39. *Id.* at 13.

40. *Id.* at 29-30.

41. *Id.*

42. BROOKS, *supra* note 34, at 29-30.

43. *Id.*

44. *Id.* at 52-75.

45. *Id.* at 21.

publique notary to attend the court and from time to time to keep a faithful record of all passages and conclusions of the court and of whatsoever else then or at other times shall by the court or magistrate be committed to him concerning the civil publique occasions of the plantation.⁴⁶

No notarial records kept by Fugill have survived, but the Record Book for the New Haven Colony is in Fugill's handwriting.⁴⁷ It appears that Fugill's role as notary public was to act as recorder or record-keeper for the colony, much as notaries did in England in ecclesiastical and admiralty courts, rather than as a general notary engaged in international or commercial work for individuals.⁴⁸ In fact, after 1640, Fugill was referred to as Secretary of the Colony.⁴⁹

In November of 1639, Fugill and five others were appointed to dispose of house lots.⁵⁰ Several years later, it was discovered that Fugill had allotted to himself more land than he should have.⁵¹ He was removed from office and excommunicated by the Church.⁵² He then returned to England and no further record of him exists.⁵³ The fact that the first notary in the American colonies was removed from his position because of dishonesty has not gone unnoticed by notary observers and commentators.⁵⁴

Two years before the establishment of New Haven, a group of Puritans from the Massachusetts Bay Colony settled the inland towns of Hartford, Wethersfield and Windsor.⁵⁵ In 1639, the three towns drafted The Fundamental Orders of Connecticut, which remained in effect until 1662 when Charles II combined these towns with New Haven to form the Royal Colony of Connecticut.⁵⁶

Throughout the colonial period, Connecticut was "in a class by herself—a small, inconspicuous agricultural community."⁵⁷ Despite a long coast line, "Connecticut never developed any single center of mercantile and trading interest to compare with Boston

46. *Id.*

47. BROOKS, *supra* note 34, at 20. See also Thomas Fugill, *Publique Notary*, AM. NOTARY, Nov.-Dec. 1989, at 1. On November 7, 1989, the American Society of Notaries was instrumental in having the governors of over 30 states proclaim November 7 (corresponding to October 25 in the Julian calendar) Notary Public Day. *Id.*

48. Fugill, *supra* note 47, at 1.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. Fugill, *supra* note 47, at 1.

54. *Id.*

55. 1 SAMUEL ELIOT MORISON, THE OXFORD HISTORY OF THE AMERICAN PEOPLE 67 (1965).

56. *Id.* at 66-67.

57. CHARLES M. ANDREWS, OUR EARLIEST COLONIAL SETTLEMENTS 113 (1933).

or Newport.⁵⁸ For this reason, notaries were not needed in Connecticut as they were in the colonies involved in trade and commerce. In *The Judicial and Civil History of Connecticut*, notaries are dealt with in a single brief paragraph, as follows.

The appointment of notaries public was confided to the government in 1784 as part of 'An Act for the Regulation of Navigation.' Before the Revolution, the commissions of notaries emanated from the Archbishop of Canterbury.⁵⁹

2. Massachusetts

By far, the most complete account of the development of the office of notary in the American colonies is to be found in the records of the Massachusetts Bay Colony. It was there, in 1644, where the first general notary in the colonies was appointed.⁶⁰

In 1628, a group of wealthy and influential Puritans obtained a charter from King Charles I to form the Company of the Massachusetts Bay in New England.⁶¹ In 1630, the first members of the group arrived in Massachusetts, and by 1634, some ten thousand people had settled in the colony.⁶² By the end of the 1630's, the colonists had become active in trade with England and the West Indies, exporting dried fish, timber, and salted beef and pork, which enabled them to buy goods and obtain credit in England.⁶³ "During the 1640's, the colonial economy went through a drastic change, from one that was predominantly agrarian and self-sufficient to one that came to be based to a substantial extent upon foreign trade."⁶⁴ Merchants in England and in the Massachusetts Bay Colony followed the same commercial customs and practices that were based on the *Law Merchant*, an international body of law.⁶⁵ "So important had commercial law become by 1650 that the General Court ordered that Malynes' *Lex Mercatoria* be studied and such laws extracted as were applicable to Massachusetts needs."⁶⁶

As society in the late 1630's became more complicated and more involved in trade, the need for men trained in the law became apparent.⁶⁷ "[M]en trained in law who came from England

58. *Id.* at 117.

59. THE JUDICIAL AND CIVIL HISTORY OF CONNECTICUT 92 (Loomis & Calhoon eds., 1895).

60. 2 MASS. COL. REC. 86 (1854).

61. MORISON, *supra* note 55, at 64.

62. *Id.* at 65.

63. *Id.* at 66.

64. GEORGE LEE HASKINS, LAW AND AUTHORITY IN EARLY MASSACHUSETTS ix-x (1973).

65. *Id.* at 179.

66. *Id.* at 109.

67. LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 84 (1973).

found a ready market for their services, so did laymen with a smattering of law and the semi-professionals who had experience for sale.⁶⁸ One such man with semi-professional experience was Thomas Lechford, who arrived in Boston on June 27, 1638 and immediately established himself as a scrivener.⁶⁹ Little is known of Lechford's early life in England beyond the facts that he had acquired the skills of a scrivener and that he was a member of Clement's Inn, an Inn of Chancery rather than an Inn of Court.⁷⁰ The Chancery Inns trained men to be attorneys and solicitors rather than pleaders in the courts.⁷¹ As a solicitor, Lechford acted as the agent for clients who needed to engage the services of a pleader.⁷² As a scrivener, he drafted pleadings and other legal documents.

Lechford stayed in Boston for three years, returning to England on August 3, 1641.⁷³ During his stay in Massachusetts, he supported himself by acting as a scrivener.⁷⁴ He kept a "Note-Book," now on display at the American Antiquarian Society in Worcester, Massachusetts, containing copies of the various instruments he drafted—contracts, deeds, mortgages, powers of attorney, passports and court pleadings—showing him to have been a skilled draftsman and conveyancer.⁷⁵

At this time, written records were not kept of trials; in June 1639, Lechford submitted five proposals to the General Court—apparently at the Court's request—for the keeping of trial records.⁷⁶ Essentially, he proposed that the office of notary public be created, that he be appointed to the office and that the notary keep a written record of trial court pleadings and proceedings.⁷⁷ Lechford listed six benefits to the public good in support of his proposal.⁷⁸ The sixth benefit was "[t]he people may also use the publique notary in divers cafes, to the eafe of the magiftrates, and for making fveral writings, etc."⁷⁹ The General Court,

68. THOMAS G. BARNES, THOMAS LECHFORD AND THE EARLIEST LAWYERING IN MASSACHUSETTS 1638-1641, *reprinted in* 62 LAW IN COLONIAL MASSACHUSETTS 1630-1680, PUBLICATIONS OF THE COLONIAL SOCIETY OF MASSACHUSETTS 3 (n.p. 1984) [hereinafter BARNES].

69. *Id.*

70. *Id.* at 15-16.

71. *Id.* at 17.

72. *Id.*

73. BARNES, *supra* note 68, at 11.

74. *Id.* at 19.

75. *Id.* at 21-23; *see also* Thomas Lechford, *Note-Book kept by Thomas Lechford*, in *ARCHAEOLOGIA AMERICANA VII* (Cambridge, Mass. 1885).

76. THOMAS LECHFORD, *PLAIN DEALING OF NEWS FROM NEW ENGLAND* 69-71 (1867), *reprinted by* Johnson Reprint Corp. (1969).

77. *Id.*

78. *Id.* at 70-71.

79. *Id.*

however, declined to create the office and to appoint him.⁸⁰ In his own words, "the court was willing to bestow employment upon me, but they said to me that they could not do it for fear of offending the Churches"⁸¹ Lechford was not a member of the Congregational Church and disagreed with it on many points of doctrine.⁸² In fact, it was this disagreement that led to his leaving the colony in 1641. He recounts his problems with the Congregational Church in *Plain Dealing of News from New England*, a book he published in 1642 after his return to England.⁸³

Lechford seems to have expected that the notary public would act as a public record keeper as well as "someone the people may use . . . for making several writings, etc. . . ."⁸⁴ In other words, he imagined the notary public as someone who would combine the roles of English ecclesiastical notary and general notary. Though Lechford's proposals were not adopted, they nevertheless had an effect. On September 3, 1639, the General Court appointed Stephen Winthrop as Recorder of the Suffolk County Court and ordered that henceforth "every judgment with all the evidence be recorded in a book," and that records be kept by a Clerk of Writs of all wills, administrations and inventories, and the dates of every marriage, birth and death.⁸⁵ On October 7, 1640, the General Court ordered that all conveyances of land had to be acknowledged by the grantor before a Magistrate and recorded in a book kept by the County Recorder.⁸⁶ And on November 13, 1644, the General Court appointed William Aspinwall the first notary public of the colony.⁸⁷

Nothing is known of Aspinwall's life in England before he arrived in the Bay Colony. Supposedly, Aspinwall arrived with the first fleet in 1630.⁸⁸ He was active in the affairs of the Colony in various capacities, traveled to Rhode Island and Connecticut, and suffered banishment for his religious beliefs; but by 1642, he reconciled with the Church and civil authorities.⁸⁹ Thereafter, his advancement was rapid. On September 7, 1643, he was appointed Clerk of Writs for Boston.⁹⁰ On November 13, 1644, he was chosen Recorder, and on the same day, the General Court ordered "that Mr. Aspinwall shall be publique notary for this iurisdiction [sic],"

80. *Id.* at 35.

81. BARNES, *supra* note 68, at 36.

82. *Id.*

83. *Id.* at 35.

84. I MASS. RECORDS 276 (1639).

85. *Id.* at 306-07.

86. *Id.*

87. II MASS. RECORDS 84 (1644).

88. WILLIAM ASPINWALL, ASPINWALL NOTARICAL RECORDS i (1903).

89. *Id.* at ii-x.

90. II MASS. RECORDS 45 (1643).

and he immediately assumed these duties.⁹¹ Thus, Aspinwall was Recorder of the Suffolk County Court, Clerk of Writs for Boston and Notary Public for the Colony at the same time. These were three separate and distinct offices. The records Aspinwall kept as Recorder and Clerk of Writs were public records, but he considered his notarial records “not publick Records . . . but privat Records of my owne Acts”⁹²

Aspinwall’s notarial records from 1644 to 1651 first received public exposure in 1854 when they were given to the Boston Athenaeum.⁹³ The Registry Department of the City of Boston printed them in 1903.⁹⁴ There is reason to believe that Aspinwall kept several other books of notarial records. He referred to “the books of affidavits” and in his letter to the General Court written in 1652 before his return to England, he referred to his “notaries booke.”⁹⁵ However, the only surviving book is the one covering the period 1644 to 1651, and it is the only known book of seventeenth-century notarial records from any of the English colonies.

In the seven years between November 13, 1644 and October 14, 1651, Aspinwall made over 1200 entries in his record book, but it is difficult to reconstruct his practice with precision.⁹⁶ As he said in his letter to the General Court concerning the disposition of his record book, “[v]ery many things therein, for brevity sake, are registered in such a method, which none but my selfe or by instructions from me can make vse of; they being intended for my privat vse & my owne voluntary act”⁹⁷ Aspinwall’s record book begins with the statement “[a] Table of such Acts or Writeinges as have beene Attested by me William Aspinwall Notarie & Tabellion pub: under my hand.”⁹⁸ The first document Aspinwall attested or authenticated was “[a] letter of Attorney from Nathaniel Sparhawke to Thomas Adams Alderman of London to recover a debt of [£16-2-10p] of Mr. Owen Roe for clothes, dyet, bookes & other necessities unto his sonne.”⁹⁹ The letter of Attorney itself is not set forth.

Aspinwall attested and entered summaries of a wide variety of documents dealing with maritime and commercial matters including copies of affidavits,¹⁰⁰ ship protests,¹⁰¹ protests of bills of

91. ASPINWALL, *supra* note 88, at iv.

92. *Id.* at vii.

93. *Id.* at 3-4.

94. *Id.* at 1.

95. *Id.* at 5.

96. ASPINWALL, *supra* note 88, at vii-viii.

97. *Id.*

98. *Id.* at 5.

99. *Id.*

100. *Id.* at 46.

101. ASPINWALL, *supra* note 88, at 7.

exchange,¹⁰² acknowledgments of receipt of goods,¹⁰³ bonds,¹⁰⁴ certificates of goods imported and exported¹⁰⁵ and Bills of Health for vessels arriving in the port of Boston.¹⁰⁶ He also entered in his record book notarial documents prepared in other countries.¹⁰⁷ How Aspinwall acquired the skills of a notary is not known. From the documents he prepared, it is clear that he was familiar with the work of general notaries in England and had access to documents of various kinds prepared by them. Although there is no evidence that Aspinwall had access to it, William West's *Symboleography*, first published in England in 1590,¹⁰⁸ was the only precedent book on notarial practice.

The General Court of Massachusetts Bay had a clear idea of a notary's duties and the standard of conduct expected of them. On November 11, 1647, the General Court required notaries public to take the following oath:

[y]ou here swear by the name of the Living God; that in the office of Publick Notarie, to which you have been chosen, you shall demean yourself diligently and faithfully according to the duty of your Office. And in all writings, instruments and articles that you are to give testimony unto, when you shall be required you shall perform the same truly and sincerely according to the nature thereof, without delay or covin. And you shall enter and keep a true register of all such things as belong to your office. So help etc.¹⁰⁹

On October 15, 1650, the General Court passed an Act that enumerated the duties and fees of notaries.¹¹⁰ Furthermore, the

102. *Id.* at 91-92.

103. *Id.* at 423-24.

104. *Id.* at 366.

105. *Id.* at 394.

106. ASPINWALL, *supra* note 88, at 411.

107. *Id.* at 332.

108. BROOKS, *supra* note 34, at 87-89.

109. 2 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 119 (1854).

110. 3 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 210 (1854). The Act reads:

[i]t is ordered by this Court & the authoritie thereof, that every publicke notary in this jurisdiction shall henceforth stand charged from time to time to doe the [p]ticulers hereafter mentioned, beinge thereunto required for the [p]ticuler fees hereafter expressed, viz^t, for writing—

A peuration or letter of attorney, twelue pence; for entring the same at large in his booke, if therevnto required, twelue pence.

For copying a bill of exchange, & for a ptest, & atesting the same vnder his hand, two shillings six pence.

For time nessesarily expended abroad in trautils, or otherwise, about ptests, besids writinge & atestinge a cocquet or certificate, twelue pence an hower.

For writinge, recordinge, and atestingue a cocquet or certificate^v, twelue pence.

For entringe a bill of exchange & ptest at large in his booke, one

General Court passed other Acts affecting notaries. On October 14, 1651, the notary was required to keep a record of ammunition and powder that came into the colony.¹¹¹ The court also exempted the notary from military training and, in 1684, the court authorized a seal for the notary, although it seems the seal was never implemented.¹¹²

In October 1651, Aspinwall was charged with jury tampering.¹¹³ He was fined and suspended from the office of County Recorder and Clerk of Writs.¹¹⁴ A year later, at the October 1652 session of the General Court, he was removed from the office of notary public and was ordered to deliver his notarial record books to the Secretary of the Colony.¹¹⁵ He refused to do so, but agreed to leave his notarial records with the leading Puritan clergyman in the colony, John Cotton.¹¹⁶ Aspinwall contended in a letter to the General Court that his notarial records were private, not public records.¹¹⁷

The day Aspinwall left office, his successor, Nathaniel Souther, was appointed, and a notary continued in office throughout the colonial period.¹¹⁸ In 1684, Charles I's original charter creating the Massachusetts Bay Colony was revoked.¹¹⁹ In 1691, William and Mary created the Royal Province of

shilling six pence.

For a copy of a bill of exchange & ptest, & signing it, two shillings.

For searchinge & declaringe, vpon demaund, any record vnder his custody, three pence.

For all writinges exceedinge a page in folio, ouer & aboue the former fees, after the rate of eight pence p page^v, (for all aboue one page,) contayning 30 or 34 lines in a page, of ordinary sized paper, & 8 or 10 words in a line.

For a coppie of any writinge or recored, the same fee as for writinge & attestinge the originall writinge or record thereof.

For the bare pvsinge & attestinge any kind of writinge not hereby specially pvided for, six pence.

And it is further ordred by the authoritie afor[s]led, that no such officer shall deny or delay, any man desireinge it, the view or coppie of any record, or signinge of any writinge, vppon tender of due fees, as is aboue expressed, on peonalty of twenty shillings for euery such default, & shalbe lyable to the [p]ty therby damnified by way of action, as in other cases. P Curiá.

Id.

111. 3 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 239-40 (1854).

112. 5 RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND 438 (1854).

113. ASPINWALL, *supra* note 88, at v-vi.

114. *Id.* at vi.

115. *Id.*

116. *Id.* at vii.

117. *Id.* at vi-viii.

118. ASPINWALL, *supra* note 88, at vi.

119. MORISON, *supra* note 55, at 116.

Massachusetts Bay, appointed Sir William Phips as the first Royal Governor and issued the Province Charter which would govern the colony until the Revolution.¹²⁰ “Notaries public were not mentioned in the Province Charter”; but it appears that until the year 1720 they were appointed by the governor and council¹²¹ “The fees of notaries public were established by statute, but it does not appear that any provincial statute was passed which defined any of their duties. Apparently, the only duties they performed under the province charter were those which by custom were attached to the office.”¹²²

On November 11, 1720, the Royal Governor appointed seven notaries for the province.¹²³ In December, two of the appointees notified the governor “[t]hat Mr. Joseph Marion of Boston, Scrivener (as they are informed), takes upon him the Character & Acts as Publick Notary for the province, under Pretence (as is commonly said) of a Commission from his Grace the Archbishop of Canterbury”¹²⁴ The General Court ordered that Marion act no further as notary and held that under the Provincial Charter, the appointment of notaries public had not been reserved to the Crown but was vested in the Provincial Government.¹²⁵ Henceforth, notaries were elected in the Province by the Governor’s Council and the House of Representatives, not appointed by the Governor and his Council alone nor appointed in England by the Archbishop of Canterbury.¹²⁶ Despite this order, notaries appointed by the Archbishop of Canterbury appear to have practiced in the province from time to time. A document dated October 1760 in the Inferior Court of Common Pleas, Suffolk, bears the seal of Richard Jenneys, “Notary & Tabellion by Royal Authority duly admitted and sworn dwelling and Practicing in Boston.”¹²⁷ The Massachusetts Civil List for the Colonial and Province Periods does not include Jenneys among those notaries elected by the Council and House of Representatives, and it seems safe to assume that his commission was from the Archbishop of Canterbury.¹²⁸ The Act of Parliament required Registrars in the

120. *Id.* at 123.

121. *Opinion of the Justices*, 150 Mass. 586, 587 (1890).

122. *Id.* at 588.

123. 1 THE ACTS AND RESOLVES, PUBLIC AND PRIVATE, OF THE PROVINCE OF MASSACHUSETTS BAY 169, 731-32 (1780).

124. *Id.*

125. *Id.*

126. *Id.*

127. ROBERT J. BRINK, IMMORTALITY BROUGHT TO LIGHT: AN OVERVIEW OF MASSACHUSETTS COLONIAL COURT RECORDS, *reprinted in* 62 LAW IN COLONIAL MASSACHUSETTS 1638-1641, PUBLICATIONS OF THE COLONIAL SOCIETY OF MASSACHUSETTS 471 (n.p. 1984).

128. WILLIAM H. WHITMORE, THE MASSACHUSETTS CIVIL LIST FOR THE COLONIAL AND PROVINCIAL PERIODS 1630-1774 162 (1870).

Courts of Vice Admiralty to be notaries; the Archbishop of Canterbury may have appointed some notaries as well.¹²⁹ Unfortunately, most of the records of the Massachusetts Vice Admiralty Court have disappeared, in all probability lost in the Stamp Act Riot in 1765 when a Boston mob destroyed the home of the Deputy Registrar of the Court.¹³⁰

A few notarial records from the Province period have survived. The records of Stephen Sewall from 1696 to 1722 and the records of Samuel Sewall, Mitchell Sewall, James Jeffrey and Jonathan Notting from 1723 to 1769 have been preserved as the Essex County Notarial Records at the Essex Institute in Salem, Massachusetts.¹³¹ The Boston Athenaeum has preserved the records of Samuel Tyley from 1731 to 1743, of Ezekiel Goldwait from 1748 to 1754 and of Ezekial Price from 1754 to 1780.¹³² An examination of these records shows that throughout the province period, notaries were involved in maritime and commercial matter—mainly authenticating documents for use in foreign jurisdictions. They also entered in their record books notarial documents prepared in foreign jurisdictions, no doubt so that they could issue authenticated copies of them if requested. They preserved documents—often letters—that could not be deposited in public registries. Tyley's record book includes an inventory of Negroe slaves made in Nevis, Bills of Sale and private letters regarding slaves from other Caribbean islands, a Maritime Protest made in Jamaica and Powers of Attorney prepared in England.¹³³ These entries would be preceded by the words, "[t]he following recorded at the request of . . ."¹³⁴

The number of notaries in Massachusetts was small from the founding of the colony to the time of the American Revolutionary War.¹³⁵ There was no more than one notary for each town at any one time up to the province period. *The Massachusetts Civil List for the Colonial and Provincial Periods* shows two notaries in the province in 1692 and seven in 1720.¹³⁶ In 1774, on the eve of the Revolution when the population of the Province was approximately 235,000, there were twenty-two notaries, all in

129. 11 & 12 WILL. 3.

130. W. KINVIN WROTH, *THE MASSACHUSETTS VICE-ADMIRALTY COURT* 37 (1963). See also CARL UBBERLOHDE, *THE VICE ADMIRALTY COURTS AND THE AMERICAN REVOLUTION* Preface at 1 (1960).

131. Transcriptions of the Salem Notary Records were published in the 42-48 *ESSEX INSTITUTE HISTORICAL COLLECTIONS*. BRINK, *supra* note 127, at 489.

132. ASPINWALL, *supra* note 88, at 3-4.

133. *Id.*

134. *Id.*

135. *THE MASSACHUSETTS CIVIL LIST FOR THE COLONIAL AND PROVINCIAL PERIODS 1630-1774 162-63* (1870).

136. *Id.* at 162.

seaport towns.¹³⁷

The seventeenth and eighteenth-century notaries, such as Price, Tyley and the Sewalls, were prominent and respected members of the community who were active in shipping and insurance matters.¹³⁸ They fully met the criteria for the qualifications of a notary set out by John Ayleff, the eighteenth-century English legal commentator: “[f]irst, he ought to be a person of trust and fidelity: secondly, a person of some worth and dignity, and not a person of low fortune and station in the world; thirdly, a person well instructed in the business of a notary”¹³⁹

With respect to notarial records, a statute passed in 1798 made detailed provisions for the preservation of notarial records and provided heavy penalties for their destruction.¹⁴⁰ The records were to be deposited “in the office of the Clerk of the Court of Common Pleas for the same county in which the said notary resided.”¹⁴¹ Unfortunately, a statute passed 140 years later allowed for the disposal by destruction or otherwise of obsolete and useless papers or records that have been filed or deposited in any court of the Commonwealth, and “old records of notaries public which are kept in any court of the Commonwealth is within the authority provided by this section.”¹⁴² As a result of this statute, what notarial records we have today survived by chance, often because they were held in private hands.¹⁴³

3. New Hampshire

New Hampshire began as a proprietary grant to John Mason, an English merchant interested in the development of northern New England.¹⁴⁴ In 1671, Mason sold his holding to the Crown and in 1691 New Hampshire became a royal colony. Puritans from the Massachusetts Bay Colony settled this colony along the coastline at Portsmouth, and Massachusetts claimed jurisdiction over the colony in an effort to expand its territory.¹⁴⁵ In 1690, the Governor of Massachusetts appointed Thomas Brattle, the first known notary public in New Hampshire.¹⁴⁶ It is likely, however, that notaries appointed by the Archbishop of Canterbury practiced in the colony before the appointment of Brattle. A criminal statute as early as 1679 provided:

137. *Id.* at 162-63. AYLIFFE, PARERAGON 382 (1726).

138. ASPINWALL, *supra* note 88, at 3.

139. AYLIFFE, *supra* note 137, at 382.

140. GENERAL LAWS OF MASSACHUSETTS FROM 1780 TO 1822, 575 (1831).

141. *Id.*

142. MASS. GEN. LAWS ch. 221, § 27A (1996).

143. ASPINWALL, *supra* note 88, at 3, 4.

144. R.C. SIMMONS, THE AMERICAN COLONIES FROM SETTLEMENT TO INDEPENDENCE 26 (1976).

145. ANDREWS, *supra* note 57, at 83.

146. NEW HAMPSHIRE PROVINCE LAWS, 441 (1690).

[t]hat if any Notary, or Keeper of public Records or writings, shal wilfully imbezil or make away any such Record or writing of concernment com'itted to his keeping & trust; or shall on purpose falsify, or deface them, by razing out, adding to them, or otherwise; SUCH corrupt Officer shal lose his Office, be disfranchised, & burnt in the face, or fined, according to the circumstances of the fact.¹⁴⁷

The fees of notaries were regulated by an Act passed in 1718.¹⁴⁸

4. *Rhode Island*

In 1635, men and women who had been banished from Massachusetts for their religious and political views settled in and formed Rhode Island.¹⁴⁹ Thomas Coddington, one of those banished from Massachusetts, founded Newport in 1639, which became the richest town and most active seaport in the colony.¹⁵⁰ In 1663, Rhode Island obtained a royal charter and in 1705 the General Assembly established the office of notary public and appointed the Colony Recorder to fill the office.¹⁵¹ The only notary in the colony resided in Newport until 1751, when an Act establishing the office in Providence was passed.¹⁵² Fees for notaries were established in 1766.¹⁵³

B. *The Chesapeake Colonies*

The records of the Chesapeake colonies—Virginia and Maryland—are less detailed than those of Massachusetts, but the acts creating the office of notary public in those colonies clearly set forth the reasons why notaries were needed.¹⁵⁴ An act by the General Assembly appointed the first notary public in Virginia on March 23, 1662, stated:

[w]hereas for want of a publique notary the certificates and other instruments to be sent out of this country, have not that credit given to them in foreign parts as duly they ought; Bet it therefore enacted that Henry Randolph, clerke of the assembly be authorized and sworn a publique notary for this Country, to whose attestation at home or abroad we desire all credence to be given.¹⁵⁵

Similarly, the following year, an act of the General Assembly appointing the first notary public in Maryland, stated:

147. *Id.* at 19.

148. *Id.* at 279, 524.

149. ANDREW, *supra* note 57, at 36.

150. *Id.*

151. II S.G. ARNOLD, HISTORY OF THE STATE OF RHODE AND PROVIDENCE PLANTATIONS 22 (1894).

152. *Id.* at 182.

153. *Id.*

154. 2 WW. HENING, COLONY LAWS OF VIRGINIA 136 (John D. Cushing ed., Michael Glazer 1978).

155. *Id.* at 136.

[t]he Burgesses of this present General Assembly observing that little regard or Credit hath been usual in former, Tymes given to Publiq Instrum As Protests, Certificates and Copys of Records sent out of this province into Foreign Precincts for want of a Publiq Notary Authorized for that end And conceiving it necessary that such an officer be appointed whereby such instruments as aforesaid may pass with greater Credence both in foreign precincts and at home amongst the People of this Province be it enacted by the Right Honorable the Lord Proprietor by and with the Assent of the upper and lower house of this present general assembly that the Secretary of this province for the tyme being be hereby appointed and authorized to be the Publiq Notary of this Province and that he be sworne by the Lieutenant General for the tyme being for that end and purpose. *To end that all persons who shall desire any publiq or private Instrument in wryting to be Attested may to him Repayre whoe is hereby enjoined to give Attestation there unto as in such cases Publiq Notaries in England use to do, And that the Attestations may beare the greater Credence he shall cause the Lesser seale of this Province to all such Attestations by him made to be thereunto Affixed unto whose Attestation both Abroad and at home We desire all faith and Credence may be given and the notary shall have for his fee for every such attest fifty pounds of Tobacco and Fifty pounds of Tobacco for the Recording thereof provided that the Act nor anything therein Contained abridge not the Secretary's fee upon any Instrument or other wryting allowed him by any former of Act of Assembly. This Act to endure for three years or to the end of the next General Assembly.*¹⁵⁶

C. The Middle Colonies

After the settlement of Maryland in 1632, no new colonies were established until after the restoration of Charles II to the English throne in 1660.¹⁵⁷ Following the surrender of New Netherland to the English in 1664, the King granted the area that now includes New York, New Jersey, Pennsylvania and Delaware first to his brother, the Duke of York, and later to various proprietors who appointed local governors, councils and assemblies.¹⁵⁸ The chaotic political state of the middle colonies, their ever-changing boundaries and the scarcity of records make it difficult to follow the establishment of the office of notary public.¹⁵⁹ But it is known that Governor Richard Nicolls appointed the first English notary in New York, Thomas Carveth, in 1664.¹⁶⁰ The first

156. *Proceedings and Acts of the General Assembly of Maryland*, Sept.-Oct. 1663, Archives of Maryland, at 498 (emphasis added).

157. SIMMONS, *supra* note 144, at 50.

158. *Id.* at 60-61.

159. *Id.*

160. NEW YORK HISTORICAL MANUSCRIPTS: DUTCH THE REGISTER OF SOLOMON LACHAIRE xvii (E. B. O'Callaghan trans., Kenneth Scott & Kenneth Stryker-Rodda eds., Genealogical Publishing 1978) [hereinafter HISTORICAL

notary in Pennsylvania was appointed sometime before 1701.¹⁶¹ In 1765, the governor of Pennsylvania appointed Thomas McKean notary in Delaware.¹⁶² In 1665, the Province of New Jersey was founded.¹⁶³ It was divided into two political units—East New Jersey and West New Jersey.¹⁶⁴ The two units united in 1702 to become the Royal Province of New Jersey.¹⁶⁵ It cannot be determined when the first notary of New Jersey was appointed.

D. *The Southern Colonies*

The Southern colonies were the Carolinas and Georgia. Charles II chartered Carolina in 1663 as a proprietary colony that extended from southern Virginia to northern Florida.¹⁶⁶ In 1729, Carolina separated into two royal provinces.¹⁶⁷ The first notary public in South Carolina was William Whiteside from Georgetown, near Charleston, who was appointed March 13, 1741.¹⁶⁸ North Carolina was slower in development than South Carolina, and the first notary in that colony was probably appointed shortly before 1777.¹⁶⁹

The last of the thirteen colonies to be established was Georgia, which was founded in 1733 as a proprietary colony to be settled by poor debtors and others released from English jails.¹⁷⁰ The colony did not prosper; in 1752 the proprietors returned the colony to the Crown and the first Royal Governor arrived in 1754.¹⁷¹ Courts elected notaries public and a statute setting their fees was passed in 1792.¹⁷²

In summary, notaries in the English colonies, with the exception of those appointed by the Archbishop of Canterbury, derived their authority to act from the local colonial government, most often by appointment by the Governor and his Council, usually on the recommendation of the Legislature. They were men of substance, active in commercial affairs. All notaries were located in seaport towns, and they dealt with commercial and

MANUSCRIPTS].

161. Telephone Interview with Louis Waddell, Pennsylvania Division of Archives (Dec. 31, 1997) (referring to the appointment of the first notary).

162. Telephone Interview with Bruce Haase, Delaware Public Archives (Dec. 31, 1997).

163. MORISON, *supra* note 55, at 121.

164. *Id.* at 122-23.

165. *Id.* at 123.

166. *Id.* at 141.

167. *Id.* at 144-45.

168. Telephone interview with Spencer Hewett, Office of South Carolina Secretary of State (Dec. 31, 1997).

169. 1777 N.C. Laws 24.

170. SIMMONS, *supra* note 144, at 192-93.

171. *Id.* at 183.

172. 1798 Ga. Laws 471.

maritime matters. Their practice was based on unwritten international custom derived from the *Law Merchant*. Colonial statutes set fees, provided penalties for notarial misfeasance and sometimes added special duties, but did not regulate traditional notarial work. Their duties were those "which by custom were attached to the office."¹⁷³ Notaries kept books in which they recorded the notarial acts that they performed, the acts performed by notaries in other jurisdictions, if so requested, and sometimes documents that could not be recorded in a public records office. They issued attested copies of these records when asked to do so. Their record books were roughly equivalent to the protocol books kept by civil law notaries to this day. There were penalties for destroying or defacing notarial records and provisions for depositing the records with some colonial official. Unfortunately, most of these record books have disappeared.

E. New Netherland

The history of notaries public in New Netherland is outside the development of the English colonial notariat, but is of interest for the light it casts on seventeenth-century continental notarial practice. In 1626, the Dutch West India Company established the colony of New Netherland, which remained in Dutch hands until it fell to the English in 1664.¹⁷⁴ During its thirty-eight years of existence, the colony was governed by a resident Director General and Council appointed by the Company's headquarters in Holland.¹⁷⁵ The language of the colony was Dutch and its law was Roman-Dutch. The position of notaries public under Roman-Dutch law was far different than under English common law. The notary drafted and authenticated legal documents and kept a record of his notarial acts in his register, just as civil law notaries do to this day.¹⁷⁶

In March 1657, Simon Lachaire, who had come to the colony from Holland around 1655, applied to the Council for appointment as notary public, but was refused for reasons that are not known.¹⁷⁷ He applied again in January 1661, setting forth his legal experience and knowledge of the English language. He stated that "he has been employed in the study and practice of law for some years as well as having applied himself diligently to learning to understand, speak and write the English language . . ."¹⁷⁸ His request was granted subject to an examination by one of the Councilors. Lachaire passed the examination and, in his own

173. Opinion of the Justices, *supra* note 121, at 587.

174. MORISON, *supra* note 55, at 6, 118-21.

175. *Id.*

176. HISTORICAL MANUSCRIPTS, *supra* note 160, at xi.

177. *Id.* at xvi.

178. *Id.* at xii.

words, "took the oath of fidelity in that office . . . wherein it is among other things expressed, that I shall keep a true and correct register and protocol of everything that will pass before me in quality as notary."¹⁷⁹

Lachaire was not the first notary in New Netherland. There had been notaries in that colony at least as early as 1651.¹⁸⁰ However, it is Lachaire's register for the years 1661 and 1662 that has survived and has been translated into English.¹⁸¹ It gives a rare and fascinating glimpse into the work of a seventeenth century civil law notary. Unlike the notarial acts of notaries in the English colonies that deal almost exclusively with maritime and international matters, Lachaire's notarial work, like that of continental notaries, was largely domestic.¹⁸² His register contains contracts for the construction of buildings, conveyances of real property, bills of sale, leases, acknowledgments of debt, wills and depositions.¹⁸³

Lachaire died in December 1662.¹⁸⁴ After the English acquired the colony in 1664, Governor Richard Nicolls appointed Thomas Carveth to fill the vacancy left by Lachaire.¹⁸⁵ The commission read "[w]hereas there is no Publique Notary in this place that understands the English tongue, I . . . confirme Thomas Carveth to be a Publique Notary in this Town of New York . . ."¹⁸⁶

V. CONCLUSION

Until the adoption of the United States Constitution in 1789, the work of American and English general notaries were virtually identical and consisted of drafting, authenticating and maintaining a record of documents for use in international commerce. After the adoption of the Constitution, English and American notaries began to go their separate ways. The Constitution left the appointment and regulation of notaries to the individual states, rather than to the federal government. Hence, there was no uniform control of practice. On the other hand, in 1801, England adopted the Public Notaries Act that regulated all aspects of the profession under the central authority of the Court of Faculties.¹⁸⁷ English notaries concentrated their activities "almost exclusively on the preparation and authentication of

179. *Id.* at 1.

180. *Id.* at 123.

181. HISTORICAL MANUSCRIPTS, *supra* note 160, at xi.

182. *Id.* at xi.

183. *Id.* at 14, 19, 41-42, 165.

184. *Id.* at xvii.

185. *Id.*

186. HISTORICAL MANUSCRIPTS, *supra* note 160, at xi.

187. READY, *supra* note 7, at 423.

instruments to be used abroad."¹⁸⁸

Throughout the nineteenth century, the work of United States notaries was increasingly limited to domestic practice: taking acknowledgments, administering oaths and protesting bills of exchange. During the nineteenth century, states began to authorize notaries to perform many functions that had hitherto been done by Justices of the Peace. Massachusetts, for example, authorized notaries to administer oaths in 1851¹⁸⁹ and to take acknowledgments of deeds in 1867.¹⁹⁰ Gradually, the number of justices of the peace decreased and the number of notaries increased. The reason for this was that judicial functions of justices of the peace were transferred to local courts and their ministerial functions were transferred to notaries. In Massachusetts in 1892, some 1265 justices of the peace and 327 notaries were commissioned.¹⁹¹ Within fifty years, the number of commissioned justices of the peace dropped to 317 and the number of notaries increased to 3036.¹⁹² In addition, state legislatures authorized notaries to perform miscellaneous ministerial functions such as opening safe deposit boxes, issuing subpoenas and, in a few states, performing marriage ceremonies.¹⁹³

The work of United States notaries, while losing its international character, fully met the needs of a young, expanding nation. Notaries assured the reliability of land transfers, verified affidavits required by state and federal agencies, protested bills of exchange and, in general, facilitated commerce within and among states. But having lost proficiency in international practice, United States notaries are not qualified to perform notarial acts acceptable in civil law jurisdictions.

As a result of the unique development of notaries in this country, there are three distinct groups of notaries practicing in the world today: civil law notaries, English notaries and United States notaries. Civil law notaries are lawyers who, after specialized training and a period of apprenticeship, are eligible for appointment by the state as a notary. Appointments are made after a series of competitive examinations to fill the office of a deceased or retired notary. Notarial offices are established to serve a particular geographical area; hence, the number of these notaries is small. There are approximate 7500 notaries in France, about the same number in Germany, some 4500 in Italy and about

188. *Id.* at 17.

189. MASS. GEN. LAWS ch. 29 (1851).

190. MASS. GEN. LAWS ch. 59, § 13 (1867).

191. *See generally* SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS, FIRST ANNUAL REPORT (1892) (noting the number of notaries commissioned).

192. *See generally* SECRETARY OF THE COMMONWEALTH OF MASSACHUSETTS, ANNUAL REPORTS (1940).

193. *Id.*

2000 in Spain.¹⁹⁴ The civil law notary prepares legal documents such as deeds, wills, corporate charters and contracts that have the status of public instruments and are accepted throughout the civil law world. "Until recent years, notaries in civil law countries handled very little international work, but the demands of international commerce have resulted in greater involvement of notaries in this area."¹⁹⁵

English notaries are also highly trained legal professionals who have passed strict examinations and have served a period of apprenticeship.¹⁹⁶ They are required to be fluent in at least one language other than English and to be familiar with the law of at least one civil law country. Most of their work consists of preparing documents for use abroad. "[N]otaries exist primarily in England to enable parties to authenticate documents or give effect to legal transactions outside the United Kingdom."¹⁹⁷ "The importance of the English notary resides not in the functions which he performs within his own legal system, but rather the link he provides between the institutions of the common law and those of the civil law."¹⁹⁸ There are some one thousand notaries in England and Wales, of whom approximately thirty-five are Scrivener Notaries practicing exclusively in London.¹⁹⁹

United States notaries are for the most part non-lawyers who have been appointed by the states in which they reside and who usually have not undergone any special training or testing.²⁰⁰ Appointment is virtually automatic after submission of an application and payment of a modest fee.²⁰¹ There are about 4.2 million notaries in the United States.²⁰² The main work of American notaries is to prevent fraud by verifying the identity of persons taking oaths and making acknowledgments on documents to be used within the United States. These notaries are not authorized to prepare legal documents of any kind except in the state of Louisiana, where notaries follow civil law practice,²⁰³ and in Puerto Rico, where notaries must be attorneys.²⁰⁴ The acts of United States notaries may not be accepted in foreign countries

194. Malavet, *supra* note 7, at 474.

195. THE UNITED KINGDOM NOTARIAL FORUM, THE ORGANISATION AND FUNCTION OF THE PROFESSION OF NOTARY IN THE UNITED KINGDOM 1 (n.d.) [hereinafter NOTARIAL FORUM].

196. *Id.* at 19.

197. *Id.* at 4.

198. READY, *supra* note 7, at 1.

199. NOTARIAL FORUM, *supra* note 195, at 22.

200. READY, *supra* note 7, at 1.

201. *Id.*

202. CLOSEN, *supra* note 1, at 36.

203. LA. REV. STAT. ANN. § 323 (West 1999).

204. P.R. LAWS ANN. tit. 4, § a (1994).

nor are they ever accorded the status of public instruments.²⁰⁵

In order to give American notarial documents international standing, the U.S. Council for International Business and the American Bar Association have proposed the creation of a class of international attorney-notaries whose training would be comparable to that of English notaries.²⁰⁶ Florida has already passed an act authorizing such a class.²⁰⁷ Thus, after more than 300 years, a group of United States notaries will be coming full circle. Like their colonial predecessors, they will be qualified to engage in international commerce and to prepare documents that will be accepted throughout the world.

205. READY, *supra* note 7, at 28, 29.

206. John E. Seth, *Report from Montreal American Notary*, 31 THE INT'L NOTARY PRACTITIONER 2 (1995); Theodore Barassi, *The Cyber-Notary: A New U.S. Legal Specialization for Facilitating International Electronic Commerce*, BULL. OF L., SCIENCES AND TECH. 5-7 (Apr. 1995).

207. FLA. STAT. ch. 118 (1998).