

NOTARIES AND THE LAW IN VENICE: DEVELOPMENT OF A DISCIPLINE

NOTAI E DIRITTO A VENEZIA: SVILUPPO DI UNA DISCIPLINA

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Abstract English: The paper follows the development of the notary profession in Venice in the production of private deeds (*instrumenta*) and public acts (*acta*). In the Middle Ages, both activities were performed by the clergy. With the advent of the *Commune*, a Chancery was instituted to archive separately the *acta*, as well as the *instrumenta*. A lay Great Chancellor organised clerks who were members of the clergy, and they also wrote private deeds. As the requirements of the notarial activity became stricter, a policy of careful selection was implemented. The two fields of the notarial activity began to differentiate. In 1433, a papal bull forbade priests to work as clerks in secular institutions. It marked the beginning of a turnover in the Chancery staff, the new clerks being chosen among laymen. Close control was kept on Venetian citizenship as the main requisite to access Chancery posts. Similar criteria were applied to private notaries: after some successful tests, in 1514 a procedure for admission to the profession, and a College of Notaries, were finally instituted.

Keywords: Republic of Venice; Notaries; Legislation; History

Abstract Italiano: Il saggio segue lo sviluppo della professione notarile a Venezia nella produzione di atti privati (*instrumenta*) e atti di governo (*acta*). Nel medioevo, entrambe le attività erano praticate dal clero secolare. Con l'avvento del *Commune*, venne istituita una Cancelleria per archiviare tanto gli *acta* quanto gli *instrumenta*. Un Cancellier Grande laico organizzava il lavoro di segretari membri del clero, che redigevano anche atti privati. Quando i requisiti per l'esercizio del notariato si fecero più severi, fu introdotta un'attenta selezione. I due ambiti del notariato iniziarono a differenziarsi. Nel 1433, una bolla papale proibì al clero di esercitare funzioni segretariali nelle istituzioni secolari. Fu l'inizio di un ricambio nel personale di Cancelleria: i nuovi segretari venivano scelti tra i laici. La cittadinanza veneziana, requisito principale per l'accesso ai posti di Cancelleria, era strettamente disciplinata. Criteri simili vennero applicati ai notai privati: dopo il successo di alcuni esperimenti, da ultimo nel 1514 si istituirono una procedura per l'ammissione alla professione e un Collegio notarile.

Parole chiave: Repubblica di Venezia; Notariato; Legislazione; Storia

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1. Venetian notaries. The state of the art

On all considerations, it is not surprising that the medieval notarial profession has features of its own in the lagoon city. In the words of Bartoli Langeli, «Looking at Venice in the mirror of notaries and the documents they produced, does not belie its calling to be ‘a world apart’, which, in this matter, cuts out a slice of anomaly in the landscape of the notary profession in Italy». The Author also remarks how Venice pursued a counter-current course in maintaining “a wedge of early medieval notariat in the body of the ‘modern’ notarial civilisation in central and northern Italy”¹. Time flows at a different speed there than on the mainland, and Venetian medieval history, including that of its notaries, is made up of delays and sudden accelerations. A case of delay is the experience of statutory legislation, which began in Venice a long century later than in the cities of the mainland, but then was pursued until the mature Modern Age with numerous *Correzioni* to the Statutes. An instance of sudden acceleration can be seen when, along a bare century and a half, the simple constitution of the *Ducatus* as a diarchy of doge and assembled people blossomed into the solid institutional structure of the democratic *Commune*, followed by the aristocratic Republic with its five Councils and dozens of magistrates, destined to endure until the end of the State itself. It does not fit here to discuss topics so fraught as those connected with the institutional development of Venice in the Middle Ages².

Perhaps this is why Venetian notaries are a subject that historiography has for a long time only touched in a cursory fashion. In the last thirty years or so, however, studies have been produced with increasing frequency, focusing on the modern age: starting from different and stimulating points of view, they have issued in wide-ranging essays, exploiting the improved accessibility of archival documents

¹ My translations. In the original, «Venezia, a considerarla allo specchio dei notai e della documentazione che essi produssero, non smentisce la sua vocazione a fare ‘mondo a parte’, che, in questo caso, le ritaglia uno spicchio di anomalia nel panorama del notariato italiano»: Bartoli Langeli, 2001, pp. 73-101, p. 73 (the paper is now republished as Bartoli Langeli, 2006, pp. 59-86) and «un cuneo di notariato altomedievale nel corpo della civiltà notarile ‘moderna’ dell’Italia centro-settentrionale»: Bartoli Langeli, 1992, pp. 847-864, especially p. 861.

² For the crucial period with regard to this study, I will just mention Castagnetti, *Il primo Comune*, especially pp. 98-102, where the Author points to some of the specific traits of the Venetian *Commune*.

in the time preceding the current covid-19 pandemics. Some new methodological and reconstructive perspectives, not limited to mere description, have also emerged, opening the way to improved interpretation. I refer above all to the monographs by Adelin Charles Fiorato³, Andrea Zannini⁴ and Elisabetta Barile⁵ on various aspects of the organisation, functioning and staffing of the central Chancery and the magistrates' secretariats⁶, as well as the volume by Maria Pia Pedani Fabris on notarial activity in both branches⁷; the works by Mary Neff⁸, Matteo Casini⁹, Anna Bellavitis¹⁰, Massimo Galtarossa¹¹ and Giuseppe Trebbi¹² on the class of the originary citizens and its social, cultural and professional connotations; and finally the seminar held at the Ateneo Veneto in 2010¹³.

As far as the Middle Ages are concerned, the lines of research conducted so far have been mainly oriented towards the publishing of documents¹⁴ and their

³ Fiorato, 1989, pp. 133-184.

⁴ Zannini, 1992, pp. 131-145, and Id., 1993.

⁵ Barile, 1993, pp. 53-103, and Id., 1994.

⁶ The shift from the Latin to the Venetian Italian language in public documents, which took place gradually during the late XV and early XVI century together with a change in the script and in the way the pages were filled, as well as more widely the use of language in public documents, is discussed in Frasson, 1980, pp. 577-615, Tomasin, 2001, and Zordan, 2003, pp. 89-115, now in Condorelli (ed.), 2004, pp. 519-541. About language and Italian notaries in general, see Fiorelli, 1992, pp. 119-128, later expanded in Id., 2008, pp. 309-327.

⁷ The already mentioned Pedani Fabris, 1996.

⁸ Neff, 1981, pp. 33-61, and Id., 1985.

⁹ Casini, 1991, pp. 195-251, and Id., 1992, pp. 133-150.

¹⁰ Bellavitis, 1995, pp. 359-383.

¹¹ Galtarossa, 2006.

¹² Trebbi, 1980, Id., 1986, pp. 35-73, Id., 1992, pp. 32-58; and Id., 1996, pp. 508-516.

¹³ Tamba (ed.), 2013.

¹⁴ The patient (and exhausting) census of the archival funds until the end of the XIII century, prerequisite for the compilation of a published catalogue, was reported in Lanfranchi, 1984, pp. 355-363. Published medieval documents have meanwhile become available thanks to the Comitato per la pubblicazione delle fonti relative alla storia di Venezia, which dedicated sections 1, *Archivi pubblici* and 3, *Notarial archives*, to editions of medieval secretarial and notarial protocols. but also the other three sections (2, *Archivi ecclesiastici*, 4, *Archivi privati* and 5, *Fondi vari*) include documents at least in part of notarial origins. Other deeds can be found in Morozzo Della Rocca R. and Lombardo A. (eds.), 1940; in the additions in Idd. (eds.), 1953; and of course in the already mentioned Migliardi O'Riordan G. and Schiavon A. (eds.), 1988.

analysis¹⁵ and towards prosopographical studies¹⁶, without actually producing overarching reconstructions.

A precious opportunity has been offered by the volumes of the *Storia di Venezia* published by the Istituto dell'Enciclopedia Italiana, containing dense contributions on this matter by Attilio Bartoli Langeli, as already mentioned, Marco Pozza¹⁷ and Girolamo Arnaldi¹⁸. However, the state of research on the subject has remained so far, on the whole, at the stage of soundings and the enunciation of problems, which are still largely under debate¹⁹.

This brief overview of mine will not of course bring any final progress in unraveling them. However, I would like to contribute to the work in progress with a chronological synthesis of the regulatory discipline of the notarial activity in its two aspects – secretarial and professional – conducted through a census of the laws on the matter, so far identified by historiography, and with a tentative hypothesis of interpretation regarding the main thread of the policy they express.

2. A handful of questions

The modernist perspective, with which I am more familiar, interfered at the beginning with my research, pushing me to ask myself questions – and to look for answers – that I later discovered needed some revision. The answers to my initial questions were less clear than expected. Indeed the current definitions of the characters of the notary and the notarial work, cannot easily be applied to the Middle and modern ages. Such definitions in fact came at a time when the process of separation and of stationalisation of the two areas as incompatible with each other was radicalised in legal theory; this brought about a distorted retrospective view of earlier situations²⁰.

First of all: when and how did notaries *ad acta*, producing the texts of acts of government, distinguish themselves in Venice from notaries *ad instrumenta*, writing private deeds? «They did not», was the gist of a personal communication

¹⁵ Too few works so far, as noted by Bartoli Langeli, 2006, pp. 77-78, and for the most part already old. I just mention Lazzarini, 1904, pp. 199-229; Pitzorno, 1909; Pagnin, 1950; Lombardo, 1953, issues 1-3. A recent pioneering, solitary study about the early Middle Ages is Parcianello, 2012.

¹⁶ For instance, Bellemo, 1912; Lazzarini, 1930, pp. 118-125; more recently, Tiepolo, 2002, pp. 257-314.

¹⁷ Pozza, 1997a, pp. 349-369, and Id., 1997b, pp. 365-387.

¹⁸ Arnaldi, 1997, pp. 865-887.

¹⁹ A provisional list of questions to be studied can be found in Amelotti, 1996, *Premessa*, pp. V-VI. There is also noted the need, so far unsatisfied, for the study by Pedani Fabris about the modern age to be paralleled by a miscellaneous volume about the Middle Ages, collecting the specific know-how of a panel of researchers.

²⁰ See as an instance the definitions in Rezasco, 1881, *ad vocem Notajo, Notaro, sub I and II*.

on this point by the late Dott. Maria Francesca Tiepolo, former Director of the State Archive in Venice: «Until the end of the Middle Ages, the very same persons performed both functions»²¹.

Perhaps, however, the start of the distinction could be glimpsed at the end of the XII century and the first half of the XIII, when the change from *Ducatus* to *Commune* took place: that is, when the new institutional structure, still in development, began to need and therefore organised a Chancery, which from then on would produce the paper exoskeleton supporting the governing body, as it is still largely preserved in the State Archive²². And yet another two centuries would have to pass before aspiring scribes would have to choose between two different careers...²³

And then, when and how did the private notarial deed obtain the value of legal proof, with what requirements, and how effectively? It was only with the comprehensive reform of 1514 that Venetian notaries *ad instrumenta*, enrolled in the College of Notaries, were given the power to draw up deeds having value of legal proof²⁴. But recourse to *instrumenta* (still without enhanced efficacy) was already extensive before the XII century! The contradiction is only apparent, as the notary certainly did not act as a mere scribe. His clients, as we know, were literate more often than not²⁵, and would probably have been able to draw up valid private agreements themselves, free of charge; but a notary provided added value by the suggestion of well-trying and flexible negotiating models and clauses, suitable for preventing drawbacks in the implementation of the deed.

Again about notaries *ad instrumenta*: there were Venetian notaries operating in Venice, Venetian notaries practicing outside Venice, and foreign notaries drawing up deeds in Venice. How were they managed, how did they coexist and interact? It is well known how in the Middle Ages every judge applied the law of the institution that gave him jurisdiction. In the same way each notary may have drawn up deeds in accordance with the regulatory system of the institution that had invested him with the function (it is the case of imperial and papal notaries), or allowed him to perform it (as happened for the Venetian ones). Private parties

²¹ Of course she was right: her unparalleled knowledge of individual notarial protocols, as well as of the documents of the Chancery, made her see these hundreds of people, busy with their pens and vellum or paper along the centuries, in their dimension as human, personal lives spent writing both types of documents.

²² Thus Pozza, 1997a, especially pp. 358-359; also, explicitly, Bartoli Langeli, 2001, pp. 78-79, where he notes the major planning role performed by non-Venetian notaries, given professional assignments as top-level functionaries during a deliberate hiring campaign, in order to institute, organise and test the original core of the Chancery.

²³ Thus Pedani Fabris, 1996, pp. 4-5 and note 4 on p. 5.

²⁴ Late once again, given that in Northern and Central Italy, *publica fides* was given by notaries deeds already in the XII century: Bartoli Langeli, 1992, p. 851.

²⁵ As attested by «quelle strepitose esibizioni di un alfabetismo diffuso e capillare che sono le sottoscrizioni alle 'ducali maggiori'» (Bartoli Langeli, 2001, p. 80).

performing legal acts may choose the notary according to the deed pattern they meant to employ, that is the institution by whose law system they intended to have the situation regulated²⁶. No use for an imperial notary, or a papal one, when it was a matter of establishing a *commissaria* or a *fraterna*, legal institutes so idiosyncratically Venetian that they could not be fitted into either the Roman or the canon law. On the other hand, recourse to an imperial notary may have been fitting for such deeds as e.g. land transfers on the mainland.

And finally, reversing the initial approach: what do the *acta*, that is the acts of government (be they judgments registered by the law Courts' notaries, decrees of the Councils, or the magistrates' *terminazioni* drawn up by secretaries) have in common with the *instrumenta* (wills, contracts, powers of attorney in many different forms...) drawn up by private notaries?

Medieval Venetians were eminently practical people, and they probably saw the production of physical written acts with legal relevance as more important than their specific public or private contents. Among the very earliest surviving written documents there are public deliberations of the *placitum*, the general assembly of adult male citizens, drawn up along the same pattern as private agreements, complete with the signatures of witnesses²⁷.

So maybe it is the justicial, procedural, remedial, pragmatic spirit of Venetian law that provides the answer: both *acta* and *instrumenta* are written documents, crafted for the enforcement of legal positions on the basis of the text they contain, with the aim of preventing or resolving disputes. After all, what else is a legal system for?

3. The ducal age: pragmatism of the origins

A handful of deeds are extant from the IX century to the year 1000. But there are already six hundred and thirty, gradually increasing in number in geometric progression, from between 1000 and 1150, and almost two thousand up to the end of the XII century²⁸: a quiet beginning, from the point of view of quantity, followed by an acceleration that brings the Venetian documents to surpass, numerically, those produced in the mainland cities.

There were about one hundred and fifty notaries who produced this growing mass of documents in the second half of the XII century. All belonged to the parish clergy; despite this, they do not appear to have been bound to a fixed location, since one in three was also active in the lagoon *vici* and in the foreign ports frequented

²⁶ The idea seems to agree with the observations of Bartoli Langeli, 1992, p. 852, with regard to the already mentioned Waldrada's quittance «realizzata da un notaio imperiale per esser sottoposta a un placito comitale, dal quale infatti il documento fu riconosciuto per *bonus et verus*».

²⁷ See instances in Romanin, 1853; Lazzarini, 1897; and Cessi (ed.), 1942.

²⁸ Bartoli Langeli, 1992, pp. 848-849; Pedani Fabris, 1996, pp. 113-114 and note 59.

by Venetians²⁹. Being a notary was not yet a professional choice: «notary *in quanto cleric*’, ‘cleric and therefore notary’»: thus Bartoli Langeli translates the recurrent signature: *presbiter et notarius, clericus et notarius...*³⁰ They often went in person to their clients’ homes, still unprovided with a proper protocol, but taking notes of the content of the deed they would later write down³¹.

Up to this point, little can be deduced about a possible regulatory discipline; the rules – still to come – on the formal acquisition of the title of notary and on the effects of their deeds as evidence remain hypothetical in hindsight. As we have seen, it was not yet possible to speak of a real *publica fides*, given that witnesses’ signatures were needed in addition to those of the notary³².

Nor can we see a significant change in the first decades of the XII century, at the time when the mainland was swept by the slow wave of Justinian’s law revival and the early medieval notarial habits were abandoned there in favour of different technical forms. After all, the clerical status of the notaries caused less alarm in Venice than the prospect of a colonisation of the lagoon by a class of lay jurists, linked to the empire by the formal enforceability of the law they handled³³.

The pragmatism of such operational choices by the Venetians is undeniable. Entrusting the notarial function to the clergy meant entrusting the documentation service to a structure, the parish, endowed with a homogeneous and capillary presence throughout the territory, whose staff was constantly available, equipped with the required technical knowledge, not too embroiled in legal theory, and highly reliable in the eyes of both the citizens and the government. Moreover, the need to care for Christian souls and to draw legal deeds in notarial form often tended to arise on the same occasions: for instance when the priest was called to the bedside of a sick person to hear his confession and at the same time draw up his last will.

²⁹ Bartoli Langeli, 1992, pp. 852-855; Parcianello, 2012, pp. 53-62. In view of the documents preserved, a weak foundation can be acknowledged for the claim that «dapprima era aperta la strada ad esercitare questo ministero tanto ai chierici, che ai laici». Thus Ferro, 1778-81 and 1845-47, *ad vocem Notajo*.

³⁰ Bartoli Langeli, 2001, p. 75; see also Id., 1992, pp. 859-860.

³¹ Bondi Sebellico, 1973, p. XXIV.

³² See for all Pagnin, 1938, pp. 1-17, and Id., 1950, pp. 57-63.

³³ Thus also Bartoli Langeli, 2006, pp. 79-80. A reasoned summary of the numerous studies, recently and less recently comparing the Venetian use of the legal system with those prevalent in the areas availing themselves of Roman law, can be found in Simonetto, 2004, pp. 235-272. Mention can be usefully made of what Folini, 1990, observes on pp. 248-249 about the fact that in the late Middle Ages «la Chiesa veneziana non costituiva un nucleo di potere esterno e contrapposto allo Stato, ma al contrario era assolutamente integrata nel sistema di governo [...]. Dal X al XIV secolo [...] il doge non si serve di un corpo di professionisti, o meglio di una categoria compatta inquadrata nell’organizzazione di palazzo, ma del clero cittadino, evitando di appoggiarsi su di un vero e proprio ceto di burocrati» ...or lawyers.

The same pragmatism is revealed in the drafting of government acts. After all, up to the first three decades of the XII century, clerics were part of the *placitum*: those among them who acted as notaries could offer their services as secretaries, without the need to call in external professionals, as is still the case today for many collegial bodies³⁴.

4. 1141-1307: the Comune, its Chancery and the Venetian alternative to *publica fides*

Pietro Polani's term of office as doge (1130-1148) appears, retrospectively, as a turning point in the Venetian constitutional order, which at that time took on modes of operation proper to the Comune³⁵. His time also saw the experimentation of new diplomatic forms for the exercise of public powers: the deliberations of the *placitum*, certified by the signature in their quality of witnesses of those who had been present when the resolution was made, were replaced by the more agile ducal diploma, certified by the affixion of the seal of the Comune³⁶.

However, the Venetian legal framework, although still largely customary, was finally producing the earliest legislative rule governing the notarial profession: namely the oath, contained in Enrico Dandolo's *promissio* of 1192, not to appoint notaries without the approval of the Major Council and the *collaudatio populi*. Choosing notaries was evidently a reserved power of the doge, but subject to the condition of effectiveness of the agreement of the Major Council and the people³⁷.

Thus began an increasing flow of provisions, aimed at providing reliable forms of archiving the growing mass of documents produced, at shaping the new Chancery, and at regulating the public duties of its staff, as well as the professional activities carried out on account of private individuals.

No explicit difference between the two spheres, that of *acta* and that of *instrumenta*, is yet apparent in Tiepolo's Statutes of 1242. Chapter 35 of book

³⁴ «Non esisteva una reale differenza, nè di persone nè di compiti, fra costoro [i *notarii curtis* o *capellae palatii*] e i *notarii curiae palatii*, incaricati di redigere la documentazione prodotta dalla curia [...] sembra lecito escludere fino a tutto il XII secolo l'esistenza di un vero e proprio ufficio di cancelleria distinto» (Pozza, 1997a, p. 349).

³⁵ See again Castagnetti, 1995, pp. 81-130.

³⁶ Early initiatives to organise a permanent Chancery, about which more below, to set up secretariats to support the magistrates and to file government acts in registers, seem to date back to the second half of the XIII century. Thus Bartoli Langeli, 2001, pp. 78-79, and Pedani Fabris, 1996, pp. 21-22. Pozza, 1997a, p. 350 and pp. 359-363, suggests a slightly later date for the beginning of the registers' series of *acta*.

³⁷ The *promissio* is published in Graziato (ed.), pp. 1-4. The chapter in question is no. 13 and it states that *notarios sine maiori [parte Consilii et collaudatione] populi non faciemus*. It remained effective, although with the addition of further prescriptions, until the *promissio* of Andrea Dandolo in 1343. See also Pedani Fabris, 1996, p. 7.

I sets fixed procedural terms for the notaries, who were required to swear obedience and to complete the steps from *rogatio* to *instrumentum* through *imbreviatura*, with leeway for the client to engage the notary for a longer time or to appoint an agent³⁸. Chapter 36 prescribes regular forms of archivation for *imbreviatura* (the first notes from which the original deeds were drawn up): they must be timely written or transcribed in registers, and an entry added when the original was produced.

It is to be noted that the deeds were drawn up according to the widely shared “thrice over” pattern, but – as usual in Venice! – with a difference in names: here the series saw *prex-breviarium-cartula* (first notes according to the client’s request, then draft and finally original deed) rather than *rogatio-imbreviatura-instrumentum* as it was the custom elsewhere. The autonomy of the notary in the elaboration of the final text was of course limited by the persistent requirement of the witnesses’ subscriptions³⁹. Even in the late, official collection of 1729, the numerous entries in the *Index* under *Nodari* touch indifferently on matters of Chancery and profession⁴⁰.

The distinction would emerge slowly in notarial practice between the middle of the XIII and the beginning of the XV century⁴¹. The boundaries that were then drawn by custom were the consequence of a functional diversification between two poles. On one hand, the activities of the Chancery and the secretarial organisation were no longer occasional but stable, complex, and to some extent linked to secrecy, at least after the shift from the democratic Comune to the aristocratic Republic with the Serrata of 1297-99; the permanent staff of civil servants operating at the side of the Councils, the Courts of law and other magistrates, came to constitute the so-called *ministero*. On the other hand, the initiatives of professionals not linked to institutions of government, but dedicated to offering legal services to private individuals, were expanding, together with the success of the booming Venetian economy.

A tendency toward diversification can be seen in the subject matter and contents of the notarial legislation, which began to set rules for the two fields on separate occasions.

³⁸ See the text in Di Pietro (ed.), 1477, Libro I, Cap. XXXV.

³⁹ *Ibidem*, Cap. xxxvi. See also Bartoli Langeli, 2001, p. 77.

⁴⁰ Pinelli (ed.), 1729, pp. 69-71.

⁴¹ Bondi Sebellico, 1973, pp. XX-XXI, remarks that «gli statuti di Jacopo Tiepolo del 1242 [...] considerano alla stessa stregua atti provenienti da una manifestazione di volontà di organi pubblici ed atti che hanno radice nella volontà del privato. Nel secolo seguente [il Trecento] la distinzione si fece sempre più netta, mentre si ordinavano e definivano le competenze delle varie magistrature, in concomitanza con la sempre più pressante necessità di una burocrazia efficiente e specializzata, anche a causa dell’ampliarsi dello Stato veneziano in Terraferma».

The activity of the Chancery and the framework of its staff, as different from the production of *instrumenta*, became indeed the focus of interest in the XIII century. The *promissio* of doge Jacopo Tiepolo in 1229 bore mention of a Chancellor, entrusted with the preservation and application of the ducal seal⁴². The chapter states that *Bullam nostram ducatus nostri non consentiemus servandam et exercendam nisi uni ex nostri servitoribus quem ex legalioribus nostris crediderimus esse*. The noun *servitor* is key: it does not refer to a magistrate's office but to a paid work post, or indeed already to public employment. The chancellor was required to have an adequate legal know-how; doubts however could be entertained about the adjective *legalis*. Does it imply only the need for a good degree of Venetian legal culture, as practical knowledge of the statutes, of the legislation of the Councils and of judicial customs, or does it refer also to a smattering, if not an adoption, of the Romanistic legal culture already well rooted on the mainland? I tend to support the second assumption. A pragmatized knowledge (*sensu Cavanna*)⁴³ of the systematics found in Justinian's glossed *Institutiones* could of course help in the organisation and management of the secretariats, as well as in elaborating consistent patterns for the compilation of *acta*.

In any case, the apposition of the seal now took the place of the subscriptions of those who had been present in the *placitum* and had approved the *actum*: the Comune was now an abstract entity, separate from the individual persons who acted *pro tempore* as members of its institutions. *Acta* validated by the seal and *instrumenta* subscribed by witnesses were now clearly different in form as well as in the scope of the interests they pursued.

Further innovations are to be found in Marino Morosini's *promissio* of 1249, which integrated the traditional provision regarding the investiture of *notarii* with the mention of a *cancellarius curie nostre*, whose appointment was also subject to approval, and further established that the doge should employ at his own expense a *notarius ad servicium Communis*, chosen by majority vote by the Major Council⁴⁴.

A flurry of Council legislation followed. On 18 March 1251, the Major Council passed a general resolution on the recruitment of notaries for the Chancery (now indicated in the plural): they were to be chosen from among those who had

⁴² The text is published in Graziato (ed.), 1986 pp. 7-22; see especially p 19.

⁴³ Cavanna, 1982, pp. 146-155.

⁴⁴ *Ibidem*, pp. 23-39; the relevant chapters can be found on p. 30 and p. 37 respectively. Even on such points of detail, the *promissio* of 1249 appears severely restrictive of the ducal powers. It may have been a form of reaction against the strong personality of the former doge, Jacopo Tiepolo, and his exploitation of his powers in pursuit of personal political aims: thus Graziato (ed.), 1986, *Prefazione*, *ibidem*, pp. XVII-XVIII. Indeed the harnessing of the doge to progressively stricter limits develops in the long period, but with sudden clenches.

been resident in the city for at least ten years, and they held annual (but possibly renewable) posts. In 1261, Corrado Ducati was appointed *ad personam* as head of the notaries of the Chancery. On 25 February 1267 *m.v.*, it was decreed that notaries to the Courts of law could not leave Venice as part of the ambassadors' retinues. Finally, on 15 July 1268, the post of *Cancellier grande* was instituted on a permanent basis⁴⁵.

In less than twenty years, a central Chancery had been established and in working order. However, production and archiving of *acta* was not its only function: *instrumenta* were also taken care of. The Chancery was divided into two sections: the Upper Chancery, answerable to the Major Council, was employed in the drawing and the preservation of government acts. It was located in the upper storey of the Palace, was not accessible to the general public, and was subdivided on 23 April 1402 into a Ducal and a Secret Chancery. The so-called Lower Chancery, sited on the ground floor and open to the public, was dedicated to the archiving of private acts drawn by professional notaries who were not currently practicing in Venice, or were retired, or dead, so that anyone could obtain an authenticated copy for legal use⁴⁶.

During this time of fervent development of trade, economy, society and institutions, when the complexity of legal relationship aggravated the judicial Courts, the question of *publica fides* rose to an unprecedented relevance: the problem was how to prevent litigation, or how to decide it quickly. The Lower Chancery of course helped in avoiding the need for the unwieldy testimonial proof: witnesses may not be easily available, e.g. be abroad or dead, while deeds survived by care of the State. Yet, the deeds were mere written proof: they must be evaluated by the judges as to their veracity. The Middle Ages were a time of forgeries, and not only in matters of national or international relevance; rather than endowing a class, or worse a college, of professionals with *publica fides*, as was common practice in the cities of the mainland and in general in areas adopting *ius commune*, the Venetian State found a way to maintain complete control through a new magistrate, the Curia dell'Esaminador. The new Court, instituted in 1204 during the IV crusade, when the doge Enrico Dandolo was at the head of the army in Constantinople and his son Ranieri acted as regent, was endowed with powers of certification on private deeds and legal documents which might in the future serve as evidence in a trial, e.g. the *brevaria* (minutes) of public procedures performed with the intervention of a *comandador* (bailiff),

⁴⁵ Pedani Fabris, 1996, pp. 14 and 22 and note 5 p. 4.

⁴⁶ *Ibidem*, p. 23. The institution of the Lower Chancery was a precious service rendered to the citizens, who could thus at any time ascertain the date and contents of private deeds. This is one of the areas where the Republic began at an exceptionally early age to take care, as relevant for the State, of tasks which elsewhere were left the initiative of private individuals or of professional colleges.

like notifications, *investiciones*, evictions, foreclosures...⁴⁷ The judge of a future controversy would be bound to admit the certified document as evidence; however, he would remain free to evaluate its significance and relevance, according to the general principles applied about evidence.

The private profession of notary was not neglected by legislation either⁴⁸. On 6 November 1279, the form *ad usum novum* for sales of land (which had been introduced in 1226 under the doge Pietro Ziani, and later received in the Tiepolo Statutes) was stated to be the default modality for sales, unless a dispensation was obtained from the Curia dell'Esaminador⁴⁹.

⁴⁷ *Investicio* was a form of publicity, by which transfer of land ownership was immediately effective between the seller and purchaser and was made enforceable against third parties. About the figure of the comandador, see Ferro, *Dizionario, ad voces Comandador, Comandamento*. Another instance of *breviarium* coming under the scrutiny of Esaminador by request of a party was the declaration given by the recipients of a last will, verbally declared in an emergency to two witnesses, when a notary was not at hand. In case the testator indeed died, the witnesses were bound to access the nearest Venetian representative and give evidence for the will to be written down in a *breviarium*. Chapters ruling the activity of Curia dell'Esaminador are included in the well-known *Codex Marcianus Latinus Cl. V, CXXX*. See Melchiorre Roberti, *Le magistrature giudiziarie veneziane e i loro capitolari fino al 1300, 2*, Venezia: Deputazione di Storia patria per le Venezie, 1909.

⁴⁸ A precious source, although not exhaustive, about the legislation enforced between the mid-XIII and the end of the XVII century is Bigaglia (ed.), 1689, a private compilation collected by a collegiate notary. Marco Antonio Bigaglia (o Bigalea) was born in Murano, as mentioned by Pedani Fabris, 1996, p. 53. I have been unable to gather additional information about him, possibly with the exception of Cicogna, 1858, and Zanetti V., 1865, which however I have not been at liberty to consult. Bigaglia claims to have had access to original documents, found «ne pubblici registri della Cancellaria ducale, eccellentissimi Consigli, Colleggi, et altri Magistrati», and indeed he notes the location of the originals of his transcriptions. It is likely that he may also have used the original register of the College of Notaries, instituted in 1514, about which later. The collection opens with the text of the oath given by the collegiate notaries before taking up their functions, and proceeds with transcriptions of deliberations starting with June 1258 in the Major Council and ending with 2 May 1689 by Savi ed Esecutori alle Acque. In addition to the laws I will soon mention, the collection also includes deliberations about the form in which special types of deeds should be drawn up. The compilation is listed in Cicogna, 1847, as n. 1298 on p. 189; at n. 1297, p. 188 is also listed an earlier compilation, Padavin (ed.), 1591, updated in Pinelli (ed.), 1632. Bigaglia himself mentions this last edition, but he qualifies it as less than useful, because incomplete: «comparve all' hora diffettoso d'alcuni anteriori publici decreti, nè mai fu perfetionato con gli ordinati posteriormente».

⁴⁹ Bigaglia, 1689, p. 9, *Quod aliquis notarius non possit facere cartam venditionis ad usum veterem*. On 17 October 1280, the same Curia was charged with countersigning transfers of ownership of real estates and keeping a record of them in a register, marking a pioneering intervention of the State on the real estate market to prevent its inflation at a time of fast urban expansion. *Ibidem*, pp. 9-10, *Quod notarii de Venetiis non possint*

More laws followed, touching alternately on notaries *ad acta* and *ad instrumenta*. Since 1280, the law Courts and Chancery notaries were required to keep rough drafts notebooks for judgements, an obligation that was reiterated on 14 July 1300⁵⁰. The notaries *ad instrumenta* were required on 28 July of the same year to keep an original copy of all last wills in their files⁵¹. Finally, on 1 June 1307, the obligation to keep parchment registers of all drawn up deeds, identified by date and summary⁵².

5. From the beginning of the XIV century to 1433: selection requirements

The later Middle Ages brought about a more detailed discipline about the recruitment of the Chancery staff. At the beginning of the XIV century, the performance of notarial functions in both branches was still the prerogative of clerics, and was subject to investiture by the doge in accordance with his *promissio*⁵³. However, on 7 September 1310, the Major Council changed both the requirements and the procedures: the Chancery notaries must now give proof that they had been living in Venice for twenty years rather than ten, and they had to be jointly invested by the doge, the Minor Council and the Capi di Quaranta⁵⁴.

As for *instrumenta*, the obligation to transfer the archives of deceased notaries to the Lower Chancery was reiterated on 22 August 1316; in 1364, an *interim* transfer of current archives was requested from notaries who had to leave Venice temporarily, as it happened when they followed the convoys of merchant ships, performing their duties for the Venetian traders in their travels. Their archives were returned once the notaries resumed service in Venice⁵⁵.

The definition of the requirements for the two branches of the notary profession

facere cartam de vigore, et robore, nisi Iudices Examinatorum se subscribant; Pedani Fabris, 1996, pp. 15 and 114-115. The role performed by Esaminador in this matter mirrors that of our Uffici del Registro, but the subscription of the Court gave the deed the added effect of a check on its formal validity.

⁵⁰ Bondi Sebellico, 1973, p. XXII and note 1 *ibidem*. At that time the practice probably began for the clerks to keep the already copied drafts in *filze*. The drafts were stuck in reverse chronological order on long nails with a wooden slab at the base; when the nail was full, the *filza* was pulled out and bound or boxed. See Boerio, 1867, *ad vocem Filza*.

⁵¹ Tamba, 1974, p. XIV.

⁵² Bigaglia (ed.), 1689 p. 12, *Quod teneantur autenticare in suo quaterno testamenta sicut dant commissarii*; Tamba, 1974, again on p. XIV, and Tiepolo, 1970, p. VII. The duty was reiterated in 1327 (Pedani Fabris, 1996, pp. 86-87).

⁵³ Domenico, priest at S. Maurizio, was appointed on 3 March 1308 (Tiepolo M.F., 1970, p. XIV nota 6).

⁵⁴ Pedani Fabris, 1996, p. 8.

⁵⁵ Bigaglia (ed.), 1689, p. 12, *De scripturis notariorum in Cancellaria consignandis quando recedunt ultra confinia*; Bondi Sebellico, 1973, p. XV; Tamba, 1974, p. XV; Pedani Fabris, 1996, pp. 115-116.

continued: there were some fluctuations in the choices made, but overall legislation moved in the direction of increasing the selection requirements, both on a technical level and with regard to the delicate problem of the personal reliability of the candidates. Thus, on 10 October 1322, the Major Council resolved that the office notaries should undergo an annual *proba*, or review: an obligation that must not have been exactly respected, given that the law had to be reiterated on 1 August 1389 and again on 28 June 1411⁵⁶. On 25 September 1394, the Major Council established that the notaries *ad acta* employed in the Lower Chancery should also be *probati*, but apparently this resolution was never implemented⁵⁷.

On 9 July 1323, the requirements were established in a minimum age of 25 years⁵⁸ in addition to being born in the city or, alternatively, having resided there for 15 years⁵⁹.

The year 1342 saw a quality leap in the selection procedures for the Chancery: on 30 December, the Major Council decided to opt for a public competition based on qualifications and examinations. The candidates were tested for three distinct categories of requirements: original citizenship, professional competence and good morals⁶⁰. The deliberation makes use of the experience accumulated over the previous hundred years, and applies it to satisfy the increased need for

⁵⁶ Pedani Fabris, 1996, p. 8.

⁵⁷ *Ibidem*, p. 22.

⁵⁸ Bigaglia (ed.), 1689, p. 13, *De aetate idonea ad tabellionatus officium consequendum*.

⁵⁹ Bondi Sebellico, 1973, nota 2 a p. XVIII; Pedani Fabris, 1996, pp. 8 and 47. The deliberation is also mentioned by Ferro, 1778-81, *ad vocem Notajo*. Ferro articulates the history of Venetian notaries in three periods: the time since its beginning (but he only gives dates since the early XIV century) to 1500; the implementation of the reform in 1514; and the time since 1514. His information about the development of the legal rules on the matter is rather imprecise, and likely to be based on second-hand data. Not much more can be gleaned from Pedrinelli, 1768-69. In chapter 1, «Dell'antichità e dignità de' Notaj, e quali persone vi si possano loro ascrivere», pp. 1-4, he focuses straight away on the reform of 1514, with mere retrospective mentions for the provisions 1323 and 1485, about which I will return later. Better attention to his sources was shown in Sandi V., 1755. Under point 5, about «Cancelleria ducale; istituzione del Cancellier grande di Venezia», pp. 811-821, he assumes for it an origin «sì antica, quanto il primo Governo veneziano, o almeno il Dogado: essendo ella quel luogo, in cui debbono serbarsi le carte pubbliche originali di rilevanza attinenti a pubblici affari, o a privati, che passino immediatamente per il Principato, e che vi abbian rapporto», but not much later he confesses that the passing of time has «tolto i fondamenti antichissimi, e le prime remote origini, non essendomi presentato nelle mie osservazioni documento certo avanti il secolo di N.S. XV». Again in Sandi V., 1756, cap. 5, pp. 100-106, «Collegio notariale in Venezia», he states that «da tempo immemorabile il ministero del tabellionato o sia notariato» is present in Venice, but that the capitular of the College instituted in 1514 does not include any law earlier than 1278.

⁶⁰ Pedani Fabris, 1996, p. 8.

staff for an expanding Chancery. The policy in the choice of good official notaries required an involvement of the candidates in the interests of the Republic, of which citizenship was a usually reliable indicator (if not a guarantee); their personal integrity and care for social image, inferable from good morals; and their cultural and technical fitness, as ascertained by examination.

On 14 October 1375, the requirements for notaries *ad instrumenta* were also redefined: they had to be born citizens or residents for at least 15 years and, if they were laymen, they had to be up to date with their tax payments⁶¹. The distinction on the basis of the clerical *status* suggests that the increasingly technical nature of both Chancery and professional activities may have had the consequence of increasing the proportion of non-clerical notaries in both branches of the profession. An early clue can be seen in the resolution of 14 September 1311, when the Major Council defined the amount of the *piezaria* (surety)⁶² to be paid upon starting in office: it went from 100 to 200 lire for laymen, while clerics were always required to pay the maximum of 200 lire⁶³.

The coexistence and possible competition – both in the Chancery and the profession – between clerical notaries and the more recently recruited lay notaries seems to have led, alternately, to attitudes of acceptance and rejection in the Venetian governing class. On one hand, the cultural and organisational contribution of lay people, endowed with deeper and more specialised technical and legal training in comparison with clerics, showed benefits for international relationships, as well as for internal affairs and trade: the Venetian Chancery had become one of the most efficient in Europe⁶⁴. On the other hand, the influx of lay people entailed a hidden risk of contamination with the mental framework of the “imperial” (or allegedly endowed with technical superiority) Roman law⁶⁵. The Chancery staff did not take part in the deliberations of the Councils and magistrates, but the proposals were based on dossiers, made up of information sheets and reviews of legislation and judicial records, collected by *ministero* by request of the proposing magistrates or Councils. It was inevitable that the suggestions of the secretaries, chancery notaries, *proti* (engineers) and other experts in the offices had a significant, if not direct, influence on the acts of government.

⁶¹ Bigaglia (ed.), 1689, p. 17, *Quod notarius sit civis vel habitator Venetiarum per 15 annos*.

⁶² Patriarchi, 1796, p. 236, voce *Piezaria*.

⁶³ Pedani Fabris, 1996, p. 12. On p. 13 note 22, the Author gives an early instance of limitation for the activities of the priest-notaries: a deliberation of the Major Council on 19 October 1290, which forbade them to practice in Rialto until the rooms in the new loggia had been all rented. I suspect that perhaps the intention was not so much that of discouraging priests from acting as notaries, as that of giving priority to shops and merchandise, rather than to third sector activities, in the limited space of the central market.

⁶⁴ Thus again Bartoli Langeli, 2001, p. 99.

⁶⁵ Pedani Fabris, 1996, pp. 59-60.

A compromising arrangement, marked by a decisive and conscious choice for balance, was reached in 1399: on 25 November, the Major Council established that the posts of notary to the law Courts were reserved for clerics, with the implication that the posts of notary to the Councils and the other magistrates were open (but perhaps not reserved) to laymen⁶⁶.

6. From 1433 to 1514: the consolidation of the Chancery class and the notarial profession

The profession of notary *ad instrumenta* was not affected by the 1399 resolution: the lists of those admitted to the practice of notary show a persistent, clear prevalence of clerics⁶⁷. At the beginning of the XV century, the age-old synergy between the care of souls and that of estates and family structures still seemed to be at work: the parish clergy fulfilled both, on land and, through the ship's chaplains, also on the sea.

But a change was imminent, for once not by legislative initiative of the Republic, but all the same due to a Venetian: on 8 June 1433, Pope Eugene IV Condulmer issued the *Cum ex iniuncto* bull, in which – under penalty of excommunication – he forbade clerics to perform notarial functions, unless as an occasional, indispensable tool for the care of souls; a deadline of just six months was set for implementation⁶⁸. The bull was followed on 15 March 1434 by a circular with detailed instructions, addressed to the Venetian Patriarch Lorenzo Giustinian, which partly mitigated the radical nature of the ban⁶⁹.

⁶⁶ The deliberation gives this reason for the reserve: *ut presbyteri habeant causam studendi et addiscendi et quod efficiantur valentes*, thus revealing an ambivalent situation. Was the law aimed at promoting a better technical qualification for clerical notaries, so as they could keep pace with the secular ones, or instead at establishing a sort of Indian reserve, within which to confine a category more and more distant from the dynamic evolution of the Chancery notaries? Pedani Fabris, *ibidem*, p. 13, reads the deliberation of 1399 mostly as favourable to secular personnel, whose presence turns out strengthened in the offices «dei Consilia, di ben maggiore autorevolezza e potere». The law of 1399 is also discussed by Tiozzo, 1937, on p. 728 (where a typo sets the date as 1379) and p. 732, but his assumption that there must have been in place a formal course of studies or at least a specific *curriculum* to prepare for the notarial activity seems open to doubt.

⁶⁷ See Pedani Fabris, 1996, p. 13.

⁶⁸ It is mentioned by Tiozzo, 1937, pp. 728-729; it is analysed in detail, with documents, in Cracco, 1961; it is also discussed by Pedani Fabris, 1996, pp. 9 and 12-14. About the life and political personality of Eugenio IV Condulmer, see Hay D., 1993.

⁶⁹ The text extended the scope of the exceptions listed in the bull, that is acts about *piae causae*; the *tres cancellarii* serving the doge; clerics not enjoying any benefit. The newly introduced exceptions allow to keep in service clerics appointed as secretaries of the Procuratori di San Marco (limited to acts regarding testamentary successions, which constituted anyway the bulk of the business) and those notaries serving in the judicial *Curiae*, in reception of the law of 1399 (Cracco, 1961, pp. 184-185).

However, more than a ban was needed in order to eradicate a practice with so much history behind it, and so many good results to its credit. At the end of the XV century, the law Courts still maintained a clerical presence in the Chancery, as shown on 24 January 1474 *m.v.*, when the Major Council established that *quando ai officii e zudegadi nostri di Palazzo over di Rialto vacherà alcuna nodaria, over scrivania esercitada da preti, non possi esser eletto alla ditte nodaria over scrivania alcun prete, ma eleger si debbino nostri cittadini laici di questa città per il Consiglio di XL al Criminal, come si eleggono i scrivani e nodari degli altri offizi di questa terra*⁷⁰. It was not until the beginning of the following century, and finally with the mentioned double-pronged reform of May 3 and September 28, 1514, about which more below, that clerics were effectively turned over out of the Chancery⁷¹.

The episode reveals a tension between two different, poorly compatible ideas of the clerical state. The tradition had long been followed in Venetian legislation and practice, both public and private, to consider clerics as a useful, numerous and always available reserve of sufficiently qualified personnel. The somewhat moralising approach of the pope now intervened, calling the clergy back to their primary vocation of caring for souls, no more distracted by the search for worldly profit and the prestige offered by the notarial practice either inside or outside the Chancery.

An all-lay workforce needed an official census, independent from the ecclesiastical ones: thus the embryo of a professional register was introduced, so that no notary now could practice *nisi prius se dederit in scriptis Cancellariis nostris ac officio Provisorum Communis*⁷².

Control by means of a registry was also tried out for the Chancery staff, and used to establish rotating shifts: something similar had already been done for the noble magistrates through the institute of *contumacia*⁷³, with the identical aim of preventing the consolidation of positions from which personal or family power

⁷⁰ Tiozzo, 1937, p. 728; Bartoli Langeli, 2001, p. 80. Pedani Fabris, 1996, p. 13, amends the date to January 29.

⁷¹ Pedani Fabris, 1996, *ibidem* and p. 9, gives a final summary of the turn-over and remarks that the last priest-chancellor was Giacomo Grisolario, priest at St. Aponal (Apollinaris), who died in 1534. Among the clerics still active after 1433 as notaries *ad instrumenta*, we find for instance Servodio Peccator, also practicing overseas (his forms betray some Romanistic knowledge), whose archives have been edited in Rossi F. (ed.), 1983. Another such professional was Giovanni Manzini, priest and notary in Venice as well as chaplain, chancellor and notary on board naval convoys, whose very interesting register is edited in Greco (ed.), 1997.

⁷² Cracco, 1961, p. 183, nota 19.

⁷³ Once again, we find a word with a different meaning in Venice than elsewhere. It is not the position of someone who does not take part in a trial in which he or she is involved, but a lapse of time before which a magistrate who had completed his term could not be re-elected to the same office: see Mutinelli, 1852, *ad vocem Contumacia*.

could be exercised over public affairs. Thus, on 10 May 1444, a four-year limit was introduced on a number of offices held by the chancellors, scribes and notaries, who until then had been considered as lifelong employees, and a one-year *contumacia*, or turn of absence before readmission, was added⁷⁴. The dynamics of turn-over, due to its relevance to the structures closest to the heart of the State, then came under the growing influence of the Council of Ten. First, with a decree of 4 December 1460, the four-year shifts in the ministry offices were confirmed, *ut omnes fideles Veneti nostri possent de illis participare*; then the shifts were repealed, referring the duration of appointments *ad beneplacitum nostri Domini*; and finally, in response to the protests of many who found themselves excluded from access to profitable and prestigious positions, the four-year limit was reintroduced in 1481, but only for the lowest executive posts, available also to non-citizens⁷⁵.

The separation of the two branches of the notary profession was at this point truly complete, as can be seen in the Republic's attitude towards the technical legal training of office notaries and professional notaries, respectively. The public *Scuola di San Marco*, set up in 1446, offered courses of study *in litteris* to those aspiring to jobs in the Chancery and was also a benchmark for the *curricula* of candidates who did not attend; notaries *ad instrumenta* did not enjoy similar benefits, but were subjected to verification of their skills at the time of their *proba*⁷⁶.

But the development of public supervision on notaries *ad instrumenta* continued. On 28 December 1449, the staff of the Lower Chancery was solicited to take steps to obtain copies of wills and dowries that had not yet been delivered by private notaries⁷⁷. On 18 June 1453, a campaign was launched to recover and bring into the Chancery the archives of those notaries who had died in the last 23 years, given that these were still being held by private individuals who could thus profit unduly from the production of authenticated copies⁷⁸. On 21 December 1474, the Major Council prescribed that wills, dictated to the notary in the presence of two witnesses, should be drawn up simultaneously in two originals, one of which was to be deposited immediately in the Lower Chancery. On 11 May 1478, it was ordered that those wills, in which *commissarie* were established involving the *Procuratie di San Marco*, should be transcribed in the Procurators'

⁷⁴ Pedani Fabris, 1996, p. 8 and note 8.

⁷⁵ Cracco, 1961, p. 185, note 24.

⁷⁶ Pedani Fabris, 1996, p. 60. About the School at St. Mark's and more in general about late medieval education, see for all Ortalli, 1993, and Id., 1997, pp. 889-910.

⁷⁷ Bigaglia, 1689, p. 24, *De testamentis, et cartis dotium Cancellariae inferiori notificandis*; Ferro, 1778-81, *ad vocem Notajo*.

⁷⁸ Bigaglia, 1689, p. 25, *De scripturis notariorum absentium in Cancellaria inferiori, et mortuorum penes Dominium deponendis*.

offices within eight days⁷⁹.

On 19 August 1486, another provision stated that those who had been banned, or had otherwise suffered criminal convictions, were forbidden to practise as notaries, even if they were independently appointed as imperial or papal notaries⁸⁰.

The XV century ended with a typically Venetian experiment, opening the way to the decrees of the Senate which, at the beginning of the following century, would give a definitive structure to the notary *ad instrumenta* profession. With a decree dated 11 November 1485, the Major Council instituted a commission formed by the Cancellier grande and the two heads of the Lower Chancery: they would examine the candidates, verify their expertise, their completed professional practice in the study of an approved notary, and their good reputation; the names of the successful recruits were noted in a register, kept by the Lower Chancery. The same examination was now also applied to imperial notaries practicing in Venice, but in their case the test concerned the *formulae more imperii*. On this occasion, the obligation to confer the archives to the Lower Chancery was extended to the imperial notaries, and it was ordered that they must each draw up an inventory, update it regularly, and keep it under lock and key⁸¹.

The test produced good results: the door was open to a more incisive reform. On 3 May 1514, the Senate decreed that it would be in the future forbidden to practice the profession to anyone who had not been approved as a notary, under penalty of a fine of 200 ducats and the deeds being void; that the fixed number of 66 *numerarii* notaries (not including Chancery notaries) would remain unchanged; that only Venetian notaries may practise in Venice, whereas in the Dogado and the Dominions they were to compete with the local ones; that they were obliged to reside in the capital, and in the event of absence must indicate a suitable substitute; and finally, that the future successors to the first 66 approved notaries must be laymen and citizens. The required *piezaria* was set at 200 ducats, to be returned on cessation of practice. On 28 September, the Senate also instituted a Notarial College, presided over by three Priori with an annual term of office, whose resolutions were to be passed with the participation of the Cancellier grande and approved by the Senate⁸².

⁷⁹ *Ibidem*, p. 29, *De testamentis, in quibus Procuratores commissarii instituti fuerint, in Procuratia registrandis*.

⁸⁰ *Ibidem*, p. 32, *Quod banniti, et condannati [sic] munus tabellionum exercere non possint*.

⁸¹ *Ibidem*, pp. 29-30, *De notariorum examine, et eorum qualitate nec non de scripturis defunctorum vel absentium notariorum in Cancellaria inferiori consignandis*. See also Tiozzo, 1937, p. 732; Pedani Fabris, 1996, pp. 6, 69 and 116. Ferro, 1778-81, *ad vocem Notajo*, remarks how «con questa legge cominciò l'ufficio del notariato ad acquistare qualche carattere».

⁸² Bigaglia, 1689, pp. 35-39, *Quod nemo notarius possit Venetiis, et Ducatus notariam exercere, nisi sit approbatus notarius Venetiarum, et de eorum electione*, and pp. 40-41, *De Collegio notariorum, et prioribus in eo eligendis*. Ferro, 1778-81, reserves to the

7. A final hypothesis

When one reads the preambles of Council resolutions, one always finds less than one would wish to. Rarely – at least in the Middle Ages – the *τέλος*, *causa finalis*, or aim of the rules, what we would call the policy expressed in the law, was explicitly stated in the normative text. What remained unwritten were those things that were obvious at the time: those that all members of the deliberating body knew perfectly well, because they had personally discussed and/or voted them, and which it would therefore be superfluous, if not insulting, to include expressly... But they are not so obvious to us now. This is rather frustrating.

And yet, while I examined the development of Venetian legislative choices on the subject of notaries, observed their rhythm and frequency, noted the oscillations between favour and rejection for the involvement of clerics, I seemed to recognise an element which remained constant in time. This element can be defined as a deep distrust of any form of technocracy, a danger present in all the many areas in which politics in Venice found its tool in the law⁸³.

Such diffidence did not, however, imply a rejection on principle, to the detriment of effectiveness. Rather, it implied that the adoption of sophisticated technical legal methods, and the employment of qualified personnel capable of using them, was given its place in the data-gathering phase, but without ever renouncing a direct and ongoing control by the governing class. In a participated government, be it democratic or aristocratic, decisions are deliberated by vote, never to be delegated to other agents. In short, Venice made use of the best of legal culture without falling into the trap that in the *ius commune* countries often led government institutions to be yielding, in return, to the corporate interests of an organised class of jurists⁸⁴. It seems to me that this awareness and the choices that followed it are shown, with surprising continuity, precisely by the changes that the circumstances time after time suggested, or imposed, on the regulatory regime of the notary profession, both in and out of the Chancery.

As far as the Chancery itself was concerned, in the late Middle Ages the Republic appears to have been torn between two drives that were difficult to reconcile, both of which equally intense: the need to equip itself with an efficient

provisions of 1514 a detailed analysis *ad vocem Notajo*. See also Pedani Fabris, 1996, pp. 10, 16-19 and 34.

⁸³ A privileged instance of legal know-how employed as a tool for government were the *Consultori in iure*, about whose nature and activity see for all Barzani, 1986, pp. 179-199.

⁸⁴ In the late '60s and early '70s of the past century, a fruitful line of research started which brought the discussion of legal systems and practices out of traditional abstract technicalities and deep into a political analysis of the past as a background for the present. I wish here to mention three works by Authors whose different opinions should not, I believe, be sidelined: they are Sbriccoli, 1969; Costa, 1969; and Mossini, 1975. A still fascinating comparative approach to these questions, based on English legal history but extended to the Continent, can be found in Dawson, 1968.

archive and staff, capable of managing the quantity and variety of government acts, versus the refusal of allowing the development of situations of personal or corporate power external to the institutions of the State.

How, then, could the jurists' know-how be used without having to deal with powerful colleges of jurists?

An earlier solution, until the bull by Eugene IV, was, as we have seen, to co-opt the work of the clerics. Belonging to the general (indeed, universal) institution that boasts the longest historical continuity, and which moreover has preserved and passed on the organisational tradition of the ancient Roman empire, the parish priests appeared fit to meet the needs of the institutions of the developing Venetian *Commune*; at the same time, however, they were not in a position to pursue long-term policies of family and politic advancement, given the effectiveness of the early separation achieved in Venice between the secular and the ecclesiastical *iurisdictions*⁸⁵.

The time came, however, when the notarial work of the clerics was no longer sufficient for the growing institutional complexity of the Venetian *Commune*. So a second solution emerged, which for a couple of centuries coexisted with the first: lay jurists from the mainland were appointed, but they were subjected to a double regime of security measures. First of all, they were to be employed individually and not as members of professional colleges; secondly, they were integrated into the social order through the granting of the civil rights connected with the Venetian citizenship, but never of political rights⁸⁶.

Such a double constraint did work: separated from their corporative context of origin, and tied instead to the interests of the Republic, which welcomed them and offered them a gratifying socio-economic position through career opportunities, they had everything to gain from being faithful servants of Venetian institutions, even at the price of giving up the corporate privileges they would have enjoyed elsewhere.

In short, the late-medieval and early-modern action of the Chancery appears to be the result of a collaborative and non-competitive coordination between the political deliberations taken, with full control, by the governing aristocracy, and the instrumental activities performed by a staff of lay operators endowed with specific skills⁸⁷. The bull of 1433 gave a forward jolt to a process which had been already slowly beginning to take place.

⁸⁵ Among others, see Rossi, 1901; Da Mosto, 1937, *ad vocem Savi all'Eresia*, pp. 181-182; and De Col, 1988 (with retrospective considerations). After 1032, no signatures of clerics are found anymore in the deliberations of the *placitum*; see also Zorzi, 1980, pp. 62-63 e 66.

⁸⁶ Notaries *ad acta*, engaged through a deliberate "campaign of acquisitions" among the legally literate on the mainland, were free to practice in Venice after being evaluated trustworthy enough to be made citizens: see Bartoli Langelì, 2001, pp. 78-79.

⁸⁷ Thus Pedani Fabris, 1996, p. 14; see also Zannini, 1992, pp. 131-145.

As for the profession of the notaries *ad instrumenta*, the development of the regulatory framework seems to me more linear, but just as revealing.

In the beginning it was (only) a question of appointment, while the exercise of the profession remained substantially outside the legislators' attention. The irruption of Roman law technicalities in legal practice of the mainland in the XIII century, sometimes in competition with the ways and formulas of the Venetian notary profession, led to increasingly incisive interventions concerning the selection of operators and the effects of the deeds they produced.

In time, such legislation eventually led to the creation of a State-managed professional register: a system which would later be adopted also for other categories, like *avvocati extraordinari*, *solleccitadori*, *ragionati*⁸⁸. It is important to note that these Venetian Colleges did not enjoy autonomy of government: they were entirely controlled by the Republic in terms of their establishment, discipline, staffing and operation. Like the Venetian guilds of the various crafts, like the Chancery and its staff, also the collegiate notaries had no recourse to conduct a policy of their own, independent of that of the government.

In its relations with the law, the Republic always seems to have danced on the edge of sea-water, like the long lines of wading birds, walking to and from the shoreline to catch the food brought by the waves, without getting their wings wet. Venice used the law, fed on the law, but never let itself be manoeuvred by jurists, or soaked by legal culture. If we are to judge them by the quantity, the technical quality and the orderly filing of the documents they have left, the results have been quite remarkable.

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