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Pérez Ragone, Álvaro

Reseña de "Handbuch zur Geschichte des Notariats der europäischen Traditionen" de Schmoeckel, Mathias - Schubert Werner (directores)

Revista de Estudios Histórico-Jurídicos, núm. XXXII, 2010, pp. 627-630

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Schmoeckel, Mathias - Schubert Werner (directores), Handbuch zur Geschichte des Notariats der europäischen Traditionen (Baden-Baden, Nomos, 2009), 619 págs.

Las necesidades de la libre circulación y del territorio de justicia unificado europeo insta a unificar o al menos a armonizar la tradicional profesión de escribano o notario desarrollada de distinta forma, con parámetros de regulación comparables, particularidades propias diferentes y comunes en cada uno de los estados de la Unión Europea. Ello sin duda coadyuva al pilar fundamental de del territorio de justicia europeo para la seguridad del tráfico en el derecho comunitario¹. Este libro es un aporte para aquella empresa, sienta las bases históricas, se adentra en detalle en la particularidades de los notariados nacionales en Europa como también en los Estados Unidos, la Federación Rusa y en Latinoamérica.

Partiendo de lo mínimo común, es decir de las particularidades nacionales en el desarrollo de la profesión notarial, se puede identificar una propuesta de armonización a partir de un conjunto de características comunes comenzando por el desarrollo (nacimiento) del notario en el norte de Italia para continuar con la conformación y desarrollo paulatino del notariado francés que logrará –a partir del siglo XVIII– imponerse como modelo para toda Europa. Incluso siendo receptado en los modelos germánicos, Polonia, España, Latinoamérica y Estados Unidos. Disímil fue el desarrollo del notariado en los países escandinavos, no sólo por su tardía conformación sino también por la diferente importancia que se le adjudicó dependiendo del país². Interesante también va a ser el desarrollo del derecho notarial y el rol del escribano en Rusia durante la edad moderna y contemporánea.

Dos capítulos aparte merecen el desarrollo del notario en el Reino Unido y posteriormente un recepción y desarrollo en los Estados Unidos de América donde

curiosamente la influencia inglesa terminó siendo insignificante frente al modelo de notariado francés y latino cultivado especialmente en Luisiana que terminó imponiéndose llegando a ser subsistema del “Civil Law” dentro del marco del “Common Law”³...

1 Heinz, V., “Auf dem Weg zum Europäischen Notariat ?”, conferencia dada en la reunión número 58 del Colegio de Abogados de Alemania en el año 2007, (<http://www.notaries.org.uk/eu-notariat/eu-notariat.html>: visitado 7/1/2010);

2 Ver el prólogo del libro p. 5. y en detalle el aporte de la relación de TaMM, d., Geschichte des Notariats in Dänemark, p. 429 y ss.; igualmente PiHHlaJMäki, H., The Notary Public in the Legal History of Finland and Sweden, p. 463 y ss. MarTHinuSSen, H.f, ØyreHagen, J. Notarius Publicus in Norwegien legal history, p. 463 y ss.

3 Kogan, L., The Creeping ‘Authenticity’ of Europe’s Intrusive Civil Law System, 2008, Informe ITSSD, passim:

((REHJ. XXXii (2010) Sección Bibliografía p. 627)

... La obra desarrolla en profundidad además la historia del Notariado en Polonia, el Imperio Austro-Húngaro, los países Bajos y Grecia. Los puntos de contacto en base al detalle de cada relación hacen vislumbrar la relevancia de un notariado importantísimo para el tráfico y certeza de las relaciones jurídicas, con grados de dignidad y calidad profesional no lejos de principios comunes para un notariado armonizado.

Al Varo Pérez ragone
Pontificia Universidad Católica de Valparaíso

((REHJ. XXXii (2010) Sección BiBliografía p. 630)

Review of "Handbuch zur Geschichte der des Notariats europäischen Traditionen" of Schmoeckel, Mathias - Werner Schubert (eds.)

Historical Journal of Legal Studies, Vol. XXXII, 2010, pp. 627-630

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Book Review of "The Notary in American Legal History: The Fall and Rise of the Civil Law Tradition?"

Mathias W. Reimann

In Handbuch zur Geschichte des notariats der europäischen Traditionen (Handbook on the History of Notaries of the European Traditions), edited by M.Schmoeckel and W.Schubert, 559-93. Rheinische Schriften zur Rechtsgeschichte (Rheinische Writings on Legal History), 12. Baden-Baden: Nomos, (2009)

Schmoeckel , Mathias - Werner Schubert (eds.) , Handbuch zur Geschichte der des Notariats europäischen Traditionen (Baden -Baden, Nomos , 2009) , 619 pp. .

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The need for free movement and territorial justice urges unified European unification or at least harmonize the traditional profession of notary or notary developed differently, with comparable control parameters , different and common peculiarities in each of the states of the European Union. This undoubtedly contributes to the fundamental pillar of the European judicial area for traffic safety on the Community law [1] . This book is a contribution to that company , provides the historical basis , goes into detail on the specifics of the national notaries in Europe as in the United States, the Russian Federation and Latin America.

From the least common , ie national particularities in the development of the notarial profession, you can identify a harmonization proposal from a set of common characteristics starting development (birth) of the notary in northern Italy for continue with the creation and gradual development of the French notary to accomplish - from - imposed eighteenth century as a model for Europe. Even being receptado in Germanic models , Poland, Spain , Latin America and United States. Dissimilar development was notarized in Scandinavia, not only for its late formation but also by the different importance awarded depending on the country . [2] Interesting will also be developing the right attorney and the role of the notary in Russia during the modern and contemporary age.

Two chapters deserve the development of a notary in the UK and then a reception and development in the United States of America where English influence curiously ended up being insignificant compared to the model of French and Latin notary cultivated especially in Louisiana becoming finally prevailed subsystem of the " Civil Law" within the framework of "Common Law" [3].

A second point deserves special notarial law development in the Iberian Peninsula in conformation to the present and especially its reception in the conquest and colonization of Latin America where the basis for an identical right attorney sat at its roots , similar in operation but assuming that personality was during the nineteenth and twentieth centuries , up to the formation of the Latin American Union of Notaries in 1948.

This book was created based on input from national reporters from 21 countries at a symposium held in Bonn in 2007 with the participation and support of several institutions , not only academic but also directly linked to the profession of notary . Contributions that would result then systematized this magnificent work that integrates the collection of books of the Rhineland. All right is called "treaty" on the history of European tradition and notarized is volume 12 this magnificent collection dedicated to the history of law in joint work of the University of Bonn and Cologne .

As detailed directors this book is not intended only to stay in an exhibition of " Big History " working only with structural history of the tradition of notaries in Europe, but also aims to identify in the European tradition the birth and development that goes back to Latin notary northern Italy in the Middle Ages and the improvement and expansion by the French notary law until the nineteenth century, concluding with the French law of March 16, 1803 notarized . This coupled with the development of the Napoleonic Empire and its expansion as reception throughout Central, Eastern and Western Europe. Many common bonds as proposed reformulation challenges and always aimed at the basic functions of notary law : public faith being the notary or scribe the minister of faith par excellence, qualified impartial advice on holding legal business in the market and finally the record creation and ensuring legal certainty, the necessary support and solemn evidence of relationships that were generated in the market, parallel to safety that may provide the existence of the judicial function in each of the states. The economic impact of the notarial profession belies a changing value in Scandinavia , where it was developed with force initially Denmark then lose its importance and resume it later , in contrast with little development in Norway and Sweden for the little economic impact of the notarial function compared with southern European states [4] .

The origin and development of notaries occurs in northern Italy during the late Middle Ages. In the thirteenth century began to weave the ideas in northern Italy around the published fides or public trust for the security of legal transactions . Many have claimed that northern Italy became the universal square from all walks of the world, an exception being the profession of notary directly associated with the lawyer and the development of law . Bologna was the center of development of the role of notary that began in medieval Lombardy between centuries VIII -XII seeking to give legal certainty in relation to the authenticity and credibility of the expression of will of the shareholders subject in legal , trying some narrow form of crystallized or manifestly expresses the inner will and considering how this could mutate after affecting the established legal relations. The assurance given by the action of the minister of faith is consolidated in Bologna in the twelfth and thirteenth centuries, especially the participation of the Minister of public trust through his attorney firm assisting not only the conclusion of contracts, but especially to refine acts unilateral and unilateral solemn as wills, in this case that will disappear later and needed a frame - continent of certainty to ensure compliance with the will. Such was the economic importance of the role of notary soon become notaries society between the late fourteenth century the early fifteenth century , all initially under the auspices of the Catholic Church who had assumed duties faith minister parallel to the professionals giving certainty and security to momentous legal relationships such as marriage or legal facts such as birth and death . The role of the notary in Milan was instrumental in the development of credible and reliable institutions in traffic as commercial companies trade law , the credits and insurance. In all of them the role of faith in public plays a key role in these different institutions to expand into Europe facilitating traffic. The Milanese and Genoese notarial gradually professionalized through the introduction of fees and rates established shaping common forms facilitated the various legal transactions and resulted in an instrument with reliability and enforceability . Notaries consolidates four centuries in northern Italy and central, evidence of this was the development and structuring of various schools of notaries and production treaties or dogmatic texts related to notarial practice . This was the basis for the training and professionalization of notarial law and further development of private law in the nineteenth century to allow the introduction of the Civil Procedure Code in various states of Central and Nordic Italy. The constitution of the Kingdom of Italy

is a gradual process of political unification imposed by the requirement of legal unification takes place in 1865 significantly with the enactment of the Civil Code and Code of Civil unique , by the law of administrative organization 1889 together with the Penal Code. Was a fact notarized unification from 1864 draft and finally ended up being accepted in the late 80s in the nineteenth century, combining the influence rules of French notarial development and first article regulating in detail the notions public trust , authenticity and professional notary with disabilities exercise details , all doctrinally ratified in 1871 the Congress of attorney assigned to the notary professional dignity and decisive role within the various legal professions [5]

The development of the European notarized from northern Italy should not be prevented - not to mention the parallel - notarized in southern Italy especially Sicily and Sardinia between XII -XIX centuries where the notary gradually assumed roles in the production and maintenance log important documents for legal transactions . The discussion about the role of public and private national notary function , the development of the profession in southern Italy with the active participation of a notary in the legal life management and cultural policy Unsigned function of a prevailing public ministry , demanding additional to the suitability of personal knowledge and personal preparation conditions. But even this does not take long to become a notary in a bureaucrat and government official on duty what was already evident in the chaos of the notary 's called old regime was radically changed in the design of French influence and Bourbon restoration between 1806-1815 .

France was certainly the engine for the expansion of notaries in Europe , embodies and improving it developed in Italy . The development of the French notary can be set from the twelfth century to the reception of the vision of the Italian public notary , it is the participant notary in this system until the Napoleonic revolution , assumed the quality of public ministerial officer or a role and directly linked to the so-called voluntary jurisdiction . His introduction of Italy starts in the south of France with a practical reception of the notarial profession through various ordinances and accompanying gradual production doctrinaire about it. The development of notaries during the medieval and modern in France takes place based on the extraordinary importance that assume strict acts and solemnity . Just wait until the fifteenth century that arrives to the unification of the former regime being notarized the transition to the new system but will not involve further professionalization of the notarial function , which by the way was not so much prestige as judicial . Thus, the complete unification of the French notary is verified after the Republic and a long process starting in 1791 starting the notary to be qualified as a public official and allocating public document a decisive role in the French Civil Code of 1804 and Civil Procedure Code , 1806. During the first half of the twentieth century will remain a notarized and combine traditional southern public view contentious voluntary with no court vision, being inextricably linked to today to the judicial authority . Indeed assumes such importance the deed , which is situated on the French right at the same level as the administrative act, the judgments and other public events especially on your age and the possibility of enforceable compliance [6] .

The history of notaries in Spain has not only a methodological difficulty of delimiting the object of study , but also a time dispersion and historical continuity - discontinuity in its development. Thus, in the first period, between the thirteenth and sixteenth centuries , served to lay the foundation of the notary , to continue forever institutionalization through schools Notaries between the seventeenth and nineteenth centuries. The French influence , with the institution of the notary public was instrumental in the kingdom of Aragon and laid the foundation of close to the courts and notary public hearings and excellence in the provision of instruments scribe. The role of the notary public was linked to the faith and as in the previous cases came to a unification of the Notaries Act only in 1862. In Germany and background can be found in the XI- XIII centuries but recently examples of larger organization they would later , after the full reception of the Italian Nordic influence as the Order of Notaries 1512 in Cologne .

The work develops in depth the history of Notaries also in Poland, the Austro -Hungarian Empire , the Netherlands and Greece. The contact points based on the detail of every relationship makes feasible the relevance of a notarized important for traffic and certainty in legal relations , with degrees of dignity and professional quality not far from common principles for a harmonized notarized.

NOTES

[1] Heinz , V., " Auf dem Weg zum Europäischen Notariat ? " , Lecture given at the 58th meeting of the Bar Association of Germany in 2007 , (<http://www.notaries.org.uk/eu-notariat/eu-notariat.html> : visited 7/1/2010) [Links]

[2] See the book's preface p. May . and in particular the contribution of the ratio of Tamm , D., Geschichte des Notariats in Dänemark , p. 429 et seq . Equally Pihhlajmäki , H. , The Notary Public in the Legal History of Finland and Sweden, p. 463 et seq. Marthinussen , HF, Øyrehagen , J. Notarius Norwegien Publicus in legal history , p. 463 et seq.

[3] Kogan, L. , The Creeping ' Authenticity ' of Europe's Intrusive Civil Law System , 2008 , Report ITSSD , passim : [[Links](#)]

[4] See the detail in Schmidt- Rantsch , J - Kraus, D. - Riesenhuber , K. Entwicklungen nicht im - legislatorischer Rechtsangleichung europäischen Privatrecht , Berlin , 2008 , pp . 23-45 . [Links]

[5] According to the relationship of Villata , m . , Per una storia nell'Italia notariato the center - settentrionale , p. 15 et seq .

[6] According relationship Roumy , F., Histoire du droit et du Notariat attorney in France, p. 125 et seq .

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