

“FROM THE BAKED CLAY TO THE ELECTRONIC MEMORY”

1. Rolandino Passaggeri, notary from Bologna and Professor at the University, was born on the year 1207 according to the date of the monument which is found at *Piazza de Santo Domingo*, where Rolandino Street leads, in Bologna. He probably died in 1300. He was the author of the famous book *Summa Artis Notarie*.

The words this capital work of the notarial science (it was called *Meridiana*) starts with are famous:

My role, certainly, in this job resembles that of the farmer in respect to the tree: "...because, neither that who plants nor that who irrigates know anything; only God is who invigorates the plants." With all, it is true that I was young and I am almost old now; during all of my life I scrutinized the misteries of the notarial art, helped by the holy grace, reading, reflecting, and practicing restlessly this exercise; my hands examined in prolonged and continuous practices this Art, acquiring firm proofs of its importance, either listening to others, or sensing and seeing its results. Firstly I edited the *Suma*; then, after many years of practices, I added up the present *Aparato*.

Finally, the names and the things must match. This book is rightly called *Aurora*, due to its special result and aim, because it fades away the shadows of the nocturnal ignorance in the notarial Art, and the splendors of its noon light open wide doctrinal horizons to whose study these are devoted from the very beginning.

The *Aurora*, by separating the times, dissipates the glooms and, blushed, announces the nice shines of the light (*Pr.*, 4).

Not many years ago, the illustrious Notarial College from Madrid published this work due to the II Latin Notariate's International Congress and in the year 2000 important celebrations for the seventh centenary of the author's death have taken place in Bologna.

The cover of the *Summa* in an edition from 1541 displayed an elaborated artesanal design which framed up the text with a theological reference in Latin in the title page: *Sancta-Trinitas-vnvs-Devs-Miserere-Nobis* ("Holy Trinity and a single God, have mercy on us").

2. This *Aurora* from Rolandino marked in its moment the finishing point of a long –very long– evolution of the notarial science. When this book appeared in the 12th century, after this it was found important institutions which would take back their antecedents to the figure of the *scribae* from the second millenium B.C. writing over baked clay tablets.

There is a space of many centuries in the technical development of the inscriptions in stone, bone, and clay, and then in bronze, marble and wooden tablets covered with wax or crockery, used by the Romans to write the *responsa* and consignate their laws and businesses. A passage of Justinian says that “it is indiferent whether the testament is written on tablets, paper, parchment or any other matter” (*Inst. Just.*, 2, 10, 12).

The stem of the papyrus, laminated and in rolls, was preferred by the Egyptians due to its being a much more ductile and permeable material which would also permit the cursive writing (the Latin vocablo *papȳrus* passed to the French *papier* and to the Castellán *papel*). In the high Middle Age it was popularized the use of the parchment made out of goatsin, calfskin, lambskin, etc.

As centuries passed, it would be invented the rough and thick paper which we can still admire in the old Medieval manuscripts and which was manufactured in many ways (hemp pulp, rice, wood, cotton, etc.). In the New World the prehispanic towns would draw the history of their origins in precious multicolor paintings over paper made out from the crust of the *amate*. This paper would then be bathed in lime and, cut in sheaves, it would be stuck in the shape of a folding screen between wooden tops.

The paper got to configure our actual world and signified an amazing technical evolution in the conservation, the development and the transmission of the human knowledge. Not long ago, the newspapers were presented still in foldings that would have to be cut

and the rag paper –rough and without bleaching– was very popular to carry out the accounts in the grocery stores. Much more recently, we all got to know the recycling paper to, all of a sudden, enter the electronic memory and the cyber-space.

3. But it only talks about the *means used* as a support for the writing. At the same time, the *instrument* which was used to write would suffer a gradual evolution starting from the chisel, then passing to the punch and finally stabilize its development in the punchers and Roman stylets of wood or rush to draw characters in the boards. A flattened stripping knife would serve, besides, to erase. There were also tiny brushes with animal bristles that would work with ink made out of soot.

Once very advanced the Middle Age that puncher was then replaced by the bird's feather, particularly appreciated not only for its capability to retain the ink and draw characters, but even for its beauty and handlingness. The feathers had to be put to damp a certain time in order to make them soft and then they had to be cleaned and sharpen the cannon.

By the middle of the 15th Century it was produced an astonishing revolution in the method to write that reduced the patient and meticulous labor of the Medieval copist monks almost immediately to be forgotten. Gutenberg's printing press accomodated wooden characters and then steel ones that would

compound words, phrases and entire pages reproduced in speeds unimagined before.

In more recent dates, the hard charcoal pencils came up (the Latin word *lapis* means, precisely, stone), with a graphite bar imprisoned in wood; then the stylographic pens with an ink deposit and finally, the modern roller balls with steel iron. The typewriters appeared a century ago (1868), but up to the end of the seventies they were substituted by the modern electric ones and later on by other faster ones with an exchangeable sphere-like device in the keyboard.

In any form, the judicial actuations and the escritures and notarial acts would continue being done in a form rigorously handwritten, until the first typewriters started to appear gradually in the judges. The stenographers also appeared in the United States.

Almost immediately, the contemporanean offices were flooded with text-processing machines and personal computers. Hence, the material graphical expression of the escritura disappears to give place to combinations of bits that only exist in a memory of electronic pulsations.

4. It is then achieved a fortunate combination of the material and the technique to write, that is, the deliberated union of a support –from whichever nature– and a specific technique to write on it.

Both things, however, are even far from characterizing the final nature of the Latin notaries labor. If at the beginning such instruments could be enough to have by manifested the expression of will of a person, to make the negotiation effected true or to register important facts, very soon it was given the necessity to incorporate to that support a *mark* or specific *sign* that would guarantee undoubtedly its authenticity.

Since many centuries ago in *Hammurabi's Code* we can find the demanding of adding up to the document a mark set by the personal seals of those intervening (§§ 5, 104, 182) even when in the event of not having it –as it was frequent– a small mark would be printed with the nail. The clay baked board and the authenticity seal were commonly kept in a cylinder or over the material itself. In other cases, it can still be seen in documents of the epoch the sign of the *scribae* who would write the contracts, inside a square that would remark its singularity.

It is also certain that the mysticism, the magic and the religion could confere a larger credibility to the pact. Thus, we can find, for example, the magic number seven which presides the signs of authenticity of the pact between Abraham and Abimelec (*Gn.* 21:27-32), the curious form to swear by the servant in Abraham's thighs (*Gn.* 24:2-9) and the submission that unbinds the responsibility assumed between Jacob and Laban (*Gn.* 31:45-52).

In times of the Romans, the use of suppositions and fictions in the hiring and the great development of the businesses made it

necessary the obliged displacement to the place where the fund object of the sale would be found. Then, the magistrate, as well as the parts would fake the trip, and also the delivery of the heavy copper in the balance and even the defeat in a trial, also imaginary (*Inst. Gay.*, 1, 119, 121).

The witnesses could seal the testament with only one or with seven rings, but in this last case they had to be of an identical engraving (*Inst. Just.*, 2, 10, 5).

In the first epoches of the Medieval age we may find misterious traditions in the laws of the Spanish *Fuero Juzgo* that would consignate the necessity of the *manufirmatio* once written the escripture:

Cada uno omne deve escrevir su manda con su mano, é diga special mientras que manda fazer de sus cosas, ó á quien las manda, é notar y el dia y el anno en que faze la manda, é depues que tod esto oviere escripto, escriba en fondon de la carta que lo confirma con su mano (*F. J.*, 2, 5, 15).

In the *Fuero Viejo de Castilla* it was commanded the sales of a real estate would have to be done necessarily during the day and “at the foot of the heredity” except for they may have been done in the church's cemetery or intervening a *fijodalgo* (*F. V. C.*, 4, 1, 2, 7).

The *Fuero Real* of Alfonso X “The Wise” would prescribe the obligation of the *escribanos* to place a personal signal in the *escritures* (letters) that they would make (*F. R.*, 1, 8, 3; 2, 9, 3).

It is true likewise, that, evenly, the *escribano* would be severely sanctioned if he edited the escrituras with falsehood, because then the same laws would establish penalties of 200 lashes, to be publicly appointed as a liar, to be cut off the thumb of his hand, to lose the duty or even to die for it (*F. J.*, 7, 5, 9; *F. R.*, 4, 12, 1).

As time passed by, it was set in force the use of official seals exclusively utilized by the gubernamental functionaries, so that their imposition in any document would make it presume their authenticity. Meanwhile, the personal seals would continue subsisting which would only be used by the nobles or the knights. It was accustomed to carry them with oneself in covered rings or special recipients (sealkeepers).

The Medieval *escribanos* and of the Spanish colonies in America would use signs and crosses at the end of the *escrituras*, adding up the phrase “in testimony of the truth”. Escriche consignates sentencedly that without these signs the instruments would neither make faith nor bring harnessed execution (*Dicc.*, IV, 529).

The Mexican Civil Code (1928) prescribes that in the event of closed and olograph testaments, the author may place for its higher security “the seals, signals or marks that he may consider necessary to avoid violations” (arts. 1524 and 1553 *in fine*). Containing dispositions similar to these the civil codes of Italy (605), Puerto Rico (657), Spain (707), Argentina (3649), Colombia (1080) and France (976), in this last case of that called *testament mystique*.

In the North American law, the seal is used in certain formal contracts, but quite often people just fake, and then, it is enough with placing the word *seal* or the letters *L. S. (locus sigilli)* to make it be understood that in that place *it should be* stamped the seal.

In the *Fausto* from Goethe, the ambitious protagonista had to sign with a drop of his own blood the contractual document redacted by Mephistopheles to sell his soul:

FAUSTO: –Do you also ask for a writing, you stuck up? Haven't you met any men yet or word of a man?

... an old parchment, written and sealed, is a scarecrow before whom everybody gets scared away. The word expires now in the feather; the wax and the leather have the supreme authority. What do you want from me, you evil spirit? Bronze, marble, parchment, paper? Do I have to write with a punch, chisel, feather? I leave you the choice entirely free.

MEPHISTOPHELES: –A small sheet whichever is good for the case. You will sign with a tiny droplet of your blood.

Goethe was quite far from imagining that with just a drop of blood, this same purpose of authenticity would be accomplished as well with other technical expressions so close to the magic as to that of the body temperature, the iris of the eyes, the dactilar impression, the genetic registrars of the cells and even the modulation and the tone of our voice.

5. The formalities, thus, have been very diverse. It may be about the mark produced by the fingernail in a document, by hitting a scale

with the bronze or the cabalistic invoking to the number seven or the Holy Trinity. It could also be trusted the divine intervention swearing *In nomine domini Jesuchristi* with the hand placed on the Evangelia, caressing the cross or grabbing the sword.

It is still common to resort to the presence of three witnesses in a solemn act or the necessity to pronounce or write sacramental words which the legal dogmatic imposes (such as by renewing a contract or by nominate credit titles. Some North American notarial laws demand the express vocablo *sworn* or its verbal derivates in the swearing).

Coexisting still in the negocial practice, are elements that seem quite ridiculous, or at least unnecessary from the legal point of view, but that also intervене in the formality of the act, as that of shaking hands mutually, hugging or exchanging pens that were used for signing.

In all that –and in many other things more– there is always an element of ancestral magic, powerful mysticism, religious fervor or incomprehensive technology that makes us believe in the impossibility of falsification of the document.

But, in sum, the same technological abyss that in its opportunity separated Rolandino's notarial science from the antique Egyptian *scribae*, separates us from the publishing of that *Aurora*.

We are fortunate to live in a time like this one. Up to now our old books of registry covered, with numbered *folios* and sewn, membretados papers, rubber seals, autograph signatures and digital

fingerprints, have been of ordinary use in our offices; up to very short time ago it was the chinese ink and the drying paper and then the noisy typewriters, the old *minutas* and the printing gel; tomorrow it will be the magnetic lectures and the bar codes, the unfalsifiable inks and the security films, the binary keys and the alphanumeric codes, the optic impressions and the “intelligent” *chips*...

Foreseeingly, in the next years it will take place very important innovations, for example, in the processes of verification of the personal identity.

6. Without a doubt, the material where it is being written, the instrument to do it and the special signs will continue changing. It is absolutely unimaginable, however, what may follow after the cyberspace, the electronic pulsations and the bidimensional holograms.

But there is something that hasn't changed. We frequently forget that, neither the material used, nor the technique to write on it, nor the usage of mysterious signs or marks, may by themselves, confere the character of authentical to a mere phisical document. Such adding up subvenes, precisely, from an element which has no physical representation and may only reside in the integrity and honesty of its author, as in the case of the public notary who edits it and authorizes it for having seen it before his eyes.

Come to this point, I want to refer to two historical passages that call my attention. The first one takes place when the law doctors

takes an adulterous woman before the presence of Jesus. According to the account, Jesus –who never wrote anything– is found leaning over the floor and writes on the ground with the finger (*Jn.* 8:2-11). We don't know what he was writing.

The second passage refers to Socrates, when he makes a young slave “remember” some basic principles of geometry. With his accustomed display, the philosopher (who never wrote anything either and didn't use to wear shoes) draws on the sand with the big toe (*Menon*, 214). We know that he drew a square.

These accounts let us know, again, of the space where it is written and the instrument *ad hoc*. There couldn't be more humbleness and singlehood in both: by using simply the sand and the finger to do it, it is outstanding then the majesty of that *who* does it.
