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The good (civil law?) notary

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Abstract:

This article explains how structural differences between civil-law notaries and common-law notaries public create friction in cross-border circulation of public documents. Using Spanish case law and practice, it traces a pivot from "equivalence of forms" to "equivalence of authority," and increasingly to a notary's "judgment of sufficiency." The shift relaxes formalism and centers which public functions were performed—identification, capacity, legality checks, authorship—reducing re-documentation. Evidence does not support a claim that common-law systems are less secure; rather, they relocate assurance to ex post remedies and professional accountability. The article proposes a functional, risk-weighted recognition framework: cross-border effects should turn on demonstrable delivery of safeguards—independence, competence proportionate to risk, verifiable record-keeping, and enforceable liability—regardless of institutional mix. On this view, hybrid pathways become coherent: modest liberalization in civil-law systems and "enhanced" notaries public with legal training in common-law settings.

Keywords:

Notary public, civil notary, legal certainty, equivalence of authority, common law, civil law, cross-border recognition.

Resumen:

El presente artículo explica cómo las diferencias estructurales entre los notarios de los sistemas de derecho civil y los notarios públicos de los sistemas de derecho anglosajón

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generan fricciones en la circulación transfronteriza de documentos públicos. A partir de la jurisprudencia y la práctica jurídica española, se traza un giro desde la "equivalencia de formas" hacia la "equivalencia de autoridad" y, cada vez más, hacia el "juicio de suficiencia" del notario. Este cambio relaja el criterio formal y centra la atención en qué funciones públicas se realizan —identificación, capacidad, controles de legalidad, autoría—, reduciendo la necesidad de volver a documentar el acto jurídico. La evidencia no respalda la tesis de que los sistemas de derecho anglosajón sean menos seguros; más bien, desplazan la garantía hacia remedios a posteriori y hacia la responsabilidad y rendición de cuentas profesionales. Se propone un marco de reconocimiento funcional y ponderado por riesgo: los efectos transfronterizos deberían depender de la prestación demostrable de salvaguardas —independencia, competencia proporcional al riesgo, conservación de registros verificable y responsabilidad exigible—, con independencia de la configuración notarial institucional. Desde esta perspectiva, las vías híbridas cobran más coherencia: una liberalización moderada en los sistemas de derecho civil y notarios públicos "reforzados" con formación jurídica en entornos de derecho anglosajón.

Palabras clave:

Notario público, notario civil, seguridad jurídica, equivalencia de autoridad, derecho anglosajón, derecho civil, reconocimiento transfronterizo.

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1. INTRODUCTION AND OVERVIEW OF THE RESEARCH PROBLEM

When a Spanish Notary—an office rooted in the Roman civil-law tradition—receives from a Spanish lawyer a public deed executed outside the European Union, they will typically do three things. First, verify that the foreign notarial instrument bears an apostille—where the foreign country is a party to the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, concluded at The Hague on 5 October 1961. Second, check compliance with Article 11.1 of the Spanish Civil Code, which requires that the foreign document have been executed in accordance with the laws and formalities prescribed by the relevant foreign local law (this is verified by a certificate that the foreign notary should include at the end of the instrument intended to have effect in Spain). Finally, they will open the body of the document and, upon seeing that it is signed by a "Notary Public"—that is, a public officer from a common-law jurisdiction—will let out a laconic sigh and—without stopping their reading—murmur, "it seems we have a problem."

The "problem" to which the civil-law notary refers typically arises with complex deeds which, in Spain, by statute, would have required extensive procedures to ensure the legality of the act (cross-checks with the tax authorities, searches of anti–money laundering databases, procurement of various registry certificates, law compliance revision…etc.), whereas before the foreign notary public there was no such extensive scrutiny—or it was conducted only briefly and limited to the signer's identity. The Spanish notary's reservations about the Anglo-Saxon Notary Public—although grounded in a broad and, to be sure, coherent body of law to which we now turn—are conceptually straightforward and subdivide into two strands: (a) a purely corporatist matter of professional self-protection, and (b) a matter of legal certainty stemming from the collision between a liberalized, agile system like the common law and a highly formalistic, closed system like the Roman civil law—features of each system that the academy has historically acknowledged (Conley 2023).

The simplicity of the first, purely corporatist strand suggests beginning there, and then, turning to the second, more technical. This first issue concerns the very concept of the notarial profession and its marked divergence across jurisdictions. Generally speaking, in civil-law jurisdictions the notary is a legal expert who has passed an extraordinarily demanding public examination (Verboven and Yontcheva 2024), for which—at least in Spain—candidates typically prepare full-time for an average of four and a half years, in a (very) intensive fashion. In Spain, thousands of candidates compete each year—often for no more than a dozen slots. Indeed, a sector of the scholarly literature (Shaw 2003, 2006) elaborates on the comparable difficulty of access to the notarial profession in France and Germany—classic civil-law jurisdictions—highlighting numerus-clausus examinations. Also, once the coveted notarial post is obtained, strong resistance to any opening that might jeopardize the profession's privileges and its monopoly over notarial public faith. Some authors (Rivero-Silva 2025) have pointed precisely to this issue—the joint corporatist front of civil-law notaries and registrars—in opposition, for example, to adopting blockchain technology under civil-law regimes, technology that could potentially perform certain certification tasks currently reserved exclusively to these professionals.

To make matters more striking, after investing several years in intensive study and outperforming 99% of the thousands of civil-law notary candidates, Spanish notaries—and, according to the European Commission for the Efficiency of Justice (CEPEJ) (2023), a large

proportion of their civil-law counterparts in Europe (see the exception of certain German Länder where the lawyer "*Rechtsanwalt*" may act as notary in non-contentious matters, given the name "*Anwaltsnotare*" [Bundesnotarkammer 2023], likewise in Switzerland and Liechtenstein)—are barred from the lucrative practice of private law and must devote themselves exclusively to the public notarial office. This is in addition to further obligations inherent in assuming the office, such as the prohibition on executing public deeds outside their assigned city of residence or "*seat*" (plaza) (see Article 116 of the Spanish Notaries Regulation), and the duty to maintain order and digitalization not only of the public instruments they execute (Malavet 1995) but also of the tens of thousands executed over previous years by their predecessors in that seat (see Articles 17 and 37 of the Spanish Notarial Act). Thus, for example, Spanish notaries must rent premises with advanced security for the custody of their protocols (archives) and several years back of those of their predecessors and maintain their digitalization. This high barrier to entry has historically been invoked by the civil-law notariat as a public-interest necessity to deliver a high-quality service. The Netherlands liberalized the sector beginning in 1999, and contemporaneous national scholarship reported a decline in service quality as a result (Nahuis and Noailly 2005).

The lengthy academic training undertaken by civil-law notaries and the competitive rigours to which they are subject naturally generate a corporatist mindset inclined to mistrust public deeds executed by a "Notary Public". These are professionals who, as in the State of New York (New York State Department 2025), are required to pass a 40-question multiple-choice exam often completed in under an hour. In other states, such as Florida (Florida's Executive Office of the Governor 2025), a three-hour online course is required. Indeed, Florida's Notary Public Handbook (Kemple 2019) runs to a mere thirty pages and devotes much of its content to basic matters such as explaining what a notary public is and reminding readers which documents should be requested before performing a notarization. Granted, other common-law jurisdictions such as the United Kingdom have somewhat more demanding requirements, including a two-year online course in legal subjects (The Notaries Society 2025). In Hong Kong and Australia—also common-law jurisdictions—one must be a lawyer with prior experience and pass an examination. As to the experience required, seven years as a solicitor in Hong Kong (Hong Kong Society of Notaries, 2026) and five to ten years in Australia (Society of Notaries of Queensland 2025), depending on the state or territory, are stipulated; and, unlike in continental Europe, practice as a lawyer and notary is compatible.

This reality raises a reasonable doubt: can a notary public without legal training perform complex legal acts that, in the civil law, are entrusted to notaries—such as protecting copyright in sophisticated intellectual-property structures (Rivero-Silva 2024) or presiding over arbitral proceedings, even imposing decisions on lawyers in conciliation procedures who plainly have more legal training than the notary public? Surprisingly, the answer is yes: the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York 1958) does not forbid it. Strictly speaking, an arbitral award or a copyright certificate issued by a notary public without legal training carries the same enforceability as one issued by a civil-law notary who has passed a demanding legal examination. In this vein, some authors (Kennett 2016) point to the particular suitability of notarial arbitration in countries where the final step likewise depends on the notary—for example, in civil-law jurisdictions like Spain a notary may execute a consensual divorce in lieu of a judge. Arbitration over the distribution of assets in a divorce conducted by the very notary who will later formalize it is undoubtedly efficient. By contrast, as noted in California's Notary Public Handbook

(Weber 2022), the notary public is a person whose primary role is to verify identities and signatures and to administer oaths; that is, they lack the legal capacity to execute a divorce or to administer an arbitration. Even so, under Article 36 of the Spanish Mortgage Regulations (Reglamento Hipotecario) and Article 46 of Law 60/2003 on Arbitration, a Spanish registrar is (after exequatur) obliged to accept an Anglo-Saxon deed that, for some unusual reason, contains an arbitral award in which the notary public—without being a lawyer—has acted as arbitral decision-maker.

Accordingly, some authors (Reimann 2009) have put on the table (and criticized) the perspective that seems to underlie the reticence in civil-law jurisdictions to accept complex instruments executed by notaries public: namely, that such notaries are administrative employees or "second-tier" notaries far removed from the extensive legal knowledge and rigor that civil-law notaries devote to their instruments. This would constitute, in some sense, an "original sin" affecting foreign notarial acts whose enforcement is sought in continental Europe. It is a perspective this author does not share, for the 1961 Hague Convention on Apostilles does not posit any hierarchy of "better" or "worse," and notaries, as public officials, are bound to comply with the international treaties that Spain signs and ratifies. Therefore, the legal limit on the profession's protectionist impulse is narrow and generally manifests as a punctilious review of the legal requirements applicable to such foreign documents, where these are relevant under Spanish domestic law. In this sense, the analysis is organized around the two research questions. First, who is the "good notary"—that is, toward which model a hybridized or adaptive system of international notarial practice should converge? - Second, whether it is justified to deny effects in a civil-law jurisdiction to an instrument executed before a Public Notary in a common-law jurisdiction.

At a purely sociological level, from the standpoint of the public—the users of notarial services—the academic evidence does not suggest any special dissatisfaction among Anglophone users with the notary public, nor, certainly, greater legal uncertainty in common-law countries compared to civil-law ones. The World Justice Project (2024) consistently ranks various common-law jurisdictions highly in terms of the "rule of law." Moreover, a University of Bremen study (2007) deems unjustified the strict functional reserve of the civil-law notariat—which even prevents lawyers from issuing a simple "true copy" and, additionally, increases consumer costs in economic transactions. In the same vein, the World Bank (2020) argues for the need to deregulate the notarial profession—clearly alluding to strict civil-law systems such as Spain's—in order to improve competitiveness to the benefit of end consumers. In short, the underlying critique of an alleged lack of legal certainty in the Anglo-Saxon notariat is readily rebutted: not all common-law jurisdictions allow notarial acts without legal training, and the market is markedly more agile and competitive than in civil-law systems. As for the qualities of a "good" notary, the literature is diverse: on one side, Closen, Orsinger and Ullrick (2001) emphasize confidentiality and the keeping of orderly records of notarial acts; Gaupp (2004), for his part, focuses on the notary's independence from those requesting various notarial services. On another side, Bruno and Closen (1999) contend that ensuring the signer understands the act they are performing is not an essential notarial function "Absent statutory provisions and court decisions expressly declaring that (public) notaries should determine whether the signer of a document comprehends the contents of that document, notaries should not attempt to make such a determination." In any case, none of these tasks is, as such, prohibited to a notary public; they are simply carried out differently and in accordance with each country's local law.

Be that as it may, the circulation of foreign deeds encounters a second obstacle: civil-law public registries. Certain authors (Cámara-Lapuente 2005) have described the dual nature of legal certainty in civil-law systems, by virtue of which public registrars exercise extensive control and review of deeds—sometimes correcting the notary's own requisite legality control of the act and even refusing public registration contrary to the authorizing civil-law notary's view. On this point, Heidemann (2017) conducts a comparative study between civil-law-type public registries, taking Germany as a case study, and those in the common-law system, taking the UK as an example. The conclusion is that the Anglo-Saxon commercial register prefers a self-regulatory format, not based on painstaking review by a legally expert registrar, as occurs, for example, in Spain under the civil law (Méndez 2017). That is, whereas the civil-law model offers "dual" protection (notarial review and registral review), the common law opts for a set of ex post protections against false or incorrect information, severely penalizing those who submit it to a public register, but without an in-depth ex ante examination by either the notary or the registrar. In any event, Spanish law maintains an open posture: Article 60 of Law 29/2015 of 30 July, on international legal cooperation in civil matters, expressly provides that foreign extrajudicial (notarial) documents may even be admitted in Spanish public registries, provided that "the requirements established in the specific applicable legislation are met and the foreign authority has participated in drawing up the document by performing functions equivalent to those carried out by Spanish authorities in the relevant subject matter, and it produces the same or closely similar effects in the country of origin."

2. Beyond signature witnessing: notarial functions and the evidentiary force of public instruments

Apple and Deyling (1995) argue that the civil-law notary essentially performs three functions: (i) drafting legal instruments, (ii) authenticating those instruments, and (iii) keeping copies of the acts executed, with the ability to issue authentic copies. Other authors (Zeng 2012) note that civil-law jurisdictions aim to provide an additional guarantee of legal security through civil-law notaries: it is not merely a matter of authenticating the parties' signatures, but of ensuring the legality of legal transactions—through notarial acts carried out in accordance with the law of the forum (*lex fori* principle)—and the reality or truthfulness of the information contained therein. In practice, the civil-law notary's work is even more complex. By way of example: (i) the civil notary verifies whether an ill person is in full capacity to execute an act or, on the contrary, does not understand the legal consequences of the act being undertaken; (ii) the notary refuses to act and alerts the juvenile prosecutor (in spanish, "*fiscalía de menores*") if parents appear at the notary's office holding their child's hand, seeking to sell property titled in the child's name to the child's patrimonial detriment (See the requirement of judicial authorization under Article 166 of the Spanish Civil Code.); (iii) the notary orders family members to leave the room if they attempt to pressure an elderly woman when making a will, and will refuse to authorize it upon detecting such pressure; (iv) the notary will refuse to complete a real-estate conveyance (in Spain, mandatorily executed before a notary and registered in a public registry for *erga omnes* effect) if original title deeds are not produced—and will, moreover, examine those originals minutely for authenticity; (v) when granting a bank mortgage, the notary will question the consumer to ensure the document is understood and will refuse to sign if the consumer has not understood the transaction or is being misled by the bank; (vi) the notary will refuse to authorize company acts if, for example, in breach of Article 160(f) of the Spanish Companies Act, the managing director has concealed information from the

shareholders that should have been communicated and submitted in advance to the General Meeting for approval. And so on—an almost interminable list of legal-certainty safeguards for the benefit of society, which will then be subject to a second layer of review by the registrar receiving the deed, where the law imposes mandatory public registration (as happens routinely in matters of real property and commercial companies).

That is, impartiality vis-à-vis clients, incompatibility with the practice of law, extensive legal expertise, and limits on the number of notaries (*numerus clausus* principle) operate as ex ante legal guarantees for any authorized legal act—guarantees that, objectively, go far beyond mere "signature witnessing." By contrast, as Figueroa (2009) notes, the Anglo-Saxon notary public has a wholly different nature. In practice, they essentially handle (a) affidavits, (b) jurats, (c) oaths and (d) acknowledgment. An affidavit is an act in which the signer attests that the contents of a document are true; a jurat, by contrast, involves signing a document in the notary's presence; an oath is a promise or sworn undertaking to fulfil an obligation and finally, an acknowledgment is simply a recognition of a signature. In other words, the notary public, in terms of legal comprehension, need not even know or understand what is being signed—beyond determining whether to append an affidavit, jurat, oath or acknowledgment certificate at the end of the document presented by the client (and not drafted by the notary public itself). Their competence is limited to guaranteeing that a specific person appears before them and signs or swears something in their presence. They do not guarantee that the appearer has full legal or mental capacity; they do not guarantee that the signature is freely given; they do not guarantee that the document complies with the laws of the United States or the United Kingdom; they do not guarantee that annexed documents are genuine (whereas the civil notary will, quite literally, handle the document, hold it to the light, and check whether it is an original, has been altered, or is merely a photocopy); and, in general, they perform virtually none of the tasks legally entrusted to the civil-law notary.

Zeng (2013) observes that, while competences vary across states, it is generally accepted that notaries public, given their limited remit, are prohibited from drafting notarial instruments and, more broadly, from providing legal advice—since, plainly, they are (with exceptions) not lawyers. Thus, a civil-law notary who receives a notarial instrument from a notary public has no guarantee of any kind: neither as to the legality of the act, nor as to the signer's capacity, nor as to the truth of the facts recited in the document. Absolutely nothing—beyond the fact that a person appeared claiming a given identity and presented identification (which is not substantively examined) that apparently matched the name declared by the appearer. This uncertainty runs head-on into the legal functions of civil-law notaries and therefore breeds scepticism regarding the legal effects of such instruments in civil-law countries. This is, in essence, the second "problem" referred to earlier: that of legal certainty—now joined to the first, namely professional corporatism (simply, the avoidance of foreign competition). Indeed, with respect to the corporatist organization of the Latin notarial profession, certain Anglo-American authors (Closen 2002) elaborate on the disparity in the profession's social prestige between continental Europe and common-law jurisdictions, the latter having historically undergone a contraction of functions and, as a corollary, a lower barrier to entry—i.e., greater ease in obtaining a notarial commission or appointment.

In this connection, some authors (Chianale 2017) draw a link between the predominantly written nature of evidence in civil-law judicial proceedings and the high probative value accorded to public instruments in those legal systems. In Spain, this is entirely accurate.

Under Article 319.1 of the Spanish Civil Procedure Act, public instruments "[...] constitute full proof of the fact, act, or state of affairs they document, of the date on which such documentation occurs, and of the identity of the officiating notaries and any other persons who, as the case may be, take part." Chianale, by contrast, underlines the oral character of common-law judicial proceedings, which are less monolithic in their acceptance of a document generated by a notary public. In short, civil-law civil procedure draws upon—and benefits from—the rigor and meticulous evidentiary controls exercised by the notary and the registrar, something the common-law process cannot do, at least not with the same degree of confidence. Be that as it may, the presumption of the principle of *bona fides* in the notarial function cannot be ignored (Antohie 2024). It entails that—whatever the degree of confidence reposed by the State in the office—the function must be discharged, in the notary's best judgment (whether public or civil-law), without prejudicing the client's interests and subject to the confidentiality inherent in the service. In other words, divergent state views on *fe pública* (public faith) and on notarial training do not imply a "*worse*" service, but rather a different one. That said, as will be seen below, this understanding stands in stark tension with the perspective of practitioners within the civil-law notariat.

Llopis Benlloch (2017), a Spanish notary, writes as follows regarding the conceptualization of the notary public: "the truth is that we see in him (the notary public)[1] no trace of the reliance that defines the notary (the civil notary). Quite the opposite: what we see is a legal system that ignores—or avoids—providing ex ante certainty to legal transactions, placing its trust in the courts and in the subsequent repair or compensation of those harmed by non-compliance, in the best of cases through insurance." Thus, both Chianale's reflection and Llopis's lead to the same conclusion: this is, less a question of the quality of notarial professionals or of the service provided in each country than of the very conception of legal certainty—"*ex ante*" in the civil law (preventive, prior to the act itself) and "*ex post*" in the common law (remedial and punitive). It is also worth noting the perspective of Burke and Fox (1975): the civil-law notary is an independent third party and does not act for either side. In the U.S., by contrast, a notary may even be an employee of counsel for one of the parties, thereby raising doubts as to impartiality and the care brought to the task.

Civil-law distrust ex ante recalls a reflection made in a university seminar[2] by the late Spanish professor Mr. Dalmacio Negro: "in our system, citizens have come to be presumed suspect". That is, the civil law does not "*trust*" the citizen; it does not "*trust*" lawyers; and—worse still—it does not "*trust*" the courts to deliver compensatory justice for the victim of deceit, punitive justice for the wrongdoer, or timely civil measures to protect a specific legal interest. It presumes that, absent strict dual control by notary and registrar, citizens will sign what they ought not to sign, lawyers—if allowed to serve as notaries—will breach the duty of independence, and judges will be unable to repair the damage or take swift protective action. Hence, faced with this foundational distrust, the system prohibits or strictly limits private legal acts, channeling legal transactions through prior legality checks by a notary and a registrar—both public officials. This, in my view, is a far weightier and more substantive critique that the notary public can level against the civil-law notary. By contrast, Anglo-American models place their trust in the courts: if someone signs what they should not sign or does what they should not do, justice will be done. Hence the decision is to dispense

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with an ex ante examination in favor of an ex post one—and, along the way, to streamline and facilitate legal transactions.

Against criticisms of the quality of common-law notarial instruments, Haberkorn and Wulf (1998) contend that notaries public do not abandon the duty of notarial care. On the contrary, the Anglo-American minimum standard of notarial diligence includes the obligation to "take reasonable precautions to assure that his seal will not be the vehicle by which a fraudulent transaction is consummated." The difficulty is that (i) not being lawyers, they lack legal training, and (ii) they operate within a system that grants relatively little scope beyond signature verification; inevitably, then, the legal control of a deed executed in a common-law context will be less strict than that exercised under the civil law. Moreover—and this is now a critique of the Anglo-American model—other authors (Van Alstyne 1999) point to the difficulty of reconciling what is known as the *constat de persona*—the irrefutable verification that a person is who they claim to be—with the civil right to privacy vis-à-vis the state that exists in many common-law jurisdictions. Indeed, some U.S. states (fewer and fewer, it must be said) permit identification by a variety of low-assurance methods. Responsibility for establishing the constat de persona may thus shifted to entities with minimal security, opening the door to fraud of all kinds. In any case, the notary public does not undertake substantive verification of identity documents—whereas the civil notary does.

The Spanish scholar Rafael Arenas (2014) refers to the text of Articles 4 of the Spanish Mortgage Law (Decree of February 8, 1946, approving the new official wording of the Mortgage Law), which expressly provide for the admissibility of foreign notarial titles in Spanish land registries, naturally subject to certain requirements of translation and legalization. He elaborates on the rich doctrinal debate this raises and notes that, as we shall see, case-law appears to have opted for an open stance. That is, in Spanish law the equivalence assessment between a notary public and a civil-law notary is not conducted by re-enacting the notarial procedure itself, but rather by examining issues of functional equivalence of office, translation, and legalization/apostille. Without prejudice to the foregoing, and as regards Spanish notarial-registral corporatism, there is an evident need, de lege ferenda, to revisit the matter.

3. Corporatism, competition, and convergence: Spain's sufficiency doctrine and hybrid notarial models

A sector of the scholarship (Monkkonen 2018) has highlighted that, in civil-law contexts such as Mexico, society perceives that the notariat maintains a kind of monopoly in its own interest rather than in pursuit of greater legal certainty. Against this, the aforementioned author argues that, at least in Mexico, they might better be described as a "*cartel*," insofar as prices are typically regulated by State-fixed fee schedules, while a demanding public examination is retained. A clear example of monopolistic guild behavior can be found in the problem of "free deeds" in Italy (Lavecchia and Stagnaro 2019). In 2012, the Italian government introduced the so-called "simplified limited liability company," the incorporation of which was theoretically free of notarial costs. According to those authors, the Italian notarial guild refused to comply with the rule, thereby evidencing an internal capacity for organization and resistance vis-à-vis the State. Other authors (Van den Bergh and Montangie 2006), while attributing a generally monopolistic nature to civil-law notaries, suggest that such a monopoly is grounded to some extent in the need for secure legal transactions, and that deregulation would result in a "civil-law" notarial service being more

expensive than a "public/common-law" one. In other words, the very institution of the notary as understood in civil-law systems would be fundamentally altered, and two categories would emerge within a single notariat: those who, holding the professional title, continue to operate under civil-law paradigms, and others who would seize the opportunity to compete by effectively acting as "public notaries." Thus, the distinction would persist *de facto*, producing two types of notarial services within the same country, with users selecting one or the other according to the transaction's risk profile.

With respect to the proper calibration of the legal risks inherent in each transaction, it is true that this article does not purport to provide a taxonomy of risk. That said, it is self-evident that a cross-border function on which hundreds of jobs depend does not call for the same level of expertise, diligence, and *ex ante* review as a simple power of attorney or a certified true copy. In this regard, the Organization for Economic Co-operation and Development (OECD) (2007) has historically favored grading notarial services according to their risk profile and, on that basis, advancing the liberalization of the notarial sector depending on the nature of the act to be performed. It thus suggests developing "conveyancing services", a hybrid between the traditional civil-law notary and a legal service provider. In short, it argues for the coexistence, within a single jurisdiction, of the lawyer-notary, the civil-law notary, and the notary public, with a view to enhancing competitiveness and service quality in the notarial market.

With respect to civil-law notaries, the monopolistic guild dynamic to which the literature refers operates, for present purposes, by taking refuge in an alleged (to varying degrees real) lack of quality in foreign public deeds. The upshot is to force, in the case of complex legal acts, Spanish notaries to retain a kind of exclusive competence over acts intended to produce effects in Spain, under threat—wherever possible—of blocking the validation and registration of legal acts issued abroad. Indeed, the (extra)official website of Spanish notaries and registrars (Notarios y Registradores Españoles 2014) includes a public section titled *"A proposal on how to negatively qualify a foreign document seeking entry in our registries."* It offers "model" wordings to justify—by simple copy-and-paste—the refusal by a Spanish notary or registrar to recognize legal effects in Spain for foreign instruments. In the same vein, Spain's National Competition Commission (2007), in case file no. 2803/07, examined a complaint alleging that Spanish registrars had been "discriminating against foreign notarial documents" in relation to their telematic access to Spanish public registries, thereby forcing submission of the original copy by physical mail.

Contrary to the interest in maintaining a closed monopoly, the Spanish administration has not supported the notarial and registral guilds, thus evincing a clear interest in advancing toward an international commercial law framework that may fairly be considered a matter of public interest for national economic development. Thus, in its Resolution of 5 January 2017, the Directorate-General for Registries and Notaries addressed the case of a registrar who refused to register the cancellation of a mortgage executed by a Spanish lawyer on behalf of a Luxembourg company on the ground that he "did not know Luxembourg law" and therefore could not verify that the power of attorney had been validly executed under local law. The Spanish public body reproached the registrar's refusal in suggestive terms, translated here as follows: "This Directorate-General again reminds (cf. Resolution of 15 February 2016) both registrars and notaries of the desirability of advancing in their knowledge of the laws of other States, especially if they are part of the European Union, in order to facilitate the application of foreign law in the extrajudicial sphere—resorting not only to the means provided in Article 36 of the Mortgage Regulations (Decree of February

14, 1947, approving the Mortgage Regulations), and exceptionally to the provisions of the Law on International Legal Cooperation, but also to the tools offered by the 'E-Justice' environment—by collaborating actively in the resolution of private international law conflicts."

Specific opinions from Spanish registrars (Valle 2016) underscore that, notwithstanding the Spanish administration's position and the general tenor of Law 29/2015 of 30 July on International Legal Cooperation in Civil Matters—Article 35 of which allows the Spanish "Central Authority" to be asked for a report on foreign law, but not on its interpretation or on its conformity with Spanish law—it can be genuinely difficult to obtain authoritative knowledge of foreign law (beyond the mere mechanical reproduction and automatic translation of foreign statutes). This difficulty extends to ascertaining the judicial construction of those statutes in the country of origin and verifying whether they remain in force as of the date of filing with a Spanish public register. It likewise raises complications for the adaptation in Spain of foreign legal institutions. In this respect, one may note the problem posed by common-law trusts, which are prohibited within Spain's civil-law system (Rivero-Silva 2025) on grounds of legal certainty and due to the incompatibility between civil-law and common-law conceptions of legal personality.

This opening by the Spanish State continued in the Resolution of 4 June 2020 of the Directorate-General for Legal Certainty and Public Faith. A Spanish registrar refused to accept a Spanish notarial deed in which one party acted under a power of attorney granted in the United Kingdom. The excuse, literally, was that it had not been shown that "under English law, the notary authorizing the power-of-attorney deed is competent to attest to a legal act of representation, and whether in authorizing it he identified the grantors and assessed the sufficiency of their capacity." The Directorate-General held, on the one hand, that "a foreign document is equivalent to a Spanish document only if its execution involves those structural elements that give force to the Spanish public instrument: that it be authorized by someone who, in their country, is vested with the competence to exercise public faith, and that the attesting officer ensures the identification of the grantor as well as his capacity for the act or transaction in question." It continued: "the application of the so-called rule of equivalence of functions—surpassing and leaving behind the rule of equivalence of forms—must focus less on the content of the document than on the status and conduct of the foreign authority (in accordance with its own rules, generally based on international practice, as in the present case). This means that a document executed abroad will be prima facie valid for the requirements of Spanish law if the foreign authorising authority performs functions equivalent to those of a Spanish authority, or if they can be appropriately supplemented and integrated by the Spanish notary in the specific case."

In the same spirit, the Spanish Supreme Court, Judgment no. 998/2011 of 19 June 2012, addressing a Spanish registrar's attempt to require that a foreign notarial act be re-executed in Spain to afford the act the highest level of guarantees, replied as follows: "[...] the need in all cases for intervention by a Spanish notary would amount to imposing a limitation on the free transfer of property, as regards its full effects, that is not justified in the current state of EU and Spanish law." And: "[...] Once equivalence of form has been accepted between a German notarial public instrument and a Spanish one for purposes of its validity in Spain, it would make no sense to require the same transaction to be re-documented before a Spanish notary, and such a requirement would have to be regarded as a reiteration and an unnecessary duplication."

A segment of Spanish legal practice (Torralba 2017) notes that these decisions (among many others we omit here for reasons of space) mark a paradigm shift in Spain's approach to foreign public documents, moving from "equivalence of form" to "equivalence of authority," which is noticeably more flexible. This new approach may have its origin in the Resolution of 14 September 2016 by the Directorate-General for Registries and Notaries, analyzed by Torralba (2017), which makes clear that, in the view of Spanish administrative doctrine, the equivalence principle is not "structural" to the instrument nor exclusively within the remit of the Spanish notary; it may even be established by the foreign notary in the instrument itself or by various means of proof. Hence, it would seem that the equivalence assessment has been displaced by what the recent Resolution of 21 February 2024 of the Directorate-General for Legal Certainty and Public Faith calls the "judgment of sufficiency," thereby reviving Article 98 of Law 24/2001 of 27 December to lend coherence to the acceptance of foreign titles in Spain. In essence, this means that if the Spanish notary has deemed a foreign power of attorney sufficient, the registrar may not demand a copy or verbatim transcription. In this way, the security afforded by the civil-law "dual review" (notary-registrar) is, to a degree, loosened, facilitating the admission into civil-law public registries of legal acts (at least simple powers) derived from instruments granted by notaries public.

This contentiousness surrounding the interaction of common-law public instruments within civil-law settings suggests—just as Closen and Dixon (1992) argue—that notarial practice should evolve toward safer pathways, abandoning the posture of mere "professional signature-witness." Some U.S. states, such as Florida and Alabama (while retaining the traditional Anglo-Saxon "Public Notary" format), have implemented the coexistence of the "Civil Notary" (Stephenson 2016), which affords a higher degree of legal certainty by requiring lawyer status with a measure of experience (albeit at the cost of the notarial act's impartiality, which can in turn generate new and different equivalence problems). Beyond these developments, Cox (2000) proposes moving toward a kind of common international notarial practice. The question is: should this unified practice move toward simplifying civil-law notarial procedures, or toward making common-law notarial procedures more elaborate? Which of the two is the "good notary"? Perhaps a bit of both: it makes little sense that, in a context where the e-IDAS Regulation (EU) No 910/2014 allows qualified electronic signatures with the (at least the technical) effects of a certified digital copy, European notaries should retain a monopoly over that simple task. By the same token, it makes no sense to authorize corporate instruments while ignoring the most basic principles of local company law.

In short, the historical trajectories of common law and civil law—each with its strengths and critiques—seem to point toward a meeting in the middle: a partial deregulation of the civil-law notary, moving toward hybrid lawyer-notary models and the possibility of lawyers issuing true copies, while it becomes increasingly common to see Public Notaries with basic legal training in the common-law context. Perhaps this combination of factors will be what we may one day call the "good" notary. In any event, the guild-based resistance of the Latin notariat does not appear likely to ease this transition. The acceptance of some Anglo-Saxon notariats as "equals" within the UINL ("Unión Internacional del Notariado Latino"), according to authorized notarial sources (Bolás 2025), was—and appears to remain—a source of conflict: defended by some (notably the Swiss notariat, which allows the dual identity of Lawyer-Notary) as necessary, but regarded by many others as "excessive" and a threat to the very survival of the civil-law notariat as we know it.

4. DISCUSSION – CONCLUSION

The comparison between civil law notaries and common law notaries public is routinely caricatured as a contest between "highly trained guarantors of legality" and "mere signature witnesses." The evidence and doctrinal trajectory recounted here undermine both extremes. First, civil-law notaries undeniably embed a dense layer of ex ante safeguards—capacity, voluntariness, legality, authenticity—reinforced by registral review. Second, the common law neither uniformly eschews competence requirements nor tolerates anarchic evidentiary practices; rather, it reallocates assurance to ex post remedies, professional licensure, and sanctions. If there is a lesson in Spain's shift from "*equivalencia de formas*" (equivalence of forms) to "*equivalencia de autoridades*" (equivalence of authority), it is that legal systems can—and increasingly must—translate notarial effects across institutional grammars without insisting on isomorphism of procedures.

Therefore, the normative question is not which profession should monopolize public faith, but which functions must be guaranteed for a given transaction risk profile of the legal actuation. The civil-law catalogue (identification, capacity, anti-coercion, legality checks, record-keeping, and accountable authorship) describes a bundle of verifications that can, in principle, be delivered by different institutional combinations—lawyer-notaries, enhanced public notaries, specialized registrars, or digital trust services—provided they are auditable and enforceably liable. Spain's emerging "*juicio de suficiencia"* (judgment of sufficiency) doctrine already privileges *who* did *what* (and with what authority) over *how* the form looked. That pivot should be consolidated into a general principle of **functional parity**: cross-border effects turn on demonstrable delivery of core safeguards, not on membership in a guild.

Also, the article's evidence on guild dynamics is not incidental; it shapes the feasibility of reform. Where refusal practices are motivated by exclusivity rather than measured risk, they impose deadweight loss without demonstrable gains in safety. The Spanish Supreme Court's skepticism toward redocumentation requirements and the administration's preference for sufficiency judgments signal a public-interest turn: the free circulation of legal effects is part of economic strategy, not professional charity. Competition policy and judicial oversight should therefore police both excessive closure (blanket refusals, formalisms untethered to risk) and illusory openness (recognition without meaningful accountability). The right baseline is contestable competence: protection where risk justifies it, rivalry where it does not.

On the synthesis advanced here, the "good notary" is not a guardian of a tradition but a provider who, for the relevant risk tier: (i) is independent of the parties' interests; (ii) is competent (with training commensurate to the functions performed); (iii) is accountable (insured, subject to discipline, and personally answerable); (iv) is proportionate (neither over- nor under-engineering assurance relative to risk); and (v) is interoperable (producing artifacts legible across borders). Measured against these criteria, both the civil-law notary and the enhanced common-law notary can succeed—and both can fail. Accordingly, reservations about giving effect in a civil-law jurisdiction to a public instrument authorized by a notary public are, in most cases and having regard to the instrument's complexity, difficult to sustain—at least if the objection rests on the quality of the notarial work.

The civil-law/common-law notarial divide is best understood as a divergence in where legal systems place their trust—and their error-correction costs. Convergence does not require homogenization by suppressing any legal tradition. A risk-weighted recognition framework, anchored in functional parity, auditability, and accountable passporting, can preserve the civil law's commitment to ex ante security while honoring the common law's preference for agility and remedial justice. In this way, the first research question— "Who is the good notary?"—resolves into a governance test: Who delivers the right safeguards, at the right time, for the right risks, under conditions the law can verify, price, and enforce? Therefore, the answer can't be monolithic on one side (notary public) or another (civil law notary). Notwithstanding the foregoing, the path toward a common notarial practice proceeds in tandem with the liberalization of the civil-law notarial sector. The second research question—whether it is justified to deny effects to an instrument executed before a Public Notary within a civil-law jurisdiction—should be answered in the negative, provided that (a) the instrument clears a minimum sufficiency test with respect to the authority and standards of the governing common-law system, and (b) the juridical act is capable of adaptation to the civil-law forum without contravening that forum's *lex fori*.

5. Limitations

While the comparative sample is deliberately heterogeneous, the fine-grained reconstruction of the shift from equivalence of forms to authority and to sufficiency necessarily leans on Spanish judicial and administrative sources; generalization to other civil-law jurisdictions requires caution, particularly where registral control and notarial monopolies are configured differently.

"Notary public" and "civil-law notary" are genus labels covering significant intra-family variation in training, permitted functions, liability regimes, and professional governance. The ordinal investigation scheme smooths these differences to extract functional commonalities; this abstraction can obscure local doctrinal nuances that matter at the recognition margin.

Finally, normative priors cannot be eliminated. A functional and risk-weighted lens privileges outcomes over guild boundaries and may understate values some systems hold intrinsically (e.g., the civic meaning of public faith as a state-anchored function). This framework aims to surface, not settle, such value choices; where stakeholders attach independent weight to form, the proposed recognition tests should be read as decision-support rather than as dictates.

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