

## Notaries and Plagues over the Centuries



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**The Australian and New Zealand College of Notaries Conference**

***Notarii Quo Vadis?***

*Friday 4 and Saturday 5 November 2022*

*The Star, Gold Coast, Australia*

*Ken Lord*

## Introduction

*Quo Vadis*, translated, is “where are you going”? To know where you are going it may be useful to see where you have been. History “tangles the past with the present in webs of fact ... [and records] ... the ways people construct understandings of the past in order to speak about culture in the present” (Glassie 961). Exploration of history generally is obeisance to Bacon’s homily that “Histories make men wise” (Bacon quoted in Clare 37).

Tracing notarial history in particular and the work of the notaries as “truth’s alchemists” (Burns 352), may therefore enable better understanding of the role of the modern notary. Mediaeval notary protocols and registers, a rich source of material for historians researching notarial history, are evidence for the proposition that notarial acts carry power for as long as records survive. From these records, it may be observed that notaries, as they provided “protection and gateways to the legal system” (Burns 351), faced many challenges, not least, as we have all recently experienced, during times of plague. Examining the work and behaviour of notaries during times of plague, it is observable that some notaries distinguish themselves admirably, others not so much. Among the former group certain characteristics are evident and common, namely,

- (a) that they remained at their posts rather than fleeing,
- (b) continued to archive extensive records which survived,
- (c) wrote accounts of the plague,
- (d) ignored misinformation such as that leading to the persecution of Jews,
- (e) operated from their homes, in a civic space even if priest-notaries,
- (f) shared tools and expertise with each other,
- (g) were generous in life and death,

- (h) shaped the behaviours of those around them including appearers in a manner that was parent-like, “authoritative, authoritarian, and sympathetic” (Cossar 32), and
- (i) formed the “ground in which the seeds of the Renaissance grew” (Cossar 23, citing Wray).

In this paper I shall examine:

- A. the Black Death, including origins and climate change exacerbation;
- B. notary acts during times of plague, with a focus on **Italian** notaries, truth, and cultural influence, evidence for the characteristics listed above; and
- C. modern day COVID and notarial work in **New Zealand** during lockdown.

### ***A. The Black Death, including origins, flight, beak masks and climate factors***



*The plague bacillus never dies or disappears for good; it bides its time in bedrooms, cellars, trunks and bookshelves; and the day will come when, for the bane and enlightenment of men, it would rise up its rats again and send them forth to die in a happy city.*

*The Plague, Albert Camus, 1947 (Swenson 183)*

The Black Death got its name from “dark blotches produced by haemorrhages in the skin” (Langer 114). People afflicted exhibit

certain swellings in the groin or under the armpit ... In a short space of time these swellings spread ... all over the body. Soon after this the symptoms changed and black or purple spots appeared on the arms or thighs ... Very few recovered; most people died within about three days of the appearance of the swellings (Getz citing Boccaccio 268).

It is a disease with the most fatalities in human history, although estimates wildly vary between 25 million and 200 million deaths. By way of comparison, the Spanish flu mortality rate is estimated to have been 100 million, while COVID 19 currently stands at 6.56 million deaths. Despite scepticism as to the high mortality rate

it is now generally accepted that at least a quarter of the European population was wiped out in the first epidemic of 1348, and that in the next 50 years the total mortality rate rose to more than a third of the population (Langer 114).

Mortality rates differ from city to city, but it seems likely that “Florence was reduced ... from 90,000 to 45,000, Sienna from 42,000 to 15,000 ... [and] ... Hamburg lost almost two-thirds of its inhabitants” (Langer 114). In Venice, a city where the Black Death struck “23 times between 1348 and 1576” (Langer 114), meticulous records were kept which bear out the overall estimates of mortality rates. London lost 40-60 percent of its population by the summer of 1349. Later, Shakespeare was unable to produce plays for an entire year starting late July 1606 in the midst of a *King Lear* season due to a further outbreak of the plague.

### ***Origins of the Black Death***

The Black Death originated in the “steppe lands of southern Russia, to the north west of the Caspian Sea” (Campbell 301), although scientists as recently as 2021 suggest that a 30-year-old Latvian who died 5000 years ago is the first human known to have the virus”. Nonetheless, in southern Russia, in 1346, “heavy disease fatalities are reported” (Campbell 301). Over the next seven years, the plague spread successively:

to the shores of the Black Sea, to Asia Minor and the coast of the Aegean, to the whole of the Mediterranean basin, and eventually to the greater part of continental Europe and its Atlantic islands (and may even have reached Iceland, where, significantly, there were no rats). The epidemic finally spent its force in European Russia in 1352-3. In England, where the first plague outbreaks were reported in late summer 1348, the massive and unprecedented mortality, which far eclipsed that of the Great European Famine, transformed the established relationship between supply and demand (Campbell 301).

### *Causes of the Black Death*

The Black Death is caused by the bacterium *Yersinia pestis*, a

gram-negative, facultative anaerobic, rod-shaped bacterium belonging to the Enterobacteriaceae family. It is a zoonosis found chiefly in feral rodents, spread in the main by infected fleas. Plague epidemics in human populations can, however, occur when the *Yersinia pestis* pathogen invades rat populations that live in close proximity to humans. Once the rats have been largely killed off by the disease, the infected fleas move to human hosts (Weichmann 65).

### *Airborne transmission now thought to be a possibility*

The speed at which the plague travelled has led scholars to now suggest that it must have been airborne,

communicable person to person, and possibly transmitted as well by infested clothing and other objects ... [and that] ... the fourteenth century disease spread almost as fast per day over land as modern plague does per annum (Cohn 712).

### *Abandonment*

Flight in the face of danger is a fundamental human reaction. The Italian poet Boccaccio, in his Decameron, famously described the plague of Florence in 1348. According to Boccaccio,

people behaved like animals. Brother abandoned brother, ... and very often the wife her husband. What is even worse and nearly incredible is that fathers and mothers refused to see and tend their children, as if they had not been theirs. The poor fared especially badly, since they had no one to care for them. Many ended their lives in the streets ... and many others who died in their houses were known to be dead because the neighbors smelled their decaying bodies. Dead bodies filled every corner (Getz citing Boccaccio 268).

Those who could fled as soon as possible. "Emperors, kings, princes, the clergy, merchants, lawyers, professors, students, judges and even physicians rushed away" (Langer 116). Proper mourning and burial customs are not observed, people caring no more for dead men "than we care for dead goats. The cemeteries were full and huge trenches had to be dug for the bodies ... between March and July ... [of 1348]

... more than one hundred thousand persons died within the walls of Florence” (Getz citing Boccaccio 269). Some notaries stayed, writing about their experiences.

### *Notary Gabriel de Musis plague narrative*

Gabriel de Musis is a notary from Piacenza who died in 1356. In his narrative he suggests that the plague came to western Europe from Asia Minor. He relates that

In 1346 a street fight between Tartar soldiers and Genoese merchants caused the Genoese to flee and take refuge behind the walls of their trading outpost in the Crimean city of Caffa, on the Black Sea ... the Tartars ... were struck down by what Gabriel called a “disease both sudden and unexplainable.” The Tartars were forced to abandon the siege – but before they did, they catapulted the bodies of dead plague victims over the walls (Getz 267).



*Plague: Arms of Dr. Zwinger of Bale. Wellcome Collection.*

During the Black Death, judges visiting prisons used to wear primitive gasmasks, stuffed with herbs and spices thought to ward off the plague. As it looked like a beak...they were referred to “as going before the beak” as they were never seen

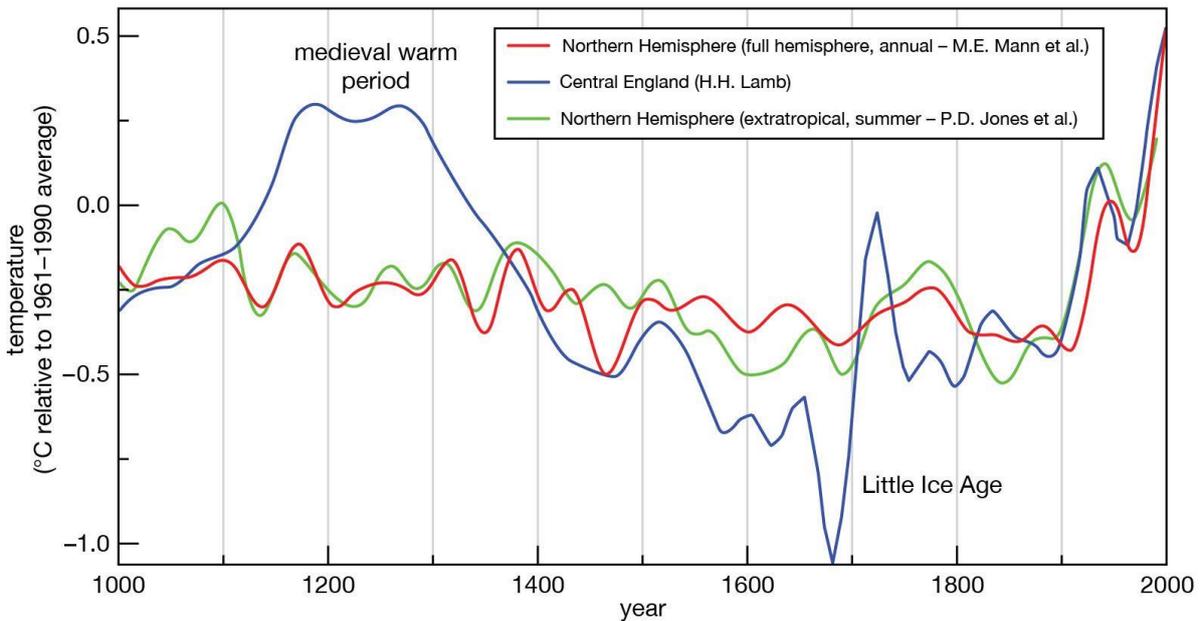
without it". No doubt it was the same with notaries. In his diary, Samuel Pepys gives a "vivid account of the empty streets in London, as all who could had left in an attempt to flee the pestilence ... [and] ... it was believed that holding a posy of flowers to the nose kept away the plague and to this day judges are still given a nose-gay to carry on ceremonial occasions as a protection against the plague! (<https://www.historic-uk.com/Historyof/England/The-Great-Plague/>).

Conditions for incubation of the Black Death reach back two hundred years, with the onset of climate change, and, in particular, the Little Ice Age.

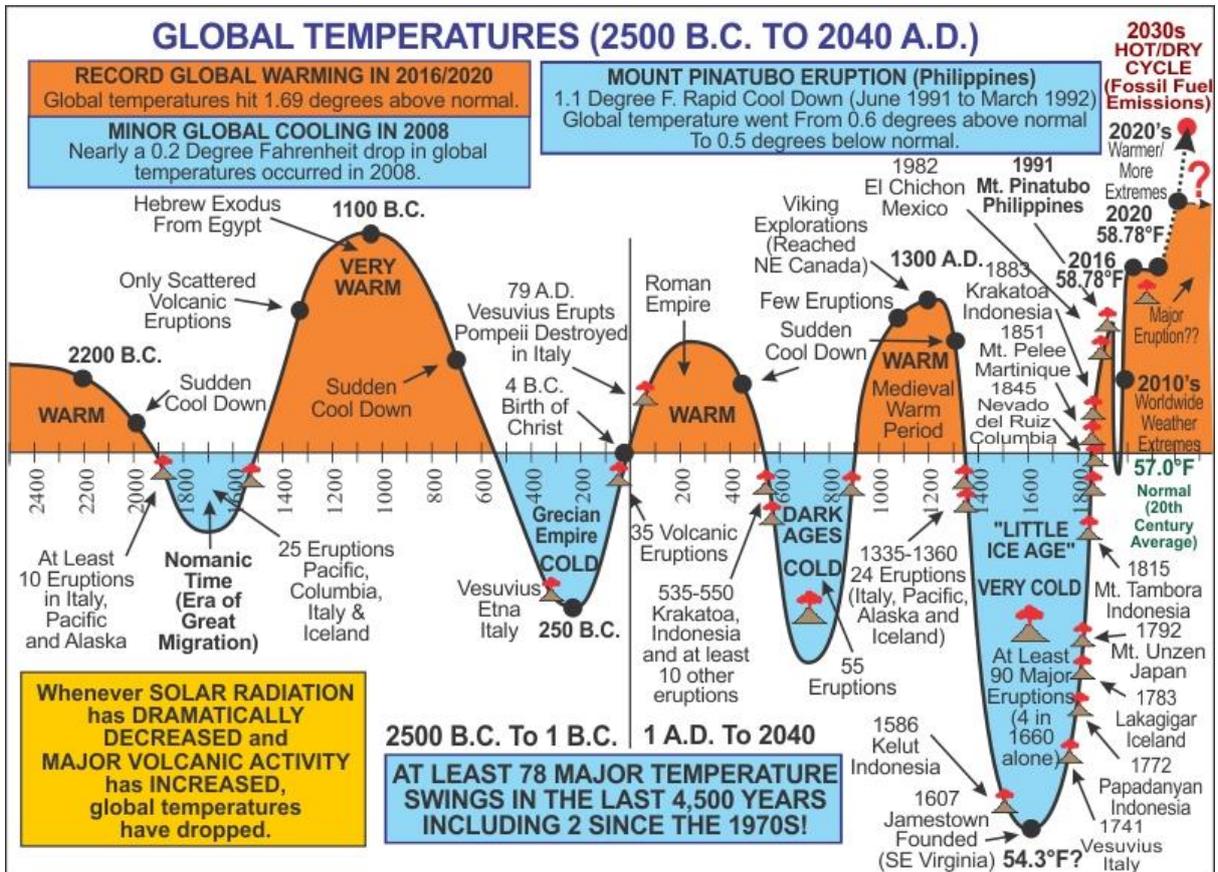
### *The Little Ice Age: climate contribution to incubation*

Europe is prosperous during the eleventh and twelfth centuries, politically stable, with relatively few diseases, warm weather and a plenteous food supply resulting in population increases. Its population of "twenty-five million in 950 A.D. had tripled to seventy-five million by 1250 A.D." (Swenson 184). Soon after a phenomenon known as the Little Ice Age "began abruptly between AD 1275 and 1300, triggered by repeated, explosive volcanism and sustained by a self-perpetuating sea ice-ocean feedback system in the North Atlantic Ocean" (*Little Ice Age* 32, 33), graphed as follows:

### Estimated temperature variations for the Northern Hemisphere and central England (1000–2000 CE)



Sources: M.E. Mann et al., "Northern Hemisphere Temperatures During the Past Millennium: Inferences, Uncertainties, and Limitations," *Geophysical Research Letters*, 26:759–762 (1999); P.D. Jones et al., "High-resolution Palaeoclimatic Records for the Last Millennium: Interpretation, Integration, and Comparison with General Circulation Model Control Run Temperatures," *Holocene*, 8:477–483 (1998); H.H. Lamb, "The Early Medieval Warm Epoch and Its Sequel," *Palaeogeography, Palaeoclimatology, Palaeoecology*, 1:13–37 (1965).



In fact, during Shakespeare's entire life temperatures are colder, with the result that most of his 37-40 plays feature storms as non-human actants (for example, *The Tempest* written in 1610-1611)).

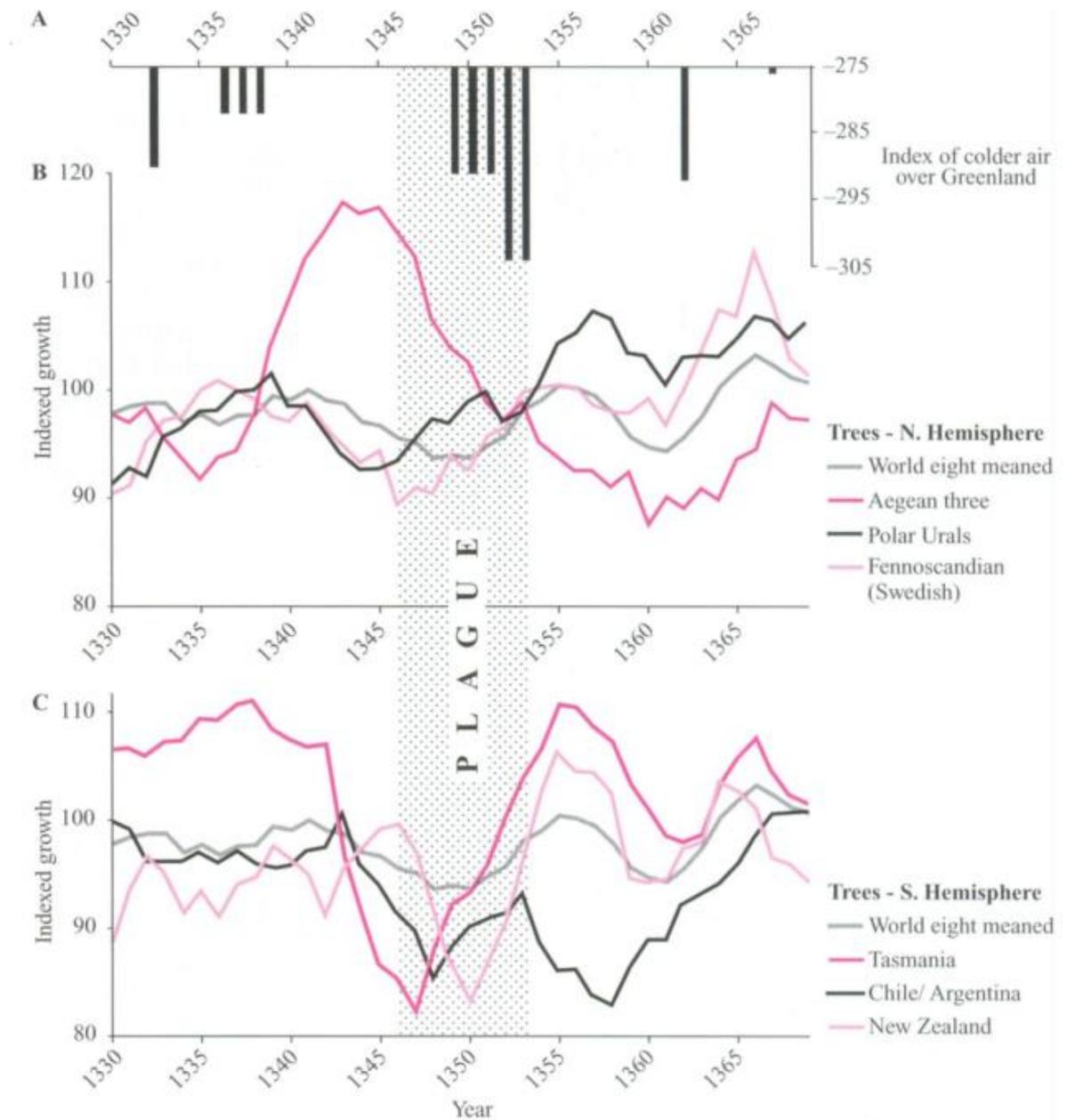
The significant drop in European temperatures leads to crop failure and famine. Many peasants are forced "to move to the towns, producing severe poverty and crowding. Under these conditions, the black rat population also increased greatly" (Swenson 184). Plague is prevalent amongst rats, spread by means of fleas that, infected, quickly travel to other rats. But if no rat is available they "will attempt to feed on humans" (Swenson 184).

The Black Death brought economic, religious, medical and environmental consequences. Populations decrease more than food supplies leading to declining food prices and a collapse of a manorial system that depends on income from food production. Increased mortality together with a perceived failure of the church to ameliorate the epidemic paves the way for the Reformation. Medical systems change with a rise in number of surgeons, "rudiments of scientific inquiry ... [and first recognition of] ... the concept of quarantine" (Swenson 185).

In the mid-1340's environmental deviations are noted, even in New Zealand, as beginning in 1348 and

at its most pronounced between 1349 and 1353, ... there was another extreme divergence between the growth records of New Zealand cedars and British Isles oaks, pivoting upon 1351. Evidence from ice-cores confirms the unusual nature of these years. Over western Greenland temperatures reconstructed from the deuterium content of ice registered a pro longed depression: ... this was at its most pronounced from 1349 to 1353 and, in

1352-3, sank to a minimum lower than that at any subsequent point in history, including the notoriously cold 1690s - the coldest decade of the Little Ice Age. (Campbell 300).



(Campbell 302)

## ***B. Notary acts during times of plague, Italian notaries, cruelty to Jews, cultural influence, power and truth***

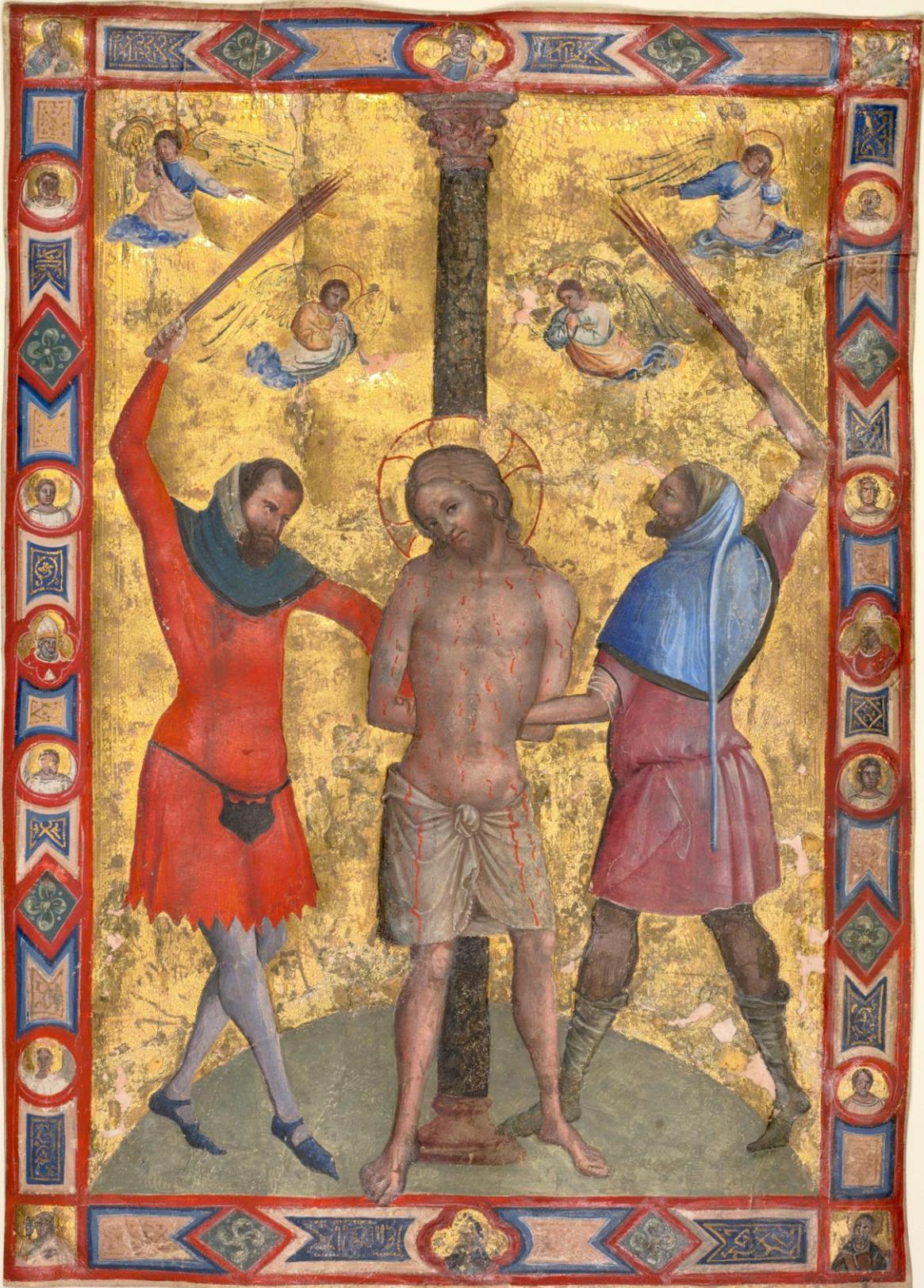
Notaries were active during the Black Death, some to good effect, others not so good. Unfortunately, some notaries are implicated as having participated in misinformation as the Black Death created many social changes, especially injurious for Jews.

### ***Black-Death Social Toxins***

The Black Death of 1347-51 has cast a long shadow over how big epidemics shape social and psychological reactions, “not only for plague or the Middle Ages but for epidemics across time and place” (Cohn quoting Delumeau, 39). Reactions to the Black Death includes acts of cruelty such as the burning of Jews and the Flagellant

Movement, the mortification of the flesh with scourges of nails or carrying a cross:





### ***Cruelty against Jews: some notaries involved, others not***

Notaries are involved in unleashing waves of persecution against Jews, thinking they were responsible for the plague “across German-speaking regions of Central Europe, down the Rhineland and into Spain, France, ... the low Countries” (Cohn 39). There was mass persecution against at least “235 Jewish communities” (Cohn 39). Those pressing the charges or committing violence against Jews were not the poorer classes. Those involved “did not sink below the rank of notary” (Cohn 40).

Municipal archives of Strasbourg record that, as early as August 1348 councillors sought evidence of Jews poisoning wells, springs and food supplies. At least “nineteen letters from sixteen cities or their noble lords survive” (Cohn 19). Several of the letters contain detailed descriptions of the individuals accused and tortured by patrician city councils and “under duress, many of them revealed networks of supposed accomplices” (Cohn 19). Only one city, Cologne, questioned whether Jews had poisoned wells and food supplies. The rest

supplied ‘proof’ that Jews had been found guilty in these cities’ tribunals of causing the plague through poisoning. Notaries registered the accusations, and their courts duly examined the evidence and delivered their verdicts. (Cohn 19).

Not all notaries are guilty of persecution or abandonment during the onset of the plague.

### ***Bologna: Notaries remain at their posts during times of plague***

In a comprehensive study tracking families and flight in Bologna during the Black Death is an account of a notary called to the bedside of Jacobus, a wealthy

Bolognian. Jacobus's will, dictated at the height of the Black Death, is urgent because he is:

dying of a hideous and frightening disease. Despite the epidemic of plague, the traditional social behaviors were continuing. A notary, priest, and health practitioner were at the bedside, as were Jacobus's neighbors, friends, and family. His instructions do not differ from those given in wills written during more normal, plague-free days (Wray 146).

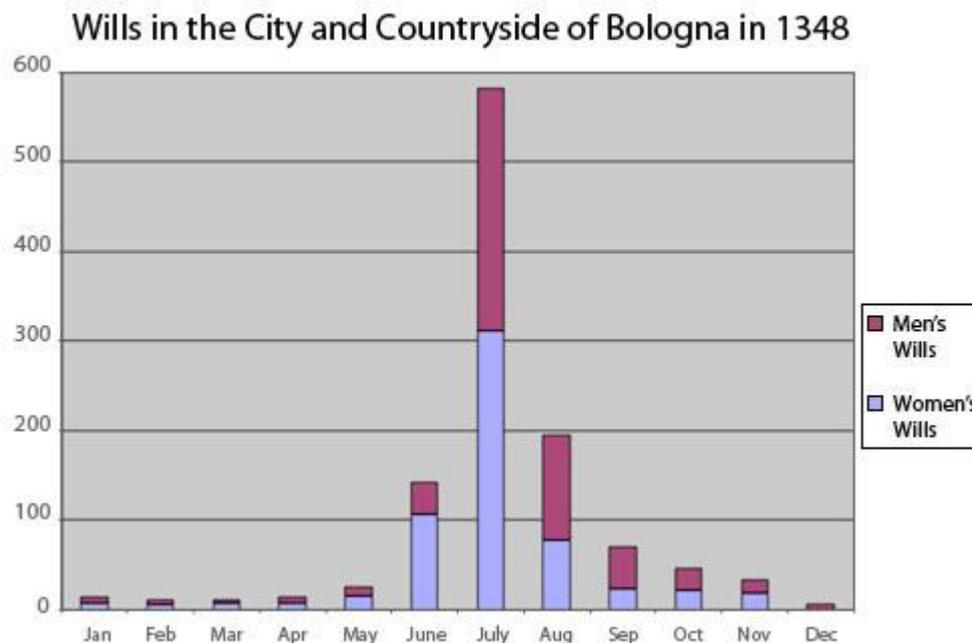
The more familiar sources for life in Italy during the plague, such as chronicles and, especially, Boccaccio's famous Introduction to the Decameron, present us with different scenes. Instead of gatherings of neighbors and parishioners there are reports of widespread flight. Instead of concern for the future of one's family, we read of the abandonment of family members. Yet the "actions and decisions revealed in Jacobus's will were not unlike those of his fellow townsmen" (Wray 146), indicating more stayed than Boccaccio's *Decameron* indicates.

### ***Ser Luca. further evidence of continuation of notarial duties***

Ser Luca, a highly educated notary, lives less than 40 kilometres from Florence's walls, knows nothing of the Black Death abandonment tales and had not read Boccaccio's *Decameron* with its accounts of widespread abandonment by many, including notaries. Instead of abandonment, the chronicle of Ser Luca illustrates repeatedly the opposite: communal solidarity with families assembling together in city- and country-wide processions, shouting 'Pace e misericordia', 'peace and mercy'. Most of Ser Luca's chronicle charted the charitable activities of the 1399-1400 mass movement called the *Bianchi* that crossed central and northern Italy and into Provence

pleading to individuals and city officials to end grievances and make peace. He charts the remarkable spread of this social interregional movement spurred by the plague, which ended, at least temporarily, his city's ancient factional strife and united much of central and northern Italy across sex, class, city, and countryside in a new, optimistic zeal for mutual assistance. No more is heard of abandonment or neglect of vital services as this plague intensified. (Cohn 39-41).

### Wills in 1348 in Bologna attended by notaries



The graph displays the number of wills by gender made each month in the city and countryside of Bologna during 1348 that were copied into the city notarial registers, known as the *Libri Memoriali*. The graph shows that during the first half of the year there are more female than male testators, which is unusual for medieval Italy. In general, women's wills made up about 40% of all wills, but in Bologna men had the option to make a secret will which they could deposit in the Mendicant friaries and keep out of the public record of the *Libri Memoriali*. It appears that men chose this

option more frequently during the first part of the year, before the epidemic took hold. In order to make a will in medieval Italy, one needed a notary to write up the testator's declared wishes in legal form. In July 1348, there were 185 notaries who redacted wills that appeared in the *Libri Memoriali*, compared to 85 in June and 89 in August. The majority of notaries working in July (125 out of 185) were writing up only one or two wills, but a smaller group of six notaries wrote up between 10 and 30 wills during that plague-filled month. The notaries went into the homes of most of the testators, the vast majority of whom declared themselves sick.

In Bologna, a member of the clergy, usually a parish priest, had to be present to confirm the identity of sick testators. For every will recorded in the *Memoriali*, there is at least one priest or friar present as witness. After the redaction they were also required to go with the testator and notary to the public registration of the will in the *Libri Memoriali*.

“Will-making among the general populace of Bologna during 1348,” in World History Commons, <https://worldhistorycommons.org/will-making-among-general-populace-bologna-during-1348> [accessed October 10, 2022].

### ***The Plague of 1418***

According to an anonymous so-called “‘bourgeois of Paris’, probably a clergyman, the plague of 1418 was the worst anyone had seen in three hundred years!” (Cohn 51). So many priests had died that they employed economies of scale at funerals, singing “one grand burial mass (*‘une messe à notte’*) for ‘four or six or eight heads of households (*‘chefs d’hôtel’*)” (Cohn 51). In contradistinction to accusations of cowardice made in 1348 by Boccaccio and other chroniclers there was no repeat. It was the opposite as:

priests toiled 'night and day', transporting eucharists to the thousands dying in Paris and its environs ... [and there were] ... no reports claiming that notaries fled or refused to redact testaments of the plague infected. Again, the opposite was reported as at Ivrea during its worst plague of the sixteenth century in 1585 and Aix-en-Provence during a plague of 1580, when, because of the demand for wills, notarial business became frenetic (Cohn 51).

The pictures painted by Boccaccio and chroniclers of widespread flight, family abandonment, mass burials, and of priests, notaries, and neighbours shunning their vital duties during the Black Death should therefore not be viewed, as they usually are, as "the most authoritative or accurate descriptions of life during the plague" (Wray 160). Even though flight may have been easier and safer for professionals, such as notaries and professors, many stayed and the "Bolognese were well served by notaries during the plague" (Wray 155). Some testators, abandoned by their families were still "served by notaries, priests, and neighbors as witnesses" (Wray 157). Bologna's notarial registers provide an important database, evidence for a conclusion that "the abandonment tales in Boccaccio and chroniclers were 'tropes' and 'literary constructions' to heighten the drama of the plague ... [even though] ... efforts to find notaries to draft last wills were not always successful" (Cohn 56).

Some notaries did take flight to escape the plague, and:

Those who could so did in fact flee the city during the epidemic. Such was probably the case of **Ser Francesco di Pietro di Ferro**, author of the sole extant Sieneese notarial chartulary begun before the plague and continued after it ... 31 March 1348 Ser Francesco entered an act in Siena. There follow several blank pages. We next find him at the seaport town of Talamone on 17

September. This "vacation" was not his wont. Neither he nor his clients customarily left Siena for the summer. But in 1348 Ser Francesco remained in Talamone at least three months, doing little business and that of slight consequence. Not until 13 January 1349 do we again find him in Siena, writing marriage documents for two Sieneese nobles. (Bowsky 18, 19).

### ***A notary from Piacenza, Italy, stayed home***

An early description of the advent of plague is written by a notary, Gabriele de' Mussi. He traced the history of the plague to Crimea in 1346

in such vivid detail that some have supposed he must have been an eyewitness; but the extensive records of his notarial activity in Piacenza leave no gap indicating an absence during those years, so he must have stayed home and used reports received from Crimea on the plague. The notarial records end in 1356, when he must have died (Paden 686).

### ***Notarial Cultural Influence***

Notarial culture in Venice, not solely determined by civic authorities is also shaped by notaries themselves as they interact with their peers and clients, influencing

the attitudes and language of clients ... [with] ... patriarchal authority, providing professional services ... [facilitating] ... relationships ... mentoring and companionship while also reinforcing the hierarchies that structured Venetian ecclesiastical and parish life (Cossar 39).

### ***Notaries and the Renaissance: Venetian Notaries***

In a remarkable suggestion, it is thought that notaries form the "the ground in which the seeds of the Renaissance grew" (Cossar 23, citing Wray). Historians and literary

scholars, focussing on the work of Venetian notaries, now consider them as a source for understanding the

transmission of textual and literary culture in the pre-modern era ... their promotion of intellectual life across the Italian peninsula in the later Middle Ages ... [and their] ... unique role at the crossroads of the city's ecclesiastical and civic life (Cossar 23, 24).

### *Venetian and Mainland (terraferma or dry land) Italy Notaries - not so different*

Mainland notaries have “long been famous for their ubiquity and civic importance ... easy to locate within the spaces of the Renaissance city ... found drawing up documents in piazzas and residences, serving as officials in governmental palaces, and meeting their colleagues at professional gatherings” (Cossar 24). Venetian notaries, numbering in the “hundreds in the fourteenth century, are less visible as historical actors than their mainland peers. They apparently worked on the margins of both secular and ecclesiastical culture in the lagoon” (Cossar 24). They did not have the same legal power over their records as their mainland peers, as while

their mainland peers gained the independent power to guarantee the authenticity of their records in the twelfth century, Venetian notaries were never granted such autonomy. Their lack of so-called *publica fides* meant that throughout the Middle Ages witness signatures continue to appear on Venetian notarial records to establish the authenticity of those documents (Cossar 24).

Another unusual characteristic of Venetian notaries was that the majority “had two professions, since most were also clerics in the city's several dozen collegiate churches” (Cossar 24).

It seems that Venetian authorities emphasised the Venetian notary's lack of autonomy by identifying the redaction site of all Venetian notarial work as a "collective urban space rather than a site selected by individual notaries" (Cossar 26). In fact, it appears that Venetian notaries operated out of their homes, their role civic rather than ecclesiastical. Venetian notaries always

identified the Rialto (*Rivoalti*) as the site where their records were prepared.

This vague designation contrasts with descriptions of place in notarial acts from the *terraferma*. Those identify redaction sites very specifically, usually to the nearest street and building. Their references are so detailed that they have been used to map the cities of the later Middle Ages (Cossar 26).

Venetian notarial records, delocalised, therefore delineated the work carried out by the notary as carrying the status of a dependent scribe. But the notaries' own testaments and related records describe actual locations where they worked, belying that status. They identify notarial work activities as "taking place within the men's residences, where they were household heads and thus authorities" (Cossar 26).

Notary **Marco Marzella's** register includes transactions as "redacted in Corfu, Constantinople, Monemvasia and Tana" (Cossar 26). Venetian notaries kept extensive records in obedience to a 1327 decree of the Great Council stipulating that notaries "preserve registers of all their records in their houses ... [and ... their testaments indicate that notaries also kept books papers, and other tools of their work in their residences" (Cossar 27).

Bequests in priest-notaries' testaments also sometimes identify these collections. The archpriest and notary **Hermolaus de Porte** left legal texts to one of his executors, a fellow priest-notary. One of those, now known as the *Splendor venetorum civitatis*

*consuetudinum*, was written by the jurist and priest-notary **Iacopo Bertaldo**, archpriest of the church of San Pantalon in the early fourteenth century. Iacopo's text, which contains formulas for financial transactions as well as reflections on Venetian customary law, has been called "the mirror of the notarial arts in Venice" (Cossar 27). This is evidence of a likely common practice of notaries sharing their expertise and tools with their contemporaries, and "further underlines the fact that those tools were kept at home" (Cossar 28). Most importantly, this evidence suggests that contrary to their theoretical status as scribes dependent on Venetian state authority, "notaries in Venice considered themselves autonomous professionals who defined their own work practices (Cossar 28).

The homes of Venetian notaries were places where notarial, liturgical, administrative, and paralegal responsibilities intersected. Many Venetian cleric-notaries exercised real power through their positions within their churches. Of the thirty priest-notary testators "identified in the notarial archives of fourteenth-century Venice, approximately one-half were archpriests, or *pievani*, of their collegiate churches ... [and as] ... the administrator of his church and the clerics within it, the *pievano* was an authoritative figure with control over a highly visible space in the civic landscape (Cossar 28).

### ***The notary Victor Ferro***

The notary Victor Ferro began his career as a priest of the church of San Barnaba, then became pievano of San Basilio, then later a canon of the cathedral at Aquileia. Many were also wealthy, and their testamentary largesse sometimes equalled that of the republic's patrician class.

### ***The notary Leonardus Cavazza***

Even more strikingly, the archpriest and notary Leonardus Cavazza left the huge sum of 1,500 gold ducats to his church (San Zulian) to buy books “and other necessities”—and to pay for his tomb to be constructed in the church, thus creating a memory of his presence in the church by reshaping its space.

### *Notaries at the nexus of Venetian ecclesiastical and lay life*

Notaries in the lagoon were both paralegal professionals and “also clerics with responsible positions in their church communities” (Cossar 30). Their homes “actively shaped the social expectations on both the notary and his clients” (Cossar 30).

### *The notary Bartolomeus Pino*

The records of one notary’s professional and domestic activities illuminate the significant role of his house as a setting for such interactions. The notary in question, Bartolomeus Pino, was a priest of the collegiate church of Santa Maria Formosa in the last half of the fourteenth century. He was a man of means and authority, with a substantial household that included servants, at least one slave, and a young woman he had adopted as his daughter. Like many parish clerics across Venice, Bartolomeus was also a moneylender and a pawnbroker, and he was active in commercial affairs for several years, between at least 1377 and 1384. He loaned money and accepted household objects such as clothing in pawn for residents of his parish and beyond. The amounts of these loans varied, from small sums of one ducat or less to amounts as large as fifty gold ducats. Bartolomeus also acted as a banker, accepting money as deposits (*in deposito*) for his parishioners. The slips of paper detailing his loans and pawns, fragmentary though they are, suggest that moneylending was a regular and profitable feature of his professional life. Certainly

he died a wealthy man; in his will he left, among many bequests, 1,000 lire held in forced loans (*imprestiti*) to the brothers of the Benedictine monastery of San Matteo on the island of Murano on the condition that they celebrate a daily mass for his soul (Cossar 31).

He had a fatherly attitude and likely appeared simultaneously “authoritative, authoritarian, and sympathetic” (Cossar 32).

### **Notary Power**

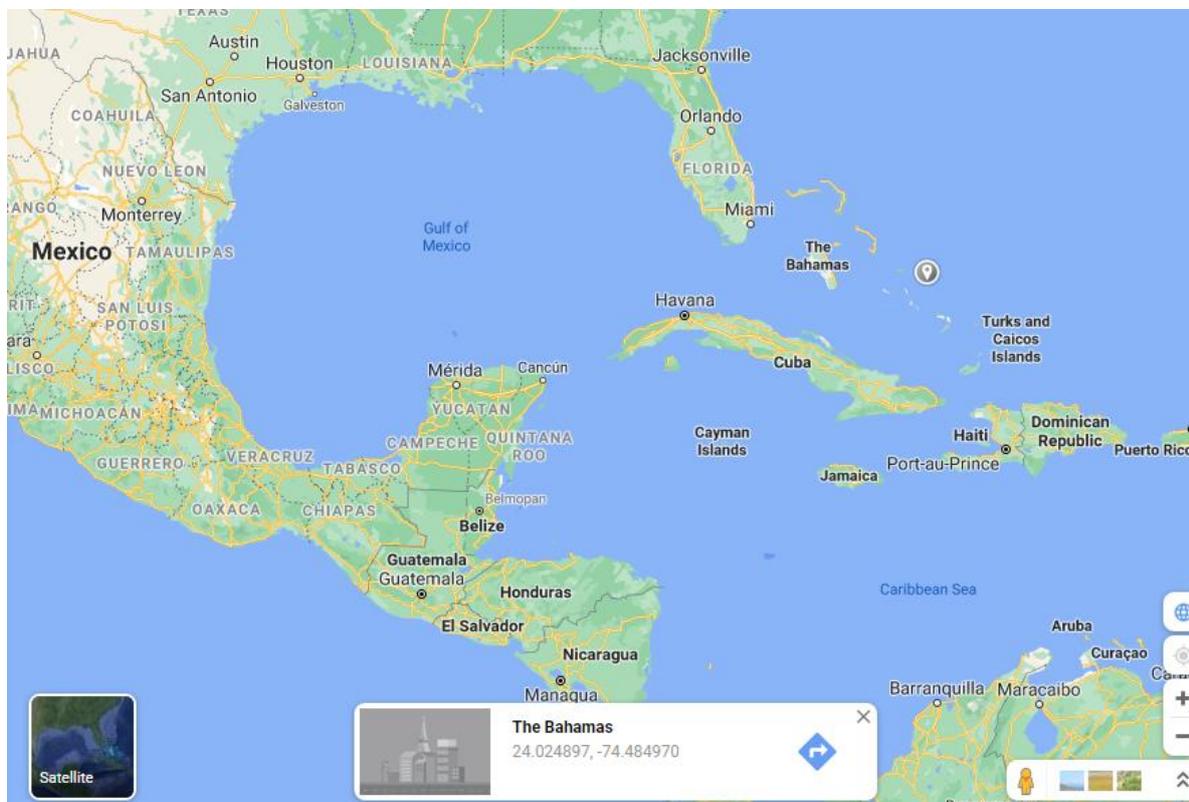
Countless millions of pieces of paper constituting notarial acts lie among the records of the offices, libraries, government archives, and computers in modern times. It is no different in early modern times, excepting, of course, for the use of computer technology. Notaries, “in large areas of the early modern West, from Italy to the newly founded European colonies, were crucial cogs ... in the apparatus of the state and in the daily organization of people’s lives” (Hardwick 4). There are notary records of names, dates, contracts, powers of attorney, passports, identity cards, loans, marriages, births, deaths, divorces, wills, mortgages, ships, degree and education records, to the point where, for those “writing premodern and colonial histories, these are often the richest, most abundant sources available” (Burns 352). When did it become so important to keep records of notarial acts? In an early example, Jaume I, (James I), King of Aragon 1213-1276:

once had to drop a royal claim when his notary could not find a document in his archives. The king had to back down, rescind his orders, nullify the lost document in case it were found later, and accept the negative consequences of the government's conversion to written records (McCrank 292).

## ***Notaries and Truth***

When Columbus in his first voyage, set foot on the beach (probably Watling Island in the Bahamas, now San Salvador Island), a notary stood beside him. We all know who Columbus is but we do not easily recall the name of the notary, Rodrigo de Escobedo:

No sooner did the admiral go ashore in October 1492 on the island “called Guanahani in the language of the Indians” than he called over his companions, including Rodrigo de Escobedo, his notary, and he said that they should be witnesses that, in the presence of all, he would take, as in fact he did take, possession of the said island for the king and for the queen his lords, making the declarations that were required, and which at more length are contained in the testimonials made there in writing (Burns 350).



This notary, Rodrigo de Escobedo, represented the emblems of colonial power, dispossessing an entire nation of land in favour of those who “discovered” it. The language used cannot be ordinary or colloquial. Notaries enjoy a special relationship to the truth. They are expected to:

to witness noteworthy acts, from the spectacular – like Columbus’s seizure of Guanahani - to the humble and mundane: the promise of a dowry, and apprenticeship, or a loan. It then fell to notaries to shape the messy specifics of each event into the proper form to be committed truthfully to the page. Not just any written language would do ... Notaries were truth’s alchemists, mixing the singular into the formulaic in accordance with prescribed recipes to produce the written, duly witnessed, and certified truth. Their truth was recognizable not by its singularity, but by its very regularity. It was truth by template (Burns 352).

### ***C. Modern day COVID and notarial work in New Zealand during lockdown***

#### **Covid-19 Crisis and Notarial Service**

Given mandatory isolation requirements and restrictions on movement resulting from the Government’s Covid-19 virus Alert Level 4, and the consequences of the Epidemic Preparedness (Covid-19) Notice 2020 issued by the Prime Minister of New Zealand on 25 March 2020, and given that notarial services are not in the category of being considered “essential”, it was impossible for a notary to lawfully be present with the applicant when asked to witness a signature on the document.

However, New Zealand notaries, with approval from the Master of Faculties limited in time to the duration of the legislation giving effect to lockdown regulations, were permitted to meet an applicant by audio-visual link and describe in the Notarial Certificate which system (Skype or Zoom) was used.

The Notary could ask the applicant to scan and email complete copies of the document(s) together with copies of identification such as the photograph page of their passport, driver licence or other form of identification.

The applicant had to then identify themselves by name and hold up to the camera the photograph and personal identification page from passport and driver licence, and these, of course, must match. If the Notary knows the applicant very well this may not be necessary.

As well, each page of the document to be signed must be held up to the camera, and also match.

As New Zealand Notaries may only practice within New Zealand, the Notary may request additional evidence, if this is in doubt (for example, the applicant could hold in sight a local newspaper dated the same day as the appointment or walk outside and point the device's camera at parked cars with NZ number plates).

The applicant must then place the document down on a desk in view of the camera and the Notary must witness the applicant signing the jurat page and initialling each preceding page, holding each page of the signed and initialled document up to the camera.

The Notary will qualify the Notarial Certificate with the rider that she/he had seen the applicant sign, as far as it was possible to do so by following these procedures.

After the signed and scanned document is printed and a notarial certificate attached and sealed, the Notary (or the applicant) should arrange a courier service for the transfer of the hard copy to either Te Tari Taiwhenua: (Department of Internal Affairs), or back to the applicant as applicable (subject to any Governmental restriction on the use of courier services).

### *The New Zealand Society of Notaries Practice Note*

The following is a transcript of a notice sent from our Notary Council during the lockdown in New Zealand.

Dear Notaries

The Council has agreed to adopt the same process as last year, for use by notaries during the lockdown period, in cases where the applicant's signature is required on a document. Document certification requests are not dealt with in this letter. Notaries may proceed with certification of electronic documents where verification is not in question (e.g. Companies Office) in the usual manner. Subject to any conditions that may yet be imposed by Master of the Faculties or by the Department of Internal Affairs ("DIA"), Notaries may undertake remote notarisation of the applicant's signature, using the process set out below. Notaries should be mindful that once the lockdown period(s) is/are over, personal appearance by the applicant is advisable in terms of usual notarial practice. Copies of this letter and of the certificate are also located in the Precedents section of the forum page of the website.

1. The decision whether or not to notarise remotely rests with each individual Notary, and is a “best endeavours” exercise, subject always to the following:

(a) any conditions which may be imposed by the Master of the Faculties, or by the DIA if apostille or authentication is required; and

(b) remote notarisation being accepted by the end user/country in which the document will be presented.

2. If Apostille or Authentication certification is required, the Notary will advise the applicant of any specific requirements of the DIA and/or the Master of the Faculties. These may include retention by the DIA of absolute discretion whether or not to accept any particular document. On that basis the Notary will advise the applicant that there is no absolute guarantee that the Notarial certification will enable an Apostille/Authentication certificate to be issued.

3. It is the applicant’s responsibility to check with the end user/country, that remote notarisation will be acceptable (the Notary may wish to provide the applicant with the form of certificate attached, to enable the applicant to seek that confirmation).

4. As with usual Notarial practice, the Notary must establish the validity of identification and authenticity of request. The applicant must scan and email copies of the identification and of the document PRIOR to signing the document. A minimum of two forms of identification and one proof of address is recommended.

5. Please be wary of the potential for fraud. Our appointments as Notaries are limited to practising in New Zealand, so the Notary must be certain that the remote applicant is actually in New Zealand, too. The Notary may request additional evidence, if this is

in doubt (for example, the applicant could hold in sight a local newspaper dated the same day as the appointment or walk outside and point the device's camera at parked cars with NZ number plates).

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