The role of the notary public is significantly different in civil and common law countries. In the latter, notaries mainly authenticate signatures, attest affidavits, prepare wills, and occasionally protest bills of exchange and other commercial instruments. In contrast to civil law notaries, common law notaries do not certify the contents or veracity of the acts, transactions, or contracts they authenticate, nor do they keep a protocol or record of such instruments. Moreover, in common law countries, one may become a notary public without a legal degree or legal training. Although notaries occasionally have to be present to validate certain legal acts in common law jurisdictions, and they occasionally intervene as bankruptcy trustees, conservators, executors, or guardians ad litem, they do not play a central role in the common law system.

In contrast, the role of notaries is crucial to understanding the civil law system. In fact, whether it concerns creating legal entities, amending articles of incorporation, writing and amending of wills, handling of land transfers, verifying the legality of a transaction, or performing other acts related to family law, hardly any legal act takes place in civil law countries without encountering the intervention of a notary public. Unlike common law notaries, civil law notaries must have a legal degree, and in some jurisdictions they must also complete a specialization course, including practical training, in order to obtain a government license and appointment to their posts.

The quintessential role of the civil law notary is to authenticate and record legal acts. They keep a registry—protocol—of all of the documents that they authenticate, referring to instruments that the parties execute without the intervention of a government official of any type, such as contracts and powers of attorney. Notaries public are also witnesses-for-hire, meaning that they attest to a multitude of acts and circumstances. For instance, a notary public may “certify” that on a determined date a person was present in a given location or that a car was painted a specific color on New Year’s Eve. In the business realm, the intervention of notaries public is even more substantial, since they witness the creation of business entities and the transfer of different types of assets (e.g., real estate, commercial paper, stock), assist in liquidations, authenticate a multiplicity of legal documents (e.g., purchase agreements, leases, deeds, and any type of contracts in general) and corporate instruments (e.g., shareholder agreements, bylaws, corporate resolutions, powers of attorney). The intervention of notaries is also commonly sought as an evidentiary means in judicial proceedings, such as litigation. Their presence also validates the writing of wills and codicils. In addition, notaries public review the legality of titles to land, provide information on liens, and may act as tax collectors in real estate transactions.

However, the role of the Latin American civil law notary public is still evolving. There are voices calling for the opening up of a profession that to this point has been largely bred on political favors and nepotism. Oftentimes, these voices cite the lack of accountability and high fees of Latin American notaries, and their monopoly in the legal field, as reasons for a profound review of this institution.

New technologies have also helped to spur a debate about the modernization of the old-fashioned recording methods of notaries public use. With the emergence of electronic commerce and digital documents and signatures, the intervention of the civil law notary is arguably an obstacle to the promotion of business in Latin America. The main field where the intervention of notaries has been debated, and to a certain extent reduced, is the authentication of contracts.
Civil Codes generally demand the presence of a notary public to provide legal validity to contracts dealing with goods and services that are essential for economic activity.\textsuperscript{16} Such Codes thus deny legal force to electronic documents. Therefore, legislatures have passed targeted amendments to Codes to allow the expansion of electronic commerce.\textsuperscript{15}

There are other areas where the role of the notary public has also been subject to reform. Among these, the field of secured transactions is important.\textsuperscript{16} In the case of Mexico, for example, mortgages must be formalized before a notary public and recorded in the property registry. Traditionally, the assignment of mortgage rights also required the presence of a notary public.\textsuperscript{17} However, under new legal developments, creditors may assign their credits directly without providing notarial notice to debtors or complying with registration requirements.\textsuperscript{18}

Wills are another area of interest for reassessing the role of notaries public in Latin America. While a will requires the signature of the testator and two witnesses in many common law jurisdictions, in civil law countries the additional presence of a notary public is a prerequisite for the validity of a will.

This difference has generated numerous problems in the case of testators unaware of this requirement who execute their wills in a common law jurisdiction naively expecting the civil law jurisdiction to recognize them.\textsuperscript{19}

The role of the Latin American notary is undergoing a number of challenges. Nonetheless, their presence seems assured for the near term in a region where legal changes do not take hold quickly. In this context, it is more likely than not that Latin America will see in the near future an increased interest at the legislative level in the regulation of the notary public.

* Dante Figueroa is an adjunct professor at both the American University Washington College of Law and at the Georgetown Law Center. He is a Senior Legal Information Analyst on Latin American Law at the Law Library of Congress. Prof. Figueroa holds a J.D. from the University of Concepción, Chile; Master of Laws from the University of Chile and American University Washington College of Law. He is an attorney, licensed to practice in Chile, New York, and Washington D.C. and has authored several law review articles and two books. He is fluent in Spanish, English, and French, and conversant in Italian. Prof. Figueroa can be reached via e-mail at figueroa@wcl.american.edu.

3 Eder, supra note 2, at 129. See also Charles E. Meacham, Foreign Law in Transactions Between the United States and Latin America, 36 Tex. Int'l L.J. 507, 6-7 (2001)
6 Eder, supra note 2, at 130.
8 Frank G. Helman, Practical Implications of the Diversity of Languages and Legal Cultures in International Practice, 19-SPG Int'l L. Practicum 84, 1 (2006).
14 See generally Hannay, supra note 5. See also Robert Kossick, Litigation in the United States and Mexico: A Comparative Overview, 31 U. Miami Inter-Am. L. Rev. 23, 7 (2000).
15 See Nagle, supra note 13, at 920-22.
18  See Poindexter, supra note 16, at 24. See also Tirado, supra note 4, at 58.

19  Helman, supra note 8, at 84.