

## **The Maltese ‘Land Registry Certification System’: Latin and Anglo-Saxon influences. An innovative approach to the economic history of English-speaking nations\***

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### **Introduction**

Property registration practices constitute a subject that has rarely been addressed by historians, despite its long history. The first testimony of an estate certification system dates back to ancient Mesopotamia. The Babylonians created public offices in order to house the terracotta tablets on which transactions were written. But the real pioneer in this field was ancient Greece. In this culture, the validity of each specific contract was dependent on its being recorded in a proper Registry which would be available for perusal.

During the Roman Empire the entire process of making transfers officially acceptable was based purely on the fiscal mechanisms of the Government –this was of course not a means to protect third parties from concealed defects. Thus an important objective, which was later to become one of the essential features of land registration, was omitted.

Developments arose during the ‘Barbaric period’, when Roman law merged with German practices, according to which the title-holder was obliged to publicly declare the sale of his real estate with a ceremony of investiture. This system was to evolve differently in Mediterranean and Anglo-Saxon countries, generating Latin certification and Land registration respectively<sup>1</sup>. The first refers to the recording of notaries’ contracts, whereas the second provides land titles. Thus one is characterized by a personal structure, using the name of the parties making up transaction; the other is organized numerically to identify certificates of property. In both cases, such registers stand as precious primary historical sources, as they allow researchers easy access to large amounts of important data especially for economic history.

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\* Acknowledgements: I would like to thank Charles Dalli, John Chircop, Dominic Fenech, Gloria Lauri-Lucente, Claude Sapiano, Keith Francis German, Maroma Camilleri, Joseph Camenzuli and Paul Camilleri for their help in my studies. This survey was supported by a research fellowship, funded under the XIII Executive Programme for cultural collaboration between Malta and Italy.

<sup>1</sup> On this subject see: I. Luzzati, *Della trascrizione: commento teorico-pratico al titolo XXII, libro III del Codice Civile Italiano per l’Avvocato (Articoli 1932, 1933, 1934)*, Torino, 1871, V-LXXVIII; N. Coviello, “Della trascrizione”, in *Il Diritto civile italiano secondo la dottrina e la giurisprudenza*, vol. 1, Napoli, 1907, 13-165; G. Cannada Bartoli, “Note intorno al diritto ipotecario delle vigenti legislazioni europee, in confronto del Codice Civile italiano e della futura sua evoluzione”, in *Principi di diritto civile*, Milano, 1910, 422-58; L. Coviello, *Delle ipoteche nel diritto civile italiano*, Roma 1936, 32-40; S. Pugliatti, “La trascrizione”, in *Trattato di diritto civile e commerciale*, vol. XIV, no.1, Milano, 1957, 34-190; F. S. Gentile, *La trascrizione immobiliare*, Napoli, 1959, 1-42; A. M. Bianco, *La pubblicità immobiliare*, Torino, 1976, 1-58.

### **A new approach to a nation's economic history**

At present, only a handful of authors have intuited the opportunity of using property certification as sources within a new historical approach to their country's economic and social histories. A few, including Furio Bianco and Renzo Derosas<sup>2</sup>, have created an outline of financial and real estate markets in the Venetian provinces based on the so-called *Libri delle Notifiche* and *Registri di Trascrizione*. The first were Registers recording the Republic of Venice system of duty levying –to notify, namely record in note form, all contracts by local notaries. When Napoleon conquered this territory, he introduced the *Registri di Trascrizione*, where, as the name suggests, notarial documents were fully recorded<sup>3</sup>. To my knowledge no similar study has been conducted in Anglo-Saxon countries yet. Some authors have tried to use Land Registers as sources to tap much needed socio-political data, but not as fundamental sources with which to reconstruct the economic history of a particular nation.<sup>4</sup> Moreover, while some research on the history of Latin and Germanic certification, in its different varieties, exists, no specific monograph has ever been written about the Maltese Land Registry, which has to be considered as extremely important for its duality, absorbing Italian and Anglo-Saxon influences<sup>5</sup>.

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<sup>2</sup> Refer to: R. Derosas, "Il mercato fondiario nel Veneto del primo Ottocento", *Quaderni storici*, vol. XXII, no. 65, 1987, 549-578; F. Bianco, *Nobili castellani, comunità e sottani. Il Friuli dalla caduta della Repubblica alla Restaurazione*, Monfalcone (Gorizia), 1997; A. Fornasin, *Ambulanti, artigiani e mercanti: l'emigrazione dalla Carnia in età moderna*, Verona, 1998; M. Monte, "Articolazioni, pubblicità, protagonisti ed estensione del credito rurale in Friuli alla fine dell'età moderna. Il caso di Latisana", *Ce fastu?*, vol. LXXV, no.1, 1999, 66-97.

<sup>3</sup> This subject is treated in detail by E. Di Marco, "Il mercato finanziario e immobiliare udinese durante la prima dominazione austriaca, attraverso i Libri delle Notifiche e l'attività notarile fra ordinamento veneto e francese", *Memorie Storiche Forogiuliesi*, vol. MMVII, no. LXXXVII, 2007, 85-124.

<sup>4</sup> See: R. S. Smith, *Rule by records: land registration and village custom in early British Panjab*, London, 1996; J. F. Weiner and K. Glaskin, *Customary land tenure and registration in Australia and Papua New Guinea: anthropological perspectives*, Canberra 2007.

<sup>5</sup>For French and German certification systems, in addition to the studies listed in note number 1 above, refer to: E. Z. Tabuteau, *Transfers of property in eleventh-century Norman law*, London, 1988; A. Kober, *Grundbuch des Kölner Judenviertels, 1135-1425: ein Beitrag zur mittelalterlichen, Topographie, Rechtsgeschichte und Statistik der Stadt Köln*, Dusseldorf, 2000.

For Anglo-Saxon registration systems see: J. E. Hogg, *The Australian Torrens system: being a treatise on the system of land transfer and registration of title now in operation in the six states of the Commonwealth of Australia, the colony of New Zealand and Fiji and British New Guinea, including the text of the Torrens statutes and ordinances in the nine territories and references to other statutes relating to land and a historical account of the growth of the system*, London, 1905; P. Mayer and A. Pemberton, *A short history of land registration in England and Wales*, London, 1962; J. S. Anderson, *Lawyers and the making of English land law: 1832-1940*, Oxford 1992; G. D. Taylor, *The law of the Land: the advent of the Torrens system in Canada*, Toronto 2008.

## **The Maltese Land Registry Certification System**

Latin certification, which was improved and diffused by the French to large parts of the Mediterranean world, was made compulsory in the Maltese islands as from 1859, under British, rule yet in an Italian format.<sup>6</sup>

This could appear contradictory, but at the time the registration of legal documents – the so called deeds – was still made according to the Latin model even in England. The idea of recording British properties – titles – had just matured in 1857, and indeed the Land Registry Office was opened in London on the 15<sup>th</sup> October 1862 and was to continue to function until 1998<sup>7</sup>.

Maltese Public Registers followed the example of the *Libri delle Notifiche*, enrolling notarial contracts in ‘short form’, not in full, as ordered by Napoleon. This system, indexed using the name of the parties, is still in operation.

In 1981 another system, organized by land title, was introduced alongside the previous one. From then on, public notaries have been required to record the conveyance of properties, as well as any other charge – including leases, mortgages and privileges, or subsequent variation concerning the estates in question, as a precautionary measure against previous registrations and dealings – in fifteen days time. Within this new scheme, each immovable has been identified by means of an eight digit number (ZSBP), which refers to the certificate of title. This includes a description of the land, name of the owner/s, deed type, any outstanding debts and a map<sup>8</sup>. Currently, only 1/6 or so of the Maltese territory falls within a designated registration area, but it is to be expected that the certification practices be extended to the whole territory in these islands. Indeed, voluntary enrolment is encouraged, as in England<sup>9</sup>.

## **Conclusion**

Malta is now working towards combining the double registration system (Public and Land Registries) into a single central unit (Central Registry). Such an arrangement has to be considered as a very valuable historical source. It is extremely thorough and allows rapid data retrieval.

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<sup>6</sup> The *Libri Maestri di Conservatoria*, housed in the National Library of Malta, are ledgers of the Order of St. John. They deal only with the finances of the Knights. From the arrival of Napoleon up to 1859 no register was written, or at least no trace of it remains.

<sup>7</sup> See the already cited P. Mayer and A. Pemberton, 6-10.

<sup>8</sup> I collected this information at both Public and Land Registries in Valletta. Note they stand still in separate locations currently. The leaflet provided by Director Keith Francis German was very useful.

<sup>9</sup> One of the few countries which has accomplished total registration is New Zealand, thanks to its Land Transfer Act 1924. Refer to P. Mayer and A. Pemberton, 11.