

Fines, confiscation and composizione

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The penalties imposed by the courts were fines, corporal punishment, banishment, galley service and death. For offences against property, public order and morality, fines were the usual penalty, while many serious offences could be converted into money by *composizione*.¹ Banishment was frequently combined with the confiscation of property. A person banished from the bailiwick forfeited his goods to the sovereigns, subject to the claims of creditors and of the family. Confiscation was therefore a source of revenue for the ruling cantons as well as a sanction. It was also a threat to the security of property that affected the whole community.

Fines and confiscated property were divided according to fixed shares between the ruling cantons and the *landfogto*, whose share of the fines was often a tenth and sometimes more, while court fees could also flow to the sovereigns, as they did in Bellinzona. The precise shares differed between bailiwicks and periods, but the principle that the judge and the prosecutor shared in the revenue of their decisions was general.² Eighteenth-century reformers regarded this principle as the root of the injustices of the system. Cesare Beccaria's *Dei delitti e delle pene*, published in 1764 in Livorno, was written in Milan, a few miles from the bailiwicks, between 1763 and early 1764. Its condemnation of torture and of secret accusations, and its plea for a public procedure with broad guarantees for the accused, applied directly to the practice of the Confederate *landfogti*.³

Essentials. In the Italian bailiwicks the chief judge was a political appointee for two years who had usually paid for his office and who drew most of his income from court fees, shares of fines and confiscations. Criminal procedure followed the inquisitorial *ius commune* model, including torture. Many offences could be settled by money payment (*composizione*). Appeals went to the *sindacato* of the ruling cantons. The system produced revenue for the rulers and fostered distrust of judicial authority among the subjects.

1 Banditry, border crime and extradition

The bailiwicks lay on a political border that was also a jurisdictional border. Offenders from the Duchy of Milan fled across the lakes and valleys into Confederate territory, and offenders from the bailiwicks escaped into Lombardy, Piedmont or the Grisons. Banditry was endemic in parts of Lombardy in the sixteenth and seventeenth centuries, when the bailiwicks served both as refuge and as base.⁴ The ruling cantons and the governors of Milan negotiated repeatedly over the extradition of offenders, the pursuit of bandits across the border and the treatment of smugglers. Because these negotiations were linked to the capitulations and to the grain supply, a *landfogto* who protected Milanese bandits could expect Milan to close the grain trade. Chapter A.IV discusses contraband as a structural economy of the border. The early modern history of extradition between the bailiwicks and Milan also forms the background to the modern law of mutual assistance between Switzerland and Italy that Chapter H.IV describes.

2 Notes

1. Ceschi (ed.), *Storia della Svizzera italiana dal Cinquecento al Settecento* (above). ↩
2. Holenstein, "Vogteien" (above), on the governor's "Anteil an den Bussen (häufig 10%, zum Teil auch mehr)"; Schindler, Chiesi, Crivelli and Orelli, "Bellinzona (comune)" (above), on the court fees taken by the three cantons. See also Körner, *Solidarités financières suisses* (above). ↩
3. Cesare Beccaria, *Dei delitti e delle pene* (Livorno 1764); Franco Venturi, "Beccaria, Cesare", in *Dizionario Biografico degli Italiani*, vol. 7 (Rome: Istituto della Enciclopedia Italiana, 1970), [https://www.treccani.it/enciclopedia/cesare-beccaria_\(Dizionario-Biografico\)/](https://www.treccani.it/enciclopedia/cesare-beccaria_(Dizionario-Biografico)/) (composition in Milan between March 1763 and early 1764; manuscript sent to the Coltellini press in Livorno on 12 April 1764, first copies in circulation in July; the condemnation of torture and of secret accusations and the foundations of "una procedura pubblica e attenta a fornire larghe garanzie all'accusato"). ↩

4. Ceschi, Nel labirinto delle valli (above). ↩

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