

From cantonal to federal private law: 1881 and 1912

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The unification of private law in Switzerland proceeded in two steps, each of which reduced the scope of the cantonal code. The Federal Constitution of 19 April 1874 gave the Confederation competence over the law of obligations. On that basis Parliament passed the Federal Act on the Law of Obligations on 14 June 1881, which entered into force on 1 January 1883. Its principal drafter, the Bern professor Walther Munzinger, drew on the French *Code civil*, the German General Commercial Code of 1861 and the Dresden draft of a German law of obligations of 1866, producing a code that covered civil and commercial obligations in a single text.¹ For Ticino this meant that from 1883 contracts, commercial companies and the other matters regulated by the federal code were governed by federal law, while the cantonal civil code continued to apply to persons, the family, succession and property.

The second step followed a constitutional amendment of 1898, which gave the Confederation comprehensive competence in civil law. The Swiss Civil Code of 10 December 1907, drafted by Eugen Huber,² entered into force on 1 January 1912, together with a revised Code of Obligations that Parliament had adopted in 1911.³ With that date the cantonal civil codes, including that of Ticino, ceased to apply in the matters regulated by federal law. The Civil Code left certain fields to the cantons, among them parts of the law of neighbours, the public authentication of documents and the organization of the land registry. Ticino regulated these fields in its *Legge di applicazione e complemento del Codice civile svizzero* (LAC) of 18 April 1911. The law designates the land registry office that keeps the land register, including the provisional registers and the former mortgage registers (Art. 17), governs notarial instruments as public acts (Art. 19–25), allows mandatory and voluntary consortia to acquire legal personality upon approval by the state (Art. 36–37) and contains a detailed cantonal law of neighbours on common walls, building distances, hedges, water rights and plantings (Art. 103–163).⁴

1 The land registry: a federal project still being completed

The Swiss Civil Code made the land register the centre of the law of real property. Real rights in land arise, pass and end by entry in the register, on whose entries third parties may rely in good faith. The legislator of 1907 knew, however, that most cantons lacked the surveys and records that a register of this kind requires. The final title of the Civil Code therefore allowed the cantons to postpone the introduction of the federal land register, to declare existing cantonal forms sufficient for the purposes of the new law and to designate forms of publicity to which the effects of the land register would attach immediately (Art. 46–48 of the Final Title).⁵

Ticino used these options, whose consequences are still visible. The cantonal Land Registry Act of 2 February 1998 distinguishes the provisional land register (*registro fondiario provvisorio*), which records the legal relationships created since the Civil Code entered into force on 1 January 1912, from the definitive land register (*registro fondiario definitivo*), which is introduced commune by commune once an official survey (*misurazione ufficiale*) exists. Article 9 of the Act provides that the provisional register has the effects of the land register as regards the creation, transfer, modification and extinction of real rights. In the communes where the definitive register has been introduced, all surveyed parcels are entered in it according to federal law (Art. 23, 25 and 40), and transitional rules preserve provisions dating from 1933 for communes in which earlier notices had been published.⁶ The canton has had to adapt this cantonal framework repeatedly to changes in federal law, most recently to the reform of the law of real property of 11 December 2009, which entered into force on 1 January 2012.⁷

For a bank that lends against Ticinese real estate, a fiduciary that structures a property holding or a lawyer who advises on an acquisition, the history matters. The coexistence of provisional and definitive registers, the survival of the *patriziati* as owners of common land and the long fragmentation of agricultural property in the valleys mean that title searches in Ticino can require more work than in cantons that introduced the federal register early. The history of 1803 to 1912 explains why a twenty-first-century mortgage lender in Lugano still asks whether a commune has a definitive register.

2 Notes

1. Kurt Siehr, "Swiss Code of Obligations (OR)", in Max Planck Encyclopedia of European Private Law (2012), <https://max->

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Lukas Gschwend, "Obligationenrecht (OR)", HLS, version of 14 August
2009, <https://hls-dhs-dss.ch/de/articles/009611/2009-08-14/>. ↩
2. HLS, article "Huber, Eugen". ↩
 3. Gschwend (above); Swiss Civil Code of 10 December 1907, SR 210,
<https://www.admin.ch/opc/it/classified-compilation/19070042/202007010000/210.pdf>. ↩
 4. Legge di applicazione e complemento del Codice civile svizzero of 18
April 1911 (LAC), RL 4.1.1.1, <https://www.lexfind.ch/tolv/103695/it>.
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 5. LAW.CH, "Intertemporales Recht",
<https://law.ch/lawinfo/grundbuchrecht/allgemeines/grundlagen/intertemporales-recht/>. ↩
 6. Legge sul registro fondiario of 2 February 1998, RL 4.1.3.1,
<https://www.lexfind.ch/tolv/107065/it>. ↩
 7. Consiglio di Stato, Messaggio no. 6547 of 12 October 2011,
<https://www4.ti.ch/fileadmin/POTERI/GC/allegati/odg-mes/pdf/6547M.pdf>. ↩

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