

From vicinanze to patriziati

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The *vicinanze* survived the end of Confederate rule in a transformed shape. The modern municipality goes back to the Helvetic Republic of 1798, whose legislation separated the political municipality (*comune politico*), open to all resident citizens, from the corporation of the old entitled families. In Ticino that corporation became the *patriziato*, the legal successor of the old *vicinanza* and a corporation under public law that owns and manages the commons.¹ *Patriziati* still exist in large numbers throughout Ticino. The Organic Law on Patriziati (*Legge organica patriziale*) of 28 April 1992 defines the *patriziato* as a corporation under public law, autonomous within the limits set by the Constitution and the laws, which owns property in common use (*beni d'uso comune*) to be preserved and used "con spirito viciniale", in the spirit of the old *vicinanza*, for the benefit of the community. In the valleys that property consists above all of forests and alpine pastures.² Their existence reminds the modern reader that communal autonomy in Ticino rests on a long tradition of property-owning corporations, and that the relationship between the canton and its municipalities has always been one of negotiated powers.

For the financial centre the *patriziati* are more than a historical curiosity. They are landowners whose consent is needed for many infrastructure and real estate projects in the valleys. Their legal form, a corporation of public law with hereditary membership, has parallels in the family foundations and corporations with which Lugano's wealth planners work. The persistence of the *patriziati* also illustrates a feature of the Ticinese legal order that foreign clients sometimes underestimate: rights attached to local membership, property and history can survive centuries of constitutional change.

1 The local elites and the market in offices

Local autonomy did not mean local democracy in the modern sense. The communes were dominated by families that combined land, credit, notarial practice and offices. In Lugano, Mendrisio and Locarno a restricted group of families held the local offices, often for life, acted as procurators and lawyers and supplied the members of the *Magnifico ufficio*, the advisory body of local officials that assisted the *landfogto*: besides the *luogotenente*, whom the governor usually appointed himself, at least the *landscriba*, the *fiscale* and a *cancelliere*.³ Their wealth often came from emigration and trade: many of the families that dominated local politics also sent sons abroad as merchants, builders or artists and invested the proceeds in land, houses and credit at home (Chapter A.III).

These families mediated between the subjects and the rulers. They negotiated with the *landfogto*, carried petitions to the *sindacato*, cultivated connections with the ruling cantons and profited from both sides of the relationship. Their role foreshadows that of the professional intermediaries of the modern financial centre: lawyers, notaries and fiduciaries who stand between clients and the state, who know the formal law and its informal practice, and whose value lies in their ability to secure outcomes in a system whose rules are not fully transparent to outsiders.

Common misconception. Confederate rule is sometimes imagined as the replacement of Italian law by Swiss law. In fact the ruling cantons confirmed the existing statutes and left the Lombard legal tradition in place. Private law, criminal law and procedure in the bailiwicks remained Italian in origin and language until the codifications of the nineteenth century. What the Confederates added was a layer of lordship on top of an Italian legal order: in the Leventina, for example, the governor of Uri exercised more or less the same powers as the Milanese *podestà* before him.⁴

2 Notes

1. Basil Sieber, "Comune patriziale", in DSS, version of 16 February 2005, <https://hls-dhs-dss.ch/it/articles/026443/2005-02-16/> ("Gli inizi del com. moderno risalgono alla Repubblica elvetica"; "Il com. patriziale, che nel Ticino è chiamato 'patriziato' e trae origine dall'antica Vicinanza, di cui è il successore giur."); Burmeister, "Vicinanza" (above): "Durante la Repubblica elvetica scomparirono le vicinanze intese come ass. di persone con compiti pubblici [...] oppure si convertirono in Comuni patriziali (in Ticino in patriziati)";

Businger, "Why is Ticino part of Switzerland?" (above), on the vicinanza as the body that "controlled public assets such as the forests and common land". ↩

2. Legge organica patriziale of 28 April 1992 (LOP), RL 188.100, Art. 1, in the official collection of Ticinese law, <https://m3.ti.ch/CAN/RLeggi/public/index.php/raccolta-leggi/legge/num/82>; on the vicinanza as owner of forests and common land see Businger, "Why is Ticino part of Switzerland?" (above). ↩
3. Ostinelli, "Sotto il dominio confederato" (above): the governor "era coadiuvato dal Magnifico ufficio, composto a seconda del baliaggio da ufficiali di estrazione locale con funzione consultiva: oltre al luogotenente, nominato in genere dal balivo stesso, vi figuravano almeno il landscriba, il fiscale (o caneparo) e un cancelliere", whose long tenure was "spesso a vita". See also Schnyder, Famiglie e potere (above). ↩
4. Fransioli and Locarnini, "Leventina" (above), according to which Uri "confermò gli statuti e le istituzioni locali" and its governor "esercitava più o meno le medesime competenze del precedente podestà milanese"; Pauli Falconi, "Vallemaggia" (above), on the statutes of the valley jurisdiction. See also Ceschi (ed.), Storia della Svizzera italiana dal Cinquecento al Settecento (above). ↩

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