

Institution-building as the precondition of a financial centre

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A financial centre is built on institutions that are older than its banks. Lenders need a law of contracts and securities, a register that shows who owns land and what charges it bears, courts that enforce judgments, and an administration that does not confiscate private wealth at each change of government. The century examined in this chapter gave Ticino each of these institutions, slowly and often under federal pressure. This section follows the codification of private law from the first cantonal codes to the federal codes of 1881 and 1912, the creation of a land registry that is still being completed today, and the development of the courts. It then draws the line from these institutions to the questions that banks, fiduciaries and lawyers in Lugano face in their daily work.

1 The first cantonal codes, 1816–1837

The bailiwicks had lived under a patchwork of local statutes, Milanese law, the *ius commune* and Confederate ordinances, which Chapter A.II has described. The canton of 1803 therefore had to create its own law. The first proposal, made in 1810, was simply to adopt the French *Code civil* as a whole. It failed because the Church objected to the French rules on marriage.¹ The canton turned first to criminal law. A penal code compiled by Antonio Quadri, Antonio Albrizzi and Giovan Battista Bustelli was promulgated on 18 August 1816. It provided the death penalty for eighteen offences and was made harsher in 1822. A code of criminal procedure accompanied it, followed by a code of civil procedure in 1821.²

The civil code came two decades later. The *Codice civile* of the Canton of Ticino was adopted on 14 June 1837 and entered into force on 10 January 1838. It was prepared by a commission presided over by Domenico Galli of Locarno (1790–1856), in which Antonio Albrizzi of Lugano (1773–1846) and Corrado Molo of Bellinzona (1792–1864) played a leading part, so that

each of the three rival towns was represented. The drafters used several models: the French *Code civil*, the Austrian General Civil Code of 1811, the civil code of the Duchy of Parma and the civil code of the Canton of Fribourg.³ The result belonged to the family of codes that combined the French structure with Austrian and Italian solutions, the same family to which the codes of the Italian states before unification belonged. It gave Ticino a written law of persons, family, succession, property and obligations in Italian, and with it a legal vocabulary that Ticinese lawyers have used since. Chapter J.III discusses the differences between that Swiss Italian legal language and the language of the Italian Republic. The code was revised in 1882, when a new *Codice civile della Repubblica e Cantone del Ticino* of 15 November 1882 replaced it.⁴ In criminal law the canton adopted a new penal code on 25 January 1873, which the great Tuscan criminalist Francesco Carrara praised as "il migliore fra tutti i codici penali", the best of all penal codes.⁵ By the last quarter of the century Ticino thus possessed a modern body of codified law, but its application suffered for decades from weaknesses in the organization of the courts and the judiciary, which contemporary critics described as a serious obstacle to the administration of justice.

2 Notes

1. Bolla, study of the first civil and penal codes of nineteenth-century Ticino, Scuola ticinese, no. 94, https://www4.ti.ch/fileadmin/DECS/DS/Rivista_scuola_ticinese/ST_n.94/ST_94_Bolla_primi_codici_civile_e_penale_Ottocento_ticinese.pdf. ↩
2. Ibid.; Martinola, regime of the landamani (above). ↩
3. Bolla (above). ↩
4. Codice civile della Repubblica e Cantone del Ticino del 15 novembre 1882, catalogue record, Deutsche Digitale Bibliothek, <https://deutsche-digitale-bibliothek.de/item/SBDD2J2ESZGB3BYWDL43KZ3TKXGJZBXE?lang=en>. ↩
5. Bolla (above). ↩

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