

The Transalpine Bailiwicks: Confederate Rule, Justice and Public Finance, 1403-1798 — overview and summary

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For almost three centuries the territory of today's Canton of Ticino was governed as a set of subject lands. Between the first advance of Uri into the Leventina in 1403 and the revolutions of February and March 1798, the valleys and lake towns south of the Gotthard were ruled by Swiss cantons that sat north of the Alps, spoke German and sent a new governor, in most bailiwicks every two years. The Italian sources call these territories *baliaggi* (bailiwicks), the German sources *ennetbirgische Vogteien* or *Gemeine Herrschaften* (the lordships "beyond the mountains" and the "common lordships").¹ Eight of them lasted until 1798: the Leventina, the Riviera, Blenio, Bellinzona, Lugano, Locarno, Mendrisio and the Vallemaggia. Chapter A.I has traced the land and its lords to about 1500. This chapter asks how the Confederates acquired these territories, how they governed them, how justice was administered and paid for, how public money was raised and spent, and what the long experience of subjection meant for the legal culture of a region that later became Switzerland's third financial centre.

The argument of the chapter is that Confederate rule in the Italian bailiwicks combined two features that a modern reader tends to keep apart. The first is a remarkable continuity of local law and self-government: the rulers confirmed the statutes of the towns and valleys, left the communes (*comuni, vicinanze*) to manage their commons and their own taxes, and imposed comparatively few direct levies. The second is a system of government in which the chief judge was also a private entrepreneur, who had bought his office, who drew his income from fees, fines and confiscations, and who left after two years. A light fiscal burden therefore went together with a heavy and unpredictable burden of justice. The annual inspection by delegates of the ruling cantons, the *sindacato*, was the

only institutional check, although it was itself a political body with a financial interest in the revenue it audited.

These features explain a good deal about the later canton. The distrust of distant authority, the attachment to communal autonomy, the memory of justice for sale and the demand for fixed rules that bind the authorities as well as the governed are all visible in Ticinese debates from Stefano Franscini in the 1830s to the present. The final section of this chapter draws the line from the *landfogto* to the modern guarantees of the Federal Constitution and of the Ticinese constitution: independent courts financed from the public budget, a legal basis for every tax, supervisory authorities separated from the revenue they supervise, and the fiscal predictability on which private banks, fiduciaries and trading houses in Lugano now depend. The comparison with Geneva, which defended its independence while the Ticinese valleys were ruled from Altdorf, Lucerne and Zurich, is drawn in the section on the end of subjection. The migration of builders and artists and the transit economy of the Gotthard are left to Chapters A.III and A.IV.

1 Conclusion

The Italian bailiwicks were acquired by the Confederates in three waves between 1403 and 1516, each made possible by a crisis of the Duchy of Milan and each consolidated by treaty: the peace of 1480 for the Leventina, the Treaty of Arona of 1503 for Bellinzona, the Riviera and Blenio, and the Perpetual Peace of 1516 for Lugano, Locarno, Mendrisio and the Vallemaggia. Until 1798 they were governed as common lordships of one, three or twelve cantons. Their constitution was that of a jointly owned estate: rotating governors appointed by the co-owners, an annual meeting of the co-owners' delegates to audit accounts and hear appeals, and the confirmation of local statutes and privileges as the basis of the legal order.

The system had two faces. It preserved the Lombard legal tradition, the statutes of the towns and valleys and the self-government of the *vicinanze*, and it imposed few regular taxes. At the same time it placed the administration of justice in the hands of governors who had often paid for their office, who stayed for two years and who drew their income from fees, fines and confiscations. The *sindacato* offered a remedy, but it was itself composed of interested parties and financed in part by the subjects. The grain supply depended on the discretion of Milan, and the security of property depended on the conduct of a changing governor. The revolt of the Leventina in 1755 and the Enlightenment critiques of Schinz and Bonstetten exposed the failings of the system, which collapsed within weeks in the spring of 1798.

The history of the bailiwicks matters for the modern financial centre because it shows, by contrast, what the institutions of the rule of law are for. The separation of judicial office from judicial revenue, the independence of courts and supervisors, the legality of taxation and the protection of legitimate expectations are the answers of modern Swiss law to problems that the inhabitants of the bailiwicks experienced directly. The communal autonomy that survived subjection has become, under the protection of the Federal Constitution, one of the foundations of Ticino's fiscal and political order. The Ticinese preference for private ordering, notarial documentation and discreet intermediaries also has part of its roots in three centuries of experience with a public justice that could not be relied upon. Chapters A.III and A.IV turn from government to the economy of the region: the emigrant builders and artists whose remittances financed the villages, and the transit trade of the Gotthard on which the towns depended.

2 In five sentences

Between 1403 and 1516 Uri, then Uri with Schwyz and Nidwalden, and finally twelve cantons acquired the eight Italian bailiwicks that make up most of today's Canton of Ticino, and they governed them as common lordships until the spring of 1798. The ruling cantons confirmed the local statutes and left communal self-government and local taxation to the *vicinanze* and towns, so that regular taxes paid to the sovereigns remained light. Justice, by contrast, was administered by *landfogti* who had often bought their office, served for two years and lived on fees, fines and confiscations, under the limited control of an annual *sindacato* of the ruling cantons' delegates. Dependence on Milanese grain, the repression of the Leventina revolt of 1755 and the Enlightenment critique of the system shaped the memory of subjection that the Ticinese carried into the choice for Switzerland in 1798, a path very different from that of independent Geneva. The modern guarantees of salaried and independent judges, fines and forfeitures accruing to the state, taxation based on formal law and supervisors without a stake in the revenue they oversee are the institutional answers to the defects of the bailiwicks, and they form the legal foundation of trust on which Lugano's financial centre rests.

3 Notes

1. Lucienne Hubler, "Ennetbirgische Vogteien", in Historisches Lexikon der Schweiz (HLS), version of 4 October 2017, <https://hls-dhs-dss.ch/de/articles/046979/> (Italian: "Baliaggi italiani", <https://hls-dhs-dss.ch/it/articles/046979/>). The article treats Lugano, Mendrisio, Locarno and the Valle di Maggia as common lordships of the twelve cantons from 1512 to 1798 and includes, in a wider sense, Bellinzona, Blenio, the Riviera and the Leventina. The German term ennetbirgisch means "beyond the mountains", seen from the north. ↩

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