

Towns, borghi and the notariat

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The larger places of the territory were *borghi*, market settlements with walls or at least a legal status distinct from the surrounding villages. Lugano, Locarno, Bellinzona and Mendrisio were the principal *borghi*. None of them was a city in the legal sense, since none was the seat of a bishop. Their inhabitants were organized as communes with consuls, councils and statutes of their own, but their autonomy was limited by the rights of the bishop of Como, of the city of Como and later of the lords of Milan. The *borgo* communes nonetheless managed markets, weights and measures, local taxes and public works, keeping records that allow the historian to see the medieval economy at close range.¹

The key professional figure of this world was the notary. From the twelfth century onwards the notaries of the region drew up sales, leases, loans, dowries, wills, arbitration awards and the acts of communal assemblies in the Latin formulary of the Lombard notariat. Their protocols, preserved in cantonal and communal archives and in the notarial archives of Como and Milan, are the principal source for the economic history of the region.² The notary was a public officer whose instrument had full evidentiary force in any court that followed the *ius commune*, which meant that a deed drawn up in Lugano could be enforced in Como or Milan without further proof. This portability of the notarial instrument was a precondition for the credit relationships discussed later in this chapter.

1 The pievi

The ecclesiastical counterpart of the communes was the *pieve*, the baptismal church with its district. In the southern part of the territory the *pievi* of Lugano, Agno, Riva San Vitale, Balerna, Capriasca and Locarno, among others, organized pastoral care, collected tithes and provided a framework for local administration.³ The civil districts of the late Middle Ages often followed the boundaries of the *pievi*, which gave the church an influence

on local government that went beyond its spiritual role. When the Confederates organized their bailiwicks in the sixteenth century, they took over districts whose borders had been drawn by the Lombard church centuries earlier.

2 Dowries, daughters and the transmission of property

The statutes of Como and of the Ticinese *borghi* also governed the transmission of family property, and in this field they followed a pattern common to the Lombard cities of the later Middle Ages. A daughter who received a dowry on her marriage was, as a rule, excluded from the inheritance of her father and often of her mother as long as there were sons or other male relatives in the paternal line. The legal literature calls this rule the *exclusio propter dotem*.⁴ Its purpose was to keep land, houses and rights together in the male line while providing daughters with a share of the family wealth at the moment of marriage. The dowry was recorded by a notary, often with an estimate of its value in Milanese lire and a list of the goods, money and credits it comprised, and it remained the property of the wife. The husband administered it during the marriage and had to restore it when the marriage ended.

The dowry system turned marriage into a financial transaction of some complexity. Families had to raise capital in cash or in marketable goods at the moment of each daughter's marriage, which frequently required borrowing, the sale of land with a right of repurchase or the assignment of future income. Husbands' families gave security for the eventual restitution of the dowry, usually by a general mortgage over their property.⁵ Dowry claims were therefore among the most common secured debts in the notarial records, and in the event of insolvency the widow's claim for restitution enjoyed a privileged rank. The modern practitioner who deals with Italian families will recognize the continuing concern with keeping family property together and with the position of daughters and surviving spouses, although the rules have changed entirely. Italian forced heirship (*legittima*) now protects children of both sexes equally, and the EU Succession Regulation and Swiss private international law determine which system applies to a cross-border estate (see Chapter E.V).⁶

3 The long survival of the vicinanza: the patriziato

The medieval *vicinanza* did not disappear with the Middle Ages. In the nineteenth century the new canton distinguished the political municipality (*comune*), to which all residents belonged, from the corporation of old families holding the common property, the *patriziato*. The *patriziati* still

own a large part of the forests, pastures and alps of the canton, administer them through their own assemblies and are governed by cantonal legislation on the *patriziato*.⁷ A lawyer who advises on the acquisition of land in the Ticino valleys, on hydroelectric concessions or on the use of Alpine pastures will meet these corporations as owners, lessors and parties to contracts. Few institutions of Swiss private and public law have so direct a medieval ancestry.

Common misconception. It is often assumed that self-government in the Ticino began with the canton of 1803, and that the preceding centuries were a time of pure subjection. In fact the villages and valleys governed their common property, their roads and their local justice through their own assemblies and statutes from the twelfth century onwards. Lords and later the Confederate bailiffs sat above this structure without replacing it (see Chapter A.II).⁸

4 Notes

1. Paolo Ostinelli and Giuseppe Chiesi (eds), *Storia del Ticino. Antichità e Medioevo* (Bellinzona: Casagrande, 2015). ↩
2. The notarial records for the territory are held chiefly in the Archivio di Stato del Cantone Ticino (Bellinzona) and in the Archivi di Stato of Como and Milan. ↩
3. DSS, art. "Como (diocesi)" (above), on the pievi of Balerna, Riva San Vitale, Lugano and Agno and on Capriasca, which belonged to Milan. ↩
4. Francesco Calasso et al., "Dote", in *Enciclopedia Italiana* (Roma: Istituto della Enciclopedia Italiana, 1932), [https://www.treccani.it/enciclopedia/dote_\(Enciclopedia-Italiana\)/](https://www.treccani.it/enciclopedia/dote_(Enciclopedia-Italiana)/), which records that the medieval Italian municipal statutes commonly provided that a dowered woman lost every other right to her father's property, and that the statutes laid down detailed rules on the restitution of the dowry. For the doctrinal background see Manlio Bellomo, *Ricerche sui rapporti patrimoniali tra coniugi* (Milano: Giuffrè, 1961). ↩
5. Bellomo (above); Calasso et al., "Dote" (above), on the detailed statutory rules for restitution. ↩
6. Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European

Certificate of Succession, OJ L 201 of 27 July 2012, <https://eur-lex.europa.eu/eli/reg/2012/650/oj/eng>; Federal Act on Private International Law of 18 December 1987 (PILA), SR 291, Art. 86 ff., in particular Art. 90 (the estate of a person last domiciled in Switzerland is governed by Swiss law), <https://www.droit-bilingue.ch/de-en/2/29/291-90-106.html>; Italian Civil Code, Art. 536 (the spouse, the children and the ascendants as forced heirs, *legittimari*), <https://www.brocardi.it/codice-civile/libro-secondo/titolo-i/capo-x/sezione-i/art536.html>. See Chapter E.V. ↩

7. Legge organica patriziale (LOP) of 28 April 1992, as cited in Repubblica e Cantone Ticino, Sezione degli enti locali, Linee guida LOP 2012, https://www4.ti.ch/fileadmin/DI/DI_DI/SEL/Patriziati/Linee_guida_LOP2012.pdf. ↩
8. DSS, art. "Vicinanza" (above); DSS, art. "Baliaggi italiani", <https://hls-dhs-dss.ch/it/articles/046979/2017-10-04/>, on the survival of local self-government and existing legal traditions under the Confederates. ↩

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