

## Village credit and the returning master as lender

*Dr Alexander Ressos, TEP  
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),  
Solicitor (England & Wales)*

Money not invested in land was often lent to neighbours. The returning master with savings became a creditor in his village, lending to families who needed to buy grain, pay a dowry or cover the costs of an emigrant's departure. Such loans were recorded by notaries as obligations secured on land, or they took the form of annuities (*censi*), which allowed interest to be charged without violating the canonical prohibition of usury. The Catholic doctrine on usury and the *censi* are the subject of Chapter B.III.

In this way emigrant money circulated within the village and financed the next round of emigration, since a family that borrowed to equip a son for his first season abroad would repay the loan from his earnings. The village thus developed a small credit economy of its own, in which the notary served as registrar, the parish as depositary of legacies and the successful emigrant families as lenders. The first Ticinese savings banks of the nineteenth century, discussed in Chapter C.IV, took over part of this function and turned it into an institutional business.

### 1 Inheritance and the undivided family

The statutes of Lugano, Mendrisio and the other bailiwicks, discussed in Chapter A.II, followed the Lombard pattern of inheritance. Sons inherited in equal shares, while daughters were usually excluded from the paternal estate once they had received a dowry.<sup>1</sup> Equal division among sons threatened to fragment the small holdings of the village with each generation. Emigrant families often responded by keeping the patrimony undivided for long periods. Brothers who worked abroad left their shares in a common household managed by one of them, or by their mother, and accounts were settled from time to time before a notary.

This undivided family community had a practical logic. It allowed the family to operate as a single economic unit, with some members earning

abroad and others managing the property at home, and it avoided the costs and conflicts of division. It also required trust and accounting, since the brothers abroad contributed unequally and expected their contributions to be recognized. Many of the disputes recorded in the notarial and judicial archives of the bailiwicks arose when such communities were finally divided, often after the death of the parents or the return of a brother with a large fortune.

## 2 Wills, legacies and entailed estates

Emigrants made wills before departure or abroad, often in anticipation of the risks of travel and work on building sites. Such wills regulated the division of property, provided for widows and daughters and made legacies to the church, the confraternity and the poor. Wealthier families went further and created entailed estates (*fedecommissi*), which bound the family house and land to the male line and prevented their sale or division. The entail was the early modern instrument for keeping a family fortune together across generations, and it was widely used by the Lombard nobility and by successful merchant and artist families.

Entails were abolished or restricted in most European countries in the nineteenth century. In Switzerland the Civil Code of 1907, in force since 1 January 1912, prohibits the creation of new family entails (Art. 335 para. 2 SCC) and permits family foundations only for defined purposes, namely the costs of educating, endowing or supporting family members or similar purposes (Art. 335 para. 1 SCC).<sup>2</sup> The Swiss rule thus preserved, in modern form, one of the purposes for which emigrant families had used their wealth, the endowment of children, while excluding the perpetual tying up of property. The continuing parliamentary debate about lifting the prohibition of family maintenance foundations in Art. 335 SCC, which is discussed in Chapter E.V, shows that the tension between family control and free disposition of property remains alive.<sup>3</sup>

Common misconception. It is often assumed that the emigrant economy of the lakes produced a class of wealthy families who invested in commerce or manufacturing at home. In fact most emigrant capital went into land, houses, churches, dowries and village credit. These uses were rational in a small agricultural economy with limited opportunities, but they did not create local industry. The transformation of emigrant savings into financial capital came only in the nineteenth century, when the first Ticinese banks collected deposits from emigrant families and lent them to railways, hotels and real estate, with the results described in Chapter C.IV.

### 3 Notes

1. Gianna Ostinelli-Lumia, "I legami familiari nello specchio della trasmissione dei beni: statuti e testamenti nei baliaggi di Lugano e Mendrisio (XVII secolo)", *Bollettino storico della Svizzera italiana* 104 (2001), pp. 25–56 (listed in the Biblioteca cantonale di Bellinzona bibliography, [https://www2.sbt.ti.ch/dep/bzbc/diritto\\_successorio.pdf](https://www2.sbt.ti.ch/dep/bzbc/diritto_successorio.pdf)); for the comparable Alpine rule on dowered daughters, Garbellotti (cited above); see Chapter A.II. ↩
2. Swiss Civil Code of 10 December 1907 (SCC), SR 210, Art. 335, as quoted in Harold Grüninger, "Historisches Missverständnis? Familienstiftung, Handelsregister und Rechtsstaatlichkeit", 6. Zürcher Stiftungsrechtstag, 31 January 2023, [https://www.uzh.ch/cmsssl/ius/dam/jcr:8e197c84-a8d2-4ebb-8823-6616e20c0032/HG\\_Historisches%20Missverst%C3%A4ndnis\\_Familienstiftung,%20Handelsregister%20und%20Rechtsstaatlichkeit.pdf](https://www.uzh.ch/cmsssl/ius/dam/jcr:8e197c84-a8d2-4ebb-8823-6616e20c0032/HG_Historisches%20Missverst%C3%A4ndnis_Familienstiftung,%20Handelsregister%20und%20Rechtsstaatlichkeit.pdf). ↩
3. Motion 22.4445 (Burkart) of 15 December 2022, adopted by the Council of States on 12 December 2023; see LAWMEDIA, "Schweizer Familienstiftung: Modernisierung?", LAWNEWS, 9 January 2024, <https://law.ch/lawnews/2024/01/schweizer-familienstiftung-modernisierung/>, and Grüninger (cited above). ↩

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