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# Changing Layers of Jurisdiction. Northern and Central Italian States in the Late Middle Ages and Early Modern Times

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## ABSTRACT

The variety of states, small and large, present in the Italian peninsula from the 14th to the 16th centuries provide insights into the complex ways in which jurisdictional structures in that period responded to the pressure of internal and external events and processes. This chapter looks particularly at how urban and territorial jurisdictions were organized in some central and northern Italian states and how they were reorganised when new territories were conquered and annexed. Examples are given of changes in the central jurisdictional structures in response to the military and political challenges of the early modern age.

*La varietà degli stati, grandi e piccolo, presenti sul suolo italiano nel periodo tardo medievale e all'inizio dell'età moderna forniscono un interessante terreno d'indagine per scoprire come le strutture giurisdizionali cambiano sotto la pressione di vicende esterne e interne. Questo capitolo analizza in modo particolare come erano organizzate le reti giurisdizionali territoriali in alcuni stati dell'Italia centrale e settentrionale dal Trecento al Cinquecento, come venivano riorganizzate quando nuovi territori venivano annessi, e fornisce alcuni esempi di come le strutture giurisdizionali centrali potevano venire modificate per rispondere agli imperativi politico-militari del primo periodo moderno.*

## INTRODUCTION

Joseph Schumpeter thought that the study of fiscal history was an excellent key for understanding the internal logic of specific state formations: for Schumpeter, beyond ideology and rhetoric, there lies the skeleton of the state, essentially defined by who pays taxes and who spends them – and for what<sup>1</sup>. This recipe yields interesting results for early Italian states, but nearly as good a case can be made for studying jurisdictions: they too allow us to make a kind of X-ray of the relations of power in each political formation. Who administers justice, to whom and how? The relatively small but complex Italian states of the later middle ages and the early modern period furnish an unusually well documented terrain for research. Although linked by a shared political and juridical culture, and belonging to a single political space, their trajectories were highly

diversified. In the range of variation, we can find some common denominators and some very significant differences. The aim of this chapter is to sketch an overview of the organisation of jurisdictions roughly in the 15th and 16th century, showing some of the ways they changed as the territorial and political configuration of Italian states changed, because – among other factors – of the political pressures and opportunities that emerged in the early modern age.

The field is broad, and although many of its aspects have been the object of intense historiographical study and debate, the large number of significant studies do not begin to form a general picture. Most research deals, as is reasonable and necessary, with single states, or aspects of them, in well-defined periods; with the formal jurisdictional organisation, interpreted in different general perspectives; with juridical and judicial sources, including statutory materials; and with the legal culture of the age and its practitioners. The partial character of the results obtained so far depend in the first place on the high degree of specialisation required for research on any part of the general edifice; a fact of life which is complicated by the differing questions posed and the variety of approaches to answering them. Legal, institutional and political historians, and historians *tout court* interrogate the sources with different tools and from different points of view. Interests, formation and methods are sufficiently diverse as to yield only with difficulty the fruits of a comparative or connected approach – which in theory would be necessary. To the vastness of the field and the variety of premises from which it is studied we must add that, for the period in question, there is available an immense quantity of carefully conserved and so-far largely untouched archival materials which would allow for extensive investigation into actual practice, and into changes in the demand for justice as well as the theoretical and practical aspects of what was on offer.

### “CITY-STATES”? OR STATES BUILT BY CITIES?

In Italian, the expression *città-stato* [city state] is not normally used except as a calque for the well-known English expression and hence for comparative and explanatory purposes. It has been pointed out that because of the great weight given in Italian culture to the age of the communes, the *de facto* sovereign cities of Northern and Central Italy of the 11th and 12th centuries, Italy is perhaps the only country to celebrate myriad political divisions as its founding identitary structure<sup>2</sup>. The rhetorical weight of the medieval communal city is such that it often obscures the importance of the subsequent work of political and administrative construction carried out by some of those cities, as they conquered and incorporated other cities. Certainly in Italy one cannot ignore the strong urban mark on its societies and institutions. It is striking that all the major states of the period considered here – with the single exception of the Papal state – bear the name of a city. The republics of Genoa, Venice or Florence, the state of Milan, the Sienese state – even the Kingdom of Naples<sup>3</sup> bear the name of a city rather than of a geographical space or a reigning dynasty. Only the islands, Sicily and Sardinia, constitute exceptions.

It is well to note that the word *città* [city] itself expresses a broader concept than that of “town” or “city” in other contexts, insofar as the Latin expression *civitas* included the territorial dominion of a city as well as what was within the walls of the city proper. One can speak of *stati cittadini* or territorial states formed by cities. Pre-Roman Italy was itself a space organised by cities with their surrounding dominions: under Roman rule such cities continued to have important political and jurisdictional rights and duties<sup>4</sup>. This strong urban tradition persisted in the subsequent millennia – for some aspects even today, notwithstanding the century and a half since the “unification” of the Italian state. In the late middle ages and the early modern period in central and northern Italy, sovereign city-states, large and small, with varying forms of government (communal republican or lordships), controlled large territories, implementing the necessary urban and territorial jurisdictional networks. In southern Italy the situation was complicated by the presence of baronial and monarchical structures; nonetheless southern cities too had relevant jurisdictional powers and institutions of self government.

Recently the legal historian Mario Ascheri has used the term *città-stato* – or rather *città-Stato* – as the title of a brief volume, underlining the importance for Italian history of the communal phase and its late medieval and Renaissance heritage<sup>5</sup>. This choice risks overemphasizing the continuity – as a kind of Carsic river – between the communes that confronted Barbarossa in the 12th century; the late medieval and early modern republics and urban-based *signorie* and princely states; and the cities of modern Italy. The connection is strong, but must not be allowed to hide the process by which a certain small number of those early medieval ‘free communes’ were subsequently able to form and to structure larger political entities, by subjugating other territorial powers, including other communes, in various ways

One of Ascheri’s militant little volume’s central ideas, however, can certainly be accepted: the Italian city states of the Middle Ages and their successors in the Renaissance – some of which survived in fair health until the Napoleonic wars (Genoa, Venice) and beyond (Florence, Lucca, Papal State)– are now remembered more for their magnificent art works and architecture than for their statecraft – the foundation, ignored because of its pervasiveness<sup>6</sup>, of much of the artistic and architectural environment in which we live in all parts of the world. But the importance of their political experience tends to be forgotten and obscured. The tumultuous process of forging new states and experimenting with political and legal structures, elaborating collaborative ways of doing things is forgotten. Cities are remembered and presented to today’s public as ‘cities of art’, ‘as cultural and artistic heritage’, rather than as places of political and civic struggle and creativity, where a relevant part of the juridical and institutional *ouillage* of modern states was developed.

Here, while accepting that the Carsic river continued to flow – underground – we wish to emphasize differences and change, looking at how that late medieval and early modern states of central and northern Italy used and built on the communal heritage in new ways.

## COMMUNAL STRUCTURES AND JURIDICAL CULTURE

It is well known that the rebirth of Roman law and the development of canon law received great impulse through the studies of pioneering jurists working in Bologna in the 12th and 13th centuries. The revival of Roman law studies is a relevant phenomenon, and very significant in making such Universities as Bologna, Padua, Pisa and Siena centres of instruction and professional preparation for scions of educated families of much of Europe. It was hardly necessary to import the Roman and classical humus totally *ex novo* at that time: although a nearly complete breakdown of the preceding legal culture based on Lombard and Roman Byzantine law is often hypothesized, it is striking to see with what alacrity in some cities the new fashion was taken up. In Pisa around 1155 work was begun on the two monumental juridical texts known as the *Constitutum usus* and the *Constitutum legis*: the two were ready by 1160, and they were immediately put to active use by those requiring juridical action, although not always in the precise way that would have been accepted as appropriate in classical times<sup>7</sup>. Roman, canon and feudal law provided the necessary tools for the surging development of the urban and mercantile societies of central and northern Italy, and for this reason were intensely studied and moulded according to the needs of the time.

Ghibelline-leaning cities such as Pisa certainly saw the possibilities of transforming their dominions into something even more ambitious in alliance with the Hohenstaufen or other imperial dynasties, and had ideological as well as practical reasons to emphasize their debt to Justinian.

Some historians see these developments as fostering a pleasingly hierarchical order in which Roman and canon law had a unifying and harmonising role<sup>8</sup>. According to such a view, *ius commune* provided a unifying element as the primary source of law. Reality was more complex. In real hierarchy of sources of law as used in central northern Italy, the Roman law-based *ius commune* was not the first to be applied, but rather the last – the default mode, we may say, where local statutes did not contain dispositions sufficient to decide the case in point. Even at the time it was pointed out that there would be no reason for single states and cities to approve and compile statutes if they were only repetitions of general laws<sup>9</sup>. In fact statutory legislation was continuous and creative, constantly adapting to the necessities of the legislating bodies. As the state-building process went on, each dominant and each subject city, and all of the subject communes of the latter down to fairly small villages or leagues of villages, came to have their own statutes. These were either created by the autonomous legislative action of urban governing bodies, particularly in large cities, or – as often in the case of small towns and villages – the result of pressure from the dominant city that imposed certain rules or at least checked and approved the statutes elaborated by its subjects<sup>10</sup>.

The plethora of statutes – of dominant and subject cities, of towns and villages – preserved in Italian archives today provides the basis for many works of local erudition and for some lively historiographical debates about the nature of late medieval and early modern states. Some of the extant texts are quite ancient, but the mass of those preserved

date from the 14th century on. Rural statutes became even more numerous in the 15th century. Larger cities had very elaborate statutes, in many volumes, including not only constitutional norms but also complex civil and criminal laws which, since city governments could and did legislate, were continuously developed and modified (necessitating periodic reviews, selections, compilations, repertories and publications). The statutes of small rural communes dealt with the matters normally decided at a local level, such as elections of communal bodies, their by-laws, regulation of pasturage, common lands and agricultural activities, including *danni dati* [literally “damages given”, a term applied to damage of agricultural goods, theft in or damage to lands and their products].

As stated above, the jurisdictional agents at each level were supposed to apply the relevant statutes and where these were lacking have recourse to the common law. This anti-hierarchical understanding of the hierarchy of sources, if extended to its logical consequences, would have meant that the jurisdictional representatives of dominant cities, often prominent members of the urban oligarchies or for smaller communes notaries or other less exalted representatives of the urban population, would have applied the local statutes rather than those of the dominant city. The power and style of government of dominant cities can be measured by the degree of importance they gave to local statutes and by the degree of autonomy they were willing to leave to the oligarchies of their subject cities.

There were even very substantial variations in the organisation of different states, cities, “quasi cities<sup>11</sup>” and smaller communities within a state. Nonetheless, from communal times on the overall juridical-administrative *koiné* in most of central northern Italy was interconnected, not least by mobile technical personnel (notaries, judges, assessors) who shared common studies, knowledge and experience. This suggests that there was a strong dynamism in the juridical culture and an inherent tension between the law of each place and general experience of itinerant judges and practitioners<sup>12</sup>.

## ADMINISTRATION AND JURISDICTION

A rigid principle of division between jurisdiction and administrative functions is a product of more recent centuries. With some exceptions, in the late middle ages and the early modern period if a collegial body had administrative tasks and powers, it also had corresponding jurisdictional rights and responsibilities. States built by cities were governed formally either by councils and assemblies that held the ‘princely’ or sovereign power or by lords or princes who had taken them over. In the case of ‘free’ cities, it was the central magistrature, often of around six to eight citizens, normally elected for very short periods (for example, two months), that wielded supreme executive authority. Sometimes the authority of the highest magistrature was formalised by imperial or papal investiture, in other cases – a prime example is Venice – cities simply maintained their own right to administer themselves and their subjects as they deemed appropriate. Of course in final analysis it was wealth, arms and political cohesion that made it possible to uphold such claims.

But below the central *Signoria*, the formal heads of city government, who rotated after very short periods in office, a plethora of other magistratures was developed to deal with specific sectors of government or specific projects or endeavours: these collegial bodies were formed of small groups of citizens (often of the order of 3 to 9) having authority over a sector of public business – preserving public order, overseeing urban decorum, straightening streets, promoting the university, administering the hospital, gathering war supplies, building or refurbishing the city walls, running the customs offices at the gates, preventing the spread of plague, and so on through the long list of activities necessary for a city to survive and prosper. Each such magistrature had its own area of competence, its scribe or secretary (often a notary) and a camerlengo, or person responsible for finances (receipts and expenses as well as fines). Along with the magistrature's other duties came jurisdictional powers over its sector. The elected magistrature often was the place where controversy could be decided. Other sorts of organisations, such as artisans' and merchants' guilds, had similar structures and jurisdiction over their members, so much so that some have thought that communal structures developed from guild structures. It seems more likely that there are limited numbers of ways in which groups of people are able to develop shared decisions and consent to adhere to them: one of which is through deliberative bodies following agreed rules. With great variation in the details, this process seems to have followed similar general paths in medieval Italy. Guilds and guild members were very much part of the communal world, and copying in both directions was natural. At least in theory. In actual practice, the large amount of extant documentation produced by both kinds of bodies has been little studied from this point of view<sup>13</sup>.

The prosperity of central and northern Italian cities was due to their active mercantile and manufacturing activities as well as innovation in agriculture and eventually money lending and banking. The political institutions were organised to a varying degree in the different cities to accommodate the mercantile interests of many members of the ruling oligarchies as well as the imperatives set by large-scale manufacturing activities. The maritime cities can be seen as almost totally 'merchant' states, in which the political activity of the state was a direct expression of the merchant interests and directed accordingly (as can be seen in the way such cities conducted their wars, alliances, raids, organisation of traffic in slaves or other goods). In these and in other prevalently merchant cities, the organisation of communal office had to take into account the fact that many important citizens were often elsewhere (from Flanders to Spain to the Black Sea) in pursuit of their commercial interests. Communal territorial concerns were treated by certain magistratures and police forces, where merchant families were very much present, but in most cities there were also Merchants' corporations which ran their own courts and jurisdictional bodies. The relative weight of the *Mercanzie* or merchants' corporations with respect to republican or princely government varied according to circumstance. In some Italian cities the relationship was one of parallel institutions (but the citizens involved were the same individuals), in others belonging to specified guilds was necessary in order to participate in the political arena.

In any case, merchant justice had specific characteristics which make it an interesting but challenging area of investigation. In theory it was fast lay justice, carried out by such bodies as Sea Consuls or Merchant Consuls and their delegates; ideally relying on usage, and on fairly simple written and unwritten rules and principals widely accepted in the merchant world (some of which perhaps related to pre-classical Mediterranean practice as in the case of the code of Rhodes or, later, as exemplified by the formulations that go under the names of Oléron, Wisby or the consulate of Barcelona). The central objective was to preserve faith: the confidence and trust essential for commerce to take place, and to avoid any unnecessary delay in the flow of goods and money<sup>14</sup>.

If merchant justice was indeed as hypothesized, it would be largely invisible for us today – rapid, oral, lay justice that, when it worked and to the extent it worked, would leave little written trace. What is visible though is something quite different. In a merchant and banking city such as Lucca, we find a mass of legal records recording litigation, mercantile and patrimonial, indicating that merchant justice was structured, professional and often lengthy: at least the part of it recorded in written legal records. In the case of Lucca, for example, a very large number of cases were discussed before the specified magistrates, the Merchants' Court and the Court of the *Fondaco*<sup>15</sup>. Is this record complete? Certainly not, but in what measure it is difficult to say. Pilot samplings of the equally immense mass of notarial documents from the same epoch show that merchants frequently had recourse to arbitration; other notarial documents were registered on behalf of litigants who evidently had come to agreement out of court. This may be only be the tip of the iceberg, a tantalising reminder that in a functioning society only a fraction of the potential disputes reach the courts and are recorded according to the forms and the norms of legal process. Even the possibly partial written record is daunting. For example the processual archives of the merchants' courts of the city of Lucca consists of more than 5000 very large volumes or bundles, many in rapid legal cursive script and in Latin, only a very small part of which has been studied<sup>16</sup>.

## SHIFTING JURISDICTIONS IN 'REGIONAL' AND TERRITORIAL STATES

As we have pointed out, a peculiarity of the central and northern Italian political space strongly connected with the social and jurisdictional structure is the fact that each commune or *commune* had a similar basic organisation, founded on the existence of a large council where, either through rotation or all together, all citizens enjoying full political rights could be present, and a smaller executive magistrature (called for example *Anziani* [Elders], *Priori* [Priors], *Signori* [Lords]). Great cities, medium or 'quasi' cities had such organisations, and even villages had a similar though simpler structures. Large free cities also had a great number of intermediate delegated bodies. When republican or communal government broke down and was taken over by *de facto* lords (*signori*) or princes, the original communal structure did not usually did not disappear, but rather was flanked by the new employees or structures of lordly or princely government. Since such an evolution really meant that the dominant classes had decided – more or less

permanently – to support a princely form of government, there was no real contradiction in the city magistrature continuing to exist for ordinary administration even if the key political decisions were now taken elsewhere, in a court structure.

In the later middle ages some cities were able to form extended states by subjugating other cities with their territory. The earliest potentially large territorial states were formed by Verona and then by the lords of Milan. Both came to rapidly to grief, as their enemies coalesced to ward off the danger of the formation of a superstate. During the late 14th and early 15th centuries however some relatively larger regional states were consolidated: Venice, Milan, Florence, the Papal state and Naples. Other cities and feudal states occupied the interstices, and their role too was important. Genoa for example had a relatively small territory, but was fundamental because of its citizens' maritime and financial power.

During the process of state aggregation, which had many ups and downs, cities and with their territories could become part of larger states. This was not always a simple case of subjugation, rather there were commonly shifts in allegiance of cities, towns or villages as they were conquered or sold to other dominant cities, or which might even reacquire autonomy. Interestingly, the basic jurisdictional structure usually did not change. Italian late medieval states were made up of communal building blocks, each with its own statutes, internal and territorial organisation, most of which remained stable even when the city in question was 'dominated' by another city<sup>17</sup>. In some cases the subject territories continued to be administered by the local citizens; in others the newly dominant city sent its own citizens in their place, usually without changing the basic jurisdictional structures.

The organisation, functioning and hierarchy of the territorial organisation of regional states in Italy is relatively well researched, although only slowly is it becoming possible to match up what is known about the organisation of the central government with what is known about the administration of the so-called peripheries, the territorial expression of those states. The Tuscan states of Florence, Pisa, Siena and Lucca and their component parts have been the object of many studies as have been those of Lombardy and of the Venetian *terraferma* or *stato da terra* [the dominions on the mainland] and to a lesser degree its *stato da mar* [maritime dominions], Morea, the Aegean, Cyprus, Crete and the Adriatic coasts. The statutes of the Genoese state, corresponding to modern Liguria, constitute the object of a recent monumental repertory by the legal historian Rodolfo Savelli. Savelli's methodologically complex and innovative reading of the Ligurian statutes still in existence – and of the evidence regarding those no longer preserved – allows us to form a novel view of the vigorous and tenacious state-building carried out by the republic of Genoa<sup>18</sup>.

In the case of Tuscany we are fortunate to have Elena Fasano Guarini's map of the territorial jurisdictions of the Grand Duchy at the death of the first grand duke, Cosimo I de' Medici (1574)<sup>19</sup>. The jurisdictional structure represented can be considered the outcome of several centuries of Florentine and Medici state-building. By the time of

Cosimo's death, the Grand Duchy included what had once been the states of Pisa and Siena, Pistoia, Arezzo, Volterra, Cortona and other formerly autonomous cities. All of these with their lands, along with Florence and its own lands, previously conquered, constituted the *Stato vecchio* [Old state], the state built by the Florentine Republic before it became a *de facto* signoria, then a Duchy and a Grand Duchy under the Medici. While the Old State included all the city states acquired by Florence at the time of the republic, the *Stato Nuovo* [New state] was conquered in the 1550s by Cosimo on behalf of Charles V, using Medici money. After the War of Siena it was enfeoffed to Philip II by the emperor and to Cosimo by Philip. It included Siena and all of her territories except for the *Presidios* (a number of ports on the southern coast of the old Sienese state, which the Spanish monarchy kept under its direct control in order to ensure safe navigation from Genoa to Rome and to keep the independent-minded Cosimo under pressure).

Tuscany provides a good picture of jurisdictional change and continuity. Since we possess ample documentation on the territorial jurisdictional organisation of its states and their component parts in previous centuries it is possible to observe in detail the adjustments made in order to accommodate the new power structure. In the Tuscan area, the jurisdictional representatives of the central state were citizens – of differing rank according to the degree of importance and autonomy accorded to the specific jurisdiction. Territorial jurisdictions were known as *podesterie*, *vicariati* and *capitanati*. By the time of the Grand Duchy, the most important and highest posts in the two hierarchies were the governorships, to which important aristocrats or even Medici family members were appointed as *Governatori*: Pisa and Livorno for example had governors. Other key cities such as Volterra had a military captain in charge of the fortress and a podestà in charge of the civil government. Beneath them or beside them were not only the governing bodies of the cities themselves, but also literally hundreds of smaller jurisdictions in the countrysides. These had been even more numerous in the early 14th century, before the demographic decline in which the Black Death was an important factor. A rationalisation had taken place in the 15th and 16th centuries, in order to form jurisdictional networks with fewer officials<sup>20</sup>.

Taking as an example the state of Siena, the extant documentation shows that before conquest by Florence, each rural community had to pay certain sums each year to a series of officials (Sienese citizens) who exercised jurisdictional powers at various levels in the small centres of the countryside. It has been possible to show how in certain periods Sienese citizens were able to manipulate the selection process so as to be sent to areas where they had properties. It is evident that having jurisdictional powers and property in the same area gave them substantial opportunities to increase their influence and their fortunes. In some periods, they were even able to 'purchase' certain jurisdictions from the state for periods of several years. This meant that they could enjoy a kind of impunity in their territorial strongholds, building up a territorial and political power base outside the city<sup>21</sup>.

Under Medici rule, this situation changed in certain ways, but not in others. The division in podestarie and vicariati that had developed in the Sienese state of the later

middle ages continued to exist, but the grand duke and his active bureaucracy exerted careful control over the members of the Siennese oligarchy considered eligible to hold office; the Florentine governor or *Luogotenente* in Siena watched carefully over the newly subjected republic. The territorial jurisdictions were organised according to a clearer hierarchy, as in the Florentine system, a development not appreciated by the smaller communes of the Siennese state, because their members now might have to go farther to obtain justice. Another jurisdictional and political development was an increasing number of feudal investitures made by the grand duke. The Siennese state had always had a fringe of feudal enclaves along its southern border, which functioned as cushion states with respect to the Papal state. Under the Grand Duchy numerous new fiefs were created, particularly in the Siennese *Maremma*, the entire southern part of the state<sup>22</sup>.

### IMPERIAL AND PAPAL AUTHORITY

It has often been held that the Italian peninsula did not unite under a single ruler because of the presence in the peninsula of rival universal powers, the empire and the pope. It is certainly true that Italian states were able to create and maintain their free governments, the basis of which was in their flourishing economies and developing statecraft, because of the weakness of both powers and because of the ease of playing one off against the other. Only in the 16th century was having recourse to papal or imperial jurisdiction in any way realistic, and Italian states spent much energy and intelligence on making it difficult or impossible for their citizens to be subjected to the courts of the two universal powers.

Theoretically, most of central northern Italy was either part of the Holy Roman Empire or of the papal state. Hence, again theoretically, the supreme jurisdiction was either of the Pope or of the emperor. In practice, for most of the later middle ages, neither exerted much concrete power as jurisdictional overlord. For many years the popes resided in Avignon and could wield little direct power even in their own state. The papal state was always subject to strong centripetal forces. Because the pope was an elected monarch, the pope's family and allies would be tempted to use his period in office to detach as great a jurisdictional area as possible. Lords of the cities of Romagna obtained the title of papal vicar, which served as a kind of papal approval of their *de facto* power, often gained by violence or other extra-legal means, over ex-city states. Such was the case of the cities of Rimini, Fano, Pesaro and Cesena which belonged to different branches of the Malatesta family; or Urbino, belonging to the Montefeltro. Other such papal *vicariati* were Imola, Forlì and Bologna. At the turn of the 16th century the papal vicariates were revoked, and Alexander VI's son, the unjustly infamous Cesare Borgia, drove out the local lords with the impetus of the arms paid for by papal indulgences. After the death of the father and the fall of the son, the former lords came back, only to be driven out again by Julius II. Papal authority was re-established in the early 16th century, although many of the local elites continued to enjoy substantial autonomies<sup>23</sup>.

In the case of the empire, until the end of the 15th century imperial authority was invoked by those unhappy with the status quo only on the rare occasions in which the Emperor was in or near Italy and his support likely to have some effect. Lucca freed herself from Pisan rule thanks to Charles IV: her *Anziani* were re-established as imperial vicars in 1356. Genoa, Lucca and Siena were traditionally imperialist, although all of them at one time or another had had Guelph governments (friendly to the pope against the emperor). Their traditional adherence to the empire had only rhetorical content except when the emperor was near and provided with soldiers. Until the beginning of the 16th century, the empire did not often constitute an important element in the political calculations of the Italian elites. When the peninsula became the battleground on which the Habsburg-Valois rivalry was fought out, subjection to imperial jurisdiction became a much more important consideration. Charles V like his predecessors had a theoretical role of supreme judge, because of his *certa scientia*, granted by God. This theoretical role became concretely relevant thanks to the effective consolidation of imperial power, supported by the legal arguments of imperial Grand Chancellor Mercurino di Gattinara and by the imperial armies<sup>24</sup>.

Citizens of some northern Italian states were able to evaluate the difference between the high authority, based on Roman, imperial and canon law (the 'Carolina', a collection of imperial law, was in preparation) and the centralizing practices of other European monarchies: during the early decades of the 16th century when Milan and Genoa were under French rule, it became obvious that the French Kings were intent on extending the authority of their law and their *parlements* over their Italian subjects. Such a centralising system of government was much less acceptable to the Italian elites than the more complex, varied, and tolerant jurisdictional articulation of the empire, and much less suitable to the requirements of their flourishing commercial and financial activities<sup>25</sup>. In the end the jurisdictional flexibility of the imperial structure was one of the key reasons for which the Empire, under Charles V, prevailed.

## NEW DEVELOPMENTS IN THE PODESTÀ SYSTEM: THE 'ROTA' COURTS

In the communal period, central northern Italian cities attempted to establish internal political unity and maintain civil peace, in general with little success. Factional strife easily degenerated into riots or civil war; exile and violent attempts to return to power were very much the order of the day. One solution adopted by many cities was to hire a professionally prepared 'foreign' noble or judge to hold the supreme command and to apply the laws, to avoid the damage that would be done if one faction controlled the entire jurisdictional system. The 'professional' was the *podestà* (the word 'podestà' literally means 'power', but is specifically used for certain heads of city government). Podestas were usually hired for brief periods, of six months or a year, and normally had to come from at least a specified distance (such as 50 miles) from the city that employed them. Podestas were hired with their 'family': an entourage consisting of technical assistants (judges, scribes, notaries) as well as guards and horsemen who could be used to apprehend criminals, carry messages and so forth. Sociologically podestas came from wealthy

or once wealthy families, from what was left of the territorial nobility or from the urban oligarchies. Often the podestà had studied law at the university, and in any case needed the revenue provided by the employing city. When a podestà took office, he was given the staff of command by the city officials, as well as a copy of the statutes which were to be applied. His first act was to read out and have read out in various parts of the city and its territory a ‘bando’ in which threats of persecution were announced against those guilty of certain acts (blasphemy, robbery, murder). For the following six months or year the podestà and his court held the supreme jurisdiction in the city. Nonetheless, they were employees of the city and had to account for their actions. At the end of the established period of office they underwent *sindacato* [formal review] of all that they had done, and had to give compensation (in practice receiving a reduced honorarium) if errors or mistakes were found.

This system is emblematic of the communal or republican configuration of supreme jurisdiction, because the podestà provided a symbolically external source of command, but in the end was answerable to the city authorities through the *sindacato*.

In building the network of territorial jurisdictions which administered justice in the city’s territories, as we have seen above, the podestà figure was also used – although in a significantly different way: many local jurisdictions were actually called *podesterie*, and the person sent to represent the central government (the organs of the dominant city), was often called a podestà (in other cases more generically a *rettore* [rector]; similar figures with a slightly more military connotation being captains (*capitani*) and vicars (*vicari*). However in the case of the subject communities these were normally citizens of the dominant city itself, elected periodically (often by lot) to carry out the necessary tasks of territorial government. Naturally such office was prized by those in need of income (for example to constitute their daughters’ dowries) or those who could use their influence to further their interests in the area (for example if they already had property there or wished to acquire some). The jurisdictional network of *podesterie*, *vicariati* or *capitanati* formed in the later middle ages, with some redrawing and rationalisation, continued throughout the *ancien régime*.

At the end of the 15th century and the beginning of the 16th century Italian states found themselves catapulted into a larger political and military space. Disaster in the form of loss of independence was sometimes averted, not always. By the end of the period known as that of the Wars of Italy (1494 to 1559), many things had changed. Florence had lost her dominions and then, as we have seen, regained them; she now had a princely government and her grand duke controlled the Siennese state as well; in Tuscany Lucca alone had avoided Florentine conquest; Venice had also lost a great part of her *terraferma* state in 1509, but had subsequently recovered her dominions, and was once again a major European and Mediterranean power; the papal state had ousted most of the lords who had ruled the cities of Romagna and now ruled more directly through papal legates. Spain governed Milan, Sardinia, Naples and Sicily; the Spanish imperial system and financial symbiosis with republican Genoa was consolidated.

Whilst the basic jurisdictional structures changed little from the 15th century on, in the difficult decades of the Italian wars many states developed strategies to consolidate their territorial networks and to protect their central jurisdictional autonomy. It was politically essential for each state to be able to show its citizens and the outside world that justice it administered properly: *denegata justitia* was a justification for taking cases outside the state, to a higher judge (such as the imperial court). The strategies to protect the jurisdictional autonomy of each state differed from case to case. Among the most interesting are those used by the Tuscan republics, Siena, Florence and Lucca, to preserve their previous podestà system while adapting it to the times and resisting outside political pressure<sup>26</sup>.

In Florence and Siena the reforms were implemented at the very beginning of the 16th century (1501-1503), in both cases at times when the cities were severely threatened by the internal and external political situation. The new system was called the 'Rota'; its designation recalled the Roman Rota. Its basic principle included 'rotation' of judges, hence the name; but it was typologically very unlike the Roman Rota. In the papal case, the Rota developed along lines typical in monarchical or princely courts: the supreme jurisdiction belonged to the pope, and the consistory of cardinals and subsequently the Rota provided juridical advice so that papal jurisdiction could be exercised in a technically correct way. The 'rotation' aspect consisted in the fact that different jurists were designated to give opinions on each case, in rotation (these pronouncements were judgements, *de facto*, but formally were considered technical advice to the pope).

The new system inaugurated by Florence and Siena (later by Lucca, in 1528) gave the name Rota to something quite different: the podestà and part of the judges in his 'family' would now have a longer period of office, and would 'rotate' as the heads of different important courts of the city that employed them. Together the judges would form a 'Rota' court. This change was instituted in part to improve the image of how justice was administered in the state, both within and beyond its borders. The objective was to show that professional impartial judges would consider appeals as a college, and hence to show that the Florentine, Siennese or Lucchese tribunal was qualified to hold supreme jurisdiction<sup>27</sup>. According to the principle that there could be two appeals from sentences by lower courts (in that two sentences out of three would decide the day), the new Rota court seemed a good place to obtain a third sentence after matters had been tried in lower courts.

Other formulas were used in Genoa and the cities of the papal state: the jurisprudence of these courts published in collections of *Decisiones* was fundamental in the entire modern age. In practice, various quite different models of courts denominated Rota courts were employed in the various jurisdictional structures of Italian states during the *ancien régime*. Nonetheless, their institution exemplifies an active and creative approach to the jurisdictional structure when seen necessary in the internal and external context.

## CONCLUSION

The strength and independence of Italian cities was proverbial in the late middle ages and the early modern period. Cortes and the *comuneros* both considered Italian cit-

ies to be paradigms of politically active free cities. Such cities, in the varied European scene, were exceptional for their autonomy and for the extended territories they were able to conquer and to administer. The jurisdictions within the states they formed were numerous; networks of hierarchical territorial jurisdictions created by the states and remained fairly stable during the later middle ages, even when territories had to change their allegiance because of conquest and incorporation into other states. Large parts of the territories formed by dominant cities generally had already been organised by their previous masters, themselves cities. Until the end of the 15th and the beginning of the 16th century, the universal powers of papacy and empire were theoretically present, but largely absent as real operating forces (except in the case of the pope as the head of his own state), leaving nearly complete autonomy to the Italian political space.

A peculiarity of many Italian cities was the importance of the *Mercanzie*, the Merchants' corporations, which could even form a kind of parallel government alongside the state government. The study of merchant justice is of great interest, but presents particular difficulties, both because some part of it was conducted informally, and because extant written records of legal processes in merchant courts is daunting in quantity.

In the early 16th century, many central and northern Italian cities reformed their central organisation of justice to create a hierarchy of professional tribunals in order, among other considerations, to protect the prerogatives of their jurisdictions over their states and avoid their citizens' being brought before other courts. The new organisation was firmly founded on the late medieval system of the *podestà* and on the collegial principles of republican government, although princely government was able to coexist fairly easily with the republican institutions.

## NOTES

- <sup>1</sup> J. Schumpeter, *The Crisis of the Tax State*, 1918, trans. W.F. Stolper, R.A. Musgrave, "International Economic Papers", 4, 1945, pp. 5-38 (orig. "Die Krise des Steuerstaats". *Zeitfragen aus dem Gebiet der Soziologie*).
- <sup>2</sup> C. Wickham, *Courts and Conflicts in Twelfth Century Tuscany*, Oxford 2004, especially the chapter *Pisa. Roman Law in practice*, pp. 108-167.
- <sup>3</sup> The Kingdom of Naples formally was one of the two parts of the Kingdom of Sicily, but in common parlance was referred to as Naples, or simply as *il Regno* [the Kingdom].
- <sup>4</sup> M. Pasquinucci, *City-States and Roman Administration: From the Conquest of Latium to the Empire*, in S. G. Ellis (ed.), *Empires and States in European Perspective*, Pisa 2002, pp. 1-12, also on-line: <http://www.clioh.net/books/1.htm>
- <sup>5</sup> M. Ascheri, *Le città-Stato*, Bologna 2006.
- <sup>6</sup> See P. Burke, *The European Renaissance. Centres and Peripheries*, London 1998, for the 'domestication' of the Renaissance.
- <sup>7</sup> Wickham, *Courts* cit.; Id., *Derecho Romano y práctica legal en las comunas urbanas italianas del siglo XII*, in "Hispania: Revista española de historia", 1997, 57, pp. 981-1007; R. Celli, *Studi sui sistemi normativi delle democrazie comunali. Secoli XII-XV*, I, *Pisa, Siena*, Florence 1976 in general for Senese and Pisan legislation.

- <sup>8</sup> The hierarchical model of the late medieval jurisdictional world, not only in Italy, is in the process of undergoing a paradigm shift, replaced by multi-directional models in which the jurisdictional actors are many and hierarchical levels must be verified in practice. Cf. P. Grossi, *L'ordine giuridico medievale, Rome - Bari 2006*; Jesús Vallejo, *Ruda equidad, ley consumada. Concepción de la podestad normativa (1250-1350)*, Madrid 1992.
- <sup>9</sup> J. Black, *Constitutional Ambitions, Legal Realities and the Florentine State*, in W.J. Connell, A. Zorzi, *Florentine Tuscany: Structures and Practices of Power*, Cambridge 2000, pp. 48-64
- <sup>10</sup> See, in general, G. Chittolini, D. Willoweit (eds.), *Statuti città territorio in Italia e Germania tra medioevo e età moderna*, Bologna 1991; especially E. Fasano Guarini, *Gli statuti delle città soggette a Firenze tra '400 e '500: riforme locali e interventi centrali, ibid.*, pp.69-124. The catalogue of the collection of statutes preserved in the Library of the Italian Senate (about 800 ms, and 4000 printed editions), can be consulted on line: <http://notes9.senato.it/w3/Biblioteca/StatutiMedievali.nsf/home?OpenPage>.
- <sup>11</sup> For the idea of looking carefully at “quasi-cities”, an idea which has had notable success, see G. Chittolini, “*Quasi città. Borghi e terre in area lombarda nel tardo medioevo*”, in “*Società e storia*”, 1990, 47, pp. 3-26, reprinted with the title *Terre, borghi e città in Lombardia alla fine del Medioevo*, in Id. (ed.), *Metamorfosi di un borgo. Vigevano in età visconteo-sforzesca*, Milan 1992, pp. 7-30; and in Id., *Città, comunità e feudi negli stati dell'Italia centro-settentrionale (secoli XIV-XVI)*, Milan 1996, pp. 85-104
- <sup>12</sup> The itinerant judges have been very carefully studied thanks to a vast research project the results of which are published in J.-C. Maire Vigueur (ed.), *I podestà dell'Italia comunale, I. Reclutamento e circolazione degli ufficiali forestieri*, Rome 2000. The end date of this survey is 1300, however before the period examined here.
- <sup>13</sup> Early guild statutes were frequently published in the 19th and early 20th century because of their linguistic interest. For a wide-ranging study of the workers of an important Florentine guild see F. Franceschi, *Oltre il “Tumulto”, I lavoratori fiorentini dell'Arte della Lana fra Tre e Quattrocento*, Florence 1993.
- <sup>14</sup> On the layers of unwarranted generalisations about the development of law merchant and maritime law (which demand a return to the sources and careful research into actual practice), see, for example C. Petit (ed.), *Del Ius Mercatorum al Derecho Mercantil*, Madrid 1997, especially the *Presentación* of the editor, *ibid.*, pp. 9-13 and V. Piergiovanni, *Derecho mercantil y tradición romanística entre medioevo y edad moderna. Ejemplos y consideraciones, ibid.*, pp.71-90. Cf. U. Santarelli, *Mercanti e società tra mercanti*, Turin 1989. A similar critical view of a supposed international merchant code is taken by E. Frankot in her chapter in this volume.
- <sup>15</sup> *Fondaco* is a word of Arabic origin and refers to merchants' warehouses. The Court of the Fondaco of Lucca had authority over the entire Lucchese territory, and the records of the Rota tribunal (see below, note 26) from the early 16th century on are preserved in its archive.
- <sup>16</sup> *Guida Inventario degli Archivi di Stato italiani*, vol. II, pp. 612-613.
- <sup>17</sup> A.K. Isaacs, *Tuscany and Veneto from the Thirteenth to the Sixteenth Centuries: the Impact of Cities*, in P. Blickle (ed.), *Resistance, Representation and Community*, Oxford 1997, pp. 291-304.
- <sup>18</sup> R. Savelli, *Presentazione* in Id. (ed.), *Repertorio degli statuti della Liguria (secc. XII-XVIII)*, Genoa 2003.
- <sup>19</sup> Prepared by Fasano Guarini, the map was published by the Italian CNR (National Research Council) to accompany the study, E. Fasano Guarini, *Lo stato mediceo di Cosimo I*, Florence 1973.
- <sup>20</sup> In a series of classic works G. Chittolini compared the vigorous actions undertaken by Florence (when, after subjecting Pisa and Pistoia, she redrew the jurisdictional maps of their territories) with the more accommodating path followed by the dukes of Milan, who bestowed numerous territorial jurisdictions on powerful personages of the court and of the countryside. These studies are gathered in G. Chittolini, *La formazione dello stato regionale e le istituzioni del contado*, Turin 1979 (reprinted Milan 2005).
- <sup>21</sup> A.K. Isaacs, *Le campagne senesi fra Quattro e Cinquecento: regime fondiario e governo signorile*, in *Contadini e proprietari nella Toscana moderna*. Atti del Convegno di studi in onore di G. Giorgetti, Flor-

- ence 1979, pp. 377-403; M. Ginatempo, *Crisi di un territorio. Il popolamento della Toscana senese alla fine del Medioevo*, Florence 1988.
- <sup>22</sup> Fasano Guarini, *Lo Stato* cit.; Id., *Le istituzioni di Siena e del suo stato nel ducato mediceo*, in L. Rombai (ed.), *I Medici e lo stato senese 1555-1609. Storia e territorio*, Rome 1980, pp.49-62; M. Ascheri, *Siena senza indipendenza: Repubblica continua*, in Id. (ed.), *I libri dei leoni: la nobiltà di Siena in età medicea, 1557-1737*, Siena 1996, pp. 9-69; for the Old state, see, for example, M. Montorzi, *Giustizia in Contado. Studi sull'esercizio della giurisdizione nel territorio pontederese e pisano in età moderna*, Florence 1997
- <sup>23</sup> On Cesare Borgia and particularly on the jurisdictional and political aspects of his short-lived Duchy of Romagna, see A.K. Isaacs, *Cesena agli inizi del Cinquecento*, in *Storia di Cesena*, III, *La Dominazione pontificia*, Cesena 1989, pp. 30 ff.; more recently M. Bonvini Mazzanti, M. Miretti (eds.), *Cesare Borgia di Francia, Gonfaloniere di Santa Romana Chiesa (1498-1503). Conquiste effimere e progettualità statale*. Atti del Convegno di Studi, Urbino 4-6 dicembre 2003, Ancona 2005.
- <sup>24</sup> The role of Gattinara in creating the legal and iconographical framework of the new imperial power was underlined by K. Brandi in his classic *Karl V*. Only recently have historians begun to give adequate attention to this central figure of the early 16th century. See J. Headley, *The Emperor and His Chancellor: A study of the Imperial Chancellery under Gattinara*, Cambridge - New York 1983; and now, amongst others, M. Rivero Rodríguez, *Gattinara: Carlos V y el sueño del imperio*, Madrid 2005.
- <sup>25</sup> A. Pacini, *Tra economica e politica: la giustizia civile e mercantile a Genova nei primi decenni del Cinquecento*, in G. Petti Balbi (ed.), *Strutture di potere ed élites economiche nelle città europee dei secoli XII-XVI*, vol. 1, Naples 1996, pp. 41-71.
- <sup>26</sup> A.K. Isaacs, *Politica e giustizia agli inizi del Cinquecento: l'istituzione delle prime rote*, in M. Sbriccoli, A. Bertoni (eds.), *Grandi tribunali e rote nell'Italia di antico regime*, Milan 1993, pp. 341-386; for an inquiry on Senese government held by representatives of Charles V in the mid 1520s, Id., *On Justice and Republics: Describing Tyranny and Buen Vevir in Early Sixteenth-Century Siena*, in R. Averkorn, W. Eberhard, R. Haas, B. Schmies (eds.) *Europa und die Welt in der Geschichte. Festschrift zum 60. Geburtstag von Dieter Berg*, Bochum 2004, pp. 1187-1207.
- <sup>27</sup> The aspect of the new Rotas' activities which first brought them to the attention of legal historians was their obligation to deposit motivated sentences, which later were used as jurisprudential sources. M. Ascheri, *I "grandi tribunali" d'ancien régime e la motivazione della sentenza*, Id., *Tribunali, giuristi e istituzioni dal medioevo all'età moderna*, Bologna 1989, pp. 85-183 (first published in H. Coing [ed.], *Handbuch der Quellen und Literatur der Neueren europäischen Privatrechtsgeschichte*, Munich 1976, II 2, pp. 1113-1194). On the uncertainties regarding the supposed role of 'supreme tribunals' ascribed to the Rota court, see R. Savelli, *Tribunali, "decisiones" e giuristi. Una proposta di ritorno alle fonti*, in C. Chittolini, A. Molho, P. Schiera (eds.), *Origini dello Stato. Processi di formazione statale in Italia fra medioevo ed età moderna*, Bologna 1994, pp. 397-421.

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- Id., *Politica e giustizia agli inizi del Cinquecento: l'istituzione delle prime rote*, Sbriccoli M., A. Bettoni (eds.), *Grandi tribunali e rote nell'Italia di antico regime*, Milan 1993, pp. 341-386
- Id., *Cesena agli inizi del Cinquecento*, in *Storia di Cesena*, III, *La Dominazione pontificia*, Cesena 1989, pp. 30 ff.
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