THE COMMON-PROPERTY FORESTS OF CANTON TICINO, SOUTHERN SWITZERLAND: RELATIONS BETWEEN A TRADITIONAL INSTITUTION AND THE MODERN STATE 1803-2003

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A forest, mostly chestnut, owned by the Corporation("Patriziato") of Arosio near Lugano and degraded by neglect and disease, undergoing restoration in February 2000.

PREFACE AND ACKNOWLEDGEMENTS

This study of 200 years of history of the common-property forests of Canton Ticino, southern Switzerland, in particular of the conflicts between these ancient institutions and the modern state, had its genesis in, of all places, Madagascar. It grew out of discussions, heated at times, held among members of a team of consultants who were in Madagascar in 1991 in order to design an institution-building project in the natural resources field. Madagascar is, of course, a classical case of a poor country with weak state institutions and undergoing massive resource degradation, including deforestation. Its private sector is also embryonic (or was at the time, after a long period of "socialism"), and in the countryside private ownership, especially land titling, was also rudimentary. The question before the project design team, including the writer, was what kind of institutions should be proposed in order to deal with various resource problems. In the case of forests and rangelands, long ignored or mismanaged by the state, the tendency among the team members was to advocate the creation, or revival, of common-property institutions, which would own and manage these resources. This was not surprising since the team's "Bible" was the then newly-published "Governing the Commons" by Elinor Ostrom (1990). The writer, aware of the poor record of forest management by common-property institutions in Switzerland (often the same ones that manage the "alps" or high-altitude pastures quite well) warned against too rosy a view of common-property regimes for forests, especially those on long rotations. He vowed at the time to tell some day one story of Swiss common-property forests in some detail as a cautionary tale. This study is the result of that vow.

The choice of Canton Ticino as a case study was easy because few Swiss Cantons have common-property institutions (known as "patriziati" or Corporations of Patricians or Burgesses) as entrenched and as active as this Canton. The forests of this Canton have long been a source of preoccupation in Swiss forestry circles. In addition, the writer has family ties to one Ticino "patriziato", and has known Ticino foresters for a long time. In this connection, he is particularly indebted to Ing. For. Ivo Ceschi, until recently Cantonal Forestry Director, for many informative discussions and for pleasant visits to the forests under discussion. The writer is also indebted to the archivists at the Cantonal Archives in Bellinzona, in particular Mr. R. Carmine who went out of his way to find uncatalogued materials. Over the years the writer has benefited from discussions (even arguments) concerning common-property institutions with Drs. Jamie Thomson, Asif Shaikh, Jacques Weber, Lars Carlsson, and Liz Alden Wily.

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I. INTRODUCTION

One aspect of the heightened "ecological awareness" that began in the 1960s, notably since Hardin's provocative article on the so-called tragedy of the commons (Hardin, 1968), has been a growing interest in the governance of common-pool resources, particularly those vulnerable to overuse and degradation but not easily amenable to either state supervision or private appropriation. This interest grew out of the initial debate over the management of natural resources, which tended to be polarized between advocates of more state control and those who saw salvation in the privatization of natural resources. The spate of environmental legislation adopted throughout the industrial world in the 1970s reflects the former view. Examples of the latter view include the call to privatize national forests in the United States and the United Kingdom, auction sales of "pollution rights", and Western promotion of land titling in developing countries.

More recently, however, alternative forms of governance have been sought, as it has became increasingly clear that "neither the state nor the market has been uniformly successful in solving common-pool resource problems" (Ostrom, 1990). The search for a "middle way" has led to the discovery or re-discovery of traditional forms of common-property management in both the developed and developing world. Much of the impetus for this scholarship has come from the practical need of development planners to find alternative ways to manage resources in countries where neither the state nor the private sector is effective, or even present in any substantial way. A reflection of this scholarly activity has been the creation of the Inter-University Working Group on Common Property in the U.S. in 1986, and its later transformation into the International Association for the Study of Common Property (IASCP).

Among the traditional forms of common-property management rediscovered by recent scholarship, especially in North America, have been the Swiss and other alpine communal management of summer pastures ("alps") (Netting, 1981; Ostrom, 1990; Stevenson, 1990). These high-altitude pastures have been used in common since times immemorial, and they are usually mentioned as a particularly successful or robust form of common-property management (cf. Ostrom, 1990, pp. 61-65, citing various authors), presumably worthy of adoption elsewhere.

Some of this literature on the alps mentions in passing that the same institutions that manage the alps also manage forests and other lands communally (cf. Ostrom, 1990, p. 64). There is thus a risk of either implying or assuming that the common management of forests has been as successful as that for the alps. This would be misleading, as some authors have indeed noted (Ostrom, 1990, p. 225, citing others):

> ... some Swiss villages were not able to manage their forests as well as they managed their meadows. Some of the commonly owned forests were divided among villagers to become individually owned woodlots. The lots were generally too small for effective management, and they degenerated until intervention occurred in the nineteenth century...

The whole story is, of course, more complicated than that. The present study was thus undertaken to show in some detail the record of communal management of forests in one Swiss Canton where the tradition of this management is probably more widespread and deeply-rooted than anywhere else in Switzerland. The Canton is the Ticino, located south of the main ridge of the Alps, and the only wholly Italian-speaking Canton in Switzerland. In this Canton, 78 percent of the total area and 74 percent of the total forest area are owned by common-property institutions to this day. These institutions may date from pre-Roman times, and until the mid-19th century they were a parallel form of local government. As late as 1908, they were powerful enough to force the repeal of a Cantonal Forest Act passed with the full force of the Swiss Federal legislation behind it. The study has focussed on the relations between the modern state established in 1803, in particular the Forest Service, and these common-property institutions as the latter have had to adjust to modern society and a changing economy. The writer has selected Canton Ticino as a case study not only because of the historical importance of its common-property institutions within Switzerland, but also because of personal and professional ties to these institutions and their forests. These ties may explain the interest, but they also greatly facilitated access to sources of information.

The study has sought to answer a number of questions of the historical materials examined. It has tried to see the extent to which the common-property institutions in question

converge towards, or diverge from, the theoretical definition of a robust or "long-enduring CPR institution" (Ostrom, 1990, pp. 88-102). In this connection the study, despite its focus on the forests, has explored at some length the question of membership in these common-property institutions, a question that is usually treated in general terms in the existing comparative literature on common-property management. Not surprisingly, non-Swiss authors tend to overlook the more arcane or unique aspects of Swiss political citizenship and its complicated relationship to common-property membership. In addition, membership in Swiss common-property institutions, which is essentially based on ancestral family ties and not necessarily related to resource use or need, is wholly dissimilar from that of institutions whose members actually need and use a specific resource such as a fishery or irrigation water, and therefore join such institutions. To this extent, Swiss common-property institutions cannot be used uncritically as "models" for such institutions to be created de novo, especially in developing countries.

The study has also tried to shed some light on why forest management has differed from that of the alps managed by the same institutions. More generally, the study has investigated the nature of the relationships between the modern state and these traditional institutions, especially the nature of the conflicts between the two. In brief, the study has asked why and how has the state intervened as it has. Finally, the study speculates on the old question ("old" at least in Switzerland) as to whether the forests would have been better or worse off as state forests from the start of the modern state in 1803.

II. HISTORICAL BACKGROUND

The prevalence of common-property forests in Canton Ticino (74% of the total forested area; 78% of the total Cantonal area is owned by common-property institutions) to this day is difficult to understand without an appreciation of the extraordinary conservatism of Switzerland, and of the probable causes of this conservatism. More than most European countries, Switzerland has retained archaic forms of local citizenship and of common ownership, and, within Switzerland, no Canton has done so more than the Italian-speaking Canton Ticino (cf. Neue Zuercher Zeitung, 26 January 1983; Annex A).

Multiethnic Switzerland, surrounded as it is by nation-states, is often described by Swiss historians and politicians as a "Willensnation", a nation "willed" into existence by a long history of resistance to absorption or control by powerful external forces, be they the Habsburgs, the Kingdom of Burgundy, the Holy Roman Empire, 20th century irredentism or, today, the European Union. Switzerland, born of one of the few successful medieval peasant revolts, has also defined itself in terms of a long shared history of local government, local roots, and careful balancing of ethnic, religious, rural and urban interests. Such a country is bound to be conservative because it feels threatened by rapid change, especially change from the outside that may undermine a consensus built over many centuries (as these lines are written in late 2004, the Swiss electorate has rejected the simplified naturalization of thousands of second and third-generation immigrants on the grounds that it would lead to the "balkanization" of the country).

Among the many archaic (some would say anachronistic) features of Swiss institutions is the Swiss concept of citizenship which is probably unique in Europe, and which has a bearing on the issue of membership in common-property institutions. The Swiss are first and foremost citizens of their Commune (municipality) of origin, then citizens of the Canton where this Commune is located, and finally citizens of the Swiss Confederation. The Commune of origin is immutable regardless of domicile, and figures prominently in all documents such as passports. Place of birth is largely meaningless in Swiss law. In the telling German expression, the

Commune of origin is where a Swiss is "heimatberechtigt", i.e., where he is entitled to be "at home" no matter what. Thus when the CIA expelled Guatemala's president Jacopo Arbenz in 1954, the president (still a Swiss after several generations abroad) at first sought refuge in his Swiss commune of origin, which, by law, had to take him in. It is also possible that Pres. Arbenz was still technically the co-owner of pastures or forests.

Ordinary Swiss citizenship is thus unusually restrictive (it is difficult to become a Swiss citizen because, in essence, a foreigner has to find a "commune of origin" that bestows primary citizenship, a nearly contradictory concept) and place-bound, as befits a conservative country that prides itself in its real or imagined rural roots. Citizenship thus retains overtones of Ancien Regime membership in peasant communes; indeed, as will be seen, there are historical reasons why this is so. In reality, however, modern Swiss citizenship, with its emphasis on primary Communal citizenship, stems from the first Federal constitution of 1848, and has more to do with 19 century poor laws than with an atavistic longing for medieval peasant communes. Europe and Switzerland were industrializing at the time, and the Swiss (careful as ever to balance town and country) wanted to avoid the creation of urban proletariats and to slow down the rural exodus, not to mention disperse the welfare burden. Indigent Swiss had to return to their Commune of origin, in turn bound to look after them.

It would seem logical to assume that, given the Communal foundation of Swiss citizenship, residence in one's Commune of origin equates with membership in local common-property institutions. To do so, however, is to underestimate Swiss conservatism. For most Swiss Cantons have retained a second Commune superimposed on the modern political Commune ("Einwohnergemeinde"; "comune politico"), which is even more restrictive and place-bound. It is known as "Ortsbuergergemeinde" in German (literally, community of local citizens), "bourgeoisie" in French, and as the "patriziato" in Italian-speaking Canton Ticino (less commonly, "vicinanza" or "corporazione"). The closest English rendition of these terms is "Corporation of Burgesses"; hence, the use of "Corporation" and "Corporate" throughout this paper when referring to the Ticino "patriziati". At the risk of confusion, but in deference to current Swiss terminology, the terms "Commune" and "communal" will be used to refer to modern local government ("Gemeinde"; "Commune"; "Comune"), which has "communal" or "public" but not "common" or "Corporate" assets. The crux of the matter is then who are these

"Ortsbuerger", "bourgeois", "patrizi" or "burgesses" who own the common forests and pastures, a question the rest of this chapter will explore.

The historical literature thus speaks of a so-called "Swiss communal dualism" (Caroni, 1964), (Fig. 1) which, even by European standards, is an extraordinary anachronism. Most European countries have eliminated the ancient Roman distinction between "vicini" ("neighbours") and "foresti" ("foreigners") in the last 200 years. In Switzerland, normally a fiercely egalitarian society, the concept has been retained in another victory of conservatism over modernity, or perhaps, more accurately, as another way of using the past to consolidate current identity. The Swiss have always tended to define themselves by exclusion rather than inclusion.

Not surprisingly, the Swiss Constitution (1874) has to do somersaults to justify the retention of this dualism. Thus Art. 4 states clearly that "all Swiss are equal before the law. In Switzerland there is ... no privilege of place, birth, family or of person". Art. 43 (4) restates that "the domiciled Swiss citizen [the Swiss have to declare a domicile formally] enjoys in his place of domicile all the rights of the citizens of that Canton, together with all the rights of the citizens of that Commune. The sharing of Corporation assets ("Buergergueter"), as well as the right to vote in purely Corporate affairs, remains, however, an exception, unless Cantonal legislation provides otherwise" (underlining added). Art. 44(3) adds that even a "naturalized person participates in Corporate benefits to the extent foreseen by Cantonal law" (underlining added). Thus, the Federal Constitution accepts the concept of Corporate exclusiveness, but recognizes that Cantonal legislation can derogate from this exclusiveness. As will be seen later, it is at the Cantonal level that the struggle over the relationship between ordinary citizens and "burgesses", or even of the maintenance of this distinction has occurred. This struggle has been bitter at times, especially in Canton Ticino. It should be added that most of the French-Swiss Cantons, which have always formed the most progressive part of Switzerland possibly because of their more direct exposure to the French Revolution, have solved the problem by eliminating the "bourgeoisies". Canton Valais, which is only half-French, is a notable exception.

Fig. 1. "Communal dualism" in Canton Ticino: a rare case of the Communal (municipal office of the modern Commune) and Corporate ("patriziato") offices under the same roof. Intragna, Centovalli, 1999.

1. Origins and membership of the Ticino "patriziati"

For the sake of English-language readers it should be emphasized at the outset that the current term "patrizio", as used in Canton Ticino to denote a member of a Corporation of Burgesses, has no aristocratic or even "patrician" connotation whatsoever. The rules for claiming noble origin are laid down strictly in the standard genealogy of the Canton's "patrician" families: noble origin requires a mention, prior to 1500, as a' "dominus" or "ser" (sir or lord) in notarized documents, especially petitions (Lienhard-Riva, 1945, p. XX). The few Ticino "patrician" families who qualify as having noble origins are mostly extinct (eg. Turconi family in Lienhard-Riva, 1945). Membership in a Ticino "patriziato" does, however, connote deep roots in a community, as defined legally since the establishment of the Canton in 1803. Most member families ("hearths") had deep local roots prior to 1803, and membership has been essentially closed since the 1840s. Some "patrician" families are documented as such as far back as the 12th century (Maggi, 1997). Thus being a "patrizio" does carry the prestige attached to being "established" in time, if not necessarily in the socio-economic sense. Until recently, it was, in fact, common for "patrician" families to be among the poorest rural ones. The social prestige attached to being a "patrizio" explains in part the persistence of an institution that has largely become economically irrelevant (Fig. 2). Ironically, the terms "patrizio" and "patriziato" were introduced in the period after the French Revolution (Napoleonic France ruled Switzerland -the Helvetic Republic- between 1798 and 1803; de facto until 1815) by radicals who wanted to discredit anything smacking of privilege. The new terms (which at the time had the same connotation as the current English term "patrician") were supposed to replace the less provocative historical terms "vicino" and "vicinanza" ("neighbour" and "neighbourhood") which are of Roman origin. The change of terminology did take place, but the underlying institution proved to be more resilient, as described below.

Academic disputes over the origin(s) of the Ticino "patriziato" have never been resolved. Some scholars claim a post-Roman, Germanic (Lombard) origin, similar to the "Talmarkgenossenschaft" (Billet, 1972, p. 117, citing K. Meyer), or "valley association" Others, probably a majority, believe the Corporations originated with Roman or pre-Roman forms of

Fig. 2. Conveying a sense of exclusivity: the Patricians'House of Riva S. Vitale, Ticino, 1997

rural organization (Billet, 1972, p. 117). Whatever their precise origin, the Ticino Corporations were probably typical medieval peasant communes with inalienable and indivisible property, with rights vested in families ("hearths") rather than individuals, until sometime late in the Middle Ages when cultivated farmland was lost to feudal lords or other private owners (Billet, 1972, p. 188; Guzzi, 1990, p.57 ff). In the Ticino, common property has apparently been restricted mainly to forests, mountain pastures ("alps"), and other non-cultivated land for the past 500 years. It remains so to this day. The new Canton promoted the privatization of the few remaining areas of common cultivable land with a special law adopted in 1806.

Membership has also remained by "hearths" ("fuochi"; French "feux") rather than individuals; some votes still are by hearths, and benefits are commonly distributed to hearths regardless of their size. Membership in the hearth was originally governed by custom or internal regulation; since 1857 it has been determined by a specific law. A summary of modern statutory definitions is given below.

Statutory definitions of Corporate membership. The first legal definitions of the Corporations and their members coincide with the first statutory attempts to define the modern, i. e., post-Ancien Regime, state. Technically, the first such attempt was the so-called Helvetic Constitution of 1798-1803, a French-inspired centralizing document imposed on Switzerland by Napoleon. This "foreign graft" so ill-suited the historic nature of the country that Napoleon himself, fearing unrest, replaced it with the so-called Act of Mediation of 1803, which restored the federal structure of Switzerland. Thus the 1803 Act is used here as the starting point. This Act contains the first constitution of Canton Ticino, and establishes the Canton as such after more than 300 years of Swiss colonial regime.

The Act of 1803 introduces two concepts that were to prove contentious for most of the early 19th century. Art. 3 states that, in those Districts where Corporations "existed before" (which meant most of the Canton), one of the conditions for full citizenship war membership in the Corporations; failing that, a citizen had to contribute to the "poor fund" in order to vote. Art. 4 went on to say that such contributions made a citizen "owner of the assets that belong to the

corporations", with a right to the assistance granted to the burgesses of the Commune". In other words, the 1803 Act tied political citizenship to membership in the Corporations; at the same time, in keeping with post-1789 spirit, it was clear that such membership could be acquired rather easily by financial means. The former concept was, of course, much welcomed by conservatives; the latter, much less so, as later events showed.

The 1803 Act also established the modern political Commune as the basic unit of government. But as historians point out (cf. Caroni, 1974, pp. 7-16), the Act may mention the Corporations, but did not ratify their existence in law. Hence, "communal dualism" does not date from 1803. It was the Cantonal Constitution of 1814 and later documents of the so-called "restoration period" that established the Corporations in law, and that severely restricted the membership in the spirit of the ancient (pre-1803) "vicinanza".

The Law of 1807 on Corporate membership. It is a measure of the historical importance of the Corporations in the economic and political life of Canton Ticino that as early as 1807, before the reaction of 1814 and later years, the first law was passed to define Corporate membership and to reinforce the link between it and political citizenship. The 1807 law affirmed that whoever in the past "had an exclusive right to the enjoyment of the general property and usufruct of their communities" will maintain that right. (The word used, "comune", is ambiguous because it is not clear whether the reference is to the traditional communities or the new political "communes" established in 1803; presumably the reference is to the former). Within the Canton "patrician citizens" were also given the right to become "patrizi" outside their own commune, whether or not they were domiciled there; the intent of the law was presumably to boost the economic status of the "patrizi", and possibly to reinforce linkages among patrician "hearths" related by marriage. The 1807 law repeated that "ordinary citizens" (or those with a simple right to residence, acquired through real property and residence exceeding 50 years) had to become "patrizi" in order to "exercise their political rights" (mostly voting and standing for office). On the other hand, the Law of 1807 was a small step back to a more "liberal" or "constitutional interpretation of the acquisition of the patrician status. Recall that the 1803 Act provided for specific financial procedures for acquiring that status. However, as early as 1804, the more reactionary legislature introduced the concept of the "voluntary contract", whereby it was up to the Corporations to

accept new members, regardless of whether or not the applicants had fulfilled the constitutional requirements. The Law of 1807 introduced the "obligatory contract", whereby the Corporations were obligated to accept new members who fulfilled the legal requirements for admission (Caroni, 1974, pp. 10-11).

On balance, however, the Law of 1807 and the Legislature were considered by the more liberal Executive to have reintroduced explicitly the "odious difference between neighbour and foreigner" of the Ancien Regime (Caroni, 1974, p. 9, citing the Executive of the time).

The Constitution of 1814. The Cantonal Constitution of 1814 marked the beginning, as elsewhere in Europe, of the period of restoration or reaction that was to last until 1848. The latter date marks, in Switzerland, not only the end of the leftist upheavals of the 1840s, but also the end of the civil war between conservative and progressive Cantons ("Sonderbundkrieg") and the founding of the modern Swiss federal state (U.S.-inspired Constitution of 1848; replaced by the current Constitution of 1874, revised in 1999). All these events marked the evolution of the Corporations.

The Constitution of 1814 stated unequivocally (Art. 13(1)) that the

> acquisition of patrician status can only occur by voluntary contract with a Cantonal Commune, by means of the consent of three-fourths of the patricians entitled to vote...

The Law of 1807 ("obligatory contract") was duly rescinded in 1816. The concept of the "voluntary contract" was further entrenched in the Cantonal Constitution of 1830 (Caroni, 1974, p. 12), which remained the Constitution of Canton Ticino until 1997. The Constitution of 1814, by thus granting discretionary powers to the Corporations, firmly established their independence; hence, it marks the formal start of "communal dualism", or the existence side by side of the political commune with its institutions, public assets, functions and general citizenship, and the "patriziato" with its institutions, common-property assets, resource use and restricted membership. The Revolutionary ideal of "egalite", and of the fusion of all special-interest communities into one modern political commune was thus to remain thwarted in Canton Ticino

to this day (cf. Billet, 1972, pp. 118-119). It is one aim of this paper to see whether this historical evolution, regardless of its democratic implications, has been beneficial or detrimental to forest management. More specifically, this study will also try to assess the relationship, if any, between the restricted membership of the corporations and resource management.

The Organic Law of 1835. The Constitutions of 1814 and 1830 did not, of course, settle the issues pertaining to the Corporations for very long. The questions of membership, of the linkage between political rights and patrician status, of the organization and of the legal-political status of the Corporations themselves and of their stewardship of natural resources that affect the entire population made it inevitable that the legislature had to address the issue of the "patriziato" periodically. This has indeed happened to the present. So contentious are some of the issues to this day that the organic law regulating the Corporations has been completely revised twice between 1962 and 1992. The recent revisions have also been dictated, however, by rapidly changing external economic and other circumstances.

For a start, the Constitution of 1830 spelled out the principle that admission to a Corporation required the consent of three-fourths of the members and that it was a "free and voluntary act", but left the details to subsequent legislation. This led to a long, and often bitter, debate over the matter of admission.

The debate was provoked primarily by a motion tabled by the President of the Lower House to the effect that "the admission of all Cantonal citizens to the Corporations must be made obligatory" (Caroni, 1974, p. 13). The motion argued historically that communal assets cannot be the exclusive property of some families, but must be accessible to all citizens. To do otherwise is to admit to the existence of a privileged caste. If examined historically, it was argued, all Corporate properties originated as grants (from either the Church or feudal lords) to entire communities. Later members of these communities were admitted to the usufruct of the communal resources. It is only recent legislation (since 1814) that has interrupted this historical process of assimilation of newcomers. Many patrician "hearths" today were not the original beneficiaries of the communal assets, only secondary ones. Ultimately, it was argued, there is no

difference in origin between a modern political commune and a Corporation (Caroni, 1974, p. 13): both start as all-inclusive institutions.

The debate also centered around a second critical issue. This concerned the optional or obligatory grant of permits for pasture, wood, water or other usufruct to non-patricians. Conservatives argued that to force Corporations to grant these rights amounted to a serious violation of property rights (which raised the issue, long unresolved, of whether Corporations are public or private entities; cf. the 1962 and 1992 organic laws). Liberals adduced evidence to show the inequity and inconsistency of the grant (or refusal) of pasture and other permits to non-patricians, including local families of ancient origin (the quaint expression of the time was "ancient communist families"). It must be recalled that, in the subsistence economy of much of 19th century Ticino, the ability to pasture animals and to collect wood and fruit in the forests was often critical to survival (Zimmermann, 1965).

The conservatives won the day. Thus the 1835 Organic Law contains both the principles of the "voluntary contract" for admission and of the discretionary grant of temporary permits to non-members to use corporate resources.

The end of the political role of the Corporations. The Cantonal constitutions of 1803, 1814 and 1830, as well as Cantonal citizenship laws until 1840, stated explicitly that the exercise of full political rights and the acquisition of citizenship were tied to membership in the Corporations (Caroni, 1974, p. 24 f f) . It was not until 1861 that this undemocratic linkage was completely severed. From then on, the Corporations retained only their economic role.

The erosion of the political role of the Corporations occurred as a result of abuses and of the more liberal tenor of political life from about 1830 onwards. The abuses consisted mainly of the "sale" of Corporate memberships on the part of poor Corporations to foreigners wishing to become Cantonal and Swiss citizens. This practice had the result, of course, of cheapening both Corporate membership and citizenship. The parliamentary debates of 1842 reveal, for example, that some Corporations were in name only, as they had no possessions, and were thus inclined to sell memberships to generate revenue (Caroni, 1974, pp. 26-27). That same year the Secretary of

State stated what was becoming increasingly obvious: "I truly do not know at all why it is necessary to belong to a Corporation in order to be a citizen" (Caroni, 1974, p. 27).

The year 1842 was pivotal because the 12-year moratorium on revisions of the 1830 Constitution expired. One radical revision proposed by the Cantonal government was the abolition of Corporate membership as a requirement for full political citizenship. This requirement was described in the ensuing debates as violating the "spirit and letter" of the 1830 Constitution itself (Caroni, 1974,F p. 28). The opponents of the revision fell back on their most "visceral" arguments: the Corporations are very ancient institutions, and as such they must be respected; if a citizen is stripped of his patrician status he becomes undifferentiated from the foreigner, and he loses his "Swiss character"; in assemblies, a mixture is created of people whose origins are unknown (Caroni, 1974, p. 29). Included in the category of "foreigner" were ordinary (i.e., non-patrician) citizens; conservatives were promptly reminded that these "foreigners" were, however, held to all other civic duties, including military service. Conservatives retorted with a typical atavistic appeal: prior to 1798, there were only "vicinanze" and "vicini". to perform political and all other public functions, and that the Corporations and patricians of 1842 were none other than the direct descendants of these. In turn, progressives reminded conservatives that political Communes had been established by the 1803 Constitution, and developed since then (Caroni, 1974, p. 29). Such was the traditionalist denial of the modern state as late as the 1840s.

The 1842 debate ended with the compromise proposal to create the inalienable communal citizenship ("attinenza"; "Heimatberechtigung"), which, as noted earlier, is the foundation of Swiss citizenship to this day. It should be added that the 1803 and later Constitutions had established the Communes, but not formal Communal citizenship. The conservatives (i.e., the patrician "ultras") accepted this proposal after they were given assurances that the granting of Communal citizenship in no way implied an acquisition of rights to Corporate assets (Caroni, 1974, p. 30).

The Cantonal government and its progressive supporters had not counted, however, on the even greater conservatism of the people at large. Thus, in a plebiscite, the people voted

against the proposal of 1842. To be a full citizen meant being a patrician. It is estimated that at the time, 70 to 80 percent of the population was of patrician origin; by 1970, it was under 15 percent (cf. Chapter 1.2).

It took the Swiss Federal Constitution of 1848, drafted after the political turmoil and civil war of 1847-48, to undermine the linkage between patrician status and full political rights. Art. 41 of the 1848 Constitution sought to equalize the status of Swiss citizens throughout the country, at least at the Cantonal level. The domiciled [Swiss citizen from other Cantons] enjoys all political rights of the citizens of the Canton where he resides, except for the right to vote in Communal affairs and to participate in the usufruct of Communal and Corporate assets. Art. 42 stated more precisely that every citizen of a Canton is a Swiss citizen. As such, he can exercise his political rights with respect to Federal and Cantonal affairs in the Canton where he is domiciled. However, these rights can be exercised only insofar as they meet the same conditions as for the citizens of the Canton; with respect to Cantonal affairs, rights are exercised only after longer residence, the length of which is determined by Cantonal legislation, but which cannot exceed two years...

The intent of the Constitutional drafters was clear. Despite remaining restrictions at the communal level, political citizenship was no longer to be tied to ownership, whether common or private. The Cantons were held by the new Federal Constitution to revise their own constitutions in all cases where the latter were not in conformity with the new principles. They were held to do so as soon as the 1848 Federal Constitution came into force (i.e., in 1848). In practice, it took the Ticino until 1861 to bring its Constitution of 1830 into line insofar as the link between Corporate membership and political citizenship was concerned.

Not for lack of trying. In 1851, a motion was introduced to abolish the property-cum-Corporate membership requirement for full citizenship (art. 16 of the 1830 Constitution). Once again the "patrician" deputies were persuaded to accept the revision with reassurances that common property would not be affected, nor presumably the rules for Corporate membership. Once again, the revision was put to the people who rejected it by 5,227 votes to 177 (Caroni, 1974, p. 34).This extraordinary result was due in part to the political "bad

temper" and "rage" of the time (Caroni, 1974, p.34); nevertheless, it is again evidence of the stubborn perception of the "community of neighbours" as the only legitimate form of political organization. Two more attempts to revise the Cantonal constitution, in 1852 and 1857, also failed.

In 1858, the Federal 'government, "perhaps sensing" the political difficulty of the issue in Ticino itself (Caroni, 1974, p. 35), declared art. 16 of the 1830 Ticino Constitution invalid by means of a Decree. Thus full political citizenship was separated from membership in a Corporation. The Canton duly published the Federal declaration, but the struggle did not end there.

The latest reaction had actually simmered since 1850, when the Federal government had obligated the Cantons to grant the stateless a "right of communal citizenship". This was presumably a response to the problem of indigent persons displaced by the European unrest of the 1840s. Recall that the concept of "communal citizenship" was unknown in Canton Ticino at the time, and that it was rejected in a different context in 1851 (cf. above). The fear was that the new "communal citizenship" would, in fact, amount to ipso facto "free" Corporate membership since the two were then inseparable in law and in people's minds. So great was this fear that some Ticino Corporations, at the "first whiff of Federal legislation", had actually liquidated their common property and divided the proceeds among their members (Caroni, 1974, p. 36) rather than have to share Corporate assets with new members forced upon the Corporations under the guise of "communal citizenship".

By the late 1850s, however, the struggle to retain the tie between citizenship and Corporate membership was rapidly becoming a losing one, in large part because of new Federal concepts of citizenship. Conservative law (Constitutions of 1803, 1814, and 1830; citizenship laws based thereon) had always tied Cantonal citizenship to Corporate membership, but the obverse had also been true. Whoever renounced or lost Corporate membership also lost his Cantonal (and Swiss) citizenship. After the 1848 Federal Constitution this was no longer true; even the conservative framers of the 1857 Organic Law on corporations (cf. below) recognized as much (Caroni, 1974, p. 37). In Switzerland, however, there is no such thing as Federal or

Cantonal citizens "at large"; primary citizenship is local. And if this primary citizenship is no longer bestowed by the Corporations, then the political Communes (established since 1803) must do so. The alternative, so feared by patrician conservatives., was to pry open the Corporations to universal membership. Thus, even the Ticino conservatives by 1861 accepted a new Cantonal citizenship law which established the concept of inalienable Communal citizenship ("attinenza comunale") which is valid to this day.

Thus from 1861 onwards the Corporations officially lost the last political vestiges they had. They became purely economic (and social) communities. The membership, which remained somewhat open until the 1830s and more rarely the 1840s, became effectively closed. From the point of view of the theory of common-property institutions (Ostrom, 1990), a restricted membership is a prerequisite for the soundness of such institutions. This paper will attempt to show, however, that the transition from restricted to closed membership can be lethal as it contributes to stagnation or final decay.

The Organic Law of 1857. In the midst of the debates over the linkage between citizenship and Corporate membership described above, the legislature replaced the Organic Law of 1835 with a new law governing the Corporations in 1857. It was to remain valid until 1962 (q.v.).

The law of 1857 originated with a bill of 1850 which sought to address primarily the long-standing issues of the division of tasks between the Corporations and the political Communes, of the possible merger between Corporations and Communes, and of the sharing of benefits between Corporations and Communes. These issues had simmered since the "liberal" Cantonal Constitution of 1830. Not surprisingly, liberals had worked steadily towards the eventual fusion of Corporations and Communes or, failing that, for a more equitable access to the benefits from Corporate assets. The modern Communes established in 1803 had gained in responsibilities (notably in education), and thus they were under pressure to secure more revenue. One obvious source, at least to liberals, was a greater share of Corporate revenues. The paper will return to these issues in a more relevant context (Ch. III.2).

Insofar as the issue of membership is concerned, the 1857 Law did not break new ground. It reaffirmed the concept of the "voluntary contract" (i.e., at the discretion of the Corporations) for admission of new members even if these fulfilled the legal requirements. The law did, however, impose on the Corporations the obligation to grant, against compensation, temporary usufruct to non-members (Caroni, 1974, p. 23). It then took several implementing laws and decrees to prevent the Corporations from thwarting, by means of arbitrary internal regulations, this intent of the Organic Law of 1857 (Caroni, 1974, p. 23).

The Organic Law of 1962. The impetus for a complete revision of the 1857 Law came primarily from the need to give the Corporations a modern legal definition, to update the norms of membership, to adapt the Corporations to contemporary Communal, administrative and commercial law, and to lay down the rules of internal administration. The latter followed from the legal nature of the Corporations, which is defined as follows (Art. 1, Law of 1962):

> The "patriziato" is a Corporation according to public law, autonomous within the limits set by law, the purpose of which is to maintain the traditional communal spirit ["spirito viciniale"] and to provide good government of the assets which it owns and their use for the benefit of the community as a whole.

This definition is a radical departure from the extreme "private property" views (i.e., Corporate assets are the private property of the Patricians or Corporate members) expressed in the early 19th century. It was not, however, new in 1962. Ever since the revisions of 1870 and 1875, the Cantonal constitution states crisply (art. 6) that the Corporations are guaranteed [as to their existence and the integrity of their assets]. The law regulates them ["the law disciplines them" in the harsher original text]

The constitutional "guarantee" had been a victory for the conservatives who had long feared the disappearance of the Corporations in the face of modern, integral "communalism" which began with the French Revolution (cf. Caroni, 1974, ch. 7). The statutory regulation, on the other hand, was the quid pro quo for the liberals who accepted the Corporations provided they were seen as semi-public entities subject to public law.

The preceding digression was necessary to understand the level of detail concerning internal administration contained in the 1962 Law as opposed to earlier legislation. In particular, the 1962 Law addresses an old economic issue in that it categorically prohibits any division of Corporate assets among members (cf. section on "quadrelle")).

Regarding the status of "patrician" and its acquisition, the 1962 law states (arts. 5-14) that the status of patrician is inseparable from the possession of Cantonal citizenship; that is, only a Ticino citizen can be a Ticino patrician, which is a complete reversal of the 1803-1848 concept, whereby only a patrician could be a Ticino (and Swiss) citizen; the status can be acquired by birth through the paternal or maternal lines, subject to a number of conditions; women acquire or lose the status depending on the status of the husband (since changed given the equality of women in law). The status may be granted to a Ticino citizen who is a citizen ["attinente"; "heimatberechtigt"] of the Commune in which the Corporation is located, and provided he has resided there for at least 20 years; he may be asked to be freed from a previous patrician status elsewhere; the law sets the fees required for incorporation, the fees to be used to pay down debts or to be used for public purposes [a principle discussed in connection with forest management]; the grant of patrician status extends to wife and minor children of the applicant.

Thus, the principle of the "voluntary" admission of new members is maintained by the 1962 law. It should be added that by the 1960s new members were not exactly pounding on the doors to be admitted because by then the economic imperative for membership (especially the right to pasture animals on common lands) had long since disappeared. As a result, the issue had long since lost its political urgency. The concern now was more one of revitalizing the Corporations by promoting fresh membership, and finding new roles for these ancient institutions.

The Organic Law of 1992. No sooner had the Law of 1962 come into force that political forces began again to question the relevance of the Corporations to the modern social, political and, above all, economic context. An enquiry into the status and role of the Corporations was conducted by the government as early as 1964, significantly at the instigation of the Alliance of

the Corporations (ALPA) itself (RPT, 1990, no. 197, p. 4). Presumably the motives were the Corporations' fear of being driven into extinction by irrelevance, and thus the desire to force the government to define new tasks for the Corporations. The brief 1964 inquiry was then the basis for the appointment, in 1970-71, of a formal Commission of Inquiry that tabled its report in 1975 (CSPT/DICT, 1975). Among the terms of reference for this Commission was the ancient question of the "possibility of implementing the integration of the Corporation into the political Commune" (cf. ch. III. 12).

The 1975 study, which had emphasized the membership and economic crises of the Corporations, was then used to draft a new organic law on corporations, adopted in April 1992. Except for a few minor clauses, this law is still inactive, as the necessary implementing legislation and regulations have not yet been adopted (early 1994). One reason for this delay is apparently conservative resistance to the more liberal aspects of the 1992 law.

Concerning membership the 1992 Law retains the main principles of the 1962 Law but liberalizes the admission clauses, apparently too much so in some quarters. Membership is still mainly by descent, subject to certain restrictions, but now with the matrilineal and patrilineal lines on equal footing as required by the 1971 Federal constitutional amendment.

As for the acquisition of membership, the "voluntary contract" is maintained. The requirements are, however, liberalized by contrast to previous legislation. Applicants must be Cantonal citizens with Communal citizenship ("attinenza") where the particular Corporation is located. They can also be other Cantonal citizens, without local Communal citizenship, but domiciled in the particular Commune for at least 10 years. In addition, if a Ticino citizen has been domiciled in the Commune where the Corporation is located for at least 50 years (25 years for a full-time farmer; a reflection of the ancient concept that farmers are more place-bound) and there are "no serious objections" to the application, the Corporation must accept the applicant. Residence in the Commune by one parent of the applicant counts towards the 50 years. It is apparently this clause, and the definition of "serious objections", which is one of the main reasons for the delay in the implementation of the 1992 Law. The "serious objections", unless narrowly defined from other law (hereditary, family, commercial, etc.; cf. RPT, 1991, no. 204,

&13), can, of course, be used as a "weasel clause" by Corporations to exclude members even when the law requires acceptance of new members. The "voluntary contract" or discretion (or arbitrariness) of the Corporations in matters of membership is still alive as a concept after some 200 years.

The preceding discussion of Corporate membership can perhaps best be ended with a few examples of the absurdities to which rigid rules of membership can lead. These examples are drawn from the 1910 Bertoni Report on the conflicts between Corporations and the state forest service, which is discussed in Chapter 2-1. This Report mentions a patrician family absent from its commune of origin for more than a century, but barred from Corporate membership in its current commune of domicile; as the Report puts it, one Corporation could thus "prune one of its dead branches", and another could "enrich itself with a live one" to everyone's advantage. Elsewhere a family has been absent abroad for over 150 years, but is still entitled to its share of usufruct. Another family is a member of four Corporations. In another Commune, a Ticino family resident for over 200 years is still considered "foreign".

In summary, membership in Swiss common-property institutions ("Corporations") has been restrictive and exclusive, and based on ancestral family ties. In the early 19th century it was, however, possible to buy one's way into membership at the discretion of the Corporations ("voluntary contract"). Until the mid-19 century Corporate membership was also the basis of modern political citizenship; the bias towards "communal membership" is still reflected in modern Swiss citizenship. Since the 1840s, however, local communal citizenship and membership in common-property institutions have become distinct from one another, with the latter based on ancestry and essentially closed. In the past 200 years, membership in common-property institutions has also become increasingly divorced from actual resource need or use. At the same time, since the early 19th century, non-members have been granted usufruct rights to common property, notably grazing rights in forests. In the last 200 years, the view of Corporation membership has also evolved from that of an "association of private owners" free to dispose of their common but private property (with some members more equal than others), to that of membership in a common but indivisible property of public interest. Some of these aspects of membership have had an incidence on resource management, perhaps most notably in the mid-

19 century when some Corporations, fearing the State imposition of universal Communal membership (and therefore a narrower slice of the cake for everyone) liquidated their forests.

2. Some geographical, demographic and economic statistics on the Ticino Corporations

There are 255 statutorily recognized Corporations of Burgesses in Canton Ticino, or slightly more than the political Communes (247) within which most of them are located. There are some Corporations that straddle more than one Commune, notably in Onsernone Valley near Locarno, where five Corporations have become fused into one "consortium". Mergers and consortia of Corporations are officially encouraged if they lead to more rational resource management (LOP, 1962, Title 5). Within the Corporations there are also sub-units known as "vicinati" "degagne", "squadr", and "bogge" depending on the region of the Canton. These sub-units usually reflect special uses or specific purposes; thus the "bogge" of the Leventina Valley in northern Ticino usually refer to specific alps (summer high-altitude pastures) exploited in common. Until their prohibition by the 1962 Law (art. 88), some Corporations also contained sections of woods ("quadrelle") or other lands ("sorti", "lotti") assigned to specific hearths for their "exclusive and perpetual enjoyment". The notorious "quadrelle" were particularly common in southern Ticino, and are described in detail in chapter II.5.

In 1989, the Corporations owned some 2,200 km2, or about 78 percent of the total area of the Canton (2,811 km2) (RPT, 1990, no. 197, p.5). The 106,000 ha of woodland and forest they own constitute about 74 percent of the total forested area of the Canton (AST, 1992; 1971 data; the 1965 Federal land-use census gives a figure as high as 91 percent, but its definition of "forest" is more restrictive). The rest of the Corporate land area consists mainly of alps, rough grazing and other uncultivated land and some urban and agricultural land.

In 1989, there were some 38,000 patrician "hearths", with some 80,000 members entitled to vote (RPT, 1990, no. 197, p.5). Of the total membership, however, only 68,000 were residents of the Canton, and of these only 27,000 were residents of the Commune where they are Corporate members. (RPT, ibid.); these demographic factors have an obvious influence on the

degree of participation in Corporate affairs. Total population of the Canton in 1990 was 285,000 inhabitants.

In general, the relative importance of the "patrician" population varies in time and space with the degree of importance of the primary sector (agriculture and forestry) in the economy. Over thejast century the active population in the primary sector and the "patrician" population have decreased, as percentages of the total population, as follows (Billet, 1972, p. 270; Biucchi, 1973, p. 20 ff).

Employment in primary sector	Patrician population
1888: 53%	est.60-70%
1920:34%	N/A
1950: 16%	est. 23%
1970: 5%	14%

In the more industrial southern Ticino with its large foreign population, the percentage of "patricians" in the total population in 1970 was below 10% (Biucchi, 1973, p. 25). In the same year, the highest percentages of "patricians" (68% and 61%) were to be found in the two valleys (Blenio and Vallemaggia) with the highest percentages of primary employment (26% and 20%) (Biucchi, ibid.). As the 1975 Commission of Enquiry Report on the Corporations points out, "underdevelopment" and a high percentage of "patricians" go hand in hand, which means that the industrial, tourist and other development then being promoted was a "fatal prospective" for the Corporations (Biucchi, ibid.).

Despite their vast land holdings, the current assets of the Corporations, if monetized, are rather modest. In 1989, their total real-estate assets were estimated at SFr 85 mill. (ca. US$ 55 mill.), and their total liquid assets at SFr 36 mill. (US$ 23 mill.) (RPT, 1990, no. 197, p. 5). To put these figures in perspective, the price of a villa in this climatically and scenically desirable part of Switzerland is usually in the SFr. 1-2 mill, range, normally on less than one-third ha of land. On the other hand, as the 1975 Commission of Enquiry Report points out (Biucchi, 1973, p.34), the true value of the common assets of the Corporations must be sought in the

inalienability of their natural resources, which are not profitable in a commercial sense, but which are extremely useful in the context of the entire economy and social life of the country.

It is indeed safe to say that the Corporations have survived to this day because of historical inertia, the social prestige attached to membership in the Corporations, but also, increasingly, because society recognizes that the Corporations are the stewards of inalienable resources of ecological and amenity value. Were these resources to be turned over to the public domain, the state would have to fund fully their supervision and management. As part of the public domain they would also lose the "inalienable" status granted to them under the Corporations' law. There is not much chance that even a fraction of the current Corporate lands would receive some other protective status, such as "forest reserve", or "park".

The Corporations are certainly not surviving because of revenues from their natural resources. On the contrary, their existence as resource managers is most immediately threatened by the low level of their revenues vis-a-vis the investments required to manage their resources. The massive report produced in 1975 by the Commission of Enquiry on the Ticino Corporations was the first attempt to take a hard and comprehensive look at the economic and financial aspects of these institutions. The following figures are drawn from that report.

Since the 1950s the net revenue for the entire Canton from sales of all wood cut in the Corporate forests has steadily decreased, and the absolute amounts have fallen below the SFR 1 mill/year (1957 prices) (Hofer, in CSPT/DICT, 1975, Part III, p. 51):

1957:	SFr	2.0	mill.
1960:	SFr	1.4	mill.
1965:	SFr	0.6	mill.
1970:	SFr	0.7	mill.
1971:	SFr	0.5	mill.

Total net revenue from wood products in 1957-1971 was SFr 17 mill., whereas total forestry investments were SFr 33.7 mill.; of this .total, the Corporations contributed only SFr. 4.5

mill, or 14% (Hofer, ibid., pp. 58-59). Forestry investments are subsidized by both the Federal and Cantonal governments. In the more recent years of 1966-1971, annual investments in Corporation forests have been of the order of SFr 3 mill, (pro-rated from total Cantonal investments in the forestry sector, SFr 4.3 mill./year for 19661971; Hofer, ibid., pp. 48-53). Orders of magnitude of the revenues in some of these years are given above. Taken separately, the forestry sector of the Corporations was and is clearly in deficit. Further details on the economic and financial aspects of the Corporation forests are given in Chapter II.

If subsidies in the resource sector (primarily forestry) are ignored, the overall financial status of the Corporations appears to be in better shape. For example, in 1969/70 alone, the total expenses (overhead, maintenance, taxes, etc.) of the Canton's Corporations were SFr 2.377 mill., but these expenses were only 78 percent of the total revenue (SFr 3.029 mill.; US$ 1.95 mill.). This surplus was due mainly to rents, interests, users' fees (Hofer, ibid., pp. 48-53) and, of course, to expenses kept artificially low by subsidies. Total figures mask, however, great differences in the financial states of the various Corporations. As might be expected, some are relatively prosperous, others are heavily indebted, with the bulk probably breaking even (cf. papers by Biucchi and Hofer in_CSPT/DICT, 1975).

The alp sector, the other main resource sector of the Corporations, is faring better than forestry, even though the alpine sector of the Canton's economy has been in steady decline since its peak in mid-19th century. Whereas in 1864, 558 alps were still being "loaded" (actually occupied and used in the summer) with 23,200 head of cattle, by 1965 only 201 alps were used by 12,800 head of cattle (Billet, 1972, p. 288). By the 1990s the totals must be still lower, although a certain stabilization of the alpine economy has apparently occurred (back-to-the-land movement, demand for specialty products such as goat or traditional "alp" cheese).

In 1957-1971, a total of SFr 8.8 mill, were invested in the Canton for the improvement of the alpine pastures; of this total, the Corporations contributed SFr 3.3 mill. (Hofer, ibid., pp. 58, 60). The credit side of the alp sector is more difficult to calculate because the Corporations take in certain amounts for alpine-pasture rents (of the order of SFr 150,000/year by the early 1970s) but the main revenues accrue to the individual members. For these, their alp revenues are only a

part of their total farming revenues. It is estimated that in one year (1966-67), total Cantonal net revenue from the alp economy was SFr 1.9 mill., or about 8% of the total net revenue from livestock farming (Biucchi, 1973, p. 78). These totals exclude the southern part of the Canton where the alp economy is negligible. Almost the entire alpine economy is controlled by the Corporations. It would thus appear that at least some, or perhaps most, of the individual members profit from the alp sector of the Corporations as the Corporations help to maintain the pastures from other Corporate revenues. In turn, the state is able to reduce its investment in the maintenance of the alpine economy thanks to the Corporations 'contribution (cf. above).

III. THE CORPORATION FORESTS AND THE MODERN STATE

1. Introduction.

The title to this chapter should not be taken to imply that, prior to 1798-1803, the "vicinanze" of the Ancien Regime had full control over their forests and never had to deal with outside influences. This impression would be erroneous because, at least during the 300 years of Swiss overlordship of the Ticino, forest management was apparently sound "not the least thanks to the intransigence of the [Swiss] Landvoegte [proconsuls] (Caroni, 1974, p. 45). It is a history that remains to be written. Equally erroneous would be the impression that the modern state's influence on the management of Corporation forests dates from the moment Canton Ticino and its legislative-regulatory machinery were established in 1803. The first phase of the relations between modern state and Corporations concerning forests was, ironically, one of state neglect and Corporate abuse. Until the mid-19th century, the Ticino, like the rest of Europe (cf. Duby and Wallon, 1976; Marsh, 1864), underwent a phase of severe deforestation (Caroni, 1974, p. 45) generally caused by population increases, early industrial demand for wood, and agricultural expansion. In the specific case of the Ticino, two additional causes were "greedy Corporations" and a "lack of will" to enforce government forest legislation given the extreme "private" view of the Corporations during this period (Caroni, 1974, p. 45).

Perhaps a useful way to introduce relations between the Corporations and the state forest service is to let a modern Cantonal chief forester summarize these in somewhat diplomatic terms (Grandi, 1960, pp. 4-6):

> The [Ticino] Corporation is derived from the ancient Vicinanza, from which it has acquired a vast public domain, initially administered like private property. Perhaps this was the root cause of a certain conflict between Corporate and forest authorities in ancient times.

The Corporations were reproached for exacerbating the difference in treatment between patricians and non-patricians, and here and there tendencies emerged towards speculation and exploitation for private purposes.

A. Bettelini in his book "The flora of the Sottoceneri [the southern Ticino]" of 1905 has even maintained that "there prevails [in the Corporations] a most deplorable spirit of extracting from the Corporate assets any and all immediate benefit while evading the State's vigilance, whereas it is only with great difficulty that they are ready for sacrifices the benefits of which are not immediate. In addition, the revenues derived from these assets instead of being devoted to the public good are enjoyed among patricians, such has the public nature of this institution [the Corporation] been degraded"

It is thus easy to understand how the crushing defeat [in a plebiscite] of the Cantonal Forest Act of 19 June 1908 -the implementing legislation for the Federal Forest Police Act of 11 October 1902-was caused by a people's initiative of the Federation of Corporations. And one of the main reasons for the opposition can be found in the definition of the public forest, which the Act applied to the Corporate forests, and which was seen as an unjustified attempt to reduce [Corporate] forest property to state property.

These malcontents and mutual mistrust raised more than once the issue of absorption of the Corporations by the Communes. The Ticino corporation, however, conscious of its historical origins as a public-law community, has increasingly understood its true function at the service of society, and in this sense it has evolved gradually and progressively. Nowadays we can state that the Corporation is a Public Body in the fullest sense of the term, and that it complements the Commune in catering to the public welfare. Having reached this objective, it can be stated that forest management in the hands of the Corporations is well looked after, perhaps better than if it depended from the Communes.

The new Bill on Corporations which will soon be approved [in 1962] in replacement of the Law on Corporations of 1857 will also reinforce this traditional Institution, and impart it an even clearer status as a Public Body.

The Bill will provide among other things for the absolute prohibition of the division [of proceeds from the liquidation of Corporate assets] and for the abolition of the "quadrelle". The latter are subdivisions of Corporate property into lots that are assigned to patrician hearths for their perpetual enjoyment.

It is obvious that the "quadrelle", which exist to this day in the Sottoceneri [southern Ticino] and especially in the Mendrisio region no longer have a *raison d'etre,* all the more so since for some Corporations they amount to a considerable obstacle to the improvement of the forest estates in the general interest.

The legislation foreseen, while it maintains certain usufructs, it places them within reasonable limits, and regulates them in a rational manner. So it is with the thorny issue of the distribution of wood products for domestic uses. The customary assignment of wood for personal use used to occur in a disorderly and irrational manner, and used to cause the forests and the Corporate economy inconvenience and damage, which, in any case, were already substantially reduced with the introduction of mandatory cutting by the Corporation; this was in contrast to the direct use by individual beneficiaries, as used to be the rule. With the adoption of the new law this [individual] use will be even more limited and better regulated so as to eliminate its negative impact on forest operations.

Nowadays we can state, without fear of contradiction, that the Corporation forest constitutes the backbone of the Ticino forest estate, and that it affords possibilities for undertaking modern and rational forest management. The way is open for the forest authority to implement all those measures that should increase the efficiency of the Corporation forest. The authority must lay out for each Corporation a plan of work by means of management plans, which are the most suitable such means. A commitment that should be taken very seriously. Each Corporation must have its management plan. In this

respect we can say that we are on the right track, and we must pay tribute to the Ticino patricians who usually accept the management plans as their guides for the use of the forest, and to which they adhere with discipline and rigour.

This 1960 statement by the Canton's Chief Forester must, of course, be taken with a grain of salt because its author, as a civil servant, had to tread carefully and optimistically when discussing a politically loaded issue such as the current resource stewardship by the Corporations. The latter probably had much more political clout in the early 1960s than they do today. As discussed later, today's senior foresters are more openly critical, not so much of the Corporations, but of a system that interposes this ancient and heavily-subsidized institution between the forest service and a forest estate that badly needs upgrading. At the same time, today's foresters also acknowledge the positive side of forest ownership by the Corporations (Ch. 111-12).

The Chief Forester's 1960 statement is nevertheless useful in that it touches on many of the recurrent themes of the past 190 years. These themes include:

~ the view of the Corporation as a private body with private property; an extreme version of this view prevailed during the first part of the 19th century;

—the tendency towards speculation and individual use of Corporate assets;

—the tendency towards immediate benefits, and the reluctance to sacrifice for the future;

--the depredation of the forests in the 19th century;

--the opposition to modern forest laws, especially the declaration of the Corporate forest as a public forest;

-the evolution towards the view of the Corporation as a public body controlling assets of public utility;

-the existence of "private property" within Corporate property, notably the "quadrelle";

—the struggle to control customary usage within the Corporate forest, especially the controversy over "free cutting" by individuals versus collective cutting by the Corporation and subsequent distribution of produce;

-the state's imposition of management plans on the Corporations; in general, the old question of whether the forests have been better off under the direct but often inadequate tutelage of the Corporations, or whether they have suffered by not having been part of, the public forest domain, under the direct but more distant control of the forest service.

Some of these themes have provided the subheadings for this chapter. Others, such as the last one listed above, are basic issues that this study has sought to address.

2. The "Private" view of Corporations and forest degradation. 1807-1857

There is a clear historical consensus that, during the first part of the 19th century, the Corporations were seen as private bodies ("co-property"), and that, as such, they could freely dispose of their assets and revenues for the benefit of individual "hearths" (Bertoni, 1910; Caroni, 1974; Franscini, 1837/1840). This view, including the extreme one that a Corporation is nothing but a "consortium of [individual?] private properties", persisted until the early 20th century (cf. Bertoni, 1910; Caroni, 1974), despite the statutory evolution towards a "public" view of the Corporations since 1857 and even earlier. It is equally well-established that the first half of the 19th century is marked by severe degradation of the forests, in part because of poor stewardship by the Corporations (Billet, 1972, pp. 126-127; Caroni, 1974; Franscini, 1837/1840; Grandi, 1960; Kasthofer, 1847; Lavizzari, 1943). Forest degradation continued, of course, beyond the mid-19th century, but by then a conscious effort was underway to reverse the trend (cf. Chapter III. 7).

2.1 The Corporation: Private or Public entity?

In the 19th century, three basic legal issues concerning the Corporations had to be settled or at least confronted. All three had a bearing on how the corporate forests were to be managed. "Civil" and "Patrician" Corporations. The first issue raised was whether a Corporation, which everybody seemed to agree was a "body" of co-owners" is, therefore, a "legal entity" (the "personne morale" in French legal parlance) such as a business corporation. As the leading modern historian of the Corporations points out (Caroni, 1974, p. 41), this would have had certain advantages, such as making the Corporation as such the "owner" of the undivided common assets, thus preventing the 19th-century tendency towards liquidation of Corporate assets and division of the proceeds among the members (cf. below). On the other hand, as the politicians of the time grasped, equating the Corporations of burgesses ("patrician corporations") with "civil" corporations would have meant extending ordinary corporate legislation to the former. In practice, this could have meant the dissolution of Corporations of burgesses because, under ordinary corporation law, a corporation or association can be dissolved if one or more owners no longer wish the particular body to continue (Caroni, 1974, p. 42, citing the Ticino Civil Code of 1837). As a result, the Organic Law of 1835 already provides that a person renouncing membership cannot claim any share of the "patrician property" (Ibid. p. 4'3). But it was not until the so-called "guarantee" of 1875 (cf. below) that it was stated explicitly "that the Corporations of burgesses cannot be equated with other corporations regulated by the Civil Code, and which can be dissolved at the request of one member" (Caroni, 1974, p. 43, citing a politician of the time). In return, the existence of the Corporations, which had been threatened with a forced merger with the political Communes ever since the latter's establishment under the French-inspired 1803 Constitution, was finally "guaranteed" by amendment of the Cantonal Constitution in 1875 (Caroni, 1974, p. 40).

The Corporation of Burgesses thus differed, in law, from the ordinary corporation through its indissolubility. It also differed in another fundamental way, in that some of its beneficiary members, notably women and clergy, were legally excluded from Corporate assemblies and administrative posts, even though this was against pre-19th century tradition. In this respect, then, the Corporations were equated with the "political society" at large, in which neither women nor clergy had any powers of decision (cf. Caroni, 1974, p. 43, footnotes).

Public or private Corporations. The second major issue was whether the Corporation of burgesses and, by extension, its real property, was "private", "public" or somewhere in between. At the time of the debate over the 1835 Organic Law, the prevailing view (though some feeble attacks were made against it during the "radical" period from 1798 to 1814) was still clearly that the Corporation of burgesses was a "private entity" subject to the law governing private property (Caroni, 1974, pp. 44-45, footnotes). By implication, such a view "denied any public interference in the management of the co-property" (ibid.). The prevalence of such opinions persisted well into the 1870s, when they were increasingly undermined by both the state of the forests and the new forest legislation (cf. 113). As late as 1869, the Ticino government itself undermined the notion of the inherently public nature of the Corporations by stating that the "Corporation has no territory, but only property" (Caroni, 1974, p. 46). There were, however, dissenting voices who, since the 1830s, had called attention to the need to consider the "general interest" without necessarily questioning the private status of the Corporations ("shared private property") (Caroni, 1974, p. 45, footnotes).

The 1857 Organic Law on Corporations, which remained in force until 1962, is curiously vague on the legal status of the Corporations. This law (Art. 1.2.) defined the Corporations as "the patricians of a municipality as assembled" and as "represented by the Corporate Assembly and by the local Municipality". Thus it was seen as nothing more than a municipal association, either self-administered or administered by the Municipality. It could incur debts, either with or without a mortgage on Corporate assets (Art. 18). Its financial accounting was subject to Municipal law (Art. 69).

The inherently public character of the Corporations was, as noted, increasingly recognized in the latter half of the 19th century, in large part as a result of forest degradation, recurrent flooding attributed in part to the latter, and because of modern forest legislation (Chapter III.7). The Corporations were eventually and unambiguously defined as "public bodies" with assets used for the "community" by the 1962 Organic Law (art. 1), which at long last replaced the 1857 Law.

Free disposal of capital assets. The third issue, inextricably tied to the issue of private property, was whether or not Corporate property was inalienable, or whether the Corporations were free to dispose of capital assets and to divide the proceeds among the members. A related issue was whether the Corporations were entitled to sell the usufruct (usually wood cut in corporate forests), and to divide the proceeds among the members. The opposing concept to the latter was that the usufruct should only be distributed in kind as needed (firewood, timber, grazing rights, etc.), whereas the proceeds from sales of products' should be retained by the Corporation as a whole for reinvestment.

In the first half of the 19th century the answer was consistent with the answer given to the question of private property. Corporations freely disposed of their capital assets and of their resource rents, and distributed the proceeds among the members. As described earlier (Chapter I), as late as the 1850s some Corporations preferred to liquidate their assets rather than share them with imagined new members "forced" on them by new concepts of Communal citizenship. The extreme "private" view of Corporate assets was, of course, also at the core of the resistance to the concept of "obligatory" sharing of usufruct with non-patricians (Chapter 1.1)

Not surprisingly, the history of the Corporations in the first half of the 19th century is one of speculation, unauthorized sales, wholesale liquidation of forests, inequitable distribution of proceeds and, presumably, personal enrichment (cf. Caroni, 1974, pp. 48-50). Those who suffered most were "poor and needy families" (ibid, citing Franscini, 1837-40). Consequences were endless disputes, the tendency to reduce the membership by hook or by crook so as to increase individual shares, the virtual bankruptcy of some Corporations, and, of course, the degradation of forests.

All these consequences emerge clearly from the numerous debates and inquiries held between the Organic Law of 1835, soon found to be inadequate, and that of 1857. Thus a Commission of Inquiry of 1845 speaks of an "enormous number of Corporation conflicts" apparently due mainly to the "alienation of Corporate forests" (Caroni, 1974, p. 50, footnotes). The Cantonal government even hoped that the disappearance of forests would eventually result "in a rapid decrease in litigation" (ibid.). These "Corporate quarrels" inevitably spilled over into

the political Communes with which they were then (1840s) closely bound, with the result that some of the Communes were ruined, presumably as the tax base was dissipated.

The 1857 Organic Law on Corporations reflects the growing ambiguity of the time concerning the division and disposal of Corporate assets. On the one hand, this 1857 Law explicitly allows division and disposal of Corporate assets, and even provides (art. 63) a rationale for such actions:

> in order to render the land more productive and thus to increase the welfare of the people, the division of Corporate assets is permitted.

On the other hand, the 1857 Law attempted to limit the free disposal of assets and the distribution of liquid proceeds among the members. Thus art. 65 provides that

> any division of Corporate assets remains suspended until the procedure of appeal against its convenience and utility has been exhausted.

All divisions must also be approved by two-thirds of the members on the basis of a written report by a commission (art. 64). The Law also provides for an appeal against the necessity and utility of such a division within a month of the decision (arts. 64, 65).

From the 1857 Law onwards, the struggle for the unalienability of Corporate real assets and against the notion of free disposal of assets and of monetary distributions went hand-in-hand with the struggle to recognize and establish the public nature and role of Corporate forests. And yet, the division of cash revenue from the felling of forests was sactioned explicitly as late as the 1870 Cantonal Forest Act which states with some prudence (art. 50)

> The [Cantonal Executive] can authorize those Corporations that have no common liabilities ["passivita patriziale"] to divide among the hearths part of the revenue obtained from the felling of forests.

By the 1870s, however, the disastrous effects on the overall state of the forests caused by the sale of Corporate forests and the division of cash revenue from the forests among Corporate members was fully realized. As will be seen, a great boost was the Federal Forest Act of 1876 which, for the first time, introduced the principle that the total forested area of Switzerland cannot be diminished. This struggle to eliminate the disposal of forests and the division of cash revenue from these disposals culminated in the 1962 Organic Law which declares the

Corporations' "administrative assets" which "serve directly to fulfill tasks under public law" such as forests [as opposed to "patrimonial assets" such as buildings] to be "essentially inalienable" (art. 89). The 1962 Law also prohibited "any distribution of Corporate assets or of rents from such assets among members" (art. 108). Corporate assets are only to be "enjoyed in kind" (art. 102). Capital rents are "intended to increase the Corporate patrimony" (art. 108). The 1962 Law forces the Corporations to set aside 10% of all proceeds from logging as a "forest reserve fund" (art. 101) to be used for forest management.

2.2 Forest exploitation and degradation

The forest exploitation and degradation that marked Canton Ticino throughout most of the 19th century were, as noted, part of an overall European trend related to population increase, urban and agricultural expansion, and industrial development. In the specific case of the Ticino, the main causes were probably, in a rough descending order of importance, the demand for timber from the adjacent, industrializing regions of Italy (especially Lombardy), a weak untried state which replaced the harsh Swiss colonial rule, and the greed or lack of foresight of the newly-empowered Corporations, especially under the 1835 Organic Law with its "private-property" orientation. The lack of forest laws was definitely not one reason, as excellent ones were passed each decade between 1807 and 1870 but rather the "lack of will to apply them" (Caroni, 1974, p. 45, footnote 263). The passage of new forest laws tended to coincide, incidentally, with major flooding and landslides in this storm-prone part of Switzerland (cf. Ch. III.7). Industrial development in the Ticino itself apparently also played a role in stimulating forest cutting, which led, in turn, to speculation, corruption of the Corporations, and abusive floating of timber (RPT, 1966, vol. XX, p. 71). In fairness, it should also be added that the Ticino of the 19th century was extremely poor, a largely subsistence economy marked by recurrent famine and by emigration, and in which people had to survive as best as they could.

The "golden age" of timber exports lasted approximately from 1830 to 1860 (Ceschi, 1986, p, 85). In the 1840s alone, 70,000-100,000 x 3-5 m logs, 20,000 x 3m boards, 750-1,000 MT of oak bark for tanning, and 40,000 MT of charcoal (mostly from beech) were exported annually, mainly to Lombardy (Ceschi, ibid.). Internal demand was still increasing by 1855, but by 1860

the annual forestry output was already cut in half from 1830 levels. There was persistent high demand for timber for railway construction in the 1870s (the Gotthard line was built in 1871—1882), but by then reserves of timber had disappeared (Ceschi, ibid.). By the early 1870s, the wood industry of the Ticino had in fact collapsed, an opinion corroborated by the eminent Ticino naturalist of the time (Lavizzari, (1988) p. 455). Lavizzari even forecast for the Ticino a fate similar to that of the Karst region, Greece, southern France, Italy and Asia Minor "where deforestation has proved irreversible" (ibid., p. 456). As early as 1837, the statesman Franscini reported (Franscini, 1837, vol. I, p. 229) that, in the last 30 years, abuses of forests had even spread to sacred forests"(the "faure"; the "Bannwald" of the German literature) and, "therefore, there is to fear for the safety of more than one locality on account of avalanche". Franscini was to prove prophetic, as in 1863, 33 persons were killed when a protective ("sacred") forest degraded by abuse failed to stop an avalanche (Ceschi, 1986, p. 92).

Lavizzari also deplored overuse in semi-quantitative terms as he estimated that, by the 1860s, "current production by far exceeds the effective and regular annual reproduction" in the forests. Professional forestry opinion concurred in this view. Thus the Landolt Report of 1861 on the state of Swiss alpine forests (which led to the landmark Federal Forestry Act of 1876; cf. Ch. III.7) states that in 1858-1860, annual wood consumption in the Ticino was double the annual yield (Landolt, 1864, p. 293). The Landolt commission felt that, with good management, the Ticino could be exporting 3 mill, cubic feet (sic) worth SFr I million, whereas by the late 1850s wood imports were deemed necessary to allow the Ticino forests to recover their the full productive capacity (Landolt, ibid.). The Landolt commission noted that coniferous high forest had disappeared from entire regions, and that beech forests were being transformed into low coppice. The tendency of Corporations to transform high forest into coppice, and the thrust of forestry legislation to reverse this trend were to persist well into the 20th century. As late as 1956, the Chief Forester of the Canton still mentioned the transformation of low coppice into high forest as a long-term priority for the Corporate forests (Grandi, in RPT, 1956, vol. X, no. 6).

A candid historical overview of Ticino forestry by Alliance of Ticino Corporations also provides some quantitative perspective on the devastation of forests in the 19th century. Thus in 1841, 400,000 m3 were cut (presumably mostly by the Corporations themselves), whereas only

about 73,000 m3 should have been cut according to foresters (RPT, 1966, vol. XX, no. 5). The sustainable yield of Canton Ticino in 1966 was, incidentally, 50 to 60,000 m3 (ibid.), presumably from a larger and better-managed forest estate. The same historical review reveals the usual paroxysm of unreason and even violence that tends to surround the collapse of a natural resource. Thus, the progressive forest acts of 1837 and 1840, passed in the wake of disastrous flooding, remained a dead letter as the legislature refused to pass implementing regulations until the 1850s (cf. Ch. III.7). In 1856, the first Forest Inspector was appointed, but he resigned in 1860 because he felt his life was in danger (RPT, 1966, vol. XX, no. 5). In 1863, the Cantonal legislature, dominated by the patricians, rescinded the implementing Forest Regulations of 1857, and dismissed all forestry personnel (RPT, 1966, ibid.). The new Cantonal Forest Act of 1870, passed after the record flooding of 1868, was subject to repeated attempts to repeal it, despite mounting pressure to protect forests stemming from flood damage, a collapsed wood industry, and the new Federal activism in forestry after the adoption of the Federal Constitution of 1874 (cf. Ch. III.7). The 1870 Forest Act is said to mark the beginning of systematic forest conservation and management in the Ticino. The lag effect of over-cutting was, of course, felt for a long time thereafter. Apparently by 1900, only one-fifth to one-tenth of the potential wood production was possible, thanks to "past barbarisms" (Ceschi, 1986, p. 95).

Aside from the geo-hydrological consequences of overcutting sloping forests (cf. Ch.I), one result of overexploitation in the early 19th century was the damage done to streams and fisheries by unregulated, export-oriented timber floating. Abusive floating of timber was indeed the perennial forestry issue in the Legislature during the period 1807-1837, and most of the forestry legislation from this period deals primarily with it. It should be added that a major issue in this connection had nothing to do with conservation: it concerned the marking and ownership of "found" floating timber.

The last word on forest degradation should be left to the Kasthofer Report of 1845-1847 (Annex B). It is perhaps revealing of the tenor of the times, especially of the frustration felt by progressive elements in the Cantonal government, that an outsider was called in to report on the state of the forests and on the "difficulties with a reform of the forest economy". It is true that, as Kasthofer himself points out, there were only two professional foresters in the Ticino at the time

(Kasthofer, 1847, p. 21). However, it seems clear that progressive Ticino politicians felt an authoritative report by an influential outsider provided them with more clout in the ongoing debate. Kasthofer was an ex-Forest Inspector and member of the Cantonal Executive of Canton Berne, one of the most influential Cantons in Switzerland. Kasthofer was, incidentally, the first of a series of Swiss-German foresters who were to exercise considerable influence on the evolution of Ticino forestry (Landolt, 1864; Merz, 1903; Eiselin, 1932; Leibundgut, 1962).

The picture of Ticino forests that the Kasthofer Report paints is not a pretty one. It contains the usual litany of misdeeds such as clear-cuts by speculators, the total lack of management plans, "free" or discretionary cutting (cf. Ch. III.4), the lack of State demonstration forests, and practices such as free-ranging goats, haying in forests, and litter and humus collection which had, of course, devastating effects on forest regeneration. Free-ranging goats (of which there may have been as many as 80,000) were a perennial political issue in 19th century Ticino, and the difficulty of reconciling the economic necessity of keeping small livestock with forestry concerns was such that a sub-chapter of the Kasthofer report is devoted to it (cf. Ch. III.8).

Kasthofer also attempted to put some figures on the "exorbitant sales of timber" for export. He estimated that the annual production was only one-third of what it should have been given the conditions of the forests (the absolute figures cannot be calculated from the traditional measures given), and that over 80 percent of this low production was needed to cover internal demand. In reality, the Ticino exported 10 times the estimated surplus without counting the charcoal exported (Kasthofer, 1847, pp. 48-49). He confirms that this excessive demand was coming mainly from Lombardy, as by then northern Italy was "denuded of forests".

In terms of the theme of this paper, the Kasthofer Report makes clear that the fault lay with the "devouring selfishness" of the present generation of forest users and with the weakness of the government at the Communal (municipal) and Cantonal levels. The "users" were, of course, mainly the Corporations. He stresses that damage was caused not only by "speculators who almost come to own the forests" but also by the "ordinary needs" of Corporate members (litter, hay, firewood, etc.) (Kasthofer, 1847, p. 16).

The Kasthofer Report concluded, however, that it would be erroneous for the State to intervene in a heavy-handed regulatory and punitive manner. Kasthofer adduced many examples from other Swiss Cantons and from Italy that showed the ineffectiveness of the authoritarian approach (Kasthofer, 1847, pp. iv-v). He believed in education, example, persuasion and in "seeking the assent" of influential local persons, that is to say the patricians (ibid., p. 16). Subsequent history shows that eventually a middle way was found between "persuasion" and strong State intervention, perhaps closer to the latter than the former.

3.3 Early forest legislation and regulations

During the first half of the 19th century the Corporate forests were degraded in part because, as noted, there was no political will to enforce existing forest legislation. For forest laws and regulations, "some of them excellent" (Caroni, 1974, p. 45), had been on the books since 1807:such laws and regulations were passed or issued in 1807,1808,1824, 1837, 1840, and 1857. Recall that the Forest Act of 1840 remained a dead letter until implementing Regulations were issued in 1857. Even these Regulations remained ineffectual, as the 1850s and 1860s were marked by the last stand of patrician reactionaries (cf. Ch. II. 1). Stringent regulations designed to enforce the provisions of the 1840 Forest Act were not issued until the Forest Act of 1870 was adopted; despite the delay (cf. below) they were nevertheless issued before the landmark Federal Forest Act of 1876. Thus it would be misleading to attribute the major shift of the 1870s entirely to Federal pressure (cf. Ch. III.7).

Until and including the Act of 1837, the legislation was concerned mainly, as stated earlier, with the floating of timber. The 1837 Act ("Forest Felling and Timber Transport by Water") hast however, a chapter (I) that regulates forest felling, albeit in terms of general principles. Thus it bans clear-cutting in sacred (i.e., protective) forests. Regulations are, on the other hand, left almost entirely to Corporate assemblies.

The Cantonal Forest Act of 1840 is considered the first law that "established a State intervention ex officio" (Pometta, 1949), as all forests belonging to the Communes, the

Corporations and "other public entities" are declared to be under the "special supervision of the government" (art. 1). In view of the subsequent struggle to have the Corporations and their forests recognized as "public" (cf. Chs. 111. 5, 7 and 8) this 1840 legislative language is remarkable. In its preamble, the Act also notes that Communal and Corporate forest regulations have not been up to the task of managing forests, and have fallen into disuse. Which did not prevent the Act from, once again, leaving regulations to Communes and Corporations, as described below, although by now regulations are to be "examined" by the government.

The State's supervision was to be exercised through its Forest Commissioner, the District Conservators, and the (political) Communes. The "good government of forests" is left to "Communal and Corporate regulations". Corporations are, however, to manage their forests according to their own regulations and the law (chapter 11(5)). Moreover, Corporate regulations are only in force after they have been "examined" by the Forest Commissioner and by the State Executive (art. 8). The Corporations are also to appoint forest wardens (art. 10). The wood cut in Corporate forests is to be sold by public auctions (art. 12). Young forests are to be protected against livestock, and goats can be excluded from such forests (arts. 13, 14). Common uses (hay, litter, grazing, deadwood collection) are recognized (art. 17). Clear-cuts are prohibited where there is danger of avalanches, landslides or floods (art. 24).

The 1840 Act is thus still focussed mainly on do's and don'ts rather than on principles of forest management which characterize the legislation of the 1870s (q.v). The 1840 Act does not mention "sustained yield" or the need for management plans.

"Sustained yield" and other management concepts are, however, mentioned by the implementing Forest Regulations which were finally issued in 1857, after a long political struggle to keep the 1840 Act from being applied. Thus art. 24 of these Regulations provides that the Forest Inspector will fix for all "public" forests (as defined under art. 1 of the 1840 Act) the sustainable yield, as well as the annual portion to be cut. Art. 68 repeats that forests are to be so managed as to ensure a sustainable yield, and that, therefore, free or discretionary cutting is prohibited.

Art. 57 declares the principle that no high forest can be transformed into low coppice, but rather that the opposite is encouraged. Speculation and common usages in Corporate forests tended, of course, to lead to low coppice. Special care was to be taken of sacred, i.e. protection forests (art. 60).

Under "principal use of the forest", the Regulations mention such principles as designated cutting areas, hammering of logs, no-go areas such as stream banks, no stump removal on slopes, and no logging in the summer because of fire risks.

Under "secondary uses", the Regulations prohibit grazing in new or regenerating forests, promote controlled grazing, and introduce the controversial principle that goats can be totally excluded from certain forest areas. A series of "special forest police prescriptions" then deal with specific items such as debarking, resin collection, leaving paths in sacred forests, and the transport of processed timber only.

Even the 1857 Regulations proved to be too "radical". As mentioned, the first Forest Inspector resigned as early as 1860 because his life had been threatened. Thus, for all practical purposes, the Forest Act of 1840 was never implemented.

It was not until 1870, after much abuse of the forests, the record flooding of 1868 and with the waning of the "private" view of the Corporations, that new legislation was passed to implement, finally, the "high surveillance" and other principles called for by the 1840 Act.

The 1870 Forest Act (often and confusingly referred to as the Regulations of 1870, despite their format as a law) stated once again that the "high supervision" of all public forests is conferred to a "government Department" and, secondarily, to the State Executive (art. 1). "Corporate offices and forest wardens" are now part of the "forest administration" of the Canton (art. 4). Corporate administrators are answerable to the District Forest Inspector, they supervise the application of the law, they appoint the forest wardens, and they convey violations to the local Forest Inspector (arts. 26-29). Thus in 1870 the Corporations became in effect an extension of the State, at least insofar as forest management was concerned.

Ch. VI of the 1870 Act is the technical core of this legislation. It calls for forest surveys and inventories, paid in part by the Corporations (arts. 41, 42). The Cantonal Forest Inspector will prepare management plans for all Communes and (corporations; in cases of disagreement, it is the Cantonal Forest Department that decides (arts. 43, 44). The management plans are to include the extension of the forested areas, the evaluation of the needs/demand for forest products, the designation of felling compartments, and prescribe felling cycles that "allow for annual cuts without interruption of the cycle" (art. 45). In strikingly modern language, the Act states (art. 45) that the felling compartments "are at the basis of good management and enjoyment of the forests", and it declares (art. 56) the principle of "sustainable yield" ("prodotto continuo"). This principle is incompatible with "free felling, that is at the choice of the consumer", which is, therefore, prohibited (art. 56). The issue of "free felling" is dealt with in some detail in Chapter III.4 because of its importance to Corporation-State relations in the late 19th and early 20th centuries.

The Act of 1870 also prohibited clear-cuts in areas prone to avalanches and landslides, and again stated the principle that high forest is preferable to low coppice (arts. 46, 47). AH cuts of municipal or corporate forests can only occur after the advice of the Forest Inspector (art. 48). A11 vacant land not otherwise used is to be reforested, and the planting of broadleaf species is encouraged on pastures (art. 55), presumably to reduce browsing pressure in the forest itself.

The Act introduced the obligation to "inform the Forest Service of all cuts, and to hammer-mark all high timber" (art. 57). In order to promote reforestation, the Act also authorizes the State Executive, on the advice of the Cantonal Forest Inspector, to "impose the redemption of prescriptive rights, and servitudes", thus helping to "reconcile agropastoral interests with forestry" (art. 60). This principle, like so many others, was already contained in the Forest Act of 1840. The question of servitudes is addressed in chapters III. 5 and 6. The total prohibition of grazing or haying in newly sown or planted forest can also be imposed (art. 61). The 1870 Act ends with an entire chapter (VIII) that regulates livestock grazing, especially by goats.

The Forest Act of 1870 is thus a modern piece of forestry legislation, much as it repeats many of the principles already contained in the 1840 Act. It marks the first substantial and effective imposition of State control on Corporate assets. Corporate administrators now become in effect an extension of the State forest service. A revision of the Act in May 1877 marks a further intrusion of the State, in that, with the entry into force of the office of the Forest Sub-inspector, it now becomes "optional" for Communes and Corporations to maintain their own forest wardens. Forest Regulations issued in September 1877 restated and expanded the concept of State supervision:

The high supervision of forests and woods belonging to the Communes, Corporations, Consortia and similar bodies, as well as to private individuals, is devolved to the [State Executive] and, more directly, to the Department of Public Works and the Forest Inspectorate

In general, forceful implementation of the 1870 Act followed the coming into force of the Federal Constitution of 1874, which marked the arrival of the Federal Government and its resources in the forestry sector, notably via the landmark Federal Forest Act of 1876 (ch. III.7).

4. The controversy over "free cutting"

Aside from the outright liquidation of forests and free-ranging livestock (ch. III. 8), one of the main reasons for the degradation of Corporate forests well into the early 20th century was the practice of "free cutting" ("taglio libero"). This was simply the cutting of firewood, utility wood such as posts, and timber in Corporate forests by individual Corporate members at a time and place of their own choosing. In theory, such cutting was supposed to be strictly for personal use, but it can be safely assumed that illegal cutting for sale was also common. The opposing concept, as articulated since at least the 1857 Forest Regulations (art. 68), was that only the Corporation would cut according to a management plan, extract the processed wood from the forest, and distribute the wood outside the forest, in kind and according to need. The 1870 Forest Act again explicitly prohibited "free cutting." (art. 56), but this time the State meant it.

In retrospect, it may seem odd that, given the damage to their own collective interests, it took the Corporations as long as it did to suppress "free cutting", and then only under the prodding of Federal and Cantonal legislation. The samples of correspondence between the Corporations and the Forest Service discussed below throw some light, however, on the practical difficulties of eliminating this practice. Among these difficulties were the organization and timing of Corporate cuts and wood distributions when individual needs varied so much in kind and in time, and the "inequity" or absurdity of preventing an individual close to the forest from meeting his needs in those cases where Corporate authorities and Forest inspectors were far away. Chronic issues were also the cost of Corporate (as opposed to individual) felling, processing of wood and wood distribution, and the difficulty of obtaining timely State approvals of cuts, especially in remote mountainous areas. Finally, if only the Corporations could cut timber and wood for sale, it meant that they also had to look after the marketing of these products. The correspondence reveals that this was often beyond the competence of the Corporations, which in vain expected the Forest Service to assume this responsibility. The latter was expressly forbidden by the 1840 Forest Act and related Regulations of 1857. And yet as late as the turn of the century the Corporations were still asking the State Forest Service to act as a marketing agent. Thus, for example, the Corporation of Faido wrote on July 3, 1900, to the local Forest Inspector to intercede on its behalf with the Federal postal authorities for the sale of firs as telephone poles (unlesss otherwise noted, all correspondence cited is from the Cantonal Archives, Bellinzona). The reply could not be found, but the Inspector presumably refused.

In order to understand the correspondence described below it should be added that enforcement of Cantonal forest legislation and regulations, notably the 1870 Act and its Regulations, was complemented by the Federal Forest Act of 1876 and subsequent Federal regulations (cf. chapter 111 .7). Of immediate relevance is a Federal decree of 1891, based on the 1876 Act, that declared "unacceptable, in principle, the distribution of wood/ timber on the stump in Communal and Corporation forests".

This meant that felling and processing of timber or wood and, where necessary, the hauling of products to the nearest road, were to be done in a "rational manner" under the "direction and supervision of the Forest Service". Owing to a late translation of the original

German text, this directive filtered down to the Cantonal authorities only by late 1898. Thus the "new system" of cutting, extraction and supervision referred to in correspondence is that instituted by the Cantonal forest service in 1898-99.

A long letter from the Corporation of Airolo to the District Forest Inspector based in Faido (both in the northern Ticino, with its long and snowy winter) can be taken to illustrate some of the difficulties and issues described above. In this letter dated April 15,1901 (see Annex A), the Corporate administration "begs to submit some observations concerning the new provisions" then being instituted by the forest authorities, that is to say

a) the absolute abolition of free cutting, except for [shrubby] green alder;

b) the cutting for internal use [is to be done] on behalf of the Corporation.

The letter goes on to say that the Corporation has never questioned the validity and usefulness of these principles. However, on the first point, the Corporation points out that it is faced with a much longer winter than the rest of the Canton, which means a long and heavy use of firewood. Although this heavy use was being mitigated by the increasing use of coal, the total suppression of free cutting in the coppice woods would mean an immediate increase in illegal cutting in the high forest or in the higher coniferous forests. Much of the present cutting occurs on land also used for grazing, and its suppression would lower the quality of the latter. This statement underlines the persistence of the Corporate view on the multiple use of the coppice woods, if not on the priority of grazing over other uses in these woods (cf. Chapter III. 8). The statement also plays on the Forest Service's concern for "high timber". Basically, the Corporation was arguing for more exceptions to the ban (beyond the green alder) "in order to prevent abuses" in forests the Forest Service really cared about, that is to say the coniferous high forest.

On the second point, the Corporation had much more to say, more than 5 pages to be exact. It was its understanding that the purpose of Corporate felling and processing was "better and more accurate use of timber", and, hence, lower consumption. The Corporation was already acting in this sense by granting one individual concession at a time, and expecting all processing to be done within 10 days so as to facilitate supervision by the Corporation itself. Under the

present system, felling concessions are also based on demonstrated need and on forest lots/timber stands commensurate with that need in order to avoid waste.

With the new system, the Corporation feared being swamped with requests for felling, processing and distribution at Corporate expense, especially for firewood. It also feared "lower cash revenues for the Corporation", to which the Chief Forester noted in the margin "why lower?" The letter goes on to argue that wood consumption would increase, and that the sharing of expenses for wood processing among members would increase the number already in arrears.

As to the details of the "new system", the Corporation felt that allowing minor private cutting up to 30 m3 (not so minor) is a welcome "concession" to "prevalent thinking" among Corporate members. However, in practice this limit could only be enforced in the case of timber processed into beams, which constitute an exceptional use. With more common uses, "clever exploiters" would know how to abuse the system, and thus they "would enjoy a privilege denied to most" or presumably those not so "clever". This, the Corporation contended, would lead to "odious conflicts and evident injustices". The presumably cynical remark by the Chief Forester on the margin at this point is unfortunately unintelligible.

The letter then returns to individual cutting vs. team cutting on behalf of the Corporation. If the team is not to be paid, then all members would have to be "equal in terms of time, strength and capability" presumably so as to avoid inequities. If the team is to be paid, obviously the cost of labour would increase. The Corporation is, on balance, in favour of payment in kind.

The Corporation concludes that its procedure of one individual concession at a time with the work to be done within 10 days, of no concessions for lime burning or other industrial uses but only for personal uses, of fines for violations, and of priority construction use for timber hammered for that purpose is "progressive", and should have been taken into account by the forest authorities. Thus the "absolute ban on free cutting" should be "abandoned". As for team cutting on behalf of the Corporation, if this system is indeed to be instituted, then "the minimum volume of wood that can be distributed" should be determined, the timber should be hammered, and interested parties should be forced to form a "consortium" that decides on the methods of

processing and distribution. The role of the Corporation would thus be limited to one of supervision and application of the relevant Forestry laws and regulations. In other words, the Corporation was resisting a "collective" role, in this case as a forest operator, that the new forestry laws and other legislation were imposing on it. It is a theme that recurs through much of the correspondence examined. The 19th century notion of an "association of individual co-owners" was proving to be a resilient one.

A month later (letter of 16 May 1901; Annex C), the Corporation of Airolo was commenting on various "alternatives" offered by the Forest Service presumably in response to its "observations". Unfortunately the correspondence from the Forest Service has not been found. Nevertheless it is clear that the Forest Service enjoyed considerable latitude in applying legislation. The letter from the Corporation notes that the "absolute obligation to fell and process timber in common is not contemplated"; communal work is optional. The Corporation was, however, wary of the informality with which the Forest Service was willing to accept compromises apparently worked out orally in a conference. It was not certain whether these compromises would be "in conformity with future forestry requirements". Thus it requested a formal document spelling out these "requirements" so, as to avoid future accusations of "abuse of authority". The letter also notes, by way of information, that a particular forest had been turned into a "sacred wood" ("fauramento"), and that "private rights" therein were being extinguished. The invocation of the ancient concept of a sacred wood ("faura"; the Ticino equivalent of the Swiss-German "Bannwald" used for avalanche protection) was a way of complying with controversial modern legislation., mostly of Federal origin, promoting the protective, i.e. societal, role of forests (cf chapter III.7).

At about the same time the Corporation of Airolo was sending its "observations" to the Forest Service, an assembly of the "patrician citizens" of Brugnasco, a hamlet within the Municipality of Airolo, sent a petition to the same Corporation protesting the new forestry regulations. In particular, it was objecting to the notion of communal work in the Corporate forests, to which each hearth had to contribute labour. In the first place, it was not right that a man should be compensated the same as a presumably "weaker" woman. In the second place, not all are free to perform labour at the same time. In the third place, 20 trees for 22 hearths for

firewood a year was insufficient. In the fourth place, they could not afford to go to public bid for the processing and distribution of the wood. The petition ended with the hope that this "protest" would lead to a return to the "old system" of free individual cutting. Fourteen of the 21 hearths who signed the petition bore the same name; another four also shared another name. It is an indication of the ingrown nature of the membership of some of the Corporations or sub-Corporations.

In late 1901, the Corporation of Airolo received another petition from some of its own members urging it to complain to the relevant forest authorities regarding the new system of communal work. It is not clear whether there had been a breakdown in communications regarding communal work, or whether the Forest Service had, in the meantime, gone back on its word regarding optional communal work. The petition notes that

> experience teaches that communal work is done unwillingly and without profit, and can also cause difficulties as a result of the differences in capacity that exist from concession-holder to another.

The petition goes on to argue that only the rich would profit from the alternative system of awarding contracts for the felling and processing of timber. The poor cannot share the expenses. Those excluded would then obtain the timber or wood they need by fraudulent means, with incalculable damage to the forests. Better to allow individual concessions. A compromise solution in order to reconcile forestry and private interests would be to grant concessions to groups of no more than 4 or 5 participants who work equal areas during brief periods so as to allow adequate supervision. Group concessions should be staggered in time so that forest wardens can supervise them in turn. The petition called attention to the late date (November), given that the concern was for timely cutting of firewood.

The Corporation of Airolo, in a covering letter to the District Forest Inspector (November 3,1901), describes the petition as reflecting

> a real revolt against the order of things established by the higher and forestry authorities ... We [the Corporation] must necessarily declare the impossibility of imposing the new system, as we would be powerless to suppress abuses which, by reaction, we inevitably predict during the winter [illegal cutting of firewood]...

Major cutting permits, to be "executed on behalf of the Corporation", were for a time granted by Decree of the Cantonal government on the recommendation of the Forest Service. A 1904 example is given in Annex. This particular Decree also states that the "revenue cannot be divided but will be used in conformity with art. 50 of the [1857] Organic Law, including the obligation to reforest the area cleared..." Recall that art. 50 of the 1857 Law authorized the division of revenue if certain conditions were fulfilled. This 1904 concession was also granted on the condition that goats would not graze in the particular locality. Such were the governmental priorities of the day.

The 1912 Cantonal Forest Act, which remained in force until 1998, eventually and unequivocally imposed the concept of felling and distribution of processed wood "on behalf of the Corporation" but added an exceptional clause. Thus art. 31 states that

> for the allocation to individual hearths of firewood or construction wood for domestic use, the Corporation will as a rule carry out the felling on its own behalf and will assign wood which is already processed. In exceptional cases, taking into account local customs and the forestry and economic conditions of the villages, the Cantonal Executive can approve a different method of allocation.

The exceptional clause is retained in the Organic Law on Corporations of 1962 (LOP 1962) which permits (art. 106) the allocation of timber on the stump in "extraordinary cases" such for the building and repair of houses and stables in mountainous areas lacking access by road or cableways, provided the petitioner supplies "serious guarantees" that the cutting will be done "correctly".

"Free cutting" did not, of course, end with the passage of the Forest Act of 1912. At the very minimum, so long as the "quadrelle" (forest lots assigned to specific hearths for "perpetual usufruct"; cf. Ch. III.5) existed, it can be assumed that discretionary felling outside a forest management plan took place. The "quadrelle" were finally banned by the Organic Law of 1962. Even without these "private" lots, individual felling probably occurred with or without the connivance of the Corporation as a whole.

Thus in 1923, an Executive Decree placed so-called "coppice thinning cuts" on the same footing as ordinary cuts, and were made, therefore, subject to cutting permits. This Decree was aimed mainly at private forest owners, but it can be assumed that the practice was common in Corporation forests. That is to say, if an individual needed, for example, a pole, he simply removed one or more shoots from a coppice stool. This practice was obviously easier to conceal than the cutting of an ordinary tree.

"Free cutting" was, however, primarily concerned with firewood. As each hearth was traditionally entitled to an annual harvest of firewood, people simply helped themselves as they saw fit, particularly in remote mountainous areas. In the 1930s, when the Depression temporarily halted or reversed the rural exodus and strengthened markets for traditional products such as firewood (I. Ceschi, Chief Forester, oral comm., 1994), individual cutting for own use and for sale probably increased.

As late as 1960, the Chief Forester noted that "disorderly and irrational" cutting had already been reduced by the requirement that Corporations cut on members' behalf, and allocate construction or firewood already processed (as per Forest Act of 1912, art. 31). He hoped, however, that the new Organic Law on Corporations (LOP 1962) would "further limit and regulate" the "direct use by individual beneficiaries" (Grandi, 1960, p. 337). This the Law of 1962 did as it imposes an "annual allocation of processed firewood" (art. 104).

No clear-cut documentary evidence has been found to show that the gradual imposition of forest management plans on Corporation forests since the Forest Act of 1870 (art. 43), and especially since the Forest Act of 1912 (art. 21), had helped to reduce "free cutting". It seems

reasonable to assume, however, that this has been the case. The fact that a forest has been surveyed, inventoried, and subdivided into felling compartments or other management units according to a well-publicised plan is bound to act as a deterrent to all but the boldest wood poachers. In the boom years since 1960, the economic incentive to resort to free cutting has virtually disappeared.

5. Private Property within common property: the "quadrelle"

As described in the introduction, Ticino common property has long contained land assigned to individual hearths in "perpetual usufruct". These "allotments" have been variously known as lotti (allotments), sorti (lots, as in drawing of lots), and, in the case of forests, as quadrelle (literally, square plots). Short of the extinction of a particular family, in which case the lot reverted to the Corporation, the lots amounted to "private" property. The quadrelle were particularly common in Mendrisio District, in the southernmost part of the Canton, where in some cases entire Corporate forests were "quadrellate" or allotted, and thus, for all practical purposes, ceased to exist as common property. In the history of the Corporations of the last 150 years, the effort to get rid of these "private" anomalies figures prominently.

According to the statesman Franscini, most of the quadrelle are not of ancient origin, but stem from the time of the Act of Mediation and the establishment of Canton Ticino (1803) (Franscini, 1838, vol. Ha, p. 253). If that is so, then it can be assumed they amounted to land grabs at a time of weak government and in the institutional vacuum following the collapse of the Ancien Regime. Franscini, with his usual insight, adds, however, that "good has come from evil", in that the southern Ticino, where the quadrelle were common, has

> escaped the horrible depredations that are being deplored [in the early 19th century] more and more in the northern Ticino where the forests are kept and used in common.

He goes on to say that at a time when common property was not regulated by the State, the quadrelle offered the protection of private property but that when good management was imposed on common property, then "private lots" became an obstacle to that management

(Franscini, 1838, ibid.). One wonders where examples of the latter were found in the 1830s; none are mentioned. In general, Franscini suggests that, at least in the early 19th century, "good" common-property management was better than "average" or perhaps even "good" private management of forests, a proposition the test of which must await another inquiry. On the other hand, Franscini and other observers all agree that "bad" common-property management seems to have been worse for the forests than "mediocre" or perhaps "bad" private ownership.

The historian Pometta, in his review (Pometta, 1949-1954) of the State's intervention in the management of private forests, concurs in Franscini's assessment of the equivocal role of the quadrelle in the early 19th century. On the one hand, they made "entire common woods disappear", and thus those Corporation members who missed out on the allocation of quadrelle were robbed of their common usufruct. Pometta even argues that the quadrelle system is responsible for the complete disappearance of the Corporations in parts of the Sottoceneri (southern Ticino); he adds, however, that the quadrelle may have destroyed some of the Corporations, but not their woods (Pometta, 1951). On the other hand, woods that thus became "private" were better managed than Corporation woods thanks to the "lively diligence" of their individual owners (Pometta, 1949, p. 8). The quadrelle not only were generally "well kept", but they helped to keep livestock out of the forests and they prevented wholesale clear-cutting of Corporation forests (Pometta, 1951; 1953). The system apparently degenerated with the rural exodus, and with the loss of control of Corporation forests to timber fellers and merchants (Pometta, ibid.) from the 1830s on. From a theoretical point of view, the quadrelle are thus an interesting test case of private vs. common forest management.

It is curious that the 1847 Kasthofer Report on the state and management of the forests of the Ticino (ch. III.2) does not mention the quadrelle at all. As the Report does not mince words in other respects ("devouring selfishness of the present generation", p. 10), the reason for this omission cannot be attributed to political pressure. It appears more likely that Kasthofer chose to remain at the level of general policy, and to avoid comments on the internal administration of the Corporations.

In the early 19th century, the quadrelle seem to have fitted in well with the "co-property" concept of the Corporations, as they were not seriously challenged in the legislature. Some "co-owners" simply "co-owned" more than others; the sociology of this two-tier system is unfortunately unknown to the writer. Elsewhere, the assignment of quadrelle apparently degenerated into a land grab pure and simple, and common property disappeared altogether. On the other hand, as early as the Forest Act of 1840, which remained essentially uninforced for 30 years, and related Forest Regulations of 1857 already spell out clearly the principle of the "indivisibility of public forests" which Corporation forests were supposed to be. As the Federal Landolt Commission Report of 1861 (Ch. III.7 of this study) points out, one problem was the inconsistency between this early Cantonal forest legislation and the Organic Law on Corporation of 1857 (LOP 1857), which allows (arts. 63-67) the division of corporate assets (Landolt, 1864, p. 180).

The first serious challenge to the quadrelle coincides with the beginning of modern forest management in the 1870s. Four basic interrelated factors were at work by this time: 1) the devastation of the forests after some 40 years of abuse, and its geo-hydrological consequences (flooding, avalanches, landslides); 2) the passage of the first modern Cantonal Forest Act in 1870, which imposed forest-management plans on Corporation forests; 3) the adoption of the new Federal Constitution in 1874, with its emphasis on equality before the law, and its grant of Federal competences in the fields of forestry and water management; 4) the passage of Federal forest legislation focussed on the indivisibility of public forests and on the retirement of servitudes weighing on these forests; recall that by this time Corporate forests were recognized as "public" forests.

The Cantonal Forest Act of 1870 did not prohibit the quadrelle as such, but its imposition of forest-management plans on Corporate forests was bound to prove inconsistent, in the long run, with the maintenance of a patchwork of "private" lots used separately within these forests. Documentary evidence of the first collisions between the State and the Corporations over the issue of the quadrelle. particularly as a result of the imposition of the new management plans, is unavailable so far, and must await further archival work.

In 1876, largely as a result of the Landolt Commission report on the state of the Alpine forests (Landolt, 1864), the first Federal Forest Act was adopted (until 1897-1902, it applied only to mountain Cantons, such as the Ticino). This Act already prohibited the creation of new servitudes in public forests; this included Ticino quadrelle (Pometta, 1951). This clause of the 1876 Act was reflected in the Ticino by the implementing Forest Act adopted by the Canton in 1877, which repeated the prohibition of new servitudes. [Recheck]

At the Federal level, the 1902 revision of the 1876 Act, which remained in force as the Federal Forest Act until 1993, went further, as it prohibited any division of public forests for ownership or usufruct (art. 33). As the historian Pometta points out, this clause spelled the end of the existing quadrelle (Pometta. 1951). As it turned out, however, the quadrelle died a long, lingering death.

With the delay typical of the pre-WWI period, Canton Ticino did not get around to passing a new Cantonal Forest Act to implement the Federal legislation of 1902 until 1908. As events would have it, the 1908 Act did not survive a referendum, and implementing legislation was not passed until 1912 (cf. chapters III.9 and 10). Among the bitterly contested clauses of the ill-fated 1908 Forest Act were those concerning the quadrelle.

In line with principles spelled out by the 1902 Federal legislation, the 1908 Cantonal Forest Act prohibited any division of public forests (Corporation forests were unequivocally declared as such by art. 2) without the consent of the State government (art. 16). The quadrelle were to be extinguished as the forest matures and is cut; in any case, all "divisions for enjoyment" were to cease within ten years of the entry into force of the 1908 Act (art. 17). The Act further restricted the quadrelle in that all uses not foreseen by forest-management plans were prohibited (art. 24). Finally, the Act declared that "servitudes that conflicted with the good government" of public forests could be forcibly extinguished, presumably at any time, with the Cantonal Executive as the final arbiter (art. 35).

The bitter legislative debates over the 1908 Act should have warned legislators that final adoption of the Act was not going to be easy. As far as the quadrelle were concerned, earlier

versions of the Bill went further than the Act eventually passed. Thus the quadrelle were to be extinguished within five years, a deadline opposed for fear of "serious legal challenges" (PVGC, 1907/08, p. 336). In general, the debate over the 1908 Forest Act had become a debate over the very existence of the Corporations (cf. Chapters III.9 and 10). An early extinction of the quadrelle was seen by some proponents and opponents as a way of speeding up the ultimate extinction of the Corporations. The compromise eventually adopted was the extinction of the quadrelle within ten years (art. 17). The final version also added that "issues appertaining to the extinction" (i.e., challenges) were to be "within the exclusive jurisdiction of the State administration". In other words, the **quid pro quo** for a longer deadline was to be no legal challenges in the courts.

The Forest Act of 1908 was defeated in a referendum, but mostly because of the issue of "protective" forests and related restrictions imposed on their owners (ch. III.9)., The Bertoni Report of 1910, commissioned by a chastened Legislature, does mention, however, the quadrelle as one of the contentious issues. In general, this Report refers to the 1908 Act as being needlessly aggressive against the very dignity of the Corporate administrations, making them wards even in matters that have nothing to do with forest science, and shortsightedly doing violence to the reality of the divisions for enjoyment [the quadrelle among others], with the 1908 Act even going beyond the requirements of Federal legislation

The Bertoni Report notes that the division of Corporation forests into quadrelle is the "usual regime" in southern Ticino, especially in Mendrisio District (between L. Lugano and the Italian border at Chiasso). There, the coppice forest was divided roughly into as many lots as there are hearths, and assigned to these hearths in "perpetual enjoyment". If the hearth becomes extinct, the quadrella reverts to the Corporation, which assigns it to a hearth waiting for its turn. If the number of hearths is increasing (a hypothetical situation by the 20th century; RCZ), then it is the new hearths which may miss out altogether on the quadrelle. If the number of hearths is decreasing, then there can be a surplus of available quadrelle. in which case the Corporation auctions them off to members.

Art. 17 of the 1908 Act, pace Bertoni. was a "drastic measure" (extinction within 10 years) which affected the "legitimate expectations" and the "agricultural interests" of thousands of people who had "adjusted to a forestry regime never contested and never discussed" before. Thus people felt "deprived of a peaceful ownership", an action which was "all the more questionable in that the regions of the quadrelle are often the greenest and sometimes the best managed ones".

This passage of the Bertoni Report of 1910 merits some comment. It reflects, above all, the importance of the quadrelle system in the rural economy of the time which, in places, was barely above the subsistence level. It gave access to forest land to people who, for the most part, could not have acquired this land, but it did so on a guaranteed and discretionary basis. Thus the system seems to have combined the advantages of the common and private property systems. The coppiced forests or "palina" (mostly chestnut) were an indispensable source of poles for vineyards and construction, stable litter, and firewood; fruit, grazing, mast-feeding and again litter were more typical of the non-coppiced forest ("selva"), usually at higher elevations (Figs. 3 and 4; cf Zimmermann, 1965). The passage also repeats, as late as 1910, what others had observed as far back as the 1830s: that the forests that had been allotted had escaped the worst depredations to which other Corporation forests had been subjected.

The Bertoni Report goes on to say, however, that its inquiries had shown the need for some improvement. It likened the quadrelle to a vigorous volunteer plant that should be cultivated and made more productive, presumably rather than be pulled out. It saw nothing wrong with a combination of the private and public interest, particularly as "Latin people are more given to individual rather than collective effort". Bertoni takes issue with Federal legislation which, by prohibiting new divisions of the forests, "justifies" the revocation of old ones. He believes, on the other hand, that quadrelle should no longer be assigned to absentee hearths, and that unassigned quadrelle should be reintegrated into common assets, and not be subject to "commerce". He believes that for corporate rights to be res in commercio is a violation of the very essence of the Corporation. For one hearth to have rights to more than one quadrelle acquired through auctions, especially in more than one Corporation, is one such violation.

Fig. 3a. Open chestnut forest ("selva") used formerly for fruit, grazing, mast-feeding, and litter. Corporate forest of Arosio, Ticino, February 2000.

Fig. 3b. Remnant of a coppiced forest used formerly to produce mainly poles (hence "palina"). Near Cademario, Ticino, February 2000.

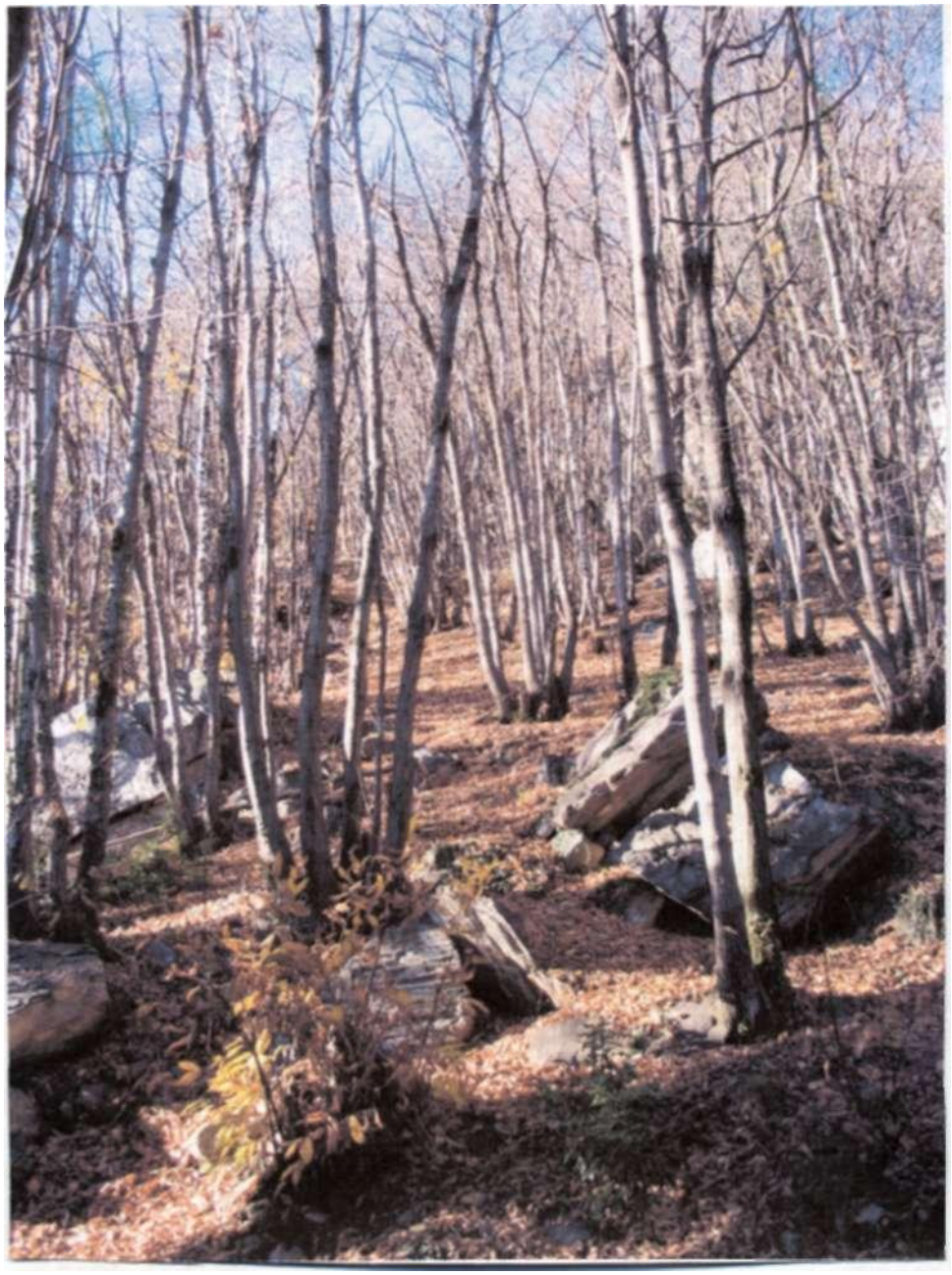


Fig. 3c. An unsually well-preserved chestnut coppice forest ("palina"); Corporate forest of Brione s/Minusio, Ticino, December 2005.

Fig. 4. "Selva" or open chestnut forest used as a source of fruit and stable litter, and "palina" or coppiced forest as photographed in the early 20th century (Source: Soc. Tic. Conservazione delle Bellezze Naturali e Artistiche, Quaderni Ticinesi, 1961, Il Castagno. Copyright pending)

The Bertoni Report went on to conclude that there is no reason to abolish the system of enjoyment of the coppice forest by quadrelle where it exists. The system

> gives no poor results, and by now it is so intermeshed with the country's economic life that it cannot be suppressed without upsetting many interests and without needlessly injuring an entire population.

The legislators who, two years later, passed the new Cantonal Forest Act (1912) that remained in force until 1998, were, however, less deferential to the status quo, and more attentive to the forestry needs of the day than the Bertoni Report. Insofar as the quadrelle were concerned, the legislators indeed reached back to the more restrictive draft versions of the ill-fated Forest Act of 1908. Thus an entire section (111.7) is devoted to the restriction and extinction of servitudes as called for by the Federal legislation. The key article (35) states that

> servitudes and rights of usage of secondary products that weigh on public forests (including the quadrelle in usufruct) and on private protective forests, and that are incompatible with the good government of these forests and that will not cease on the strength of preceding laws, will be redeemed within five years from the coming into force of the present Act.

Once again, however, circumstances intervened to thwart the legislative intent for many years. Arts. 37-41 of the 1912 Act called for notification, within six months, of all the servitudes weighing on public forests, and established a procedure for redemption and for appeal all the way to the Federal government. Therein lay the basis for foot-dragging and for litigation that were to last for another half-century. Thus it was left to the Organic Law on Corporations of 1962 (LOP 1962) to prohibit the quadrelle and other forms of "private" usufruct once and for all (art. 88).

> The allocation to Corporation members for usufruct of forest plots (quadrelle) and of farmland or of vacant land (sorti, lotti) owned by the Corporation is prohibited.

The implementing Regulations (Jan. 1963) then called for the final extinction of the quadrelle within ten years. Thus by January 1973, nearly a century after the Swiss Federal government first declared war on servitudes within "public" forests, the quadrelle had officially disappeared. In practice, however, not entirely. They apparently survive locally in the Centovalli Valley (Locarno District) as the roverine (rovere= archaic term for oak). They are actually "private" lots marked off in Corporate oak forests, in full defiance of the law (LOP 1962, art. 88) (X Ceschi, Cantonal Forest Director, oral comm., 1994). The incentive is presumably an economic one, given the value of oak wood.

6. Private rights within common property: the jus plantandi

The jus plantandi is the ancient right, of Roman origin, to the usufruct from a tree an individual has planted, and cared for, on public land or someone else's private land. The usufruct does not establish a claim to the underlying land; the right is extinguished with the death of the tree. In Canton Ticino, the jus plantandi usually pertained to chestnut trees, which, with judicious coppicing and pruning, can be kept alive and productive for centuries. In general, however, the right was used mainly to secure a source or sources of chestnuts, a vitally important product until the last century (Zimmermann, 1965).

As with the quadrelle, the beginning of the end for the jus plantandi was marked by the Federal Forest Act of 1876, which established the principle of restricting and retiring servitudes on public forests. According to historians, the jus plantandi was then "abolished" by a Resolution of the Federal government of 1886, by the Swiss Civil Code of 1912, and by the Cantonal Forest Act of 1912 (Caroni, 1971; Pometta, 1949). In part it was, and apparently in one valley (Verzasca) it contributed to the degradation of chestnut forests as a result of the demand for chestnut wood from the tannin industry during WW I (Pometta, 1951). Suppression of the jus plantandi had removed a form of "private" protection from the Corporation forests, and opened them up for speculative sales. As late as 1949, the historian Pometta worried about

> the km and km of steep land covered with ancient jus plantandi which are bound to be neglected by Corporations and Communes.

He was only echoing the words written by the Cantonal Chief Forester in 1932:

> Has this right ["ius plantandi] been abolished by the new Civil Code? The most eminent jurists of the Canton asked by us at the time [1912] have expressed in this matter conflicting opinions...

He goes on to cite Bertoni (author of the 1910 Report) who expressed the opinion in a 1921 article to the effect that the prohibition of jus plantandi only applied to private land and not fc public land. The Chief Forester hopes so because (Eiselin, 1932, p. 15)

> it is of the utmost importance that Corporation lands suitable for growing chestnuts not be denuded, and we fear that if one day the right of the patrician to plant chestnut trees on such lands should be abolished there would be a deplorable degradation.

It was pointed out as late as 1971 that the jus plantandi has never really been abolished despite clear violations of various Federal and Cantonal laws and codes since 1876. Som Corporations have prohibited new plantings, some as late as the 1960s, but the jus plantandi ha survived because its abolition has been tantamount to abolishing private rights, in other words to confiscation (Caroni, 1971; RPT, 1970, no. 3). This is in contrast to the abolition of the quadrelle, which involved a matter of the public interest (RPT, 1970, no. 3). Thus the ju plantandi is apparently still in a legal limbo. It has been suggested that the problem be solved once and for all by converting jus plantandi (which often concern groups or lines of trees) into ordinary property rights to be entered into the cadaster (Caroni, 1971). Today there is, of course very little economic incentive to either abolish or uphold the jus plantandi. Trees owned unde jus plantandi can still be seen in the forests today as they bear conspicuous numbers or blaze (Fig. **5).**

Fig. 5. Grafted chestnut trees marked with blazes to denote trees growing on Corporation land but owned privately under the Roman law jus plantandi ("he who plants and tends a tree is the owner of that tree") Near Arosio, Malcantone, Ticino, February 2000.

7. Floods, the public role of forests, and the new Federal activism in forestry

The cycle of forest degradation, increasing flood and other damage, and of technocratic and legislative efforts to recognize the "social" role of forests that marks the 19th century history of Canton Ticino is, of course, not confined to this part of Switzerland. The cycle is indeed typical of much of Alpine Europe; recall, for example, the classical studies by French engineers of the "torrent" problem of deforested southern France, which eventually influenced legislation (Glacken, 1967, p. 198-199; Duby and Wallon, 1976, p. 198).

Canton Ticino is intrinsically prone to flooding and to landslides because of its climate and geology. Maximum annual precipitation exceeding 3,500 mm is common at many localities, and locally monthly precipitation exceeding 1,000 mm has been recorded, notably in April 1986 near Locarno. Daily total precipitation of more than 400 mm has also been recorded. Torrential rainfall usually occurs in late summer-early autumn when moist, warm Mediterranean air masses are raised and cooled over the southern slopes of the Alps. On one such occasion, on September 23-24, 1924, 610 mm (24 inches) fell; between September 13 and October 9, 1868, total rainfall in the central and northern Ticino ranged between 800 and 1,700 mm, and gave rise to the record flood described below. Most recently, 1,200-1,700 mm fell in northern Ticino between September 10 and October 24, 1993. In the winter, snow covers exceeding 10 m are not uncommon in the higher valleys. The risk of avalanches is often acute. Entire villages have been destroyed over the centuries, sometimes repeatedly. Part of the village of Airolo, at the southern entrance of the St.-Gotthard tunnel, was destroyed by an avalanche as recently as 1951. Not surprisingly, the northern Ticino has a long tradition of "sacred woods" ("faure") or protection forests.

In addition, many of the valleys of the Ticino have been over-steepened by glaciers, which retreated as recently as 8,000 years B. P. As a result, landslides are common, and sometimes catastrophic. Thus, in 1512 the original village of Biasca was buried under a slide, and the lower Blenio valley dammed as a result. In 1515, the lake

formed behind the dam burst through this obstacle, and flooded the Ticino valley as far as Lake Maggiore; 600 people were killed, and the present capital, Bellinzona, lost most of its ancient walls.

There is little doubt that the natural tendency towards flooding and other landscape instability was reinforced by forest degradation in the 19th century. The Kasthofer Report of 1847 already calls attention to the need to control torrents with reforestation (p. 7). The Federal ("Landolt") Commission which inspected the Alpine forests in 1858-1860, and whose work eventually led to the 1876 Federal Forest Act, mentions the "devastation of the Ticino forests" and its hydrologic consequences (Lavizzari, 1863, p. 455; Landolt, 1861/1864). The relationship between flooding, flood control and reforestation became then a major topic of the forestry, agricultural and engineering literature of the late 19th century (cf. Caroni, 1974, p. 45, for citations). The public for its part was only too aware of the damage caused by repeated flooding and landsliding in 1829, 1834, 1839, 1840, 1846,1868, 1872 and 1888, although in retrospect not all of this damage could have been prevented with reforestation. There is a limit to the absorptive and consolidating role of forests during extreme weather, as the recent, disastrous floods of 1978, 1981, 1987, 1988 and 1993 have shown.

It was probably the flood of 1868 that provided the final impetus for the passage of modern forest legislation, or more specifically for the final recognition of the "social" or "public" nature of Corporate forests. The precipitation that led to this flood, still the highest on record since at least 1640, was cited earlier. As an indication of the severity of the flooding, the level of Lake Maggiore (208 km2) rose by 7.8 m (25.5 feet) above mean level; the peak level since then, notably in October 1993, has only reached 4.2 m. The Ticino River (mean annual discharge of about 45 m3/sec) reached a peak discharge of 2,500 m3/sec as it entered L. Maggiore. Some 50 people were killed, and damages exceeded SFr 5 million (Billet, 1972, p. 95), or about SFr 250 million in today's money.

As described earlier, the "public" nature of Corporate forests was recognized as early as the 1840 Cantonal Forest Act, which remained, however, a dead letter. It was left

to the 1870 Cantonal Forest Act, passed in the wake of the 1868 flood, to treat Corporate forests unmistakably as "public" forests, and even to declare Corporate officers and forest wardens as members of the "forest administration" (art. 4). But it was the new Federal activism in forestry, foreseen by the 1874 Constitution, that irrevocably established the "social" role of forests. Thus the first Federal Forest Act of 1876, inspired by the Landolt Commission report on the Alpine forests, declared all State, Communal and Corporate forests, whether "protective" or not subject to Federal supervision (art. 3). "Protective" forests were essentially those on steep land subject to floods, avalanches and landslides (art. 4). By this definition, much of the Ticino's forest estate qualified as "protective". The 1876 Act also fixed the total forested area of Switzerland (art. 11), and declared all State, Communal and Corporate forests indivisible and inalienable (art. 12).

As might be expected, the new Federal activism did not go unchallenged, particularly the sweeping declaration of protective forests. In the case of the Ticino Corporate forests, the reaction came, however, with considerable delay, notably in 1908 with the rejection in a referendum of the new Cantonal Forest Act (Ch. III.9). The delay had something to do with the leisurely pace of implementation of new legislation, especially Federal at the Cantonal level, in the late 19th-early 20th century. Even at the Federal level, the 1876 Act was not vigorously implemented until the passage of the Federal Forest Police Act of 1902, which remained in force until January 1993. In turn, the Cantonal implementing legislation for the Federal Act of 1902 was not adopted until 1908. The reaction of the Corporations was focussed on this Cantonal law, as it was seen as an overzealous Cantonal interpretation of Federal legislation concerning "protective" forests and other forestry issues, as described later.

8. "Progress in forestry and the pastoral economy are incompatible"

Before examining the Corporations' last major stand against modern forest legislation in 1908, it is usefu to recall the vital role played by small livestock in the economy of the Ticino until the early 20th century. The forests played, in turn, a key supporting role in this sector of the economy, and thus inevitably pastoral and forestry

interests collided in much the same way they do today in many parts of Africa. The risk of a major head-on collision was heightened in the late 19th century when it was realized that the newly legislated hydrologic role of the forests meant large-scale reforestation and declaration of strict protection forests.

Goats and, to a lesser extent, sheep have long been important in the Ticino, as they have been in similar mountainous parts of Europe. The goat (the "poor man's cow") is particularly well suited to the steep rough grazing prevalent in the Canton, as witness its prominence in the Ticino folklore. The one recognized Ticino breed, the Verzasca, can reach the size of a small calf, and is correspondingly destructive in the forests.

The total size of past goat populations provides an indication of the potential damage to the forests and, as both the Kasthofer and Bertoni Reports point out (Kasthofer, 1847, p. 13; Bertoni, 1910), to gardens, vineyards, orchards and mulberry trees (silk industry). The Kasthofer Report mentions a total herd of 70-80,000 goats (p. 14) for the mid-1840s, which confirms the figure of 75,000 goats given for the mid-1830s by the statesman and statistician Franscini (cf. Billet, 1972, p. 125). In 1866, the total was still of the order of 75,000 head (as opposed to 45,000 cattle, and 15,000 sheep) (Billet, 1972, p. 290); there were then probably more goats than rural inhabitants, as the total agricultural population in 1860 was probably about 65,000 (Billet, 1972, pp. 157, 271). On the other hand, the figure of 200, 000 goats often mentioned by folk memory is probably an exaggeration. As late as 1946, there were still 36,000 goats in the Canton, since reduced to fewer than 15,000 (Billet, 1972, p. 290; Ann. Stat. Cant.). As early as 1910, goats were already banned from 14 Communes (Bertoni Report).

The goats were --and are— especially detrimental to the regeneration of forests, all the more so since in the 19th century the goats were mainly free-ranging. The issue of free-ranging goats (and other livestock) was to rage throughout most of the 19th century. As late an instrument as the 1912 Cantonal Forest Act (in force until late 1998) empowers the State to impose minimum fines for free-ranging livestock (art. 57), and, in case of

repeated damage to forest plantations, to ban goat-grazing in the offending Commune (and Corporation) (art. 59).

The attraction of free-ranging goats was, of course, the reduction of labor, feed, and other costs to practically zero. In the relatively mild climate of the Ticino, goats could be left to fend for themselves practically all year round, at least at lower altitudes. As the Kasthofer Report points out, "free grazing has by now degenerated into a sordid selfishness of the most revolting injustice" especially to farmers, but its economic advantages are evident (pp. 12-13). A farm household with 100 goats (a common occurrence, according to Kasthofer) could count on 100 kids in the spring, which amounted to money in the bank; in addition, in the summer the goats could be sent up to the alps, and rented out for their milk for additional income. With luck, no hay, fencing or stabling would be needed; in the winter, the goats would graze in the lower forests ("selva"). The system provided mountain farmers with a "certain degree of well-being" (Kasthofer, 1847, p. 13). Kasthofer admitted that excluding goats from the forests forever was an "impossibility"; he simply pleaded for the abolition of free grazing, and for controlled grazing away from regenerating and other vulnerable forests.

Free-ranging goats were, however, not the only pastoral source of damage to the forests. Another detrimental practice was haying in the forests (particularly the open chestnut forest, or the "selva"; Fig. 4), which must have destroyed millions of tree seedlings annually (Kasthofer, 1847, p. 14). The excessive collection of litter and of humus in the forests as bedding for cattle and as supplements to manure was also destructive to forest ecology in the broadest sense (forest regeneration; forest soil fertility; hydrological role of the forest) (ibid., p. 15).

It was clear that, by the late 19th century, foresters and traditional agropastoral users of the forests were on a collision course. On the one hand, agropastoral use of the forests was well entrenched in the local mores, and was probably seen by many as a matter of sheer survival. Many forests had probably been deliberately degraded to no more than shrubby pastures so as to emphasize their primary role in the economy. Many

farmers even saw the goat as an ally in holding back the forest from scarce grazing land (Bertoni Report, 1910). On the other hand, forest science had progressed throughout the century, and with it came a new emphasis on regeneration, sustained yield, and the "normal" forest (equal distribution of age-size classes). In addition, the new understanding of the role of forests in the hydrologic cycle pointed increasingly to the need to reforest, and to value the forest for its "social" role. Finally, advances in economics also played a role in the reassignment of values to various land uses, notably in favor of forestry as opposed to the more destructive forms of subsistence agriculture. The latter can be seen, for example, in the discussion of the net value of goats in the Bertoni Report of 1910 (Ch. III. 10) . The Bertoni Report questions the "famous" 60 percent return from goats touted by conventional wisdom if all the "externalities" (damage to agriculture and forestry) were to be subtracted. For a while it must have seemed as though forestry and agropastoral interests were irreconcilable. The title of this sub-chapter was taken from a passage in the Bertoni Report of 1910 to the effect that

> anyone with the slightest acquaintance with the spirit of our population knows that the principal, nay sole, reason for any and all aversion to progress in forestry is the opinion that this progress is incompatible with the pastoral economy.

The Bertoni Report was deliberately using provocative language, but it goes on to say that this opinion does find some of its justification in the very 1902 Federal Forest Police Act, which says (art. 20) that

> appropriate measures will be taken, in the case of public wooded pastures, in order that the existing wooded area will be maintained.

In other words, pace Bertoni, the conflict lies in the nature of things: land cannot be wholly a pasture, nor wholly a forest; one of the two has to prevail, and the Forest Act gives priority to the forest. Hence, the anger of the pastoralists. The Bertoni Report proceeds then to show, however, that compromise is possible and that "our patricians are not as retrograde" as some believed (Ch. III.9). In fact, a head-on collision between

forestry and agropastoral interests never occurred because by the late 19th century economic circumstances had changed.

The peak in the pastoral economy of Canton Ticino was probably reached sometime between 1860 and 1895 (Billet, 1972, p. 288), at the same time that concern over forest degradation and flood damage also reached a peak (Ch. 1II.7). However, by the time the two sets of interests collided over legislation, notably the ill-fated Cantonal Forest Act of 1908, pastoral and other agricultural pressures against the forests were already abating. Art. 31 of the 1908 Act prohibited free grazing; forest grazing, where allowed, had to be by herd, in designated areas and supervised. These were restrictions that had been anathema in the 19th century. But by 1910 the Bertoni Report had found that goats were in decline in 67 Communes, and had already been banned from 14 other Communes. In the second half of the 19th century, emigration overseas had also drained off excess rural population, especially from the poorer valleys; alone in the two years after the record flood of 1868, 2 percent of the total Ticino population emigrated (Billet, 1972, p. 144). Some 30,000 Ticinese, almost all of rural background, are believed to have left for good between 1834 and 1928 (out of a total population between 110,000 and 152,000 people) (Billet, ibid.). Some mountain Communes lost as much as 20-30 percent of their population in the late 19th century (Billet, 1972, pp. 146-147). The statistics show a relatively slow decline of the total agricultural workforce between 1888 and 1910, but from 1888 until 1930 women far outnumbered men in agriculture; this imbalance reflects the collapse of agriculture as an important sector of the economy, as the men emigrated or had moved to other, more remunerative sectors of the economy (cf. Billet, 1972, p. 271).

Pastoral concerns were undoubtedly behind the Corporate reaction to, and defeat of, the Cantonal Forest Act of 1908. But by then it was a delayed reaction, probably driven more by old reflexes than by the economic urgency of the day. The blow against modern forest legislation in 1908 turned out to be a short-lived one, as by 1912 a new, in many ways more restrictive Forest Act was adopted by the Canton, as described next.

9. Debacle: the Cantonal Forest Act of 1908

In 1908, the Cantonal legislature adopted a new forest act as the Cantonal implementing legislation called for by the Federal Forest Police Act of 1902. This Act declared all forests, whether public or private, to be under the supervision of the State (art. 1). Forests are divided into protective and non-protective ones, with the Cantonal executive making the final decision; Corporate forests are unequivocally declared to be public forests (art. 2). All protective forests are to be surveyed (art. 13), and they cannot be cleared without Federal authorization (non-protective forests can be cleared with Cantonal authorization); in any event, the total forest area cannot be decreased, in line with Federal policy since 1876 (art. 14).

As described in chapter III. 5, the 1908 Act, in line with Federal policy on the retirement of servitudes on forests, called for the extinction of all quadrelle as the forest matures and the timber is cut. In any case, all "divisions for enjoyment" were to be retired within 10 years of the coming into force of the 1908 Act (art. 17).

The 1908 Act foresaw the preparation of forest management plans designed to ensure sustained yield (arts. 22, 23). All uses not foreseen by such plans were prohibited (art. 24).

The proceeds from timber cuts in public forests (and thus in Corporate forests) could not be divided, but had be used to increase Corporate assets, and to improve forest management (art. 27).

Customary "secondary" uses of the forests were allowed provided they were within the norms of the management plans. However, in public protective forests, all harmful uses such as grazing and litter-harvesting were prohibited except as authorized by the Department of Agriculture (art. 28). Grazing, litter gathering and haying were prohibited in newly sown or planted forests (art. 29). The Forest Service could restrict the

number of goats (art. 30). As noted earlier, free grazing was prohibited; forest grazing, where allowed, was restricted and supervised (art. 31).

The Act added that any servitudes that conflict with the "good government" of public forests can be forcibly extinguished by the State Executive (art. 35).

The 1908 Act was rejected in a plebiscite held in June 1908. The opposition to the Act was mounted by the association of Corporations in what was probably the first and last major political action taken by the Corporations ever since the debates over Corporate membership and political citizenship of the 1830s and 1840s (q.v.). The specific reasons for the rejection are examined in the next chapter in connection with the Bertoni Report of 1910. According to this Report, the "drastic" elimination of the quadrelle foreseen by art. 17, and which affected the "agricultural interests of thousands of persons", was "enough to ensure the negative issue of any popular vote".

Apparently there were, however, broader, more emotional ,reasons for the rejection of 1908 Act. The unequivocal designation of Corporate forests as "public forests" was seen as an attempt to turn these forests into State forests ("foreste demaniali dello Stato"); in turn, this was seen as another step towards the abolition of the Corporations themselves (Bertoni Report, 1910). Never mind that Corporate forests had been designated as "public forests" since at least the Cantonal Forest Act of 1840 (according to one source, Pometta, in RPT, 1949, vol. Ill, p. 8, since a Cantonal Executive Decree of 1824) and that, as the Bertoni Report itself points out, the Federal Forest Police Act of 1902 by recognizing the public role of Corporate forests did not foresee a public status for these forests. However, the talk of abolishing the Corporations had been going on for some 60 years, and presumably conservatives were still on the defensive (if not paranoid) after the Radical excesses of the 1890s (which included one political assassination).

Other general reasons included, still according to the Bertoni Report, the perception in Canton Ticino that the great work of reforestation was from the start [the

1870s] the relentless enemy of the pastoral economy... The Report attributes the erroneous impression that any attempt to create or. rejuvenate the forest was "tantamount to reducing pastures" by an equal amount, to Federal initiatives, which, for all their "goodwill and unquestionable technical competence", lacked the necessary understanding of Ticino problems. In this the Report blamed mainly local politicians for having neglected forestry issues, and the necessary preparation of public opinion.

There was also a general feeling that the Cantonal forest service had been acting in a high-handed manner ever since its hand was strengthened by the Federal Forest Act of 1876 and related Cantonal Forest Regulations of 1877. Forest inspectors and "even sub- inspectors" were accused of treating Corporate officials as their subordinates, and Corporate forests as though these were State property (Bertoni Report, 1910). Cantonal forest authorities were also accused of "overzealous" interpretation of Federal texts, and thus of exceeding their briefs. Some of the "subordinate-superior" relationships and frustrations with references to Federal texts that were unknown in the Ticino are indeed revealed by some of the correspondence between Corporations and Forest Service seen in archives (see Ch. III.4).

Somewhat different concerns over the 1908 Act transpire from the debates in the Cantonal Legislature. The outright abolition of the quadrelle was opposed in large part out of fear of "serious legal challenges" (Processi verbali, Gran Consiglio Repub. e Cantone del Ticino, 1908, p. 336) which is why the 1908 Act was amended to the effect that "issues arising out of the abolition" would be "within the exclusive jurisdiction of the State administration" (i.e., out of the courts). The issue of the quadrelle was, however, a lightning rod for polarized views on the Corporations themselves. As one deputy put it (Processi verbali, ibid.):

> the Corporation has two categories of opponents, those who want to abolish it completely, and those who defend it with too much zeal. Both are wrong.

This particular deputy felt the Corporations were too important for the common welfare to abolish them, or to allow them to become paralyzed by defects. That is why he was

against the quadrelle, which lead to disorder, and against the division in cash of common resources, which leads to the progressive impoverishment of the Corporations and their ineffectiveness as resource managers.

The debates over the taxation of wood cut from "public forests" also showed the persistence of the view of the Corporation as "private property held in common" and the view that the Corporation, although its existence is guaranteed by the Cantonal Constitution, must adapt and act more as a body of "public utility" if it is to survive (Processi verbali, ibid., pp. 338-339). One debater warned (ibid.) that the Corporations will be irrevocably swept away by the current opposed to them, current which is becoming larger and more powerful every day throughout the country

In general, however, the main opposition to the 1908 Act in the Legislature centered on the definition, deemed too inclusive, of "protective forests", and on the new powers contained in the Act to expropriate Corporate forests and create new State forests (cf. statement by Chief Forester, Ch. III. 1 of this study).

10. Trying again: the Bertoni Report of 1910 and the Cantonal Forest Act of 1912

After the rejection of the Forest Act of 1908, the Cantonal government had no choice but to address grievances, and to adopt a new Forest Act as called for under the Federal Act of 1902. Thus in 1908-09, the State Executive ("Consiglio di Stato") appointed a 3-man "Commission of Inquiry into the Causes of Conflict between Forest Authorities and the Patrician Corporations" which reported in April 1910. The report is named after its Rapporteur, the Cantonal legislator Bertoni. The other members of the Commission were a lawyer and another legislator with an engineering degree. The political make-up of -the Commission is not known, but presumably the Rapporteur, judging from the tone of his Report, was sympathetic to the Corporations.

The Bertoni Report is a valuable document, as it is the only one that deals specifically with the conflicts between Corporations and the Forest Service since the

founding of the modern state in 1803. The Bertoni Report has been referred to many times earlier in this paper, but it deserves a separate examination because of the insights it provides into the basic question of the relations between the modern state and the Corporations. Incidentally, the very title of the Bertoni Commission is a public admission that the defeat of the 1908 Forest Act in a general plebiscite was in fact the result of a conflict between the Corporations and the state.

The sources of conflict. The Bertoni Report examines first the general nature of the "conflict" between Corporations and the state, a conflict

> increasingly strident between the authorities charged with the very highest duty of the State, that of reconstituting the protective forests and of preparing the future forest wealth of the nation, and the great mass of the owners of the same forests, assembled in the ancient patrician communities...

The general sources of the malaise have been discussed in the preceding chapter. They include the ancient talk of the abolition of the Corporations, which have been described by certain "friends of progress" as "barbaric relics" whose assets should devolve to the political Communes. Then there were Federal initiatives to restore the protective forests, which were poorly understood in a Ticino fearful of losing the pastoral role of the forests. Then there was a strengthened Cantonal Forest Service acting in a highhanded, "bureaucratic" manner, often forgetting that Corporate officials and Corporate forests were not State employees or State property. The final straw was the 1908 Act, with its interference in matters that had "nothing to do with forest science", and with its

> short-sighted violence against the state of things regarding divisions for enjoyment [i.e., the quadrelle], well beyond the requirements of Federal law...

The Report goes on to say that the bases for a new law must be found "by using the energies of those who won". In other words, the state must work with the Corporations, not against them.

The Corporations. In a second chapter, the Bertoni Report reviews briefly the essence of the Corporations. The very fact they won in 1908 shows they are "solid". Forest policy will be made with the patricians, not against them. Is "wise cooperation" possible with them? The Commission believes so on the strength of its inquiry, provided the State can "reconcile and coordinate" the pastoral with the forestry interests, which are paramount and inseparable "twins".

The Report then protests too much by stating in negative terms that

> it is not true that the Corporations are backwards, resistant to progress, closed to new ideas, hostile to the resident [i.e., non-patrician] population, selfish and negligent of their forests...

In a further infelicitous passage the Report adds that "some exceptions do nothing but confirm the rule" ... The wrong impression is further conveyed by examples of the need to "rejuvenate institutions" and of "dry branches to be pruned". They concern mainly the rules of membership; some extreme abuses have been cited in Ch. II. 1.

More seriously, the Corporations are being "reproached" for no longer performing "public functions", and the Bertoni Report admits there are grounds for this reproach, although the idea of public service by the Corporations is not dead yet. These remarks are historically interesting, as they show that by 1910 the idea of the Corporations acting as local government (which they were until the end of the Ancien Regime and beyond) was still current. The Bertoni Report blames in part "enemies of the Corporations" within the ranks of the Corporations themselves for the decline. These are the members who pushed for the division of assets to the point where the Corporations disappeared or were discredited. They are also those who have claimed that the Corporations have no territory, and that they are only "consortia of private owners" (cf. Ch. 111.2).

The Bertoni Report sees an opportunity in the "public role" assigned to the Corporate forests by the 1902 Federal Forest Police Act, and not a threat of nationalization. The Corporations are created under public law ("let it be stated once categorically"), and under this law one of their most important tasks is forest policing - in the language of the day. This task "ennobles" the Corporations, as they are thus "elevated to perform one of the main tasks of the modern state".

The state of the Corporations. The Bertoni Commission submitted a questionnaire to all the Corporations in order to compile a data-base not only on the state of the forests, but also on the related questions of the pastoral economy, the conditions of the agricultural workforce, and on the "movement of the population". The questionnaires as well as additional interview materials were submitted as annexes to the Report, but could not be found. The summary that follows is based on the summary of findings provided by the Bertoni Report itself.

Concerning the high forest, the apparent thrust of the questionnaire was to find out whether the Corporations were self-sufficient in timber, and, beyond that, whether timber was an important source of revenue. Presumably the Commission sought to gauge the stake that the Corporations had, or could have, in the forest economy.

The answer to the first question was, predictably, that the northern part of the Canton was generally self-sufficient in construction materials, whereas the southern part had a severe shortfall. Much revenue was being forgone through neglect or ignorance. In general, the Commission confirmed what the Forest Service had been advocating for years, namely that many unproductive areas could have been upgraded to high forest. Among the reasons this did not occur was the fear of expenditures, and widespread ignorance that coniferous timber could be grown on rotations shorter than' 50 years. On the other hand, some Corporations complained that the Forest Service has established plantations without consulting them on the need for, extent and species of the plantations "as though the land owner were not a party" to the matter.

Concerning the coppice forest, the Commission sought answers regarding the supply of firewood and other secondary products, discretionary or "free" cutting, the assignment of lots for long-term or perpetual "enjoyment" (i.e,, the quadrelle), and the treatment of non-members or absent members ("hearths").

The supply of firewood was generally adequate, and a surplus was being sold, even exported to Italy. The Commission found that some Corporations already used the "best system" of collective cutting, processing, measurement and distribution of firewood, as opposed to individual discretionary cutting. Those Corporations that, at the urging of the Forest Service, were selling wood by weight rather than by lot (on the stump) found that their revenue and the "honesty of their contracts" had increased. Those Corporations that still used the "ancient system" had weak reasons for doing so; the "ancient system" should no longer be tolerated. As for the quadrelle, they were most widespread in the southern Ticino (cf. Ch. III.5), where the lots were assigned in perpetuity (that is, until the extinction of a particular hearth). The 1908 Forest Act thus sought to eliminate, at the latest within 10 years, a system that was well-entrenched. The Commission apparently accepted the view that the agricultural interests of thousands of people had adjusted to a forestry regime that had never been objected to or discussed, that people felt deprived of a peaceful possession, in a manner all the more questionable in that the regions with quadrelle are often the greenest ones, and sometimes the best managed ones! The Report goes on to say that the inquiry has left your Commissioners convinced of the futility of repeating the attempt [to abolish the quadrelle], but at the same time it has suggested the idea of some improvements.

The Commission felt that the quadrelle were "a plant born of spontaneous vegetation, endowed with a strong vitality", and that it should be "cultivated" to the benefit of forestry. It asked rhetorically: what is the disadvantage of combining individual interests with common ones? The new Federal law forbids new subdivisions of forests, and calls for the revocation of old ones, but the Commission implies that this is Germanic thinking, as "the spirit of Latin people tends more to individual effort rather than the collective

one". Ironically, this "spirit" has not prevented the "Latin", "individualistic" Ticino from being the most ardent defender of Corporations and common property in Switzerland.

The Commission deplores, however, the assignment of quadrelle to absent hearths, and any commerce or speculation with these lots as it violates the essence of the Corporations for "patrician rights" to be res in comercio. It is also against this essence for people to be members of more than one Corporation, and thus to have rights to quadrelle in more than one Corporation.

As for the rights of resident non-members (then quaintly known as the "communists", or citizens of the Commune), the Commission solicited their views —officially, via the Official Gazette- as to the uses of woods and pastures. None came forward, possibly because they were too dependent on the Corporations for their usufruct rights, and thus afraid of jeopardizing these rights with incautious remarks.

The Commission states, evidently tongue- in-cheek, that thus "according to the patricians, there is no complaint on the part of residents [non-members]". In the light of the bitter debates over common-usage access to Corporate resources throughout the 19th century (cf. Ch. II. 1), the Commission's obvious skepticism can be forgiven. The Commission notes, however, that in many Corporations non-members pay slight fees for access to resources, and that in other Corporations non-members are for all practical purposes of usufruct on the same footing as members. Thus some progress had occurred. The Report repeats that long-time residents should be made members, as occurred in 1803-1807, whereas long-absent hearths should be stricken from the lists so as to renew the Corporations ("as Rome renewed its citizenry").

The Report then dealt with the relations between grazing and forests. The questionnaire asked how pastures could be improved, whether or not pasture and woodland could be separated, and whether there were rights to free grazing.

The Report notes, as stated earlier, that in the Canton the notion was widespread that forestry and the pastoral economy were "incompatible". The wording of recent forest legislation had reinforced the view that the forest was to advance at the expense of grazing. But, so says the Commission, the value of the forest is collective and remote, whereas pasture is "milk for today's and tomorrow's family", and the calf pays for this year's expenses.

The Report reminds its readers of some basic differences between Switzerland north of the Alps and the Ticino. In the North, forests are forests, and meadows are meadows. Not so in the Ticino. The land is steep, rocky, wooded and shrubby; there is no sharp distinction between forest and meadow. Multiple land use is the rule. Only a handful of Corporations were able to answer that they have separated woodland from pasture. Most of the coppiced forest also serves as pasture, inevitably so. The farmer struggles to maintain his pastures, as shrubby species (notably the hazelnut, the green alder, juniper, and the Scots broom; RCZ) constantly invade and spread. Which is why many farmers see goats as allies in this struggle. The Report concludes that in the Ticino any forest policy that seeks to separate forest from pasture, and to increase the forest without a corresponding increase in pasture, is bound to lead to "sad disappointment". The Commission found a widespread consensus that pastures are steadily deteriorating throughout the Canton, that this deterioration is reducing livestock numbers, which can only be taken as a "sure sign of impoverishment". The deterioration is attributed to "natural reforestation".

Without independent evidence, it is, of course, difficult to ascertain how much truth there was to the degradation of pastures, or whether farmers, in time-honoured fashion, were exaggerating their problems in order to undermine the foresters' case. They may indeed have tried the tactic of the villain-as-victim ("the trees are ruining the farmers") after many years of complaints that their livestock was ruining the forests. It is possible, of course, that by 1908, after decades of rural male emigration and with livestock numbers declining (the peak was apparently in 1865-95), the forest was indeed taking over many pastures.

In any event, the Bertoni Report came to the conclusion that a compromise between Corporations and foresters was possible, if only the two parties sat down and worked out a common strategy. The compromise took the form of a greater effort to rid pastures of shrubby species, as thousands of ha were neither pasture nor woodland. The Corporations were naturally reluctant to undertake a major clearance campaign at their expense. The Report hints that in many Communes depopulated by the rural exodus, cooperative reforestation schemes could regenerate the forest and create work. The Bertoni Report concludes that there may be areas where conflicts are insoluble, such as in unstable watershed where the social interest should prevail. In such cases, Corporate forests should be expropriated and turned into State forests. A clause to this effect was contained in the 1908 Act, and, according to the Commission, should be retained in the future.

The Bertoni Report devotes a whole chapter to goats, which underlines both the extent of the problem and the economic importance of these animals as late as 1910. Much of what the Report has to say about goats has already been summarized in chapter 111,8. The Report sums up its attitude to goat-keeping in the Ticino by admitting that

> in the world many people live from the wrong, obsolete industry, and one that is theoretically loss-making [if externalities are taken into account], but they live just the same, and it is not easy to substitute it with something better. A Ticino without goats in 50 years would be much richer in woods, in 20 years richer in orchards, richer in cattle, but in the meantime we have to live from one day to the next with the means we have.

With the "same consensus with which they denied the possibility of separating pastures from woods", Corporate members denied the possibility of controlling goats with permanent shepherds, which is what art. 31 of the 1908 Act foresaw. This is not surprising, given the economic advantages of free-ranging goats (Ch. 111.7). The Bertoni

Report points out, however, that where the land use and the lay-out of settlements and property lines are favourable, controlled grazing has been instituted. Almost everywhere, so claims the Report, there is a "will to do better". Most understand that where there are forest plantations, goats must be kept out; the issue is who does the policing, and with "how much zeal". Some of the Corporations themselves have proposed goat "quotas" based on need; the reductions in numbers must start at the top, that is with those people who have goats beyond their immediate needs. The Report supports this approach, and advises against the Forest Service setting limits to goat numbers, as art. 30 of the 1908 Act had foreseen.

On the extinction of servitudes, which had been Federal and Cantonal forest policy since 1876, the Bertoni Report found that corporations were generally in agreement. The Report is ambiguous, but presumably it means servitudes other than the quadrelle. It warns, however, that the extinction will be a "delicate" matter, and that the "draconian procedure" foreseen by the 1908 Act would cause "serious troubles".

The questionnaire also invited the Corporations to express their attitudes towards the Forest Service. The main questions asked were whether the Corporations had had disagreements with the Forest Service, whether fines had been paid, whether the sub-inspectors, [the main officials in daily contact with the Corporations] live up to their tasks, and whether the Corporate forest wardens (appointed since the 1840s) could take over the functions of the sub-inspectors.

The Commission was "glad" to note that "public opinion" was not against the Forest Service; on the contrary, it held it "in the highest esteem". At the most, Corporations wanted to be treated more like equal partners, and be recognized as the land owners they were. Conflict was localized, and "neither serious, nor substantial". Where inspectors (professional foresters) have acted with "tact and good will", they have become popular.

The main source of dissatisfaction was with the sub-inspectors (forest technicians). They have to cover too much territory, they arrive too late and they are always on the run.

Their field surveys are superficial, and when their supervision is really needed (as during felling) they are not around, so that violations go unnoticed for months. With due respect to the persons involved, the Corporations felt that this position did not fit the task.

By probing with oral questions, the Commission found that the main problem was sub-inspectors who "understood their function a little too bureaucratically". They are at the bottom of a chain of command which starts with the District Inspector. By the time an order reaches a sub-inspector, he tends to pass it on to Corporate officials as his "executors". What the Corporations want is a sub-inspector who helps them, and not vice-versa. The language of the 1908 Act ["the Corporate administrations are expected to assist the Forestry personnel in the implementation of the law"] helped to perpetuate this reversal of roles. How true this was the Commission was not able to say, but it assumed it contained a "basis of truth"; it notes that the critiques correspond to those voiced in the Cantonal Legislature as early as 1886.

The Commission also noted that the 1908 Act was silent on the position of Corporate forest wardens, as "though these were destined to disappear". This was an odd omission, as by then these officials had provided a modicum of forest policing and management for some 70 years; the position and its requirements were formalized by the Cantonal Forest Act of 1870. As the Commission remarks, even if the number of sub-inspectors were to be increased, there is no substitute for the Corporations to have their own forest official; direct State control of the forests might run into "hostility, indifference or obstructionism".

The Commission recommends that the law start from the premise that the Corporate administration is the primary forest Authority, and that state forest inspectors are there to supervise, assist and coordinate. There is no substitute for local policing of forests by their owners. If the position of Corporate forest warden has been allowed to decay [when the sub-inspectors were created in 1870, their salaries were charged in part to the Corporations who inevitably began to neglect their own forest wardens; part-time or poorly paid wardens often did not meet the minimum literacy standards; the financial

burden had since been removed from the Corporations but the damage had been done] then the situation should be redressed.

In the neighbouring Canton Grisons, its large Corporations were exempted from state inspection, but appointed certified forest wardens subsidized by the state. This solution was not relevant to the Ticino with its small, fragmented and poor Corporations. A modified solution might be for consortia of Corporations to appoint well-paid and well-trained forest wardens. Some Corporations were willing to try again with their own forest guards, on the principle 'that a "blind man in his own house sees better than a sighted person in someone else's house". The "sighted person" in this case being the forest sub-inspector.

The Bertoni Report concludes with a brief mention of private forests. It notes that these forests, mostly coppiced and typical of the southern Ticino, are generally better managed than the Corporate ones. This same "greater interest of private owners" can also be seen in the case of the quadrelle. But, adds the Commission, this does not mean that all forests, especially those of high altitudes, should be subdivided and made "private". The Commission believes firmly that "collective property" is still the sine qua non condition for economic and social life in the high mountains. It also emphasizes again that it would be a "useless effort" to return the subdivided coppiced forests of the southern Ticino (i.e., the quadrelle) to collective ownership as they have not suffered from the subdivision.

Conclusions. The Bertoni Report concludes that the two main sources of conflict between the Corporations and the Forest Service are the "natural antithesis" between "immediate and concrete', (mostly pastoral) and "future and indirect" (forestry) interests, and the "lack of tact" on the part of the Forest Service, notably with the recent forest legislation, which has hurt "respectable sensibilities".

Thus the foundation of a future forest policy must the reconciliation of opposing interests, and, above all, of different attitudes. Corporations must be recognized as "legitimate owners", and as "necessary and respected collaborators".

For their part, the Corporations have shown themselves "sufficiently conscious of their social function" despite some exceptions and some reactionary attitudes. In any case, nothing justifies the "tutelage" and the "near degradation" that the 1908 Act imposed on them, even in matters unrelated to forestry such as the use of their capital.

The aim should be to enlarge high forest, while enlarging pastures on present unproductive land. A complete separation of wood and pasture is neither desirable nor possible.

Reforestation should be done in close consultation with the Corporations, while rational production of firewood is possible without "rules that are too absolute or uniform" because the Corporations are already convinced of the merits of good practice.

There is no reason to abolish the system of using coppice by means of quadrelle. as it is not harmful and the abolition would needlessly hurt the interests of an entire population.

What should be abolished are usufruct by absent hearths and speculation with quadrelle.

Access to membership by old-established families should be facilitated, and long-absent hearths should be removed from the membership lists.

Goats should be more controlled, but a system of herding with permanent goatherds is unrealistic. The number of goats is, in any case, decreasing, and this decrease should be promoted by means of goat quotas by hearths.

Local authorities, whether Corporate or Communal, are the bases of the forest regulatory and management structure. The sub-inspectors, the lowest rank of the Forest Service, are the weakest point of the entire structure, through no fault of the persons involved. The great need is to strengthen the direct surveillance of the forests through Corporate forest

wardens. On the other hand, the work of professional foresters at the level of the District Inspector is much appreciated by the Corporations.

Where the need for protective forest is essential, but afforestation is difficult because of complicated servitudes and other obstacles, the creation of State forests is desirable. The extinction of servitudes within the limits foreseen by the 1908 Act is impossible; a much more prudent and rigorous procedure is needed to avoid judicial litigation.

The Cantonal Forest Act of 1912. The Canton adopted a new forest law in June 1912, a little over two years after the tabling of the Bertoni Report. This law remained in force until late 1998); it was replaced in 1999 by a new act, to complement the new Federal Act in force since January 1993 (Ch. III. 12).

In terms of the controversies of 1908-1910, the 1912 Act shows that the Corporations (and the conservative legislators who supported them) probably "lost" more in matters of substance than they "won".

On the "loss" side, art. 2 of the Act states that the classification of "protective forests" in the rather comprehensive "sense of art. 4 of the Federal Act of 190211 will be the responsibility of the Department of Public Works (i.e., the Forest Service) with "appeal to the State Executive". More ominously for the Corporations and conservative legislators, art. 2 also states that the designation of protective forests "potentially includes vast areas with natural boundaries". The proponents of the "social role" of forests clearly won on this point.

Art. 4 reflects another "loss" tempered with a "win". The article states that the Corporations and other "public-law" bodies administer the forests they own, but "under the discipline of laws imposed in the general interest of the country". On the other hand, the "administrators of these Corporations must be consulted on all forestry matters

Arts. 14 and 15 represent a "win" for the. Corporations as they prescribe that all Corporations or other public owners of forests will have a forest warden for their own local policing. These forest wardens will have the same qualifications as state forest sub-inspectors; if not, they will be so, trained and certified by the Forest Districts.

Art. 18 restates Federal policy on the total forest area, which is henceforth fixed. Clearances and compensatory plantations in protective areas are controlled by the Federal government; in non-protective areas, the Cantonal Executive decides. Forests that belong to Communes, Corporations or forest consortia cannot be alienated without authorization from the Cantonal Executive (art. 20).

Forests, whether public or private, must be managed according to plans prepared in collaboration between the state and the owners (art. 21).

Art. 24 is another "loss" for the Corporations, as this article prohibits the "division of Corporate forests with assignment of property title among patrician hearths". This was a practice more common of the 19th century, when it led to the complete disappearance of some Corporate forests; it is not to be confused with the "division in usufruct"! i.e., the quadrelle. Recall that the quadrelle were not prohibited until the Organic Law on Corporations of 1962 (art. 88). This delay of more than 50 years after the attempted abolition of 1908 represents a considerable "win" for the Corporations.

Art. 29 gives the state the power to force Corporations to eliminate, against compensation, the quadrelle in protective forests. The aim was presumably consistent management.

Art. 31 is another mixed "win-loss". It obliges the Corporations to cut themselves firewood and other wood for domestic use, and to distribute wood which has been processed. On the other hand, the State Executive can make exceptions, "taking into account local customs", regarding the system of wood allotment.

Corporate forests subdivided into quadrelle are exempted from cutting permits if they do not exceed 500 m2 (art. 33). On the other hand, felling of coppice in quadrelle exceeding 1,000 m2 was now subject to permits from the District (forest) Inspector, who could prescribe conditions for cutting, removal and reforestation.

Common usages of the forests (deadwood, litter, hay, etc.) were as before subject to Corporate and other local regulations, "consistent with the good government of forests" (art. 34). Common usages could be limited or prohibited if "required by the public interest". Forest inspectors could revoke local regulations in cases of "serious abuse".

All servitudes (including quadrelle) "inconsistent with the good government" of forests could be bought out within five years of the coming into force of the 1912 Act (art. 35). Included in these servitudes were "economic rights of a complementary nature", whether or not they designated as "property" or "co-property". The Act also empowered the State Executive to require all servitudes, whether or not subject to extinction, to be known within six months (art. 37). The forests could not be burdened with new servitudes without Cantonal and Federal authorization (art. 42). The 1912 Act stated that the Swiss Civil Code was relevant in matters regarding "private rights to plantation on other owners' land" (jus plantandi) (art. 43); this seems like an evasion, as the matter has remained in a legal limbo ever since (cf. Ch. III.4).

Arts. 49 and 50 gave the State considerable powers to impose the reforestation of critical watersheds and other unstable lands. To this end, the State could now retire servitudes, create forest consortia, expropriate and create State forests. These sweeping powers were a clear defeat for the Corporations.

The pill was, however, sweetened with a chapter (VI) in the 1912 Act that recalls the conciliatory language of the Bertoni Report. Thus, under "Relations between pasture and forest", the Act called for an effort to "reconcile the interests of grazing with those of sylviculture", especially through the conservation and creation of "wooded pastures" (art.

53). Where the forest was to be extended to the "prejudice of pasture", the Act provided for the reclamation of pastures, as the Bertoni Report had recommended. This principle is also contained in the Federal Act of 1902. On the other hand, the 1912 Act states clearly (art. 54) that livestock must be excluded from plantations or regenerating forest until saplings or coppice shoots are no longer vulnerable.

Under "penalties", the 1912 Act left it to the Corporations to levy fines for free-ranging livestock, but imposed minimum fines (art. 57). If the Corporations failed to impose fines, these could be levied directly by the Forest Service on the Corporations themselves, with the State reserving the right to proceed against the owners of the livestock (art. 58).

Thus the Cantonal Forest Act of 1912 set the ground rules for the relations between the Corporations and the Forest Service until the 1990s.. As noted earlier, the notable exception was the abolition of the quadrelle, which occurred as late as 1962 (in practice, at the latest by 1973) when the Organic Law on Corporations of 1857 was finally replaced. Presumably this abolition was too "political" an act to be left to forestry legislation.

11. From World War I to World War II: subsidized watershed rehabilitation and last reprieve for the conventional forest economy

The passage of the Cantonal Forest Act of 1912 marked, at long last, the beginning of the systematic implementation of the Federal and Cantonal policies of watershed rehabilitation that can be traced to the Landolt Commission of 1859-1861 (Landolt, 1864). In 1913, all Ticino forests were declared "protective forests" in the sense of the 1902 Federal Act. However, "conscious" implementation is perhaps more accurate than "systematic", as the work of reforesting or rehabilitating mountainous watersheds was to proceed slowly until modern times. The main reason was probably lack of money on the part of both the Corporations and the State. Between 1900 and 1970, the Corporations reforested only 5,140 ha out of some 100,000 ha of woodland and forest

land they own, financed almost entirely from SFr 22 million in Federal and Cantonal subsidies (RPT, 1971, vol. X X V , p. 71). Another source (Grandi, 1960, pp. 334-335)) mentions a total of only 5,000-5,500 ha reforested between 1876 and 1960, despite the fact that the Ticino was one of the more active Cantons between 1876 and 1899. According to the Canton's Chief Forester, the average annual rate of reforestation of 65 ha between 1876 and 1960 should have been 500 ha annually given the state of the Ticino forests (Grandi, ibid.). As late as 1956, the same Chief Forester still mentions the transformation of degraded and other low coppice into high forest as a long-term priority (Grandi, in RPT, 1956, vol. X, no. 6). This had been forest policy since at least the ill-fated Cantonal Forest Act of 1840 and related Forest Regulation of 1857 (art. 57), as restated in the Cantonal Forest Act of 1870 (art. 46).

Both World Wars and the Great Depression inbetween were, of course, a great strain on public finances. There may have been other delaying factors at work, such as foot-dragging on the part of the Corporations (future archival research will focus on this question), an overworked and undermanned Forest Service, and a diminishing sense of urgency as the causes of forest degradation typical of the mid- to late 19th century (speculative forest felling, too many goats, etc.) gradually disappeared.

After 1912, there also began the slow work of surveying, demarcating and inventorying the forest areas, and of preparing the management plans called for by arts. 21 and 22 of the 1912 Act (cf. Pometta, 1954, RPT, vol. VIII, no. 5).

The Two World Wars and, perversely, the Great Depression in between were, however, the period when the conventional forest economy of the Corporations underwent a partial and, as it happened, final revival. By "conventional" forest economy is meant the extraction of ordinary wood products such as poles and saw timber, as opposed to more modern economic roles such as recreation and other amenity uses.

During WW I the demand for tannin was such that it led to overcutting of chestnut forests. Tannin was previously imported mainly from France and Italy (Merz, 1919, p.

34). Particularly insidious was the demand for older chestnut logs, which have the highest tannin content. In 1917, both the Federal and Cantonal governments forbade the cutting of chestnut trees (Pometta, 1953, RPT, vol. VII; Merz, 1919, p. 12). The Federal government even published a monograph reminding the public of the many other uses of chestnut trees and forests (Merz, 1919). During WW I, the price of chestnut wood rose from about SFr 4/stere (500 kg) to about SFr 28/stere, mainly as a result of demand from the tannin industry (Merz, 1919, p. 7). The Federal monograph mentioned above reminded its readers, however, that a well-managed chestnut forest could yield a total annual net revenue of SFR 600/ha (Merz, 1919, p. 65) , *a* substantial sum in those days. Hence the warning against "unbridled speculation" because of the tannin demand. As stated earlier, one reason for not abolishing the jus plantandi was that these servitudes --although against Federal forest policy since 1876- provided some protection for the chestnut forests against speculation by the greedier Corporations. These servitudes concerned mainly individual chestnut trees as sources of fruit and poles.

The active use of Corporate and other forests even after WWI is reflected in Executive Decrees and Regulations issued in 1923, 1925 and 1927. They concern the degradation of coppice forest through excessive thinning (Corporations and other owners are reminded that coppice forest is forest, and thus subject to cutting permits under the Forest Act of 1912; the old tendency to convert forest to pasture is still there); the obligation to weigh wood cut in the forest itself as "remote weighing" is not "apt to protect sufficiently the interests of the owners of the forests or of the State"; the creation by decree of forest-management consortia for private forests if requested by a majority or deemed in the public interest.

During the Depression, the rural exodus was temporarily reversed in the Ticino, as elsewhere, as people returned to the land to survive. In addition, as a result of the overall decline in living standards, the urban and other demand for traditional forest products ((firewood, utility wood, fruit, etc.) was revived (I. Ceschi, Chief For., oral comm., 1994). Thus the forest, and in the Ticino this meant primarily the Corporate forest, regained in value. This trend was reinforced during World War II, when an

economically isolated Switzerland was forced to rely heavily on all domestic energy and other supplies. In particular, the Corporate forests became vital sources of rationed firewood, as the writer recalls only too well. This firewood replaced in part German coal until the late 1940s.

For the Ticino Corporations the financial upshot of these new or renewed demands on their forests was that the management of existing forests became largely self-financing between WW I and the late 1940s (I. Ceschi, Chief Forester, oral comm., 1994). During this period, State subsidies were confined almost entirely to the reforestation of critical watersheds (ibid.). Historically, however, the two World Wars and the Depression inbetween only served to postpone the final break between a traditional rural society, in decline since the turn of the century, and its multiple-use forest (Ceschi, 1994, pp. 10-11). The final break came sometime between the late 1940s and the mid-1950s (Ceschi, ibid.; cf. chapter 11.2). This break inevitably raised fundamental questions concerning the nature and future of the Corporations.

12. The post-war economic decline of the forest, the new consumer society, and the rise of ecological concerns

The Ticino, one of the last traditional rural societies of western Europe, underwent a late but profound social and economic transformation between the late 1940s and the early 1960s. Agriculture, which still employed about 28% of the labour force in 1940, by 1950 and 1960 only employed 18% and 11%, respectively (Billet, 1972, p. 261). These statistics probably overestimate full-time employment in agriculture, which was probably below 5% by the late 1960s. The number of farms decreased by 57% between 1955 and 1969 (Billet, 1972, p. 262), despite government subsidies to keep farming alive, especially in the mountainous regions.

The Ticino, long a source of emigrants, also became a land of immigration, as manpower was drawn in by the boom in residential and infrastructural construction and by industrialization. The number of factories alone doubled between 1944 and 1965

(Billet, 1972, p. 308). By 1960, there were over 30,000 foreign workers in the Ticino, out of a total workforce of some 90,000; by 1964, the foreign workers exceeded 56,000 (Billet, 1972, p. 303). As foreign workers came in, the domestic workforce generally moved up the socio-economic scale, as many entered the tertiary (services) sector. The largest town, Lugano, became one of the main banking centers of Europe, thanks in large part to Italian flight capital. A largely rural, poor, traditional society gave way to a modern, prosperous consumer society, except in the more remote villages of the Alpine valleys, and even there only among the older generations.

Given this social and economic transformation, it is not surprising that the Corporate forest lost most of its traditional role, both economic and cultural. Some markets, such as for firewood, charcoal (also revived in WW II, as trucks were run on producer gas) and tannin, disappeared. With the decline of agriculture, the forest as a source of hay, browse, litter, and utility wood lost much of its significance. Chestnuts, for centuries a staple if not the food of last resort during famines, were now left to rot on the ground, or at best gathered only for folkloric reasons. Thanks to modern transport and closer economic ties with the rest of Europe, even the relatively modern saw timber industry lost many of its outlets. The Corporations' revenue from the sale of wood products declined drastically (cf. Chapter 11.2). Two other reasons for the decline of the forest industry was the rise in personnel costs (38% rise between 1959 and 1969; RPT, 1969, vol. XXIII, p. 12), and the sheer lack of manpower for forest work.

The Ticino Patrician Alliance, the umbrella organization for the Corporations, itself noted in a 1971 historical overview (RPT, 1971, vol. XXV, pp. 71-72) that in the decade of 1957-1967 there occurred a

> progressive substitution by the social function of the forest for the economic one, and the split between ownership and the right of [free] disposal of forest assets is the cause of serious consequences for the Corporations lacking non-forest income; consequences which translate into Corporations foregoing the execution of essential forestry operations, or indebtedness.

In other words, the Corporate forests were ceasing to produce revenue, but the Corporations remained the owners responsible for the management of these —now socially important- forests while being prevented by law (Forest Act of 1912; LOP of 1962) from liquidating forest assets and thus raising funds needed to manage the resource. The result was neglect of the forests, or indebtedness. As discussed later, this became not just the Corporations' problem, but the State's as well.

For the Corporations, however, the malaise went deeper than the loss of the economic importance of their vast forest holdings. With economic development and transformation, came urbanization, greater mobility of people, and general loss of interest in Corporate affairs through absence and loosening of ties to the land (cf. Chapter II. 2). In brief, it seemed for a while as though the Corporations' survival faced a greater threat from economic irrelevance and social indifference than it ever did from the radical reformers and abolitionists of the 19th century. However, as the economy and society evolved, so did the role of the forest, and thus by extension of the Corporations. As the Canton's Chief Forester notes in a recent article (Ceschi, 1994, p. 11)

> as a society becomes almost entirely independent of the forest's products [this] <u>inevitably causes a profound alteration of the relationship between society and the natural environment</u> [emphasis in original text].

As might be expected, the new role and new value of the forest lie in the direction of air and water quality maintenance, of recreation, of wilderness experience, and biodiversity conservation without, of course, losing its productive capacity (ibid.). The Ticino forest, for which read the Corporate forest, has always had a multi-purpose function; today, it has simply acquired even more functions (ibid.).

Before examining the relationship between the Corporations and contemporary society regarding the forests, it is worthwhile, however, to return briefly to the early 1960s when the then new Organic Law on the Corporations was being debated. The new law (1962) finally replaced the 1857 Organic Law. These debates are interesting because

they took place while the profound transformation described above was already well underway; they may thus reveal how the Corporations viewed themselves, and how society at large viewed the Corporations, at this critical time.

The main impression conveyed by the debates, by legislative reports and by the 1962 law itself is that, by 1960-61, there was a consensus that an ancient institution, threatened with irrelevance, needed to be defended, updated and strengthened. There were no radical calls in the early 1960s to abolish the Corporations as undemocratic anachronisms as there were each time the Corporations were debated in the 19th century. So far as is known, no one testified in favour of abolition before the legislative commission that examined the bill (Raccolta dei Verbali del Gran Consiglio, 1961-62 Session, p. 462). Perhaps it was precisely because the Corporations had become for the most part economically irrelevant that there were no longer strong economic interests —namely rural non-members— opposed to them. In many Communes patricians were now such a minority that they no longer constituted a feared political or social elite, or even one worth belonging to. On the contrary, in an upwardly mobile and increasingly urban society, patricians were often the rural poor or backward (cf. chapter 11.2).

Thus it seemed that by the early 1960s, at a time of great social change and personal uprooting, society rallied in support of an institution that stood for continuity and rootedness, even if most people no longer had a direct vested interest in that institution. It should be added, however, that the revision of the law on Corporations had also become essential because of the need, long overdue, to reconcile this law with the new law on the political Communes adopted in 1950. Since 1803, in the Ticino Communes and Corporations are the twin foundations of local government, and thus any legal inconsistencies between the two cannot be tolerated for long.

It may be added here, however, that only a decade later the winds had shifted again, and "communal dualism" was again brought into question in the light of harsh economic and social realities. Thus in 1970 an all-party motion in the Cantonal Legislature asked the government to establish, a commission of inquiry into all aspects of

the Corporations, including the feasibility of integrating the Corporations into the political Communes. It is this commission that produced the massive report (CSPT/DICT, 1975) quoted repeatedly in chapter U.2. The commission also laid the groundwork for the 1992 Organic Law on Corporations described below.

The debates of the early 1960s centered in large part on the issues of the alienation and the division of Corporate assets, either in kind or in cash. This division was allowed by the 1857 law (art. 51), although in the case of forests the right to alienate or divide Corporate forests had been severely curtailed, at least on paper, since the Federal Forest Act of 1876 (arts. 12 and 13). Recall, however, that the Cantonal Forest Act of 1912 had tolerated the "divisions in usufruct", i.e., the quadrelle. and banned only the "divisions in property" (art. 24) or divisions "incompatible" with the "good government" of forests (art. 35). The Act had also severely restricted new servitudes (art. 42).

Inevitably the debates on alienation and division of Corporate property focussed on the quadrelle, but another topic was the irregular status of many "private" lots, buildings and other structures on what was technically Corporate property. The construction of private homes on "free" Corporate land was indeed a Cantonal scandal, and one which undermined the credibility of the Corporations. By the 1960s most were also aware that land grabs and liquidation of Corporate assets had ruined many a Corporation. Hence, all parties, including the Patrician Alliance, accepted the principle that "any and all division of Corporate assets" should be prohibited (Raccolta dei Verbali, ibid., p. 463). Which did not prevent the Alliance from defending some Corporations where the quadrelle were well established, and where strong opposition to their abolition was to be expected (ibid.).

The Legislative Commission eventually conducted an inquiry on the nature and extent of the quadrelle problem in the southern Ticino. It found that, in general, the extent of the problem had been exaggerated, but that in some cases quadrelle assigned for "perpetual enjoyment" had indeed been entered into the Communal cadaster as private

property and taxed as such. The Commission concluded, however, that where the quadrelle had been assigned "solely in usufruct", nothing should prevent the Corporations from reintegrating these lots into the common property within the ten years foreseen by the new law.

The Commission also heard from the Cantonal Chief Forester who deplored that the issue of the quadrelle had been left unsettled by the failure of the 1908 Forest Act and by the half-hearted retirement of servitudes foreseen by the 1912 Forest Act. More to the point, he argued that the quadrelle were incompatible with modern, consistent forest management. They were also no longer justifiable on the grounds that they supplied households with firewood, as by the 1960s wood from the quadrelle was usually sold on the stump to wood merchants. The quadrelle also ran counter to the old Ticino forest policy of converting low coppice into high forest. The Commission agreed with the Chief Forester that an unequivocal ban on the quadrelle should be included in the 1962 law (art. 88). The last quadrelle were theoretically retired by January 1, 1973 (but see Ch. III.4 for relics today).

The debates and eventually the law (art. 89) also upheld the principle that "administrative assets" of public utility such as forests were "inalienable", whereas "patrimonial assets" such as ordinary real estate could be sold to retire debts, to finance works of public utility or otherwise act in the public interest. However, the State Executive must ratify any alienation of real estate "in order to conserve the Corporate patrimony" (art. 90). This clause was opposed by those who saw it as a "diminutio capitis", that is as an encroachment on the Corporations as "free and independent bodies". Those who were afraid of corruption, speculation (the 1960s saw unprecedented real-estate boom in the Ticino), and just plain hoodwinking of weak Corporate administrators won the day.

The law (art. 102) also upheld the principle that divisions in cash were prohibited. This principle, which had been debated since the early 19th century when entire forests were razed for cash, was designed to remove the first incentive to the liquidation of

Corporate assets. The principle was also upheld because some feared the legal consequences of making cash grants to hearths, which then meant divisions within families.

Art. 108 repeats that all divisions of revenues or of assets among Corporate members is prohibited. Revenues from sales of timber and from the sale of real estate must be used to "increase the Corporate patrimony", or to retire debts, or to finance works of public utility. Art. 108 also sought to legitimize previous de facto divisions, as it authorizes owners of buildings erected on Corporate lands, "even those with only the tacit consent of Corporate administrations", to apply for and obtain title to the land "at a price established by the Corporate Assembly". The latter was presumably a concession to the Corporations, as these could sell land to their offending members at nominal —as opposed to market— prices.

The emphasis in both the debates and the Act of 1962 on the prohibition of the liquidation and division of assets evidently reflects the concern in the early 1960s that, with falling revenues from forests and other assets, the Corporations were tempted to start eating into their capital. Just as they had been tempted to do so in the early 19th century by the strong demand for forest products. As far as the forests were concerned, the 1962 Act imposed a further restriction on the disposal of revenue from timber cuts. Thus a State concerned about the neglect of forest management (and presumably ever-rising subsidies) imposed on the Corporations a so-called Reserve Fund for Forestry, replenished from a maximum 10% contribution from the net revenue generated by timber sales (art. 101). On the other hand, the 1962 Act abrogated the 5% tax on forest revenues imposed by the 1912 Forest Act, as this tax was a form of double taxation [Corporations pay income and capital taxes to both the Communes and the Canton] of little benefit to the Forest Service.

A further debate centered on what constitutes a "hearth", and who has the right to vote in the Corporate Assemblies. Here the Patrician Alliance fought a rearguard battle to retain the time-honoured system of having the "hearth" represented by only one person

(male or female since 1919) who is the "head of the household". It lost the battle. The 1962 Act, in keeping with the times, gives the right to vote to all Corporate members of voting age (art. 19). In addition, the "hearth" is now defined as either a man or woman of voting age and with his or her "own household" ' or a "community of. Corporate members who form one household under the authority of a head of family" (art. 20). Recall that allocations in kind are still by "hearth", and thus not necessarily to all individual voting members of the Corporations.

Society, the Corporations and their forests in the 1990s. As the Canton's Chief Forester sums up the situation, by the 1990s the Corporations are essentially owners of forest and other lands. It is a fiction that they are managers of forests, as forest management is 90 percent subsidized, and is essentially planned and executed by the State. Local surveillance and policing of forests are hardly an argument for Corporate ownership, as most members are now absent rather than being local farmers. Forest policing is, in any event, hardly an issue today. As noted earlier, today the one great advantage of Corporate ownership of the forests is this very ownership, which thus prevents the alienation of amenity and other resources of great social value. There would be no sense to the State trying to expropriate Corporate forests even if the Canton could afford it; as Cantonal State forests they would still have to be managed, and their legal status as forests would be less secure than at present.

There is the alternative of turning the Corporate forests over to the political Communes, which is what the neighbouring Canton Grisons did over a century ago. A case can be made for such a move, as the Communes have powers of taxation, and thus do have some financial means to manage resources. According to the Canton's Chief Forester, there is no doubt that the forests of Canton Grisons are in better shape today than those of the Ticino because the Grisons Communes have been responsible for their forests for over a hundred years (I. Ceschi, oral comm. 1994). But presumably a transfer of ownership today would not make much sense, as most Ticino Communes, like local government everywhere, are struggling to cope with more urgent problems such as waste disposal and traffic (a problem peculiar to the Ticino is second homes imposing heavy

infrastructure investments). Besides, the Communes would still be heavily dependent on the Canton for technical and material forestry support.

As far as the Cantonal Forest Service is concerned, one practical advantage of Corporate ownership of the forests is that the Corporations are much simpler to deal with than the political Communes (I. Ceschi, oral comm. 1994). The latter have party politics, various services, and cumbersome procedures. In contrast, the Corporations have one administrative council answerable to a general assembly, and are generally free of party politics.

New legislation. Three new pieces of legislation affect the Corporations and their forests in the 1990s. One is the organic Law on Corporations adopted in April 1992 (cf. Ch. II. 1) but not yet in force except for a few clauses concerning elections. The second is the new Federal Forest Act of 1991 (in force on January 1, 1993). The third is the new Cantonal Forest Act adopted in 1998; this new Act implements the new Federal Act. In this section, the principles contained in these three pieces of legislation are examined.

Organic Act of 1992. As stated earlier, it is a sign of accelerating social and economic change that, whereas 105 years elapsed between the Organic Act of 1857 and that of 1962, the latter was superseded only 30 years later. In retrospect it is clear that the Act of 1962 was obsolete as soon as it was adopted; it was still "inspired by the model of the historical Corporation, that is the agricultural one, overtaken by events" (RPT, 1990, no. 197, p. 4). Recall that as early as 1964, the Ticino Patrician Alliance had itself asked the government to investigate the Corporations and, above all, their functions. The Alliance seemed to ask the government to define tasks for the Corporations, as though to stave off decline or abolition through irrelevance. After this initial inquiry by the Department of the Interior, two independent Commissions of Inquiry were appointed in 1971 and 1976. The first Commission, which looked into all socio-economic aspects of the Corporations, was also asked to examine the relationship between Corporations and the political Communes, including a possible merger of the two. This specific task resulted from the all-party Motion of 1970. The first Commission produced the comprehensive 1975

Report (CSPT/DICT, 1975) which, in turn, formed the basis of the work of the second Commission, charged as it were to produce drafts of legislative reform. The second Commission did not report to the Cantonal government until 1983. There followed a series of public consultations. The new Organic Act was not adopted until April of 1992, and, as noted, is still largely a dead letter as the relevant implementing Regulations have not been passed. All these delays probably reflect a) the lack of urgency of the reforms envisaged; b) the usual caution with which the Swiss tamper with ancient institutions.

More than twenty-five years of academic, legislative and public soul-searching produced a consensus on the following basic principles.

-the Corporations are irreplaceable and should, therefore, be maintained; the Motion of 1970 (merger with the political Communes) was thus rejected;

-the Corporations need to be strengthened institutionally (reaffirmation of the inalienability of their assets; linkages with other institutions for improved management of resources; mergers of Corporations; transfer of certain non-agricultural public functions to the Communes; simpler administration more in tune with that of the Communes);

--the Corporations need broader membership (transmission of membership through the maternal line; facilitated accession for farmers; automatic legal membership for anyone domiciled in the same Commune as the Corporation for at least fifty years);

-the Corporations need to be strengthened economically (through tax breaks, special subsidies for public works, and a compensation fund);

-the Corporations need technical and promotional support from the State via a consultative commission (i.e., the State ceases to play a purely regulatory function). The core conclusion reached by most parties by the early 1990s is, however, the one hinted at earlier. Today the Corporations are the owners of inalienable assets of great ecological, recreational and other amenity value, so let society make the most of this fact by means

of appropriate legislation (RPT, 1990, no. 197, pp. 7,9). As large landowners, those Corporations that are located on the lowlands can also play an important and constructive role in urban planning and in economic development. In a reversal of priorities, it was even stated that the "agricultural function, where it can be maintained, is always complementary to the other functions" (RPT, ibid.), notably the ecological, recreational, urban and developmental ones. Above all, the "entire edifice" of the new law rests on the conviction that there are no valid alternatives to the management of the real assets owned by the Corporations, as potential substitute institutions lack above all the force of tradition [emphasis added], which has ensured for us and future generations a patrimony of inestimable value, indispensable for a balanced relationship between man and environment (RPT, ibid.)

Thus the "ecological consciousness" of the last thirty years has caught up even with an institution that may have been designed for sheer survival more than 2,000 years ago.

Accordingly, the 1992 Act

-redefines the Corporation as a public body with real assets available for the public good (so as to prevent the Corporations from degenerating into associations of people united only by exclusive membership; the law provides, however, for Corporations that have turned over their assets to the Communes, but that serve to keep alive the past with cultural and charitable activities);

-lists the tasks of the Corporations for the social and public use of their assets;

—restates more explicitly the inalienability of Corporate assets [given the central value of this inalienability in the modern context];

—spells out the means by which the Corporations can be strengthened financially (tax exemptions, subsidies, etc.; the forestry reserve fund, 10% of the net proceeds from timber cuts, is retained from the 1962 Act);

--a new clause provides for communal labour in order to conserve and manage natural resources;

-provides for the "de-recognition" of Corporations that lack the bases for existing as a public institution;

-facilitates access to membership on the basis of gender equality, the new matrimonial law, and the new citizenship law [the Corporations fought and won, however, a rearguard battle to retain their Assemblies' right to examine and rule on requests for membership -as opposed to having all rules made non-discretionary in law; however, the Assemblies must now admit an applicant who has been a resident for 50 or more years, or 25 years for a farmer; apparently, residual opposition to this rule is a major reason why the Act is still not in force);

-the administration and financial management are made simpler, more transparent and more in line with modern Communal law;

-the coordination of Corporate activities with regional and Cantonal planning is to be assured by a mixed government-Corporate commission.

The latter represents a major symbolic departure from the intensely local character of the Corporations in the past.

The Federal Forestry Act of 1991. The new Federal forest legislation, just as the debates on the future of the Corporations, has had to face the reality that the ecological and amenity value of the forests has increased at the expense of their conventional productive functions. It is perhaps more accurate to say that the range of the multiple uses of the forests has increased, while some traditional uses have shrunk or disappeared. At the Federal level, the Forestry Acts of 1876 and 1902 also used to be the main environmental and planning legislation, but since 1970 new laws concerning water pollution, nature and

landscape protection, regional planning, and general environmental protection have been passed and forestry legislation must be harmonized with them (Ceschi, 1994, p. 11).

The central purpose of the new Act is the conservation of the multiple functions of the forest, whereas earlier Acts placed their emphasis on the maintenance of the total forested area. The new Act thus reinforces the new central role of the Corporations as the owners of resources of ecological and amenity value.

As far as the Corporations are concerned, the new Forestry Act also does away with the old distinctions, much contested at the time, between public and private, protective and non-protective forests. The Act does impose the obligation on the Cantons, however, to define and map the functions of the forests, notably the protective function. Thus the state will once again be in a position to have to define roles for Corporate forests, which may or may not lead to conflict with the Corporations. The new Act also reverses priorities, as before it aimed to protect the forest from natural hazards, whereas now the focus on the protection of human life and property from natural hazards. This means that the new Act has jurisdiction beyond the edge of the forest, which imposes a requirement to zone lands according to risk.

The new Act guarantees pedestrian access to the forest, while restricting vehicular access other than for forestry purposes. This clause reinforces the concept of the amenity value of Corporate and other public forests.

The new Act promotes forest management that takes into account the timber supply, "natural sylviculture" and nature protection but does not impose this management, except where the forest has a protective function. Owners can opt out of the management requirement by creating forest reserves. The Federal government now makes ordinary subsidies available for sylviculture and for restoring damaged forests, whereas before ordinary subsidies were confined to protective measures, forest roads and reforestation. Federal funds are now also available for forest conservation in mountainous

areas or by "associations of national importance in the forestry sector". These are evidently areas in which the State is likely to interact with the Corporations.

The Cantonal Forest Act of 1998. In terms of the story told so far, the striking feature of the 1998 Forest Act is that it hardly mentions the Corporations, the main forest owners in the Canton. Indeed it only mentions them by name once (art. 34), as one of the private and public entities with which the State collaborates in the protection and management of the forest. The reason for this seems clear: the 1998 Forest Act is a short, modern piece of forest legislation that reflects a broad societal consensus on the need to protect, manage and use wisely all forests, whether public, Corporate or private. The Act applies to all forests at least 800 m2, 12 m wide and at least 20 years old. All these forests are subject to a Cantonal master forest plan, and to universal principles of protection and management, including biodiversity conservation. Management plans can be imposed on all owners. The actual management is encumbent on the owners, but the State offers technical and financial support. Probably the main difference between private and public forests (and no one today questions the public nature of the Corporate forests) is that only private forests can be "alienated" without authorization from the State Executive. All this is a far cry from the battles between the State and the Corporations over forestry legislation 90 years earlier (Ch. III. 9).

CHAPTER IV. DISCUSSION AND CONCLUSIONS

General themes. After examining 200 years of the history of the relations between the modem state and the common-property forests of Canton Ticino, it would take a strong dose of doctrinaire anti-statism, coupled perhaps with an equally strong dose of rural romanticism, to conclude that these forests have been a model of efficient, traditional resource management struggling against the encroachments of the modern technocratic state. On the contrary, the history of these common-property forests in the last 200 years is primarily one of repeated state interventions made inevitable by poor resource management resulting from institutional weakness or breakdown. Ironically, the state has had to intervene often in order to keep common forests common, and to keep the owners of these forests from committing institutional suicide. State intervention has also occurred because the priorities concerning the common forests have diverged between those of their owners and those of society at large, and the views of the latter have prevailed.

Thus, the history of the common-property forests is not at all comparable to that of the high-altitude common pastures ("alps"), often owned by the same Corporations of Burgesses, and managed successfully for centuries or even millennia under self-imposed rules refined by long experience. The products and the management of the forest have a spatial and temporal complexity that grass pastures used for a few months each year do not have. This fact is clearly revealed by forestry legislation, most of which affects common-property forests, whereas hardly any legislation (aside from rules concerning dairy products or endangered Alpine flowers) affects the management of alps. In the case of the alps, the expenses and benefits are also concrete, visible, easily divisible and short-term; it is indeed possible to "close the books" on an alp each year. The festive September "Kaesteilet" ("the sharing of the cheese") of the more folkloric German-Swiss alps is, in fact, a form of annual closing of the books on these common properties. Not so with the forests. The books on them can never be closed, at least not unless the forests are liquidated. Which is precisely what some Ticino Corporations did with their forests in the

19 century, when external cash offers for forest products became too tempting, or when the state threatened to widen Corporate membership or make it more egalitarian.

There is another major feature that distinguishes the alps from the forests. With the alps, there is an almost immediate negative feedback from mismanagement, and this feedback would affect individual members in monetary and other personal terms. One need only consider the consequences of "overloading" an alp beyond its carrying capacity; at **1,800 or 2,000** meters of **altitude, the** health of the animals would quickly deteriorate, some animals would probably die before long, and the income from dairy products would plummet. In farming communities there is also a strong social stigma attached to poor animal husbandry, not to mention official sanctions from state veterinary services. Neglecting to repair stables or milk-processing facilities, usually damaged by heavy snow loads, would also render an alp unusable almost immediately. With forests, it is possible to get away with neglect or mismanagement for years, in fact to profit from such abuses as grazing in the forest.

Without idealizing the role of the modern state, it seems more accurate to conclude that the main theme of the modern history of the common-property forests has been the struggle of state to keep these forests common, intact, regenerating and socially useful. In terms of keeping the common forests common, one need only recall the struggle of the state from about 1840 onwards to prevent the liquidation of Corporation forests (usually for the benefit of the few), to eliminate individual free cutting in favour of collective forest management, to give local residents a chance to become members, and, above all, to eliminate the quadrelle and other special privileges within the Corporations.

On the other hand, it is not so much that the Corporations have been derelict in their duties as stewards of these forests, although some of them undoubtedly were in the first half of the 19th century. It is more than an institution that may have worked well under conditions of subsistence agriculture and local household demand has needed the help, and occasionally the prodding, of the state to cope with external or new pressures such as industrialization, population growth, and social demands such as for watershed

protection. It is indeed fortunate —but probably not coincidental- that the modern state rose just when these new or external pressures came to be felt. The Corporation forests were probably never more physically threatened than in the period 1815-1870, when new pressures such as external, industrial demand for wood were at their peak, and the new state was at its weakest as a result of reactionary forces after the state-building efforts of 1803-1814 and 1848. The combination of a weak state and the lure of substantial cash income -possibly for the first time in the long history of the Corporations— proved almost fatal to the Corporation forests from about 1815 (after the end of the Napoleonic wars) until the modern state was reinforced, tentatively in the 1840s, and decisively after 1870.

The existence of the common-property forests as institutions was most threatened after about 1870, when forest degradation reached a peak after some 50 years of abuse, and when the call for a more socially responsible forestry, especially for watershed protection after a series of disastrous floods, was loudest. That is indeed the time when some other Swiss Cantons did away with traditional common ownership of forests, usually in favour of modern Communal control and management (eg., Canton Grisons in 1872; the Corporations retain, however, token ownership). In the Ticino, this threat passed, mostly because of deep and widespread popular identification with the Corporations, but it gave way to the pattern that persists to this day: the Corporations own the forests, but the Canton with its financial and technical resources essentially manages them —directly or indirectly- according to state policy. Ironically, in the 1990s the common-property forests survive mainly because their "inalienable" ownership by the Corporations is considered a "guarantee", of these forests' current and future ability to meet such social demands as stabilizing and purifying the environment, maintaining biodiversity, and providing physical and spiritual recreation.

Phases of history. Beyond the general trends described above, the history of the relations between State and Corporations since 1803 can be divided into a number of phases usually marked by types of demands placed on the forests, problems created by these demands, and by legislative responses to these problems.

1803-1807. The modern state is established at the Cantonal and Communal (local) levels. Despite the relatively liberal climate of the time, full political citizenship is tied to Corporate membership. The latter is, however, relatively open, and subject to clear, mostly financial rules, as set out in the first modern law on the Corporations (Law on Acquisition of Corporate Status, 1807).

1807-1857. In this conservative phase, membership in the Corporations becomes progressively more restricted and at the discretion of the Corporations. Membership is essentially closed from the 1840s on. The view that the Corporations are private bodies, including the extreme view that they are nothing but associations of private owners ("co-property"), prevails. As such the Corporations enjoy free disposal of their property, including the forests. Particularly harmful is the practice of liquidating common assets, and dividing the cash proceeds among the member hearths. In this period, commercial demand for Ticino lumber and charcoal, especially from adjacent Italian regions undergoing industrialization, is strong, leading to widespread degradation and liquidation of Corporate forests. Floating of timber is also detrimental to rivers and fisheries, and elicits the first forestry legislation. During the more liberal interlude of the 1840s, there are the first attempts to de-couple political citizenship from Corporate membership [the Swiss Federal Constitution of 1848 did this, but the particular clause remained a dead letter in the Ticino until the 1860s], to strengthen the political Communes or make them the sole local institution, and to counter forest degradation by a progressive forest law (which was adopted in 1840 but was never implemented).

1857-1870s. In this transitional phase, conservatives and progressives clashed, alternately winning and losing various battles over such issues as Corporate membership as a prerequisite for political citizenship (finally settled in 1861 in favour of de-coupling), discretionary admission of new corporate members (the liberals lost in 1857), obligatory grants of usufruct rights to resident non-members (the liberals won in 1857), the liquidation of Corporate assets (the liberals lost as LOP 1857 still allows it) and the establishment of a modern forest service and forest legislation (an attempt was made to

implement the principles of the 1840 Forest Act via the Forest Regulations of 1857, but the first Chief Forester resigned in 1860 because his life had been threatened. By 1870, however, after record flooding the Canton had passed a remarkably progressive Forest Act, which unequivocally declared the Corporation forests to be public and imposed on them management plans based on sustainable yield. The more radical attempt to abolish the Corporations altogether, by merging them into the political communes (as was tried after the French Revolution), fails again.

1870s-1908. This was the phase when modern forest management was first imposed on the Corporations, particularly after the passage of the Federal Forest Acts of 1876 and 1902 and relevant Cantonal forest legislation. Corporate officials became extensions of the Forest Service. Watershed protection was the chief preoccupation of this period, which led to the first reforestation efforts on Corporate lands. Federal legislation also fixes the total forested area, and calls for the extinction of servitudes in the forests. A reaction builds among Corporate members who fight a rearguard battle against the view of Corporate forests as public forests, against the extension of forests at the expense of pasture, and against the extinction of servitudes such as the quadrelle or private lots within the common forest.

1908-1912. The final reaction against the modern state --or, more accurately, against the technocratic view of forests-- peaks with the rejection, spearheaded by the Corporations, of the Cantonal Forest Act of 1908 in a plebiscite. Opposition to this Act was focussed on the extinction of the quadrelle and on the fear that too "public" a view of the forests (mostly for watershed protection) would damage pastoral interests. The rejection of this Act was probably the last major political act of the Corporations at the Cantonal level. The rejection led to a public inquiry (Bertoni Report of 1910) which aired the grievances of the Corporations; by then, however, most of these grievances were being overtaken by events such as the final decline of traditional rural society. The Forest Act adopted in 1912 was, in some ways, more restrictive in terms of Corporate prerogatives than the 1908 Act. The quadrelle, however, are only restricted, but not abolished, by the 1912 Act,

despite the thrust of Federal legislation against servitudes in public forests. Final abolition did not occur until 1962-1973.

.1912-1960s. The Corporation forests regain some of their value thanks to the demand for traditional (subsistence) and conventional forest products (timber, tannin, charcoal, firewood) during World War I, during the Depression (back to the land movement), and during World War II. With increasing demands on the forests, some of the old abuses (such as clear-felling for charcoal, individual felling or excessive thinning to increase pasture) return. On the other hand, enough revenue is generated that most forest operations become self -financing. State subsidies go mainly towards reforestation and watershed protection. The two wars and the Depression delay or mask, however, the long-term decline of agriculture and of rural society, and, with it, of the conventional and traditional value of the Corporation forests. By the mid-1950s, the traditional rural ties to the forests (or common usages) had disappeared, and conventional forestry had largely collapsed as a major revenue earner for the Corporations. Cantonal and Federal subsidies cover 90 percent of the cost of managing Corporate forests. The state tries to revive the Corporations threatened with irrelevancy with a new Organic Law (LOP 1962) designed to replace at long last that of 1857, but the new law is doomed from the start because it is still inspired by a traditional, agricultural view of the Corporations which no longer corresponds to reality.

1960s-present. The economic and social (demographic) decline of the Corporations and the inadequacy of the 1962 law prompt almost thirty years of academic, public and parliamentary soul-searching over the future role of the Corporations, as their century-old raison d'etre (ownership and management of traditional agricultural assets used extensively) has largely disappeared, and as Corporation members (once the bulk of the electorate) dwindle to a minority of the population. The basic conclusion reached is that the main value of the Corporations today (aside from their heritage role) lies in their inalienable ownership of assets -mainly the forests- of great social, ecological and amenity value. These assets are thus seen as being better protected in Corporation ownership than in either state or private ownership. A new law (LOP 1992) reflects this

basic conclusion, and thus reinforces the inalienability of Corporate ownership of most of the Canton. The new law also attempts to broaden, and thus revive, the membership of the Corporations, essentially closed since the 1840s. The intent today is presumably to give more people a greater stake in their environment and its conservation.

Were the common-property forests flawed institutions?

With a modern history marked by state intervention to correct short-comings and downright abuses, it is legitimate to ask whether the common forests were not inherently flawed institutions from the start of the modern period (1803, for the purposes of this study). One way of seeking an answer to this question is to assess the Ticino Corporations in terms of the characteristics proposed for "long-enduring CPR institutions" (Ostrom, 1990, p. 90).

1. Clearly defined boundaries; individuals or households who have rights to withdraw resource units from the CPR must be clearly defined, as must be the boundaries of the CPR itself:

on paper, the Ticino Corporations meet this requirement fully, as boundaries and membership have been defined in detail in both law and in internal regulations. It may be argued, however, that until the 1870s within the Corporations the boundaries of the forests were never clear because pastoral and forestry land uses were superimposed on one another, with short-term pastoral interests usually prevailing over long-term forestry ones. Until the 1870s there was also no concept of a "permanent forest estate", without which there can be no forest management; some forests were in fact liquidated. It is not surprising that in the early 19th century some of the better-managed forests were those that had been divided into quadrelle (forest lots assigned to specific hearths in perpetual usufruct), which is an extreme example of clear boundaries and well-defined users. The only problem is that the quadrelle amount to private property.

2. Adequate fit between the rules of appropriation (timing, place, technology, quantity) and the local conditions: this fit may have existed prior to the 19th century when most of the demands placed on the Ticino common-property forests were of a local, subsistence nature. As external, industrial or social (flood-protection) demands on the forests occurred, the adjustment of the rules to the new conditions did not occur from within: the state eventually had to impose the new rules. Which begs the question as to why this adjustment did not take place from within: is it perhaps unrealistic to expect rules that were adequate for common usages could be changed within a few years to fit the demand for industrial timber? Let alone for watershed protection? Again, the contrast between the forests (new uses with vastly different temporal and other dimensions) and the alps (continuity of uses: so much livestock on so much pasture) is striking.

3. The operational rules, and their modifications, rest on a broad consensus of those affected by these rules: in theory, the Ticino Corporations meet this requirement as all member households ("hearths") participate in general assemblies. However, in the 19th century, some households were more equal than others, and it was an open secret that some Corporations were the private fiefs of a few influential families. Also, many users of the resources controlled by the Corporations were excluded from membership (and, hence, from decision-making) at a time when these resources were essential for economic survival.

4. The conditions of the CPR and of the use of these resources are monitored by individuals who are accountable to the CPR membership or who are members themselves: in modern times, Corporation forest wardens were only appointed when required by law (1840), and their qualifications were imposed by the state. In practice, after 1870 they have been more accountable to the Forest Service than to the CPR membership. After 1877, some of the wardens were replaced by state Forest sub-inspectors.

5. CPR users, or officials answerable to them, impose graduated sanctions (i.e., sanctions that fit the gravity of the offense) on other users who violate operational rules: the

internal rules of Ticino Corporations have long provided for various levels of fines and other sanctions for transgressions. In the case of the forests, however, fines and other sanctions (eg., banning of goats) have had to be imposed by legislation since 1870; an entire title (VIII) of the 1912 Cantonal Forest Act is devoted to penalties for various forest offenses, although some categories of fines (eg., for free-ranging livestock) are left to the Corporations. The state has had to step in because in forestry the Corporations as a whole have been the main offenders; recall, for example, the long struggle to get the Corporations to ban "free cutting".

6. Low-cost, easily accessible mechanisms are available to settle disputes among CPR users or between these users and officials: the general and special assemblies of the Corporations meet this requirement. Since the late 19th century, low- and middle-level forestry officials routinely use these assemblies to try to resolve conflicts not so much between individual users and the state, but between the Corporations as a whole and the state.

7. The right of CPR users to devise their own institutions is not challenged by external government authorities: whether or not this requirement is met in the case of the Ticino Corporations is a matter of definition. By and large these Corporations have maintained themselves —notably, insofar as membership is concerned- against some severe external challenges in the last 200 years. These challenges have included the call for outright abolition. In the narrower realm of forestry, however, the overall institutional framework that governs the management of Corporation forests has been imposed by state legislation in the last 125 years.

On the basis of the foregoing principles, it would appear that the Ticino Corporations, at least insofar as their forests are concerned, have not been robust, self-governing institutions in the last 200 years. They were particularly weak in the two critical areas of devising rules of appropriation that met changing demands and conditions, and in monitoring resource use. Especially in the first half of the 19th century, the Corporations were not able to devise new rules to cope with strong external demand for wood products

requiring long-term management (such as timber), and many Corporations succumbed to the temptation to liquidate assets altogether, and to divide the proceeds among members rather than reinvest the capital in sustainable, collective resource management. Some Corporations also allowed their forests to be appropriated, for all practical purposes, by a few individual households. Later in the 19th century, Corporation members seemed more concerned about protecting their individual pastoral interests than in responding to society' need for a more "social" role of the forest, notably that of watershed protection. A11 these weaknesses and inequities inevitably invited state intervention.

Are we to conclude then that it is **Utopian** to **expect** CPR institutions that may have worked well with equal, internal demand, with simple rules of appropriation, and with easily definable, short-term **costs** and benefits - a classical example being household firewood and utility wood-- to **adapt** to unequal, **external** demand (such as a few powerful wood merchants) and to hard-to-calculate, long-term costs and benefits such as forest management on rotations or felling cycles exceeding 50-80 years, not to mention such socially-imposed tasks as watershed protection or biodiversity conservation?. The answer seems to be yes. Society has created "impersonal" institutions such as foundations, large corporations and governments to deal with long-term planning, heavy initial costs, deferred benefits and the imponderable. CPR institutions are inherently and intensely personal, egalitarian, present-oriented and concerned with the concrete, which is why the alps (so long as the members all remain at the artisanal level) work so well. The writer was once asked to evaluate "sustainable" forest management by landowners' groups in Papua New Guinea by a well-endowed foundation in insular Malaysia. The former are well-intentioned, but are run by men in their fifties whose sons dream of the cities; the latter has 99-year concessions and a strong corporate incentive to generate timber profits 40-60 years from now. On whom are we to bet?

As noted, some of the Ticino common-property forests disappeared when external, commercial demand for timber proved to be too much of a temptation. We also know that many of the decisions to liquidate these forests were taken by a few powerful members who received disproportionate shares of the proceeds. It is possible that these

members saw the clear-fells as a once-in-a-lifetime chance to generate capital, and thus to change their economic status drastically, possibly to society's general benefit. If this is true, then it would appear that CPRs that offer this possibility are inherently fragile, particularly if the alternative is keeping them to provide only common usages, as was the case in the early 19th century. In this respect, the alps again appear to be at the other end of the spectrum, as no one to the writer's knowledge has ever radically changed his economic status by liquidating or over-appropriating these summer pastures. The steady annual income from these pastures is in fact a powerful incentive to keep many of them going, right down to the present. The same probably applies to most irrigation systems.

State vs. Corporate forests

As described in the Introduction, a perennial question in Switzerland is whether, at the end of the day, the forests have fared better or worse under Corporate ownership and management than under State control. This is evidently not an easy question to answer, as there are no "clean" experimental conditions to provide answers. As shown, in the Ticino most of the forests are owned by the Corporations, but they have been to a greater or lesser degree managed by the State for over a century. Other Cantons have either maintained or eliminated Corporate forests; to the writer's knowledge, there are no examples of side-by-side management suitable for valid comparisons.

According to Ticino's recent Chief Forester, the forests of the neighbouring Canton Grisons (Graubunden) are generally in better shape today than those of the Ticino, in part as a result of their having been turned over to the political Communes in the 1870s (I. Ceschi, oral comm., 1994). He believes that the Communes, by virtue of their tax base, have had at least some financial and manpower resources to manage their forests. Forest management has also been accepted as one of the Communes' routine formal functions, alongside road maintenance and water supply; this is in contrast to some or most Ticino Corporations, where forest management was often neglected unless specifically promoted and supported by the State.

Thus, if the example of Canton Grisons (and perhaps that of the French-speaking Cantons that have abolished their "bourgeoisies", and where today forest management by the modern Commune is well established) is anything to go by, the answer seems to be that ownership of, and responsibility for, the forests by the Communes (i.e., modern local government) has generally provided more consistent and professional forest management.

In the case of Canton Ticino, however, the final answer has to remain more ambiguous for the reasons already stated elsewhere. Perhaps the forests have not been as well looked after as they could have been under municipal (Commune) control, but today their inalienable Corporate ownership is seen as a guarantee that the forests' broad social role will be maintained. Thus the unintended consequence of 19th century legislation against Corporate abuses has been, in effect, the creation of Protected Areas, while at the same time relieving the State of the responsibilities of ownership. There is no doubt that today, in one of Europe's most attractive areas, the State would have a constant struggle to maintain forests against encroachments if most of the forest estate were ordinary public forest, including reserved forest. This is obvious today in areas under tremendous pressure from tourism-related construction such as the chestnut-forest zone between Locarno and Bellinzona; most of this zone remains green, and firmly in Corporate ownership. Finally, the forest service apparently finds it easier to deal with Corporations than with the more independent-minded and "politicized" Communes in carrying out its management duties. All in all, not a bad compromise.

REFERENCES CITED

AST (Annuario Statistico Cantonale=Statistical Yearbook of Canton Ticino)

Bertoni, B. 1910. Relazione della Commissione d'inchiesta.sulle cause del conflitto fra le Autorita forestall e le corporazioni patriziali: Bellinzona, n. p.

Billet, J. 1972. Le Tessin. Essai de geographie regionale: . Grenoble, Imprimerie Allier.

Biucchi, B.M. 1973 (1975). L'economia dei Patriziati: in CSPT/DICT, part II, pp. 1-143.

Caroni, P. 1964. Le origini del dualismo comunale svizzero: Milan, Ed. Giuffre.

Caroni, P. 1971. In tema di superficie arborea (jus plantandi) nella prassi cantonale ticinese: RPT, vol. XXV (1), pp. 1-21.

Caroni, P. 1974. L'altra storia del patriziato: Quaderni dello Archivio Storico Ticinese, no. 57-58 (also reprinted in CSPT/DICT, 1975, part I).

Ceschi, 1. 1994. La nuova Legge federale sulle foreste: RPT, April issue.

Ceschi, R. 1986. Ottocentesco ticinese: Locarno, A. Dado Edit.

CSPT/DICT. 1975. Commissione di studio sul patriziato ticinese. Documenti della Commissione di studio sul patriziato ticinese. Bellinzona: Dipartimento dell'Interno del Cantone Ticino.

Duby, G. and Wallon, A., Eds. 1976. Histoire de la France rurale. Tome 3. Apogee et crise de la civilisation paysanne, 1789-1914: Paris, Ed. du Seuil.

Eiselin, H. 1932. Sul patrimonio ticinese di selve castanili: Bellinzona, Tipo-Litografia Cantonale.

Franscini, S. 1837-1840. La Svizzera italiana: Lugano, Tipog. Ruggia, 2 vols. in 3 parts.

Glacken, C.J. 1967. Traces on the Rhodian shore: Berkeley and Los Angeles, Univ. of California Press.

Grandi, C. 1958. Il cancro corticale del castagno ed il risanamento della zona pedemontana nel Cantone Ticino: Schweiz. Zeitschrift fuer Forstwesen, no. 7.

Grandi, C. 1960. Aspetti di politica forestale nel Cantone Ticino: Schweiz. Zeitschrift fuer Forstwesen, no. 7, pp. 333-340.

Guzzi, S. 1990. Agricoltura e societa nel Mendrisiotto del Settecento: Bellinzona, Istituto Editoriale Ticinese.

Hardin, G. 1968. The tragedy of the commons: Science, vol. 162, pp. 1243-1248.

Hofer, A. 1973 (1975). Le finanze dei Patriziati: in CSPT/DICT, part III, pp. 1-63.

Kasthofer, C. 1847. Memoria rassegnata al Consiglio di Stato della Repubblica e Cantone del Ticino (Riassunto delle osservazioni generali intorno alla condizione e al governo dei boschi nel Cantone Ticino e sulle difficolta per una riforma dell'economia forestale): Lugano, Tipog. del Verbano.

Landolt, E. (1861) 1864. Rapporto al Consiglio federale sulle foreste delle alte montagne della Svizzera: Lugano, Tipog. F. Veladini e Co. (Italian version of the original report).

Lavizzari, L. 1863. Escursioni nel Cantone Ticino: Locarno, A. Dado Edit. (1988 re-issue).

Leibundgut, H. 1962. Waldbauprobleme in der Kastanienstufe Insubriens: Schweiz. Zeitschrift fuer Forstwesen, no. 3/4, pp. 164-188.

Lienhard-Riva, A. 1945. Armoriale ticinese: Bellinzona, Dip.to Cantonale della Pubblica Educazione.

LOP, 1857/1962/1992. Legge organica patriziale (organic Law on Corporations)

Maggi, F. 1997. Patriziati e patrizi ticinesi: Viganello, Pramo Edizioni.

Marsh, G.P. 1864. Man and Nature; or Physical Geography as Modified by Human Action: New York, Chas. Scribner.

Merz, F. 1903. Die foerstlichen Verhaeltnisse des Kantons Tessin: Zuerich.

Merz, F. 1919. Die Edelkastanie. Ihre volkswirtschaftliche Bedeutung, ihr Anbau und ihre Bewirtschaftung: Bern, Schweiz. Dept. des Innern.

Netting, R. McC. 1981. Balancing on an Alp: Cambridge Univ. Press.

Ostrom, E. 1990. Governing the commons. The evolution of institutions for collective action: Cambridge Univ. Press.

Pometta, M. 1949-1954. L'intervento.dello Stato nella gestione dei boschi privati: RPT, vols. III-VIII, v.p.

PVGC (Processi verbali del Gran Consiglio, Repubblica e Cantone del Ticino) (legislative debates; earlier known as Raccolta dei Verbali del Gran Consiglio)

RPT (Rivista Patriziale Ticinese, vol. 1, 1947-) (organ of the Alleanza Patriziale Ticinese/Alliance of Ticino Corporations)

Stevenson, G.G. 1990. The Swiss Grazing Commons: the Economics of Open Access, Private, and Common Property: Cambridge Univ. Press.

Zimmermann, R.C. 1965. Chestnut blight in the forests of southern Switzerland: Geog. Review, vol. 55, pp. 99-104.

ANNEX A - ARTICLE FROM THE NZZ CONCERNING TICINO CORPORATIONS (JAN. 1983)

Gesetzeshilfe für die Tessiner Patriziate

Bürgergemeinden auf neuem Kurs

26 JAN 1983

We. Bellinzona, 24. Januar

Wie kaum in einer anderen Landesgegend ist der Dualismus zwischen *Ortsbürgergemeinden* («patriziati») und *Einwohnergemeinden* («comuni politici») im Tessin ein historisch und sozioökonomisch äusserst gewichtiger Faktor. 78 Prozent der Bodenfläche sind noch heute in Eigentum von Korporationen, Genossenschaften oder ähnlich strukturierten Institutionen, die unter den Gesamtbegriff *«patriziato»* fallen, obwohl sich damit in keiner Weise eine besonders gehobene Standesform verbindet. Sollen die Patriziate sich künftig wirksam *gegen Zerfallserscheinungen* behaupten, so müssen für sie bessere Voraussetzungen für die Wahrung ihrer angestammten und neuen Aufgaben geschaffen werden. Dies bezweckt eine *Gesetzesrevision*, mit dessen Entwurf der Staatsrat vor rund sechs Jahren eine Sonderkommission beauftragte. Bevor er nun in die *Vernehmlassung* geht, wurde er am Montag in Bellinzona den Informationsorganen vorgestellt.

Der Stellenwert öffentlicher Aufgaben

Schrittmacher für die vom Wirtschaftswissenschafter *Pietro Ballestra* präsidierte Kommission war eine Expertengruppe, die die Grundlagen rechtlicher und praktischer Art zur gesamten Thematik erarbeitet hat; ihre *Analysen und Empfehlungen* waren 1975 vom kantonalen Departement des Innern veröffentlicht worden. Beim gegenwärtigen Reformvorschlag geht es darum, die *öffentliche Bedeutung* der Patriziate und die dafür zur Verfügung stehenden *Mittel* gegenüber dem geltenden Gesetz aus dem Jahr 1962 — das den gesamten Sachkomplex grundlegend geordnet hatte — zu verstärken.

In wachsendem Mass ist die *land- und alpwirtschaftliche Funktion* der Korporationen zurückgegangen. Um so mehr ist hingegen die Notwendigkeit der im Interesse der Allgemeinheit liegenden *Erhaltung von Grün- und Freiflächen* hervorgetreten. Aber immer weniger Leute stehen heutzutage für diese Unterhaltsarbeiten am Patriziatsbesitz zur Verfügung. Die Gesetzesrevision sieht deshalb im wesentlichen eine *numerische und eine organisatorische Stärkung* der alten Körperschaften vor sowie *neue Formen der Zusammenarbeit* mit den Einwohnergemeinden und mit dem Kanton und schliesslich *finanzielle Erleichterungen*, die von Steuerbefreiungen für den gemeinschaftlichen Vermögensbesitz bis zu erhöhten Subventionen für sogenannte ausserbetriebliche Leistungen gehen.

Die demographische Anreicherung

Substanzerhaltend sollte sich einerseits der strenger gehandhabte Grundsatz der *Unveräusserlichkeit des Gemeinschaftsbesitzes* (Wald, Land, Gebäude) auswirken, anderseits die Möglichkeit der *Zusammenlegung* und bei einzelnen überregionalen Aufgaben des *Zusammenschlusses* der Patriziate. Ideal wäre es, wenn auf eine politische Gemeinde jeweils nur ein Patriziat fallen würde. Diese Situation ist heute zum Teil gegeben, zum Teil jedoch führten die Vorformen der Einwohnergemeinde zu einer Proliferation von Körperschaften, die sich *auf die einzelnen Weiler* verteilen und in Umfang, Besitz- und Nutzungsrechten äusserst verschieden sind. Ein typisches Beispiel solcher Verschachtelungen ist die Gemeinde *Quinto* in der oberen Leventina, auf deren Gebiet es rund 20 Korporationen gibt.

Insgesamt wird die Anzahl der Patriziate im Tessin mit 250 gegenüber 247 Einwohnergemeinden angegeben. Die Arbeiten für die Gesetzesrevision bedingte unter anderem die Erstellung einer *Situationskarte*, aus der die Eigentumsverhältnisse nun genau hervorgehen. Es wird daraus auch ersichtlich, dass die Bürgergemeinden einen *demographischen Zuwachs* brauchen, wenn Unterhalt und Verwaltung ihres Besitzes angemessen gewährleistet werden sollen. Die Zugehörigkeit zu einer Ortsbürgergemeinde soll deshalb künftig *auch über die mütterliche Linie* gesichert sein. Es wird überdies das gesamte *Anerkennungsverfahren* vereinfacht, und eine Familie mit Tessiner Bürgerrecht kann von Gesetzes wegen *nach 50 Jahren gleichen Wohnsitzes* in das Patriziat der entsprechenden Bürgergemeinde aufgenommen werden.

ANNEX B - TITLE PAGE OF THE KASTHOFER REPORT OF 1847

RIASSUNTO

DELLE OSSERVAZIONI GENERALI INTORNO ALLA CONDIZIONE E AL GOVERNO DEI BOSCHI NEL CANTONE TICINO &c.

SULLE DIFFICOLTA' PER UNA RIFORMA DELL'ECONOMIA FORESTALE;

E

PENSIERI SULLE DISPOSIZIONI TRANSITORIE E PRELIMINARI DA PRENDERSI IN ASPETTAZIONE CHE QUESTO RAMO DI PRODUZIONE NAZIONALE VENGA RIORGANIZZATO COMPIUTAMENTE.

MEMORIA

RASSEGNATA AL CONSIGLIO DI STATO

DELLA REPUBBLICA E CANTONE DEL TICINO

DA

CARLO KASTHOFER

LUGANO

DALLA TIPOGRAFIA DEL VERBANO

1847.

Signori Presidente e Con

Ho l'onore di sottoporvi i
restale del Cantone Ticino, ri
ginale che aveva redatto prim
gano. Vogliate accogliere con i
schizzo, intanto che mi propo
tagliato lavoro; se tuttavia ult
schiararmi, e se più che altro
approvazione verrà ad incora
cominciato lavoro.

Tutti i Cantoni cui attrave
tutti soffrono la conseguenza
delle foreste, e dappertutto i
conservazione di quelle che ri
to d'immense pendici aspetta
i Governi di quei Cantoni sar
l'una o per l'altra delle altern

1.° Si vuol egli, e si può i
tarii di boschi, col mezzo di
citivi, le riforme più urgenti
mia forestale: oppure

ANNEX C - LETTER FROM CORPORATION OF AIROLO TO FOREST SERVICE (MAY 1901)

CONFEDERAZIONE SVIZZERA
CANTONE TICINO
L'AMMINISTRAZIONE PATRIZIALE
DI
AIROLO

N.° 1a colombi Bellinzona

Airolo, li 16 Maggio 1901.

All'On.° Dep.° Ispett.° di Circondario
Faido

Abbiamo esaminate le varianti da voi introdotte al nº regolamento, e nel senso e tenore come da voi ammesse non abbiamo il minimo dubbio che esse vengano integralmente accettate dalla nº Assemblea dato che non vi è contemplato l'obbligo Società assoluto del taglio e lavorazione in comune, che viene invece, col § aggiunto all'art.° 73 ammessa come facoltativa. - Siccome però la redazione da voi data al § mi discorda, mi sembra non rispecchi esattamente le idee da voi manifestate nella recente nº conferenza, così non sappiamo come in pratica si concilierà no le future esigenze forestali quali espresse nella conferenza stessa, col tenore dell'aggiunta introdotta. -

Riteniamo quindi opportuno e necessario che precisiate in quale atto scritto emanante dall'Dep.° Ispett.°

risulteranno formulate le esigenze stesse onde non si abbia poi dai ns. Amministrati ad accusarci di applicare dei dispositivi non previsti dal regolamento, e quindi di abuso d'autorità o peggio.

A titolo d'informazione aggiungiamo che il fauramento del piano di Stalvedro è in massima deciso come d'accordo, e questa Amministrazione si farà premura di iniziare le pratiche necessarie pel riscatto dei diritti privati.

In attesa di leggervi in merito a quanto sopra esposto, prima del 26 corr.e vi rassegniamo con tutta stima.

Per l'Ammin.e suddetta
Il Presidente
Tomini R.
Ramelli R. Segr.o

ANNEX D - RESOLUTION OF STATE EXECUTIVE CONCERNING THE FELLING AND SALE OF A CORPORATE FOREST JULY 1904

DELLE RISOLUZIONI DEL CONSIGLIO DI STATO

Seduta del giorno 15 Luglio 1904

Presidenza del Signor Consigliere di Stato Simen

N. 3078

Vista l'istanza 15 Marzo u.s. dell'Ufficio Vegagnale di Termolgio in Monte, Mairengo, chiedente il permesso di tagliare e vendere il legname del bosco " Faura di Siguet " ;

Conformemente al preavviso dell'Ispettorato forestale;

Su proposta del Dipart. di Agricoltura e Forestale,

R I S O L V E

E' accordato al petente Ufficio la chiesta autorizzazione ritenute le condizioni seguenti:

1. L'abbattimento ed il trasporto del legname dalla foresta devono effettuarsi per conto della Vegagna.
2. Il relativo capitolato di taglio e vendita sarà sottoposto per l'approvazione all'Ispettore di Circondario.
3. Al sotto ispettore forestale di Distretto saranno comunicati il volume esatto del materiale legnoso, la spesa per il taglio e lavorazione dello stesso ed il ricavo ottenuto.
4. Il ricavo non potrà essere diviso, ma sarà impiegato in conformità dell'art. 50 legge organica patriziale, compreso l'obbligo di rimboscare la superficie denudata, sotto responsabilità dei membri componenti l'Ufficio vegagnale;
5. La concessione è pure vincolata all'obbligo di provvedere perchè le capre non pascolino in quella località.
6. La presente concessione scade colla fine del cte. anno.

Comunicazione come di pratica.

ANNEX E - TITLE PAGES OF THE LAWS ON CORPORATIONS OF 1807, 1835, 1857,1962 AND 1992

1807

tribuzioni, ed i doveri delle Municipalità con precisione; così per una più sicura norma, ed intelligenza dell' Assemblea vengono incaricati i Sindaci di leggerla in presenza della medesima, prima di passare al detto rimpiazzamento.

Bellinzona, 19 Aprile 1807.

Il Presidente del Piccolo Consiglio

MAGGI.

Il Segretario di Stato

PELLEGRINI.

Legge sull' acquisto del Patriziato.

IL GRAN CONSIGLIO

DEL CANTONE TICINO

sulla proposizione

DEL PICCOLO CONSIGLIO

DECRETA:

Art. 1. Li Cittadini, che sotto il nome di Patrizj (o di Vicini) ed in tale qualità hanno finora avuto un diritto esclusivo al godimento delle proprietà e redditi gene-

rali delle loro Comuni, conservano questo diritto senza restrizione.

2. Li Cittadini Patrizj d'una Comune del Cantone possono acquistare il Patriziato, ossia la comproprietà dei beni di un'altra Comune, vi siano o non vi siano domiciliati, colle regole qui sotto prescritte.

3. La Comproprietà, sia temporaria, sia perpetua si deve acquistare *necessariamente* (nelle comuni, dove vi sono Patriziati) dai *semplici Cittadini* del Cantone, che vogliono esercitare i diritti politici (*Costit. Tit. 1. Art. 3.*); salva l'eccezione costituzionale (*ibidem*).

4. Per *semplici* Cittadini del Cantone s' intendono:

1. Quelli, che vi acquistarono un diritto di domicilio perpetuo, o di Cittadinanza, in forza di concessioni date da legittime Autorità, senz' essere però aggregati al Patriziato particolare di alcuna Comune.

2. Quelli, che possedono beni stabili nel Cantone, e vi hanno il domicilio almeno da cinquant' anni.

5. Li patrizj d'una Comune, che desiderano il Patriziato d'un' altra, dove non sono domiciliati, devono intendersi per le condizioni del Contratto con li comproprietarj di questa.

6. Li Patrizj d'una Comune, che sono domiciliati in un'altra, e che desiderano il Patriziato di questa, hanno diritto di acquistarlo (nel caso, che ciò non succeda per contratto volontario co' vecchj Pa-

Patrizj) mediante il pagamento del Capitale, moltiplicando per quindici la rendita annuale dell'intiera Comproprietà de' beni del Patriziato del loro domicilio.

7. Li *semplici* Cittadini possono (se non ha luogo il contratto volontario) partecipare al godimento, o annuale, o perpetuo delle proprietà appartenenti al Patriziato della Comune, dove sono domiciliati, mediante pagamento come segue:

8. Per partecipare al godimento annuale dovrà essere calcolato.

A. L'annuo profitto, che si ricava dai Pascoli, e Boschi del Patriziato, tanto in via d' interesse, che di godimento in comunione.

B. Quello degli altri suoi stabili, e capitali.

C. Quello delle Pie fondazioni, e degli stabilimenti d' istruzione, che sono di ragione privativa del Patriziato.

D. Quello in fine, che proviene da qualunque altra sua proprietà, dedotte le passività.

La somma annuale di tutte le dette rendite sarà divisa pel numero delle famiglie, che ne godono, ed il quoziente sarà l' annua somma, che dovrà pagare l' aspirante.

9. Per partecipare al godimento perpetuo, e così diventar Patrizio della Comune, dovrà il *semplice* Cittadino del Cantone sborsare il capitale al quindicesimo dell'annua somma.

10. Per valutar le rendite soggette a va-

questo commercio di transito tanto interessante pel nostro Cantone, sempre in correlazione di quanto sopra.

§ 2. I regolamenti saranno debitamente pubblicati, onde vengano a cognizione di quelli cui apparterrà, dopo essere approvati dal Consiglio di Stato.

6. Li Sindaci, ed ogni municipale in loro mancanza, dovranno sotto la loro risponsabilità prestare mano forte anche con penali, a sostegno specialmente degli articoli 2, 3 e 4 suddetti.

7. Li decreti 10 gennajo 1818 e 15 settembre 1834 sono abrogati in quanto non sono conformi al presente.

8. Il presente sarà stampato, pubblicato e affisso ai luoghi soliti per la sua esecuzione, la quale è anche raccomandata ai Giudici di pace ed ai Commissarj.

Bellinzona, 10 giugno 1835.

PER IL CONSIGLIO DI STATO
Il Presidente
V.° D'ALBERTI.

Il Segretario di Stato
STEF. FRANSCINI.

Legge organica del Patriziato.

IL GRAN CONSIGLIO
DELLA REPUBBLICA E CANTONE DEL TICINO
SULLA PROPOSIZIONE
DEL CONSIGLIO DI STATO.

Veduto l'art. 7 della legge 6 dicembre 1825 col quale fu abrogata la legge 22 maggio 1807 sull'acquisto del patriziato come dipendente da una costituzione che più non esiste;

Veduto l'art. 34 della legge 20 giugno 1803 che abilita le Municipalità a nominare delle Camere Economiche nelle circostanze ivi prevedute;

Veduto il decreto legislativo del 20 maggio 1812 che fissa i limiti e le condizioni alla divisione eventuale dei beni spettanti ad alcune corporazioni;

Considerando che nella amministrazione municipale possono essere ammessi dei cittadini che sono bensì patrizj d'un comune del Cantone, ma non di quello ove sono domiciliati;

Considerando che il buon ordine e la giustizia esigono che l'amministrazione dei beni del patriziato sia affidata a chi vi ha un interesse diretto, sempre però con quelle cautele e quelle norme colle quali vengono conciliati i riguardi dovuti agli usufruttuarj d'essi beni coll'interesse generale della Repubblica;

Considerando che la Costituzione attuale ha bensì posto un metodo generale per l'acquisto del patriziato prescrivendo coll'art. 13 § 1 che non può farsi che per contratto volontario e *coll'assenso di tre quarti de' patrizj*, ma ha dovuto lasciare alla legge lo sviluppo di questi principj;

Considerando che la legge organica del patriziato è essenzialmente utile e necessaria onde togliere l'incertezza e l'arbitrio nell'applicazione del testo costituzionale e nei diversi oggetti cui si riferisce il patriziato:

DECRETA LA SEGUENTE LEGGE ORGANICA:

TITOLO PRIMO

Godimento ed amministrazione de' beni del patriziato.

Art. 1. I soli cittadini patrizj d'un comune (conosciuti sotto il nome di Vicini)

hanno il diritto al godimento ed alla amministrazione dei beni del patriziato in conformità della presente legge.

2. Dove esistono beni di proprietà del comune in generale, distinta dalla proprietà del patriziato, sono essi goduti da tutti quelli che per istituzione o per consuetudine gli hanno goduti fin' ora, e la loro amministrazione appartiene esclusivamente alle Municipalità.

3. In quei comuni che non sono abitati che dagli antichi originarj, gli utili e le spese saranno regolate come per lo passato, salve quelle riforme che una legge potrà trovare utili e ragionevoli, e l'amministrazione resterà alle Municipalità.

4. Nei comuni che sono o saranno abitati da patrizj e da non patrizj (siano questi o non siano vicini di altro comune) l'amministrazione de' beni patriziali potrà delegarsi alla Municipalità, ma il conto delle spese che incumbono a tutti gli abitanti dovrà essere distinto da quelle che spettano ai soli patrizj. Le spese della polizia locale e regime generale spetteranno a tutti gli abitanti indistintamente. Quelle che riguardano l'amministrazione de' beni patriziali, e gli stabilimenti di nomina

1857

Legge organica patriziale.

(23 Maggio 1857)

IL GRAN CONSIGLIO
DELLA REPUBBLICA E CANTONE DEL TICINO
SULLA PROPOSTA
DEL CONSIGLIO DI STATO

DECRETA:

TITOLO I.

CAPO. I.

Assemblea patriziale.

Art. 1. I patrizi o vicini di un Comune o di più Comuni riuniti ne costituiscono il Corpo patriziale o Patriziato.

§. Esso è rappresentato dall'Assemblea patriziale o vicinanza, e della Municipalità locale, o da un Ufficio patriziale, secondo i rispettivi attributi.

Art. 2. All'Assemblea patriziale interviene un solo individuo per ogni famiglia o fuoco, che sia maschio e maggiorenne. Ove concorranvi più individui, vien preferito il più anziano.

Art. 3. Ha diritto d'intervenire all'Assemblea patriziale e di esercitare tutti gli altri diritti patriziali, il patrizio o vicino che ha trasferito altrove il domicilio materiale o politico, purchè sopporti

tutti gli aggravi, prestazioni ed imposte annue comunali e patriziali ordinarie e straordinarie, incumbenti agli altri patrizi e cittadini abitanti nel Comune.

§. A quest'effetto il patrizio non abitante dovrà eleggere il suo domicilio presso un abitante del Comune, e prestare benevisa garanzia per il pagamento delle taglie e imposte patriziali e comunali.

Art. 4. Sono esclusi dall'Assemblea patriziale:

a) tutti gli individui contemplati dall'art. 6 della legge organica comunale;

b) gli esercenti professione ecclesiastica;

c) chi non avrà pagato per *due* anni le imposte patriziali.

§. Cesseranno questi titoli di esclusione ogniqualvolta cessi la causa dei medesimi, oppure l'escluso venga riabilitato dalla competente autorità.

Art. 5. Nei comuni dove vi hanno *squadre, degagne, bogge, corporazioni* e simili corpi patriziali, ciascuno di essi tiene le sue proprie assemblee per gli affari che lo risguardano esclusivamente.

Art. 6. Ogni anno, e nella stagione in cui il maggior numero di patrizi è in patria, si terranno almeno due assemblee periodiche, l'una per le nomine di competenza dell'Assemblea, la rassegna del conto preventivo e del consuntivo, i quali saranno sempre rimessi all'esame di una Commissione; ed un'altra per l'approvazione de' conti medesimi. Il regolamento parziale di ogni Patriziato ne determina il numero e l'epoca.

Legge organica patriziale

(del 29 gennaio 1962)

IL GRAN CONSIGLIO
DELLA REPUBBLICA E CANTONE DEL TICINO

visto il messaggio 2 agosto 1960 n. 909 del Consiglio di Stato,

d e c r e t a :

Titolo primo
NORME GENERALI

Definizione e scopo del patriziato.

Art. 1. Il patriziato è una corporazione di diritto pubblico, autonoma nei limiti stabiliti dalla legge, il cui scopo consiste nella conservazione dello spirito viciniale, nel buon governo dei beni di cui è proprietaria e nel loro impiego a favore della comunità.

Altri enti patriziali.

Art. 2. Sono pure considerate corporazioni di diritto pubblico e sono trattate alla stregua di patriziati a norma della presente legge le degagne, i vicinati, le squadre, le bogge e simili enti.

Garanzia legale.

Art. 3. Ogni ente patriziale dev'essere riconosciuto dal Consiglio di Stato.

Tale riconoscimento ha effetto dichiarativo.

Contro il decreto del Consiglio di Stato è dato ricorso al Gran Consiglio nei modi e nei termini di cui alla legge sulla procedura per le cause d'amministrativo semplice del 5 maggio 1904 [1]).

Garanzia della proprietà.

Art. 4. La consistenza dei beni di proprietà del patriziato o degli enti patriziali può essere mutata unicamente secondo le norme della legge.

Il godimento dei beni deve avvenire in comune da parte dei patrizi e dei non patrizi nei limiti stabiliti dalla legge.

Titolo secondo
DELLO STATO E DEI DIRITTI DI PATRIZIO

Capo I
Acquisto dello stato di patrizio

Presupposto dello stato di patrizio.

Art. 5. Lo stato di patrizio è indissolubile dal possesso della cittadinanza ticinese.

Pubblicata nel BU **62**, 253.

[1]) Dal 1° luglio 1966 è applicabile la «Legge di procedura per le cause amministrative», del 19 aprile 1966 - RL volume 2/77.

Acquisto dello stato di patrizio
A. per filiazione.

Art. 6 [1]). È patrizio per nascita:

a) il figlio di padre patrizio coniugato con la madre;
b) il figlio di madre patrizia non coniugata con il padre.

B. per cambiamento di stato civile.

Art. 7 [1]). Il figlio di madre non patrizia non unita in matrimonio con il padre acquista lo stato di patrizio, se il padre è patrizio:

a) per successivo matrimonio del padre con la madre;
b) se, per cambiamento di nome, riceve il cognome del padre perchè allevato sotto la sua autorità.

La moglie del figlio di madre non unita in matrimonio con il padre e dei figli che ne seguono lo stato, acquistano con lui la qualità di patrizio.

C. per matrimonio.

Art. 8. La donna acquista lo stato di patrizia per il fatto del suo matrimonio con un patrizio: in tal caso perde i diritti sull'eventuale precedente stato di patrizio.

I figli nati da un matrimonio dichiarato nullo conservano lo stato di patrizio.

D. per concessione
1. condizioni

Art. 9. Lo stato di patrizio può essere concesso a un non patrizio alle seguenti condizioni:

a) se il richiedente è cittadino ticinese attinente nel comune in cui ha sede il patriziato, o vi è domiciliato, da almeno venti anni;
b) se il richiedente, già membro di altro patriziato, domanda e ottiene, per sè, la moglie e i figli minorenni, lo svincolo dal patriziato precedente.

Lo svincolo può essere condizionato all'acquisto del nuovo patriziato.

2. tasse
a) importo

Art. 10. Per la concessione dello stato di patrizio può esser prelevata una tassa dell'importo massimo di fr. 1.000.—.

Nello stabilire la tassa si terrà conto particolarmente delle condizioni economiche del richiedente, del tempo da cui la sua famiglia è attinente del comune del patriziato, della durata del domicilio del richiedente nel comune medesimo, come pure di ogni altra circostanza per cui, a giudizio del concedente, il richiedente si fosse reso meritevole della concessione.

La tassa di concessione non può essere superiore in ogni caso all'importo di fr. 300.— quando si verificano le seguenti due condizioni:

a) se la madre del richiedente apparteneva al patriziato concedente immediatamente prima del matrimonio con il padre di lui;
b) se gli ascendenti della linea paterna del richiedente sono attinenti del comune del patriziato da almeno trent'anni.

b) devoluzione

Art. 11. Le tasse di concessione dello stato di patrizio devono essere devolute all'ammortamento straordinario dei debiti o impiegate per scopi d'utilità pubblica.

[1]) Art. modificato dalla **L 20.12.1977 - BU 78, 25.**

(del 28 aprile 1992)

IL GRAN CONSIGLIO
ELLA REPUBBLICA E CANTONE DEL TICINO

visto il messaggio 5 dicembre 1989 n. 3539 del Consiglio di Stato,

decreta:

TITOLO I

Norme general!

DefInIzIone e scopo

Art. 1 ill patriziato e una corporazione di diritto pubblico, autonoma nei limiti stabiliti dalla Costituzione e dalle leggi, proprietaria di beni d' uso comune da conservare e utilizzare con spirito viciniale a favore della comunita.

¡Sono pure patriziali le corporation! di diritto pubblico, proprietarie di beni d' uso comune, che hanno svotto e svolgono uri' attivita d' interesse pubblico riconosciuta dal Consiglio di Stato.

3I patriziati generali, le corporazioni, le degagne e i vicinati sono considerati analogamente purche adempiano ai requisiti di cui ai capoversi precedenti.

AltrI enti

Art. 2

Il regolamento del patriziato stabilisce e disciplina l' esistenza di altri enti o eventuali suddivisioni interne, con i relatjvi diritti e obblighi.

Garanzla legale

Art 3

tOgni patriziato secondo l' art. 1 deve essere riconosciuto dal Consiglio di Stato.

2Tale riconoscimento ha effetto dictiiarativo.
3Contro il decreto del Consiglio di Stato e dato ricorso al Gran Consiglio nei modi e nei termini di cui alia Legge di procedura per le cause amministrative del 19 aprile 1966.

Garanzia della proprleta: congodimento

Art. 4
¡La consistenza dei beni di proprieta del patriziato o degli enti patriziali puo essere mutata unicamente secondo le norme della legge.

2I godimento dei beni deve aweriire in comune da parte dei patrizi e dei non patrizi nei limiti stabiliti dalla legge.

TITOLO Il

Del beni patriziali

Capo I

AmmInIstrazione

DefInIzione

Art. 5 il beni patriziali si suddividono in beni amministratjvi e beni patrimoniali.

2I beni amministrativi sono beni che servono all' adempimento di compiti di diritto pubblico. Essi sono in particolare i boschi, gli alpi, i maggenghi, i prati, i pascoli, le cave, le case patriziali e gli altri edifici di uso pubblico, i terreni incolti, l' archivio e gli altri beni culturali, le strade e gli accessi, gli acquedotti, le teleferiche, gli impianti sportivi o per il tempo libero, le opere di premunizione torrentizie e antivalangarie di consolidamento dei terreni.

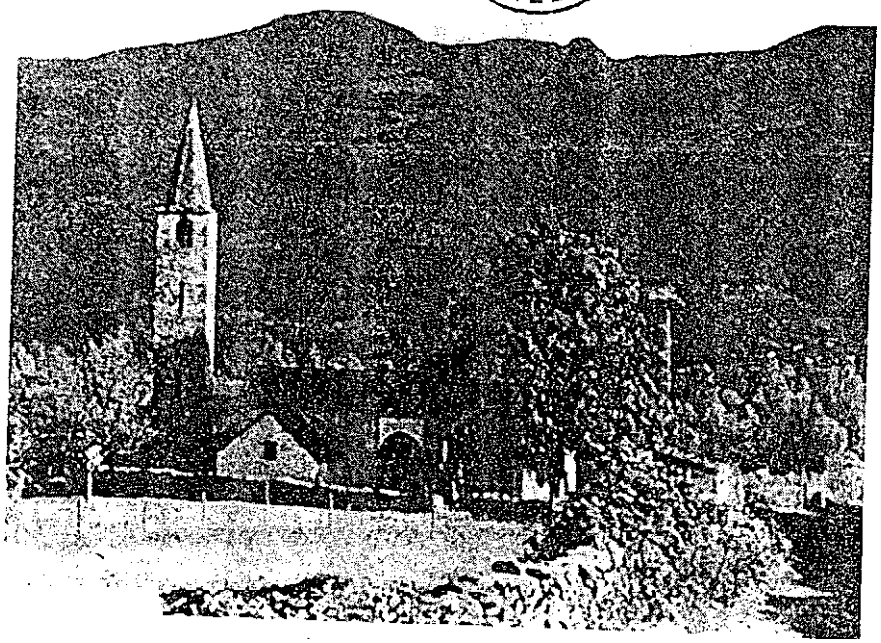
3I beni patrimoniali sono beni privi di uno scopo pubblico diretto. Essi sono in particolare i beni mobili, quali i capitali, il denaro contante e i crediti, nonche gli edifici utilizzati nella forma del diritto privato (locazione, affitto) o attraverso la concessione di uno speciale diritto di godimento.

ANNEX *fi-* TITLE PAGE OF THE ORGAN OF THE TICINO ALLIANCE OF CORPORATIONS

Rivista Patriziale Ticinese

ORGANO DELL'ALLEANZA PATRIZIALE TICINESE

Anno XLIV, fasc. 1 **N.o 19Z** Locarno, gennaio-marzo 1990



esc, dei Sana Ncuzaro e Celo.

SOMMARIO