

3. The evolution of property rights in Tuscany, from the end of the Middle Ages to the nineteenth century

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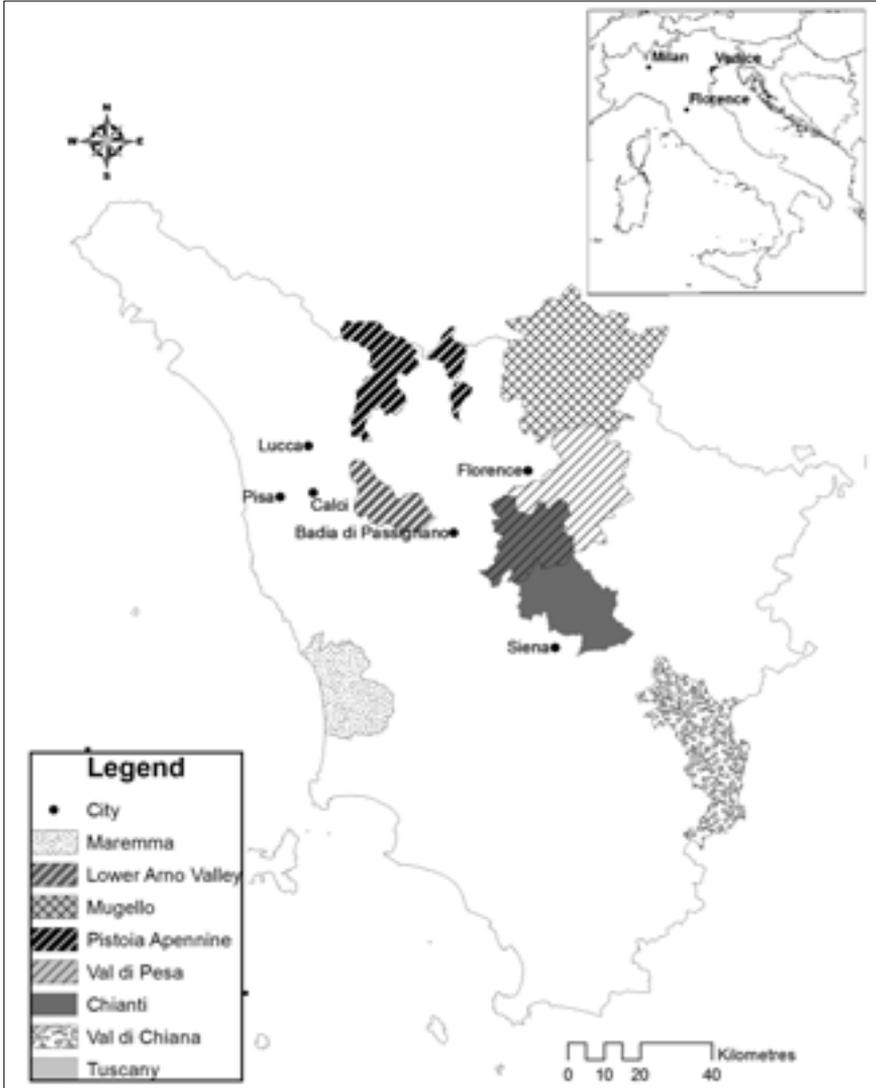
I. Introduction

This chapter attempts to understand how property rights worked and were socially appropriated during the early modern period in the Italian region of Tuscany. The initial proposition is that property relations transcend ‘legal principles and institutional frameworks’ (Congost, 2003: 74).

From the point of view of size, this case would appear, on the face of it, to be a marginal one in European history. Present-day Tuscany, even though it is larger than when it was a regional State in the early modern times, is still not very large: less than 23,000 sq. km, with a population of just over three and a half million inhabitants. However, in this small area there are many cities which back in the Middle Ages were free communes, with a population that exceeded the European average. From medieval times up to the modern period, this Italian region has been continuously involved in European history. It was one of the protagonists in the creation of the first world economy in the early modern period, centred around the Mediterranean and identified by Braudel, and albeit more marginally, it continued to be involved with major trends in the context of European history until, with the advent of the Habsburg-Lorraine dynasty in the mid-eighteenth century, it fully entered the great European phenomenon of the Enlightenment. Throughout the period it played an important role in the evolution of property rights in Europe as well, both through the adoption of new forms of behaviour by actors and social groups and the adaptation of pre-existing institutions to new economic and social conditions.

Tuscany has been an area of precocious urban civilization since the Middle Ages, with a pre-eminence of many manufacturing and commercial cities in relation to the countryside. While artisans, merchants and bankers from Florence, Lucca and Pisa had commercial, financial, and political relations throughout Europe, they were also among the most important landowners who diverted a part of their capital to acquire land, in order both to diversify their investments and to gain control of agricultural surpluses and raw materials. The seigniorial system found it hard to establish itself where city institutions, the *comuni*, did not allow institutional competitors to settle

Figure 3.1. Tuscany



Note. Map by the author.

in their neighbourhood (Pinto, 2007). The feudal system, together with serfdom, disappeared almost completely at a very early stage. The very first medieval documents attest to the existence of a free market for land: such was the case at least with allodial land (i. e., land in full ownership, as opposed to that in feudal concession), which was

freely bought and sold, exchanged or used as security. However, such early emergence in Tuscany of a process which occurred much later in other European countries does not mean that property rights and the way they are embedded in society have remained unaltered in the course of the following centuries. On the contrary, it will prove most interesting to trace the paths of the competition for land among social groups from the late medieval period to the dawn of modern times, in order to be able to compare these processes with contemporary events in the European scene and highlight the peculiarities – if any – of this precocious beginning.

II. The Middle Ages: the importance of men, the importance of the cities

During the Middle Ages Tuscany, with its manufacturing and commercial cities, was among the European regions leading economic development, a leadership which did not wane until the end of the sixteenth to the beginning of the seventeenth century. Between the tenth and the thirteenth centuries, both demographic growth and urban development were high. At the beginning of the thirteenth century Tuscany probably had over a million inhabitants within its current regional boundaries, which is more than it had in the second half of the eighteenth century. Population density in the richest areas was between 100 and 200 inhabitants/sq. km. In the fourteenth century, almost 30 per cent of the population lived in cities, while the rate of urbanization in Europe was barely 10 per cent. Florence, with its 100,000 inhabitants, was then among the largest cities in Europe, together with Venice, Paris and Milan. Pisa and Siena were also among the fifteen European cities with over 40,000 inhabitants (half of which were Italian); Lucca had 20,000 to 30,000 and five other cities had between 10,000 and 20,000 (Petralia, 2004: 119-120).

In the cities dwelled landowners, notaries, professional men, bankers and, above all, many craftsmen-merchants who in 1427 made up 56 per cent of all families in Florence. Only few among the city's inhabitants were farmers. Their number was negligible in Florence in 1427, and it was less than 10 per cent in five of the other six major cities (Herlihy and Klapisch-Zuber, 1988: 391). In the course of the fourteenth century, Florentine wool merchants had begun to produce woollen fabrics as highly prized for quality as the French and Flemish ones. For the following two centuries, Florentine woollen fabrics became the most sought after by European aristocrats. The fourteenth century was also the golden age of Tuscan banking and commerce. Banking institutions had branches in all the main European cities and courts, and bankers sold both city products and agricultural produce, namely cereals. The demographic crisis triggered by the Black Death in the mid-fourteenth century resulted in a fall in land prices and an increase in wages, which gave rise to important instances of social

mobility, earlier than in the rest of Europe because of greater economic and social development in the area.

In fact, during previous centuries the cities had extended their economic and juridical power, dealing a final blow to the earlier seigniorial hold of the land. From the second half of the thirteenth century, ‘people’s governments’ promulgated laws that freed peasants who until then had remained legally subservient to the nobility and personally bound to the land. Seigniorial estates based on serfdom and *corvée*, which had already been in decline for some considerable time, disappeared almost everywhere but the less populated areas. Noblemen were not permitted to live in the cities, while their jurisdictional powers and rights were replaced by taxes to be paid to the communes and obedience to their officials.

III. The central pattern: the creation of the great secular fortunes in inland Tuscany

At the beginning of the Middle Ages, a considerable part of all landed property belonged to abbeys, monasteries and to the clergy at large. Their lands were cultivated mostly by *livellari*, that is, tenants under a *livello* contract, which created a duality of claims to the land between the landlord, who retained the eminent lordship (*dominium eminens*), and the tenant as the immediate owner of the land and the right to use it (*dominium utile*) – a kind of duality which was very widespread throughout Europe (Congost, 2003: 86). The *livello* (from *libellum*, the relevant contractual document) has a long history in Tuscany. Some such contracts are still in force to this day, having survived all redemption laws, even though in many instances they have ceased to be paid and occasionally gave rise to surges of requests and litigations. The *livello* is a contract similar to Roman emphyteusis, a sort of copyhold tenancy, which generally lasted for three generations. It differed from the original meaning of emphyteusis because it did not always refer to waste land being cultivated; quite the contrary, since throughout the centuries, and particularly in the eighteenth century, the *livello* was also applied to farms that were already established and functioning. Furthermore, unlike emphyteusis this contract did not require the lord’s consent to be conveyed to third parties.

Unfortunately, we do not know the full extent of ecclesiastical land ownership in the Middle Ages. A maximum of 15.6 per cent of landed property value in the Florentine cadastre of 1427 seems to be an underestimation (Herlihy and Klapisch-Zuber, 1988: 333). It has been estimated at 20 to 30 per cent of all land in the sixteenth century (Stumpo, 1986: 265-289). The feudal nobility were scarcely involved as landowners in Tuscany, although some families stood out, such as the della Gherardesca who

dominated the outer zones of the Maremma, or the Ricasoli, barons since 1029, who owned a major part of the Mugello and Chianti areas. There were also some small allodial properties owned by commoners. Most of the common land had been already lost in Medieval times by the rural *comuni* (Ginatempo, 2003: 263-264), and what remained was at constant risk of shrinking, though it kept a somewhat larger importance in the more remote areas, farther away from the cities (Menzione, 1995: 77). This process was very precocious in central Tuscany as compared to other areas in Europe (De Moor, 2007; Iriarte, Lana, 2007), and indeed within Tuscany as well.

The one wholly new phenomenon which emerged between the thirteenth and the fourteenth centuries was the establishment of the large city-owned estates, above all at the expense of former small owners and farmers. This process involved communes throughout northern and central Italy, and within Tuscany this first began to appear in the Florentine countryside, or *contado*. This term, which in the period around the year 1000 had meant the domain and jurisdiction of a count, in the age of the communes came to refer to the rural area under the authority of a city. The *contado*'s inhabitants, the *contadini* (or *comitatini*), had a quite different legal status to that of city dwellers. As the communes extended their control, the term *contado* generally came to mean the first areas to have come under the authority of the communes, as distinct from the wider city district (Herlihy and Klapisich-Zuber, 1988: 153-186).

Commune societies were pervaded by a strong drive towards land ownership. Political life, business, work, and existence itself seemed precarious in those days. In the collective imagination of city dwellers, as it emerges from contemporary documents, we find the constant ambition to own land to ensure a stable economic basis of bread, oil, meat, and good wine to the domestic economy (Conti, 1965a: 2-3). Furthermore, investing in land was a complement to city activities, because craftsmen needed raw materials from the countryside and merchants would sell their agricultural surpluses. Therefore, whoever had available funds tried to purchase land in the *contado*. Around 1320, 70 to 80 per cent of the land in the part of the *contado* of Siena closest to the city belonged to city dwellers. In the Florentine countryside, according to the land register of 1427 two-thirds of the land belonged to Florentines and only 18 per cent to *contadini* (Conti, 1965b: *passim*). At that time, land 'constituted the common denominator of all the upper and middle class of urban society' (Conti, 1965b: 3).

The process leading to this situation had often been quite a long one. In the first half of the fourteenth century, before the Black Death, it fed off the predicament of small-scale landowners in the face of demographic growth in the countries that followed Roman Law, which required the sharing of property among all heirs. Thus in 1330 the Florentine merchant-banker Peruzzi bought six houses 'in the castle',

two oil mills, an oven and land with olive trees and vines in Passignano, in Val di Pesa, through nine separate notary deeds. The sellers were small landowners, perhaps farmers, who lived in the *contado* and were leaving Passignano for other 'peoples' (settlements). Since these plots of land were scattered far apart, an attempt was made to link them by means of land exchanges with the local abbey and the purchase of neighbouring properties (Conti, 1965a: 314-315). In the same period, other Florentine families acquired allodial land or property in emphyteusis from the inhabitants of the *contado* and arranged land exchanges with the same abbey. Meanwhile the abbot, for his part, had regained possession of land from *contadini* tenants who had been in arrears for many years or who had emigrated elsewhere (Conti, 1965b: 298-299). Parallel to this trend in land transfers, legal instruments became more precise, and during this period it became possible to distinguish between allodial property and forms of copyhold tenancy in the notaries' deeds, while in preceding centuries a clear distinction between the two categories would have been impossible.

As a result of all these developments, in the Florentine *contado* at the beginning of the fourteenth century, it was only in the poorest hilly and mountainous or peripheral areas that *contadini* managed to keep hold of the majority of their allodial land, which tended to decrease in the following century (Cherubini, 1985: 69-71).

IV. The Tuscan 'far West' and its convergence to the central pattern

The situation of the city of Pisa, in western Tuscany, remained very different to that of the inland cities until the fall of the maritime Republic following the war with Florence in 1407. Pisa's interests and economic organization were more directed towards the Mediterranean, from which the city could stock up on supplies brought in by the ships of its merchants. Because of its sea-faring economy, Pisa had far less interest in the *contado* than Florence or Siena had in theirs. Once the commune's authority had freed them from the seigniorial yoke, Pisa's *contado* and its inhabitants played a more autonomous role (Luzzati, 1979: 293 ff.). Even up to the fourteenth century, the only large estates in the area were those of old feudal families, like the della Gherardesca, those of noble families of merchant origins like the Alliata, the Upezzinghi and other solid families of the urban bourgeoisie, and the estates of the clergy, particularly the substantial possessions of the Archbishop of Pisa. There was still a large acreage in common lands, but these were no longer collectively exploited, except in the case of wastelands or marshes that were difficult to bring under cultivation. In some cases rural communes, ever hungry for money, had underwritten *livello* contracts with local inhabitants living in households that held entitlements to common rights. This in itself already entailed a form of private management and appropriation of collective resources. In subsequent centuries, even

'outsiders', particularly town inhabitants, would successfully infiltrate the system and gain access to the common lands for their private use.

This situation was overturned first of all by the Black Death and then by the war defeat to Florence and the subsequent fall of the Republic, even though the whole of the century was characterized by a precarious political situation caused by attempts to overthrow the new power. The city and the *contado* of Pisa declined and became depopulated. What is more, the hydrogeological condition of the plains, which had been poor to begin with, became even worse. According to the land register of 1427, population density in the area surrounding Pisa was three to four times less than in the Florentine *contado*. There was little cultivation in the countryside and large tracts of the lower Arno Valley and its tributaries had turned into marshes.

By the end of the fifteenth century, the new Medici dynasty, who were to become the consolidators of the State's territory, began a repopulation policy operating with incentives and land reclamation, which continued even after the new demographic increase and the rise in agricultural prices had taken place throughout Tuscany. This policy was accompanied by the creation of a large estate of the Medici family in the Pisan countryside, which in the mid-sixteenth century consisted of approximately 34,000 hectares, even though they were not the full owners of the entire area. In fact, many of the properties, which either belonged to the ecclesiastical authorities or were common lands, were taken over by the Medici as *livellari*. The Medici took advantage of their power to set very low rents, which, moreover, they quite often did not pay. (Pult Quaglia, 1980: 83). The self-serving intervention in this sphere by the highest levels of political power, the intertwining of private and public interests, made the crisis of the common lands irreversible. The contracts contained provisions regarding traditional collective resources, such as the concession of some privileges or the return to the communes of a part of the marshlands after reclamation, which the Medici, as *livellari*, were committed to implement. In fact, these lands were never restituted in subsequent centuries.

Other lands came to enlarge the Medicean estate out of the political battlefield: that of Florentine and, above all, Pisan landowners who had rebelled against Florence and the Medici and had their property confiscated by the victors. In order to avoid the rancour of those who had been expropriated in still uncertain times for the destiny of the Princedom, these lands did not generally become part of the Medici estate directly; more often than not they were exchanged for more anonymous properties. Finally, the family did not disdain the purchase of small landowners' plots, which had often remained as enclaves within their new properties (Pult Quaglia, 1980: 83).

The instance of the establishment, in the territory of Pisa, of the property of yet another family of merchant entrepreneurs who were subsequently ennobled, the Riccardi, provides us with further valuable information, not only concerning this particular family's estate, but more to the point about the ways in which such private estates were established throughout the centuries. In the case of the Riccardi, it all began in the fourteenth century with the family of the Pisan merchants Gambacorta, who started buying land in the *contado* in order to convert the profits which had accrued from trade with southern Italy, Provence and North Africa into real estate (Malanima, 1979: 350-353). Between 1320 and 1350, by way of about one hundred contracts, the Gambacorta acquired land from almost as many families of small landowners, who sometimes were in debt to the Gambacorta. At the end of the fourteenth century the last descendant of the Gambacorta donated all his property to the Charterhouse of Calci, whose initial qualms about the cleanliness of the fortune's sources according to Catholic precepts were promptly quieted by the Pope. (Malanima, 1979: 352). In the fifteenth century, the Charterhouse of Calci went through a period of financial difficulty, of which the Riccardi took advantage. They were a merchant family from Pisa who had moved to Florence and who were creditors of the monks. The Charterhouse let them have, through a *livello* contract, the lands it had inherited from the Gambacorta. This was the initial nucleus of a large *fattoria* (the administrative centre of several agricultural units) which the Riccardi organized in the course of the fifteenth century. To enlarge it, they later acquired more ecclesiastical property through another *livello* contract, took over the positions of small *livellari*, and bought land from allodial owners. They became one of the most important landowners in Tuscany, up to the second half of the eighteenth century (Malanima, 1977), when the family patrimony came to ruin under the weight of debt (Biagioli, 1998: 13-15).

The Medici and the Riccardi are by no means isolated examples. Many other Florentine merchants and bankers invested their capital in the Pisan *contado*, who were all ennobled under the newly established Medicean principedom. However, they were a part of nobility whose origins could be traced back to the wealth accumulated in the manufacturing and commercial cities, and who were by then partly dedicated to the acquisition of land (Malanima, 1979: 357-369). This process was not always properly understood by European and Italian historiography. The investment in land by the urban bourgeoisie of merchants, manufacturers, and bankers has often been explained as resulting from the seventeenth century crisis in Italy and of the cities' economic decline, and as part of the so-called 're-feudalization' (Romano, 1974: 1919-1927), while in fact the creation of estates by city dwellers had already occurred at the heyday of the urban economies (Pinto, 1979: 223 ff.; Aymard, 1991: 9-12).

V. The establishment of the agricultural system: farms and sharecropping contracts

The conquest of the territory by the cities, the expropriation of allodial land and of land owned by small *livellari*, the creation of large estates of bourgeois origin followed by ennoblement, all deeply modified not only the configuration of landed property, but also the social composition of the rural population, with a progressive decline in the part consisting of independent small and medium peasant holdings. Peasants became more and more dependent on the bourgeois landowners to find jobs as either wage labourers or sharecroppers. This also influenced the organization of agricultural areas, the contracts and the characteristics of the families in the *contado*. The cities reshaped the countryside they controlled, as urban owners began increasingly from the thirteenth century onwards to adopt an organizational system of rural life in their properties based on a form of sharecropping contract, the *mezzadria*.

This kind of contract hinged on two elements. The first was the farm to be cultivated, the *podere*, provided by the owner in fit condition to be productive, together with the capital needed for the annual cycle of work, above all concerning the cattle. The second element was the farmer's family, generally drawn from the inhabitants of the *contado* who did not own land, who were responsible for all the work in the *podere*, which was run as a family farm. Remarkably, the sharecropping system in central Italy persisted from the late Middle Ages up to the mid-twentieth century, linked to a veritable 'sharecropping culture'. As late as 1951, 62 per cent of agricultural workers in Tuscany were sharecroppers.

The creation of those family farms, generally aimed at being compact entities, had very marked economic effects. In fact, to work a farm with all or almost all its land consolidated instead of many scattered plots was a much more productive agricultural and economic system, and supervision costs were drastically reduced. Little by little, a 'sharecropping landscape' came into being: isolated farmsteads, each the base of one family who lived in accordance with its rigid internal organization; an agricultural system based on mixed herbaceous-arboreal cultivation, with cereals, vines and olive trees, working animals and a few pigs and sheep, if there were some woodlands or wastelands to raise them in. The process of establishing *poderi* in the countryside was the pioneering phase of a process that eventually led to the demise of small-scale land ownership and customary copyhold by the inhabitants of the *contado*, of common lands, and of village communities and solidarity (Ginatempo, 2003: 271-272).

VI. The early modern period: property and its defence

It was in the sixteenth century that the concept of ownership became definitively associated in legislation with that of an object to which ownership applies, namely the title or legal ownership of the soil, as opposed to the medieval period when the attention had been focused more on the enjoyment of the *utilitates* (the resources, be they arable land woods, meadows, etc.) (Zagli, 2001: 116-119). But the concept of ownership as we understand it today was still evolving. In fact, in the first centuries of the early modern period the rights of use persisted not only on collective lands, but also on those of individuals. The *ius pascendi*, the French *vaine pâture*, was practised even on private lands: after the wheat harvest or the first scything of the grass the land was opened for common grazing, albeit under certain conditions. Other rights of use allowed the inhabitants of a community to gather straw and to glean after the harvest, and to scythe the second and third grasses.

Such civic uses of private property were widely practised in the territory of Pisa, especially where the municipal property had been subject to transfers of ownership and usurpations by the citizens and was regulated by local statutes. A law passed by Cosimo I in 1547, which was inspired by early elements of agrarian individualism, banned thereafter the practice of *ius pascendi* on private lands in the *contado* of Pisa, because it was considered an obstacle to agricultural progress. However, many communities, especially in areas involved in transhumance, continued to allow *ius pascendi* on private property during subsequent centuries, even amidst conflicts and court proceedings. In fact, these uses survived a little everywhere, up to the reforms of the late eighteenth century.

During the sixteenth and seventeenth centuries, the distribution of landed property throughout the region was fairly homogeneous. The amount of land owned by city dwellers and by ecclesiastical authorities increased, at whose expense depending on the place in question. In the surroundings of Florence, after all common lands had been appropriated, it was the allodial property or that held by the inhabitants of the *contado* which attracted the attention of citizens and ecclesiastics. In the early sixteenth century, city dwellers owned an average 60 per cent of all land in the Florentine *contado*. The percentage rose to 75 per cent in the countryside around Florence, while it remained only 14 per cent in the mountainous areas, where most soil was so unproductive that farming families would not have been able to survive agricultural income if they had to pay a rent. In the neighbouring territory of Pisa, in 1560, the land owned by the city inhabitants varied between a minimum of 29 per cent and a maximum of 53 per cent. By 1637 these percentages had risen, respectively, to

46 and 70 per cent (Pult Quaglia, 2003: 139). In the latter year, 28 per cent of the land was owned by the inhabitants of the *contado* and 14 per cent belonged to clergy.

In the course of the sixteenth century ecclesiastical authorities maintained their preference for the traditional *livello* contract. However, more and more often the *livellari* were no longer farmers, who would perhaps add the small plots of land contracted with monasteries to those they owned or held by some other means, but rather they were noble and later also bourgeois families, who took large areas of barely cultivated land on *livello* to create *poderi* and have them farmed by sharecroppers. The abbots, bishops, and rectors of diocesan administrations who ceded the land typically came from the same city, the same social milieu and often from the same family as the *livellario*. The annual rent was low, the contractual period was very long, and profits were assured for the *livellario*. Furthermore, taking land on *livello* could also be the only legal device to take hold of properties which could not have been sold since ecclesiastical mortmain was instituted in the sixteenth century.

Common lands were still to be found in the mid-sixteenth century in mountainous areas, in Val di Chiana, between Tuscany and the Papal States, and in western and south-western Tuscany, up to then the least populated area. They persisted in areas which were difficult to cultivate: the marshes in Val di Chiana and in the Maremma, and in part of the lower valley of the Arno. During the Rule of the Medici (1531-1737), common lands in these areas regressed wherever public authorities carried out major land reclamation works (Zagli, 2001: 45-50). Between 1525 and 1532, Pope Clement VII – Giulio de' Medici, together with a cardinal from the same family, convinced the communities of Val di Chiana to grant them many of their lands, which they had not succeeded in draining, in perpetual *livello* contracts, promising to make them suitable for farming. Thus these lands became part of the estates of the Medici, who paid the agreed rent very irregularly, low as it was. In the seventeenth century, part of these lands were sold by the Medici to the military order of the Knights of Saint Stephen, who, once the reclamation work had been effected, abrogated all collective rights the communities' inhabitants held in reclaimed and cultivated lands, and nullified the previous rights of hunting and fishing as well. Furthermore, with the Grand Duke's support, they ceased paying any rent whatsoever (Gregori, 1976: 212-213).

Usurpation of common lands did not come about only through the power and the arrogance of important families. Very often, as has been shown by studies on the Pisa *contado* in the seventeenth century, wasteland was taken over and used as farmland by the local inhabitants themselves, who usurped them without paying any kind of rent or fee to the community in recognition of its direct authority. The appointed community magistrates, with the Grand Duke's consent, ended up recognizing these

appropriations, justifying them with the fact that the usurpers' efforts to cultivate these lands had proved beneficial to the community. Thereafter, the magistrates only compelled the usurpers to formally acknowledge the community as the direct owner of the land. One way of making such an acknowledgement was to have the usurpers sign *livello* contracts that, when they were extended not only to the male but also to the female line of descent, constituted a *livellare* possession fully comparable with private ownership, because it was in fact held in perpetuity (Pesciatini, 2000: 334-335). In this way a new class of land owners came into being; but these processes which could still, at least at a social level, be considered a defence by the local community against preying outsiders were often short-lived. Lands given in *livello* to small local 'usurpers' to legitimate their previous abuses often ended up very quickly in the hands of large urban and rural landowners, who bought the *livelli* from the former holders. The legal provision that prevented urban landowners from signing *livello* contracts for common lands, to protect the interest of local inhabitants, was circumvented by this ploy in favour of the stronger social groups.

The new owners exploited the common lands by carrying out various forms of agricultural individualism, such as enclosures and the prohibition of the *ius pascendi* and all other collective uses which until then had guaranteed the survival of the poorest groups of the commune. By the beginning of the eighteenth century, most of the common lands still in existence were held by private individuals either in lease or in *livello*.

The first two centuries of the early modern period were characterized by the widespread application of legal regulations forbidding the sale of aristocratic or ecclesiastical estates. This is an interesting fact in itself: it means that there was perceived market demand for these properties, of such proportions as to raise fears that the social groups controlling these lands might not be able to perpetuate their control. Entailment was the means used in lay estates. In Roman Law, from which this statute was derived, it was above all a property bequest to those who, like women, could not legally receive an inheritance. In sixteenth-century Europe it was reinterpreted as an obligation to hand down certain assets to a series of persons constituting the family's descendants, and, more precisely, to preserve and hand down an undivided estate through the male agnatic line (Tria, 1945: 5-13).

In practice, according to this interpretation, entailment introduced in Roman Law countries the principle that a part of the inheritance should be handed down to a preferential heir, without being subject to the general principle of equal division among heirs – even though absolute indivisibility was not necessary, nor indeed the rule in Tuscany, as we shall see. In addition, the portion of the estate received in entailment

could never be sold. The heirs received entailed property in a fideicommissary capacity and in fact simply held the asset in usufruct: they could benefit from the income of the property in question, but not sell it, use it as security, or in any way put it on the open property market.

This was the ethos of the testamentary dispositions which, from the sixteenth century onwards, multiplied the number of entailments in Tuscany as in the other countries of Mediterranean Europe (Amalric, n.d. [2004]: 109-111), having started, it appears, in Spain (Tria, 1945: 13). The main aim was to prevent that as a result of demographic growth and the survival of more heirs, as in fact had been happening since the mid-fifteenth century, the splitting up of estates should go as far as to make them unproductive and thus deplete the source of families' incomes and social status, as the loss of a family's identification with a property which set it apart from others would have undermined both its social and economic prestige.

The entailed portion of the estate could be handed down to the eldest son of the current holder (birthright), to the closest relative of the previous holder (*majorat*), or to the oldest descendant of the original testator (*seniorasco*). The first testator's dispositions could remain in force either for a specified number of generations or in perpetuity. In Tuscany, however, the most common kind of entailment was the 'divisible' one – namely, divided between various heirs (the first-born and younger sons, brothers and grandsons or nephews, etc.) – to avoid the risk of the extinction of the lines of succession (Calonaci, 2005: 45-51).

The importance attributed to entailment has to be viewed from yet another perspective, that of the region's general economic prospects, taking into account the decline of manufacturing and commercial activities since the seventeenth century, following the shift of the commercial barycentre from the Mediterranean towards north-western Europe. In Tuscany, this resulted in a fundamental change in the aims of those investing in land. It was no longer a question of diversifying investments but rather of turning to the safest ones, which in the circumstances of the time meant falling back on the internal market. There was more and more investment in real estate, to such an extent that 'wealth was tied up in entailments and *majorats*' (Tria, 1945: 14). The legislative practice from the sixteenth century onwards was to place the names of those families who belonged to the recognized nobility in special books kept apart from the others, and allowing only the former the right to impose entailments. In Tuscany, however, during the Medicean rule there was a continuous process of ennoblement and the practice of entailment spread down from the great aristocratic families to those with smaller estates.

The effects of this regime of inalienability have been the subject of long-running disputes by jurists and economists (Tria, 1945: 1-3). It undoubtedly had one positive aspect, as far as the intentions of its institutors were concerned: it did preserve the wealth of families. Another positive result, actually one condition for the former, was that creditors could not lay hand on the assets which were tied up in the entailment without going through long and difficult proceedings. As regards the negative consequences, they will be touched on here not so much in the light of the agreements and documents which led to the abolition of the restrictive regimes in the eighteenth century, but rather from the perspective of the records concerning the estates of the old families of the Tuscan nobility.

From these records, it emerges that when there were entailments these families would resort in case of need to the sale of allodial assets, thereby diminishing their wealth, or would offer the income of part of those assets as a guarantee for loans by placing a *censo* on it (Biagioli, 2000: 55-62; Bertini, 1989: 56-77). The *censo* was a sort of mortgage involving the paying out of the consigned assets of a long-term annual income to the creditor, who quite often was the Church. This contract was originally a way of bypassing the religious ban on loan interests, used to provide credit to small landowners lacking in liquidity. It was later adopted for the same purpose by noble families. Even though the owner of allodial lands on which a *censo* had been placed legally kept it as full property, they could not be sold without the consent of the creditor nor bought without the buyer accepting to pay the creditor's *censo* fee, nor could they be divided. In practice, it was yet another way to disentangle the bundle of property rights pertaining to those lands.

Indebtedness of important families was a common phenomenon in Europe. Apart from their conspicuous living standards, it was partly caused by the need to give dowries and by the difficulties created by entailments, which hindered the possibility of obtaining money from the sale of assets (Biagioli, 2000: 72-96). Getting into debt was not dangerous as long as the creditors were mainly ecclesiastical bodies, who gave long-term loans at low interest rates both to avoid the sin of usury and because of the social and family ties their leaders shared with their debtors. The result was, however, that the property system became more and more complicated. This also happened because where, as in Tuscany, the 'democratic' practice of *majorat* divided the usufruct among several family heirs, there tended to be an increase in the number of restrictions, as each generation of heirs, whether first-born or younger sons, modified and added new provisions regarding the lands and even personal property at its own discretion.

The inalienable mortmain on ecclesiastical property was older than the use of entailment by the laity. As a result of both, the land market became more and more stagnant and inert, even though ploys were found to bypass the bans, as in the aforementioned case of the *livelli* on ecclesiastical property and instances of economic and social mobility continued to emerge. It is worth pointing out in this context the vitality of the numerous villages that were involved with manufacturing and trade from the second half of the seventeenth century onwards, which increased in importance as the traditional cities declined. Along with this process came the growth of a rural landowning class (often merchants who had bought land), which, once having accrued substantial estates, moved to the cities to raise their social status and the family's political importance, for all intents and purposes becoming city dwellers. A consequence of these developments is that very often what appears from the 'assessments' (land-tax records organized according to different categories: city dwellers, the inhabitants of the *contado*, ecclesiastics...) as a growth of city dwellers' property at the expense of the inhabitants of the *contado* was rather caused by some of the latter having moved to the cities and consequently their property being transferred to the city dwellers' category¹.

VII. Between enlightened reforms and the Empire: the victory of land and agrarian individualism

The eighteenth century, as regards property rights, is characterized on the one hand by the continuation of evolving processes that can be traced back to preceding centuries, and on the other by the irreversible decline of the old order of land ownership because of political events (the period of reforms, the French Revolution and the Napoleonic Empire).

The pace of evolutionary processes already under way quickened considerably and affected zones which until then had been barely touched by them. Such processes did not come out of one systematic, organized plan, but rather evolved as the interventions of the different players gradually contributed to changing the scene: the reforms tied to enlightened despotism, the revolutionary and Napoleonic wars that brought in new legislative principles, but also the need to finance armies. During the eighteenth and the nineteenth centuries, land ownership and the rights and duties of landowners were often at the centre of the political and economic debate. Eventually the victors were those who had stood their ground on the field of those advocating the privatization of landed property and of its free and total availability. Consequently a process came

¹ These conclusions emerge very clearly from still unpublished evidence in research the author is carrying out on the *contado* of Pisa in the seventeenth and eighteenth centuries (ASP, Fiumi and Fossi).

about leading to the redefinition of property rights, the privatization of land, and the liberalization of the land market.

In Tuscany, the event that initiated a new phase in the life of the Grand Duchy was the arrival of the Habsburg-Lorraine dynasty in 1737, which carried Tuscany to the heart of European politics, thus marking the end of the regional state of the Medici. From the beginning, the new dynasty endeavoured to assert royal power against the local aristocracy's former domination and to transform and simplify its laws and institutions. Concerning property rights, the state of entailments was investigated in order to achieve a reform of the system. However, all three reports presented by the officials encharged by the new government to prepare an outline of the situation were against state intervention in such a sphere, at least with regard to noble entailments. According to them, a law abolishing or limiting entailments would have destroyed the nobility, for it was thanks to them that the noble families had been able to keep their assets and remain rich. (Calonaci, 2005: 31). In fact, where, as in Tuscany, the status of nobility seldom derived from a feudal deed and more often from the assets accumulated by the family, wealth was indeed considered a necessary attribute of the nobility (Donati, 1988: 123-124).

This concern was acknowledged by the law passed in 1747 which prohibited entailments except for those of the nobility, which were maintained because their aim was to uphold the main families of the State. Nevertheless, the law intervened further into the matter than the three reports had advised: even noble entailments were limited to four generations, and some guarantees for third-party interests were introduced. Forty years later, under the rule of Peter Leopold, who would subsequently become the Emperor Leopold I, property rights were redefined and simplified (Montorzi, 1988). This delivered even heavier blows to entailments: first a law in 1782 abolished the divisible ones after any one share or part of them had been handed down four times, and in 1789 all forms of entailment were abolished (Tria, 1945: 97). After the revolutionary and Napoleonic period, while many Italian states restored entailments, in Tuscany a law passed in 1814 reinstated that of 1789 and pronounced the final word on this institution in the Grand Duchy.

The end of the legal ties on estates which had formerly prevented creditors from seizing entailed assets exposed noble families to grave risk, as a great many of these families were heavily in debt. Many eventually lost their lands in this way, disposed of by forced sale at auctions. Upon the ruins of these families other estates came into being, belonging to families which were rising in social rank: merchants, builders, and even secret usurers (Biagioli, 1998).

Concerning ecclesiastical property, other laws had drastically limited the rights of mortmain since the arrival of the House of Habsburg-Lorraine. One of them dating from 1751 prohibited Tuscan subjects from selling, donating or bequeathing their real estate or personal property to 'holy places', and to all lay or ecclesiastical organizations which could avail themselves of the privilege of mortmain. Peter Leopold, with two laws of 1769 and 1771, confirmed the ban on these organizations buying land (Greco, 2004: 60-64). In 1784, all religious confraternities were suppressed and their assets transferred to the parishes.

Mention has already been made of the redefinition and simplification of property rights in Tuscany leading to the concentration of ownership in individual persons, rather than collective or corporate entities. One can find examples of this in the fight against the collective rights to use the land, either in farms or in wastelands, woods and marshes. This was not a new trend, but it underwent a marked increase during the age of enlightened reformism. In 1776 a first law in this area, concerned with the collective use of the land in the *contado* and the Pistoia Apennine, abolished collective grazing rights and the right to the second harvest on the land of private individuals, who could from then on use it 'as they consider to their greater advantage'. In the marshes and the lakes that were considered private property, the collective right of the inhabitants of neighbouring communities to fish and to exploit other marshland resources was abolished. In 1778, legal measures were taken against another customary right of very long standing, that of transhumance. The law, again aiming to ensure the owners' total and absolute control of the land and the full benefit of its produce, abolished transhumance paths through private land and pasture servitudes for transhumant animals, together with the magistrates who had until then organized this activity. (Biagioli, n.d. [2004]: 417-418).

The last and perhaps the most noteworthy part of the reforms, certainly the one that has provoked more debate among twentieth century historians, concerned the privatization of the lands of the 'holy places', of the remaining commons, and of the lands owned by the Crown and by the Order of the Knights of Saint Stephen. The Grand Duke's intention initially was to promote the development of Tuscan agriculture through the improvement of neglected and barely productive lands. According to this initial project, privatized land would be used to create a class of small landowners, which was deemed to be lacking in the country, by employing the old *livello* in a new way as a transferable perpetual contract. This project was implemented, in the first phase of the reforms, on much of the land that had previously passed through usurpation from collective ownership to that of the sovereign or of religious orders. Here, the political will recreated two superimposed rights on the same land: the eminent lordship of the owner and the right of possession in perpetuity

of the *livellario*. This was a paradoxical act, as it totally contradicted the efforts to unify individual ownership, which had inspired most other laws in that very period.

The project was politically and socially important, but it failed because of economic (the poverty of the small farmers chosen as *livellari*) and political problems (due to the powerful composite lobbies of nobles, incumbent tenant farmers in the properties to be conveyed, and merchants and financiers with liquid assets available to buy land). Thus, the government abandoned the project of the new perpetual *livelli* a few years later and decided to sell all common and Crown lands, and above all not to sell them in small but rather in large plots (Biagioli, n.d. [2004]: 421). The process ended with the strongest economic actors acquiring almost all the lands put on the market. In the case of the common lands, preference as purchasers was often given to the families mostly wealthy ones who already had the use of the land as *livellari*. Thus, the process eventually ended up reuniting ownership in a single person, joining the mainstream of the former legislation. As a whole, in the twenty-five years of Peter Leopold's reign, the redistribution of landed property involved about 20 to 25 per cent of the landed property of the region (Mineccia, 2002: 111).

The Napoleonic Empire can be considered in this respect as a period of continuity and consolidation of the policies on land ownership pursued by the Habsburg-Lorraine, through a more centralized system of prescriptions by law and control. In fact, one might say that the French rule was rather more successful in achieving some of the projects that Peter Leopold and some (though not all) of his ministers had laid down as fundamental issues in their programmes, but about which they were either less audacious in their reforming action from the outset, or were unable to achieve their aims because of the opposition by the representatives of landed interests.

One instance of the first situation was the case of ecclesiastical property, a multifarious universe difficult to grasp and, when necessary, to fight against. In the second half of the eighteenth century, under Peter Leopold, the Jesuits had already lost their property in Tuscany. The action of Peter Leopold's government in this field was limited to the suppression of many religious corporations, the endowments of which were transferred to other religious orders. The hardest blow to ecclesiastical property, resulting in its almost complete disappearance, was in fact dealt during the Napoleonic period with the suppression of the religious orders (no less than four hundred convents and monasteries) and the sale of their land as '*biens nationaux*' [national assets] to pay for war costs.

The most striking example of the second situation was that of a truly essential project to determine property rights in Tuscany, the plan for a new land cadastre on a geometric basis, which can be ascribed to the French period. Peter Leopold had

tried during his reign to undertake the reform of the old land registers, as an essential part of the new organization of the communes, the control of which had been given to landowners who paid land tax in their territory above a certain threshold. After nearly twenty years of discussions and two successive Deputations concerned with the new cadastre, the enterprise had been substantially abandoned, mainly because of opposition by the great Tuscan landowners (Büchi, 1915: 293 ff.; Biagioli, 1975: 3-13). The issue of land registers was again brought forward by the Napoleonic government, following the annexation of the Tuscan territory to the French Empire at the end of 1806. In 1807, a new cadastre was prescribed by Napoleon for all the Departments. No local opposition was possible in this case, and negotiations took place only concerning the criteria for the evaluation of land income (Biagioli, 1975: 3-35). The geometric cadastre project in Tuscany survived Waterloo. The restored Habsburg-Lorraine dynasty took it up again in 1817, and it was operating by the mid-1830s. This became the most analytical and complete instrument of knowledge about an Italian territory in the nineteenth century (Biagioli, 1975: 36-37).

The overall result of the succession of enlightened reforms and those under the Napoleonic Empire was on the one hand the almost complete disappearance of ecclesiastical property, the loss of the residual rights of most of the few remaining collective properties in peripheral areas of the state, and on the other hand the consolidation of the importance of the estates both of the strongest traditional nobility and of the urban and rural bourgeoisie, as well as a faster pace concerning the creation of free property to meet the needs of agrarian individualism.

VIII. Conclusions

From the foregoing, the following conclusions may be drawn:

- The concept of ownership and the formation of private property rights underwent an evolution over the centuries. This was not a linear evolution, but rather a series of ownership ‘paradigms’ that developed within previous forms, which continued to leave substantial traces for centuries, as in the case of collective rights to use the land of private owners.
- Access routes to ownership for dominant and upwardly mobile and dominant groups also made use of previous contractual forms. In so doing, however, they changed the social and economic significance of those institutions, as shown for instance by the remarkable plasticity of the *livello* and its strategic association with the sharecropping contract in the change of the agrarian landscape and social structure during the late medieval and the early modern periods.

- Tuscan history is a case of precocious development of urban and bourgeois capitalism, which deeply interfered in rural society and affected social relations, eventually preventing the creation or the survival of substantial small-scale peasant property. Even the eighteenth-century attempt to encourage the latter by reintroducing small-scale *livelli* was unsuccessful.
- Eighteenth century reforms and those that followed during Napoleonic rule were crucial for the individualization of property and for the final dissolution of the remaining collective use, as well as for the liberalization of the land market.

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