Thus far, it is clear that the jurists not only constructed a legal ‘system’: they also convinced other sections of society, beginning with those that were the most important, to recognize their system, and also to accept that it was timely. The jurists furthermore managed to manoeuvre themselves into a position where they were given full rein, since the management of the system was delegated to them: except, that is, for some of the more cautious powers like Venice; or those, like England, that had already constructed a different system. What other group of individuals would have been capable of achieving such a position, other than this professional body of legal men which was by this date universally well-established? The Europe-wide uniformity of the jurists’ language, their methods and their works must have been extremely impressive. It must also have been a powerful element of accreditation for their system. The key thing was that it inspired trust. It was also relevant that the system had already been functioning for a considerable period of time. Nevertheless, such delegation of responsibility did not come without strings: public powers were very sensible of the fact that they themselves needed to intervene in legal matters as, and when, necessary. The jurists’ message to both political leaders and the general public was that the prince (that is to say, the political power) was responsible for justice. Moreover, such princely responsibility carried with it an obligation to intervene in general matters, as well as in individual local issues, or in certain specific areas. It was also made clear that the prince should intervene in a number of other circumstances – such as the levying of duties and taxes.

Legislation forms an integral part of history, despite the fact that at times we prefer to think of it as something that is modern rather than medieval. In fact, the very opposite is true, even for those countries where the ideology of customary law was most firmly embedded. For example, we need only to leaf through the great volumes of the English Statutes of the Realm that were officially compiled during the early years of the nineteenth century to realize the part played by legislation in England even during the medieval period. The Constitutions of Clarendon of 1164, even though presented as recognizing prevailing customs and freedoms in the
relationship existing between the king and the Church, contained so many innovations that Thomas Becket, the celebrated archbishop of Canterbury, who was later assassinated inside the cathedral and subsequently sanctified, felt unable to bestow them with his blessing.¹

This was a general phenomenon throughout Europe. The late middle ages, a most fertile period in terms of writing, and particularly influenced by the diffusion of culture during the course of the thirteenth century, was also the time during which the circulation of legislation increased exponentially. Sapiential law, which we have discussed above, was not an alternative to legislation. As we have already said, the one referred to the other. The one was also favoured by the other. If there was any kind of competition, it must only have been in the context of remuneration for services offered, because they each formed part of the same culture. This was a culture of the book and of writing ab antiquo, based on authoritative texts (above all, the Bible) that were explained to the ‘people’ by authorized and specialist men of learning.

9.1. COMPLETION OF THE CORPORA IURIS

This phase of rapid progress and organization also explains why, during the first part of the period now under consideration, there was a move to finish the Corpora that were being taught in the universities. In fact, both Corpora acquired their definitive forms before the great pandemic.

9.1.1. THE CORPUS OF CIVIL LAW: FROM FEUDALISM TO TYRANNY

Not everyone was entirely satisfied with the final consolidation of the ordinary glosses. There can be little doubt that these influenced interpretation of the text indicating, like scholastic readers, how to proceed, and thus conditioning the reader’s response. It was, however, clear that the annotations were useful, and ended up having a considerable impact. The system had reached a point of stability. Just as the imposition of particular readings of the legal texts would come to be accepted by the early fourteenth century, so now there were far fewer of the final volumes of the civil law corpus that were not embellished the Accursian gloss.²

¹ See Wolf, Gesetzgebung, p. 339 (pp. 350–351 for English legislative sources).
² Azo and Odofredus’s works, which adopted an alternative doctrinal trend from that of Accursius, were increasingly being ignored; see esp. Giuseppe Speciale, La memoria del diritto comune. Sulle tracce d’uso del ‘Codex’ di Giustiniano (secoli XII-XV) (1994).