CHAPTER ELEVEN

THE END OF THE MIDDLE AGES

With this final chapter we reach the end of the medieval age, and are thus in a position to draw a number of conclusions. So far, we have rapidly pursued all kinds of topics and issues which are now regarded, and which our medieval forefathers accepted, as being concerned with ‘law’. We have looked at the principal legal sources, and considered those individuals who set about researching and interpreting the meanings of the ancient texts. There have, of course, always been men of letters (even if often attached to religious orders), just as there have always been priests and soldiers. But our practising theorists, perhaps the most influential professional and social force throughout the long period of the medieval age, were new.

We have made numerous references to the prestige enjoyed by the jurists, and at the same time, have drawn attention to the most obvious manifestations of this, from the very large stipends offered inside the universities; to the costly payments made for judicial and extra-judicial advice; to the part played by such individuals in diplomatic missions. Jurists seem to have played a central part in late medieval life, even when they were not becoming popes or cardinals.

11.1. THE ROLE OF THE JURISTS AND THE HUMANISTS IN POLEMICAL DISCUSSIONS

The jurists were fond of saying, not least as a way to justify their enormous salaries, that jurisprudence (in the sense of its being scientia iuris, iuris prudentia) was the ‘one true philosophy’, even though it was intricately entwined with other disciplines. But it remains true that both the civil

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1 For further information and a bibliography see in particular Ascheri, Diritto medievale e moderno, pp. 101–155, where there are references to a number of fundamental studies, most notably those by Riccardo Orestano, Domenico Maffei (his Gli inizi dell’umanesimo giuridico, 1956, is a classic work), Donald Kelley and Hans Erich Troje. There is a note bringing this up-to-date in Ascheri, ‘I giuristi, l’umanesimo e il sistema giuridico dal Medioevo all’età moderna’ (1992). But there are many new works; see for example Maurizio Manzin, Il petrarchismo giuridico. Filosofia e logica del diritto agli inizi dell’umanesimo (1994), and Mario Lupinetti, Francesco Petrarca e il diritto (1995).
lawyers and the canonists tended to resolve their own particular problems within the orbit of their own documentary sources – the former with slightly less confidence than the latter, and the canonists always with some reservation in the face of the theologians. This did not exclude an interest in poetry, but it was the notaries of the late thirteenth century, at Padua, at Bologna or at Perugia, for example, who were more interested in such matters, or who were sensitive to the so-called ‘pre-humanism’. However, attitudes changed considerably during the course of the fourteenth century.

A renowned jurist already alive at that date, Iohannes Andreae (m. 1348), whom we have suggested was probably the most eminent canonist during the middle ages, had contacts with the illustrious and very learned Areteine poet, Petrarch. For his part, Petrarch, who was crowned poet laureate in Naples by king Robert of Anjou, had once been a student of civil law. It may thus have been Petrarch who set in motion a polemic that had various phases, some of which were extremely virulent, with, in modern times, very real insults being hurled at the defenceless ‘bartolists’. Nevertheless, this heated discussion maintained a certain consistency as a result of the perception of the role played by the jurists and by their culture in the society of the time.

According to Petrarch, and many other intellectuals who were not jurists, the law had ended up occupying an excessive and undeserved amount of space within the cultural system. Petrarch (and the humanists after him) was intent on investigating a freer kind of wisdom, one that was not ‘scholarly’ like that which was by now carved in stone by the universities. The humanists wished to achieve a state of wisdom through an exploration of history, the written word and art, adopting a new approach that was based on philological rigour. In so doing, they hoped to be able to define a learned man at the height of ‘modernity’, as free from all prejudice and pre-conceived ideas. For the humanists, the diligence of the jurist, in searching to assuage the anxieties of conscience and of freedom, was over-rated. Who could have been satisfied with the legal world of that time, packed as it was with delays and excessive expenses with, for the most part, an end result of absolutely nothing?

During the process of their formation, the humanists inspired new kinds of literary forms, such as that produced by Lucas de Penne, a south-Italian jurist contemporary with Bartolus and closely associated with Avignon. Lucas de Penne’s very learned commentary on the *Tres libri* of Justinian’s Code did in fact pre-date the humanists, and attracted little interest in later legal typography. However, individuals like this were