LAURO MARTINES

Lawyers and Statecraft in Renaissance Florence

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for them, wheresoever
my father and mother

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Abbreviations

ACP: *Atti del Capitano del Popolo*
AEOJ: *Atti del Esecutore degli Ordinamenti di Giustizia*
AGN: *Arte dei Giudici e Notai*
AP: *Atti del Podestà*
ASF: Archivio di Stato di Firenze
ASI: *Archivio storico italiano*
BNF: Biblioteca Nazionale di Firenze
C: *Code* (*Corpus Iuris Civilis*)
Cod. Vat. Lat.: *Codici Vaticani Latini*
CP: *Consulte e Pratiche*
CRS: *Corporazioni Religiose Soppresse*
D: *Digest* (*Corpus Iuris Civilis*)
DBCMLC: *Dieci di Balìa, Carteggi, Missive: Legazioni e Commissarie*
DBCR: *Dieci di Balìa, Carteggi, Responsive*
DBLC: *Dieci di Balìa, Legazioni e Commissarie*
DBRA: *Dieci di Balìa, Relazioni di Ambasciatori*
DSCOA: *Deliberazioni dei Signori e Collegi, Ordinaria Autorità*
DSCSA: *Deliberazioni dei Signori e Collegi, Speciale Autorità*
Inst.: *Institutes* (*Corpus Iuris Civilis*)
LF: *Libri Fabarum*
Magl.: *Magliabechiana*
MAP: *Mediceo avanti il Principato*
NA: *Notarile Antecosimiano*
Nov.: *Novels* (*Corpus Iuris Civilis*)
OCMLI: *Otto di Pratica, Carteggi, Missive, Lettere e Istruzioni*
OCR: *Otto di Pratica, Carteggi, Responsive*
Prov.: *Provvisioni*
SCF: *Statuti del Comune di Firenze*

SCMC-I: *Signori, Carteggi, Missive, I Cancelleria*

SCMLC: *Signori, Carteggi, Missive, Legazioni e Commissarie*

SCRO: *Signori, Carteggi, Responsive Originali*

SCS: *Statuti dei Comuni Soggetti*

SDO: *Signori, Dieci, Otto di Pratica, Legazioni e Commissarie*

SRRO: *Signori, Carteggi, Rapporti e Relazioni di Oratori*

Statuta: *Statuta Populi et Communis Florentiae*, 3 vols., Freiburg, 1778-1783

Strozz.: *Carte Strozziane*

UDS: *Ufficiali dello Studio*

LAWYERS AND STATECRAFT IN

Renaissance Florence

Chapter One

An Approach

I offer here a study of the place and achievement of lawyers in Florentine statecraft. This may seem a narrow interest, but in fact, owing to the critical public functions and prominence of lawyers, it has the interest and breadth of Florentine political institutions. And these in turn—more than is often suspected—conformed to types found all over central and northern Italy from the fourteenth to the sixteenth centuries. The last chapter, centering on a comparison with Milan, seeks to catch the similarities.

With few exceptions, notably in Chapter II, where some space is given to events before 1380, the period spanned by this inquiry is the 150 years from about 1380 to 1530. Statecraft is defined by dictionaries as the art of government or skill in the management of state affairs. The word entails a stress on technique, on the *way* matters of state are handled; it thus seemed to belong in the title of this inquiry. To study the distinctive place of lawyers in the conduct of public affairs is to focus attention on the expert and his skills. Moreover, the organization of politics in Florence was such that the lawyers whose activity we shall be studying were nearly always politicians and statesmen in their own right. All the more is the word "statecraft" justified in the title.

Wherever we look in Florentine public affairs, we find lawyers at work: in diplomacy, in relations with the Church, in territorial government, in the formulation of policy, in administration and adjudication, and in the political struggle proper. Why was this? What explains the omnipresence of lawyers? What functions were they performing? How did their prominence reflect on the nature of the Florentine state? On the practice of politics in Florence? What was their view of the state and what did they say about it?

These questions run through the present inquiry. My concern has been to understand the nature and exercise of political power in Renaissance Florence. But so comprehensive an interest required a focus. This was the

value of putting lawyers at the center of things: they provide the distinctive feature of the approach in this study.

The method of getting at historical events through the study of groups gives a unique advantage. On the one hand—unless his sample be unwieldy—it allows the historian to observe individuals, to get away from impersonal factors to the men who made decisions. On the other hand, the method takes him beyond individuals to groups, and from here he may look on to power blocs or social classes. These legitimize the historian's concern with forces which no analysis of individuals can satisfactorily explain. The study of groups thus looks two ways, and each may be used as a check on the other. We cannot do without individuals in history, but neither can we do without impersonal forces. The face in the crowd is not more real than the crowd.

Generally speaking, lawyers in Italy began to enter the upper spheres of government and politics in the course of the twelfth century. Connected with this rise, and in part promoting it, were the demands of popes and emperors, the pressing needs of the new city-states, and the revival of scientific jurisprudence in the study of Roman law. The Renaissance had no monopoly of the use and pre-eminence of lawyers in government and statecraft. This was already true in the twelfth century.[1] And yet a study of the Middle Ages, executed along the lines of this inquiry, could not be done. It is only for the period after 1300 that the riches in Italian archives permit the historian to follow in detail the careers of many lawyers and to pinpoint public-law cases in continuous series and large numbers.

The early stages of this study swiftly revealed that every generation of Florentines produced some five or six lawyers of great public distinction. But the fact that they were also key figures in statecraft, that they provided critical skills, did not become apparent for a long time. There is a difference between being prominent and being indispensable. Constantly found in all branches and phases of government, lawyers were apparently doing things that could not be done by others. This may seem obvious, but what it signified was complex and obscure. To get at the underlying

[1] E. H. Kantorowicz, "Kingship under the Impact of Scientific Jurisprudence," *Selected Studies* (Locust Valley, New York, 1965), pp. 151ff.

significance it was necessary to go to the point of contact: to see precisely where lawyers were being deployed and to learn how and why. Examining their public functions, I found that their critical prominence was the necessary feature of a given polity, of a particular type of political and social organization. Lawyers may also of course enjoy exalted place under other polities. Most modern states employ teams of lawyers. These men tend, however, to remain in the background—faceless figures. Who can name the lawyers of the British Foreign Office or of the American State Department? But at Florence, and in Renaissance Italy generally, lawyers were key men in politics, while being equally well known as men of the law. A major task was to account for this fact. Part of the explanation has to do with the organization of the executive sector of Florentine government, but part also concerns the fact that the Republic was an oligarchy.

Government in Florence was of and by the few. At no point in the period from about 1390 to 1530 were there more than 4,000 Florentines who could boast of having full-fledged political rights, and during all but twenty years of this time-span the total stood much nearer 2,000 or 2,500. Here was the ruling class in its entirety.[2] Within this class there was a group which I shall often refer to as the "inner oligarchy." Depending upon the period, this group included some 400 to 700 men from the leading families. They constituted the effective ruling class. Most of the lawyers whose names will dominate the present study were of this class. The choice was not mine. I sought to collect information on *all* lawyers active or even temporarily resident in Florence between about 1380 and 1530. Owing to gaps in the documents, I may have missed a few men but none who was active in public life. All qualified lawyers who came to my attention have been entered in the Appendix, which lists nearly 200 civilians and canonists.[3] Of these, more than 100 actively participated in Florentine public affairs (i.e., held office); and of these, again, public prominence was attained by about seventy-five, some fifty of whom were men of the first political importance. I produce these figures to show that the inquiry seeks to be complete.

[2] References on pp. 206, 388-89.

[3] Notaries, who differed from lawyers both in their preparation and functions, are not included. Scholarship often confuses the two. See Ch. II, 3.

The political study of Florentine lawyers is in some respects a study of oligarchy. Often active in the inner circle of the oligarchy, pre-eminent in public life, born in most cases to typical families of the ruling class, the lawyers in the forefront of this study were representative figures. But there was also their unrepresentative feature—the fact that they were professional men. This disinguished them from bankers, merchants, rich tradesmen, *rentiers*, and others,[4] and was still another reason to study them. Their representative side, perceived in much of their political behavior, grouped them with the other members of the oligarchy. The effects of this will be evident in the succeeding chapters. But their distinguishing feature—the possession of legal skills put at the service of the state—served to draw the inquiry away from more commonplace matters, fixing it instead on the more technical and specialized functions associated with affairs of state. This provided a means of obtaining a clearer and finer understanding of the Florentine state. No other social or professional group, not even the notaries,[5] offered as excellent a standpoint from which to study political processes. Lawyers alone were deeply involved in the technical questions—constitutional, diplomatic, territorial —the raising of which served to expose the inner workings, the distinctive nature, of the state and statecraft.

Before indicating the plan of this book, I should say that I considered dividing the most difficult section (Chs. IV-VIII) into two parts: one on the lawyer as functionary, the other on the lawyer as policy maker. Though such an arrangement would have made for a more rational narrative, I rejected it on grounds of its false assumption. In the political world of Renaissance Florence, there was no sure distinction between the lawyer's ordinary and his more exalted functions. He often operated in a vast gray area. As an ordinary functionary, he could take action which might well have a determining effect on policy. As an alleged policy maker, when holding forth on a particular question, he might have no influence whatsoever. The form of the modern state, already adumbrated in Renaissance Florence, calls for a clean distinction between decision

[4] Lawyers, however, often engaged in business activity or had notable income from land and government securities.

[5] They composed much too large and unwieldy a group.

makers and functionaries; but if our concern be lawyers rather than notaries or other lesser men, the distinction has little bearing on our problem, owing to the nature of the Florentine oligarchy and the place of lawyers in it.

I begin in Chapter II by analyzing the guild of lawyers. Chapter III goes on to a treatment of the legal profession itself and explores the background, social and economic, of lawyers. The five succeeding chapters[6] review and analyze the performance of lawyers in all aspects of Florentine public life. In the course of these chapters the outlines of a particular system of state begin to emerge, and are fully elaborated in the last three chapters, which dwell on the nature of the Florentine state and draw on a comparison with Milan. There again the figure of the lawyer provides the approaches or holds the focus of study.

Readers who see historical study as a search for typological models, or who believe that history is first and foremost the history of ideas, may wish to read this book backwards. The last chapter tries to establish the identity of "the Renaissance state." The preoccupation of the penultimate chapter is with *ideas* as such—legal ideas of the state. I have approached these ideas from the world of affairs—from a concern with politics, with oligarchical government, and with society. If some legal historians find an element of politico-social determinism in this study, it is because they approach affairs from the world of ideas. The perspectives of a study condition it, and no man can command all perspectives. History has more imagination than historians.

[6] Ch. IV serves to introduce the major themes.

The Profession

Chapter Two

The Guild

1. The Function of the Guild

There is an element of irony in studying the Florentine guild of lawyers and notaries (Arte dei Giudici e Notai). If ever in Florence a guild stood as patron and tutor over the practice of recording and preserving the important transactions of everyday life, it was this one, yet its archives are among the poorest of those that come down to us from the twenty-one guilds of republican Florence. Two floods (in 1333 and 1557) carried away or destroyed hundreds and probably thousands of registers which had been stored in the old palace of this corporate body. With those registers went account books, collections of statutes, consular deliberations, lists of members, legal *consilia*, and, one may as well say, most of the detailed history of the guild. For this reason both Robert Davidsohn and Alfred Doren, when they came to discuss the guilds of Florence, were not as informative about this one.

The earliest surviving statutes of the guild date from circa 1344 and, although many of the vellum folios have been damaged, most of the rubrics are legible.[1] Apparently complete, these statutes are sketchy on some items of importance for this study. The next collection of extant statutes is more than two centuries later (1566).[2] These are set forth in great detail and are about four times the length of the 1344 collection. For the fifteenth century—the whole central span of the period to be studied here—there is little in the way of guild statutes: a mere table of contents which lists the individual rubrics as they stood in 1415.[3] Additional material, however, can be extracted from the guild acts (*atti*), from some volumes of consular deliberations, as well as from the legislation and statutes of the Republic. Hence our knowledge of how the guild was organized and run must be pieced together from a variety of

[1] ASF, *AGN*, 749. All documents cited in this chapter are in the State Archives of Florence.

[2] *AGN*, 1. Published in a hopeless edition by Lorenzo Cantini, *Legislazione toscana*, vol. VI (Firenze, 1803), 171-265.

[3] *AGN*, 2, ff. 11-4r. Folios 5r-12r are actually summaries of rubrics added to the guild statutes from 1416 to 1518.

sources. But the framework will be constructed from the elements of continuity that link the two collections of guild statutes and the table of contents of 1415.

I call attention to the statutes because they are the blueprint, so to speak, of the guild's organization and function. Keeping to the essential interest of this study—statecraft—I shall try to present a picture of the guild which highlights those features that made it stand out in public life.

A PHENOMENON of the later twelfth century, the birth of guilds in Florence, as in other Italian communes, derived in part from the debilities of the central or sovereign state. As Florence absorbed a continuous influx of men from the country, thereby showing remarkable economic vitality and capacity for expansion, new social and occupational groups gained admission to the Commune or pressed to enter it. Since the state, such as it was, seemed unfit to enhance or fully protect his opportunities and civil rights, the individual was ready to be drawn into well-organized corps. What neither state nor Commune was able to do, the corporation could. This goes far to explain the universality and boldness of the corporate spirit in Italy during the twelfth and thirteenth centuries. But it was the revival and scientific study of Roman law that facilitated the formation of the corporation, whether as guild or other association, providing its legal basis, terminology, and procuratorial forms.[4] None was to profit from this more than the guild of the legal profession, which immediately acquired outstanding authority.

In a sense all recorded legal relations in Florence came under the purview of the guild of lawyers and notaries. It exercised jurisdiction over members, and no man outside the guild was authorized to attest public instruments. This prohibition was endorsed by the Commune itself. The claim of the guild to a certain judicial competence over all its members also had the support of the Commune. This claim had particular force in all matters that touched the legal and notarial profession: every document which betrayed the official hand of a lawyer or notary was therewith implicated. With the consent of the guild consulate, the

[4] G. Post, *Studies in Medieval Legal Thought* (Princeton, 1964), esp. Ch. 1.

proconsul—supreme officer of the guild—could requisition any such document, calling it into his court to examine its format or validity, in some cases even to change and correct it. In this regard, accordingly, there was hardly a commercial establishment or private study which lay beyond the guild's reach. Did X claim to have a document attesting to a business partnership or a deed establishing his title to certain lands? The guild was empowered to look into its authenticity.

This was a formidable power in a city sustained by its commerce and industry, a city where one of the major passions was the stress on the written contract, the sworn testimony, the public instrument. Yet the guild does not seem to have abused its privileges. It needed a certain authority to help foil shyster lawyers, crooked notaries, and charlatans who passed themselves off as members of the guild.

Let us note some things about the guild's relation to a class of functionaries who composed the framework of a developing civil service in Florence. The statutes, papers, and records of every leading public office were in the hands of notaries who took turns holding down the city's different secretarial and recording posts. Older, experienced guildsmen and men of solid standing in the guild occupied the better posts of this type, serving as secretaries attached to the Signory, to the War Commission (The Ten on War), the Eight on Public Safety, the Monte Officials, the Treasury, the Tribunal of Six (Sei di Mercanzia), and so forth. Also prominent in the guild were the first secretary of the Republic (always a lawyer after 1459), the notary in charge of legislation, and the official who handled the lists of all Florentines drawn for office. These men were expected to have at their fingertips a knowledge of the functions and jurisdictions of the offices which they served as secretaries.

Every piece of Florentine legislation, when passed in the councils, was attested and authenticated by the *notaio delle riformagioni*, a functionary whose fitness as a notary had first been certified by the guild. From the end of the fifteenth century, every Florentine ambassador, just before starting out on his appointed mission, had to have a notary draw up an official document attesting to the facts of his departure.[5]

[5] Before starting out on their embassies, all ambassadors had once been required

Lawyers and notaries were the leading assistants of governors in the Florentine dominion. I could continue to enumerate examples of the many jobs performed in public life under the aegis of the Arte dei Giudici e Notai, but these suffice to indicate that of all Florentine guilds this one was nearest to the centers of public administration and the working out of policy.

There seems to have been only one guild in twelfth-century Florence, the Calimala, and it included different types of merchants and craftsmen. Toward the end of the century this *universitas* began to split up, and by 1220 the four richest of the seven major guilds already had independent existences: the Calimala (now more specialized) and the Lana, Cambio, and Por Santa Maria guilds. Two of the other major guilds came into being later in the century, the guild of furriers and that of the physicians and spicers. Davidsohn observed that a Florentine college or association of advocates existed in the middle years of the twelfth century. But it was dissolved not long after, probably with the birth of the guild of lawyers and notaries, already a vigorous organization in 1212.[6] This guild was a force in the city and had an enormous reputation from its earliest years. Indeed, down to the final demise of the Republic it was officially the highest-ranking guild. It occupied the first place of honor at ceremonies or processions in which all the guilds were represented, and the proconsul, chief officer of the lawyers and notaries, was considered the honorary head of the whole guild system.

Precisely why the lawyers' guild enjoyed such an exalted position is a question no student of the period has cared to explore. Among the main causal factors, no doubt, was the high status generally accorded to the study of Roman law, as well as the influence of this law on the growth and structure of guilds and other corporate bodies. Old and respected Florentine families gave many notaries and especially lawyers to the city. The guild also drew great prestige from the imperial office. Until

to appear before the Executor of the Ordinances of Justice or one of his judges and "iurare de sua ambaxiata legaliter facienda, et expedienda, et quod vere electi sint et non ficte." *Statuta*, I, 415. This job passed to the Podestà when the Executor's office was suppressed.

[6] R. Davidsohn, *Geschichte von Florenz* (Berlin, 1896-1927), I, 274-75; A. Doren, *Entwicklung und Organisation der florentiner Zünfte im 13. und 14. Jahrhundert* (Leipzig, 1897), p. 35.

about the middle of the twelfth century, all Florentine notaries seem to have been created by imperial appointment, although this power was temporarily delegated at times.[7] Up to then, too, justice in Florence had been in the care of jurists appointed by the imperial vicar. At the beginning of the thirteenth century, the entire legal profession still had about it a certain color borrowed from the office of the Holy Roman Emperor. Florence like the rest of Tuscany was a fief of the Empire.

A grasp of the law, a practical knowledge of Latin, familiarity with complex notarial formulae: such a professional preparation must have made a notable impression on the rude mind of the urban populace in the twelfth and thirteenth centuries. Offering advantages to the pocket as well as to the spirit, the legal and notarial professions easily attracted well-born and able men. They, in turn, worked to provide the guild with a distinctive place in public life.

No individual or corporate group can enjoy high place and power without provoking detractors and the enmity of men hurt in the normal course of things. The lawyers' guild was no exception, particularly as rivalries developed between the guilds on the question of their different shares in the distribution of public offices. The remarkable thing is that the lawyers and notaries succeeded in long maintaining their political prominence. In 1338, at the peak of its strength in terms of membership, the guild had 80 lawyers and 600 notaries, of whom in all probability not more than half were endowed with the right to hold public office.[8] In the same year there were more than 200 workshops affiliated with the Lana guild, whose members (*lanaiuoli*) must therefore have amounted to several times this number. The *lanaiuoli* disposed of large quantities of capital, and their economic activity directly affected the livelihood of some 30,000 Florentines.[9] If we think for a moment of the rich, powerful families of *popolani* status—the princes of the Cambio and Calimala guilds—engaged in banking and the international wool trade, we cannot avoid the suspicion that in any showdown between the different guilds

[7] On this and prior observations, Davidsohn, *Geschichte*, I, 662; Doren, *Le arti fiorentine*, tr. G. B. Klein, 2 vols. (Firenze, 1940), II, 274-75; G. Salvemini, *Magnati e popolani* (Torino, 1960), pp. 81-83.

[8] Davidsohn, *Geschichte*, IV, ii, 109.

[9] Figures in Giovanni Villani, *Cronica*, ed. F. G. Dragomanni, 4 vols. (Firenze, 1844-45), III, bk. xi, ch. 94.

the lawyers and notaries would have been bound to lose power and place. Yet except for two setbacks suffered by the notaries in the fifteenth century (to be discussed in due time), a showdown did not come—not during the turbulent 1290s, nor during the crises of the 1340s, 1370s, or 1380s. Throughout the fourteenth century the legal guild enjoyed political parity with the other major guilds and got its full share of seats in the offices, major and minor, of the Republic. External political conditions permitting, lawyers and notaries were too practical to alienate the other major guilds. No matter what regime won out, they had to be near it for professional reasons—serving it, acceptable to it.[10]

From the end of the thirteenth century on, and quite likely for a long time before as well, each generation produced a number of lawyers who ranked with the most influential political figures in the city. As has already been noted, every one of the Republic's leading magistracies had at least one notary attached. These observations help to explain how the guild managed to retain its exalted place in politics and in the whole system of guilds. The avenues leading to the centers of the decision-making process were always open to the guild, and its agents and spokesmen—lawyers and notaries—tended to be experienced statesmen, shrewd administrators, or persuasive speakers.

2. *Policies and Organization*

The guild existed to give a rule to the legal profession, to survey the professional conduct of lawyers and notaries. In some societies these functions or parts thereof have belonged to the state. This was not so in Florence, where every guild more or less regulated the services or goods of its own sphere and claimed a certain judicial competence over its members. The Commune cooperated with this system of divided authority.

Looking into the guild constitution of 1344, we find that no significant aspect of professional aims or activity was neglected. Matriculation requirements, fees, examinations, the different offices of the guild and their authority, questions of procedure, the preservation of guild records and notarial protocols, rules of professional and even moral conduct,

[10] Cf. Salvemini's shrewd remarks, *op.cit.*, pp. 82-83.

the prerequisites connected with certain jobs (e.g., that of *procurator* in the court of the Podestà): all these and other matters are summarily or extensively treated by the statutes. My plan will be to set forth only as many particulars as seem to accord with the aims of this study; if I dwell on the details of guild office, I do so in order to be able to point out, in the last part of this chapter, some striking parallels with certain forms in public life.

All members of the guild were matriculated as *giudici* or *notai*: judge-lawyers or notaries. Later on in this chapter we shall see how the two differed. I call attention here to the distinction because the offices of the guild were staffed by lawyers and notaries in certain fixed proportions.

The proconsul was the supreme head of the guild. His office survived the republican period and passed over into the duchy.[11] He was always a notary. A term as proconsul lasted six months in the fourteenth century, four in the fifteenth and sixteenth centuries. The statutes of 1344 specify that he must be at least thirty-six years old and have been in the guild not less than ten years. In the fifteenth and sixteenth centuries the age requirement varied from forty to forty-five years and the incumbent had to have been in the guild for at least twenty years. This denoted perhaps an element of growing conservatism.

Chief of the proconsul's functions were those connected with his investigative and judicial powers. The guild whip, he looked to the honor and high state of the profession, and was expected to prosecute all lawyers and notaries accused or suspected of any form of dishonesty or negligence in the exercise of their professional duties. To be guilty of an infraction, it was enough to do something which cast shame on the guild or detracted from its authority. The proconsul first ordered an investigation and then had the defendant summoned before the proconsular court for trial. Ordinarily his sentences involved fines and could not be appealed. During the fourteenth century and possibly thereafter, the proconsul seems to have been authorized to suspend lawyers and notaries from practicing, even to take this right away permanently. In

[11] Material on proconsul in *AGN*, 749, ff. 5r-6r, 8r-9r, 10r, 13v, 32v. In 1564 the Duke decreed that the proconsul was to have the first seat in the Council of Two Hundred, thus putting him before *cavalieri* and doctors of law.

the sixteenth century, however, he could do this only with the consent of the guild consuls and counsellors. On the matter of his competence in civil cases lying before the guild court, we find that these powers of his were always limited by the intervention of the consuls. According to the statutes of 1344, the proconsul had to hold court daily, mornings and afternoons. He was joined by the consuls every Friday, when civil cases were heard and determined. Subsequently this practice changed; the statutes of 1566 obligated the consuls to meet with him "at least twice each month,"[12] although he could summon them at will to get their help in expediting any pressing affairs of the guild.

The proconsul was the embodiment of the guild. His person was held in high esteem, and any guild member who dared to use dishonorable words in his regard, or indeed against any of the consuls, was liable to severe penalties. The obligations of the office required the proconsul to wear an outer garment of crimson or violet, and he was forbidden—like cardinals in our own day—to go into public unaccompanied. Two guild pages were always at his side.

The consulate was composed of eight consuls throughout the period from 1344 to 1566.[13] The office of the consuls was to hear civil cases, to entertain petitions, to keep a certain check on the proconsul, and to have a hand in guild legislation. Acting in concert with the proconsul, they had judicial competence over all civil litigation between members of the guild. Despite the proconsul's powers, the consuls could also move of their own initiative against lawyers and notaries accused of corruption in the pursuance of their profession. They were empowered to act on a variety of petitions: requests for matriculation in the guild, for the authentication of public instruments, for certified copies of instruments drawn from the abbreviatures (*imbreviaturas*) of deceased notaries, and for action against individual guild members. On October 5, 1461, for example, Messer Giovanni de' Saracini d'Arezzo appeared before the consuls, claiming that the doctorate in civil law had been conferred on him in 1454 in the presence of the Florentine College of Lawyers and of the *decretorum doctor* Messer Lazzaro Nardi d'Arezzo. Nardi had been there to represent the Archbishop of Florence, who was in-

[12] *AGN*, 1, ff. 5v-6r.

[13] *AGN*, 749, f. 6r; 1, f. 5r.

vested with the papal and imperial right to confer doctorates. The doctoral act had been attested by Ser Jacopo di Ser Antonio da Romena, who had since died and whose notarial protocols had been lost. Saracini was requesting certification of his doctorate.[14]

Another example is a petition which sought to compel a lawyer and a notary to offer a certain guarantee. In the spring of 1442, Giovanni della Casa reported to the consuls that it was two years since he had given one of his daughters in marriage to the advocate and doctor of law Francesco di Ser Piero Pucetti, providing her with a dowry of 525 gold florins.[15] The jurist's father, a notary, had promised to acknowledge receipt of the money and to guarantee it ("confexare, promettere, e sodare"); but he had so far failed to keep his promise. Della Casa wanted the dowry insured "according to the practice and custom of the city of Florence," so that if, for example, Messer Francesco died, the 525 florins would revert to the widow or, if she died, to her father or heirs. At the end of the hearings the consuls moved to make the notary observe his promise.

The requests of Saracini and Della Casa were not typical. I adduce them to suggest the variety of petitions entertained by the guild consulate, with of course the proconsul present. Really typical were two kinds of petitions which seem to have dominated the activity of the consuls: (a) petitions requesting the authentication of last wills, deeds, and contracts and (b) petitions of shopkeepers, artisans, and merchants, bringing charges of debt against individual members of the guild. For the period from 1390 to 1530 there are nearly 230 registers of guild acts, recording thousands of such petitions, many of which gave rise to cases tried in the guild court. The cases usually turned on quarrels over debt or the authenticity of instruments. Now and then litigation concerned items lent and not returned. Claims rarely involved sums of less than 2.00 florins; sometimes it was a question of several hundred. In October 1438 Cosimo and Lorenzo de' Medici brought a suit, in the form of a petition, against the heirs of Guaspare de' Bonizi, a Perugian who had moved to Florence and entered the guild in 1406. The brothers were suing for 256 florins "di camera" and 26.0 florins "direno" (sic), which they claimed

[14] *AGN*, 182, f. 17r.

[15] *AGN*, 129, f. 37r.

to have lent to Messer Guaspare, a doctor of law and consistorial advocate.[16] It is interesting and somewhat perplexing that jurisdiction in this case was attributed to the guild. We may suspect that the brothers for some reason considered the consulate to be the tribunal most likely to adjudicate this suit in their favor. That particular consuls were sometimes in collusion with plaintiffs is an observation borne out by evidence in the guild record itself.[17]

The guild statutes explicitly required the consuls to hear cases from two to five times a month, but the number of petitions and high incidence of civil litigation compelled them to join the proconsul in court or *in camera* a good deal more often. Taking the first three months of 1433 as a random example, we find that the consuls heard cases and entertained petitions during eleven days in January, seven in February, and sixteen in March.[18] Additional meetings were undoubtedly called for the purpose of managing other affairs of the guild. The office of consul—a term lasted four months—was therefore no sinecure and no easy task. During the period covered by this study, two of the eight consuls were always lawyers, the other six notaries.[19] The guild constitution of 1344 specified that to qualify for this office lawyers had to have been members of the guild and have practiced "in the city" for three years, notaries for ten. Both were required to be at least thirty-two years of age. The rule that a notary had to be a member of the guild for ten years before becoming eligible for the consulate lasted down to the sixteenth century and beyond, but the three years required of the lawyer were reduced to one in 1435,[20] a condition still observed more than 100 years later.

In all matters of general or grave importance to the guild, the proconsul and consuls assembled with at least one council of advisors.[21] In the middle years of the fourteenth century, and perhaps later, this council was composed of ten notaries and six lawyers. During the fifteenth and

[16] *AGN*, 124, f. 11v. Guaspare's family name appears as "Bonazzi" in this document. On him see the Appendix.

[17] *AGN*, 123, f. 19r.

[18] *AGN*, 114, ff. 1r *et seq.*

[19] This ratio was different up to about 1370, as will be noted in next section of this chapter.

[20] *AGN*, 2, f. 7v.

[21] *AGN*, 749, ff. 14r-15r; 1, ff. 6r-7v.

early sixteenth centuries two councils (the twelve and the thirty-two) served as advisory bodies, and lawyers here held one-fourth the places. By the 1550s these had been replaced by the councils of twelve and fifteen, where lawyers held only two and three places respectively. These bodies were regularly summoned to give their advice and votes on such matters as guild legislation, changes of policy, relations with the state, and "scrutinies" to pick out the men eligible to hold offices in the guild. When a wider representation was desired, the consulate and the advisory bodies were joined in their deliberations by a group of *arrotos*, or select guild members. Such an assembly became the supreme council of that sworn association—the guild—and wielded its final authority. If we consider that even the meanest member of this assembly enjoyed a certain status (e.g., he had to practice his profession *in* the city and come from a family which had paid taxes regularly for a continuous twenty-five or thirty years), then it appears that the guild retained a semi-oligarchical tendency even in its most democratic moments. We shall presently see the political ramifications of this.

Like other guilds and like the Florentine Republic itself, the Arte dei Giudici e Notai had, or now and then created, a number of special commissions to handle matters that either required particular care or were too taxing for the proconsul and consuls. To this class of jobs belonged the "syndication" of guild officials: the practice, at the end of terms, of conducting inquiries into the way guild offices had been managed. In the sixteenth century, for example, the consuls, the proconsul, and the guild treasurer were examined by three notaries and one lawyer, all drawn from the twelve advisors.[22]

The statutes of 1344 provided for an office of "arbiters": a commission of three lawyers and five notaries, elected every two years for the purpose of checking, correcting, improving, or otherwise emending the statutes of the guild. During part of the fifteenth century this job seems to have been done by the *correctores*,[23] but later on it may have been taken over by the consulate and advisory bodies. Two other commissions are worthy of mention: the examiners and the defenders (*conservatores*). The first of these, as the name indicates, examined candidates for entry into the

[22] *AGN*, 1, ff. 13v-14r. For a technical definition of "syndication" see pp. 143-45.
[23] *AGN*, 2, f. 6r.

guild, and was made up either of lawyers or notaries, depending on the nature of the candidacy.[24] During part if not all of the fourteenth century the examiners were recruited from the advisory council and served only two or three months. Thereafter they were a commission apart, elected for one year. The candidate was examined by the commission, but the consuls and proconsul also had a voice in whether or not he was finally taken into the guild.

The participation of the proconsulate (proconsul and consuls) was not a feature in the workings of the other commission—the defenders. Set up in 1473, this body consisted of five notaries and one lawyer.[25] They were elected by the proconsulate and served for a period of six months. Each had to have passed his thirty-fifth year and be eligible to hold public office in the city. As "defenders of the statutes and ordinances of the guild," their job was to combat the fraud, corruption, and dishonorable activity of guild members. To carry out this task they were given the authority not only to conduct investigations but also to sit as a tribunal with full powers of jurisdiction. An extension of this authority gave them the right to draw up new guild statutes in the sphere of professional ethics. It is clear, therefore, that the powers of this magistracy overlapped with those of the proconsul and consuls, who however retained a frank priority. The defenders did not have the judicial competence to touch cases already lying before the proconsular court. And in any conflict of jurisdiction between the defenders and the proconsulate, the former had to give way.

Two offices of first-rate importance were held by individuals, the treasurer and the provisor, whose terms lasted four months.[26] Each of these posts went to an experienced notary. He had to be thirty years old or more, a member of ten-years standing in the guild, and come from a family which had paid taxes in the city for not less than thirty continuous years. The treasurer saw to the accounts, took in and paid out money, recorded the letters sent by the proconsul and consuls to magistrates in the Florentine dominion, and kept a summary of all cases tried in the guild court. The provisor was in charge of guild properties, including

[24] *AGN*, 749, f. 39r-v. [25] *AGN*, 31, f. 1r; 1, ff. 7r-8r.
[26] Material on these offices in *AGN*, 749, ff. 11v-13r; 2, f. 9v; 1, ff. 9v-12v.

some shops, lands, and a small collection of law books kept in the palace of the guild. He drew up certified copies of public instruments stored in the guild archives and kept the matriculation rosters, the lists of the office-holders, and the lists of men eligible for guild office. By dividing all the debtors and creditors of the guild into several classes, entering these into different registers, and keeping a strict account of the individual sums, the provisor did some of the treasurer's work and so was a key figure in the "syndication" of the treasurer.

It is not too soon to ask whether there can have been a better training ground than these two offices, or some of the others mentioned above, for the work of regulation and administration connected with municipal and territorial government. We have seen that there were fewer posts for lawyers than for notaries, in this as in all the other guilds, where notaries also carried out much of the critical work of administration. But there were so few lawyers who qualified for the consulate or the other leading guild offices,[27] that nearly all those who won political distinction were also exceedingly active in guild affairs. I have in mind, for the later fourteenth century, Giovanni de' Ricci and Filippo Corsini; for the early fifteenth century, Lorenzo Ridolfi, Bartolommeo Popoleschi, and Piero Beccanugi; for the middle years of that century, Guglielmo Tanagli, Domenico Martelli, Otto Niccolini; for the 1490s and after, Domenico Bonsi, Guidantonio Vespucci, Antonio Malegonnelli, Antonio Strozzi, and Baldassare Carducci.

The particular curse of the guild from the fourteenth to the sixteenth centuries seems to have been the incidence of corruption and fraud among members, notaries especially. Something might be said in praise of the guild's statutory readiness to prosecute lawyers and notaries who violated their professional oaths, but this mere disposition of the guild was not a sufficient guarantee. The record, guild and otherwise, is heavy with the misconduct of men who practiced the notarial craft. At least one case shows that the Podestà himself was not safe from the depredations of a notary attached to his own staff.[28] May we conclude that there was ex-

[27] There were seldom more than about twenty-five in any year between 1380 and 1530.

[28] *AP*, 4319, by date: 27 June 1421. Not paginated.

cessive indulgence? The evidence suggests that there was.[29] Indulgence was also shown outside the guild. There were always men who practiced as notaries, especially in the county and district of Florence, who were not inscribed in the guild. Some periods undoubtedly saw more of this than others. The period of the late fifteenth and early sixteenth centuries was such a time; the palace of the archbishop of Florence one of the settings. In December 1515 a denunciation was lodged with the *conservatores* (the defenders) against the many working notaries in the archbishop's train of officials, men "who are not matriculated and therefore go against the ordinances of the guild and Commune of Florence."[30] Evidently, apart from their other duties, they were also engaged in affairs of pure temporal stamp. The guild, however, was lenient: no action was taken.

There was prudence here, the prudence of men who recognized the point at which their insistence on ordinances could become excessive and begin to go against their own corporate interests. If we judge by the way the guild sometimes suspended its rules in order to make matriculation easier for notaries,[31] it is clear that there was often a shortage of such men. Lenience was one way to overcome the shortage, to placate the demands; if this meant a falling off of professional standards in the deep country, practice within the city walls did not necessarily suffer. Competition here was keener, specimens of instruments and notarial protocols were more often under the public eye, and the officers of the guild were just around the corner—much too near. The guild's practical outlook was more evident still in its attitude toward the non-matriculated notaries in the archbishop's entourage. The proconsul and consuls might annoy this dignitary, but could they ever forget his powers, particularly in a time when the authority of the papacy stood higher than it had for two centuries and more? It was better to suffer the archbishop's notaries.

[29] This is denoted by the constant duplication of measures enacted against fraud and corruption. The existing laws, though vigorous and clear, seemed never to suffice. A special guild statute of 1441 raised the fine against *baratteria* (fraud) to 200 gold florins, to be equally divided by guild and state, *AGN*, 2, f. 8r. On the incidence of illegal contact between notaries and the Podestà or his judges, see statute of 1475 in ASF, *Statuti di Firenze*, 29, f. 411r.

[30] *AGN*, 32, f. 65r.

[31] *Ibid.*, ff. 26v-30r, 73v, 74r.

In this flexible or, if one chooses, indulgent application of policy, we can see that the guild sensed its limitations and recognized its self-interest. The officers of the guild took an oath: to do their jobs honestly and as best they could, to defend the guild and its ordinances, and to defend all members. Sometimes, however, it was necessary to balance parts of this oath. It was right to favor the interests of guild members, but only so far as these coincided with the advantage of the corporation as a whole. Poor relations with others, outright clashes, bad publicity, and a standing on principle which only served to make enemies in high place did not serve the interests of the guild. The *universitas* came first.

What emerges here is that element which was so much a feature of late medieval Italy—particularism: the toughness and drive of the small, clearly defined community inside the larger one, a phenomenon which cut through much of Florentine political and social life. We find it in most of the important sectors of life. The family, the faction, the guild, the class, the extraordinary political magistracy—each of these was "managed" with an eye to taking in as wide an area as possible, whether of wealth, numbers, influence, or might. The larger community was perceived, acknowledged, or accepted only when it served the lesser one, or when it was so clearly superior that to be strong-headed about resisting it was to be wrong-headed, was to invite loss rather than gain. In the practical conduct of affairs, particularism governed both the way of the guild and Florentine relations with other states.

A passage in the guild constitution of 1344 observed that there were many magnates inscribed in the guild as notaries who were ignorant of Latin and scarcely knew how to write.[32] They were not interested in practicing the notarial art (one of the charges against them was that they did not practice), but rather in holding guild office so as to have a pretext for entering the palace of the Signory. Their objectives were quite plainly the rewards of politics. Having had their political power broken by the Ordinances of Justice (1293-1295), the magnates had evidently tried in the first decades of the fourteenth century to infiltrate this most strategic of guilds, determined to retain or regain some of their former political influence. Indirect power apparently served their purposes as

[32] *AGN*, 749, f. 41v. Noticed by Doren, *Le arti fiorentine*, I, 132.

well as direct power, might in some instances even prove to be more effective. Yet in an age of high political passion, how discrete can their entry into the guild have been? How serious the examinations, written and oral, which they took to qualify for matriculation? We must assume that there were powerful men in the guild who tolerated and even supported the matriculation of "ignorant" magnates. Opponents were probably silenced or reduced to impotence, which fully accords with the aristocratic reaction seen in Florence during the first decades of the century. Some of the leaders of the guild were deeply involved in politics; they waited to see the outcome of things, made perhaps an occasional protest against the unlettered magnates, then fell silent. Here, for once, the interests of guild and faction were identical; surely the guild would be served if at the right moment its officers were found on the triumphant side. Then came the city's encounter with one-man rule (September 1342 to July 1343), the *signoria* of Walter of Brienne, who managed to alienate the entire political class. His expulsion was followed in the autumn by a popular reaction against the magnates; the statutes of the guild, containing the clause against ignorant magnates, were drafted shortly thereafter, most likely at the beginning of 1344. Now finally the guild began to move against those political intriguers who were notaries in name only. Once again, however, the guild did not lose its prudence; it was not going to engage in a witch-hunt. Such matters were best conducted in an orderly fashion. That this was taken for granted is borne out by the whole tenor of the statute against impostors.[33] A series of individual investigations was to precede the purge, though purge is too strong a word. First of all there would be examinations; then each suspect was to submit for inspection a volume of his protocols or abbreviatures; finally the proconsul and consuls were to examine his actual notarial license or diploma. Unfortunately, a record of the outcome of this reform does not survive.

3. Lawyers and Notaries

The guild was neither a mere professional organization nor just an impersonal, semi-public body. It was a brotherhood, a sworn association which the members were bound to obey and defend, just as they were

[33] *AGN*, 749, f. 41v.

bound to treat one another with a special consideration, a certain fraternal feeling which they need not express for others. This confraternal feature of the guild lost a good deal of its strength with the passage of time. It was surely different in the sixteenth century from what it had been at the outset of the thirteenth, when the guild, not yet very old, was struggling to consolidate its position and increase its influence on the destinies of the Commune. It is impossible to say how far certain rules were observed. To give an idea of the presumed bond between members, it may be noted that the statutes of 1344 and 1566 alike obligate all lawyers and notaries to attend the funerals of fellow guild members. Something here hung on of the old sentiment which undoubtedly helped to give birth to the guild. A kindred note can be detected in the rule which forbade any guild member—unless he had the previous permission of the proconsul—to take part as an advocate or procurator in any lawsuit brought against a lawyer or notary. Nor could one member bring a civil action against another save within the compass of the organization. Thus the guild court.[34]

We have seen that the guild absorbed certain judicial and regulative powers from the Commune and so was an appendage of government. A professional organization, a confraternity, and also an arm of the state, in principle it had to be somewhat demanding about its requirements for membership. Some of the requirements touched social and ceremonial matters, for the guild had a strong sense of its respectability, a sense of class or caste which left its mark on the ordinances that governed matriculation. Certain classes of men were excluded from membership. The bans are revealing.

Towncriers, undertakers, former prison wardens, actors and clowns: all these were barred from entry into the guild by the statutes of 1344. It was not only the indecorous side of these occupations which closed the doors of the guild to them but also their economic lowliness. Surveyors, music teachers, and men who taught children their ABC's were also excluded.[35] These seem to have been singled out because, of all men who hired themselves out on an hourly basis, they were the ones most likely to seek matriculation as notaries. In Florence, as in most of Europe in the

[34] *AGN*, 749, f. 20v; 1, f. 41r; 2, ff. 1v-2r.
[35] *AGN*, 749, ff. 37v-38r; 2, f. 67r; 1, f. 26r.

late medieval and Renaissance periods, the upper classes attached a stigma as well to manual labor as to the hiring out of oneself on an hourly or daily basis. One of the surprising things is that physicians were also declared ineligible to enter the guild. In this case, however, the prohibition probably issued from some desire to keep the two professions entirely apart, and perhaps from possible envy aroused within the guild at seeing a physican perform with ease in two different fields. Still another prohibition concerned heretics, bastards, and clerics. Heretics caused scandal and horror, and besides, members of the guild often had lucrative relations with the Church. Bastardy—whatever Bruckhardt and others may have said about its political place in the Italian Renaissance—generally carried a stain of some sort, especially in urban society, although men could be made to overlook it by the force of power and place or by means of money and a dispensation. The clause against men in holy orders is perfectly understandable: the guild wanted to be sure of its jurisdiction over members, and this disqualified clerics, who were under ecclesiastical jurisdiction.[36] A similar precaution was exhibited in one final ban: no one could enter the guild who was bound by ties of homage, fidelity, or servitude in Florentine territory. The last of these was plainly irreconcilable with the pursuit of a liberal profession.

In Western Europe, generally speaking, urban society of the late medieval and Renaissance periods was disposed to harbor a certain distrust, indeed often a dislike, of the outsider or foreigner. This was less true of the medieval commune during its revolutionary period, when men were given the prize of citizenship somewhat more easily. At Florence this communal phase came to an end in the thirteenth century. The requirements for both citizenship and guild matriculation were increasingly raised, although they levelled off in some matters before the middle of the fourteenth century. During most of the fourteenth century, the guild demanded that the candidate for matriculation, lawyer or notary, be of Florentine origin and that his father have been a resident of the city or county of Florence for at least twenty-five years. This twenty-five-year requirement remained in effect throughout the fifteenth and sixteenth

[36] Furthermore, the Florentine constitution excluded all clerics from office. A notary was legally and in essence a public official.

centuries. But in 1467 a new guild statute was enacted, bearing directly on the residence requirement: thereafter the aspiring neophyte or his family had to have paid taxes in Florence proper for twenty-five continuous years if he proposed to practice law or attest documents in the city.[37] Shortages sometimes compelled the guild to relax this requirement, but the consuls and other officers were always tough about exacting high matriculation fees from foreigners and even from natives without guild connections.

The moment we begin to talk about fees and other matters pertaining to matriculation, we touch at once on the question of the difference between lawyers and notaries. This question calls for detailed treatment. For when we look to see what has previously been done with it, whether in connection with Florence or other city-states of the time, we find that institutional and legal historians have either neglected the question altogether or accorded it such vague and general treatment that they have sown misunderstanding and a still more hopeless imprecision in others.[38]

We may start with titles. Throughout the late medieval and Renaissance periods the lawyer was called Messer or Dominus, the notary Ser. Sometimes priests also were called Ser. The title Messer (Latin Dominus) was more elevated than Ser and used with reference to knights, great lords, ecclesiastical dignitaries, as well as lawyers.[39] Interestingly, official documents often used Dominus in connection with university students. Messer or Dominus was also accorded as an honorary title: Boccaccio, Salutati, and Machiavelli were sometimes designated thus in chancellery documents. Notaries in Tuscany were never called Messer or Dominus, save through error or to acknowledge fame and distinction, as in the case of notaries like Salutati and Poggio Bracciolini.

In many cities the lawyer ranked ceremonially with the knight or just

[37] *AGN*, 2, ff. 9v-10r. This statute was then revoked in 1470, but most probably reintroduced later.

[38] Cf. e.g., F.-T. Perrens, *Histoire de Florence*, 6 vols. (Paris, 1877-1880), III, 283-94, where the confusion is invincible regarding the difference between lawyers and notaries; also Piero Fiorelli, "Avvocato e procuratore," *Enciclopedia del Diritto*, ed. Fr. Calasso (Varese, 1958—), IV, 644-70.

[39] The lawyer's claim to the title "Lord" (*Dominus*) was based on the *equiparatio* in Roman law of the lawyer and *miles*, which the glossators translated as "knight." E. H. Kantorowicz, *Studies*, pp. 153-54.

below; in Bologna, Perugia, and Siena he held the rank above. In Florence the lawyer came just after the knight, as in wedding ceremonies or public processions.[40] But they were equal in other matters. During the early fifteenth century, lawyer and knight were given the same stipend and number of horses when serving as ambassadors of the Republic: 5.00 gold florins per day and ten horses. On an identical mission the notary, banker, merchant or any other was allotted 4.00 gold florins and eight horses.[41] When addressing its agents in diplomatic correspondence, the Florentine Signory gave precedence to the knight over the lawyer and to the lawyer over all others.

Unlike the guild of physicians and spicers, which circumscribed a multiplicity of trades and one profession, the Arte Iudicum et Notariorum was composed solely of two professional groups, and members could be inscribed in only one of these. As the official name of the guild denotes, the two groups were the *iudices* and *notarii*, or judge-lawyers and notaries. The guild recognized no middle ground between them. Records of all sorts, public and private, nearly always refer to the notary as *notarius*, *notaio*, or *notaro*. The lawyer, on the other hand, was known by a variety of names, most often by the first five of the following: *advocatus*, *iudex*, *iurista*, *iurisperitus*, *legum* or *iuris doctor*, *iurisconsultus*, *consultor*, and *causidicus*. In the case of canon lawyers, usage called for a name like *canonista, decretista*, or *decretorum doctor*. Some notaries became skilled enough to perform the work of representation in a court of law. In this capacity they were called *procuratores*. Strictly speaking, the general term "lawyer," which the dictionary defines as a man versed in law, might be used of a good procurator. I shall return to this point in a moment. Suffice it for now to observe that the guild itself relegated the procurator of the civilians to the class of notaries, and I shall do the same, chiefly because political and guild records of the period do not and could not distinguish the notary who did things purely by formula and rote from the one who bothered to acquire a working knowledge of the law. The truth

[40] G. Salvemini, *La dignità cavalleresca nel comune di Firenze* (ed. Torino, 1960), pp. 386-88. When knight and lawyer were one, as often happened, the title alone, Messer or Dominus, could not reveal this.

[41] *Signori, Carte di Corredo*, 52, ff. 2v-3r, 5r; *Statuta*, II, 706.

is that there were practicing notaries who did not know the correct forms for certain types of contracts and petitions, let alone for briefs.[42]

The word "lawyer" as used in this study may be most simply defined as any man listed in the guild rolls among the so-called judges, the vast majority of whom actually practiced law. To be inscribed among the judges meant that one had studied civil or canon law at an Italian university for at least five years. Very often, but most especially in the fifteenth century and later, the student attended law school for six to nine years and terminated his formal studies with the doctorate, frequently in both civil and canon law. In the 1340s an aspiring lawyer was received into the guild only after he fulfilled five conditions: he had to (1) produce proof of his birth and Florentine residence; (2) pay 16.0 gold florins to the guild treasurer; (3) prove—usually by means of a notarized document—that he had frequented the law faculty of a university (*studio generale*) for a period of five years or more; (4) pass a legal examination administered by a special commission of the guild; and (5) have several sponsors attest to his moral rectitude.[43] The outline of these conditions remained more or less the same down to the period of the duchy, although some changes of a non-structural sort deserve mention. At some point in the second half of the fourteenth century the matriculation fee was increased to 25.0 gold florins,[44] an extraordinary increase, which may have been occasioned by the desire to keep "new men" out of the profession, the results of the Black Death having brought many to the top. At all events, the practice was eventually introduced of letting matriculants pay their entrance fee in several installments. The guild statutes of the sixteenth century permitted settle-

[42] An example is to be found in Lapo Mazzei, *Lettere di un notaro a un mercante del secolo xiv*, ed. C. Guasti, 2 vols. (Firenze, 1880), 1, 62. Yet most of the basic models are to be found in one of the most widely used formularies of the period, Rolandino Passaggeri's *Summa artis notariae*. Poggio Bracciolini tells the story of two men who went to a notary for a contract of sale. When asked to give their names, they said they were John and Phillip, whereupon the notary immediately said that he could not draw up the instrument for them. "If the vendor is not called Gaius, said the notary, and the buyer Titus (these were the names given in the formulary), the contract cannot be drafted nor can it have any legal validity." *Facezie*, no. 103.

[43] *AGN*, 749, f. 38r-v.

[44] *AGN*, 2, f. 2r. The date of the entry is 1415 but refers to a statute enacted before 1400.

ment of the fee in three payments. Another change was formally introduced in 1367, although there may well have been some precedent: it was ordained that any Florentine citizen with a doctorate in civil or canon law could enter the college of lawyers without having to undergo an examination.[45] However he had to fulfill the other four conditions and produce a *bona fide* doctoral degree. This form of accreditation was still used by the guild in the late sixteenth century.

Like other Florentine guilds, this one also accorded preferential treatment to the sons, brothers, and nephews of men already inscribed in its rosters. Guildsmen knew how to look after their own. Preferred treatment, however, did not bear on the requirement that the aspiring lawyer give proof of his having attended a law school for at least five years. Instead, it concerned his matriculation fee and the stipulation that he be not less than twenty-five years old on entering the guild. A man thus favored could be two or three years younger and, in the fifteenth century, pay a matriculation fee of as little as 5.00 florins. Now and then the fee was waived entirely.[46]

To see the Florentine lawyer from another vantage point it may be useful to look for a moment at the "college of judges and advocates" at Modena in the late thirteenth and early fourteenth centuries.[47] There lawyers and notaries had separate guilds. Throughout the Guelf-Ghibelline struggles of the thirteenth century, the Modenese lawyers seem to have identified their interests with those of the knights and noblemen. Eventually, however, they passed over to the victorious popular camp and thereby retained their prominence in public life. The lawyers' guild took precedence over all others; the second place was held by the notaries. To enter the guild, the prospective lawyer had to prove that he had been a citizen of Modena for at least ten years, or that he or his family had lived in the county or district of Modena for twenty continuous years. Having paid his matriculation fee (20.0 *solidos mutinem*), he was ready for the examination and went first of all before the guild consuls, who examined him briefly on his knowledge of the law. Not more than eight

[45] *AGN*, 748, by date: 16 Sept. 1367. Not paginated.

[46] *AGN*, 2, ff. 13r-v, 14r.

[47] Material in this paragraph from *Statuta iudicum et advocatorum collegii civitatis Mutinae, mcclxx-mcccxxxvii*, ed. E. P. Vicini (Modena, 1935).

days later, he had to present himself to an examining board of eight judge-lawyers, bringing with him two parts of the *Corpus Iuris Civilis*—the *Old Digest* and the *Code*. Opening these to any book he wished, he began to discuss one of the laws, "and once he had started none of the jurists could talk, save to interrogate and examine the candidate." He passed the examination if he obtained a majority of the eight votes. Although the statutes are not explicit about this, the guild clearly assumed that he had frequented a law school for a sufficient period of time. This was certainly expected of any man appointed to one of Modena's judgeships. A statute of 1328 declared that he must have studied law for five consecutive years in schools with qualified professors. He had to give proof of this by producing witnesses, among them a "master of laws [dominum legum]." Amusingly enough, the master was not required to take an oath: the Commune was ready, said the statute, to accept his word.

In order not to confuse the functions and preparation of the Florentine lawyer with those of the notary, let us draw professional distinctions between the two.

The lawyer was a man formally trained in jurisprudence. Additional knowledge, chiefly of the practical sort, came with experience in the law courts and with clients. But first of all he spent five or more years acquainting himself with the theory and content of the laws, civil or canon. And he learned to deal with the different classes of questions raised by the interpretation as well as by the application of the law. Once he began to practice, the lawyer was normally called on to perform three functions: those of judge, advocate, and counsel. In the first of these capacities he made binding judicial decisions; in the second he pleaded in open court or submitted written defenses; in the third he not only gave legal advice to clients but also, on requests from magistrates, examined lawsuits and submitted judicial opinions. It is when he acted as a legal consultant, and more precisely when he presented written counsel to a magistrate, that we best see the *consilium* of the lawyer as part of the judicial process. On being read out by the magistrate *pro tribunali sedens*, the *consilium sapientis* (the opinion of the jurisconsult) was transformed into a court decision.[48] This practice was widely observed

[48] On which see the excellent study by Guido Rossi, *Consilium sapientis iudiciale*

in Italy during the Middle Ages and Renaissance because many judicial posts were filled by *iudices idiotae*—laymen, men not trained in the law. But the tradition of having lawyers provide judicial counsel had a long history: it went back to ancient Rome. Medieval kings were also to employ lawyers as judges and judicial advisors. We see, therefore, why the lawyer was spontaneously associated with the judicial dignity and why in some cities he entered the guild as a *iudex*.

The notary was not as glamorous a figure as the lawyer. His place, political and social, was solid but lower. In the 1340s the would-be notary entered the guild at the age of twenty or after—at seventeen or eighteen if he could procure a dispensation. This requirement was later raised to twenty-five years (twenty-two with a dispensation) and remained in effect throughout the fifteenth century and beyond.[49] About the middle of the sixteenth century the age minimum was reduced to twenty-one years. In the 1340s the notary paid a matriculation fee of 8.00 gold florins. Later this fee was more than doubled, raised to 17.0 gold florins (18.0 for the matriculant who came from the county or district of Florence), and remained so down to the late sixteenth century.

The most trying phase of matriculation for the notarial candidate was the one which involved the examining commission, usually consisting of at least four notaries. A lawyer also had to be present at the examination. In the form given to it by the statutes of 1344, the examination had three parts: the first tested the candidate's knowledge of grammar (Latin), the second his handwriting and composition, the third his understanding of the nature and form of contracts and other public instruments.[50] If he failed the first two parts, he was not permitted to try again for one year, nor could he sit for the examination on contracts until a second year had elapsed. The third part of the examination was

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(Milano, 1956); also Peter Riesenberg, "The Consilia Literature: A Prospectus," *Manuscripta*, VI (1962), 3-22

[49] Now and then this rule was suspended even for individuals who had no relatives in the guild. *AGN*, 32, ff. 73v, 74r (date: May 1515).

[50] *AGN*, 749, ff. 39v-40r, on this and succeeding information. Compare with examination practices at Bologna in the mid-thirteenth century: Lino Sighinolfi, "Salatiele e la sua 'ars notariae,'" *Studi e memorie per la storia dell' università di Bologna*, IV (Bologna, 1920), 67-149. See pp. 108-11.

the hardest. To prepare for it the candidate attended classes on the *ars notarie* for about two years or learned the appropriate subject matter by working in the *apotheca* of a practicing notary. The guild commission examined him in the following manner. First he was asked about the vernacular form of a given contract. Then, taking either the same contract or another, he was examined on its technical Latin form. Next the commission asked him a series of questions concerning the forms of contracts ("de hiis que in contractibus requiruntur"). At some point in the exchange between commission and examinee, the lawyer raised some questions: he conducted a brief examination on a type of contract which had not been considered. Questions could be put by the proconsul and consuls, who were also present. The candidate was finally invited to draw up "at least the first article of a public instrument." When the vote was finally taken, he needed a two-thirds majority to pass.

The form of the examination did not change much during the period covered by this study, but its application seems to have become more rigorous. Somewhere along the line the parts of the examination dealing with grammar and composition were combined, thus issuing in a more rational form. The statutes of the sixteenth century speak of two examinations: one in grammar, the other in *notaria*.[51] Public instruments, their nature and form, remained the subject of the second of these. First the candidate was questioned by an examining commission which consisted of seven notaries and one lawyer. Obtaining their approval by a two-thirds vote, he passed on to the proconsul, consuls, and twelve advisors. They required him to deal in Latin with at least three themes. Then he dictated parts of three public instruments, being very careful to observe their correct form. A third and final round of examinations included the participation of the advisory council of fifteen. The statutes do not specify, but we may assume that the candidate was expected once more to give proof of his grasp of the nature of contracts and to dictate in Latin parts of two or three instruments.

Elsewhere in Tuscany the preparation and testing of notaries were much the same. Let us look at Pisa a moment. There, at the beginning of the fourteenth century, no one could practice the notarial craft until he

[51] *AGN*, I, ff. 8r-v, 27v-28r.

was twenty years old, unless he worked as an apprentice in a notary's *apotheca* and was a close relative.[52] To enter the guild he had to be a Pisan born or to have resided in the city or district for at least twenty years. He or his father had to be a registered taxpayer and the prestanzas of the household had to have been paid during the four years preceding matriculation. Some requirements were more onerous than any imposed at Florence. Thus any youth seeking entry into the Pisan guild was made to prove that he had served four years as a notary's apprentice. During that period he was required to turn a large part of his earnings over to his master, and it was the master who recommended him for matriculation by attesting to the youth's knowledge of the craft. The candidate then appeared before a board consisting of the four captains or chief officers of the guild, in addition to twenty-four notaries, six from each quarter of the city. He was supposed to have studied Latin for not less than four years. They examined his grammar, his grasp of the forms of public instruments, but especially his ability to draft the documents of his *métier* in Latin. The four captains and the six notaries from his own quarter were the judges of his performance in the examination. He needed six of the ten votes to pass, but the statute on matriculation specifically provided that if a candidate made a single mistake in his Latin, "he could be neither approved nor accepted."

At Bergamo requirements were somewhat less rigorous, at all events in the second half of the thirteenth century. The stiffest examination was administered to notaries who wished to qualify for the notarial offices of the Commune. And eligibility to sit for this examination was based on two items only: the candidate's being at least eighteen years old, and his giving proof either of having practiced as a notary for one year or of having spent one year studying for the notariate. Not surprisingly, there were some notaries in thirteenth-century Bergamo who were also barbers and shopkeepers.[53]

[52] Pisan material from *Statuti inediti della città di Pisa*, ed. Fr. Bonaini, 3 vols. (Firenze, 1857), III, 761-857, are statutes of Pisan guild.

[53] G. Poletti, *Il notariato a Bergamo nel secolo xiii* (Bergamo, 1912), pp. 31-39, 61. In the thirteenth century, generally speaking, the North Italian communes required that notaries be eighteen to twenty years old before they could be taken on as communal functionaries. Pietro Torelli, *Studi e ricerche di diplomatica comunale* (Mantova, 1915), pp. 33-34.

We must try to define the public person of the notary.[54] He performed a variety of jobs and appeared, so to speak, in different guises. Yet in most of these his essential function remained unchanged: most simply stated, it was to attest or certify human affairs of a certain kind by recording them in public form. Of all public officials he alone was invested with the authority to make those affairs legally binding. His official contact with the document which recorded a transaction brought in the seal of public law and made it a valid instrument. Deeds, wills, business agreements, emancipations from parents, marriage contracts: these were the notary's province and specialty in the field of private transactions. In public affairs his official hand was required to authenticate or certify laws, ordinances, treaties, decrees, judicial writs, and indeed all public acts. Although the statutes of the guild say nothing about this, we must assume that examinations for the notariate could occasionally touch on the correct form of different types of public acts.

The steps involved in drawing up a public instrument were these. First the notary had the contractors, testators, or donors tell him what they wanted. Raising questions to clarify points, he made a full note of the business at hand. Next he read out his summary (this was the so-called *recitatio*), noting down any changes or corrections made by the parties concerned. From two to seven witnesses had to be present, depending on the nature of the document (wills, for example, required the most). The notary then entered the summary—technically known as an abbreviature or protocol—into a register of protocols. The authentic instrument was always drawn from the original protocol. An instrument had two parts: the business at hand and the formalities of publication. It was the second of these that made an authentic public instrument; it could only be registered by the hand of a notary. Publication included and specified these formalities: year, indiction, day and month, specific place, names of witnesses, the notary's signature, and, in some parts of Italy, the name of the reigning emperor or pope.

Notaries attached to the Signory, to the chief offices of the Republic, and to the law courts were expected to have a wider, finer experience than those who made their living merely by attesting (*rogando*) con-

[54] Succeeding material from items on notaries in sources for this chapter.

tracts and other private matters. In the major law courts, the notaries who conducted the examination of witnesses were skilled in court procedure. They were recruited from among the more experienced or better-prepared men. The notary in charge of legislation (*notaio delle riformagioni*), the notaries who assisted the first secretary of the Republic, and those who took office with every new group of priors, recording their deliberations, had to have an intimate working knowledge of at least parts of the Florentine constitution and of some sectors of the city's statutory law. It seems clear, accordingly, that the class of notaries was not a homogeneous one; it included specialists as well as men with a superficial preparation.[55]

During the fourteenth and fifteenth centuries, Bologna may have been the only center where the aspiring notary was actually required to follow university courses. Significantly, the *ars notarie* came under the arts faculty, not the law school.[56] At Florence, Milan, Pisa, and elsewhere, men who aimed at a notarial career might be encouraged to enroll for some formal university courses, but this training was perhaps more easily acquired in the *apotheca* of a practicing notary. And if at Pisa the required period of apprenticeship was four years, at Milan it was only two, although three years of university work could be substituted for these two years.[57]

There is enough evidence to show that nearly everywhere in Italy the notary's education and office, at least in some of his incarnations, gradually became more complex and demanding. At Milan, by 1498, a statute already demanded—although we should be suspicious of its application—that the notary know Azo's gloss and be familiar with the chief books of the *Corpus Iuris Civilis*. In Piedmont, university courses for the notariate were not finally prescribed until the sixteenth century. The situation at Florence was somewhat more complicated and centered mainly on the figure of the procurator.

[55] This aspect of the history of the profession is the least studied, the least understood.

[56] Bologna had public instruction in *notarìa* as early as 1228. A. Anselmi, *Le scuole di notariato in Italia* (Viterbo, 1926), p. 8.

[57] Charles Dejob, *Le notaire en Italie et en France*, offprint from *Miscellanea di studi storici in onore di A. Manno* (Torino, 1912), p. 7.

By the 1550s we see quite clearly for the first time that the office of procurator had been steadily evolving at Florence for some three centuries and had now reached a point where it could only be exercised by men with some technical grasp of the law. Occasionally, lawyers undertook the simple representation of clients—that is, performed the part of procurators. But this function was normally restricted to men properly inscribed in the guild as notaries. To obtain a license to practice as a procurator in the Council of Justice, the highest Florentine court after 1502, the notary had to present himself to an examining board consisting of the proconsul and consuls, two doctors of law, and two procurators from the guild's advisory council of twelve.[58] Not only was the candidate required to have been a practicing member of the guild for three years or more, he also had to show that during that period he had served as a recorder (*scriptor*) in the designated tribunal. Furthermore, he had to present proof of having studied at a university (a *studio generale*) for three years, presumably following the basic courses offered by its law faculty. That the number of notaries qualified to serve as procurators in the Council of Justice was very limited is denoted by the fact that the guild made special provisions for ways of enlisting the two procurators for the above-mentioned examining board. If the current council of twelve happened not to include any, they could be drawn from the advisory council of fifteen; and if this council also had no procurators, then the proconsul and consuls were authorized to use their own initiative in recruiting them.

The procurator had thus come a long way since the thirteenth and fourteenth centuries, when his functions of attorney, so long as they were fully joined with those of the simple notary, were considered beneath the dignity of the trained jurist and even thought by some to be *ignobile*.[59] With an ever increasing skill and a growing fund of techniques, the procurator handled the formalities and paperwork connected with the lawsuits of his clients, gave them advice, and represented their claims in court. In time, therefore, the procurator of the civilians came to cor-

[58] *AGN*, I, ff. 30v-31r.

[59] G. Salvioli, *Storia della procedura*, in P. Del Giudice, ed., *Storia del diritto italiano* (Milano, 1925-1927), III, ii, 218.

respond to the solicitor in chancery and to the old public attorney. Probably he had the right to argue certain types of cases, at all events in some courts. In general, however, he was denied the right of audience, which properly belonged to the advocate or lawyer, a full-fledged jurist.

4. *Political Vicissitudes and Parallels*

The internal organization of the guild seems to present a tranquil countenance during the fifteenth and sixteenth centuries. Not so in the period running from the middle thirteenth to the later fourteenth century, when there was a good deal of conflict between lawyers and notaries. The differences sometimes turned on questions of status and faction, and occasionally they took an acute form, creating scissions within the guild, until such a time as political society itself became less stormy.

It is not unlikely that the earliest conflicts between lawyers and notaries were connected with the struggle between Guelfs and Ghibellines. Davidsohn found that in 1254 the six guild consuls were three lawyers and three notaries, a distribution which favored lawyers because notaries outnumbered them in the guild by about eight or nine to one.[60] In 1269 the hand of the jurists was heavier still, for the consulate then had only four places and three were held by lawyers. But by 1275 the old numerical parity had been restored, though strife within the guild continued. It came to a head in 1287, when the two groups temporarily split, formed two guilds, and elected separate consuls. The Council of the People, however, soon persuaded them to reunite, undoubtedly fearing the additional political influence that a new major guild would confer on lawyers and notaries alike. The reunification was a partial victory for the notaries, and thereafter the representation of lawyers in the main offices of the guild was gradually whittled down. In 1329 the guild had five consuls, only two of whom were lawyers. Later on the number of consuls was raised to eight, with lawyers securing three of the seats. About 1370, finally, the notaries succeeded in claiming a sixth consul.[61] Although this arrangement survived the lifetime of the Republic, the overall rep-

[60] Davidsohn, *Geschichte*, IV, ii, 123. On other material in this paragraph see Davidsohn, *Forschungen zur Geschichte von Florenz* (Berlin, 1896-1908), III, 232; Doren, *Entwicklung*, p. 35.

[61] The change came between 1368 and 1372. Cf. lists of consuls in *AGN*, 92, 93.