

*GRATIAN: THE TREATISE ON LAWS (DECRETUM DD. 1-20)* translated by Augustine Thompson OP, WITH THE ORDINARY GLOSS translated by JAMES GORDLEY, Introduction by Katherine Christensen, *Studies in Medieval and Early Modern Canon Law* 2, The Catholic University of America Press, 1993, xxviii +131 pp. (\$24.95 cloth; \$14.95 paper) ISBN 0-8132-0785-1 (clothbound); 0-8132-0786-X (paper).

*YVES DE CHARTRES: PROLOGUE*. Latin text, introduction, French translation, and notes by JEAN WERCKMEISTER. *Sources Canoniques* 1, Les Éditions du Cerf, 1997, 160 pp. (110 FF). ISBN 2-204-05542-5.

In the late 1980s, The Catholic University of America Press began a series entitled 'Studies in Medieval and Early Modern Canon Law', including both original works in English and translations of more important works from other languages (such as Manlio Bellomo's *Storia del diritto commune*). A multi-volume history of medieval canon law is currently under production as a part of these studies, under the editorial direction of Kenneth Pennington and Wilfried Hartmann, and, when completed, will certainly be the crown jewel of this series. But one of the most intriguing productions in this series to date is surely the English translation of the first twenty *distinctiones* of Gratian's *Decretum*, along with the *glossa ordinaria*.

Gratian, the 'Father of the Science of Canon Law', produced his *Concordia discordantium canonum* ('A harmony of conflicting canons', but known more popularly as Gratian's *Decretum*) around 1140. This textbook compilation of thousands of canonical sources became a standard work on canon law for the remainder of the middle ages, and was still in use in the Roman Catholic Church into this century: the number of medieval manuscripts of this work is matched only by those for the Bible and Peter Lombard's Sentences. Gratian opens his work with a treatise on law and its subdivisions, moving from a general categorisation of law to a discussion of the underlying premises of law within the Church. Early manuscripts record questions and cross-references to other parts of the *Decretum* in the margins; these comments, conventionally called 'glosses', were soon (between 1215 and 1218) collected and presented surrounding Gratian's text as a teaching aid in a standard form known as the 'ordinary' gloss.

The massive number of manuscripts of the *Decretum* makes the edition of a Latin text of Gratian a daunting prospect. There is not now a satisfactory critical edition, nor is there a single base manuscript. In 1578, Gregory XIII appointed a group of scholars to edit the *Decretum*; the edition produced by these lawyers (known as the *Correctores Romani*) appeared in 1582 as the 'Roman Edition', and became the standard text for centuries thereafter. Although there are several editions which are currently more available (notably Friedberg's hybrid edition of 1879), the Roman Edition of the text of Gratian's *Decretum* and the accompanying gloss was chosen as the basis for this new English translation.

What first strikes the reader in the CUA Press translation is the editorial presentation: Gratian's text is located in the middle of the page, with the gloss arranged around it. In its form, it parallels exactly the appearance of the medieval manuscripts and early printed editions; one could move from the text to the gloss and back again without flipping pages, having to consult another book or losing one's place. There are, in addition, two sets of modern footnotes (one for Gratian's text, another for the gloss), placed for practical reasons at the end of the volume, which identify sources in modern editions or mark certain textual problems. The fact that it is far more difficult to describe this arrangement than it is to use it is a tribute to the careful editing of this work. A preface by the translators explains how to use the work and describes the forms for citation (the most mystifying barrier to a novice's approaching the text).

The Latin of Gratian's *Decretum*, incorporating sources from over a thousand years of Christian writing and in a wide variety of Latin styles, is notoriously difficult to read. The translators, according to the Preface, 'have attempted to produce a smooth, readily intelligible English version that avoids Latinisms.' The fairly literal nature of this project is all the more important because of the dependence of the gloss on Gratian's text: a freer translation of the text, while perhaps capturing the spirit of the source, would leave the gloss floating in mid-air. The literal translation, however, sometimes produces what is close to a technical 'jargon' translation. Thus, the definition of *lex* from Isidore's *Etymologies* (*lex est constitutio scripta*) is rendered as 'Ordinance is written enactment', which, while defensible, is a bit too scrupulously close to the Latin to render the full meaning in comprehensible English. The problem of the conventional and ambiguous translation of both *lex* and *ius* as 'law' in English dogs the steps of any translator, and the translators here manage to maintain a clarity which is missing in most other presentations.

The introduction presents an overview of Gratian's work and its place in canonical tradition. It assumes no previous familiarity with the *Decretum*, and in a short space covers a remarkable amount of history and scholarship. Although the introduction's author is clearly conversant with the latest work in medieval history and law, there are a number of lapses with regard to modern canonical scholarship. She notes that 'Gratian's text remains of great historical interest and often sheds light on the thinking behind modern canons', citing Cardinal Gasparri's monumental nine volume edition of the *fontes* for the 1917 Code of Canon Law, and then sighs that 'unfortunately no parallel work is available as yet for the 1983 Code'. The 1983 Code of Canon Law, however, had been published in 1989 with its *fontes* annotated in precisely the same manner as Gasparri produced the 1917 Code; the Canon Law Society of America has produced a revised English translation of the 1983 Code, also containing a similar annotation of sources. Furthermore, Gasparri's *fontes* did not contain any texts from Gratian, or, indeed, from any part of the *Corpus Iuris Canonici* (it being assumed that the reader already had access to such a standard work).

Gratian's work was an unofficial compilation—'unofficial' in the sense that it was never formally promulgated as a whole by the supreme legislative authority of the Western Church, although its individual sources retained the force of their original enactment. With the promulgation of the 1917 Code of Canon Law, however, the *Corpus Iuris Canonici*, of which Gratian's *Decretum* forms the largest and earliest part, lost all force in the Roman Catholic Church and was completely superseded by the new Code. Oddly enough, however, pre-Reformation canon law retains a foothold in the Anglican Communion. Gratian's *Decretum*, with other similar sources, continues to operate in the Church of England by means of incorporation into the common law as a form of custom, on condition that it is not repugnant to royal prerogative, statute or common law (under the Submission of the Clergy Act 1533). The operation of pre-Reformation canon law in other Anglican Churches is less clear; a celebrated exchange of published volleys in the American Episcopal Church during the 1950s and 1960s on the force of such law in the Protestant Episcopal Church in the United States of America left the issue unresolved. This led one noted teacher of the canon law of the American Episcopal Church to remark that 'the last bastion of medieval canon law is the Anglican Communion'.

While there has been a fairly steady production of literature concerning medieval canon law in English for some time now, in part through the influence of scholars such as the late Professor Stephan Kuttner (the man 'rumored to know everything'), the Institute for Research and Study in Medieval Canon Law (which publishes the annual *Bulletin of Medieval Canon Law*), and the International Society of Medieval Canon Law, it has only been in the past few years that the sources themselves have become available in English translation. In addition to the CUA Press translation of the first twenty *distinctiones* of Gratian's *Decretum* with their relevant glosses,

Robert Somerville and Bruce Brasington have produced within the last year selected translations of and commentary on canonical sources from 500 to 1245 in *Prefaces to Canon Law Books in Latin Christianity* (New Haven and London: Yale University Press, 1998). The CUA Press translation of the beginning of the *Decretum* does not indicate whether further translations of additional parts of Gratian's work are forthcoming in a similar format. One can only hope so, given the significant contribution that this short first step has already made.

Another series of medieval canonical sources, this time from the editions du Cerf in Paris, has been started within the past three years. The first volume, containing the *Prologue* of Ivo of Chartres (1040–1115), promises three more volumes containing Gratian's treatises on marriage and penance. The editions provide an edited Latin text and French translation on facing pages, with fairly complete annotations and bibliography, and a full introduction.

Unlike the CUA Press translation, this work is not one which could be profitably used as an introduction to medieval canon law. Ivo, Bishop of Chartres and the most famous canonist of his generation, compiled several collections of canons in defence of the Gregorian reform of the eleventh and twelfth centuries, and much more study needs to be done on this canonist's life and work. In the prologue to his collection entitled *Panormia*, Ivo set forth rules for the interpretation of canonical texts that became central to the work of later canonists (and especially to the work of Gratian).

The text of Ivo's *Prologue* which was printed in Migne's *Patrologia Latina* vol. 161 (1855) is a poor one, and, in Professor Brundage's words, 'is not very reliable as a representation of what Ivo originally wrote'. Jean Werckmeister has produced an improved Latin text, and a fluid French translation; his notes to the text point out problems in the text or translation, as well as modern editions of the sources. The introduction, however, is rather meandering and somewhat polemical. The major modern study of Ivo against which Werckmeister takes aim (and on which he rather shamelessly then proceeds to base his text and annotations) is that of Bruce Brasington; unfortunately, this is only available as a typescript thesis from the UCLA Library. His criticisms of Brasington (most of which are clearly petty or regard simple typographical errors) take up an inordinate amount of the introduction, and regard a work to which the vast majority of Werckmeister's readers could not possibly have access.

The texts of Ivo and Gratian presented and translated in these works are clearly important, and vital to any understanding of medieval canon law (or, indeed, of modern law understood in the light of its medieval antecedents). The CUA Press translation deserves to be in any law library, at least as an introduction and access to the history of this law. The Werckmeister edition of Ivo, for all the faults of its introduction, presents a crucial text of medieval canon law in a readily accessible form, and deserves to be studied by those with the desire and background to evaluate it.

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*THE 'BAWDY COURT' OF BANBURY: The Act Book of the Peculiar Court of Banbury 1625–1638*, transcribed and calendared by the late E.R.C. BRINKWORTH, edited by R.K. Gilkes, Banbury Historical Society, Banbury, Vol. 26, 1997, 256 pp. (£15) ISBN 0 900129 24 7. Obtainable from Banbury Historical Society, c/o Banbury Museum, 8 Horsefair, Banbury, OX16 0AA.

Recent events from the United States may be evidence for some of the declining state of the morals of our society. If anyone is of that ilk, they would be well advised to read this fascinating account of proceedings in the Peculiar Court of Banbury. Whilst the task of editing court records can be both thankless for the editor and