

Chapter 1

GRATIAN AND THE *DECRETUM*

Gratian is the only lawyer authoritatively known to be in Paradise. Not that he is lonely there, surrounded as he is by theologians and philosophers, Albertus Magnus on one side and Peter Lombard on the other. How did Gratian earn this favored place? Given the scarcity of lawyers in heaven, one may justly query whether it really was his lawyerly qualifications that made Gratian deserve Paradise. After all, he was an expert on canon law, the law of the Church, which exists on the borders between law and theology. Dante, who reported on the inhabitants of the Afterworld, seems to acknowledge the ambiguity inherent in Gratian's vocation by praising his mastery of "both courts," i.e., the exterior, public court of justice and the interior, sacramental court of the confessional (*Paradiso* x 103–105). Perhaps it was as a theologian, not as a lawyer, that Gratian was admitted, and perhaps this is why he smiled, as Dante tells us he did. Or perhaps Dante thought of Gratian primarily as a pre-eminent teacher, since he awarded him a place between two other teachers. Albertus was the teacher of Thomas Aquinas, who was Dante's guide in this particular circle of Paradise. Medieval intellectuals knew also Gratian and the Lombard as eminent teachers through the textbooks which they had written and which were used in the basic teaching of canon law and theology throughout the middle ages and beyond. Thomas had early in his career lectured on Peter Lombard's *Sentences* and he often quoted from Gratian's *Decretum* in his works.

The pairing of Gratian and the Lombard is in fact common both in modern scholarly literature and in medieval writings. One of the more fanciful examples is the widespread medieval story that they were brothers, or even twins.<sup>1</sup> Credence is not given to this myth, and with good reason, but the pairing itself recognizes an important fact. Gratian and

<sup>1</sup> Joseph de Ghellinck, *Le mouvement théologique du XIIe siècle*, 2nd edn., Museum Lessianum: Section historique 10 (Bruges 1948), 285.

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the Lombard were not twin brothers, but the twin pillars on which medieval education in theoretical and practical theology built. They had, each in his discipline, produced the first successful compendium, comprehensively summarizing the learning of that discipline using the scholastic methods that were newly fashionable in their time, the middle of the twelfth century. The continuing usefulness of their works is attested to by the hundreds of medieval and early-modern commentaries that have survived. Gratian's *Decretum* was in fact a valid law book, the oldest and most voluminous part of the so-called *Corpus iuris canonici*, in Catholic ecclesiastical courts until 1917.

It is obvious that books which were used so much for so long would have been greatly influential. Gratian's *Decretum* was one of the cornerstones of canon law. Its definitions of concepts and terminology as well as its actual solutions to legal problems have in many cases been definitive and survive in the most recent compilation of the law of the Catholic Church, the *Codex iuris canonici* of 1983. But the influence of Gratian's *Decretum* is not restricted to the law of the Catholic Church. During the middle ages, canon law regulated areas that would today be thought of as thoroughly secular, such as business, warfare, and marriage. Together with Roman law, canon law formed a coherent and autonomous legal system, the so-called *ius commune* (European Common Law). This system was the only legal system that was studied at the universities, and during the middle ages (and in some countries also much later) it was in fact used in local judicial practice and in producing local law codes.<sup>2</sup> This influence is still felt in modern legislation, for example in the rules concerning a third party's acquisition in good faith of stolen property. In such cases, modern law tends to follow either Gratian in strongly protecting the rights of the original possessor or Roman law in protecting acquisitions made in good faith.<sup>3</sup>

Against the background of the significance of Gratian's *Decretum*, it comes as something of a surprise that practically nothing is known about Gratian and not much more about how he created the *Decretum*. Scholarship during the second half of the twentieth century attempted to clarify Gratian's reasons for writing the *Decretum* and to explore the political and other sympathies that he demonstrated in this, but these

<sup>2</sup> Historians have tended to undervalue the contribution of European Common Law to local practice and legislation, see Manlio Bellomo, *The Common Legal Past of Europe, 1000–1800*, Studies in Medieval and Early Modern Canon Law 4 (Washington, D.C. 1995) and Kenneth Pennington, "Learned law, droit savant, gelehrtes Recht: the tyranny of a concept," *Rivista internazionale di diritto comune* 5 (1994), 197–209; reprinted with corrections in *Syracuse Journal of International Law and Commerce* 20 (1994), 205–215.

<sup>3</sup> James Gordley and Ugo A. Mattei, "Protecting possession," *The American Journal of Comparative Law* 44 (1996), 293–334.

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attempts were misguided and unconvincing. On the contrary, an important article showed convincingly that the received account for Gratian's biography is a myth constructed by scholars over the centuries and that almost nothing remains when it has been carefully examined.<sup>4</sup> At the same time, many scholars, particularly legal historians, religious historians, and social historians, do research on the basis of Gratian's *Decretum* from different viewpoints. The publication of such research is often accompanied by a reservation that the results are uncertain since the circumstances surrounding the creation of their source text are so poorly known.

This book will, I believe, remove the need for most such reservations. A fresh consideration of the most important among the medieval manuscripts of Gratian's *Decretum* reveals that the creation of this work was an even more complicated process than has been imagined. The text that scholars have read, studied, and discussed for generations represents in fact an elaboration of a considerably shorter text. This original *Decretum* is not a hypothetical construction but actually a text which survives and can be read in medieval manuscripts. It has, thus, become possible to study Gratian's original book.

The discovery that Gratian's *Decretum* is not one book but two has manifold implications. To begin with, it has become easier to read and interpret the *Decretum*. Many have complained that Gratian's discussion is rambling and that it fulfils but poorly the promise of the work's original title (see below) to harmonize the contradictions of canon law. In comparison, Peter Lombard's slightly later *Sentences* seem better organized and better argued. The first version (or, as I call it, the first recension) is more succinct and to the point than the text previously known (the second recension). This makes it less confusing for the reader, who will be able to distinguish between Gratian's original argument and the later additions of the second recension.

In the first recension, the nature of Gratian's project and his contribution to early scholastic methods is clearer. The ratio of commentary to quoted text is higher, making the first recension a more analytical and less discursive work than the second recension. Not every contradiction is resolved even in the first recension, but it becomes easier to understand why the *Decretum* was adopted as the primary text book of canon law. Gratian deserved a place next to Peter Lombard in Paradise.

The first recension is not only shorter and more succinct, it is also different from the second recension in many other respects, which allows

<sup>4</sup> John T. Noonan, "Gratian slept here: the changing identity of the father of the systematic study of canon law," *Traditio* 35 (1979), 145–172.

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the scholar to trace the surprisingly rapid legal and intellectual development during the interval between the two recensions. The first recension contains remarkably little Roman law and technical language. This reopens and redefines the long-standing debate about the role of Roman law in the *Decretum*. A comparison between the two recensions raises important new questions about the legal renaissance of the twelfth century, some of which will be addressed in this book. I shall argue that the lack of Roman law in the early version is not an expression of Gratian's distrust of or disgust for secular law. It simply shows that Gratian was not particularly well oriented in Roman law. This is in fact to be expected, since the teaching of Roman law was not as far advanced in his time as the foundation myth of the Roman law school in Bologna claims. I shall also suggest that the differences between the two recensions are so great that it becomes difficult to think of them as the products of a single author.

This book has six chapters. The first provides the historiographical background and a consideration of the printed editions and manuscripts that I have used. Chapters 2 and 3 constitute two test cases, in which I closely examine two selected sections in the *Decretum* (C. 24 and C. 11, q. 3, respectively). Chapter 4 will pull together the threads from the previous two chapters and demonstrate that the evidence presented there conclusively proves the existence of the first recension. I shall also consider some basic issues which now require re-evaluation, such as the place and date of the composition of each recension. The important problem of the incorporation of Roman law into the second recension of the *Decretum* is treated in chapter 5, where I also explore the development of Roman law teaching in Gratian's time. The authorship of the *Decretum* was already a vexed question before the discovery of the first recension. Some scholars believed that Gratian was responsible for the entire *Decretum*, while others preferred to think that his work was supplemented by others. The problem is even more acute after the discovery of the first recension. In chapter 6, I shall study the arguments for and against Gratian's authorship of both recensions.

In conclusion, I shall discuss the broader implications of this study. The realization that the received text of Gratian's *Decretum* is an uneasy composite of incongruous parts will, in the first place, change the ways in which scholars read this fundamental law book. To assist them, the Appendix lists the contents of the first recension. Even more importantly, this study has repercussions for our understanding of the intellectual and legal history of the twelfth century and opens up new possibilities for what promises to be fruitful further research in these areas.

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### THE *CONCORDIA DISCORDANTIUM CANONUM*

The work usually known as Gratian's *Decretum* was originally entitled the *Concordia discordantium canonum* ("The Harmony of Discordant Canons").<sup>5</sup> This title illustrates the aims and methods of its author, who attempted to resolve the contradictions among the canons which were included in the work. The legislative texts with which he worked spanned the period from the early, pre-Constantine Church to the council celebrated in 1139 by Pope Innocent II, in addition to biblical quotations. The texts included papal decretals, conciliar canons, fragments from writings of the Church Fathers, and pieces of secular legislation. Gratian discussed the canons and contradictions among them in his commentaries, the so-called *dicta Gratiani*, which are interspersed among the canons.

The overall structure of the *Decretum* as presently known may appear peculiar and mystifying to modern scholars, particularly those who are used to the strictly logical structure of later scholastic texts. It consists of three parts. The first is divided into 101 *distinctiones*, which concern the sources of law, the ecclesiastical hierarchy, and the discipline of the clergy. The second part consists of thirty-six *causae*, each divided into *questiones*. This part discusses among many other things simony, judicial procedure, religious orders, heretics, and marriage. The third *questio* in *Causa* 33 is much longer than Gratian's *questiones* normally are. Its subject is penance and it is usually referred to as the *de penitentia*. This *questio* contains seven *distinctiones*. The third part consists of five *distinctiones*, is usually termed the *de consecratione*, and treats the remaining sacraments.<sup>6</sup>

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In 1979, John T. Noonan published an article which questioned the historical accuracy of the received opinion about Gratian's biography.

<sup>5</sup> Friedrich Heyer, "Der Titel der Kanonensammlung Gratians," *ZRG KA* 2 (1912), 336–342. See also below, chapter 6.

<sup>6</sup> When citing a text in the first part, I refer to *distinctio* and *canon*: "D. 1, c. 1." For the second part, I refer to *causa*, *questio*, and *canon*: "C. 1, q. 1, c. 1." The third part (the *de consecratione*) and C. 33, q. 3 (the *de penitentia*) are cited with an abbreviation for the name of the treatise, *distinctio* and *canon*: "de. cons. D. 1, c. 1" and "de pen. D. 1, c. 1," respectively. Gratian's *dicta* are cited as "C. 1, q. 1, d. a. c. 1" (*dictum ante . . .*) or "D. 1, d. p. c. 1" (*dictum post . . .*). The *dicta* introducing each *causa* are cited as "C. 1, d. init." At the head of each longer quotation from the *Decretum* or of each collocation of variant readings, I indicate the relevant section in the *Decretum* with an abbreviated reference: "1.1.1" = C. 1, q. 1, c. 1. My citations consistently follow the divisions of the standard edition, Emil Friedberg, ed., *Corpus iuris canonici, 1, Decretum magistri Gratiani* (Leipzig 1879). When I refer to a line in Friedberg's edition, I number the line from the beginning of the text of the relevant canon or *dictum*, leaving the lines occupied by rubrics and inscriptions uncounted.

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Until then, most scholars claimed that Gratian had been a Camaldolese monk who taught canon law, probably at the monastery of Saints Felix and Nabor in Bologna.<sup>7</sup> Noonan showed how layer after layer of Gratian's biography had piled up through the centuries. There is only one contemporary document which mentions a Gratian who might be identical with the author of the *Decretum*. When the papal legate Cardinal Goizo in 1143 judged a case in Venice, he consulted with three *prudentes*: *magister Walfredus*, *Gratianus*, and *Moyasis*. The first and the third are usually identified with Bolognese lawyers, which makes it likely that the second expert was the author of the *Decretum*.<sup>8</sup> Very little else can be known with certainty about Gratian except that he wrote the *Decretum*. Even his religious status is open to question. The author of the *Summa Parisiensis*, a commentary on the *Decretum* probably written shortly before 1170, claims that Gratian was a monk.<sup>9</sup> Since Gratian treats questions of monasticism thoroughly in *Causae* 16 to 20, and in a manner that benefits monks, several modern scholars have remained convinced that he in fact was a monk, Noonan's doubts notwithstanding.<sup>10</sup> However, there is reason to query whether the author of *Summa Parisiensis*, who was commenting on passages which he thought beneficial to monks, communicated correct information or simply attempted to discredit Gratian's objectivity. Complicating the situation are statements that Gratian was a bishop. In a chronicle composed about 1180, the abbot of Mont Saint Michel, Robert of Torigny, claims that Gratian was bishop of Chiusi.<sup>11</sup> That Gratian was a bishop is also maintained by a gloss which appears in manuscripts from

<sup>7</sup> Noonan, "Gratian slept here." An uncritical summary of the traditional view is found in Carlo Mesini, "Postille sulla biografia del 'Magister Gratianus' padre del diritto canonico," *Apollinaris* 54 (1981), 509–537.

<sup>8</sup> Paul Kehr, *Regesta pontificum Romanorum: Italia pontificia* (Berlin 1906–1975), v 60. Cf. Stephan Kuttner, "The father of the science of canon law," *The Jurist* 1 (1941), 2, and Noonan, "Gratian slept here," 171.

<sup>9</sup> *Summa parisiensis* ad C. 2, q. 7, d. p. c. 52 et C. 16, q. 1, c. 61, in Terence McLaughlin, ed., *Summa Parisiensis on the "Decretum Gratiani"* (Toronto 1952), 115 and 181. For the date, about which there has been some controversy, see Kenneth Pennington, "Medieval canonists: a bio-bibliographical listing," to appear in Kenneth Pennington and Wilfried Hartmann, eds., *History of Medieval Canon Law* (Washington, D.C. 1999–) x, provisionally available on the web at <http://www.maxwell.syr.edu/MAXPAGES/faculty/penningk/biobibl.htm>.

<sup>10</sup> Most importantly Peter Landau, "Gratian," in *Theologische Realenzyklopädie* xiv (Berlin 1985), 124, Peter Landau, "Quellen und Bedeutung des gratianischen Dekrets," *Studia et documenta historiae et iuris* 52 (1986), 220, Stephan Kuttner, "Gratien," in *Dictionnaire d'histoire et de géographie ecclésiastiques* xxi (Paris 1986), 1236, and Stephan Kuttner, "Research on Gratian: acta and agenda," in *Proceedings of the Seventh International Congress of Medieval Canon Law*, MIC Subs. 8 (Vatican City 1988), 6; reprinted in Stephan Kuttner, *Studies in the History of Medieval Canon Law*, Collected Studies CS 325 (Aldershot 1990), no. v.

<sup>11</sup> Richard Howlett, ed., *The Chronicles of the Reigns of Stephen, Henry II, and Richard I*, iv, *The Chronicle of Robert of Torigny*, Memorials of Great Britain and Ireland during the Middle Ages ["Roll Series"] 82 (London 1889), 118.

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the third quarter of the twelfth century.<sup>12</sup> In its oldest form, this gloss does not mention the *de consecratione* in its enumeration of the parts of the *Decretum*. The present book aims to show that the original version of the *Decretum* did not contain the *de consecratione*, which suggests that the gloss is very early and should be paid more attention than is usually the case. Unfortunately, it is impossible to check whether Robert of Torigny was correct in stating that Gratian was bishop of Chiusi, since extremely little is known about any bishops of Chiusi in the twelfth century.<sup>13</sup>

The evidence is, in other words, contradictory. To conclude that Gratian was both monk and bishop is not very satisfying and in any case methodologically questionable. Particularly striking is that what twelfth-century information there is derives from French sources, while the masters active in Bologna remain silent. Also, the oldest manuscripts of the *Decretum* do not even name its author (see chapter 6). This and the confusion about whether he was a monk or a bishop suggest that the canonists of the second half of the twelfth century, at least in Bologna, simply did not know who Gratian was, or that they did not care to investigate. They were, however, from the very beginning agreed about calling him *magister*, which suggests that he taught canon law. That this label was attached to his name could, however, be interpreted also in other ways. He could have been simply "the master of the *Decretum*" (which is the meaning the word has when Paucapalea refers to Gratian in the preface to his *summa*<sup>14</sup>), a judge, or even an abbot.<sup>15</sup> R. W. Southern has recently argued that Gratian in fact was a lawyer and not an academic teacher of law.<sup>16</sup> However, the form of the *Decretum* itself seems to contradict Southern's suggestion. The thirty-six fictitious cases that provide the layout of the second part are not, as Southern calls them, "imaginary law-suits" or imaginary legal cases, as might be inferred from the term *causa*:

C. 32, d. init.

Since he did not have a wife, a man joined a prostitute to himself in marriage. She was infertile and the daughter of a serf and the granddaughter of a freeman.

<sup>12</sup> The gloss was edited on the basis of all known manuscripts in Rudolf Weigand, "Frühe Kanonisten und ihre Karriere in der Kirche," *ZRG KA* 76 (1990), 135–155.

<sup>13</sup> Noonan, "Gratian slept here," 153–154, Kehr, *Italia pontificia*, III 230, and Ferdinando Ughelli, *Italia sacra sive de episcopis Italiae . . . opus singulare* (Venice 1717–1722), III 631.

<sup>14</sup> Paucapalea, *Summa über das "Decretum Gratiani"*, ed. Johann Friedrich von Schulte (Giessen 1890), 3.

<sup>15</sup> Doubts were raised by Noonan, "Gratian slept here," 169–170, and also by Peter Classen, who was prevented by his untimely death from substantiating them, see Kuttner, "Research on Gratian," 7. For the possible meanings of *magister*, see also Johannes Fried, *Die Entstehung des Juristenstandes im 12. Jahrhundert*, Forschungen zur neueren Privatrechtsgeschichte 21 (Cologne 1974), 9–24, Franz Blatt, *Novum glossarium mediae latinitatis*, M–N (Copenhagen 1959–1969), 22–29, and J. F. Niermeyer, *Mediae latinitatis lexicon minus* (Leiden 1976), 625.

<sup>16</sup> Southern, *Scholastic Humanism and the Unification of Europe*, I: *Foundations* (Oxford 1995), 303–305.

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Although the father wanted to give her to another, the grandfather joined her to this man, for the reason of incontinence only. Thereafter, the man, led by regret, began to attempt to conceive children with his own maid. Afterwards, when he had been convicted of adultery and punished, he asked a man to take his wife by violence, so that he would be able to divorce her. When this had been done, he married an infidel woman, but on the condition that she converted to the Christian religion. Now it is first asked if it is licit to take a prostitute as a wife? Second, if she who is taken [as a wife] for the reason of incontinence is to be called "wife"? Third, whose judgement would she follow, the free grandfather or the servile father? Fourth, if he is allowed to conceive children with a maid while his wife is alive? Fifth, if she who suffers violence is proven to have lost her virtue? Sixth, if an adulterous man can divorce his adulterous wife? Seventh, if a man may marry another while his divorced wife is alive? Eighth, if a Christian man may take in marriage an infidel under the aforementioned condition?<sup>17</sup>

This is not the description of a case in which all these questions had to be answered before judgement could be passed. Instead, it bears the hallmarks of a teacher who designs his examples in such a way that, however bizarre, they raise exactly those legal issues which he wants to discuss. Besides, every teacher knows the value of striking examples that stay in the memories of his students. Even as severe a critic as Noonan yields this point.<sup>18</sup>

Short of the unlikely event that some hitherto unnoticed source will throw light on Gratian's biography, the text of the *Decretum* is our most reliable source for knowing its author. Here, much work remains to be done. To mention only one detail, the rather sweeping assertions that Gratian favored monks deserve to be studied and substantiated in greater detail,<sup>19</sup> and to be contrasted with other twelfth-century canonical works. Such studies are, however, hampered by the fact that it is not entirely clear exactly what the text of Gratian's *Decretum* comprises.

<sup>17</sup> Friedberg, ed. *Decretum*, 1115: "Quidam, cum non haberet uxorem, quandam meretricem sibi coniugio copulavit, que erat sterilis, neptis ingenui, filia originarii; quam cum pater uellet alii tradere, auus huic eam copulavit, causa solius incontinentiae. Deinde hic, penitencia ductus, ex ancilla propria filios sibi querere cepit. Postea de adulterio conuictus et punitus quandam rogauit, ut ui uxorem suam opprimeret, ut sic eam dimittere posset, quo facto quandam infidelem sibi copulavit, ea tamen condicione, ut ad Christianam religionem transiret. Hic primum queritur, an licite meretrix ducatur in uxorem? Secundo, an ea, que causa incontinentiae ducitur, sit coniux appellanda? Tercio, cuius arbitrium aliqua sequatur, an liberi aui, an originarii patris? Quarto, si uiuente uxore liceat alicui ex ancilla filios querere? Quinto, si ea, que uim patitur, pudicitiam amittere conprobetur? Sexto, si adulter adulteram possit dimittere? Septimo, si uiuente dimissa aliam possit accipere? Octauo, si infidelem sub premissa condicione licet alicui fidelium in coniugem ducere?" <sup>18</sup> Noonan, "Gratian slept here," 169.

<sup>19</sup> Rudolf Weigand recently pointed to some details in D. 63, d. p. c. 34, where Gratian gives his interpretation a slant favorable to monks, see Rudolf Weigand, "Das kirchliche Wahlrecht im Dekret Gratians," in *Wirkungen europäischer Rechtskultur: Festschrift für Karl Kroeschell zum 70. Geburtstag*, ed. Gerhard Köbler and Hermann Niehlsen (Munich 1997), 1344.



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### THE TEXT AND THE EDITIONS OF THE *DECRETUM*

Despite the fundamental importance of Gratian's *Decretum* in the middle ages and beyond, it was never formally promulgated by the Church. It was, nonetheless, one of the texts which were subject to philological attention following the Council of Trent. A commission, commonly known as the *Correctores Romani*, was appointed in 1566 for the purpose of correcting and emending the *Corpus iuris canonici* (including the *Decretum* of Gratian, the *Liber extra* of Gregory IX, the *Liber sextus* of Boniface VIII, the *Clementinae* promulgated by John XXII, and the *Extravagantes*). The *Correctores'* efforts resulted in the so-called *editio Romana* published in 1582. Its impact on all later editions of the *Decretum* is so great that some acquaintance with the methods and aims of the *Correctores* is indispensable. For the scholar interested in Gratian's text, the most important drawback of the *editio Romana* is that the *Correctores* were less concerned with reproducing what Gratian actually wrote than with restoring the original text of his material sources. They would retrieve for each canon what seemed to be the most accurate text of the papal decree, conciliar decision, or patristic authority that Gratian was quoting, and then "correct" his text. As the most recent editor of the *Decretum* pointed out, the aims of the *Correctores* were "not to restore the *Decretum* as Gratian composed it, but as he ought to have composed it."<sup>20</sup>

The *editio Romana* was reprinted numerous times. The first editor after 1582 to go back to the manuscript tradition of Gratian was Just Henning Böhmer (Halle 1747), who, being a Protestant, did not feel bound by the official edition of the Catholic Church. The four manuscripts he used were late and unreliable, but he produced a better text than had earlier been available. The next editor, Emil Ludwig Richter (Leipzig 1839), returned to the *editio Romana*. However, he made and published collations of pre-1582 editions of the *Decretum*, of the editions of Gratian's material sources which were available at the time, and of other canonical collections. The most recent editor of the *Decretum*, Emil Friedberg,

<sup>20</sup> "Vides non id in animo habuisse correctores Romanos, ut restitueretur decretum, quale a Gratiano compositum esset, sed quale a Gratiano componi debuisset." Friedberg, ed., *Decretum*, lxxviii. Columns lxxvii–xc give a convenient overview of the *Correctores'* activities including the texts of relevant sixteenth-century papal letters. The methods of the *Correctores* have serious implications for the usefulness of the recent translation into English of *distinctiones* 1–20, which unfortunately is based on the *editio Romana*: Gratian, *The Treatise on Laws (Decretum DD. 1–20)*, trans. Augustine Thompson and James Gordley, Studies in Medieval and Early Modern Canon Law 2 (Washington 1993). Katherine Christensen's statement in the introduction to this translation, p. xx, that "the Roman edition . . . remains the edition of choice for serious work on the *Decretum*" is incorrect. See also Rudolf Weigand's review of this translation, in *Theologische Revue* 92 (1996), 152–155.

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used eight manuscripts for his edition (Leipzig 1879), and made substantial use of Richter's collations. The text he presented was based on the manuscripts, and the divergences from the *editio Romana* are signaled in a separate apparatus. A large and not always easily interpreted critical apparatus gives accounts of variant readings, sources, and parallels in other canonical collections.

Friedberg's edition remains an impressive monument to the great industry of an editor working alone,<sup>21</sup> but its shortcomings are, after more than a century of research, well known. Aside from formal inadequacies and a few purely typographical deficiencies,<sup>22</sup> one of the two fundamental problems is that Friedberg's manuscript basis is narrow, although in this he is typical of the editor of his time, understandably so given conditions of travel and technology.<sup>23</sup> Before re-editing C. 24, q. 1, Titus Lenherr studied the value of several old manuscripts and the edition of Friedberg by comparing their text of the canons that Gratian took from the canonical collection *Polycarpus* with a critical edition of this collection (available in typescript at the Monumenta Germaniae Historica in Munich).<sup>24</sup> Through this procedure, he determined which manuscripts of the *Decretum* have the highest number of readings in common with the *Polycarpus* and he assumed that these would best represent Gratian's text. He concluded that the two Cologne manuscripts (Ka and Kb<sup>25</sup>) which Friedberg used as the basis for

<sup>21</sup> Cf. Friedberg, ed., *Decretum*, CI.

<sup>22</sup> Every reader of Friedberg's edition is familiar with the eye-strain required to sort out the apparatus. In 1948 Stephan Kuttner pointed out that Friedberg's reports of the readings of manuscripts and sources are often ambiguous or even misleading and that his listing of other canonical collections' use of the same canons in many cases is inadequate, Stephan Kuttner, "De Gratiani opere noviter edendo," *Apollinaris* 21 (1948), 118–128. Titus Lenherr's research confirms that Friedberg does not always accurately report readings of his manuscripts, see Titus Lenherr, "Arbeiten mit Gratians Dekret," *AKKR* 151 (1982), 140–166.

<sup>23</sup> The least incomplete listing of *Decretum* manuscripts is found in Anthony Melnikas, *The Corpus of the Miniatures in the Manuscripts of "Decretum Gratiani,"* *Studia Gratiana* 18 (Rome 1975), 1261–1267, where 495 manuscripts are listed, unfortunately without date and origin. This listing is little more than an excerpt from Stephan Kuttner, *Repertorium der Kanonistik (1140–1234): Prodomus Corporis glossarum* 1, *Studi e testi* 71 (Vatican City 1937) and fails to register many manuscripts mentioned in the literature since 1937. Cf. Carl Nordenfalk's review of Melnikas' work, in *Zeitschrift für Kunstgeschichte* 43 (1980), 318–337, and Hubert Mordek's review, in *ZRG KA* 72 (1986), 403–411 (with corrections and a list of fifty-nine additional manuscripts). For the oldest manuscripts, these works are superseded by Rudolf Weigand, *Die Glossen zum "Dekret" Gratians: Studien zu den frühen Glossen und Glossekompositionen*, *Studia Gratiana* 26–27 (Rome 1991). I am preparing a new listing of *Decretum* manuscripts for the forthcoming Pennington and Hartmann, eds., *History of Medieval Canon Law* x.

<sup>24</sup> Lenherr, "Arbeiten," and Titus Lenherr, *Die Exkommunikations- und Depositionsgewalt der Häretiker bei Gratian und den Dekretisten bis zur "Glossa Ordinaria" des Johannes Teutonicus* (hereafter *Exkommunikationsgewalt*), *Münchener theologische Studien*, III, *Kanonistische Abteilung* 42 (Munich 1987), 12–17.

<sup>25</sup> In citing manuscripts of the *Decretum*, I use the *sigla* employed by Rudolf Weigand in various publications (fullest listing in Weigand, *Glossen zum "Dekret,"* xxi–xxiv). All the *sigla* I mention are listed in the *Conspectus siglorum* of the present book.