

## Chapter 2a

### *The Decretum*

The *Decretum* represents a towering intellectual achievement of the renaissance of the twelfth century that ushered in the high middle ages in Europe. But whose achievement was it? In particular, is the *Decretum* the achievement of a single author or was it the product of serial or even collaborative authorship? Because so little is reliably known about the historical Gratian, and because almost everything that previous generations thought was known about Gratian has proved, on closer examination, to be myth,<sup>1</sup> it is best to make our first approach (*accessus*) to the author through his text.<sup>2</sup> The approach is made more difficult by the fact that, like many modern university textbooks, the *Decretum* underwent at least one major revision, and was probably the product of a process of continuous revision.

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<sup>1</sup> John T. Noonan, "Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law," *Traditio* 35 (January 1979): 145–72.

<sup>2</sup> "Given this lack of reliable extrinsic evidence, our best source of evidence about Gratian is his book(s)." John C. Wei, *Gratian the Theologian*, Studies in Medieval and Early Modern Canon Law, Volume 13 (Washington, D.C: Catholic University of America Press, 2016), 33.

In 1996, Anders Winroth discovered that four surviving twelfth-century manuscripts – Florence, Biblioteca Nazionale Centrale, Conv. Soppr. A. 1.402 (Fd); Barcelona, Arxiu de la Corona d’Aragó, Santa Maria de Ripoll 78 (Bc); Paris, Bibliothèque Nationale de France, nouvelles acquisitions latines 1761 (P); and Admont, Stiftsbibliothek 23 and 43 (Aa) – preserve the text of what Winroth called the first recension of the *Decretum*.<sup>3</sup> In 1998, Carlos Larrainzar identified Paris, Bibliothèque Nationale de France, latin 3884 I, fo. 1 (Pfr) as a one-page fragment of a first-recension manuscript of the *Decretum*.<sup>4</sup> And

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<sup>3</sup> Manuscripts of Gratian’s *Decretum* are frequently referred to in recent scholarly literature by two-letter abbreviations or *sigla* derived from their shelfmarks. A reference to Sg (to use a particularly controversial example) is much more compact and memorable than one to Sankt Gallen, Stiftsbibliothek 673. Rudolf Weigand (†1998) generated the original list of *sigla* in the course of his groundbreaking study of early glossed manuscripts of the *Decretum*, *Die Glossen Zum "Dekret" Gratians: Studien Zu Den Frühen Glossen Und Glosskompositionen*, Studia Gratiana 25-26 (Rome, 1991). In the context of Weigand’s study early means before 1216, when Johannes Teutonicus (†1245) finalized the ordinary gloss, or standardized commentary, on the *Decretum*. Manuscripts falling outside the original scope of Weigand’s investigation are now assigned *sigla* following the pattern he set. For example, Paris, Bibliothèque Nationale de France, nouvelles acquisitions latines 1761, although an extremely important and early (possible the earliest) manuscript of the *Decretum*, was not glossed, and was therefore not assigned a *siglum* by Weigand. **Verify that Winroth supplied the *siglum* P by which the manuscript is now commonly identified.** (Although the *sigla* in Weigand’s *Handschriftenliste* adhere consistently to the two-letter convention, some of the *sigla* supplied by other scholars deviate from it, e.g., P, Pfr.)

<sup>4</sup> Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge: Cambridge University Press, 2000), 32.

in 2011, Atria Larson discovered that München, Bayerische Staatsbibliothek, lat. 22272 (Mw) contains an abbreviation of the first recension of the *Decretum*.<sup>5</sup>

Winroth's discovery of the first recension suggests one obvious way in which it might be problematic to refer simplistically to Gratian as the author of the *Decretum*, as I have done thus far.<sup>6</sup> Winroth rejects any presumption of monolithic authorship on stratigraphic grounds. He argues that the first recension is "coherent and complete," and that its author intentionally released it into circulation as a "finished product."<sup>7</sup> (In

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<sup>5</sup> Atria A. Larson, "An Abbreviatio of the First Recension of Gratian's *Decretum* in Munich?" *Bulletin of Medieval Canon Law* 29 (2011): 51–118.

<sup>6</sup> **The second order of business is to discuss Winroth's findings and explain that you will concentrate on what he proposed was the first recension. I think the explanation for this focus is that the discovery of the first recension opens up questions about how the second recension developed. The conjecture that the first recension had one author—as Winroth surmises—and that the second might have had several is natural. You want to explore the question of whether the first Gratian was in fact one person. Having done that, one could then move on to study the nature of Winroth's Gratian 2.**  
- Stan Chodorow

<sup>7</sup> "The first recension of the *Decretum* was not a living text. It was a finished product which its author considered ready to be circulated. This is evident from its text, which is as much a finished and polished product as could be expected of any twelfth-century text. Further, it is also evident from the fact that the first recension survives in one version only; what differences there are among the manuscripts are all minor (the apparent exception of Aa will be discussed below). They are differences one would expect to find in any manuscript tradition, arising from scribal mistake or ingenuity. In other words, the manuscripts do not represent different stages in the development of the text, in the manner of 'classically'

other words, it did not just prematurely escape into the wild like parts of Augustine's *de Trinitate*.) Winroth thinks of the first and second recensions as distinct textual layers and argues that two different authors (Gratian 1 and Gratian 2) compiled the two recensions.<sup>8</sup>

Several decades before Winroth discovered the first recension of the *Decretum* and argued that the Gratian of the first recension was not necessarily the same as the Gratian of the second recension, John Noonan pointed out another obvious way in which it might be problematic to conceptualize the *Decretum* as the product of monolithic authorship. As was noted briefly above and will be discussed in further detail below, the second recension of the *Decretum* had three distinct parts. Noonan warned that the Gratian of Part I was not necessarily the same as the Gratian of Part II or Part III. (And in point of fact, the Gratian of Part III, the compiler of *de Consecratione*,

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living texts, such as the *Song of Roland*, where each different manuscript version has an equally valid claim to authenticity." Winroth, *The Making of Gratian's Decretum*, 130.

<sup>8</sup> "In the interests of simplicity and clarity, I have therefore chosen to call the author of the first recension Gratian 1 and the author of the second recension Gratian 2. These labels are not intended to suggest that Gratian 1 and Gratian 2 could not have been the same person." Winroth, 122. "It is impossible to draw any certain conclusions, but the evidence presented in the last two chapters supports the view that that two recensions had difference authors." Winroth, 194–95.

is very unlikely to have been the same as the Gratian of Parts I and II.) Furthermore, nothing logically excludes the possibility that Winroth and Noonan are both right and that the Gratian of the first-recension version of Part I is not necessarily the same as the Gratian of the second-recension version of Part I, and so on through all the possible permutations and combinations of recensions (first and second) and parts (I, II, and III).<sup>9</sup>

But long before the discovery of the first recension in the late twentieth century, the first twelfth-century readers of the *Decretum* were distinctly aware of the limited extent to which it could be thought of as the work of a single author. Even early readers, such as the author of the *Summa Parisiensis*, who implicitly endorsed the single author theory by subsuming the entire vulgate text of the *Decretum* under the eponym “Gratian,” recognized that whoever Gratian was, he was not directly responsible either for the bulk of the text or for certain notable formal features of the work, like the division of Part I into *distinctiones*.<sup>10</sup> Gratian was working within a well-established genre of

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<sup>9</sup> Excepting only that there is no first-recension version of Part III.

<sup>10</sup> “Distinctiones apposuit in prima parte et ultima Paucapalea ...” Terence P. McLaughlin, ed., *The Summa Parisiensis on the Decretum Gratiani* (Toronto: Pontifical Institute of Mediaeval Studies, 1952), 1. (Paucapalea arranged the distinctions in the first part and the last, trans. PLE)

academic writing in medieval Latin literature, the canonical collection.<sup>11</sup> The *Decretum* followed in the footsteps of any number of systematic canonical collections in which the material was organized by topic that had been in circulation since the beginning of the eleventh century.<sup>12</sup>

Twelfth-century readers of a canonical collection did not necessarily expect all (or even any) of the words they read to have been written by the author. They expected instead to find the distinctive contribution of the author in the selection, editing, and arrangement of words not his own: canons of councils, decrees of popes, and extracts from patristic authorities and secular law, often accompanied by traditional inscriptions

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<sup>11</sup> Cf. Atria A. Larson, *Master of Penance: Gratian and the Development of Penitential Thought and Law in the Twelfth Century*, Studies in Medieval and Early Modern Canon Law, volume 11 (Washington, D.C: The Catholic University of America Press, 2014), 12–13, n30. “My refusal to apply the standard label of ‘canonical collection’ to the *Decretum* is meant to make clear that I do not classify the rest of the *Decretum Gratiani* as a canonical collection in the exact way that the work of Regino, Burchard, Anselm of Lucca, or even Ivo of Chartres (and many anonymous compilers) was, and yet it was a canonical collection in many respects, especially considering much of its source material and how it was used. Many abbreviations of the *Decretum*, for instance, are clear testimony that some religious houses and episcopal courts wanted the canons, not the *dicta*; they wanted a pure canonical collection that could serve as a reference manual to the church’s law.”

<sup>12</sup> In earlier collections such as the *Collectio Dionysiana* (ca.500) the material was organized chronologically.

ascribing the texts (accurately or inaccurately) to recognized authoritative sources.

Gratian met this expectation. Around four-fifths of the text of the vulgate *Decretum* comes from the tradition of canonical texts accumulated over the first millennium of the church's history. An extremely important part of the authorial activity of Gratian, then, did consist precisely in the collection and selection of material from the canonical tradition and in his presentation and organization of the texts that he had collected and selected.

If the author of a canonical collection had anything to say on his own authority, he was expected to do so in a prologue. The Prologue of Ivo of Chartres, for example, was a work of considerable theoretical sophistication that continued to circulate independently and find an audience even after Gratian's *Decretum* superseded the collections to which it had originally been prepended.<sup>13</sup> In this respect, Gratian did not

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<sup>13</sup> The prologue was prepended (in slightly different forms) to both the *Decretum* and *Panormia* of Ivo of Chartres. For the edited Latin text, see Bruce Clark Brasington, ed., *Ways of Mercy: The Prologue of Ivo of Chartres ; Edition and Analysis*, Vita Regularis, Bd. 2 (Münster : Piscataway, N.J: LIT ; Distributed in North America by Transaction Publishers, 2004). For an English translation, see Robert Somerville and Bruce Clark Brasington, eds., *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500-1245* (New Haven, Conn: Yale University Press, 1998), 132–58.

conform to the expectations of the genre in which he was working. For starters, he did not include a preface, something that did not escape the somewhat disapproving notice of contemporaries like the author of the *Summa Parisiensis*.

In presenting and organizing the canonical texts that he had selected, however, Gratian added a significant amount of first-person commentary (*dicta*), amounting to around one-fifth (or eighty thousand words) of the vulgate *Decretum*. Gratian's commentary is what binds the *Decretum* together into a coherent whole, and his *dicta* form the backbone of the arguments that he makes. The *dicta* (sayings) are a feature that Gratian borrowed from another genre, the theological treatise. In addition to the *dicta*, Gratian also wrote the rubrics, so-called because they were written in red ink in manuscripts of the *Decretum*. The rubrics are one-line summaries of canons that they introduce.

As a first-order approximation, then, Gratian could be considered the author, in the modern sense of the word, of the *dicta* and rubrics, and the compiler and arranger of the canons and inscriptions. (In practice, *dicta*, inscriptions, and rubrics cannot be distinguished quite so cleanly as we would like: *dicta* sometimes trail off into



inscriptions, and rubrics and inscriptions are sometimes poorly separated.<sup>14</sup>) But, as Noonan further pointed out, the Gratian who compiled, arranged, and edited the canons and inscriptions was not necessarily the same as the person who wrote the *dicta*, who in turn was not necessarily the same as the person who created the rubrics.<sup>15</sup> All of these considerations suggest that the presumption that the *Decretum* was the product of a single author ought to be entertained with extreme caution. As I turn my attention to the collection and selection, presentation, and organization of the canonical texts found in the *Decretum*, I will continue to use the name Gratian as a conventional label for its author or authors, while withholding judgment as to whether one person or many stand behind the name

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<sup>14</sup> Especially in *de Penitentia*.

<sup>15</sup> “There are two difficulties when this authorship comes to be determined. One is that the *Concordia* is a book in three distinctive parts, with several distinctive sections within the parts, and these parts have undergone editing as to chapter heading, chapter insertions, and chapter order. Whatever the later formal ascription, is Gratian responsible for all these parts? The other difficulty is the range of roles the one ‘responsible’ person might have had – compiler, commentator, rubricator, reviser. Was Gratian one or all? The difficulties relate to one another, because evidence that Gratian was, say, the commentator of Part II does not establish what role he had in Part I.” Noonan, “Gratian Slept Here,” 162–63.

## Collection and Selection

A canon is an authoritative text, or an excerpt from one, that provides a rule or norm for Christian life, either for an individual Christian believer in their clerical or lay station, or for the Church corporately, at whatever level – local church or religious foundation, diocese, province, or the universal Church. The Greek work *kanon* literally means a ruler or straightedge used to mark a line, and Christian believers individually and the Church corporately follow a straight path when they follow the rules marked out by the *kanones*. “*Canon grece, latine regula nuncupatur. Regula dicta est eo quod recte ducit, nec aliquando aliorum trahit. Alii dixerunt regulam dictam, vel quod regat, vel normam recte vivendi prebeat, vel quod distortum pravumque est corrigat.*” (“Canon’ is Greek for what is called a ‘rule’ in Latin. It is called a rule because it leads one aright and never takes one astray. But others say that it is called a rule because it rules, presents a norm for right living, or sets aright what is twisted and bent.)”<sup>16</sup> The late first- or early second-century *Didache* is an example of a very early Christian text that contains such rules or norms.

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<sup>16</sup> D.3, c.1-2. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017, p.5, l.13-18.

After the official recognition of Christianity by Constantine in 313, the Church had a greater need for an agreed-upon set of rules. Such rules were provided by the canons of provincial and ecumenical councils, and somewhat later by papal decretals.

Gratian, strictly speaking, defines canons as either *decreta Pontificum* (“decrees of pontiffs”) or *statuta conciliorum* (“statutes of councils”).<sup>17</sup> From a relatively early date, the bishops of Rome had cultivated the practice of issuing decretal letters, consciously modeled after Roman imperial rescripts, in which they laid down disciplinary and doctrinal norms in response to questions put to them, usually by other bishops.<sup>18</sup> The earliest surviving example is a letter from Pope Siricius (†399) to Bishop Himerius of Tarragona, written in 385 in response to a letter that Himerius had sent to Siricius’s predecessor, Pope Damasus (†384).<sup>19</sup> The letter, sometimes referred to by the first word

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<sup>17</sup> “Porro canonum alii sunt decreta Pontificum, alii statuta conciliorum.” D.3, d.p.c.2. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017, p.5, l.19-20.

<sup>18</sup> In addition to genuine papal material, for example a large number of excerpts from the register containing the letters of Gregory I, Gratian used a number of pseudo-papal sources, which will be discussed below in the context of Gratian’s formal sources.

<sup>19</sup> JK 255. Philipp Jaffé, ed., *Regesta Pontificum Romanorum*, 2nd ed, vol. 1 (Graz: Akademische Druck, 1956), 40. [“Register of papal letters to 1198. Reflecting the editors who contributed to various time

of its text as the *Directa* decretal, remains an important source for norms concerning clerical celibacy in late antiquity. The most familiar example for modern readers of an imperial rescript, the genre after which the papal decretal letter was modeled, is the early second-century (ca. 112) response of the emperor Trajan (†117) to a letter from Pliny the Younger inquiring as to how Pliny, then Roman provincial governor of Bithynia and Pontus, ought to proceed against those accused of being Christians.

Another extremely important source for the *Decretum* is canons from the ecumenical councils and from historically important provincial synods: *Conciliorum vero alia sunt universalis, alia provincialia*. (“Some councils are universal, others provincial.”)<sup>20</sup>

Although the Council of Nicaea (325) is primarily remembered for its doctrinal settlement, memorialized in the Nicene Creed, of the Arian controversy over the divine nature of Christ, it also promulgated twenty canons of a disciplinary nature. Provincial synods tended to assume an outsized importance in the canonical tradition when

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periods, the work is conventionally given an abbreviated citation as JK to the year 590, JE for 590-882 and JL for 883-1198.” [Papal Documents: A Finding Aid | Columbia University Libraries](#)]

<sup>20</sup> D.3, d.p.c.2. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017.



figures such as Augustine of Hippo (†430) or Caesarius of Arles (†542) either participated in or presided over them: “*Etiam S. Augustinus Yponensis episcopus in eadem synodo legitur fuisse.*” (It is read that St. Augustine, bishop of Hippo, also attended this synod.)<sup>21</sup> By the time the *Decretum* was compiled, the cumulative output of the ecumenical councils and provincial synods amounted to a considerable mass of material, and Gratian devoted most of *Distinctiones* 15 and 16 to enumerating the canonically authoritative councils and synods.<sup>22</sup>

In addition to textual material strictly defined as canons (“decrees of pontiffs” and “statutes of councils”), Gratian drew on other sources which, if not canons according to the narrower technical definition, could be treated as authoritative in a more general sense. The most important of these *auctoritates* were drawn from the writings of major patristic figures such as Ambrose (†397), Jerome (†419 or 420), Augustine (†430), and

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<sup>21</sup> D.16, c.11. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017. p.32, l.7-9.

<sup>22</sup> **Verify that the enumeration is in the first recension.**

Gregory (+604), whom later generations considered doctors of the church.<sup>23</sup> It is easy to see how works such as Ambrose of Milan's *De officiis* ("On duties") – a Christian answer to the work of Cicero with the same title – could be a rich source of norms.

Gratian provides an explicit list of "the works of the holy fathers that are received in the Catholic Church."<sup>24</sup> (It is necessary to distinguish the papal from the patristic when dealing with figures like Gregory. While textual excerpts from the letters found in the registers of Gregory clearly derive their authority from the fact that Gregory was pope, a text like the *Moralia in Job* has an authority to a large extent independent of the formal ecclesiastical office Gregory held.)<sup>25</sup>

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<sup>23</sup> Ambrose, Augustine, Gregory the Great, and Jerome were formally recognized as doctors by Boniface VIII in 1298 in the *Liber Sextus*, VI 3.22, *Gloriosus Deus in sanctis suis in De reliquiis et veneratione sanctorum* (edF 2.1059-1060). Leo the Great was only added to the list in 1754.

<sup>24</sup> First recension D.15 c.3, §1-§16 in Friedberg, §2-§17 in Thompson and Gordley.

<sup>25</sup> "The *Moralia*: based on talks Gregory gave on the Book of Job to his 'brethren' who accompanied him to Constantinople while he held the office of papal *apocrisiarius* (see above). The work as we have it is the result of Gregory's revision and completion of it soon after his accession to the papal office." R. A. Markus, *Gregory the Great and His World* (Cambridge ; New York: Cambridge University Press, 1997), 15. "In the case of Gratian's chapters from Gregory I's *Moralia in Job*, the unusually precise citations in Gratian's inscriptions lead to the conclusion that he used this work directly (as Munier already argued)." Peter Landau, "Gratian and the Decretum Gratiani," in *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, D.C: Catholic University of America Press,

Finally, in addition to excerpts from works of patristic authors, another source for extra-canonical authorities was secular law, primarily (pre-Justinianic) Roman law but also including the capitulary legislation of the more important Carolingian emperors – Charlemagne (†814), Louis the Pious (†840), and Charles the Bald (†877) – and their successors.<sup>26</sup>

Up to this point, I have been implicitly referring to Gratian's material sources, texts such as the *Letters* of Gregory I or the *de Officiis* of St Ambrose from which the canons in the *Decretum* were ultimately derived. And in a small number of cases, Gratian did work directly with material sources. Isidore of Seville's *Etymologies* is an example of a text from which Gratian probably collected excerpts directly from the material source. It is also possible that he collected excerpts directly from Gregory the Great's *Moralia in Job*. But Gratian drew the overwhelming majority of the canons he compiled in the *Decretum*

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2008), 22–54, 35. “There are six chapters taken from the *Moralia*, and Gratian noted the book and chapter of the text in his inscription: D.13 c.2; D.45 c.9 and c.14; D.46 c.1 and c.2; D.47 c.3. Each text is also in the first recension.” Landau, 35n22.

<sup>26</sup> **Comment on use of Lombard law and Germanic law sources in the first-recension version of the *Decretum*, especially in light of *Lombarda* glosses in early *Decretum* manuscripts.**

from formal sources, predecessor collections containing patristic, conciliar, and papal (as well as pseudo-papal) authorities, predigested into canon-sized units of text.

Peter Landau suggested in 1984 that Gratian had relied primarily on just five formal sources in writing the *Decretum*: Anselm of Lucca's *Collectio canonum*, the pseudo-Ivonian *Collectio Tripartita*, Ivo of Chartres's *Panormia*, Gregory of San Grisogono's *Polycarpus*, and an anonymous *Collection in Three Books* (3L).<sup>27</sup> This hypothesis is not universally accepted: Pennington, for example, believes that Gratian may have relied on one or more now-lost Central Italian collections similar to the *Collection in Nine Books* (9L).<sup>28</sup>

By the end of the Patristic period, the canons of the ecumenical and of historically important provincial councils constituted a substantial body of canon law, which were gathered into collections such as the *Collectio Dionysiana* (ca. 500). A later revision of the

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<sup>27</sup> Winroth, *The Making of Gratian's Decretum*, 15–17.

<sup>28</sup> **Connect the tradition of research into Gratian's formal sources to Kuttner's "Acta and Agenda."** For the *Collectio IX librorum* of the Ms Vat. lat. 1349 (9L), see Linda Fowler-Magerl, *Clavis Canonum: Selected Canon Law Collections Before 1140: Access with Data Processing*, Monumenta Germaniae Historica. Hilfsmittel 21 (Hannover: Hahnsche, 2005), 79–82



*Dionysiana*, the *Collectio Dionysio-Hadriana* (774), exercised enormous influence on the transmission of canon law to the Carolingian world and through it to medieval Western Europe.

Collectors like Dionysius Exiguus (†ca. 540), the original compiler of the *Collectio Dionysiana*, located all authority in the distant past. This attitude prevailed throughout the period during which the canonical sources later used by Gratian were being compiled. Law, however, ultimately has to correspond with and respond to the needs of contemporary society, and by the ninth century the Church, especially north of the Alps, was operating in a very different political and social environment from that of the Mediterranean world of late antiquity, which had produced the sources for Dionysius's collection. When faced with the need for new law to cope with new circumstances, some enterprising Carolingian churchmen took more recent material – mostly canons from provincial synods – and repackaged them, attributing them to popes from the first century through Gregory I (†604). Although the compilers of these collections are usually referred to as “forgers,” they were not simply inventing their sources. Most of the material in the collections was genuine but of relatively recent origin – the goal of the forgers was simply to retroject it far enough into the past to make it authoritative.

In order to understand the intent of the forgers, one has to understand the immediate political situation to which they were reacting. Charlemagne's son and successor, Emperor Louis the Pious (†840), was dethroned by three of his sons in a ceremony of public penance in 833. When Louis was unexpectedly restored less than six months later, he moved quickly to depose many of the bishops who had participated in imposing the penance on him, starting with Ebbo, archbishop of Rheims.<sup>29</sup> The forgers wanted to protect bishops from being deprived of office by emperor, king, or metropolitan. They did this by building up the pope as the only superior who could judge a bishop. This was convenient, because while popes in the ninth century had considerable moral authority north of the Alps, they had little real power. The intent of the forgers' program therefore was to render bishops effectively impervious to judgment. The collections that resulted from this effort, the so-called Pseudo-Isidorian *Decretals* and *Benedictus Levita*, were accepted everywhere as genuine in an age lacking any serious historical-critical awareness and survived to become important sources for

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<sup>29</sup> See Mayke De Jong, *The Penitential State: Authority and Atonement in the Age of Louis the Pious, 814-840* (Cambridge, UK ; New York: Cambridge University Press, 2009).

canonical collectors in the eleventh century.<sup>30</sup> Many of these forged canons eventually found their way into Gratian's *Decretum*.

The reform papacy that reached its apogee with the pontificate of Hildebrand, who reigned as Gregory VII from 1073 to 1085, provided a new impetus for the collection and study of canons. The special concerns of the Gregorian reformers also shaped their approach to the collection and presentation of canons. The consuming interest of the reform generation was the relationship between *regnum* and *sacerdotium* (church and state). This interest in the problem of church-state relations was instrumental: the ultimate concern of the eleventh-century reformers, as it had been for their eighth- and ninth-century Carolingian predecessors, was for the reform and renewal of monastic and clerical life. Unlike the Carolingians, however, who had thought that cooperation between ecclesiastical and secular authorities was essential for the reform of religious

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<sup>30</sup> For the much-criticized 1863 edition, see Paul Hinschius, ed., *Decretales Pseudo-Isidorianae, et, Capitula Angilramni: Ad Fidem Librorum Manuscriptorum Recensuit, Fontes Indicavit, Commentationem de Collectione Pseudo-Isidori Praemisit* (Aalen: Scientia Verlag, 1963). See also Klaus Zechiel-Eckes, "Ein Blick in Pseudoisidors Werkstatt. Studien Zum Entstehungsprozeß Der Falschen Dekretalen. Mit Einem Exemplarischen Editorischen Anhang (Pseudo-Julius an Die Orientalischen Bischöfe, JK +196)," *Francia* 28, no. 1 (2001): 37–90; [Zum Inhalt von "Projekt Pseudoisidor"](#) by Karl-Georg Schon; [Introduction to Pseudo-Isidore - Decretum Gratiani](#) by Eric Knibbs; and [Pseudo-Isidore | An edition-in-progress of the False Decretals](#) by Eric Knibbs.

life, the eleventh-century reformers believed that secular rulers had to acknowledge the jurisdictional supremacy of the papacy and the independence of the church from lay interference as a necessary precondition for effective clerical and monastic reform. It is significant that the most important canon law collections of the reform period were compiled by prelates sympathetic with the reform movement, such as Anselm, bishop of Lucca (+1086), compiler of the *Collectio canonum*; Gregory, cardinal of San Grisogono (+1113), compiler of the *Polycarpus*; and Ivo, bishop of Chartres (+1115), compiler of the *Panormia*. These collections were compiled by and reflected the concerns of reform-minded church administrators. Burchard of Worms (+1025) was a forerunner of this group – although he died before the reform papacy or the investiture controversy, his *Decretum* has more in common with the collections that came after it than with those that came before it, insofar as it is systematic and reflects concerns similar to those of his successors.

Unsurprisingly, given their concern with asserting the jurisdictional supremacy of the papacy and the independence of the church from lay interference, the eleventh-century collectors showed considerable interest in the forged decretals of the ninth century. In

particular, 252 out of the 315 chapters of the anonymous *Collection in 74 Titles* (ca. 1050) are drawn from the Pseudo-Isidorian *Decretals*.<sup>31</sup>

The program of the Gregorian reformers collided with two practical realities of eleventh-century life. Abbots and bishops were large landowners and therefore important vassals of secular rulers. Furthermore, secular rulers were almost completely dependent on the Church for administrative personnel until the rise of university faculties of Roman law in the twelfth century. It was therefore essential from the point of view of secular rulers that they should be able to control appointments to key benefices in order to ensure the loyalty of their holders. The controversy over this issue dominated papal-imperial relations for half a century. It was finally resolved by the Concordat of Worms (1122), which provided that key benefices were to be filled through regular canonical processes free from lay interference (such as election by a cathedral chapter) but that the benefice holder should swear fealty to the secular ruler for their landholdings.

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<sup>31</sup> "Altogether I have estimated that 252 out of the 315 *capitula* were taken from Pseudo-Isidore." J. T. Gilchrist, ed., *The Collection in Seventy-Four Titles: A Canon Law Manual of the Gregorian Reform*, Mediaeval Sources in Translation 22 (Toronto: Pontifical Institute of Mediaeval Studies, 1980), 15

Gratian depended on a relatively small number of eleventh- and early twelfth-century systematic canonical collections, his formal sources, and those predecessor collections, in turn, depended on an older stratum of mostly chronologically arranged canonical collections. Gratian was selecting from a body of canonical material that had already passed through a fairly rigorous filtering process, and two of the most important filters—the ninth-century pseudo-Isidorian forgers and the eleventh-century Gregorian reformers—had had an extremely strong ideological orientation.

## Chapter 2b

### The *Decretum*

#### Presentation

Having considered how Gratian sourced and collected his materials—the question of what canons are and where Gratian got them—we now turn to the question of how Gratian presented and organized the canons he had collected. Here, it is important to distinguish between presentation, the small-grain or micro structure of the *Decretum*, and organization, the large-grain or macro structure of the *Decretum*. The organization of the *Decretum* is very regular, so structurally regular, in fact, that Reuter and Silagi's OCP e-text of the Friedberg edition can be taken apart using a recursive descent parser, and should be thought of as a sequence of hierarchically nested containers. Taking a bottom-up approach, we will turn first to the presentation or small-grain structure, and start with the canons, the atomic containers out of which the higher-order containers—parts, distinctions, cases, and questions—in the *Decretum* are built up.

The way in which canons are presented in the *Decretum* differs somewhat from the way in which they are presented in the predecessor collections of formal sources from which Gratian selected his material. The canon package in the formal sources typically included an inscription, a rubric, and the canon text. Gratian added to the package a *dictum post canonem* containing his own commentary on the preceding canon or canons, a feature borrowed from Alger of Liège's theological treatise *De misericordia et iustitia*, but without an immediate precedent in the canonical literature.

A canon is often, though not always, introduced by a rubric. The name refers to the fact that rubrics were conventionally written in red ink in manuscripts. A rubric is a very short summary of what the following canon is about. In many cases the rubric simply reads “*de eodem*”, which means “about the same thing” as the preceding canon.<sup>1</sup>

Most canons have an inscription, which identifies the ultimate source of authority for that canon, usually a papal decretal, a canon from an ecumenical council or an important provincial synod, or a patristic text.<sup>2</sup> This raises the

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<sup>1</sup> The role of the *de eodem* rubrics in Winroth’s argument that the Aa, Bc, Fd, and P mss. of the *Decretum* are a first recension rather than an abbreviation of the vulgate. Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge: Cambridge University Press, 2000). Kuttner’s statement of the “untidy seams” problem in “Acta and Agenda”, and how Winroth solves it. Stephan Kuttner, “Research on Gratian: Acta and Agenda,” in *Studies in the History of Medieval Canon Law*, Collected Studies CS325 (Aldershot, Hampshire, Great Britain : Brookfield, Vt., USA: Variorum ; Gower, 1990). Winroth’s frequently-cited and incorrect claim that there are 398 *de eodem* rubrics, a cautionary tale about the care needed when approaching electronic resources.

<sup>2</sup> The distinction between rubrics and *dicta* is blurry: “Gratian rarely took his rubrics from earlier collections. Rather he created his own and often melded the rubrics with the dicta.” Melodie Harris Eichbauer, “St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian’s Decretum,” *Bulletin of Medieval Canon Law* 27 (2007): 107. “Both J. Rambaud-Buhot and John Noonan, Jr. have highlighted the similarity between dicta and rubrics, that is, a rubric very often echoes the dictum that immediately preceded it.” and “These



need to distinguish Gratian's material sources—an original letter of Pope Gregory I, for example—from his formal sources—the collection from which Gratian actually copied his text.<sup>3</sup> Because Gratian collected his texts almost exclusively from formal sources, the inscription was frequently historically inaccurate, especially if the text in question was one derived from the Pseudo-Isidorian collections.

Finally, there are the *dicta post canones* (singular *dictum post canonem*), usually abbreviated d.p.c., and literally meaning “something said after the canon”. The *dicta post* are statements that Gratian made on his own authority as a jurist, carry the thread of his argument, and do his interpretive work. The

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isolated instances in the first cluster show that Gratian felt that the dictum was sufficient for summarizing the following *auctoritas*.” Eichbauer, 115.

**Expand to include inscriptions.**

<sup>3</sup> “Since Gratian frequently took fragments of letters from the Register of Gregory I—266 in all—using the inscription ‘in registro’, older research assumed that he must have used this important source in the form of the *Registrum Hadrianum*. According to more recent research (Landau), even these texts from the Register of Gregory I found in Gratian derive almost without exception from canonical collections predating Gratian; the direct use of the Register is probable in only a single case.” [C.27 q.1 c.19 (JE 1496)] Peter Landau, “Gratian and the Decretum Gratiani,” in *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law (Washington, D.C: Catholic University of America Press, 2008), 34.

*dicta* are texts that Gratian (whether we think of him as one person or many) actually wrote, and are therefore subject to analysis for authorship attribution. "The *dicta* in Gratian's *Decretum* bring the reader closer to its author than any other part of the text."<sup>4</sup>

## Organization

The *Decretum* in the form that circulated after around 1150 (the Köln Dombibliothek manuscripts 127 and 128 are good early examples) has three parts. The first part consists of 101 distinctions. Groups of distinctions form treatises within the work: the first twenty distinctions, for example, form a treatise on laws (*tractatus de legibus*) that explores the sources of law. Other topics covered include ecclesiastical hierarchy and clerical discipline. The second part consists of 36 cases. A treatise on penance (*tractatus de penitentia*) is inserted in the second part at C.33 q.3. The third part of the *Decretum* is a treatise on sacraments (*tractatus de consecratione*).<sup>5</sup>

Contemporaries like Rufinus and Stephen of Tournai understood the parts to treat respectively of ministries, business or problems, and sacraments: "*librum suum in tribus partibus distinguit, quarum primam ministeriis, secundam negotiis, tertiam ecclesiasticis deputat sacramentis*. (p.5) (he divides his book into three parts, the first of which he devotes to ecclesiastical ministries, the second to [ecclesiastical] business, and the third to ecclesiastical

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<sup>4</sup> Winroth, *The Making of Gratian's Decretum*, 187.

<sup>5</sup> Winroth, 5.

sacraments.)”<sup>6</sup> (Rufinus) “*Harum primam ministeriis, secundam negotiis, tertiam ecclesiasticis deputat sacramentis.* (p.6) (“The first of these parts is devoted to ecclesiastical ministries, the second to ecclesiastical problems, the third to ecclesiastical sacraments.”<sup>7</sup> (Stephen of Tournai)

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[Here I am only talking about *dicta post canones*. Dicta ante canones are not part of the canon container but instead part of the distinction or question container (always d.a.c.1 or equivalent). There are three kinds of dicta: d.init (first leaf node of case or *causa* container), d.a.c. (first leaf node of distinction or question container), and d.p.c. (optional last leaf of canon container).]

The hypothetical case statements or *themata* that introduce each of the thirty-six *causae* (cases) that constitute Part II of the *Decretum* reflect at least in places an outlook and a set of concerns that university-educated urban professionals of the present day would not find it difficult to identify with. At a time when considerable attention is being paid in the realm of popular discourse (if not yet public policy) to the issue of “opportunity hoarding” on behalf of upper- and upper-middle class children by their university-educated, urban professional parents, the intense concern of “a certain man” in the first case statement to secure a good ecclesiastical career for his son (and his

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<sup>6</sup> Robert Somerville and Bruce Clark Brasington, eds., *Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500-1245* (New Haven, Conn: Yale University Press, 1998), 192–93.

<sup>7</sup> Somerville and Brasington, 201.

willingness on more than one occasion to resort to bribery in order to realize that objective) has a distinctly contemporary feel to it.<sup>8</sup>

The cases are hypotheticals like those used in modern law schools, and some of them are quite far-fetched. In case 28, for example, a married infidel converts to Christianity, as a result of which his wife separates from him out of hatred for his new faith. (By “infidel,” Gratian means a Muslim.) The convert then takes a new Christian wife, and after she dies, he is made a priest. Finally, “on account of the merit of his life and learning,” he is elected bishop. Gratian extracts questions from this fantastical fact-pattern, however, that are of considerable theoretical (if not practical) interest: whether there can be marriage between infidels, whether there is ever a situation in which a man can take another wife if his previous wife is still alive; and whether someone who had one wife before he was baptized and another wife after he was baptized should be considered a bigamist.

The third part, *de Consecratione*, is problematic in several ways. That *de Cons.* is a very late addition is not in doubt – it is absent from all first-recension (R1) manuscripts, nor was it included in the earliest manuscripts of the more widely circulated second-recension (R2) version of the *Decretum* as indicated by glosses found in the Gt, Pf, and Tr manuscripts describing Gratian’s work as “principally divided into two parts.”

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<sup>8</sup> “Quidam habens filium ...” C.1, d.init., edF. 1.357. Although Gratian does not say so explicitly, I think that we can reasonably infer that the father is an urban merchant or professional, rather than a member of the landed aristocracy, since his wealth, the source of several bribes, is so readily convertible into cash.

## Chapter 2c

### *Correctores Romani* edition (1582)

The *Decretum* never received the kind of formal ecclesiastical (papal or conciliar) recognition that was conferred on decretal collections like the *Liber Extra*, *Liber Sextus*, and *Clementinae*. Nevertheless, it remained foundational both to the *Corpus Iuris Canonici*, the body of canon law that governed the Roman Catholic Church right up until 1917, as well as to the academic study of canon law throughout the medieval and well into the early modern periods. As a result, the text of the *Decretum* came in for close attention as part of the reform program initiated at the Council of Trent (1545-1563). A commission led by the Spanish archbishop Antonio Agustín (1517-1586), the *Correctores Romani*, was charged with producing an approved version of the text of the *Decretum* (along with the rest of the *Corpus Iuris Canonici*) for the age of the printing press.

The *Correctores* proceeded from the Renaissance Humanist assumption that their job was to identify and include the most textually correct version of the material source for each of Gratian's authorities. In this sense the *Correctores* were less concerned with getting at the text of the collection Gratian actually compiled, and more concerned with getting at the text that they thought Gratian should have compiled, if his concerns had been those of a Renaissance philological scholar.<sup>1</sup>

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<sup>1</sup> The idea that the *Correctores* were trying to reproduce the text of the *Decretum* as they thought Gratian should have written it, as opposed to the text as he actually wrote it, goes back at least as far as Friedberg: "Vides non

The 1582 printed edition of the *Decretum* includes the ordinary gloss, the standardized commentary by [Johannes Teutonicus](#) (c.1170–1245) in 1216, which was revised and updated by [Bartholomeus Brixienis](#) (fl.1234–1258) around 1240-1245. UCLA's online version of the [Corpus Iuris Canonici \(1582\)](#) is a convenient way for modern scholars to consult the ordinary gloss, which is an important tool for understanding the reception of Gratian's text by medieval jurists.

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id in animo habuisse correctores Romanos, ut restitueretur decretum, quale a Gratiano compositum esset, sed quale a Gratiano componi debuisset." ("You see it in the mind that the *Correctores Romani* had, as the *Decretum* was restored, not how it was composed by Gratian, but how it ought to have been composed by Gratian." trans. PLE) (edF 1.lxxviii, see also Anders Winroth, "[Emil Friedberg's Edition of Gratian's Decretum: An Evaluation](#)".)