

## Chapter 2

### *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

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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. On the advice of Weigand, Winroth supplied the *siglum* P by which the manuscript is now commonly identified: “it was Rudolf Weigand who came up with it. I had asked him what siglum this ms should have, since I thought all of the two-letter ones that started with a P had been taken. He said to use only P, ‘because it is such an important manuscript’.” (Anders Winroth email to Paul Evans, October 1, 2018) (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.)

manuscript of the *Decretum*.<sup>4</sup> 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> The four first-recension manuscripts Aa, Bc, Fd, and P were previously thought to have been abbreviations and are by one imperfect but frequently-invoked metric about half the length of the vulgate *Decretum*, 1,860 as opposed to 3,945 canons.<sup>6</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. Winroth rejects any presumption of monolithic authorship on

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

<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 recension contains 3,945 canons (including the paleae) in the editions. The first recension contains only 1,860 canons (47 percent)." Winroth, *The Making of Gratian's Decretum*, 122. The division of distinctions and questions into canons is a matter of editorial opinion and therefore unavoidably conventional. The generally-cited number of 3,945 comes from Friedberg's introduction (edF 1.xii). Furthermore, many canons include more than one canon text, and the conventional number obfuscates the distinction between the canon defined as a container or package and the canon text or texts included within it. The Reuter and Silagi e-text of the Friedberg edition has 3,848 canons (identified by the OCP <4 N> tag, where N is the canon number) containing 4,394 distinct canon texts (identified by the OCP <T T> tag). (Note: `egrep "<T T>.*<T T>" edF.txt` to find the three lines where the canon text tag occurs twice on the same line.)

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 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 the same as the Gratian of the second recension, John Noonan pointed out another obvious way in which it might be

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<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’ living texts, such as the *Song of Roland*, where each different manuscript version has an equally valid claim to authenticity.” Winroth, 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 different authors.” Winroth, 194–95.

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*, is very unlikely to have been the same as the Gratian of Parts I and II since the treatise was such a late addition to the *Decretum*.) Furthermore, nothing logically excludes the possibility that Winroth and Noonan are both right and that the Gratian of the first-recension of Part I is not necessarily the same as the Gratian of the second-recension 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>

Long before the discovery of the first recension in the late twentieth century, however, the first twelfth-century readers of the *Decretum* were aware of the limited extent to which it could be thought of as the work of a single author. Even early readers, such as

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

Stephen of Tournai and 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>

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<sup>10</sup> “Compositorem huius operis recte dixerim Gratianum, non auctorem. Capitula namque a sanctis patribus edita in hoc volumine composuit, i.e. ordinavit. Non eorum auctor vel conditor fuit, nisi forte quis eum auctorem idcirco dicere velit, quoniam multa ex parte sua sanctorum sententias distinguendo et exponendo in paragraphis suis ponit.” Johann Frierich Schulte, ed., *Die Summa über Das Decretum Gratiani* (Aalen: Scientia Verlag, 1965), 5. “I should properly say that Gratian is the compiler of this work, not the author, for he brought together in this volume—that is, he arranged—rulings enacted by the holy Fathers. He was not their author or framer, unless perchance someone wishes to say that he is thus the author since he offered on his own in his dicta many things for clarifying and explicating the opinions of the holy [Fathers].” 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), 200–201. Somerville is not translating from the 1891 Schulte edition but from Herbert Kalb, *Studien Zur Summa Stephans von Tournai: Ein Beitrag Zur Kanonistischen Wissenschaftsgeschichte Des Späten 12. Jahrhunderts*, *Forschungen Zur Rechts- Und Kulturgeschichte*, Bd. 12 (Innsbruck: Universitätsverlag Wagner, 1983), 113–20.

“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)

Gratian was working within a well-established genre of 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 that had been in circulation since the beginning of the eleventh century in which the material was organized by topic.<sup>12</sup>

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

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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.

texts (accurately or inaccurately) to recognized authoritative sources. Gratian met this expectation. Around seventy percent of the text of the vulgate *Decretum* comes from the tradition of canonical texts accumulated over the first millennium of the church's history.<sup>13</sup> An extremely important part of the authorial activity of Gratian, then, did consist 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>14</sup> In this respect, Gratian did not conform to the expectations of the genre in which he was working. For starters, he did

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<sup>13</sup> 302,384 words or 71.2% of the vulgate *Decretum*.

<sup>14</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 Somerville and Brasington, *Prefaces to Canon Law Books in Latin Christianity*, 132–58.



not include a preface, something that did not escape the 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 twenty percent of the vulgate *Decretum*.<sup>15</sup> 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, specifically Alger of Liège's *De misericordia et iustitia*. 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

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<sup>15</sup> 81,008 words or 19.1%.

distinguished quite so cleanly as we would like: dicta sometimes trail off into inscriptions, and rubrics and inscriptions are sometimes poorly separated, especially in *de Penitentia*.) 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>16</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>16</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 that provides a rule or norm for Christian life, either for individual Christian believers 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 word *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.*”<sup>17</sup> The late first- or early second-century *Didache* is an example of a very early Christian text that contains such rules or norms. After the official recognition

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<sup>17</sup> D.3 c.1-2. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017, p.5, l.13-18.

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 defines canons as either *decreta Pontificum* (“decrees of pontiffs”) or *statuta conciliorum* (“statutes of councils”).<sup>18</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>19</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>20</sup> The letter, sometimes referred to by the first word of its text as the

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<sup>18</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>19</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>20</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

*Directa* decretal, remains an important source for norms concerning clerical celibacy in late antiquity. For modern readers, the most familiar example 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 universalia, alia provincialia*. ("Some councils are universal, others provincial.")<sup>21</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>21</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>22</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.

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 Gregory (†604), whom later generations considered doctors of the church.<sup>23</sup> It is easy to

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<sup>22</sup> D.16 c.11. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017. p.32, 1.7-9.

<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.

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>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, 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.

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.

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* 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 has suggested that Gratian 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>26</sup> This hypothesis is not universally accepted: Pennington, for example, believes that Gratian may have also relied on one or more now-lost Central Italian collections similar to the *Collection in Nine Books* (9L).<sup>27</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 *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.

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<sup>26</sup> Peter Landau, "Gratians Arbeitsplan," in *Iuri Canonico Promovendo: Festschrift für Heribert Schmitz Zum 65. Geburtstag*, ed. Winfried Aymans and Karl-Theodor Geringer (Regensburg: F. Pustet, 1994), 691–707. See also Winroth, *The Making of Gratian's Decretum*, 15–17.

<sup>27</sup> 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

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). The compilers of these collections are usually referred to as “forgers,” a convention I will observe in the following discussion, but 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 meet the standard they set for authoritativeness.

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>28</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 they survived to become important

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<sup>28</sup> 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).

sources for canonical collectors in the eleventh century.<sup>29</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

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<sup>29</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). Recent efforts to replace the Hinschius edition include [Zum Inhalt von "Projekt Pseudoisidor"](#) by Karl-Georg Schon; and [Pseudo-Isidore | An edition-in-progress of the False Decretals](#) by Eric Knibbs. The work of Klaus Zechiel-Eckes (+2010) forms the basis for much of our current understanding of the place and date at which the pseudo-Isidorian collection was compiled (Corbie in the mid-830s), and therefore of the political motivations of the compilers; see "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. Horst Fuhrmann, "The Pseudo-Isidorian Forgeries," in *Papal Letters in the Early Middle Ages*, ed. Detlev Jasper and Horst Fuhrmann, History of Medieval Canon Law (Washington, D.C.: Catholic University of America Press, 2001), 137–95 provides a good general introduction to the forged decretals; see also [Introduction to Pseudo-Isidore - Decretum Gratiani](#) by Eric Knibbs. See Horst Fuhrmann, *Einfluß Und Verbreitung Der Pseudoisidorischen Fälschungen : Von Ihrem Auftauchen Bis in d. Neuere Zeit*, Schriften Der Monumenta Germaniae Historica, Deutsches Institut Für Erforschung Des Mittelalters ; Bd. 24 (Stuttgart: Hiersemann, 1972) on the influence of the forged decretals.

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 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*. 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 collections compiled during that period, 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.

For example, 252 of the 315 chapters of the anonymous *Collection in 74 Titles* (ca. 1050) are drawn from the Pseudo-Isidorian *Decretals*.<sup>30</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

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<sup>30</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

cathedral chapter) but that the benefice holder should swear fealty to the secular ruler for his fiefs.

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 thus 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 extremely strong ideological orientations.

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