

Conclusion

The first, positive, result of the investigation presented in this dissertation is the finding that the case statements or *themata* were written by a single author whose words appear nowhere else in the *Decretum*. The author of the case statements was *not* the author of the first- or second-recension *dicta* or of the *dicta* in *de Penitentia*. I have designated this single author of the case statements Gratian 0 to distinguish him from Gratian 1 and Gratian 2, the authors of the first- and second-recension *dicta* hypothesized by Winroth, and I take him to be *the* historical Gratian. That the case statements have a single author is not surprising, but that they were not written by the author(s) of any of the collections of *dicta* is quite unexpected. This finding is supported both by the values for Burrows's Delta and the results of principal component analysis.¹ This result warrants a high degree of confidence, and future conjectural *novelle* will have to account for the fact that the case statements were not written by the author of either the first- or second-recension *dicta*.

¹ Indeed, it is worth reminding the reader here that Burrows's Delta indicates that the case statements are even less likely to have been written by the same author as the *dicta* collections in the *Decretum* than are the samples from the pseudo-Augustinian *De vera et falsa penitentia* quoted by Gratian in *de Penitentia*.

The second, negative, result is that principal component analysis (PCA) does not produce either of the two findings that might reasonably be expected on the basis of recent scholarly debate over the authorship of the *Decretum*. The PCA results do not show samples from the first- and second-recension *dicta* forming a single tight cluster in a way that would support Pennington's single-author hypothesis. Neither do they show the samples from the first- and second-recension *dicta* forming two distinct tight clusters separating cleanly from each other in an unambiguously bimodal distribution that would support Winroth's two-author hypothesis. Any attempt to make an argument on the basis of the results of principal component analysis in favor of either of the one- or two-author hypotheses would be unpersuasive. Treating the *dicta* from *de Penitentia* as a third collection separate and distinct from the first- and second-recension *dicta* complicates the picture further still. The most that we can say is that both the second-recension *dicta* and the *dicta* from *de Penitentia* display some degree of loose clustering, in that most samples from those collections of *dicta* appear in the same quadrant, and that both display some degree of partial separation from the first-recension *dicta*. These results are not compatible either with there having been a single author who wrote both the first- and second-recension *dicta* or there having been a single author who wrote the first-recension *dicta* for both *de Penitentia* and the rest of the *Decretum*. This second

negative finding does not warrant the same level of confidence as the first positive result and represents a call for further investigation.

The statement that Gratian is the author of the *Decretum* is a convenient shorthand in which the *Decretum* as a whole stands synecdochically for the *dicta*. Gratian scholars are in no danger of being misled by this shorthand. But they are in danger of being misled by the implied statement that Gratian is the author of the *dicta*.

Scholarship on the *Decretum* in the aftermath of Noonan's debunking of the traditional Gratian legendary and Winroth's discovery of the first recension has taken for granted that either one or two authors wrote the *dicta* and that either the same one author or the first of the two authors (Gratian 1) wrote the case statements or *themata*. When I started work on this project in 2013, I accepted that assumption and fully expected stylometric results for the *dicta* (including the case statements) to be consistent with either Pennington's one-author hypothesis or Winroth's two-author hypothesis. My intention was simply to expand what I perceived to be an insufficient evidentiary basis for the debate over whether the *dicta* had one or two authors. However, it became clear at a very early stage of the project that the case statements, or *themata*, were instead written by a single author (Gratian 0) whose words appear nowhere else in the *Decretum*.

Contrary to expectation, none of the stylometric evidence produced at any stage of the project was compatible with either the one- or two-Gratian hypotheses for the authorship of the *dicta*, none of which were written by Gratian 0. I became convinced that the individual *dicta* have to be distinguished from the collection as a whole and that it is not consistent with the stylometric evidence to think of the collection as a work of literature with some internal principle of unity written by either a single author or two authors. The *dicta* are more coherent than a gloss collection but less coherent than a treatise. What we have in the *dicta* is a collection of texts and what we need is some idea of how that collection was composed. Much of the post-Noonan scholarship on the authorship of the *Decretum* has engaged in what I have referred to as a “quest of the historical Gratian.” However, it appears that to search for one or more historical Gratians behind the collection of *dicta* is to ask a question that is incapable of producing a meaningful answer.

How are we then to make sense of these unexpected results?

The first questions to be answered about how the collection was composed are where and when it came into existence. I see no reason to call into question the scholarly consensus that the *Decretum* emerged from the overlapping circles concerned with legal questions in early twelfth-century Bologna. The traditional assumption that Gratian

worked in Bologna is almost the only feature of the Gratian legendary that Noonan did not seriously challenge,² and the development of Bologna as a center for the study of Roman and, somewhat later, canon law clearly seems to have benefited from the cluster effect so familiar in our age from the concentration of technology industries in California's Silicon Valley and Route 128 in Boston.

That the case statements were both quite stable from an early stage in the evolution of the text of the *Decretum* (only 13 words were added, to C.19 d.init., in the second recension) and that they were written by an author whose words appear in none of the later *dicta* argues—strongly, I think—that the textual development of the *Decretum* started early, perhaps in the mid-1120s, and that the case statements were not written after the fact to scaffold more-or-less finished treatments of the cases.

The *Marturi placitum* (1076) is evidence that the Roman law strand of the legal revolution had a lengthy prehistory—the long tail of a pattern of exponential growth in which for an extended period the number of people involved was quite small—before it broke the surface into historical visibility thirty years later in the first decade of the twelfth century. For canon law, the results of the collective efforts of the circle we

² John T. Noonan, "Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law," *Traditio* 35 (January 1979): 162.

associate with the name of Gratian emerge into our field of view only after 1140. If the development of canon law studies followed the same pattern of long-tail exponential growth that the study of Roman law did, it would not be unreasonable to posit that the circle around Gratian had been at work in some form or another for more than a decade by 1140. (Pennington has argued for a long period of textual development for the *Decretum*, while Winroth has argued that Roman and canon law studies were nowhere near as fully developed by the end of the 1130s as previously thought. These arguments have been thought of as being at odds, not least by Pennington and Winroth themselves, but I prefer to think of them as intuitions, from different starting points, of the same process of long-tail exponential growth, and, therefore, in some sense both right.)

The textual stability and unique authorship of the case statements, as well as the inferred analogy between the early pattern of growth of the study of both Roman law and canon law, suggest, then, that Gratian's project was in progress by the mid-1120s. If that tentative dating is correct, it seems plausible to connect the beginnings of Gratian's project with new understandings of the church as an independent political and juridical community in the aftermath of the Concordat of Worms (1122) and the First Lateran Council (1123). I believe that it is reasonable to assume that the historical Gratian was, when he initiated the project, someone who had carefully read around a half-dozen

important reform-era formal source collections. He was aware in a general way of how the new schools in northern France approached textual problems, and in particular of the hermeneutical approach to reading the canons outlined in Ivo's *Prologue* but which he "left as an exercise to the reader." However, Ivo's method presumes that one is interested in reconciling the contradictions between one canon and another or, at most, one carefully circumscribed selection of canons and another similarly circumscribed set. Gratian seems to have arrived at the crucial insight that the new period in church history inaugurated by the Concordat of Worms and the First Lateran Council required a system of canonical jurisprudence of a comprehensiveness that the reform-era collections had simply not contemplated and that a reconciliation of the contradictions in a selection of canons large enough to be generally representative of the tradition as a whole must provide the foundation for such a comprehensive system.

The historical Gratian is often said to have created a collection of canons that he used in the earliest course on canon law, but we must be extremely careful about precisely what we mean when we say that the collection was "used in the earliest course on canon law." At some point in the mid-1120s, Gratian became the convener of a study group that read the canons and started to work out a systematic jurisprudence based on them. That there was such a group is revealed by the evidence that the *dicta* of the first recension were written by multiple contributors and that these additions to the text

were added to a single work. Had the writers of the *dicta* worked independently of Gratian and one another, their work would have been scattered in many copies of the cases, if it survived at all. So, the production of the first recension, with case statements and *dicta*, implies the existence of the study group. The formation of the study group was obviously a crucial step in the development of canon law as a discipline, but to call it “the earliest course on canon law” is to anachronistically read back into its earliest stage the later evolution of the circle into a school, then a faculty, and finally a university. We can infer that in the early stage of his and the study group’s work Gratian had a good command of the sources, but he was not yet in possession of a method for reconciling the contradictions presented by the canons fully developed enough to be systematically imparted to students, which is the fundamental prerequisite for a university program. He did not at this stage know so much more than the other participants in the study group that we can unambiguously call him *magister* and them *discipuli*, even if he was the group’s central figure and the one whose name was transmitted to later generations of canonists.

Gratian’s first important insight, that a comprehensive reconciliation of contradictory canons was the necessary foundation for a systematic jurisprudence, is probably what led him in the first instance to gather a circle to study the problem. Gratian’s second important insight, that hypothetical cases could provide an effective framework for the

comprehensive reconciliation he envisioned, probably emerged organically out of the work of the circle. It is unlikely that Gratian had written the case statements before the formation of the study group. Indeed, the existence of the case statements in written form makes little sense outside the context of the work of the study group. One has to think that Gratian developed them as a result of the earliest group readings and discussions.

So, the evidence seems to show that the person later identified as Gratian performed two distinct roles in the evolution of the text of the first recension, as author and as authority. Gratian 0 appears to be the author of the 3,592 words of the first-recension case statements or *themata* in the literal sense of having formulated their exact wording. The case statements were Gratian 0's only direct contribution to the text of the *Decretum*, and his authorial signature appears nowhere else in the corpus of *dicta*.³ Unlike

³ Pennington has argued against Winroth's claim that the development from the first to the second recension of the *Decretum* was accomplished in a single bound by someone other than the original Gratian on the grounds that someone would have noticed and remarked on such an extensive revision of the text by another author: "My main argument for not accepting the theory that there were two Gratians is quite simple. It is difficult to imagine that if a Gratian compiled the pre-Vulgate *Decretum*, and another person doubled the size from ca. 2000 canons to ca. 4000, the first generation of jurists after Gratian would have not noticed or not known about the second Gratian's work and blithely attributed what was now a massive work to just 'Gratian.'" Kenneth Pennington, "The Biography of Gratian, the Father of Canon Law," in *A Service Beyond All Recompense*, ed. Kurt Martens (Catholic University of America Press, 2018), 361–62.

Winroth's Gratian 1 and Gratian 2, Gratian 0 is clearly one person. The facts that the case statements were written by a single author whose words appear nowhere else in the *Decretum*, that they appear to have been written as a product of the work of a study group, and that almost no changes were made to their wording during those stages of the development of the *Decretum* for which we have textual evidence, all support, in my opinion, arguments that the development of the text likely started in the mid-1120s and that the collection of *dicta* as a whole grew to its classical form over several decades.

Moving beyond the exact wording of the first-recension case statements, the second, and probably more significant, contribution to the development of the *Decretum* made by the figure later identified as Gratian was as the leader of the study group. It was Gratian's method of using hypothetical cases as a framework for applying the hermeneutical principles proposed in Ivo's *Prologue* for reconciling the contradictions

He could presumably make a similar argument against my claim that there was a change in authorship between the case statements and the first-recension *dicta*.

They did not notice or know, however, because the *Decretum* came to the attention of a significant audience only among the second, not the first, generation of jurists after Gratian. The earliest significant change to the text to draw widespread notice was the division of the first part of the *Decretum* into distinctions by Paucapalea. Paucapalea, though, was far enough removed from the circumstances surrounding the composition of the text that he does not appear even to have known the name of its author. Ironically, Pennington's "someone would have noticed" argument is wrong precisely because his argument that the text of the *Decretum* underwent a long and slow process of development is right.

presented by the canons that came to be memorialized in the first-recension *dicta*. This is not to say that his methods, arguments, and solutions were not worked out in the context of the study group, but that they were worked out under his guidance and in accordance with his program.

Members of the group clearly accepted as authoritative Gratian's fundamental insight that the canonical tradition inherited from earlier collections could and should be organized into a comprehensive system of jurisprudence that would constitute the law of the church, as well as his method of reconciling canons. They passed down to later students of canon law the understanding that Gratian was the author of the *Decretum* both in the sense that it reflected this fundamental insight and in the sense that it was his authority that lay behind the particular reading of the canons the collection embodied. Although the words of the *dicta* are demonstrably not his, the fact that his name came to be attached to the text strongly suggests that both the fundamental insight and method were his, and that these are the bases for the authority claim made on Gratian's behalf by the community of legal scholars the original study group gave rise to.

Gratian 0 continued to contribute to the work as long as the first recension was under active development by the study group, which by the mid-1130s had evolved into

something that could serve as the basis for a university course, or even a sequence of courses. I think Winroth is right that the person called Gratian was not a contributor to the second recension.

Why were the contributors who followed Gratian all anonymous? The larger-than-expected number of contributors and the apparent absence of overlap between contributors to the first- and second-recension *dicta* suggests that the involvement of individual contributors was relatively brief, perhaps a year or two. One of the most important things the formation of the study group did for Gratian was to provide him with a pool of volunteer labor that made it possible to put the collection of canons and his *themata* on parchment. Involvement in Gratian's project must have created significant real-world advantages for the contributors, almost certainly in the form of enhanced competitiveness for benefices, in order to justify the uncompensated intellectual and scribal labor they put into it. When ecclesiastical preferment came their way, their involvement in Gratian's project probably ended. But the fact that they had been successful attracted others to take their place, which goes a long way toward explaining the rapid growth both of the text itself through the creation of the cases and the collection of *dicta*, and of the community for which the text was the focal point.

The rapid turnover of contributors meant that the study group went through several “generations” of members between the mid-1120s and mid-1130s. By the time of Paucapalea in the late 1140s, turnover of membership in what had by that point become quite a substantial community was much slower, but there had been so many intervening “generations” that the only evidence about the history of the project was incorporated into the text of the *Decretum*. As a result, Paucapalea did not even know the name of Gratian.

What does all of this say about teachers and the teaching of canon law between the mid-1120s and 1140? In the 1120s and 1130s, the distinction between teacher and student was much less clear than it became a few decades later. Gratian was the leader of the study group, and the figure to whom the group deferred, because he was the one who had, it seems, done by far the most reading in the sources of canon law. But reading widely in the canons was not the same thing as working out a jurisprudential system based on them, and there was a great deal that Gratian did not know at that point, such as whether and how to incorporate Roman law into his system. In some sense, then, Gratian and the members of the study group were figuring it out together. We should not think of the Gratian of the 1120s as the kind of guild-certified master, able to “explain it all for you,” that we encounter in the schools of canon law of later decades.

Although I am uncomfortable with using the terms teacher and student to describe the relationship between Gratian and the contributors the early stages of the project, I suspect that by the mid-1130s, we can envision the ongoing activity around Gratian as having evolved from being a reading or study group into something more like a course or even a proto-faculty. Gratian need not have been the only teacher at this later stage, and some of the early contributors, at least those still working in Bologna while awaiting a suitable benefice, may well have had students of their own by that point. As a result, some of the texts that became part of the collection of *dicta* could have come from teachers other than Gratian and some from students summarizing or reporting on solutions presented by teachers in classroom discussion.