

## Chapter 3

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*The third order of business then is to recount the history of efforts, from the Summa Parisiensis on, of legal scholars and historians to find the man behind the name Gratian. Here, you need to lay out the traditional evidence used for solving this puzzle. You are lucky that Noonan, Pennington etc. have laid out the evidence and played with it for you.*  
– Stan Chodorow

### Gratian

The starting point for all modern scholarship on Gratian himself is John T. Noonan Jr.'s classic 1979 *Traditio* article "Gratian slept here: The changing identity of the father of the systematic study of canon law". Noonan's approach is apophatic, demonstrating that there is no sound historical basis for most of the affirmative statements, for example that Gratian was a Camaldolese monk at the monastery of SS. Felix and Nabor in Bologna, that many mid-twentieth century handbooks and reference works presented as commonplace.<sup>1</sup>

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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.



Very little is known about the historical Gratian, and almost everything that previous generations thought was known about Gratian has proved, on closer examination, to be myth.<sup>2</sup> On the evidence found in the *Decretum*, Gratian seems to have been less interested in contemporary ecclesiastical or secular politics in general, and in the Investiture Controversy in particular, than some modern scholars think he should have been. Gratian similarly seems, based on the relatively limited use he makes in the *Decretum* of material from the *Codex* and *Digest* of Justinian, to have been either less interested in, or less aware of, the revival of the study of Roman law in the early twelfth century than we think he should have been. On the other hand, he seems to have been more aware of, and more interested in, the emergence of scholastic theology in northern France than we can easily explain.<sup>3</sup>

Odofredus (†1265), a professor of law at Bologna, claimed that Gratian “was staying” (stabat) at the monastery of SS. Felice and Nabor while working as a rubricator.

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<sup>2</sup> Noonan.

<sup>3</sup> See Stephan Kuttner, “The Father of the Science of Canon Law,” *Jurist* 1 (1941): 2–19. Kuttner argues is that Gratian applied Ivo’s program as it had been developed in the intervening forty years by scholastic theology, most notably by Abelard, not in its original form: scholastic theology got the program from Ivo, Gratian got it from scholastic theology. See also D. E. Luscombe, “Abelard and the Decretum of Gratian.” in *The School of Peter Abelard: The Influence of Abelard’s Thought in the Early Scholastic Period*, Cambridge Studies in Medieval Life and Thought, new series, v. 14 (London: Cambridge U.P, 1969), 214–23.

Odofredus did not indicate the basis for his statement that Gratian had been a resident of SS. Felice and Nabor, nor did he say that Gratian had been a monk. In 1758, Camaldolese scholars Mittarelli and Costadono discovered papal privileges conferred in 1113 and 1153 identifying SS. Felice and Nabor as Camaldolese, and inferred from them that the monastery – and by extension Gratian himself – had been Camaldolese during the intervening years. The claim that Gratian had a connection to the Camaldolese order attracted criticism in the eighteenth century, and fell out of favor in the nineteenth century, but was put back into circulation in the mid-twentieth century by Van Hove.

Noonan (†2017) was a distinguished professor of law and an appellate judge who applied the standards of evidence of the law school and the courtroom to the historical record. By Noonan's standards, the statement of Odofredus – hearsay, not attributed to a source, a century after the fact – is nothing more than legend.

### Pennington's argument

Pennington, depending on Eichbauer, argues that because the number of additional canons found in the margins of Bc, and in both the margins and appendices of Fd and Aa, fall well short (87 are missing from Aa, and 62 are missing from Fd) of the number



that would be expected if they had been copied from a Vulgate *Decretum*, these manuscripts represent an intermediate “next-to-last” stage in the development of the *Decretum* text intermediate the pre-Vulgate and Vulgate versions. Furthermore, the fact that the Lateran II canons *are* present in this “next-to-last” stage undermines the argument going back to Fransen and supported by Lenherr that the Lateran II canons are a last-minute addition, and poorly if at all integrated into the argument of the *Decretum*.<sup>4</sup>

## Bibliography

Kuttner, Stephan. “The Father of the Science of Canon Law.” *Jurist* 1 (1941): 2–19.

Luscombe, D. E. “Abelard and the Decretum of Gratian.” In *The School of Peter Abelard: The Influence of Abelard’s Thought in the Early Scholastic Period*, 214–23. Cambridge Studies in Medieval Life and Thought, new series, v. 14. London: Cambridge U.P., 1969.

Noonan, John T. “Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law.” *Traditio* 35 (January 1979): 145–72.

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<sup>4</sup> Kenneth Pennington, “The Biography of Gratian, the Father of Canon Law,” *Villanova Law Review* 59 (2014): 686.



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