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,[1] it is best to make our first approach (*accessus*) to the author through his text.[2] 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.

---

[1] 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.

[2] "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*.[3] 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*.[4] And

---

[3] 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.)

[4] 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*.[5]

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.[6] 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."[7] (In

---

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

[6] **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**

[7] "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.[8]

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*,

---

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.

[8] "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).[9]

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

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*.[10] Gratian was working within a well-

---

[9] Excepting only that there is no first-recension version of Part III.

[10] "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

established genre of academic writing in medieval Latin literature, the canonical

collection.[11] 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.[12]

---

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)

[11] 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."

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 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

---

[12] In earlier collections such as the *Collectio Dionysiana* (ca.500) the material was organized chronologically.

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.[13] In this respect, Gratian did not 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

---

[13] 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.

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.[14]) 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.[15] All of these considerations suggest that the presumption that the *Decretum* was the product of

---

[14] Especially in *de Penitentia*.

[15] "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.

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

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 aliorsum 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.)"[16] 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 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").[17] 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.[18] The

---

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

[17] "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.

[18] 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.

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).[19] The letter, sometimes referred to by the first word 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 universalia, alia provincialia*. ("Some councils are universal, others provincial.")[20]

---

[19] 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 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]

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

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

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

sinodo legitur fuisse.*" (It is read that St. Augustine, bishop of Hippo, also attended this

synod.)"[21] 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.[22]

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

---

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

[22] **Verify that the enumeration is in the first recension.**

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.[23] 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."[24] (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.)[25]

---

[23] 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.

[24] First recension D.15 c.3, §1-§16 in Friedberg, §2-§17 in Thompson and Gordley.

[25] "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.

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.[26]

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

---

"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.

[26] **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.**

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 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 Chartes's *Panormia*, Gregory of San Grisogono's *Polycarpus*, and an anonymous *Collection in Three Books* (*3L*).[27] 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*).[28]

---

[27] Winroth, *The Making of Gratian's Decretum*, 15–17.

[28] **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

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.

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.[29] 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

---

[29] 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).

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 canonical collectors in the eleventh century.[30] 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

---

[30] 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.

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*. 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*.[31]

The program of the Gregorian reformers collided with two practical realities of eleventh-century life. Abbotts 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

---

[31] "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

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.

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.

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,[32] 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 in the *Decretum*—parts, distinctions, cases, and questions—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

---

[32] See Appendix 2 for the Python code listing for my implementation of the recursive-descent parser. Thanks to Patricio Simari of the Electrical Engineering and Computer Science Department at The Catholic University of America, who provided helpful suggestions on parser implementation. In Computer Science-theoretic terms, the parsed *Decretum* can be thought of as an ordered tree, with parts, distinctions, cases, and questions as interior nodes. A canon or chapter, properly conceptualized as a node encapsulating rubrics, inscriptions, canon texts, and *dicta post*, is also an internal node. A *dictum* (*ante*, *post*, or *initiale*) is a terminal node. So are rubrics, inscriptions, and canon texts. A case statement (*dictum initiale*) is always the first terminal node of a case. A *dictum ante* is always the first terminal node of a distinction or question. A *dictum post* is an optional, and usually the last, terminal node of a canon. **Example of d.a.c.8. The traditional notation is misleading: d.a.c.1 is not a leaf node of c.1.**

included an inscription, a rubric, and the canon text. Gratian added to the package a *dictum post canonem* (plural *dicta post canones*) 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.[33]

(The nature of the canon texts proper has been described above in the section on the collection and selection of canons.)

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

---

[33] Gratian is known to have used Alger as both a source, especially in C.1, and, to some extent, as a methodological model. Winroth, *The Making of Gratian's Decretum*, 17, 39, 144. See Robert Kretzschmar's edition, *Alger von Lüttichs Traktat "de Misericordia et Iustitia": Ein Kanonistischer Konkordanzversuch Aus Der Zeit Des Investiturstreits: Untersuchungen Und Edition*, Quellen Und Forschungen Zum Recht Im Mittalter, Bd. 2 (Sigmaringen: J. Thorbecke, 1985). Somewhat confusingly for Gratian scholars, Kretzschmar uses regular typeface for Alger's *dicta* and italics for the canons, the opposite of the convention adopted by Friedberg **(and Richter before him?)** and continued by Winroth.

reads "*de eodem*", which means "about the same thing" as the preceding canon.[34]

---

[34] **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. Winroth, *The Making of Gratian's Decretum*. 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 observed that there are 398 *de eodem* rubrics in the vulgate *Decretum*, see Anders Winroth, "Uncovering Gratian's Original Decretum with the Help of Electronic Resources," *Columbia Library Columns* 46, no. 1 (1997): 28; and Winroth, *The Making of Gratian's Decretum*, 127. The precision of this frequently-cited number can be refined in ways that demonstrate the true power of the careful use of electronic resources for the study of this, or any, text. (In the following examples, `edF.txt` is the filename of the OCP-format Reuter and Silagi e-text of the Friedberg edition. The commands used in the examples should work on any macOS or Linux-based system.) Winroth's figure of 398 simply represents the number of occurrences of the substring "de eodem" in the file: `grep -i "de eodem" edF.txt | wc -l` returns 398. Most, but not all, of the occurrences of the substring "de eodem" do, in fact, appear in the context of a rubric, In one case, *de Cons.* D.2 c.3, the inscription reads *Idem de eodem* ("the same person about the same thing"), and refining the search to count those occurrences that do **not** appear alongside the OCP rubric `<T R>` or inscription `<T I>` tags reveal that in 8 instances, the words *de eodem* are simply part of the text of a canon or *dictum*: `grep -i "de eodem" edF.txt | egrep -v "<T R>|<T I>" | wc -l` returns 8. Setting aside, then, those instances in which the words *de eodem* occur in canons, *dicta*, or inscriptions (and acknowledging that the criteria for distinguishing between inscriptions and rubrics can be blurry) leaves 389 rubrics containing the substring "de eodem": `grep -i "de eodem" edF.txt | grep "<T R>" | wc -l` returns 389. Of those 389, there are 373 *De eodem* rubrics and 13 *Item de eodem* rubrics (12 of those 13 introduce second-recension canons in D.30 in the first part of the *Decretum*): `fgrep "De eodem." edF.txt | grep "<T R>" | wc -l` returns 373, and `fgrep "Item de eodem." edF.txt | grep "<T R>" | wc -l` returns 13. In the three remaining cases, words *de eodem* are part of a longer rubric: `grep -i "de eodem" edF.txt | grep "<T R>" | fgrep -v "De eodem." | fgrep -v "Item de eodem."` returns the rubrics for D.23 c.32 (*De eodem, et ut clerici comam non nutriant*), C.22 q.5 c. 16 (*De eodem, et ut a ieiunis iuramenta prestentur*), and *de Cons.* D.1 c.17 (*De eodem, et quod octo diebus dedicationum*). Winroth's larger point, however, had to do with the place of the *de eodem* rubrics in the "untidy seams" problem. For that purpose, only the 137 *de eodem* rubrics in the first recension of the Decretum are potentially relevant evidence. **See GitHub Sand repository. This result (137) is potentially off by one, i.e., the total number of *de eodem* rubrics in the first and second recension rubric data sets is 388 instead of 389, with no way to tell whether the missing rubric is from the first or second recension.**

(Pennington and Eichbauer believe that Gratian wrote the rubrics in the *Decretum* rather than reusing those he found in formal source collections.[35] The fact that the rubrics are short, discontinuous, texts means that they are of effectively no value for the purpose of authorship attribution. On the other hand, the fact that they are believed to have been written by Gratian, and that they therefore reflect his choice of wording, means that they are potentially useful evidence in the search for new topics introduced between the first and second recensions.)

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.[36] This raises the need to distinguish Gratian's material sources—an original letter of Pope Gregory I, for example—from his

---

[35] **Placeholder for footnote referencing Eichbauer's observation that Gratian wrote his own rubrics.**

[36] 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 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.**

formal sources—the collection from which Gratian actually copied his text.[37] 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*, 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 *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."[38] **(The *dicta post* are not found in Part III, which is in this respect more**

---

[37] "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)] Landau, "Gratian and the Decretum Gratiani," 34.

[38] Winroth, *The Making of Gratian's Decretum*, 187.

structurally similar to the formal source collections Gratian relied on than to the rest of the *Decretum*).

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. **The division into distinctions is traditionally thought to have been made by Paucapalea (fl. 1140s) rather than by Gratian. The division seems to have taken some time to reach its final form: Pennington has pointed out that there were 99-distinction versions of the first recension, and Rufinus writing in the mid-1160s presumably about the second recension describes Part I as "having been completed in on hundred 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, which are further subdivided into 168 questions. Four of the questions, C.11 q.2, C.17 q.3, C.22 q.3, and C.29 q.1 are empty, and one, C.33 q.3, encapsulates a treatise on penance (*tractatus de*

penitentia, abbreviated *de Pen*.) divided into seven distinctions. The third part of the

Decretum is a treatise on sacraments (*tractatus de consecratione*, abbreviated *de Cons*.)

divided into five distinctions.[39] Contemporaries like Rufinus and Stephen of Tournai

understood the parts to treat respectively of ministries, business, and sacraments:

"primam ministeriis, secundam negotiis, tertiam ecclesiasticis deputat sacramentis."[40]

---

[39] Winroth, 5.

[40] Rufinus and Stephen of Tournai describe the tripartite division in exactly the same words: "librum suum in tribus partibus distinguit, quarum primam ministeriis, secundam negotiis, tertiam ecclesiasticis deputat sacramentis." Heinrich Singer, *Summa Decretorum* (Aalen : Paderborn: Scientia Verlag ; F. Schöningh, 1963), 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 sacraments." Somerville and Brasington, *Prefaces to Canon Law Books in Latin Christianity*, 192–93. (Rufinus) "Harum primam ministeriis, secundam negotiis, tertiam ecclesiasticis deputat sacramentis." Schulte, *Die Summa über Das Decretum Gratiani*, 6. "The first of these parts is devoted to ecclesiastical ministries, the second to ecclesiastical problems, the third to ecclesiastical sacraments." Somerville and Brasington, *Prefaces to Canon Law Books in Latin Christianity*, 201. (Stephen of Tournai) (Brasington translated the preface of Rufinus, Somerville that of Stephen of Tournai. Somerville and Brasington, vii. There is no indication as to why Somerville chose to translate *negotiis* as "problems" rather than "business".)

Given the probable dates of the *summae* of Rufinus (1164) and Stephen of Tournai (1165/66), it is just possible that Stephen got the wording from the preface to the *Summa* of Rufinus. Kenneth Pennington, Rufinus and Stephanus Tornacensis, *Bio-Bibliographical Guide to Medieval and Early Modern Jurists.* Stephen, however, had been a student of Rufinus in Bologna, and it seems more likely that this is something he had heard Rufinus say in lecture. **Kenneth Pennington, "Étienne of Tournai".**

The *dictum ante canonem* (abbreviated d.a.c.) and *dictum initiale* (abbreviated d.init.) are special cases of *dicta* and, like the *dictum post canonem*, were written by Gratian (i.e., the person performing the author-function at that place in the text). My most important finding is that the author of the first-recension *dicta* did not write the case statements. Gratian intended the case statements to be memorable, not necessarily realistic.

The hypothetical case statements or *themata* that introduce each of the thirty-six *causae* (cases) that constitute the second part of the *Decretum* reflect at least in some 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 willingness on more than one occasion to resort to bribery in order to realize that objective) has a distinctly contemporary feel to it.[41]

In other cases, the hypothetical case statements are quite remote from our own concerns. In case 28, for example, a married infidel, by which Gratian means a Muslim, converts to Christianity. As a result, his wife separates from him out of hatred for his new faith. 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, though perhaps 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.

---

[41] "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.

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 manuscripts, nor was it included in the earliest manuscripts of the more widely-circulated second-recension 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."[42]

---

[42] **Need footnote on Gt, Pf, and Tr gloss**