

Conclusion

The case statements or *themata* were written by a single author whose words appear nowhere else in the *Decretum*. In the spirit of Winroth, who refers to his hypothesized author of the second-recension *dicta* as Gratian 2, I have named this figure Gratian 0, and I take him to be *the* historical Gratian.

How to make sense of this result?

The legal revolution of the twelfth century, the background from which the *Decretum* emerged, was as much a social as an intellectual movement. My thinking in reconceptualizing the canon law strand of the legal revolution of the twelfth century as a social movement (as opposed to an intellectual movement, as it is usually treated in the scholarly literature) was strongly influenced by Rodney Stark's *The Rise of Christianity*.¹ Thinking of the growth of the systematic study of canon law as a social movement has two significant implications.

First, social movements of this kind display a pattern of long-tail exponential growth in which, for a very long time, the number of people involved is quite small. As a result, evidence of their activities emerges into the historical record only after a considerable

¹ Rodney Stark, *The Rise of Christianity: A Sociologist Reconsiders History* (Princeton, N.J.: Princeton University Press, 1996).

delay. The *Marturi placitum* (1076) is evidence that the Roman law strand of the legal revolution had a lengthy prehistory (the long tail) before it broke the surface into historical visibility thirty years later in the first decade of the twelfth century. The results of the collective efforts of the circle we associate with the name of Gratian (*Gratian-Kreis*) emerge into our field of view only after 1140, at which point it is not unreasonable to believe that they had been at work in some form or another for two if not three decades. (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.)

Second, participation in the early stages of a successful social movement confers substantial real-world benefits. Participation in the circle we associate with the name of Gratian undoubtedly involved a considerable amount of uncompensated scribal labor, and in order to explain the exponential growth pattern, there must have been some substantial real-world benefit that made the effort worthwhile for the participants. It is not at all hard to guess what that benefit was. The participants were not interested in

teaching as a career. They were looking for competitive advantage in the race for ecclesiastical benefices.

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*. When I started work on this project in 2013, I implicitly accepted that assumption and fully expected stylometric results for the *dicta* 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 the results, once I convinced myself that they were not spurious, convinced me 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 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.

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 Gratian “created a collection of canons” and especially when we say that the collection was “used in the earliest course on canon law.”

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 “left as an exercise to the reader.” I think that it is also important to note that one of the things Gratian brought to the project from the outset was a fundamentally conservative and optimistic disposition: his was the antithesis of Peter Abelard’s project of subverting

and even dissolving the whole notion of authority by showing that the authorities were in actual, not just apparent, disagreement. (I think the depiction of Gratian smiling in *Paradiso* 10.103 does actually capture something significant about the optimistic outlook that he brought to his engagement with the authorities.)

At some point in the 1120s, Gratian became the convener of a study group that read the canons, and started to work out a systematic jurisprudence based on them. The formation of the study group was obviously a crucial step in the development of canon law as a discipline, but I believe it is something of an anachronism to call it “the earliest course on canon law.” I think we can infer that Gratian at this point had a good command of the sources, but he was not yet in possession of a fully-developed method for reconciling the contradictions presented by the canons that he could systematically impart to students. 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*.

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 on parchment the collection of canons he thought raised the really salient issues and his comments on them. Before the formation of the study group, I doubt that the collection of canons and comments had any concrete existence outside of Gratian’s head.

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.

First, he appears to be the author of the case statements in the literal sense of having formulated their exact wording. In his capacity as literal author of the case statement, I refer to him as Gratian 0, to distinguish him from Winroth's Gratian 1 and Gratian 2. Unlike Gratian 1 and Gratian 2, Gratian 0 is clearly one person. Gratian 0's only direct contribution to the text of the *Decretum* was as the writer of the 3,592 words of the first-recension case statements. The case statements were textually quite stable from an early stage in the project (only 13 words were added, to C.19 d.init., in the second recension). However, I do not believe that they predated the formation of the study group. Indeed, the existence of the case statements in written form makes little sense outside the context of the study group. Rather, I think that Gratian 0 developed them alongside the earliest group readings.

The fact that the case statements were written by a single author whose words appear nowhere else in the *Decretum*, that their existence implies use by a reading or study group, and that almost no changes were made to their text during the stages of the development of the *Decretum* into which we have visibility, all suggest to me that the process start quite early, likely in the 1120s and that the collection of *dicta* as a whole therefore grew to its classical form over several decades.

Moving beyond the exact wording of the first-recension case statements, the real contribution of the figure later identified as Gratian to the *Decretum* was as the leader of the study group, the thinker whose method of reconciling the contradictions presented by the canons came to be memorialized in the first-recension *dicta*. This was the second, and probably more important, role that Gratian played in the development of the text of the first recension. That is not to say that his methods, arguments, and solutions were not worked out in the context of the study group, but members of the group clearly accepted Gratian's method of reconciling the canons as authoritative for them, and passed down to later students of canon law the understanding that Gratian was the author of the *Decretum* 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 the method was his, and that is the basis for the authority claim made on Gratian's behalf by the community the exponential growth of the original study group ultimately created.

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 looking more like a university course, or even an informal network of courses: a proto-faculty. In fact, the first recension can probably be safely (if circularly)

defined as that stage in the textual development of the *Decretum* in which Gratian 0 was still personally involved. 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. As noted above, involvement in Gratian's project would have to have conferred significant real-world advantages for the contributors, in the form of enhanced competitiveness for benefices, in order to justify the uncompensated 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 exponential growth pattern.

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 a quite substantial community was much slower, but there had been so many intervening "generations" that any information about the history of the project that had

not been incorporated into the text of the *Decretum* was lost, apparently including for Paucapalea even the name of Gratian.

What does all of this say about teachers and the teaching of canon law between the early 1120s and the 1150s? 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 done by far, one suspects, the most reading in the sources of canon law. But having read widely in the canons was not the same thing as having fully worked 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, they were all 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 would expect to encounter in 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 loose 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 class room discussion.

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,² and 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

² "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.

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.