Chapter 1

Paul Evans

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Background

Around 1140, a revolutionary textbook transformed the study of canon law into a systematic academic discipline. It did not have an attribution of authorship. It did not even have a title. However, as it entered widespread circulation in the middle decades of the twelfth century, the new textbook gave rise to a considerable body of commentary, and some early glosses referred to it as the *Concordia discordantium canonum* ("Concordance of discordant canons"). The same glosses identified Gratian, an otherwise unknown teacher thought to have worked in Bologna, as its author.[1] As a

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[1] Eight early manuscripts contain the gloss: "*Concordia discordantium canonum iuxta determinationem Gratiani episcopi quae in duas partes principaliter est divisa* (The agreement of disagreeing canons according to the determination of Bishop Gratian, which is principally divided into two parts.)" See below concerning whether, where, and when Gratian served as a bishop. Bl = Baltimore, Walters Art Gallery 777; Gt = Ghent, Bibl. der Rijksuniversiteit 55; Mt = Montecassino, Bibl. Abbaziale 66; Pf = Paris, Bibl. Nationale lat. 3884 I and II; Po = Pommersfelden, Bibl. des Grafen Schönborn 142 (2744); Ro = Rouen, Bibl. municipale E 21 (707); Sl = St. Paul im Lavant, Stiftsbibl. 25/1 (XXV.2.6); Tr = Trier, Stadtbibl. 906 (1141). Gt, Pf, and Tr indicate that the *Decretum* has two parts; Bl, Mt, Po, Ro, and Sl indicate that it has three. The

result, the book came to be commonly known as the *Decretum Gratiani* ("Gratian's *Decretum*").

The *Decretum* was arguably the first book in the European tradition written from the ground up as a university textbook. (Abelard's *Sic et Non* is the other book for which such an argument might be advanced.)

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earliest version of the *Decretum* to survive in more than one manuscript (R1) has two parts, while the most widely circulated version (R2) has three. Part III of the *Decretum* (*de Consecratione*) is outside the scope of this project, the intent of which is to compare the earliest (R1) version with the most widely circulated (R2) version for the purpose of determining authorship of those parts of the text traditionally attributed to Gratian himself. Part III is not found in R1, therefore direct comparison is not possible. In any event the class of text traditionally attributed to Gratian personally (the sayings or *dicta*) are absent from Part III. Therefore, it is not subject to comparative analysis using the techniques available for examining Parts I and II. John T. Noonan, "Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law," *Traditio* 35 (January 1979): 154. Noonan lists Mazarine 1289 (possibly a typo for Pm = Paris, Bibl. Mazarine 1287?) in place of Sl. Rudolf Weigand, "Frühe Kanonisten Und Ihre Karriere in Der Kirsche," *Zeitschrift Der Savigny-Stiftung Für Rechtsgeschichte. Kanonistische Abteilung* 76 (1990): 135–55. Kenneth Pennington, "The Biography of Gratian, the Father of Canon Law," *Villanova Law Review* 59 (2014): 698–700, supplements Noonan's discussion of these eight glosses.

The author of the preface to the *Summa Parisiensis* incorrectly thought that Gratian himself had given the collection the title *Concordia discordantium canonum*: "*Magister Gratianus, in hoc opere antonomasice dictus Magister, loco proœmii talem suo præmisit libro titulum: Concordia discordantium canonum, in quo materiam et intentionem breviter exponit* (Master Gratian, antonomastically called in this work 'the Master', in place of an introduction prefaced his book with the following title, *Concord of discordant canons*, by which he concisely sets forth subject matter and intention.)" Terence P. McLaughlin, ed., *The Summa Parisiensis on the Decretum Gratiani* (Toronto: Pontifical Institute of Mediaeval Studies, 1952), 1. English translation from 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), 201.

Gratian's exposition of his method – the *content* of the *Decretum* – transformed the study of canon law into a rigorous academic discipline. The existence of the *Decretum* transformed the social context for the teaching and study of canon law. It seems likely that Gratian's own teaching took place in a fairly informal and unstructured environment: a master surrounded by a circle of students for whose studies he provided a focus. But the existence of a standardized textbook paved the way for academic faculties formally organized along disciplinary lines to offer standardized courses of instruction and to confer degrees on those who completed them. Within a few generations, and certainly by the end of the twelfth century, organized faculties of canon law had largely displaced – at least at major centers such as Bologna, Paris, and Oxford – informal gatherings of students around a master, although the older model probably continued at more peripheral schools.[2]

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[2] "By the first decade of the thirteenth century the private schools of canon law had become part of the corporate structure of the universities in all three places [Bologna, Paris, and Oxford]." James A. Brundage, "The Teaching and Study of Canon Law in the Law Schools," 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), 98–99.

The emergence of faculties of canon law in the second half of the twelfth century was a feature of a wider intellectual and social revolution. There had been a revival in Bologna of the formal study of Roman law during the second and third decades of the twelfth century. The immediate impetus for the revival was the recovery of the great *libri legales* of the late Roman world, most important, because it provided the pattern for jurisprudence as a systematic intellectual activity, the *Digest* of Justinian.[3] The twelfth-century revolution in legal science did not take place in a vacuum. It took place because of the emergence, especially in Italy, of an increasingly urban and commercial society

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[3] The Digest was not recovered all at once, but in three parts: the *Digestum vetus* (Dig. 1.1-24.2), the *Infortiatum* (Dig. 24.3-38.17), and the *Digestum novum* (Dig. 39.1-50.17). Manlio Bellomo, *The Common Legal Past of Europe: 1000-1800*, Studies in Medieval and Early Modern Canon Law, v. 4 (Washington, D.C: Catholic University of America Press, 1995), 62–63. Wolfgang P. Müller, "The Recovery of Justinian's Digest in the Middle Ages," *Bulletin of Medieval Canon Law* 20 (1990): 1–29. Michael H. Hoeflich and Jasonne M. Grabher, "The Establishment of Normative Legal Texts: The Beginnings of the Ius Commune," 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), 5. The standard modern edition of the *Digest* can be found in Paul Krüger and Theodor Mommsen, eds., *Corpus Iuris Civilis* (Berolini: apud Weidmannos, 1928). There is a recent English translation of the *Digest* in Alan Watson, ed., *The Digest of Justinian* (Philadelphia, Pa: University of Pennsylvania Press, 1985). [See review in Charles Donahue, "On Translating the "Digest"," *Stanford Law Review* 39, no. 4 (1987): 1057–77.] There is an excellent facsimile edition of the *Codex Florentinus* (Firenze, Biblioteca Laurenziana, *sine numero*), the sixth- or seventh-century manuscript that served at least indirectly as the basis for the eleventh- and twelfth-century recovery of the *Digest* in Alessandro Corbino and Bernardo Santalucia, eds., *Justiniani Augusti Pandectarum Codex Florentinus* (Firenze: Olschki, 1988).

with many moving parts. Such a society needed a correspondingly complex and sophisticated legal system, and, because it had much in common with the society of the ancient Roman world, it was able to borrow extensively from Roman law.

Gratian, in compiling the *Decretum*, solved a problem for the new academic discipline of canon law that his counterparts teaching Roman law had sidestepped: the Romanists had not needed to create textbooks for their students because they had recovered the textbooks from which the law had been taught in late antiquity. By doing so, Gratian blazed a trail for canon law that theology followed about two decades later. The appearance around 1160 of Peter Lombard's *Sentences* served as the catalyst for a similar transformation of theology into a rigorous academic discipline taught from a standardized textbook in the context of a formally organized curriculum by a degree-granting faculty, and for the displacement of more loosely organized regional schools, such as the one at Laon, by the preeminent theology faculty of Paris.

The emergence of distinct faculties of Roman law, canon law, and theology in the middle decades of the twelfth century gave rise to a rapidly proliferating number of major universities throughout Europe, recognizably continuous in form with those of

the present day. The existence of standardized textbooks such as Gratian's *Decretum* and later Peter Lombard's *Sentences* was an absolutely essential precondition for the formation of academic faculties organized along formal disciplinary lines, offering standardized courses of instruction for their students. Those faculties in turn supplied the foundation for the medieval, and, by extension, the modern European university. Gratian's *Decretum* can be seen from the point of view of this series of historical developments as the textbook that set the stage for the emergence of the university.

Roman Law

There is good evidence that canon law emerged as a distinct, formally organized, academic discipline about two decades after Roman law, and about two decades before theology. Therefore, any information that allows us to refine our knowledge of the dates by which those disciplines, but especially Roman law, emerged has considerable evidentiary value for the dating of the emergence of canon law as well. The current consensus among historians is that the teaching of Roman law got under way as an organized activity in Bologna between 1100 and 1110 and that the teaching of canon law got under way, also at Bologna, a little later, perhaps between 1120 and 1130.

It is first necessary to distinguish the body of Roman law formally codified in the sixth century under the emperor Justinian (†565) from the forms of Roman law that had survived through continuous use and adaptation in southern Europe from late antiquity into the eleventh century. Early medieval Europe had not forgotten Roman law, and in particular, the *Lex Romana Visigothorum* or *Breviary of Alaric* (506), derived from the Theodosian Code (438), was a major source of Roman law concepts and terminology throughout the early middle ages. The codification produced by Justinian's commissioners under the guidance of Tribonian (†545?) received limited reception in the sixth century in those parts of Italy then under Byzantine control. However, it disappeared from view around the beginning of the seventh century. The last known reference to the *Digest* in the Latin-speaking and -writing West is found in a letter of pope Gregory I in 603.[4]

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[4] The reference is to Dig. 48.4.7.3. "XIII, 49 Iohanni defensori exempla legum tradit, secundum quas iudicet" in Dag Ludvig Norberg, ed., *S. Gregorii Magni Registrum Epistularum, Libri VIII-XIV, Appendix*, Corpus Christianorum. Series Latina, 140 A (Turnholti: Brepols, 1982), 1058–64. Translated as "13.49 Gregory to John, his defender, going to Spain. An example of a law," August 603, in John R. C. Martyn, trans., *The Letters of Gregory the Great*, Mediaeval Sources in Translation 40 (Toronto: Pontifical Institute of Mediaeval Studies, 2004), 863–66.

What was new in Italy from the late eleventh century on was the revival of the study and application of Roman law as codified in the *Corpus iuris civilis* of Justinian: the *Institutes*, the *Codex*, the *Digest* or *Pandects*, and the *Novels*, translated from Greek into Latin in the form of the *Authenticum*. The first documentary evidence for this revival is a reference to the *Digest* found in the *Marturi placitum*, the record of a court case held in 1076 in present-day Poggibonsi in Tuscany.[5]

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[5] Cesare Manaresi, ed., *I Placiti Del "Regnum Italiae."*, Fonti Per La Storia d'Italia, Pubblicate Dall' Istituto Storico Italiano Per Il Medio Evo 97 (Roma: Tip. del Senato, 1955), 333–35. (no. 437) The *Marturi placitum* does not explicitly identify the passage in the *Digest* to which the citation refers, but the fact that the legal principle being invoked is *restitutio in integrum* is by itself sufficient to narrow it down to *Dig*. 4. Radding and Ciaralli identify the passage as *Dig*. 4.6.26.4 (with some wording borrowed from *Dig*. 4.1.5). Charles Radding and Antonio Ciaralli, *The Corpus Iuris Civilis in the Middle Ages: Manuscripts and Transmission from the Sixth Century to the Juristic Revival*, Brill's Studies in Intellectual History, v. 147 (Leiden ; Boston: Brill, 2007), 183–84. Nordillus, the judge, decided the case "*lege Digestorum libris inserta considerata* (after he considered the law inserted into the books of the *Digest*)" [translation suggested by Atria Larson]. The translation turns on the interpretation of the participial adjective *inserta*. "I think the straight-up 'inserted' makes sense here. The writer would seem to be noticing that the Digest is not itself *lex* but includes commentary on the *lex*, the written law, and refers to and inserts many elements of *lex* throughout." (Atria Larson, email to Paul Evans, July 21, 2017.) The alternative is to translate *inserta* as "introduced," describing a passage from the Digest that an advocate for one or the other of the litigants brought to the attention of the court in support of their case as having been "introduced." For an English translation of the *Marturi placitum*, see Bruce Clark Brasington, ed., *Order in the Court: Medieval Procedural Treatises in Translation*, Medieval Law and Its Practice 21 (Leiden: Brill, 2016). (See West Texas A&M University: Order in the Court: Medieval Procedural Treatises in Translation.)

Because of the title *Corpus iuris civilis*, "the body of civil law," Roman law was also referred to as civil law, and students, teachers, and practitioners of Roman law were referred to as civilians. Gratian, following Isidore of Seville (†636), used a much older definition: "*Ius civile est, quod quisque populus vel civitas sibi proprium divina humanaque causa constituit* (Civil law is what each people and each commonwealth establishes as its own law for divine or human reasons)."[6] Gratian, again following Isidore, referred to Roman law as the law of the Quirites (*Ius Quiritum*).[7]

The scholarly consensus that the teaching of Roman and canon law were going concerns in Bologna by around 1110 and 1130 respectively has had two notable recent dissenters, Charles Radding and Anders Winroth. Radding has proposed that the epicenter of the revival of the study of Roman law was not Bologna, but Pavia, and places the date somewhat earlier, in the late eleventh century. Radding's claim is that research into

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[6] D.1, c.8. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017, 2. English translation from Augustine Thompson and James Gordley, trans., *The Treatise on Laws: (Decretum DD. 1-20)*, Studies in Medieval and Early Modern Canon Law, v. 2 (Washington, D.C: Catholic University of America Press, 1993), 7.

[7] D.1, c.12. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017, 3.

Roman law developed from its having been used as an analytical tool for the explication of the central text of the Lombard law tradition, the *Liber Legis Langobardorum* or *Liber Papiensis*. Radding's argument has not met with widespread acceptance.[8]

Anders Winroth is by far the more consequential dissenter from the consensus. He draws attention to the underdeveloped way in which Gratian uses Justinianic Roman law in what Winroth calls the first recension, the earliest version of the *Decretum* to survive in more than one manuscript.[9]

There are only three places in the first recension of the *Decretum* that incorporate material taken directly from Justinianic Roman law sources: C.2, q.6, c.28 (an excerpt

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[8] Charles Radding, *The Origins of Medieval Jurisprudence: Pavia and Bologna, 850- 1150* (New Haven: Yale University Press, 1988).

[9] Ken: defined so as to sidestep (for now) the controversy over Sg.

from the *Authenticum*), and C.15, q.3, cc.1-3 and C.15, q.3, c.4 (three excerpts from the *Codex* and four from the *Digest*).[10]

Gratian does not deploy the proper Justinianic shades of meaning to the concepts of ownership and possession when discussing the issue of *restitutio in integrum* in the first-recension version of C.3, q.1, d.p.c.2. Instead, Gratian uses concepts and vocabulary that, Winroth argues, derive from pre-Justinianic Roman law sources such as the *Lex Romana Visigothorum*.[11]

Furthermore, there are places in the first recension where Gratian, in Winroth's opinion, would have reached different conclusions had he used Justinianic Roman law. He points to Gratian's treatment of false (or at least unsuccessful) accusers in C.2, q.3, and the penalties, including infamy, incurred by them. Gratian's analysis – he distinguishes three categories of false accusers based on material indirectly derived from the *Lex*

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[10] Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000), 146–48.

[11] Winroth, 148–51.

Romana Visigothorum – is incompatible with the well-developed Justinianic jurisprudence on the subject.[12]

But there is one question – C.15, q.3 – in the first recension of the *Decretum* in which Gratian makes substantive use of Justinianic Roman law concepts and vocabulary as a part of his argument in the *dicta* and does so more or less correctly in Winroth's judgment. This is significant from Winroth's point of view, because it demonstrates that Gratian did not have an ideological objection to the use of Roman law, as Vetulani and Chodorow argued.[13] Rather, Winroth argues that where Gratian either failed to use Roman law, or used it incorrectly, it was because he lacked the knowledge to do so.[14]

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[12] Winroth, 153–56.

[13] Chodorow explains Gratian's "deletion" of Roman law as a consequence of what he sees as Gratian's adherence to the party of the papal chancellor Haimeric and proponents of the Concordat of Worms (1122). Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century; the Ecclesiology of Gratian's Decretum*, Publications of the Center for Medieval and Renaissance Studies, U.C.L.A., 5 (Berkeley: University of California Press, 1972), 60–63. **Extend footnote to include views of Vetulani.**

[14] Winroth, *The Making of Gratian's Decretum*, 151–53.

For reasons that I will discuss more fully below, Winroth is convinced that the first recension of the *Decretum* cannot have been completed or entered circulation earlier than around 1140. The underdeveloped way in which Justinianic Roman law is used in the first recension therefore leads Winroth to argue that the study and teaching of Roman law in Bologna had not progressed nearly as far by 1140 as the consensus holds.

Some corollaries to Winroth's argument that Roman law teaching got off to a late start are fairly far out of the mainstream. A notable example is his dating of the famous letter of an anonymous monk to abbot B (probably Bernard III Garin) of Saint-Victor, Marseille – the content of which Winroth has so memorably summarized as "[m]y donkey is dead, so I am going to law school" – to the 1180s rather than the 1120s. But it is extremely difficult to imagine that a letter that shows no apparent awareness that either civil (Roman) or canon law were being taught in Bologna can have been written in the 1180s.[15]

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[15] Anders Winroth, "Law Schools in the Twelfth Century," in *Mélanges En L'honneur d'Anne Lefebvre-Teillard*, ed. Bernard d' Alteroche et al. (Paris: Éd. Panthéon-Assas, 2009), 1060. For the text of the letter, see Jean Dufour, Gérard Giordanegno, and André Gouron, "L'attrait Des 'Leges': Note Sur La Lettre d'un Moine Victorin (Vers 1124/1127)," *Studia et Documenta Historiae et Iuris* 45 (1979): 504–29. For an English

Kenneth Pennington has pointed to the *Authentica Habita* (1155/1158) issued by the emperor Frederick I (†1190), which has traditionally been taken as extending imperial protection to the law school of Bologna, its faculty, and its students.[16] Pennington makes

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translation of the letter, see Anonymous, Letter to Abbot B[ernard III] of Saint-Victor, Marseille (1124/27) in Katherine Ludwig Jansen, Joanna H Drell, and Frances Andrews, eds., "Roman Law and Legal Studies: Three Texts (ca. 1124-66)," in *Medieval Italy: Texts in Translation*, trans. Sean Gilsdorf, The Middle Ages Series (Philadelphia: University of Pennsylvania Press, 2009), 167–72.

[16] "[O]mnibus, qui causa studiorum peregrinantur, scolaribus et maxime divinarum atque sacrarum legum professoribus hoc nostre pietatis beneficium indulgemus, ut ad loca, in quibus litterarum exercentur studium, tam ipsi quam eorum nuntii veniant et habitent in eis securi." Heinrich Appelt with Rainer Maria Herkenrath, and Walter Koch, eds., *Friderici I. Diplomata inde ab a. MCLVIII usque ad a. MCLXVII*, vol. 10/2, MGH DD F I (Hannover: Hahn, 1979), 39. **Regenerate footnote from Zotero, BibTeX, and Pandoc.** Heinrich Appelt, ed., *Die Urkunden Der Deutschen Könige Und Kaiser*, vols. X, 2, Monumenta Germaniae Historica. Diplomata Regum et Imperatorum Germaniae (Berlin: Weidmannsche Verlagsbuchhandlung, 1979), 39. "[W]e bestow this pious gift upon all who travel for the purpose of study, students and especially teachers of divine and sacred laws: namely, that they as well as their messengers may travel safely to the place where they are engaged in the study of letters and safely dwell there." Jansen, Drell, and Andrews, "Roman Law and Legal Studies," 167–72.

The date of *Authentica Habita* is uncertain. Frederick ordered the constitution inserted into the *Codex* as an act of imperial propaganda. No medieval manuscripts of the *Codex* give a date for the proclamation. Early modern print editions of the *Codex*, however, associated it with the Diet of Roncaglia in November 1158, and modern editions have retained the ascribed date. Kenneth Pennington, "The Beginnings of Law Schools in the Twelfth Century," in *Les écoles Du XIIe Siècle*, ed. Cédric Giraud (Leiden: Brill, 2018). **p.20, fn.53 in MS Word version.** The uncertainty arises because a contemporary poem, the *Carmen de gestis Frederici I. Imperatoris in Lombardia* gives a first-hand account of an incident that took place near Bologna in 1155 in which Frederick, in response to a petition brought by a deputation of doctors and scholars from the city, issued a proclamation matching the description of *Authentica Habita*. Some modern scholars attempt to split the difference by accepting the November 1158 date for the version of the text that we have, but characterizing it as a re-issue of the 1155 proclamation described the *Carmen de gestis*. There appears to be no good reason to believe that *Authentica Habita* was promulgated twice, in 1155 and 1158, as opposed to just once, in 1155. In any event, the uncertainty (within a narrow and circumscribed range)

the common-sense point that a privilege like this is unlikely to have been granted to an institution just getting off the ground.[17] Winroth counter-argues that the privilege mentions neither Bologna nor those involved in legal studies specifically.[18]

The main point to take away from this discussion is that while I agree with the consensus that the teaching of Roman and canon law were going concerns in Bologna by around 1110 and 1130 respectively, the reader should keep in mind that Winroth, a scholar whose point of view is not to be lightly dismissed, thinks otherwise.

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about the date *Authentica Habita* was promulgated does not take anything away from the validity of the point Pennington is making.

[17] Ken Pennington, "A Short History of Canon Law from Apostolic Times to 1917," 17. (Fr. Bradley's PDF file)

[18] It is true that *Authentica Habita* does not mention Bologna explicitly, but instead refers to "the place where they are engaged in the study of letters." But *Authentica Habita* does specifically mention "students and especially teachers of divine and sacred laws" so it is not clear to me why both Pennington and Winroth contest the latter point. "It [*Authentica Habita*] did not mention Bologna nor law students." Pennington. **p.18 in MS Word version.** "The law [*Authentica Habita*] does not mention Bologna at all, nor does it mention studies of law." Anders Winroth, "The Teaching of Law in the Twelfth Century," in *Law and Learning in the Middle Ages*, ed. Mia Münster-Swendsen and Helle Vogt (Copenhagen: DJØF, 2006), 41–62. **pp.7-8 in MS Word version.** "The Teaching of Law in the Twelfth Century" has since been superseded by "Law Schools in the Twelfth Century," which does not mention *Authentica Habita*.

In recent years, it has become obligatory to mention at this point in any discussion of the revolution in legal science the case of one Mengho, a resident of Bologna who was hanged in December 1299 after having been tortured into confessing to the theft of some bolts of fabric. There was not in 1299, nor is there now, much doubt as to Mengho's guilt – a search of his place of residence was carried out during the course of the investigation into the crime, and he was found to be in possession of the stolen goods, a state of affairs that he was unable to credibly explain. Neither can it be seriously doubted that Mengho's case was conducted according to the due process standards prevailing in that time and place. Full proof necessary to convict a criminal defendant (*reus*) under Roman law required either a confession or the testimony of two witnesses, testimony unlikely to be forthcoming in the case of a crime of stealth committed at night such as Mengho's. In the absence of a voluntary confession or witness testimony, torture of the defendant in order to obtain an involuntary confession was simply the next routine step of due process. Indeed, Hermann Kantorowicz (†1940) brought the story of Mengho to the attention of medieval legal historians, and it remains well known today, precisely because Kantorowicz considered it a textbook example of

inquisitorial (as opposed to adversarial) procedure under the *ordo iudiciarius* derived from Roman law.[19]

The fact that Mengho was tortured and executed was not the point of the story for Kantorowicz, but it is for us. In the twenty-first century, the story of Mengho is brought up to make a particular point. There is a powerful scholarly tradition going back at least to Charles Homer Haskins (1927) of presenting the revolution in legal science as an intellectual triumph that took place in the classroom. All revolutions, including the revolution in legal science, have winners and losers, and some of the losers we do not feel very sorry for.[20] But what happened in the classroom ultimately had consequences in the courtroom, consequences that were enacted on the rights and property, on the bodies and lives, of women and men in the real world.

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[19] Hermann Kantorowicz, *Albertus Gandinus Und Das Strafrecht Der Scholastik*, vol. 1: Die Praxis (Berlin: J. Guttentag, 1907), 203–18. See also Kenneth Pennington, "Law, Criminal Procedure," in *Dictionary of the Middle Ages. Supplement 1*, ed. William C. Jordan (New York: Scribner, 2004), 309–20.

[20] R.I. Moore observes that the establishment of the new order brought about by the legal revolution "required another change, no less profound: the replacement of warriors by literate clerks as the agents of government and the confidants of princes." R. I. Moore, *The Formation of a Persecuting Society: Authority and Deviance in Western Europe, 950-1250*, 2nd ed (Malden, MA: Blackwell Publishing, 2007), 128.

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,[21] it is best to make our first approach (*accessus*) to the author through his text.[22] The approach is made more difficult by the fact that, like many modern university textbooks, the *Decretum* underwent at least one major revision, and was probably the product of a process of continuous revision.

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[21] Noonan, "Gratian Slept Here."

[22] "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*.[23] 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*.[24] And

[23] 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. **Winroth supplied the *siglum* P by which the manuscript is now commonly identified. (verify)** (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.)

[24] Winroth, *The Making of Gratian's Decretum*, 32.

in 2011, Atria Larson discovered that München, Bayerische Staatsbibliothek, lat. 22272 (Mw) contains an abbreviation of the first recension of the *Decretum*.[25]

Winroth's discovery of the first recension suggests one obvious way in which it might be problematic to refer simplistically to Gratian as the author of the *Decretum,* as I have done thus far. Winroth rejects any presumption of monolithic authorship on 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."[26] (In other words, it did not just prematurely escape into the wild like parts of Augustine's *de Trinitate*.) Winroth thinks of the first and second recensions as distinct textual layers and

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

[26] "The first recension of the *Decretum* was not a living text. It was a finished product which its author considered ready to be circulated. This is evident from its text, which is as much a finished and polished product as could be expected of any twelfth-century text. Further, it is also evident from the fact that the first recension survives in one version only; what differences there are among the manuscripts are all minor (the apparent exception of Aa will be discussed below). They are differences one would expect to find in any manuscript tradition, arising from scribal mistake or ingenuity. In other words, the manuscripts do not represent different stages in the development of the text, in the manner of 'classically' living texts, such as the *Song of Roland*, where each different manuscript version has an equally valid claim to authenticity." Winroth, *The Making of Gratian's Decretum*, 130.

argues that two different authors (Gratian 1 and Gratian 2) compiled the two recensions.[27]

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*, 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

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[27] "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.

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).[28]

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 those early readers, near-contemporaries like 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*.[29] Gratian was working within a well-established genre of academic writing in medieval Latin literature, the canonical

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

[29] "Distinctiones apposuit in prima parte et ultima Paucapalea …" McLaughlin, *The Summa Parisiensis on the Decretum Gratiani*, 1. (Paucapalea arranged the distinctions in the first part and the last, trans. PLE)

collection.[30] The *Decretum* followed in the footsteps of any number of systematic canonical collections that had been in circulation since the beginning of the eleventh century.[31]

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*

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[30] 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."

[31] Define systematic vs. chronological canonical collections?

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 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.[32] 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*.

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[32] 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.

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 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.[33]) But, as

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[33] Especially in *de Penitentia*.

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.[34] All of these considerations suggest that the presumption that the *Decretum* was the product of a single author ought to be entertained with extreme caution. As I turn my attention to the collection and selection, presentation, and organization of the canonical texts found in the *Decretum*, I will continue to use the name Gratian as a conventional label for its author or authors, while withholding judgment as to whether one person or many stand behind the name

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

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[34] "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.

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.")[35] 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.

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

Gratian, strictly speaking, defines canons as either *decreta Pontificum* ("decrees of pontiffs") or *statuta conciliorum* ("statutes of councils").[36] 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.[37] The earliest surviving example is a letter from Pope Siricius (†399) to Bishop Himerius of Tarragona, written in 385 in response to a letter that Himerius had sent to Siricius's predecessor, Pope Damasus (†384).[38] 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

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[36] "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.

[37] 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.

[38] 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]

early second-century (ca. 112) correspondence between Pliny the Younger and the emperor Trajan (†117) concerning how Pliny, as Roman provincial governor of Bithynia and Pontus, ought to proceed against the Christians.

Another extremely important source for the *Decretum* is canons from the ecumenical councils and from the historically important provincial synods: *Conciliorum vero alia sunt universalia, alia provincialia*. ("Some councils are universal, others provincial.")[39] 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, temporibus Honorii Augusti.* (It is read that St. Augustine, bishop of Hippo, also attended this synod.)"[40] By the time the *Decretum* was compiled, the

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

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

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.[41]

In addition to textual material strictly defined as canons ("decrees of pontiffs" and "statutes of councils"), Gratian drew on other sources which, if not canons according to the narrower technical definition, could be treated as authoritative in a more general sense. The most important of these *auctoritates* were drawn from the writings of major patristic figures such as Ambrose (†397), Jerome (†419 or 420), Augustine (†430), and Gregory (†604), whom later generations considered doctors of the church.[42] 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

[41] Verify that the enumeration is in the first recension.

[42] 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.

Catholic Church."[43] (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.)[44]

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.[45]

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

[44] "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. Verify that Gratian uses *Moralia in Job* in the first recension of the *Decretum*, and that it is one of the few texts where Gratian uses the material source directly, like Isidore of Seville's *Etymologies*.

[45] 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.

Up to this point, I have been implicitly referring to Gratian's material sources, texts such as the *Letters* of Gregory I or the *de Officiis* of St Ambrose from which the canons in the *Decretum* were ultimately derived. And in a small number of cases, Gratian did work directly with material sources. Isidore of Seville's *Etymologies* is an example of a text from which Gratian probably collected excerpts directly from the material source. It is also possible that he collected excerpts directly from Gregory the Great's *Moralia in Job*. But Gratian drew the overwhelming majority of the canons he compiled in the *Decretum* from formal sources, predecessor collections containing patristic, conciliar, and papal (as well as pseudo-papal) authorities, predigested into canon-sized units of text.

Peter Landau 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*).[46] (Note that this hypothesis

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

is not universally accepted. Pennington, for example, believes that Gratian may have relied on one or more now-lost Central Italian collections similar to 9L.)[47]

By the end of the Patristic period, the canons of the ecumenical and of the 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

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[47] Connect the tradition of research into Gratian's formal sources to Kuttner's "Acta and Agenda."

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.[48] The forgers wanted to protect bishops from being deprived of office by emperor, king, or metropolitan. They did this by building up the pope as the only superior who could judge a bishop. This was convenient, because while popes in the ninth century had considerable moral authority north of the Alps, they had little real power. The intent of the forgers' program therefore was to render bishops effectively impervious to judgment. The collections that resulted from this effort, the so-called Pseudo-Isidorian *Decretals* and *Benedictus Levita*, were accepted everywhere as genuine in an age lacking any serious historical-critical awareness and survived to become important sources for canonical collectors in the eleventh century.[49] Many of these forged canons eventually found their way into Gratian's *Decretum*.

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[48] 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).

[49] 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

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). Like the eighth- and ninth-century Carolingian reformers, the eleventh-century reformers were intensely concerned with the reform and renewal of monastic and clerical life. The Carolingians 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),

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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. His collection is systematic – the presentation of the material is organized by topic – rather than chronological 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*.[50]

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 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.

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[50] "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

Conclusion: 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. To a certain extent, it was formal sources (almost) all the way down. 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.

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