

Chapter 2

The *Decretum*

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, 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—parts, distinctions, cases, and questions—in the *Decretum* 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 included an inscription, a rubric, and the canon text. Gratian added to the package a *dictum post canonem* 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.

A canon is often, though not always, introduced by a rubric, which is a very short summary of what the canon is about. In 398 cases (wrong number), the rubric just says “*de eodem*”, which means “about the same thing” (as the canon before). Most canons have an inscription, which identifies the authority that is the source for the canon (usually a papal decretal, a canon from an ecumenical council or a provincial synod, or a patristic text).¹ Because Gratian was getting his texts from previous collections, the inscription was frequently incorrect, especially if the text in question was one that had been included in the Pseudo-Isidorian forgeries. This raises the need to distinguish between Gratian’s material sources – the original letter of Pope Gregory I, for example – and his formal sources – the collection Gratian was actually looking at when copying his text.² Finally, there are the *dicta* (literally, “things having been

¹ 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.

² “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

said”), which are statements Gratian is making on his own authority as a jurist. It is the *dicta* that carry the thread of Gratian’s argument. [Here I am only talking about *dicta post canones*. Dicta ante canones are not part of the canon container but instead part of the distinction or question container (always d.a.c.1 or equivalent). There are three kinds of dicta: d.init (first leaf node of case or *causa* container), d.a.c. (first leaf node of distinction or question container), and d.p.c. (optional last leaf of canon container). Dicta are text that Gratian (whoever we think he is) actually wrote and are therefore subject to function word analysis for authorship attribution.]

“The *dicta* in Gratian’s *Decretum* bring the reader closer to its author than any other part of the text.”³

The hypothetical case statements or *themata* that introduce each of the thirty-six *causae* (cases) that constitute Part II of the *Decretum* reflect at least in

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)] 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), 34.

³ Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge: Cambridge University Press, 2000), 187.

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.⁴

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. Groups of distinctions form treatises within the work: distinctions 1-20, 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. A treatise on penance (*tractatus de penitentia*) is

⁴ “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.

attached to the third question of case 33. The third part of the *Decretum* is a treatise on sacraments (*tractatus de consecratione*).⁵

Contemporaries like Rufinus and Stephen of Tournai understood the parts to treat respectively of ministries, business or problems, and sacraments: "... 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." (Rufinus)⁶ "The first of these parts is devoted to ecclesiastical ministries, the second to ecclesiastical problems, the third to ecclesiastical sacraments." (Stephen of Tournai)⁷

The cases are hypotheticals like those used in modern law schools, and some of them are quite far-fetched. In case 28, for example, a married infidel converts to Christianity, as a result of which his wife separates from him out of hatred for his new faith. (By "infidel," Gratian means a Muslim.) 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 (if 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

⁵ Winroth, 5.

⁶ 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), 192–93.

⁷ Somerville and Brasington, 201.

who had one wife before he was baptized and another wife after he was baptized should be considered a bigamist.

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 (R1) manuscripts, nor was it included in the earliest manuscripts of the more widely circulated second-recension (R2) 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."

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Chapter 2c

Correctores Romani edition (1582)

The *Decretum* never received the kind of formal ecclesiastical (papal or conciliar) recognition that was conferred on decretal collections like the *Liber Extra*, *Liber Sextus*, and *Clementinae*. Nevertheless, it remained foundational both to the *Corpus Iuris Canonici*, the body of canon law that governed the Roman Catholic Church right up until 1917, as well as to the academic study of canon law throughout the medieval and well into the early modern periods. As a result, the text of the *Decretum* came in for close attention as part of the reform program initiated at the Council of Trent (1545-1563). A commission led by the Spanish archbishop Antonio Agustín (1517-1586), the *Correctores Romani*, was charged with producing an approved version of the text of the *Decretum* (along with the rest of the *Corpus Iuris Canonici*) for the age of the printing press.

The *Correctores* proceeded from the Renaissance Humanist assumption that their job was to identify and include the most textually correct version of the material source for each of Gratian's authorities. In this sense the *Correctores* were less concerned with getting at the text of the collection Gratian actually compiled, and more concerned with getting at the text that they thought Gratian should have compiled, if his concerns had been those of a Renaissance philological scholar.¹

¹ The idea that the *Correctores* were trying to reproduce the text of the *Decretum* as they thought Gratian should have written it, as opposed to the text as he actually wrote it, goes back at least as far as Friedberg: "Vides non

The 1582 printed edition of the *Decretum* includes the ordinary gloss, the standardized commentary by [Johannes Teutonicus](#) (c.1170–1245) in 1216, which was revised and updated by [Bartholomeus Brixienis](#) (fl.1234–1258) around 1240-1245. UCLA's online version of the [Corpus Iuris Canonici \(1582\)](#) is a convenient way for modern scholars to consult the ordinary gloss, which is an important tool for understanding the reception of Gratian's text by medieval jurists.

id in animo habuisse correctores Romanos, ut restitueretur decretum, quale a Gratiano compositum esset, sed quale a Gratiano componi debuisset." ("You see it in the mind that the *Correctores Romani* had, as the *Decretum* was restored, not how it was composed by Gratian, but how it ought to have been composed by Gratian." trans. PLE) (edF 1.lxxviii, see also Anders Winroth, "[Emil Friedberg's Edition of Gratian's Decretum: An Evaluation](#)".)

