

## Conclusion

The first, positive, result of the investigation presented in this dissertation is the finding that the case statements or *themata* were written by a single author whose words appear nowhere else in the *Decretum*. The author of the case statements was *not* the author of the first- or second-recension *dicta* or of the *dicta* in *de Penitentia*. I have designated this single author of the case statements Gratian 0 to distinguish him from Gratian 1 and Gratian 2, the authors of the first- and second-recension *dicta* hypothesized by Winroth, and I take him to be *the* historical Gratian. That the case statements have a single author is not surprising, but that they were not written by the author(s) of any of the collections of *dicta* is quite unexpected. This finding is supported both by the values for Burrows's Delta and the results of principal component analysis.<sup>1</sup> This result warrants a high degree of confidence, and future conjectural *novelle* will have to account for the fact that the case statements were not written by the author of either the first- or second-recension *dicta*.

The second, negative, result is that principal component analysis (PCA) does not produce either of the two findings that might reasonably be expected on the basis of

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<sup>1</sup> Indeed, it is worth reminding the reader here that Burrows's Delta indicates that the case statements are even less likely to have been written by the same author as the *dicta* collections in the *Decretum* than are the samples from the pseudo-Augustinian *De vera et falsa penitentia* quoted by Gratian in *de Penitentia*.

recent scholarly debate over the authorship of the *Decretum*. The PCA results do not show samples from the first- and second-recension *dicta* forming a single tight cluster in a way that would support Pennington's single-author hypothesis. Neither do they show the samples from the first- and second-recension *dicta* forming two distinct tight clusters separating cleanly from each other in an unambiguously bimodal distribution that would support Winroth's two-author hypothesis. Any attempt to make an argument on the basis of the results of principal component analysis in favor of either of the one- or two-author hypotheses would be unpersuasive. Treating the *dicta* from *de Penitentia* as a third collection separate and distinct from the first- and second-recension *dicta* complicates the picture further still. The most that we can say is that both the second-recension *dicta* and the *dicta* from *de Penitentia* display some degree of loose clustering, in that most samples from those collections of *dicta* appear in the same quadrant, and that both display some degree of partial separation from the first-recension *dicta*. These results are not compatible either with there having been a single author who wrote both the first- and second-recension *dicta* or there having been a single author who wrote the first-recension *dicta* for both *de Penitentia* and the rest of the *Decretum*. This second negative finding does not warrant the same level of confidence as the first positive result and represents a call for further investigation.

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* and that either the same one author or the first of the two authors (Gratian 1) wrote the case statements or *themata*. When I started work on this project in 2013, I accepted that assumption and fully expected stylometric results for the *dicta* (including the case statements) to be 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, it became clear at a very early stage of the project that the case statements, or *themata*, were instead written by a single author (Gratian 0) whose words appear nowhere else in the *Decretum*.

Contrary to expectation, none of the stylometric evidence produced at any stage of the project was compatible with either the one- or two-Gratian hypotheses for the authorship of the *dicta*, none of which were written by Gratian 0. I became convinced 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 in the *dicta* 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.

How are we then to make sense of these unexpected results?

The first questions to be answered about how the collection was composed are where and when it came into existence. I see no reason to call into question the scholarly consensus that the *Decretum* emerged from the overlapping circles concerned with legal questions in early twelfth-century Bologna. The traditional assumption that Gratian worked in Bologna is almost the only feature of the Gratian legendary that Noonan did not seriously challenge,<sup>2</sup> and the development of Bologna as a center for the study of Roman and, somewhat later, canon law clearly seems to have benefited from the cluster

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<sup>2</sup> John T. Noonan, “Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law,” *Traditio* 35 (January 1979): 162.

effect so familiar in our age from the concentration of technology industries in California's Silicon Valley and Route 128 in Boston.

That the case statements were both quite stable from an early stage in the evolution of the text of the *Decretum* (only 13 words were added, to C.19 d.init., in the second recension) and that they were written by an author whose words appear in none of the later *dicta* argues—strongly, I think—that the textual development of the *Decretum* started early, perhaps in the mid-1120s, and that the case statements were not written after the fact to scaffold more-or-less finished treatments of the cases.

The *Marturi placitum* (1076) is evidence that the Roman law strand of the legal revolution had a lengthy prehistory—the long tail of a pattern of exponential growth in which for an extended period the number of people involved was quite small—before it broke the surface into historical visibility thirty years later in the first decade of the twelfth century. For canon law, the results of the collective efforts of the circle we associate with the name of Gratian emerge into our field of view only after 1140. If the development of canon law studies followed the same pattern of long-tail exponential growth that the study of Roman law did, it would not be unreasonable to posit that the circle around Gratian had been at work in some form or another for more than a decade by 1140. (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.)

The textual stability and unique authorship of the case statements, as well as the inferred analogy between the early pattern of growth of the study of both Roman law and canon law, suggest then that Gratian's project was in progress by the mid-1120s. If that tentative dating is correct, it seems plausible to connect the beginnings of Gratian's project with new understandings of the church as an independent political and juridical community in the aftermath of the Concordat of Worms (1122) and the First Lateran Council (1123), with the circle around Gratian systematically working through the implications of an epochal event for both the universal church and the church in its local and particular institutional context.

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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 mid-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 to call it "the earliest course on canon law" is to anachronistically read as an inevitability the later evolution of the circle into a school, then a faculty, then finally a university, back into its earliest stage. 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 mind. In particular, I do not believe that case statements 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 work of the study group. Rather, I think that Gratian developed them alongside the earliest group readings.

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. Gratian 0 appears to be the author of the 3,592 words of the first-recension case statements or *themata* in the literal sense of having formulated their exact wording. The case statements were Gratian 0's only direct contribution to the text of the *Decretum*, and his authorial signature appears nowhere else in the corpus of *dicta*. Unlike Winroth's Gratian 1 and Gratian 2, Gratian 0



is clearly one person. The facts 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 wording during the stages of the development of the *Decretum* into which we have any visibility, all support, in my opinion, arguments that the development of the text likely started in the mid-1120s and that the collection of *dicta* as a whole grew to its classical form over several decades.

Moving beyond the exact wording of the first-recension case statements, the second, and probably more significant, contribution made by the figure later identified as Gratian to the development of the *Decretum* was as the leader of the study group. It was Gratian's method of using hypothetical cases as a framework for applying the hermeneutical principles proposed in Ivo's *Prologue* for reconciling the contradictions presented by the canons that came to be memorialized in the first-recension *dicta*. This is not to say that his methods, arguments, and solutions were not worked out in the context of the study group, but they were worked out under his guidance and in accordance with his program. 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* which Gratian 0 still personally guided. I think Winroth is right that the person called Gratian was not a contributor to the second recension.