

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 most important take-away from Chapter 1 on the legal revolution of the twelfth century, the background from which the *Decretum* emerges, is that it is 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*. 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 delay. The Marturi placitum (1076) is evidence that the Roman law strand of the legal revolution, at least, 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 come into our field of view only after 1140, at which point it is not unreasonable to believe that they have 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. When 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.

As to the dicta, I think you adjust your treatment to distinguish between individual dicta and the collection as a whole. What your work shows is that the dicta were not a work of literature written by a single author.

Right, although all of the post-Noonan scholarship has taken for granted that either one or two authors wrote the dicta. When I started working on this project in 2013, I fully expected stylometric results for the dicta consistent with either Ken's one-author hypothesis or Anders's two-author hypothesis. I was mostly interested in shutting down what I saw as a "tastes great!" vs. "less filling!" debate that was being conducted on an insufficient evidentiary basis. The actual results, once I convinced myself that they weren't spurious, took the project in a somewhat different direction.

What we have is a collection of works and what we need is an idea of how that collection was made. The search for the Gratian behind the dicta is a fool's errand.

I agree, but as I said above, most of the post-Noonan scholarship on the authorship of the Decretum has been engaged in precisely that fool's errand.

The historical Gratian may have created a collection of canons used in the earliest course on canon law and may have written a few of the comments that are now part of the collection of dicta ...

True, but I think we have to be very careful about precisely what we mean when we say that Gratian “created a collection of canons” and that the collection was “used in the earliest course on canon law.”

I think it’s safe to say that the historical Gratian was, when he started 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 it’s also important to note that one of the things Gratian brings to the project from the outset is a fundamentally conservative and optimistic disposition: his is the antithesis of Peter Abelard’s bad-boy project of subverting and even dissolving the whole notion of authority by showing that the authorities are in actual, not just apparent, disagreement. (With respect to the optimistic outlook that he brought to his engagement with the authorities, I think depictions of Gratian smiling in Paradiso 10.103 and in that 18th century engraving Anders has popularized all over the internet do actually capture something important about him.)

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 think it's 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 raw material, but he was not yet in possession of a fully-developed method for solving problems presented by the canons that he could systematically impart to students. He does not at this stage know so much more than the other participants that we can unambiguously call him magister and them discipuli.

I always emphasize to my students that authorship on any significant scale in pre-modern times requires wrapping an elaborate and expensive infrastructure around the figure of the author (the examples I give are Cicero, Origen, and Augustine). It's a hugely labor-intensive activity, and the labor is either unfree (Cicero), paid for by a wealthy patron (Origen), or volunteer (Augustine, in the form of the quasi-monastic members of his episcopal household). It's not Hemingway with his typewriter. One of the most important things the formation of the study-group does for Gratian is provide him with a pool of volunteer labor that makes it possible to put on parchment the collection of canons he thinks raise the really interesting issues and his comments on them. Before the formation of the study group, I doubt that the collection of canons and

comments had an existence outside of Gratian's head. I'll get into what I think is in it for the volunteer contributors, and why it matters, below (short answer: a competitive advantage in the arms-race for ecclesiastical benefices).

... but the collection of dicta as a whole grew to its classical form over several decades.

True. My thinking on this issue is heavily influenced by Rodney Stark's *The Rise of Christianity*, in that I think that the growth of study of canon law as a systematic activity was exponential. Like all processes of long-tail exponential growth, for a very long time, the number of people actively involved is quite small. The results of their collective efforts only come into our field of view after 1140, at which point they've been at it for 20 years. There's something in this conclusion to make both Ken and Anders happy: Ken has consistently argued for a long period of textual development for the *Decretum*, while Anders has argued that Roman and canon law studies were nowhere near as fully developed by the end of the 1130s as previously thought (the long tail in action). Here, I think they're both right.

Some of it could have come from teachers other than the original one—presumably Gratian—and some of it from students summarizing or capitulating what their teacher said in class.

Yes, although for the reasons that I mentioned above, I'm a little uncomfortable with using the language of teacher and student to describe the relationship between Gratian and the contributors at the very earliest stages (1120s) of the project. I think by the mid-1130s, we can think of the ongoing activity around Gratian as having evolved from being a reading or study group (Gratian-Kreis?) into something more like a course or even a loose proto-faculty. Gratian would not have been the only teacher, some of the earliest contributors (those still hanging around Bologna awaiting a suitable benefice) would have to have had students of their own by that point.

I think your work leads us to a new model of how the classical form of the *Decretum* came to be. It started with a collection of canons organized into topical segments. It then grew both by having canons and topics added to the corpus and by accumulating commentary (*dicta*). The further questions are: When did the process start?

The 1120s.

What role did the person later identified as Gratian play in the evolution of the text?

The person later identified as Gratian performed two distinct roles in the evolution of the text of the first recension.

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 elsewhere in my dissertation as Gratian 0, as opposed to Anders's Gratian 1 and Gratian 2. Unlike Gratian 1 and Gratian 2, Gratian 0 is clearly one person. 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). I don't think, however, that they predated the formation of the study group. Rather, I think that Gratian developed them alongside the earliest group readings.

Why didn't Gratian make any further direct contributions to the text? I suspect, although I am absolutely not going to say this in the dissertation, that it was because his written Latin wasn't as good as that of other members of the study group. I ran into this the first time I tried to translate C.3 d.init. (while eating a hot dog at the Costco in Washington DC), and got confused because Gratian 0 used the reflexive *se* in a context where a reflexive made no sense. I was puzzled, and it certainly did not occur to me that Master Gratian had made a mistake! But soon thereafter, I came across a confirmation that this was in fact a mistake in a ZRG-KA paper by John Noël Dillon. In my most recent conversation with Anders, he pointed out another similar instance of Gratian 0 mishandling a reflexive, *sibi*, in C.29 d.init. I think it's natural to assume that Gratian was older than the other members of the study group: teachers are, after all,

usually older than their students. Stipulating to Anders's argument that the Siena necrology indicates that "our" Gratian died on 10 August 1144 as bishop of Chiusi, and guessing that he was probably around age 60 at the time of his death, means that Gratian would have received the early Latin grammar-intensive portions of his education before 1100. That may not have been enough to keep up with his students as the standards of Latin composition rose as the twelfth century advanced. [As an aside, I think the anomalous Latin was what most convinced Anders that I was onto something after I told him that the case statements were not written by the same author(s) who wrote the first-recension dicta. He was non-committal the first time I presented my results to him in 2013 or 2014, but at the Stephan Kuttner Institute event at Yale in 2015 he told me he was convinced because "ever since you pointed that out to me, I've noticed that his Latin is just not that good."]

The person later identified as Gratian does seem, however, to have been the thinker whose methods, arguments, and solutions came to be memorialized in the first-recension dicta. This was the second, and probably more important, role that Gratian played in the evolution of the text of the first recension. That's not to say that his methods, arguments, and solutions weren't worked out in the context of the study group, but member of the group clearly accepted Gratian's harmonization of 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.

How long did that person called Gratian continue to contribute to the work?

Gratian's only direct contribution to the development of the text of the Decretum was as the writer of the 3,592 words of the first-recension case statements. (This is the author labelled Gratian 0 in my stylometric analysis, whom I take to be the person we know as Gratian.)

Gratian's extended contribution to the development of the text of the Decretum was as the leader of the study group, the thinker whose solutions to problems presented by the canons are reflected in the first-recension dicta. Although the words are demonstrably not his, the fact that his name came to be attached to the text strongly suggests that the arguments are 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..

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 proper university course, or even an informally connected cluster of courses (proto-faculty), the as yet

non-beneficed among the earlier contributors having attracted students of their own by this stage. In fact, I think we can safely (if circularly) define the first-recension as that stage in the textual development of the *Decretum* in which Gratian was personally involved. I think Anders was right that the person called Gratian was not a contributor to the second recension.

Now, that's something of a non-answer, since it doesn't put a date to the end of Gratian's active involvement in the evolution of the text. He could have remained involved until he got a benefice (possibly the bishopric of Chiusi, c.1143), something he seems to have waited rather longer for than many of the other early contributors to the project. But the textual evolution of the first recension seems to have been more or less complete by the mid-1130s, and (if we believe Noonan and Grebner), Gratian was still acting as a legal consultant into the early 1140s. That leaves a gap of a half-decade or so (1136-1143?) when Gratian could have been, but doesn't seem to actually have been involved with the further evolution of the text. I speculate that after the mid-1130s, deficiencies in Gratian's knowledge of Roman law (at least relative to other younger member of the loose proto-faculty) limited his further contributions in the same way that relative deficiencies in his Latin skills limited his contributions as unmediated author at earlier stages of the project.

Why are 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. Stark suggests that the reason Christianity experienced exponential growth in its earliest stages was that adherence conferred significant real-world benefits. I would suggest that a similar dynamic is at work here. Involvement in Gratian's project would have to have conferred significant real-world benefits for the contributors to justify the uncompensated labor they put in, and to explain the exponential growth pattern. The contributors were not interested in teaching as a career. They were looking for competitive advantage in the race for ecclesiastical benefices. When preferment came their way, their involvement in the project ended. But the fact that they had been successful attracted others to take their place.

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's now a quite substantial community is much slower, but there have been so many intervening "generations" that any information about the history of the project that didn't make it into the text of the Decretum was lost, including (for Paucapalea) even the name of Gratian.

What does that say about the teachers and teaching of canon law between the early 1120s and the 1150s?

In the 1120s and 1130s, the distinction between teacher and student was a lot less clear than it became a few decades later. Gratian is the leader of the study group, and the figure to whom the group defers, because he's the one who's done by far, one suspects, the most reading in the sources of canon law. But having read widely in the canons is not the same thing as having fully worked out a jurisprudential system, and there is a lot that Gratian doesn't know yet (like whether and how to incorporate Roman law into the system). So in some sense, they're all figuring it out together. We should not think of the Gratian of the 1120s and 1130s as the kind of guild-certified master, able to "explain it all for you," that we would expect to meet from the 1150s or 1160s on.

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 extreme reconfiguration of the text:

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."¹

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 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 did not even know 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.

This, in turn, is an argument in favor of the case statements having been one of the first parts of the *Decretum* reduced to a stable written form. The logical alternative, that case statements were written after the fact, would have to have taken place late enough in the development of the text that someone would have noticed.

¹ 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.