# Chapter 2

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The second order of business is to discuss Winroth's findings and explain
that you will concentrate on what he proposed was the first recension. I
think the explanation for this focus is that the discovery of the first
recension opens up questions about how the second recension developed.
The conjecture that the first recension had one author—as W surmises—
and that the second might have had several is natural. You want to
explore the question of whether the first Gratian was in fact one person.
Having done that, one could then move on to study the nature of W's
Gratian 2.

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*. Taking a bottom-up

approach, we will first turn to the presentation or small-grain structure.

It is necessary to be aware of the fact that when we discuss canons in the specific

context of Gratian's *Decretum*, we are using a subtly different definition of the term than
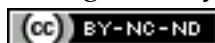
we used when discussing the textual building blocks of the canonical tradition. The organization of the Decretum is very regular (so structurally regular, in fact, that an electronic version of the text can be cleanly taken apart using a recursive descent parser), and should be thought of as a sequence of hierarchically nested containers. The canon is the atomic container from which the immediately higher-order containers (distinctions and questions) in the Decretum are organized. [We will unpack the canon container into rubric, inscription, one or more texts, and *dictum post*.]

A canon is usually, 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

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[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.**

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. Finally, there are the *dicta* (literally, "things having been 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."[2]

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[2] Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000), 187.

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 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.[3] (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.)

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[3] "Quidam habens filium …" C.1, d.init., edF. 1.357.

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 attached to the third question of case 33. The third part of the *Decretum* is a treatise on consecration (*tractatus de consecratione*).[4]

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-

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[4] Winroth, 5.

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

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.[5]

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 Brixiensis (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.

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[5] The idea that the *Correctores* were trying to reproduce the text of the *Decretum* as they though 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 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".)

General Notes

There is a convention in scholarly writing where the researcher presents their results, but carefully removes the scaffolding and effaces the process by which those results were actually arrived at. [My intention is to show rather than hide the process by which I arrived at the results that I am presenting.] I did not start out my dissertation project thinking of the authorship of the case statements or *themata* introducing each of the 36 *causae* that make up Part II of the *Decretum* as a research problem. I assumed that, by definition, the author of the case statements was identical with the author of at least the first-recension *dicta*. [Tie this in with Winroth's two Gratians chapter: to the extent that there's some one person we can point to as mapping to our idea of Gratian, it's the author of the first-recension dicta.]

Notes from 10 August 2017 meeting with Stan Chodorow:

- 1120: "Holy shit, we're independent!"
- Formation: pay attention to *what's* being formed – systematic canonical jurisprudence or, less precisely, canon law.

- Transition: Where do Gratian and the *Decretum* lie along the (ground track or trajectory of) transition of the church from Leo IX (†1054) to Innocent III (†1216)?

Notes 15 September 2017

"Considering that the first [recension] may be a record of the first 'university course' in canon law …"[6]

Yes, but not in the way Anders is envisioning here. Rather, the first university course in canon law consisted of the Master reading from a pile of books, the formal sources, guided by his original handwritten list of hypothetical case statements (*themata*). The first recension represents a reconstruction of that course by some of the original Master's students.

"Gratian 1 and the Lombard were in effect forced to create their own authoritative texts (their authority deriving from the fact that they consisted mainly of quotations) to be able to effectively teach their subjects."[7]

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[6] Winroth, 194.

Bibliography

Eichbauer, Melodie Harris. "St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian's Decretum." *Bulletin of Medieval Canon Law* 27 (2007): 105–39.

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[7] Winroth, 191.