

## Chapter 2

### *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,<sup>1</sup> it is best to make our first approach (*accessus*) to the author through his text.<sup>2</sup> 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.

In 1996, Anders Winroth discovered that four surviving twelfth-century manuscripts—Florence, Biblioteca Nazionale Centrale, Conv. Soppr. A. 1.402 (Fd); Barcelona, Arxiu de

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<sup>1</sup> John T. Noonan, "Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law," *Traditio* 35 (January 1979): 145–72.

<sup>2</sup> "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.

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*.<sup>3</sup> 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*.<sup>4</sup> In 2011, Atria Larson discovered that München, Bayerische Staatsbibliothek, lat. 22272

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<sup>3</sup> 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*, Rudolf Weigand, *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. On the advice of Weigand, Winroth supplied the *siglum* P by which the manuscript is now commonly identified: “it was Rudolf Weigand who came up with it. I had asked him what siglum this ms should have, since I thought all of the two-letter ones that started with a P had been taken. He said to use only P, ‘because it is such an important manuscript’.” (Anders Winroth email to Paul Evans, October 1, 2018) (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.)

<sup>4</sup> Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge: Cambridge University Press, 2000), 32.

(Mw) contains an abbreviation of the first recension of the *Decretum*.<sup>5</sup> The four first-recension manuscripts Aa, Bc, Fd, and P were previously thought to have been abbreviations and are by one imperfect but frequently-invoked metric about half the length of the vulgate *Decretum*, 1,860 as opposed to 3,945 canons.<sup>6</sup>

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."<sup>7</sup> (In

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<sup>5</sup> Atria A. Larson, "An Abbreviatio of the First Recension of Gratian's *Decretum* in Munich?" *Bulletin of Medieval Canon Law* 29 (2011): 51–118.

<sup>6</sup> "The second recension contains 3,945 canons (including the paleae) in the editions. The first recension contains only 1,860 canons (47 percent)." Winroth, *The Making of Gratian's Decretum*, 122. The division of distinctions and questions into canons is a matter of editorial opinion and therefore unavoidably conventional. The generally-cited number of 3,945 comes from Friedberg's introduction (edF 1.xii). Furthermore, many canons include more than one canon text, and the conventional number obfuscates the distinction between the canon defined as a container or package and the canon text or texts included within it. The Reuter and Silagi e-text of the Friedberg edition has 3,848 canons (identified by the OCP <4 N> tag, where N is the canon number) containing 4,394 distinct canon texts (identified by the OCP <T T> tag). (Note: `egrep "<T T>.*<T T>" edF.txt` to find the three lines where the canon text tag occurs twice on the same line.)

<sup>7</sup> "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

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 argues that two different authors, Gratian 1 and Gratian 2, compiled the two recensions.<sup>8</sup>

Several decades before Winroth discovered the first recension of the *Decretum* and argued that the Gratian of the first recension was not 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

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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, 130.

<sup>8</sup> "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.

fact, the Gratian of Part III, the compiler of the treatise on the sacraments *de Consecratione*, is very unlikely to have been the same as the Gratian of Parts I and II since it was such a late addition to the *Decretum*.) Furthermore, nothing logically excludes the possibility that Winroth and Noonan are both right and that the Gratian of the first-recension of Part I is not necessarily the same as the Gratian of the second-recension of Part I, and so on.<sup>9</sup>

The *Decretum* says nothing about its own authorship. Twelfth-century readers, however, implicitly endorsed the single-author theory by subsuming the entire text of the vulgate *Decretum* under the eponym “Gratian”. The *Decretum*, however, like many other scholastic texts, contains far more quoted than original material. Medieval opinion was therefore divided not on the question of whether the *Decretum* had a single author, but rather on the question of whether the creator of the *Decretum* and creators of similar texts ought properly to be considered authors at all. Stephen of Tournai in the preface to his *Summa* on the *Decretum* insists that Gratian is its compiler, not its author:

I should properly say that Gratian is the compiler of this work, not the author, for he brought together in this volume—that is, he arranged—rulings enacted by the holy Fathers. He was not their author or framer, unless perchance someone wishes to say that he is thus the author since he

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<sup>9</sup> Excepting only that there is no first-recension version of Part III.

offered on his own in his dicta many things for clarifying and explicating the opinions of the holy [Fathers].<sup>10</sup>

Bonaventure (+1274) indirectly advocates for the opposite opinion in the preface to his commentary on the *Sentences* of Peter Lombard. He asks “what is the efficient cause or author of this book?” and answers that “Peter Lombard, bishop of Paris, is the author of this book.” Bonaventure then notes that “the mode of authorship is four-fold”, and distinguishes the roles of *scriptor*, *compiler*, *commentator*, and *auctor*, on the basis of the use they make of “the words of other men” (*aliena*) and their own (*sua*):

Someone else writes the words of other men and also of his own, but with his own forming the principal part and those of others being annexed merely by way of confirmation, and such a person should be called an author [*auctor*].<sup>11</sup>

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<sup>10</sup> 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), 199–200. Somerville is translating from Herbert Kalb, *Studien zur Summa Stephans von Tournai: ein Beitrag zur kanonistischen Wissenschaftsgeschichte des späten 12. Jahrhunderts*, *Forschungen zur Rechts- und Kulturgeschichte*, Bd. 12 (Innsbruck: Universitätsverlag Wagner, 1983), 113–20. “Compositorem huius operis recte dixerim Gratianum, non auctorem. Capitula namque a sanctis patribus edita in hoc volumine composuit, i.e. ordinavit. Non eorum auctor vel conditor fuit, nisi forte quis eum auctorem idcirco dicere velit, quoniam multa ex parte sua sanctorum sententias distinguendo et exponendo in paragraphis suis ponit.” Johann Friedrich Schulte, ed., *Die summa über das Decretum Gratiani* (Aalen: Scientia Verlag, 1965), 5.

<sup>11</sup> Andrew Kraebel, “Modes of Authorship and the Making of Medieval English Literature,” in *The Cambridge Handbook of Literary Authorship*, ed. Ingo Berensmeyer, Gert

He therefore concludes that:

Such was the Master [Peter Lombard], who put forward [*ponit*] his own opinions and confirmed [them] from the opinions of the Fathers. Whence he truly ought to be called the author of this book.<sup>12</sup>

Although Bonaventure's question is stated in the fashionable terms of thirteenth-century Aristotelian scholastic jargon about causation, his answer that Peter Lombard can be considered the author of the *Sentences* can be transferred directly to Gratian and the *Decretum*: by the logic of Bonaventure's argument, Gratian ought to be considered the author of the *Decretum*.

Gratian was working within a well-established genre of academic writing in medieval Latin literature, the canonical collection.<sup>13</sup> The *Decretum* followed in the footsteps of any

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Buelens, and Marysa Demoor (Cambridge, United Kingdom ; Cambridge University Press, 2019), 98. Aliquis scribit et sua et aliena, sed sua tanquam principalia, aliena tanquam annexa ad confirmationem; et talis debet dici *auctor*. Bonaventure, *Commentaria in Quatuor Libros Sententiarum Magistri Petri Lombardi*, vol. 1, Doctoris Seraphici S. Bonaventurae S. R. E. Episcopi Cardinalis Opera Omnia (Ad Claras Aquas (Quaracchi): Ex Typographia Collegii S. Bonaventurae, 1882), 14–15.

<sup>12</sup> (trans. PLE) Talis fuit Magister, qui sententias suas ponit et Patrum sententiis confirmat. Unde vere debet dici auctor huius libri. Bonaventure, *Commentaria in Quatuor Libros Sententiarum Magistri Petri Lombardi*, 1:14–15.

<sup>13</sup> 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–

number of systematic canonical collections that had been in circulation since the beginning of the eleventh century in which the material was organized by topic.<sup>14</sup>

Twelfth-century readers of a canonical collection did not necessarily expect its compiler to have written all (or even any) of the words they read. They expected instead to find the distinctive contribution of the compiler in the selection, editing, and arrangement of texts 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 seventy percent of the text of the vulgate *Decretum* comes from the tradition of canonical texts accumulated over the first millennium of the church's history.<sup>15</sup> An extremely important part of the authorial activity of Gratian, then, did

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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."

<sup>14</sup> In earlier collections such as the *Collectio Dionysiana* (ca.500) the material was organized chronologically.

<sup>15</sup> 302,384 words or 71.2% of the vulgate *Decretum*.



consist 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.<sup>16</sup> Insofar as he did not provide a preface for the *Decretum*, Gratian failed to meet this particular expectation of the genre, something that did not escape the notice of contemporaries like the author of the *Summa Parisiensis*.<sup>17</sup>

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<sup>16</sup> 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.

<sup>17</sup> “*Magister Gratianus, in hoc opere antonomasice dictus Magister, loco proæmii talem suo præmisit libro titulum: Concordia discordantium canonum, in quo materiam et intentionem breviter exponit.*” Terence P. McLaughlin, ed., *The Summa Parisiensis on the Decretum Gratiani* (Toronto: Pontifical Institute of Mediaeval Studies, 1952), 1. “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 precisely sets forth subject matter and intention.” Somerville and Brasington, *Prefaces to Canon Law Books in Latin Christianity*, 201. As noted above (Chapter 1), the title comes from a gloss, not from Gratian.

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 twenty percent of the vulgate *Decretum*.<sup>18</sup> 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, specifically Alger of Liège's *De misericordia et iustitia*. 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 can 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, especially in *de Penitentia*.) But, as 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

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<sup>18</sup> 81,008 words or 19.1%.

rubrics.<sup>19</sup> 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 that provides a rule or norm for Christian life, either for individual Christian believers in their clerical or lay station or for the Church corporately at whatever level—local church or religious foundation, diocese, province, or the universal Church. The Greek word *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*

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<sup>19</sup> “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.

*grece, latine regula nuncupatur. Regula dicta est eo quod recte ducit, nec aliquando aliorum 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.)"<sup>20</sup> 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.

Gratian defines canons as either *decreta Pontificum* ("decrees of pontiffs") or *statuta conciliorum* ("statutes of councils").<sup>21</sup> 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

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<sup>20</sup> D.3 c.1-2. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017, p.5, l.13-18.

<sup>21</sup> "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.

response to questions put to them, usually by other bishops.<sup>22</sup> 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).<sup>23</sup> 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. For modern readers, the most familiar example of an imperial rescript, the genre after which the papal decretal letter was modeled, is the early second-century (ca. 112) response of the emperor Trajan (†117) to a letter from Pliny the Younger inquiring as to how Pliny, then Roman provincial governor of Bithynia and Pontus, ought to proceed against those accused of being Christians.

Another extremely important source for the *Decretum* is canons from the ecumenical councils and from historically important provincial synods: *Conciliorum vero alia sunt*

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<sup>22</sup> 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.

<sup>23</sup> 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](#)

*universalia, alia provincialia.* (“Some councils are universal, others provincial.”)<sup>24</sup>

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 synodo legitur fuisse.*” (It is read that St. Augustine, bishop of Hippo, also attended this synod.)<sup>25</sup> By the time the *Decretum* was compiled, the 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.

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

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<sup>24</sup> D.3 d.p.c.2. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017.

<sup>25</sup> D.16 c.11. *Decretum Gratiani*, First Recension, edition in progress. Anders Winroth, 3/21/2017. p.32, l.7-9.

patristic figures such as Ambrose (†397), Jerome (†419 or 420), Augustine (†430), and Gregory (†604), whom later generations considered doctors of the church.<sup>26</sup> 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 Catholic Church."<sup>27</sup> (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.)<sup>28</sup>

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<sup>26</sup> Ambrose, Jerome, Augustine, and Gregory the Great 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.

<sup>27</sup> First recension D.15 c.3, §1-§16 in Friedberg, §2-§17 in Thompson and Gordley.

<sup>28</sup> "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. "In the case of Gratian's chapters from Gregory I's *Moralia in Job*, the unusually precise citations in Gratian's inscriptions lead to the conclusion that he used this work directly (as Munier already argued)." 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

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.

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 has suggested that Gratian relied primarily on just five formal sources in writing the *Decretum*: Anselm of Lucca's *Collectio canonum*, the pseudo-Ivonian *Collectio*

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Canon Law (Washington, D.C: Catholic University of America Press, 2008), 35. "There are six chapters taken from the *Moralia*, and Gratian noted the book and chapter of the text in his inscription: D.13 c.2; D.45 c.9 and c.14; D.46 c.1 and c.2; D.47 c.3. Each text is also in the first recension." Landau, "Gratian and the *Decretum Gratiani*," 35n22.



*Tripartita*, Ivo of Chartes's *Panormia*, Gregory of San Grisogono's *Polycarpus*, and an anonymous *Collection in Three Books* (3L).<sup>29</sup> This hypothesis is not universally accepted: Pennington, for example, believes that Gratian may have also relied on one or more now-lost Central Italian collections similar to the *Collection in Nine Books* (9L).<sup>30</sup>

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

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<sup>29</sup> See Peter Landau, "Gratians Arbeitsplan," in *Iuri Canonico Promovendo: Festschrift Für Heribert Schmitz Zum 65. Geburtstag*, ed. Winfried Aymans and Karl-Theodor Geringer (Regensburg: F. Pustet, 1994), 691–707; and Winroth, *The Making of Gratian's Decretum*, 15–17.

<sup>30</sup> For the *Collectio IX librorum* of the Ms Vat. lat. 1349 (9L), see Linda Fowler-Magerl, *Clavis Canonum: Selected Canon Law Collections Before 1140: Access with Data Processing*, Monumenta Germaniae Historica. Hilfsmittel 21 (Hannover: Hahnsche, 2005), 79–82.

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 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). The compilers of these collections are usually referred to as “forgers,” a convention I will observe in the following discussion, but 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 meet the standard they set for authoritativeness.

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.<sup>31</sup> The forgers

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<sup>31</sup> 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).

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 they survived to become important sources for canonical collectors in the eleventh century.<sup>32</sup> Many of these forged canons eventually found their way into Gratian's *Decretum*.

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<sup>32</sup> 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). Recent efforts to replace the Hinschius edition include [Zum Inhalt von "Projekt Pseudoisidor"](#) by Karl-Georg Schon; and [Pseudo-Isidore | An edition-in-progress of the False Decretals](#) by Eric Knibbs. The work of Klaus Zechiel-Eckes (†2010) forms the basis for much of our current understanding of the place and date at which the pseudo-Isidorian collection was compiled (Corbie in the mid-830s), and therefore of the political motivations of the compilers; see 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. Horst Fuhrmann, "The Pseudo-Isidorian Forgeries," in *Papal Letters in the Early Middle Ages*, ed. Detlev Jasper and Horst Fuhrmann, History of Medieval Canon Law (Washington, D.C.: Catholic University of America Press, 2001), 137–95 provides a good general introduction to the forged decretals; see also [Introduction to Pseudo-Isidore - Decretum Gratiani](#) by Eric Knibbs. See Horst Fuhrmann, *Einfluß und Verbreitung der pseudoisidorischen Fälschungen : von*

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). This interest in the problem of church-state relations was instrumental: the ultimate concern of the eleventh-century reformers, as it had been for their eighth- and ninth-century Carolingian predecessors, was for the reform and renewal of monastic and clerical life. Unlike the Carolingians, however, who 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), compiler of the *Collectio canonum*; Gregory, cardinal of San Grisogono (†1113), compiler of the *Polycarpus*; and Ivo, bishop of Chartres (†1115), compiler of the

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*ihrem Auftauchen bis in d. neuere Zeit*, Schriften der Monumenta Germaniae historica, Deutsches Institut für Erforschung des Mittelalters ; Bd. 24 (Stuttgart: Hiersemann, 1972) on the influence of the forged decretals.

*Panormia*. Burchard of Worms (†1025) was a forerunner of this group. Although he died before the reform papacy or the investiture controversy, his *Decretum* has much in common with collections compiled during that period, insofar as it is systematic 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. For example, 252 of the 315 chapters of the anonymous *Collection in 74 Titles* (ca. 1050) are drawn from the Pseudo-Isidorian *Decretals*.<sup>33</sup>

The program of the Gregorian reformers collided with two practical realities of eleventh-century life. Abbots 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

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<sup>33</sup> "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.

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 his fiefs.

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. Gratian was thus 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 extremely strong ideological orientations.

## **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 Oxford Concordance Program (OCP) e-text of the Friedberg edition can be taken apart using a recursive descent parser<sup>34</sup> and should be thought of as a sequence of hierarchically nested containers. Taking a bottom-up approach, we will first consider the presentation or small-grain structure, and start with chapters (*capitula*), atomic containers out of which the higher-order containers in the *Decretum*—parts, distinctions, cases, and questions—are constructed.

Chapters in Parts I and II of the *Decretum* typically consist of an inscription, a rubric, a canon, and a *dictum post canonem*, literally meaning “something said after the canon”

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<sup>34</sup> See Appendix 2 for the Python 3 code listing for my implementation of the recursive-descent parser. Thanks to Patricio Simari of the Electrical Engineering and Computer Science Department at The Catholic University of America, who suggested this approach to the problem. In terminology borrowed from the field of informatics, the parsed *Decretum* can be thought of as an ordered tree, with parts, distinctions, cases, and questions as interior nodes. A chapter, properly conceptualized as a node encapsulating rubrics, inscriptions, canons, and *dicta post canones*, is also an internal node. (English-language scholarship on Gratian's *Decretum* typically uses the term *canon* to refer indifferently to both the container (chapter) and to the text it contains (canon). The following discussion uses the term *chapter* to refer to the container in order to reemphasize this important distinction.) Any *dictum* (*ante* or *post canonem*, or *initiale*) is a terminal node. So are rubrics, inscriptions, and canons. A case statement (*dictum initiale*) is always the first terminal node of a case. A *dictum ante canonem* is always the first terminal node of a distinction or question. The anomalous C.16 q.2 d.a.c.8 is actually the *dictum ante canonem* introducing a vestigial fifth question positioned between C.16 q.2 and C.16 q.3 (see Friedberg 1.787). The traditional notation misleadingly implies that d.a.c.1 is a leaf node of c.1. In fact, d.a.c.1 and c.1 are both child nodes at the same nesting level under one parent distinction or question node. A *dictum post canonem* is an optional, and usually final, terminal node of a canon.

and usually abbreviated d.p.c. Some chapters contain multiple canons, each of which may be accompanied by its own inscription. There are almost no *dicta post canones* in Part III, which is in this respect much more similar to the formal source collections Gratian relied on than to the rest of the *Decretum*.<sup>35</sup> The discussion that follows focuses on inscriptions, rubrics, and *dicta post canones*; canons have been discussed in the preceding section on the collection and selection, and nothing further needs to be added here.

## Inscriptions

Most canons have an inscription, which identifies the ultimate source of authority for that canon, usually a papal decretal, a canon from an ecumenical council or an important provincial synod, or a patristic text.<sup>36</sup> Because Gratian collected his texts

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<sup>35</sup> There are 11 *dicta post* (<T P>) tags in Part III (*de Consecratione*) in the Reuter and Silagi e-text of the Friedberg edition. Nine are really inscriptions, leaving two short *dicta post*, *de Cons.* D.1 d.p.c.50 (54 words) and *de Cons.* D.4 d.p.c.20 (19 words). Reuter and Silagi's tagging decisions were in the vast majority of cases sound, and I made very few changes to them.

<sup>36</sup> The distinction between rubrics and *dicta* is blurry: "Gratian ... 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.



almost exclusively from formal sources, rather than material sources like the register of Pope Gregory I,<sup>37</sup> the inscription affixed to a canon was sometimes historically inaccurate, especially if the text in question was one derived from the Pseudo-Isidorian collections.

## Rubrics

Canons are often, though not always, introduced by a rubric. The name refers to the fact that rubrics were conventionally written in red (*ruber*) ink in manuscripts. A rubric is a very short summary of what the following canon is about. In many cases the rubric simply reads “*de eodem*”, which means “about the same thing” as the preceding canon. The 137 *de eodem* rubrics introducing first-recension canons turn out to be important clues into the development of the text of the *Decretum*.<sup>38</sup> Stephan Kuttner observed in

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<sup>37</sup> “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 *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)] Landau, “Gratian and the Decretum Gratiani,” 34.

<sup>38</sup> Winroth observed that there are 398 *de eodem* rubrics in the vulgate *Decretum*, see Anders Winroth, “Uncovering Gratian’s Original Decretum with the Help of Electronic Resources,” *Columbia Library Columns* 46, no. 1 (1997): 28; and Winroth, *The Making of Gratian’s Decretum*, 127. The precision of this frequently-cited number can be refined in ways that demonstrate the true power of the careful use of electronic resources for the study of this, or any, text. (In the following examples, edF.txt is the filename of the

1984 that “in the course its composition the material outgrew the original plan so that many untidy seams of the texture remain visible.”<sup>39</sup> Canons that are introduced by *de eodem* rubrics but that are clearly not “about the same thing” as the preceding canon in

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OCP-format Reuter and Silagi e-text of the Friedberg edition. The commands used in the examples should work on any macOS or Linux-based system.) Winroth’s figure of 398 simply represents the number of occurrences of the substring “de eodem” in the file: `grep -i "de eodem" edF.txt | wc -l` returns 398. Most, but not all, of the occurrences of the substring “de eodem” do, in fact, appear in the context of a rubric. In one case, *de Cons.* D.2 c.3, the inscription reads *Idem de eodem* (“the same person about the same thing”), and refining the search to count those occurrences that do **not** appear alongside the OCP rubric <T R> or inscription <T I> tags reveal that in 8 instances, the words *de eodem* are simply part of the text of a canon or *dictum*: `grep -i "de eodem" edF.txt | egrep -v "<T R>|<T I>" | wc -l` returns 8. Setting aside, then, those instances in which the words *de eodem* occur in canons, *dicta*, or inscriptions (and acknowledging that the criteria for distinguishing between inscriptions and rubrics can be blurry) leaves 389 rubrics containing the substring “de eodem”: `grep -i "de eodem" edF.txt | grep "<T R>" | wc -l` returns 389. Of those 389, there are 373 *De eodem* rubrics and 13 *Item de eodem* rubrics (12 of those 13 introduce second-recension canons in D.30 in the first part of the *Decretum*): `fgrep "De eodem." edF.txt | grep "<T R>" | wc -l` returns 373, and `fgrep "Item de eodem." edF.txt | grep "<T R>" | wc -l` returns 13. In the three remaining cases, words *de eodem* are part of a longer rubric: `grep -i "de eodem" edF.txt | grep "<T R>" | fgrep -v "De eodem." | fgrep -v "Item de eodem." returns the rubrics for D.23 c.32 (De eodem, et ut clerici comam non nutriant), C.22 q.5 c. 16 (De eodem, et ut a ieiunis iuramenta prestentur), and de Cons. D.1 c.17 (De eodem, et quod octo diebus dedicationum). Winroth’s larger point, however, had to do with the place of the de eodem rubrics in the “untidy seams” problem. For that purpose, only the 137 de eodem rubrics in the first recension of the Decretum are potentially relevant evidence. (This result [137] is potentially off by one, i.e., the total number of de eodem rubrics in the first and second recension rubric data sets is 388 instead of 389, with no way to tell whether the missing rubric is from the first or second recension.)`

<sup>39</sup> Stephan Kuttner, “Research on Gratian: Acta and Agenda,” in *Studies in the History of Medieval Canon Law*, Collected Studies CS325 (Aldershot, Hampshire, Great Britain : Brookfield, Vt., USA: Variorum ; Gower, 1990), 13.

the vulgate *Decretum* are notable instances of visibly “untidy seams”. One of Winroth’s strongest arguments that the Aa, Bc, Fd, and P manuscripts represent a first recension rather than an abbreviation of the *Decretum* is that otherwise problematic *de eodem* rubrics make sense in the sequential order in which canons appear in those manuscripts (e.g., the *de eodem* rubric for C.24 q.3 c.5 refers back to C.24 q.3 c.2, which it consecutively follows in the first recension).<sup>40</sup>

Eichbauer and Pennington believe that Gratian wrote the rubrics in the *Decretum* rather than reusing those he found in formal source collections.<sup>41</sup> The rubrics are far too short to be of value for the purpose of authorship attribution. On the other hand, the fact that they are believed to have been written by Gratian, and therefore reflect his choice of wording, means that they could potentially be useful evidence in the search for new topics introduced between the first and second recensions.

### *Dicta post canones*

Chapters in the formal sources from which Gratian selected his material typically included an inscription, a rubric, and a canon. Gratian added a *dictum post canonem*

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<sup>40</sup> Winroth, *The Making of Gratian’s Decretum*, 15, 70.

<sup>41</sup> “Gratian rarely took his rubrics from earlier collections. Rather he created his own ...” Eichbauer, “St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian’s *Decretum*,” 107.

containing his own commentary on the preceding canon or series of canons, a feature he borrowed from Alger of Liège's theological treatise *De misericordia et iustitia* but without immediate precedent in the canonical literature.<sup>42</sup> The *dicta post canones* are statements that Gratian made on his own authority as a jurist, carry the thread of his argument, and do his interpretive work. The *dicta* are texts that Gratian (whether we think of him as one person or many) actually wrote, and are therefore subject to analysis for authorship attribution. "The *dicta* in Gratian's *Decretum* bring the reader closer to its author than any other part of the text."<sup>43</sup>

## Organization

We now turn our attention from the chapters, the lower-order containers that provide the small-grain organization or micro structure of the *Decretum* to the parts, distinctions,

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<sup>42</sup> Gratian is known to have used Alger as both a source, especially in C.1, and, to some extent, as a methodological model. Winroth, *The Making of Gratian's Decretum*, 17, 39, 144. Somewhat confusingly for Gratian scholars, Robert Kretzschmar's edition of *De misericordia et iustitia* uses regular typeface for Alger's *dicta* and italics for the canons, the opposite of the convention adopted by Friedberg and maintained by Winroth. See Robert Kretzschmar, *Alger von Lüttichs Traktat "De misericordia et iustitia": ein kanonistischer Konkordanzversuch aus der Zeit des Investiturstreits: Untersuchungen und Edition, Quellen und Forschungen zum Recht im Mittelalter*, Bd. 2 (Sigmaringen: J. Thorbecke, 1985).

<sup>43</sup> Winroth, *The Making of Gratian's Decretum*, 187.

cases and questions. These higher-order containers, constructed out of chapters, provide the large-grain organization or macro structure of the *Decretum*.

## Parts

The *Decretum* in the form that circulated after around 1150 (the Köln Dombibliothek manuscripts 127 and 128 are good early examples) has three parts. Contemporaries like Rufinus and Stephen of Tournai understood the three parts to treat respectively of ministries, business, and sacraments: “*primam ministeriis, secundam negotiis, tertiam ecclesiasticis deputat sacramentis.*”<sup>44</sup>

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<sup>44</sup> Rufinus and Stephen of Tournai describe the tripartite division in exactly the same words. **Rufinus:** “*librum suum in tribus partibus distinguit, quarum primam ministeriis, secundam negotiis, tertiam ecclesiasticis deputat sacramentis.*” Heinrich Singer, *Summa Decretorum* (Aalen : Paderborn: Scientia Verlag ; F. Schöningh, 1963), 5 (“[H]e 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.”) Somerville and Brasington, *Prefaces to Canon Law Books in Latin Christianity*, 192–93. **Stephen of Tournai:** “*Harum primam ministeriis, secundam negotiis, tertiam ecclesiasticis deputat sacramentis.*” Schulte, *Die summa über das Decretum Gratiani*, 6. (“The first of these parts is devoted to ecclesiastical ministries, the second to ecclesiastical problems, the third to ecclesiastical sacraments.”) Somerville and Brasington, *Prefaces to Canon Law Books in Latin Christianity*, 201. (Brasington translated the preface of Rufinus, Somerville that of Stephen of Tournai. Somerville and Brasington, *Prefaces to Canon Law Books in Latin Christianity*, vii. There is no indication as to why Somerville chose to translate *negotiis* as “problems” rather than “business”.)

Given the probable dates of the *summae* of Rufinus (1164) and Stephen of Tournai (1165/66), it is just possible that Stephen got the wording from the preface to the *Summa* of Rufinus. Kenneth Pennington, [Rufinus](#) and [Stephanus Tornacensis](#), *Bio-Bibliographical*

The first part was originally written as a collection of treatises (*tractatus*) but is divided into 101 distinctions in the vulgate *Decretum*. The division of Part I into distinctions is traditionally thought to have been made by Paucapalea (fl. 1140s) rather than by Gratian.<sup>45</sup> The division seems to have taken some time to reach its final form: Pennington has pointed out that there were 99-distinction versions of the first recension,<sup>46</sup> and Rufinus writing in the mid-1160s presumably about the second

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*Guide to Medieval and Early Modern Jurists*. Stephen, however, had been a student of Rufinus in Bologna, and it seems more likely that this is something he had heard Rufinus say in lecture. Kenneth Pennington, "Stephen of Tournai (Étienne de Tournai): (1128–1203)," in *Great Christian Jurists in French History*, ed. Olivier Descamps and Rafael Domingo, Law and Christianity (Cambridge: Cambridge University Press, 2019), 35--51.

<sup>45</sup> "In 1933 two scholars, Franz Gillmann and Adam Vetulani, concluded independently that Gratian himself did not introduce the division of the *Distinctiones* into the first part of the *Decretum*. They attributed the division to the members of the schools, suggesting that Paucapalea, the first decretist, may have made it." 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), 15. Adam Vetulani, *Sur Gratien et les Décrétales*, Collected studies ; CS308. (Aldershot, Hampshire: Variorum, 1990). "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)

<sup>46</sup> 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), 366.

recension describes Part I as “*toto tractatu in centum distinctionibus exacto* (having been completed in one hundred distinctions.)”<sup>47</sup>

Modern scholarship conventionally divides Part I into a treatise on laws (*tractatus de legibus*) corresponding to distinctions 1-20,<sup>48</sup> a treatise of those in holy orders (*tractatus ordinandorum*) corresponding to distinctions 21-80,<sup>49</sup> and an epilogue to the *tractatus ordinandorum* corresponding to distinctions 81-101.<sup>50</sup> The treatises seem to have started

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<sup>47</sup> Singer, *Summa Decretorum*, 5. Somerville and Brasington, *Prefaces to Canon Law Books in Latin Christianity*, 193.

<sup>48</sup> Distinctions 1-20 are conventionally referred to by modern scholars as the treatise on laws (*tractatus de legibus*). I cannot find an internal reference to it in the *Decretum* under that title.

<sup>49</sup> There are three internal references to the *tractatus ordinandorum* in the vulgate *Decretum*: C.1 q.7 d.p.c.6 “Item: ‘Priscis igitur, etc.’ Require supra in tractatu ordinandorum.” (first recension, Friedberg 1.430): reference to D.55 c.1 (first recension, Friedberg 1.215). C.3 q.1 d.p.c.7 “Unde supra in tractatu ordinandorum: ‘Si quis pecunia uel gratia humana, seu populari uel militari tumultu, etc.’” (second recension, Friedberg 1.507): reference to D.79 c.9 (first recension, Friedberg 1.278). *de Cons.* D.1 d.p.c.50 “Item Pelagius: ‘Dilectionis tuae rescripta.’ Require in tractatu ordinandorum.” (Friedberg 1.1303): reference to D.76 c.12 (first recension, Friedberg 1.271). Note that this reference occurs in one of only two substantive *dicta post* in *de Cons.*

There is one additional internal reference to this treatise under the title *tractatus de promotionibus clericorum*. C.16 q.1 d.p.c.20 “Gelasius tamen (sicut in tractatu de promotionibus clericorum inuenitur) in capitulo illo: ‘Monachus nouicius, etc.’ permittit illos ex dispensatione defensores fieri.” (first recension, Friedberg 1.766): reference to D.77 c.9 (first recension, Friedberg 1.274)

<sup>50</sup> Gratian refers at D.81 d.a.c.1 to the section starting at D.81 as an “epilogue”: “*Verum quia aliquantulum diffusius in his immorati sumus, precedentibus coherentia quedam sub*

out short and tightly focused and only later to have coalesced into the larger units: a first-recension *dictum* in Part II makes reference to a treatise of decretal letters (*tractatus decretalium epistolarum*) apparently corresponding to distinctions 19-20 specifically rather than to the *tractatus de legibus* generally.<sup>51</sup>

The second part consists of 36 cases, which are further subdivided into 168 questions.

Four of the questions, C.11 q.2, C.17 q.3, C.22 q.3, and C.29 q.1 are empty, meaning that

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*epilogo ad memoriam subiciamus.*" (Friedberg 1.281) The distinction between the *tractatus ordinandorum* and the epilogue however is not a strong one. There are two internal references to the epilogue that refer to it as if it were simply an undifferentiated part of the *tractatus ordinandorum*: C.9 q.3 c.15 (inscription) "ut supra in tractatu ordinandorum, ubi agitur de obedientia minorum erga maiores." (second recension, Friedberg 1.647): no canon incipit is provided, but this appears to be a reference to D.93 c.9 (rubric): "Maiores minores obedientiam exhibeant." (second recension, Friedberg 1.321). C.16 q.1 d.p.c.40 "Hoc idem datur intelligi ex uerbis B. Siluestri, qui obedientiam minorum erga maiores assignans ait: 'Abbas hostiario, monachus abbati sit subditus,' supra in tractatu ordinandorum." (second recension, Friedberg 1.773): this also appears to be a reference to D.93 c.5. (second recension, Friedberg 1.321). C.16 q.1 d.p.c.40 is a first-recension *dictum post* that was expanded in the second recension. The reference to the second-recension chapter D.93 c.5 is in the text added to the *dictum* in the second recension.

<sup>51</sup> C.1 q.1 d.p.c.96 "Unde etiam ab ecclesia Romana repudiatur, et a Deo fuisse percussus legitur in gestis Romanorum Pontificum hoc modo: 'Anastasius secundus natione Romanus, etc.' Require retro in tractatu decretalium epistolarum." (first recension, Friedberg 1.392) refers to D.19 c.9 (first recension, Friedberg 1.63). Use of the title "treatise of decretal letters" strongly suggests that this is to be read as a specific reference to a self-contained text corresponding to distinctions 19-20 rather than to the treatise on laws generally.



they contain no chapters.<sup>52</sup> C.33 q.3, encapsulates a treatise on penance (*de Penitentia*, abbreviated *de Pen.*) *De Penitentia* is structurally similar to Part I, and is divided into seven distinctions. Certain sequences of cases in Part II comprise thematic groups, notably simony (case 1), procedure (cases 2-6), monastic life (cases 16-20), heresy (cases 23-26), and marriage (cases 27-36).<sup>53</sup>

The third part of the *Decretum* is a treatise on sacraments (*de Consecratione*, abbreviated *de Cons.*) divided into five distinctions.<sup>54</sup> That *de Consecratione* is a very late addition to the *Decretum* is not in doubt—it is absent from all first-recension manuscripts, nor was it included in the earliest manuscripts of the more widely-circulated second recension, as

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<sup>52</sup> All of the empty questions contain a *dictum ante* (see below) in the vulgate *Decretum*, but in three of the four cases it was added only in the second recension: C.11 q.2 d.a.c.1, C.17 q.3 d.a.c.1, and C.22 q.3 d.a.c.1.

<sup>53</sup> The cases can be grouped thematically: simony (C.1), procedure (CC.2-6), other (CC.7-10), other (CC.11-15), monastic (CC.16-20), other (CC.21-22), heresy (CC.23-26), and marriage (CC.27-36). The thematic groupings are to some extent a matter of opinion. Anders Winroth referred me to Alfred Beyer's groupings which I have found useful. Alfred Beyer, *Lokale Abbreviationen des Decretum Gratiani: Analyse und Vergleich der Dekretabbreviationen "Omnes leges aut divine" (Bamberg), "Humanum genus duobus regitur" (Pommersfelden) und "De his qui intra claustra monasterii consistunt" (Lichtenthal, Baden-Baden)*, *Bamberger theologische Studien* ; Bd. 6 (Frankfurt am Main ; PLang, 1998), 17.

<sup>54</sup> Winroth, *The Making of Gratian's Decretum*, 5.

indicated by glosses found in Ghent (Gt), Paris (Pf), and Trier (Tr) manuscripts describing Gratian's work as "principally divided into two parts."<sup>55</sup>

## Distinctions

Parts are internal nodes that contain only other internal nodes (distinctions and cases).

Chapters are internal nodes that contain only terminal or leaf nodes (inscriptions, rubrics, canons, and *dicta post canones*). The remaining types of containers, distinctions, cases, and questions, contain both terminal or leaf nodes (*dicta ante canones* and *dicta initialia* or *themata*) and internal nodes (cases contain questions, distinctions and questions contain chapters).

Distinctions (*distinctiones*) are the highest-order containers in Part I, *de Pen.*, and Part III.

They contain a single terminal node (the *dictum ante*), followed by an ordered sequence

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<sup>55</sup> Three early manuscripts (Gt, Pf, and Tr) contain the gloss: "*Concordia discordantium canonum iuxta determinationem Gratiani episcopi quae in duas partes principaliter est divisa* (The reconciliation of contradictory canons according to the determination of Bishop Gratian, which is principally divided into two parts.)" Gt = Ghent, Bibl. der Rijksuniversiteit 55; Pf = Paris, Bibl. Nationale lat. 3884 I and II; and Tr = Trier, Stadtbibl. 906 (1141). See Noonan, "Gratian Slept Here," 154; and Pennington, "The Biography of Gratian, the Father of Canon Law," 382.

of one or more internal nodes (the chapters) containing inscription, rubric, canon and *dictum post* terminal nodes.<sup>56</sup>

## Cases

Cases (*causae*) are the highest-order containers in the second part of the *Decretum*. Each of the 36 cases in Part II is introduced by a hypothetical case statement (*thema* or *dictum initiale*, conventionally abbreviated d.init.). The case statements are a subset of the *dicta* that are found only in, and that are closely connected with the organization of, Part II. Medieval and modern scholarship agree in accepting the *dicta initialia*, like the *dicta ante* and *dicta post*, as having been written by Gratian.<sup>57</sup> Cases contain a single terminal or leaf node (the *dictum initiale*) followed by an ordered sequence of one or more internal nodes, the questions, which in turn contain chapters. The depth of Part II, considered as

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<sup>56</sup> Add footnote restating distinction between canon and chapter.

<sup>57</sup> I continue here, as I have throughout Chapter 2, to use the name Gratian as a conventional label for the author or authors of the *Decretum*, while deferring judgement as to whether the name stands for a single individual or many. Anticipating Chapter 3, the name Gratian can be taken to stand for someone performing the author-function (Foucault) with respect to a discrete selection of text under consideration (e.g., a particular *dictum*).

a tree-structured document composed of hierarchically nested containers, is one greater than the depth of Parts I and III.<sup>58</sup>

The case statements all follow a very regular formal pattern. They are introduced by a hypothetical narrative that is followed by an enumeration of the questions that Gratian wants to investigate. The text of C.4 d.init. found in the Admont (Aa), Barcelona (Bc), and Paris (P) manuscripts of the first recension of the *Decretum* demonstrates the pattern:<sup>59</sup>

Quidam in excommunicatione constitutus episcopum accusare disponit;  
 adolescentem infra xiiiium etatis sue annum ad assertionem sue cause  
 adducit. Prohibitus ab accusatione adolescentem accusatorem et se testem  
 facit. Adolescens personam accusatoris et testis gerere cupit; die statuta ad  
 iudicium electorum iudicum episcopus minime concurrat; a communione  
 suspenditur; tandem renouato iudicio accusator culpabilis in accusatione  
 inuenitur; demum ad assertionem proprie cause procedit. Hic primum  
 queritur, an in excommunicatione constitutus alium accusare ualeat?  
 Secundo, an infra xiiiium annum in criminali causa testari quis possit?  
 Tercio, utrum ab accusatione prohibitus personam testificantis possit

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<sup>58</sup> In Parts I and II, the part contains distinctions which contain chapters (depth = 3). In Part II, the part contains cases which contain questions which contain chapters (depth = 4).

<sup>59</sup> Edited by Paul Evans based on transcriptions by University of San Diego students Emily Bolender (P) and Paige Ferguson (Aa and Bc).

assumere? Quarto, an idem possit esse accusator et testis? Quinto, an die constituta non occurrens a communione sit remouendus? Sexto, si in episcoporum iudicio accusatoris persona culpabilis inuenta fuerit, an ad assertionem proprie cause de cetero sit admittenda?

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**Quidam]** AaBc *om.* P **excommunicatione]** AaBc excommunicatione P  
**adolecentem]** AaP adulescentem Bc **etatis...annum]** BcP annum etatis  
sue Aa **die]** AaBc di P **iudicium]** AaP iuditium Bc **iudicum]** AaBc  
iudicium P **concurrit]** AaBcP occurrit Fr. **suspenditur]** AaBc suspendere P  
**iudicio]** AaP iuditio Bc **an]** AaBc autem P AaBc infra P **criminali]** AaBc  
criminari P **ab]** AaBc *om.* P **an...Quinto,]** AaBc *om.* P **an]** AaBc aut P  
**iudicio]** AaP iuditio Bc

Someone permanently excommunicated (*in excommunicatione constitutus*) arranges to accuse a bishop; he brings in (*adducit*) an adolescent under fourteen years of age to the assertion of his case; prohibited from accusation, he make the adolescent the accuser and himself the witness; the adolescent wishes to perform (*gerere*) the role (*personam*) of [both] accuser and witness; on the appointed day, the bishop does not appear before (*lit.* to) the court of the judge-electors; he is suspended from communion; at last, after the court reconvened [*lit.* the court having been renewed], the accuser is found [to be] at fault in [bringing] the accusation; finally he proceeds to the assertion of his own case. Here it is first asked whether [someone] permanently excommunicated (*in excommunicatione constitutus*) is able to accuse another? Second, whether anyone (*quis*) under 14 years is able to testify in a criminal case? Third, whether someone

prohibited from accusation is able to assume the role (*personam*) of testifying? Fourth, whether the same person is able to be [both] accuser and witness? Fifth, whether someone not appearing on the appointed day ought to be removed from communion. Sixth, if the person of the accuser was found culpable in the court of the bishops, whether he ought to be admitted to the assertion of his own case concerning other things? (trans. PLE)

The transition between the narrative section and the enumeration of questions is clearly signalled in each of the case statements by the use of one of a small number of formulaic markers, of which *Hic primum queritur* is the most common.<sup>60</sup>

The cases statements appear to have been in some sense lesson plans, providing the outline for Gratian's classroom presentation of canonical sources. As such, they were intended to be memorable rather than realistic.

In D.28, d.init., for example, a married infidel, by which Gratian means a Muslim, converts to Christianity. As a result, his wife separates from him out of hatred for his new faith. 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.

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<sup>60</sup> The formulaic transition markers used in the hypothetical case statements are: *Hic primum queritur* (15), *Queritur* (8), *Modo primum queritur* (3), *Nunc primum queritur* (3), *Primo queritur* (2), *Primum queritur* (2), *Hic primo queritur* (1), *Modo queritur* (1), *Queritur autem* (1).

Gratian extracts from this fantastical fact-pattern a series of questions significant from a legal point of view: 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.

Some case statements, however, reflect an outlook and a set of concerns that Gratian's benefice-seeking students probably understood as realistic, and that university-educated urban professionals of the present day might not find 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 to resort more than once to bribery in order to realize that objective) has a distinctly contemporary feel to it.<sup>61</sup>

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<sup>61</sup> C.1 d.init., Friedberg 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 is in a form sufficiently liquid to be readily convertible into cash bribes.

## Questions

Questions (*quaestiones*) are second-order internal nodes subordinate to cases, and are found only in Part II of the *Decretum*. They are contained by a case and in turn contain chapters. They are formally identical with distinctions in Part I, *de Pen.*, and Part III, that is, they contain a single terminal node (the *dictum ante*), followed by an ordered sequence of one or more internal nodes (the chapters) containing inscription, rubric, canon and *dictum post* terminal nodes.

Because questions are contained by and subordinate to cases, the *dicta ante* that introduce them perform a somewhat different role in marshalling Gratian's arguments than do those in the distinctions of Part I, *de Pen.* and Part III. There is no higher level to the organization of Gratian's arguments in Part I, *de Pen.* and Part III to which the *dicta ante* in those parts can refer. For each *dictum ante* in Part II, on the other hand, there is a corresponding item from the list of enumerated question in the *thema* for the case in which it is contained.<sup>62</sup> The *dicta ante* restate and expand upon the questions in the *themata* that present the outline for the case.

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<sup>62</sup> In terms borrowed from informatics, the distinction is between tree-structured data in which internal nodes have only sibling pointers, and tree-structured data in which internal nodes have both sibling and parent pointers.



There are 8,547 words in the first-recension *dicta ante* in Part II. Two first-recension *dicta ante* were modified in the second recension: 23 words were added to C.21 q.3 d.a.c.1, and 3 words were added to C.29 q.1 d.a.c.1. In total, only 26 words were added to the *dicta ante* in the second recension. Thus, the *dicta ante* in Part II, like the case statements, are quite stable, displaying very little change between the first and second recension.

## **Conclusion**

**The key finding of the dissertation is that the case statements were written by someone other than the author(s) of the first-recension *dicta*.**