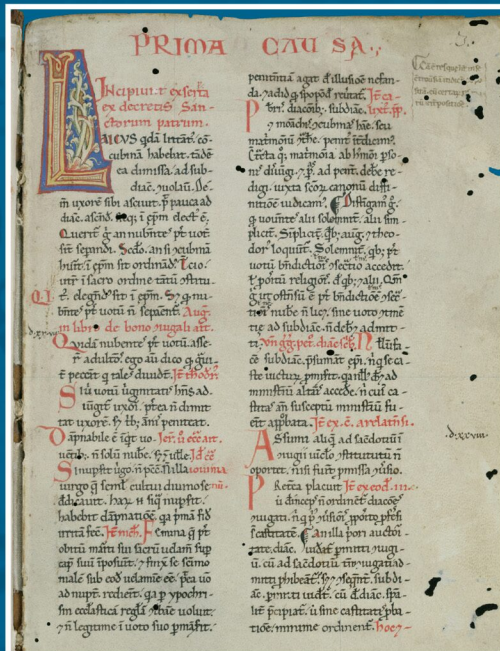


Creating and Sharing Legal Knowledge in the Twelfth Century

*Sankt Gallen, Stiftsbibliothek, 673
and Its Context*

Edited by
Stephan Dusil and Andreas Thier



MEDIEVAL LAW AND ITS PRACTICE

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Creating and Sharing Legal Knowledge in the Twelfth Century

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Stephan Dusil
Andreas Thier



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Contents

Preface	VII
List of Figures	VIII
Abbreviations	X
Contributors	XI

PART 1

Introducing the Debate

- 1 Exploring the Evolution of Legal Knowledge in the Middle Ages: The Manuscript Sankt Gallen, Stiftsbibliothek, 673 as Challenge and Chance 3
Andreas Thier

PART 2

The Origin of Sankt Gallen, Stiftsbibliothek, 673

- 2 The Codicology, the Palaeography, and the Glossing of Sankt Gallen, Stiftsbibliothek, 673 (*Sg*) 17
Philipp Lenz

PART 3

Creating Legal Knowledge

- 3 The Formation of Marriage according to the *Sg*-Codex = Sankt Gallen, Stiftsbibliothek, 673, 166–169 59
Enrique de León
- 4 The Uniqueness of *Prima Causa* in Sankt Gallen, Stiftsbibliothek, 673 78
Melodie H. Eichbauer
- 5 ‘*aliis in carceribus et latumiis reclusis*’, ‘*aliis carcere et ergastulo reclusis*’: Special Language Features in the *Exserpta ex decretis sanctorum patrum* and Their Interpretation 95
Titus Lenherr

- 6 A Miracle Story Allegedly *in decretis Bonifacii pape* 118
John C. Wei

PART 4

Sharing Legal Knowledge

- 7 *Nota*: What the Scribes of Sankt Gallen, Stiftsbibliothek, 673 Found
 Noteworthy in Gratian's *Decretum* 143
Atria A. Larson
- 8 Teaching Canon Law in the Early Twelfth Century: The Evidence of
 Sankt Gallen, Stiftsbibliothek, 673 167
Kenneth Pennington
- 9 The *Exserpta* in the Origins of the Science of Canon Law 183
José Miguel Viejo-Ximénez

PART 5

Sg in Its Context

- 10 Sankt Gallen, Stiftsbibliothek, 673 in Context: Twelfth-Century
 Transformations and Abbreviations of Gratian's *Decretum* 221
Anders Winroth

PART 6

Summarizing Observations

- 11 Sankt Gallen, Stiftsbibliothek, 673: a Copy of Gratian's *Decretum* at the
 Beginning of Decretistic Teaching. Fresh Perspectives, New Insights, and
 Open Questions 245
Stephan Dusil

Bibliography 253

Index of Manuscripts 256

Index of Persons 260

Index of Works, Councils and Decretals 262

Preface

More than 20 years ago, the manuscript Sankt Gallen, Stiftsbibliothek, 673 sparked a heated debate on the evolution of the textual form of the *Decretum Gratiani*. In order to place this intriguing manuscript in the broader context of legal knowledge and its fluidity at the beginning of the learned law of High Middle Ages, we organized a conference in June 2018 in Sankt Gallen under the title: “Generating and Transferring Legal Knowledge in the 12th Century. The Manuscript Sankt Gallen, Stiftsbibliothek, 673.” The contributions gathered in this volume are based on papers presented at this conference.

We are very grateful for the hospitality of the Stiftsbibliothek, especially for the kind support and generosity of Stiftsbibliothekar Dr. Cornel Dora. We also thank the Swiss National Fund for supporting the conference. We are deeply grateful to Magda Hayton, PhD, Missouri State University/Springfield who copy edited most of the contributions and gave – as a first external reader – much valuable feedback. We also thank the “Tübingen Crew” Tapio Bronner and Maximilian Knaak for their help during the editorial process. Many libraries granted the right to publish images of manuscripts; we are also indebted to their generosity.

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Stephan Dusil

Andreas Thier

Tübingen and Zürich, April 2022

Figures

- 2.1 *Sg* 66 20
- 2.2 *Sg* 165 22
- 2.3 *Sg* 206 24
- 2.4 *Sg* 238 26
- 2.5 *Sg* 170/171 29
- 2.6 *Sg* 179a 36
- 2.7 *Sg* 66a 37
- 2.8 *Sg* 90b 38
- 2.9 *Sg* 111b 39
- 2.10 *Sg* 129b 40
- 2.11 *Sg* 164a and 164b 40
- 2.12 *Sg* 51a 41
- 2.13 *Sg* 69ab 43
- 2.14 *Sg* 65b 43
- 2.15 *Sg* 20a 44
- 2.16 *Sg* 171b 45
- 6.1 *Sg* 204 121
- 7.1 *Sg* 93 152
- 7.2 *Sg* 66a 155
- 8.1 *Sg* 111 169
- 8.2 *Sg* 115 170
- 8.3 *Sg* 165 170
- 8.4 *Sg* 102 170
- 8.5 Stuttgart, Württembergische Landesbibliothek, Cod. iur. 2° 71,
fol. 13r 171
- 8.6 *Sg* 193 172
- 8.7 *Sg* 14 172
- 8.8 *Sg* 5 172
- 8.9 *Sg* 10 173
- 8.10 *Sg* 27 173
- 8.11 Admont, Stiftsbibliothek, 23, fol. 22v 173
- 8.12 *Sg* 20 174
- 8.13 *Sg* 171 174
- 8.14 *Sg* 66 175
- 8.15 *Sg* 138 177
- 8.16 *Sg* 138 178
- 9.1 *Sg* 46a 192

- 9.2 *Sg* 187b 193
 9.3 *Sg* 20b 194
 9.4 *Sg* 46a 194
 9.5 *Sg* 187b 203
 9.6 *Sg* 29b 207
 9.7 *Sg* 73ab 207
 9.8 *Sg* 133b 208
 9.9 *Sg* 69a 209
 9.10 *Sg* 154 211
 10.1 Admont, Stiftsbibliothek, 43 (*Aa*), fol. 92v 230
 10.2 Florence, Biblioteca Nazionale Centrale, Conv. Soppr., A.1.402 (*Fd*),
 fol. 72ra 230
 10.3 Trier, Bibliothek des Bischöflichen Priesterseminars, 91 (*Tp*), fol. 62v 231
 10.4 Biberach, Stadtarchiv, Spitalsarchiv, B 3515 (*Bi*), fol. 99v 233
 10.5 *Sg* 45b 234
 10.6 Tentative schematic stemma of the *Decretum Gratiani* 240

Images are not necessarily to scale.

Abbreviations

AKKR	Archiv für katholisches Kirchenrecht
BMCL	Bulletin of Medieval Canon Law
CCCOGD	Corpus Christianorum Conciliorum Oecumenicorum Generaliumque Decreta
Causa prima	first Causa in <i>Sg</i>
Comp.	Compilatio
edF	Emil Friedberg edition of the Decretum Gratiani
IP	Panormia
J ³	Jaffé, third edition
JL	Jaffé-Löwenfeld
MGH	Monumenta Germaniae Historica
MIC	Monumenta Iuris Canonici A Corpus Glossatorum B Corpus Collectionum C Subsidia
PL	Patrologia Latina
RDC	Revue de Droit Canonique
WH	Walther Holtzmann (and number)
ZRG.KA	Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Kanonistische Abteilung

All internet references were last accessed on December 21, 2021.

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PART 1

Introducing the Debate



Exploring the Evolution of Legal Knowledge in the Middle Ages: The Manuscript Sankt Gallen, Stiftsbibliothek, 673 as Challenge and Chance

Andreas Thier

1 Sankt Gallen, Stiftsbibliothek, 673 and the Evolution of Legal Knowledge

Recently, a well-known German legal sociologist and constitutional lawyer, Professor Karl-Heinz Ladeur, published a small volume of 180 pages under the title *Der Anfang des westlichen Rechts* (The Beginning of Western Law) with the subtitle *Die Christianisierung der römischen Rechtskultur und die Entstehung des universalen Rechts* (The Christianization of Roman Legal Culture and the Formation of the Universal Law).¹ Basically, Ladeur makes the argument that the emergence and formation of individual rights as fundament of modern legal order was a product of both the Roman legal tradition and its merger with Christian culture. Ladeur's grand narrative continues a historiographical tradition which could be traced back to the ideas about the history of mankind and law as elaborated by Karl Marx,² Max Weber³ or later Eugen Rosenstock-Huessy.⁴ These concepts have inspired more recent works

1 Karl-Heinz Ladeur, *Der Anfang des westlichen Rechts. The Christianization of Roman Legal Culture and the Formation of the Universal Law* (Tübingen, 2018).

2 Magisterial account by Peter Landau, "Karl Marx und die Rechtsgeschichte," *Tijdschrift voor Rechtsgeschiedenis/Revue d'Histoire du Droit/The Legal History Review* 41 (1973), 361–371.

3 Gerhard Dilcher, "From the History of Law to Sociology: Max Weber's Engagement with the Historical School of Law," *Max Weber Studies* 8 (2008), 163–86 ("Von der Rechtsgeschichte zur Soziologie – Max Webers Auseinandersetzung mit der Historischen Rechtsschule," *Juristenzeitung* 2007, 105–112); Kaius Tuori, "Weber and the Ideal of Roman Law," *Law and History: Current Legal Issues* 6 (2003), 201–214; see also Andreas Thier, "Max Weber's Interpretations of Medieval Canon Law and its Contemporary Narratives of Legal History," in *Recht als Kultur? Beiträge zu Max Webers Soziologie des Rechts*, ed. Werner Gephart, Daniel Witte (Frankfurt a. M., 2017), 185–197.

4 Johannes Liebrecht, *Die junge Rechtsgeschichte. Kategorienwandel in der rechtshistorischen Germanistik der Zwischenkriegszeit* (Tübingen, 2018), 116–117, 233 and 255–256; Andreas Leutzsch, *Geschichte der Globalisierung als globalisierte Geschichte. Die historische Konstruktion der Weltgesellschaft bei Rosenstock-Huessy und Braudel* (Frankfurt a.M., 2009); for a survey including an excellent bibliographical account see Klaus-Gunther Wesseling,

like Harold Berman's efforts to elaborate the interdependency of *Law and Revolution*⁵ or, more recently, Thomas Vesting's four books about the *Medien des Rechts* (The Media of Law).⁶

Against the backdrop of such monumental histories and narratives, the question might arise if and to what extent a workshop on one single legal manuscript – even when it is preserved at such a wonderful venue as the Stiftsbibliothek – is truly legitimate. Harold Berman, for example, argued against a simple “concentrating on bits and pieces of history,”⁷ and he would, probably, raise even stronger objections against the focus on a single “bit of history” as embodied by the codex Sankt Gallen, Stiftsbibliothek, 673 (*Sg* in what follows). As a matter of fact, an easy way to delegitimize such kinds of criticism as well their underlying perspectives would be to reveal the multiple profound and deep historical flaws of Berman's or Ladeur's arguments, particularly by highlighting their surprisingly limited awareness even of modern handbooks and encyclopedias of legal history,⁸ or simply by deconstructing

“Rosenstock-Huessy (nur selten: Rosentock-Hüssy), Eugen,” in *Biographisch-Bibliographisches Kirchenlexikon* 8 (1994), 688–695, updated version available at <https://www.bbkl.de/public/index.php/frontend/lexicon/R/Ro/rosenstock-huessy-nur-selten-rosentock-huessy-eugen-67729>.

- 5 Harold Berman, *Law and Revolution*, vol. 1: *The Formation of the Western Legal Tradition* (Cambridge, Mass. et al., 1983), *Law and Revolution*, vol. 2: *The Impact of the Protestant Reformations on the Western Legal Tradition* (Cambridge, Mass., 2003). For a broad spectrum of recent views on Berman's legal history perspective see the contributions in *Rechtsgeschichte – Legal History* 21 (2013), 156–227.
- 6 Thomas Vesting, *Die Medien des Rechts*, 4 vols (Weilerswist 2011–15); for an account of Vesting's perspective and its legal history problems see Andreas Thier, “Rechtstheoretische Meistererzählung und die Herausforderung der Geschichte. Beobachtungen zum Werk von Thomas Vesting über ‘Buchdruck,’” *Der Staat* 56 (2017), 277–291.
- 7 Berman, *Law and Revolution I*, p. 21 (on this aspect see Andreas Thier, “Harold Berman's ‘Law and Revolution’: A Necessary Challenge for Legal History Research,” *Rechtsgeschichte – Legal History* 21 (2013), 173–175 and 174).
- 8 For Berman see Peter Landau, “Review: Harold Berman, *Law and Revolution* (1983),” *University of Chicago Law Review* 51 (1984), 937–943; Rudolf Schieffer, “‘The Papal Revolution in Law?’ Rückfragen an Harold J. Berman,” *BMCL* 22 (1998), 19–30. The problems in Ladeur's account might be demonstrated by the following statement (Ladeur, *Anfang* [n.1], 120): “Nach dem Ende des (weströmischen) Reiches kam es aber erst in der Karolinger Zeit [*sic*] zu systematischen Sammlungen des kirchlichen Rechts. Es ist bezeichnend, dass die ersten Sammlungen von Karl dem Großen angeregt worden sind, und zwar zu Beginn des 9. Jahrhunderts.” On the *Concordia canonum*, composed by Cresconius in the sixth century, one of the early systematic collections see Klaus Zechiel-Eckes, *Die Concordia canonum des Cresconius. Studien und Edition*, 2 vols (Frankfurt a.M., 1992). On the history of the canon law collections, arising since the fourth century, see the handbook by Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400–1140)* (Washington D.C., 1999). On the *collectio Dionysio-Hadriana*, which was probably referred to by Ladeur, but whose official affiliation

these master narratives as historiographic reflections of contemporary cultural changes in perspective. But this approach would be much too simple, and it would probably not be fair either. Moreover, it would not explain the reason for asking several worldwide leading experts in their field to discuss a singular manuscript. But *Sg*, a manuscript probably from northern Italy and at least since 1461 part of the Stiftsbibliothek collection,⁹ is apparently special. This is not primarily due to its text collection starting on p. 203a, even though Philipp Lenz has highlighted the importance of this text archive.¹⁰ More attention has mainly been given to pp. 3a–203a with its transmission of Gratian texts as 33 *causae*, its omission of the treatise *de consecratione* and its unusual presentation of *De penitentia*.¹¹ This part of *Sg* has been and still is the subject of intense debates,¹² even though some signs of an “oversaturation” have been noticed by Melodie Eichbauer.¹³ This kind of exhaustion, however, might be present in the current discourse on Gratian¹⁴ as a whole.

But *Sg* is, as I would like to argue here, more than an important piece of evidence for the evolution of Gratian's *Decretum*. The manuscript can also be

has become subject to debate, see Kéry, *Canonical Collections* (n.8), 13–20 with further references; and Abigail Firey, “Mutating Monsters: Approaches to ‘Living Texts’ of the Carolingian Era,” *Digital Proceedings of the Lawrence J. Schoenberg Symposium on Manuscript Studies in the Digital Age: vol. 2/iss. 1, Article 1* (2010), available at <https://repository.upenn.edu/ljsproceedings/vol2/iss1/1>.

- 9 Formal description by Philipp Lenz, “Cod. Sang. 673,” in *Die Handschriften der Stiftsbibliothek St. Gallen*, ed. Philipp Lenz, Stefania Ortelli, vol. 3 (Wiesbaden, 2014), 17–20, and Lenz, “The Codicology (in this volume).”
- 10 Philipp Lenz, “The Context of Transmission of the Decretum Gratiani in Sankt Gallen, Stiftsbibliothek, Cod. 673 (= Sg): An Investigation of pp. 201a–246b,” in *Proceedings of the Fourteenth International Congress of Medieval Canon Law: Toronto, 5–11 August 2012*, ed. Joseph Goering, Stephan Dusil, Andreas Thier, MIC C/15 (Vatican City, 2016), 95–114.
- 11 For a survey of the contents see Carlos Larrainzar, “El borrador de la ‘Concordia’ de Gratiano: Sankt Gallen, Stiftsbibliothek MS 673 (= Sg),” *Ius ecclesiae* 11 (1999), 593–666, 601–606 and 653–664; and more recently Enrique de Leon, “Collectio Sangallensis,” *BMCL* 27 (2007), 57–67.
- 12 In more detail, see below, section 2.; as an informed survey of recent date see Stephan Dusil, *Wissensordnungen des Rechts im Wandel. Päpstlicher Jurisdiktionsprimat und Zölibat zwischen 1000 und 1215* (Leuven, 2018), 331–334.
- 13 Melodie Harris Eichbauer, “Gratian's Decretum and the Changing Historiographical Landscape,” *History Compass* 11/12 (2013), 1111–1125, available at <https://doi.org/10.1111/hic3.12119>.
- 14 Groundbreaking: Anders Winroth, *The Making of Gratian's Decretum* (Cambridge, 2000); as an early survey Anders Winroth, “Recent Work on the making of Gratian's Decretum,” *BMCL* 26 (2004/2006), 1–29; for a more recent survey Eichbauer, “Gratian's Decretum (n. 13),” 1112–1118, and already Melodie Harris Eichbauer, *From Gratian's Concordia discordantium canonum to Gratian's Decretum: The Evolution from Teaching Text to Comprehensive Code of Canon Law* (PhD thesis Washington D.C., 2010), 2–27.

understood as an interesting object for a general history of legal knowledge, its patterns and driving forces as well as the emergence of orders and structures of this kind of knowledge. Some of these phenomena shall be discussed here with reference to the debates about the *Decretum* version in *Sg*. In doing so I cannot offer any new manuscript evidence, let alone new manuscripts bearing witness to a specific recension of the *Decretum* or new readings of *Sg*. And as a matter of fact, I am not in a position to assess the arguments and opinions of the learned debates about the evolution of Gratian's text. What I intend in what follows is to present some observations on *Sg* and the discussions about it, which might put this codex into a broader context. My basic argument is that *Sg* can be understood as the medial expression for a stage of intense transition in legal knowledge: it points towards different practices of preserving and communicating legal knowledge, which would emerge during the early twelfth century. And it reflects concomitant use of these approaches in a period before the rise of consolidated canons and practices about the communication and presentation of legal knowledge within the canon law discourse.

This is of course not really a revolutionary insight. But it might help to explain some contested characteristics of *Sg* a little bit.

In order to make my argument more plausible and to shape its structure, I would like to discuss two observations on *Sg* and the research on it. My first observation is about the apparent fluidity of legal knowledge throughout the formation of Gratian's *Decretum* which is particularly present in *Sg* (below 2.). My second and very small observation is about the handling of Roman law in *Sg* and the early Gratian versions, which also indicates a kind of tentative approach to the handling of new legal knowledge (below 3.).

2 "Oscillation" as the Defining Mark of *Sg*

The making of Gratian's *Decretum* is a perfect example for a long-stretched process of evolving legal knowledge: since Anders Winroth's findings it has been well established that Gratian's *Concordia discordantium canonum*¹⁵ was not created as a closed body of texts and comments. Instead, it took several stages of development, as embodied particularly in the two recensions which

15 For a survey on Gratian's *Decretum* in general see Peter Landau, "Gratian and the 'Decretum Gratiani,'" in *The History of Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann, Kenneth Pennington (Washington D.C., 2008), 22–54. For a survey on the complex history of research in Gratian see Carlos Larrainzar, "La investigación actual sobre el Decreto de Graciano," *ZRG.KA* 90 (2004), 27–59.

Anders Winroth has identified.¹⁶ In 1999, Carlos Larrainzar introduced *Sg* into the debate for the first time claiming that it would represent an earlier stage in the emergence of the *Decretum*.¹⁷ His characterization of *Sg* as *borrador*, as first draft of the *Decretum*, in the title of his 1999 article has become famous not only due to his conciseness, but also as something like an expression for the rapid enhancement of our knowledge about the text witnesses for the development of Gratian's *Decretum*. Since Carlos Larrainzar's first several publications on this subject¹⁸ a very broad debate has unfolded, covering a huge spectrum of positions.¹⁹ They range from the idea that *Sg* predates the first recension²⁰ or that it at least refers to an earlier version, which has been called "Ur-Gratian" on the one hand,²¹ to the argument that *Sg* is something like an abbreviation of the first recension,²² which, however, includes elements of the second recension,²³ on the other hand.

16 Winroth, *Making* (n. 14), 122–144 and *passim*.

17 Larrainzar, "El borrador (n. 11)," 593–666.

18 See in particular: Carlos Larrainzar, "La formación del Decreto de Graciano por etapas," *ZRG.KA* 87 (2001), 67–83, at 68 and 72; Carlos Larrainzar, "La ricerca attuale sul 'Decretum Gratiani,'" in *La cultura giuridico-canonica medioevale: premesse per un dialogo ecumenico*, ed. Enrique de León, Nicolás Álvarez de las Asturias (Milano, 2003), 45–88 and 72–97; Carlos Larrainzar, "Datos sobre la antigüedad del manuscrito Sg: su redacción de C.27 9.2," in *'Panta rei'. Studi dedicati a Manlio Bellomo*, ed. Orazio Condorelli, vol. 3 (Rome 2004), 205–237; Carlos Larrainzar, "Métodos para el análisis de la formación literaria del Decretum Gratiani: 'etapas' y 'esquemas' de redacción," in *Proceedings of the Thirteenth International Congress of Medieval Canon Law: Esztergom, 3–8 August 2008*, ed. Peter Erdő, Szabolcs Anzelm Szuromi (Città del Vaticano 2010), 85–115, at 97–98, 105 and *passim*.

19 For a recent survey: Eichbauer, *From Gratian's Decretum* (n. 14), 10–14; see also Atria A. Larson, *Master of Penance. Gratian and the Development of Penitential Thought and Law in the Twelfth Century* (Washington D.C., 2014), 18–20, and, more recently, John C. Wei, *Gratian the Theologian* (Washington D.C., 2016), 6–9.

20 Kenneth Pennington, "Gratian, Causa 19 and the Birth of Canonical Jurisprudence," in *La cultura giuridico-canonica medioevale: premesse per un dialogo ecumenico*, ed. Enrique de León, Nicolás Álvarez de las Asturias (Milano, 2003), 211–232; updated version in *'Panta rei'. Studi dedicati a Manlio Bellomo*, ed. Orazio Condorelli, vol. 4 (Rome, 2004), 339–355. On a similar line Atria A. Larson, "The Evolution of Gratian's Tractatus de penitentia," *BMCL* 26 (2004/06), 59–123, at 93–115; reluctant, however, Atria A. Larson, *Master of Penance*, 19 with n. 44; see also Atria A. Larson, "Early Stages of Gratian's Decretum and the Second Lateran Council: A Reconsideration," *BMCL* 27 (2007), 21–56, at 25–26.

21 Larrainzar, "El borrador (n. 11)," 607–612; see also Carlos Larrainzar, "La edición crítica del Decreto de Graciano," *BMCL* 27 (2007), 71–103, at 83.

22 Anders Winroth, "Recent Work on the Making of Gratian's Decretum (n. 14)," 11–21. See also Alfons Maria Stickler, "Iter Helveticum," *Traditio* 14 (1958), 462–484. Along the same line Jean Werckmeister, "Le manuscrit 673 de Saint-Gall: un décret de gratien primitif?," *RDC* 60 (2012), 155–170, at 168–170. See also Jean Werckmeister, *Décret de Gratien. Causes 27 à 36. Le Mariage*, Source canonique 3/Revue de droit canonique 58/59 (Paris, 2011), 16.

23 John Wei, "A Reconsideration of St. Gall, Stiftsbibliothek 673 (Sg) in Light of the Sources of Distinctions 5–7 of the De penitentia," *BMCL* 27 (2007), 141–179, at 142 with the argument

It seems, however, that there is consensus with regard to at least one point: that *Sg* is everything but witness of a consolidated stage in the evolution of Gratian's *Decretum*. To the contrary, it appears as if the transitory character of *Sg* is its defining mark. Melodie Eichbauer has used the term "living text" for *Sg* and other codices of the *Decretum*,²⁴ and in fact, when it comes to *Sg*, this codex shows an intense life. This is true for the presence of numerous corrections and glosses from different hands in the manuscript, which corresponds to the fact that the Gratian text in *Sg* as a whole has apparently been produced by different scribes and thus at different times.²⁵ It might be that this multiplicity of hands and thus presumably of scribes corresponded in some ways to the adoption of different layers of Gratian texts. But this is, of course, a risky hypothesis. In one point, however, the layout in *Sg* makes the transitions between different evolutionary stages of the *Decretum* visible as, for example, the adjustment of the numbering of what was initially 33 *causae* to the usual, widespread number of 36 *causae*.²⁶ In this kind of editing the transition between *Sg* in its first, original state towards another, later and generally adopted version of the *Decretum* becomes literally visible. It fits in this pattern of fluidity that the texts in *Sg* show a certain kind of oscillation between Gratian's first recension and the second recension, as for example in the case of De pen., D. 7 c. 2, as has been shown impressively by John Wei.²⁷ On the other hand, there is apparently also a certain kind of consensus that *Sg* is in general closer to the first recension²⁸ – particularly in its language, in its kind of analytical reflection²⁹ and probably also in its word order³⁰ – while the precise quality of

of *Sg* representing an "abbreviation of a first-recension manuscript interpolated with canons taken from a second-recension manuscript."

- 24 Eichbauer, *From Gratian's Decretum* (n. 14), 15 with n. 41, see also 30, 230 and *passim*.
- 25 Cf. Lenz, "Cod. Sang. 673 (n. 9)," 17. In more detail see the appendices in Larrainzar, "El borrador (n. 11)," 662–666.
- 26 Cf. for example *Sg* 8a with marginal references to *distinctio* 33 (Sankt Gallen, Stiftsbibliothek, Cod. Sang. 673: *Decretum Gratiani*, <https://www.e-codices.unifr.ch/de/list/one/csg/0673>). For a more detailed analysis see Larrainzar, "El borrador (n. 11)," 634–635, 653–654.
- 27 Wei, "Reconsideration (n. 23)," 148–151, 166–168, 173–175.
- 28 Very strongly in this direction Titus Lenherr, "Die vier Fassungen von C. 3 Q. 1 D.P. C. 6 im *Decretum Gratiani*. Zugleich ein Einblick in die neueste Diskussion um das Werden von Gratians Dekret," *AKKR* 169 (2000), 353–381 (<<https://doi.org/10.30965/2589045X-16902002>>), at 375.
- 29 On this aspect see José Miguel Viejo-Ximénez, "La composición del decreto de graciano," *Ius Canonicum* 90 (2005), 431–485, at 467–468 and *passim*; same direction of argument in Larson, "Evolution (n. 20)," 110.
- 30 Frederick Paxton, "La Cause 13 de Gratien et la composition du Décret," *RDC* 51 (2001), 233–249.

this relationship is not clear, in particular because *Sg* demonstrates a certain kind of autonomy with respect to the first recension.³¹ However, this does not exclude the argument that *Sg* represents probably not an epitome, but nevertheless a kind of partially transformed, but mainly abbreviated version of the first recension. And it does also not exclude the idea that *Sg* represents from a doctrinal point of view a more or less earlier stage of reflection than the second recension.

Taken together, *Sg* reveals on several levels and in several ways a remarkable fluidity and thus oscillation of legal knowledge as contained in Gratian. As a matter of fact, other canon law sources sometimes show similar features: pre-Gratian canonical collections like the *Collectio Tripartita*, the Pseudo-Isidorian decretals or the *Liber Tarraconensis* were transmitted in different recensions.³² And we also know different recension of decretalist works like the different recensions of Hostiensis' lectura of the thirteenth century,³³ let alone the complex layers of glosses to the *Decretum*.³⁴

But *Sg* is different. It is different in its obviously complex relationship to earlier or later textual witnesses, which is very difficult to comprise with linear perspectives. At the same time, *Sg* represents a high grade of transitional quality when compared to other cases. This points to another challenge within research on *Sg*, which can only be indicated here: presumably, the complex fungible quality of *Sg* has something to do with the rise of academic teaching

31 Titus Lenherr, *Ist die Handschrift 673 der St. Galler Stiftsbibliothek (Sg) der Entwurf zu Gratians Dekret? Versuch einer Antwort aus Beobachtungen zu D. 31 und D. 32*, without date, MGH Library, call-nr. a 117039, online available <<https://www.mgh-bibliothek.de/dokumente/a/a117039.pdf>>, 17–18; Lenherr, “Die vier Fassungen (n. 28),” 374–375, and in particular Wei, “Reconsideration (n. 23),” *passim*. See also, below, section 3, for the use of Roman law.

32 See as a still very valuable survey and introduction Kéry, *Canonical Collections* (n. 8), 100–117, 214–215, 244–250, with further references.

33 Kenneth Pennington, “An Earlier Recension of Hostiensis’s Lectura on the Decretals,” *BMCL* 17 (1987), 77–90, reprinted in *Popes, Canonists and Texts, 1150–1550*, ed. Kenneth Pennington (Aldershot, 1993). In general see Kenneth Pennington, *Bio-Bibliographical Guide to Medieval and Early Modern Jurists* (2019, online <https://amesfoundation.law.harvard.edu/BioBibCanonists/HomePage_biobib2.php>), no. a266 (<https://amesfoundation.law.harvard.edu/BioBibCanonists/Report_Biobib2.php?record_id=a266>).

34 Rudolf Weigand, *Die Glossen zum Dekret Gratians. Studien zu den frühen Glossen und Glossenkompositionen* (Rome, 1991), summarized by Rudolf Weigand, “The Development of the Glossa ordinaria to Gratian’s Decretum,” in *The History of Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann, Kenneth Pennington (Washington D.C., 2008), 55–97.

in general³⁵ and of law in particular,³⁶ be it that *Sg* served in the context and for the needs of teaching,³⁷ or be it that *Sg* was something like the result of teaching (like a *reportatio*).³⁸ In this regard, *Sg* is also different from the other cases, where the teaching situation was much less evolved as in the pre-Gratian cases or had already reached a much higher level of differentiation than in the beginnings of the school in Bologna.³⁹

3 Gratian, Roman Law, and *Sg*

Gratian adopted Roman law sources.⁴⁰ But his handling of the Roman law sources changed between the completion of the first and the second recension

35 For a survey Cédric Giraud, "Introduction: Schools and the 'Renaissance of the Twelfth Century,'" in *A Companion to Twelfth-Century Schools*, ed. Cédric Giraud (Leiden/Boston, 2019), 1–9 (online <https://doi.org/10.1163/9789004410138_002>).

36 James A. Brundage, "The Teaching and Study of Canon Law in the Law Schools," in *The History of Canon Law in the Classical Period, 1140–1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann, Kenneth Pennington (Washington D.C., 2008), 98–120; James A. Brundage, "Legal Learning and the Professionalization of Canon Law," in *Law and Learning in the Middle Ages. Proceedings of the second Carlsberg Academy Conference on Medieval Legal History 2005*, ed. Helle Vogt (Copenhagen, 2006), 5–27; Kenneth Pennington, "The Beginnings of Law Schools in the Twelfth Century," in *A Companion to Twelfth-Century Schools*, ed. Cédric Giraud (Leiden/Boston 2019), 226–249 (online https://doi.org/10.1163/9789004410138_012); Anders Winroth, "The Teaching of Law in the Twelfth Century," in *Law and Learning in the Middle Ages. Proceedings of the Second Carlsberg Academy Conference on Medieval Legal History 2005*, ed. Helle Vogt (Copenhagen, 2006), 41–62.

37 In this direction apparently Larson, "Evolution (n. 20)," 114, and Kenneth Pennington, "The Big Bang. Roman Law in the Early Twelfth Century," *Rivista internazionale di diritto commune* 18 (2007), 43–70, at 64, 69.

38 Towards that direction Lenherr, "Handschrift 673 (n. 31)," 18, and Lenherr, "Die vier Fassungen (n. 28)," 375; on the *reportatio* in general see Olga Weijers, "Methods and Tools of Learning," in *A Companion to Twelfth-Century Schools*, ed. Cédric Giraud (Leiden/Boston 2019), 95–112, at 112; see in more detail Francesco Siri, "Lectio, disputatio, reportatio. Note su alcune pratiche didattiche nel XII secolo e sulla loro trasmissione," in *Per Alfonso Maierù. Raccolta di studi dei suoi allievi*, ed. Massimiliano Lenzi, Cesare A. Musatti, Luisa Valente (Rome, 2013), 109–128, at 125–128.

39 See the references in n. 36.

40 Adam Vetulani, "Gratien et le droit romain," *Revue historique de droit français et étranger* 4e série 24–25 (1946–1947), 11–48 (reprinted in Adam Vetulani, *Sur Gratien et les décrétales: Recueil d'études*, ed. Waclaw Uruszczak [Aldershot, 1990]); Winroth, *Making* (n. 14), 148–157; José Miguel Viejo-Ximénez, "Las etapas de incorporación de los textos romanos al Decreto de Graciano," in *Proceedings of the Eleventh International Congress of Medieval Canon Law: Catania, 30 July–6 August 2000*, ed. Manlio Bellomo (Città de Vaticano, 2006), 139–152 (see already José Miguel Viejo-Ximénez, "El Derecho Romano 'nuevo' en el

of the *Decretum*.⁴¹ Gratian's knowledge of Roman law apparently evolved from a poor state to a better command of the sources of Roman law jurisprudence. Again, *Sg* appears to represent a kind of transitional state in this evolution of legal knowledge. This can be demonstrated by an interesting example of an apparent outreach to new sources by Gratian: in *Sg*, Gratian made use of the slave names *Stichus/Pamphilius* in C.29 q.1 d.a.c.1, which were apparently derived from the digest, while the first as well as the second recension would use *Plato/Virgilius*.⁴² On the other hand, it has been demonstrated by Kenneth Pennington that *Sg* used the term *arbiter delegatus* in C.2 q.6 d.p.c.33. This kind of arbiter had, however, as Ken Pennington has made clear, "disappeared from practice if not from the pages of the *Corpus iuris civilis*."⁴³ It is difficult to know what to make of this phenomenon. Certainly, the use of a term, which actually was no longer in practical use, highlights the autonomy of *Sg* in relation to the first recension. Moreover, it could be argued that the use of this apparently older term points to a very early production of *Sg*. On the other hand, the *arbiter delegatus* as judge delegate was part of the *Codex Justinianus* (3.1.16) and thus part of an authority. So, in using this term Gratian would follow only the authority of a text which had authority for him, while the question of whether or not the Roman law concept of the *arbiter delegatus* was still in practical use would have had no relevance for him. At this point, the ambivalence of Gratian's use of Roman law, as represented in *Sg*, becomes particularly clear: in a certain way, Gratian followed the famous sentence *ecclesia vivit lege romana* (as transmitted in the *Lex Ribuaria* and the *Liber Papiensis*).⁴⁴ Certainly, Gratian used Roman law and the Justinian corpus, for example, in order to extend the deadline of appeals (cf. C.2 q.6 c.28)⁴⁵ and he even highlighted in *Sg* the fact that Justinian had changed a more severe rule given by

Decreto de Graciano," *ZRG.KA* 88 [2002], 1–19, and José Miguel Viejo-Ximénez, "Les étapes de l'incorporation des textes romain dans le Décret de Gratien," *RDC* 51 [2001], 251–260).

41 Winroth, *Making* (n. 14), 156–157; on this point in agreement with Winroth is Pennington, "Big Bang (n. 37)," 53.

42 Cf. Pennington, "Big Bang (n. 37)," 60–61, referring to *Sg* 170: *Error personae est ut cum putatur Stichus ipse est Pamphilius*. For the first recension see the preliminary edition of the first recension of Gratian's *Decretum* by Anders Winroth, online available <<http://gratian.org/app/download/767795281/Decretum+Gratiani.pdf>>, page 765, line 35–36 (*Error persone est, quando hic putatur esse Virgilius, et ipse est Plato*).

43 Pennington, "Big Bang (n. 37)," 49.

44 Andreas Thier, "Ecclesia vivit lege Romana," in *Handwörterbuch zur deutschen Rechtsgeschichte*, 2nd edition, ed. Albrecht Cordes, vol. 2 (Berlin, 2008), cols. 1176–1177.

45 On this aspect see Viejo-Ximénez, "Etapas (n. 40)."

Theodosius.⁴⁶ So, it appears as if Gratian started to use Roman legal sources with more intensity in *Sg*. But the patterns of his use are not quite clear. On the one hand, as we have seen, he apparently followed simply the authority of a Roman law text, which was applicable to an ecclesiastical legal problem, even though the legal concept of this text was no longer in use. Moreover, the Justinian law was also a source of higher authority for Gratian when it came to deciding between Justinian's rules and former Roman law as embodied in the Theodosian code. In this regard, it might be said that *Sg* indicates a potential impact of contemporary teaching of Roman law as maintained since the first quarter of the twelfth century in Bologna with the *Corpus iuris civilis* as an essential source of authority⁴⁷ and with the rise of the *ordines iudiciorum*, informed strongly by Roman legal procedure.⁴⁸ On the other hand, however, it remains an open question if patterns of Gratian's use of Roman law can be identified. *Sg* presents a use of Roman law which has a more or less tentative character and which is very difficult to understand in its approach. Overall, however, this fits into the picture of *Sg* as a fluid stage in the evolution of Gratian's work.

4 Concluding Remarks

Sg presents its readers with a whole series of questions and challenges, including not only its relationship to both recensions, but also the potential contexts of its use and the history of its corrections and emendations. But it offers also some potential insights into the formation of legal knowledge. From my point of view the most important insight is the fact that the evolution of legal knowledge – at least in Gratian – does not follow a strict linear path. *Sg* shows anything but a clear line of development with its oscillation between a kind of epitome of the first recension on the one hand, and its tendency towards a certain kind of autonomy, with its many adoptions and adjustments to the

46 *Sg* 55a: *Iustinianus in suis hoc correxit constitutionibus et infra x. dies appellationis remedium cuiquam dandum decreuit in illa lege*; see also Pennington, "Big Bang (n. 37)," 47 with n. 16.

47 Cf. Pennington, "Beginnings (n. 36)," 227–237.

48 Linda Fowler-Magerl, *Ordo iudiciorum vel ordo iudiciarius. Begriff und Literaturgattung* (Frankfurt/Main, 1984); id., *Ordines iudicarii and Libelli de ordine iudiciorum. From the Middle of the Twelfth to the End of the Fifteenth Century (Typologie des sources du moyen âge occidental 63)* (Turnhout, 1994); Knut Wolfgang Nörr, "Ordo iudiciorum und ordo iudiciarius," *Studia Gratiana* 11 (1967), 327–344. See also Kurt Röttgers, "Anmerkungen zum Ursprung des juristischen Prozessbegriffs," *Archiv für Begriffsgeschichte* 29 (1985), 116–124.

later form of Gratian's *Decretum* and also with its tentative use of Justinian as authority, on the other hand. In this regard, *Sg* reflects the unique situation of the formation of a new approach to legal normativity when general standards of structures and order of knowledge had not yet been established and when the actors were still in a process of creating such a kind of episteme. It will be interesting to learn if and to what extent these assumptions will be refuted or maybe even confirmed a little bit.

PART 2

The Origin of Sankt Gallen, Stiftsbibliothek, 673



The Codicology, the Palaeography, and the Glossing of Sankt Gallen, Stiftsbibliothek, 673 (*Sg*)

Philipp Lenz

1 Introduction

For the past 20 years, the manuscript Sankt Gallen, Stiftsbibliothek, 673 (*Sg*) has played an important role in the discussion about the early history of the *Decretum Gratiani*.¹ Research has focused on determining the place of this version of the *Decretum Gratiani* in the textual tradition and on analysing selected text passages and, to a lesser extent, glosses in the first part of the manuscript.² Except for some considerations by Carlos Larrainzar, Marina Bernasconi, Giovanna Murano and myself, no attention has been paid to the manuscript as a whole physical entity with its scripts, illumination, layout and annotations.³

This paper aims to give a detailed description of all material features of *Sg*. I will analyse the making of the manuscript, distinguish the various text hands and annotation hands, address the thorny and usually avoided issue of dating and localizing the manuscript and try to trace its provenance. Since annotations

¹ *Sg* can be viewed online at <https://www.e-codices.unifr.ch/en/list/one/csg/0673>.

² On the state of research cf. Philipp Lenz, “Die Glossierung und die Glossen in den frühesten Handschriften des *Decretum Gratiani*,” *BMCL* 35 (2018), 41–184, here 41–42, 76–85.

³ Cf. Carlos Larrainzar, “El borrador de la ‘concordia’ de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (= *Sg*),” *Ius Ecclesiae* 11 (1999), 593–666, here 596–597; Marina Bernasconi Reusser, “Considerazioni sulla datazione e attribuzione del *Decretum Gratiani* Cod. Sang. 673: un manoscritto di origine italiana in terra nordalpina,” in *Schaukasten Stiftsbibliothek St. Gallen: Abschiedsgabe für Stiftsbibliothekar Ernst Tresp*, ed. Franziska Schnoor, Karl Schmuki, Silvio Frigg (St. Gallen, 2013), 142–147; Philipp Lenz, Stefania Ortelli, *Die Handschriften der Stiftsbibliothek St. Gallen, 3: Abt. V. Codices 670–749. Kanonisches, römisches und germanisches Recht* (Wiesbaden, 2014), 17–20; Giovanna Murano, “Dalle scuole agli *Studia*: il *Decretum Gratiani* tra XII e XIII secolo,” in *Scriptoria e biblioteche nel basso medioevo (secoli XII–XV): Atti del LI Convegno storico internazionale, Todi, 12–15 ottobre 2014* (Spoleto, 2015), 71–108, here 97–100; Philipp Lenz, “The Context of Transmission of the *Decretum Gratiani* in Sankt Gallen, Stiftsbibliothek, Cod. 673 (= *Sg*): An Investigation of pp. 201a–246b,” in *Proceedings of the Fourteenth International Congress of Medieval Canon Law, Toronto, 5–11 August 2012*, ed. Joseph Goering, Stephan Dusil, Andreas Thier, MIC C/15 (Vatican City, 2016), 95–114.

are often the only source of information for the use of a manuscript, they will be thoroughly examined from a palaeographical and functional perspective. Finally, I will compare the results of this investigation to those of a previous study of first recension manuscripts of the *Decretum Gratiani* (*Aa, Bc, Fd, P*),⁴ which will allow us to draw a more precise profile of *Sg*.

2 The Codicology and the Making of *Sg*

The preserved original bookblock measures around 24 × 15 cm and comprises 122 parchment leaves (pp. 3–246). The leaves must have been somewhat larger, because their margins were trimmed after the writing of at least some of the annotations.⁵ In any case, the size of *Sg* was considerably smaller than the size of other early glossed manuscripts of the *Decretum Gratiani*.⁶ Its small size and oblong format resemble the “holster books” which were designed to be held in one hand during teaching in the classroom (classical texts) or solo singing in the Mass (tropers, cantatoria).⁷ Some leaves have irregular edges, mostly at the bottom (e.g. pp. 37–38, 41–50), but also exceptionally in the middle of the outer margin (pp. 47/48). The quaternion pp. 211–226 and the bifolium pp. 227–230 are made of thicker, sturdier parchment. There are few holes (pp. 117/118, 221/222, 231/232) or tears in the margin. The latter were repaired with a white thread (pp. 223/224) at an early stage or with a green thread (pp. 77/78, 143/144) in modern times. The contrast between the yellowish hair side with black hair follicles and the white flesh side is visible throughout the manuscript and is considered typical for south European parchment.⁸

4 Admont, Stiftsbibliothek, 23 and 43 (*Aa*); Barcelona, Archivo de la Corona de Aragón, Santa Maria de Ripoll, 78 (*Bc*); Florence, Biblioteca Nazionale Centrale, Conv. Soppr. A 1 402 (*Fd*); Paris, Bibliothèque nationale, nouv. acq. lat. 1761 (*P*). See also the first recension fragment Paris, Bibliothèque nationale, lat. 3884 1, fol. 1 (*Pfr*). Cf. Lenz, “Die Glossierung (n. 2).” On the terminology “first recension” and “second recension” cf. *ibid.*, 48–49.

5 E.g. *Sg* 15, 49, 231, 238, 246.

6 Cf. *Fd, Aa, Bc*, in particular, and other manuscripts according to Murano, “Dalle scuole agli *Studia* (n. 3),” 86–87, 90–91.

7 Cf. Erik Kwakkel, “Decoding the Material Book: Cultural Residue in Medieval Manuscripts,” in *The Medieval Manuscript Book: Cultural Approaches*, ed. Michael Johnston, Michael van Dussen, Cambridge Studies in Medieval Literature 94 (Cambridge, 2015), 60–76, here 70–73; Erik Kwakkel, Rodney Thomson, “Codicology,” in *The European Book in the Twelfth Century*, ed. Erik Kwakkel, Rodney Thomson, Cambridge Studies in Medieval Literature 101 (Cambridge, 2018), 9–24, here 14, 16.

8 Cf. Marco Palma, “Modifiche di alcuni aspetti materiali della produzione libraria latina nei secoli XII e XIII,” *Scrittura e Civiltà* 12 (1988), 119–133, here 123; Albert Derolez, *The Palaeography of Gothic Manuscript Books: From the Twelfth to the Early Sixteenth Century*, Cambridge

Four sheets of parchment were put together to form a quire, so that hair side faces hair side and flesh side faces flesh side and that the outer side of the quires is always the hair side.⁹ Prickings appear in the upper, lower and – when they escaped trimming – outer margins of the bifolium.

The prickings were applied to the folded quire. Then, each bifolium was separately opened and the prickings were connected by hard-point ruling on the hair side.¹⁰ In the quaternion pp. 211–226, the prickings for the vertical ruling were wrongly applied and needed to be redone. Contrary to most hard-point lines, the four vertical lines and the horizontal lines 1–3, 17–19 and 34–36 usually extend over the writing space of the columns to the edge of the page, thereby creating a pattern.¹¹ After p. 194, this pattern disappears gradually. There is no hard-point ruling for glosses nor a wide inner margin to properly accommodate them.

The layout of the 61 bifolia following this set of prickings consists of two columns, each with 36 lines and normally *c.* 4.5 cm wide. On pp. 195–226, the inner columns are *c.* 5 cm wide. The writing space of both columns together measures around 16.5 × 10 and 16.5 × 11 cm, respectively. The two columns are placed close to the centerfold and to the upper edge of the page, leaving wide margins at the bottom and beside the outer column.

After the bifolia had been ruled, the scribes wrote the text in two columns and added catchwords at the bottom of the last page of each quire (Figure 2.1). The scribes left out the initials and capitals in the column, but noted them in small script in the margin (Figure 2.2).¹² Then, all the additions in red ink were completed, namely the red capitals, headings or rubrics (*inscripciones, summaria*), Roman numerals (of the *causae* and *quaestiones* above and beside the columns), *nota*-signs, *notabilia* and reference signs for adjusting the text order (Figure 2.1–2.4). Occasionally, the scribe of the text did not foresee enough space for the rubrics, so that they needed to be squeezed in, sometimes vertically to the text column.¹³ Finally, the illuminator painted the initials.

Studies in Palaeography and Codicology 9 (Cambridge, 2003), 31; Maria Luisa Agati, *Il libro manoscritto da Oriente a Occidente: Per una codicologia comparata* (Studia archaeologica 166), (Rome, 2009), 153–154.

9 Cf. Palma, “Modifiche di alcuni aspetti materiali (n. 8),” *passim*; Derolez, *The Palaeography* (n. 8), 33; Agati, *Il libro manoscritto* (n. 8), 154.

10 Cf. Derolez, *The Palaeography* (n. 8), 34–35; Agati, *Il libro manoscritto* (n. 8), 200; Johann P. Gumbert, “The Tacketed Quire: An Exercise in Comparative Codicology,” *Scriptorium* 65 (2011), 299–320, here 312.

11 Cf. Derolez, *The Palaeography* (n. 8), p. 46 (3, 9).

12 E.g. *Sg* 6b, 9a, 148ab, 149ab.

13 E.g. *Sg* 15b, 48a, 71ab.

- a) First text hand. Note the wide closed lower bow of g (left column, l. 3 in *gradum*), the abbreviation b; for *-bus* (l. 8 in *canonibus*), the 7-shaped tironian *et* going far below the baseline (l. 6 in *patet*), inverted c (Ϸ) for *con-* extending slightly below the baseline (l. 3 in *conscendere*), superscript round s in final position (l. 2 in *sacerdotes*), round d with a long shaft (l. 3 in *conscendere*) besides straight d, the ligature *ct* (l. 19 in *uindictam*) besides the ligature *st*.
- b) Catchword at the bottom on the right (on the last page of the quire): *capit<ulo>*.
- c) In the left column, e.g. the *inscriptio* (*Ait enim Calixtus papa*) of C.2 q.8 c.1 in text ink, followed by its *summarium* (*Accusatio semper fiat in scriptis*) in red ink, then both the *inscriptio* (*Item Euticianus papa*) and the *summarium* (*Accusatio in scriptis semper fieri debet*) of C.2 q.8 c.2 in red ink by the first text hand.
- d) An empty line, the colored initial Q with a bird decorating the cauda, and the following majuscule letters in text ink mark the beginning of C.3 (originally C.4).
- e) "C." for *Causa* in the upper margin, decorated R and a *nota*-sign in the left margin in red ink.
- f) In the left margin, a discursive gloss by the first annotation hand and a *nota*-sign in brown ink.

FIGURE 2.2 *Sg* 165. Beginning of C.27

- a) Second text hand. Note the different shape of the large lower bow of g (left column, l. 10 in *legitur*), the short shaft of round d (l. 3 in *desponsauit*), the abbreviation b' for *-bus* (l. 9–10 in *auctoritatibus*), the tironian *et* ending on the baseline with a curve upwards to the right (l. 8), the exclusive use of c with a horizontal abbreviation stroke for *con-* (l. 4 in *conditioni*), and long s (l. 2 in *habens*) besides superscript round s at the end of a word.
- b) The scribe indicated with small minuscule letters in text ink in the left margin which colored initial and which red majuscules were to be supplemented.
- c) The *inscriptiones* and *summaria* in red ink were written by the first text hand.
- d) In the left margin, “Q. i.” in red ink indicates the *quaestio*. In the upper margin, “C. xxv.” in red ink was corrected into “C. xxvii.” with brown ink.
- e) Half an empty line, the colored initial Q followed by majuscule letters in text ink highlight the beginning of C.27 (originally C.25).
- f) The first annotation hand added Dig. 23.1.1 next to C.27 q.1 d.a.c.1 and Inst. 1.9.1 next to C.27 q.1 c.20 in the upper part of the page, the second annotation hand an allegation at the bottom of the right margin.

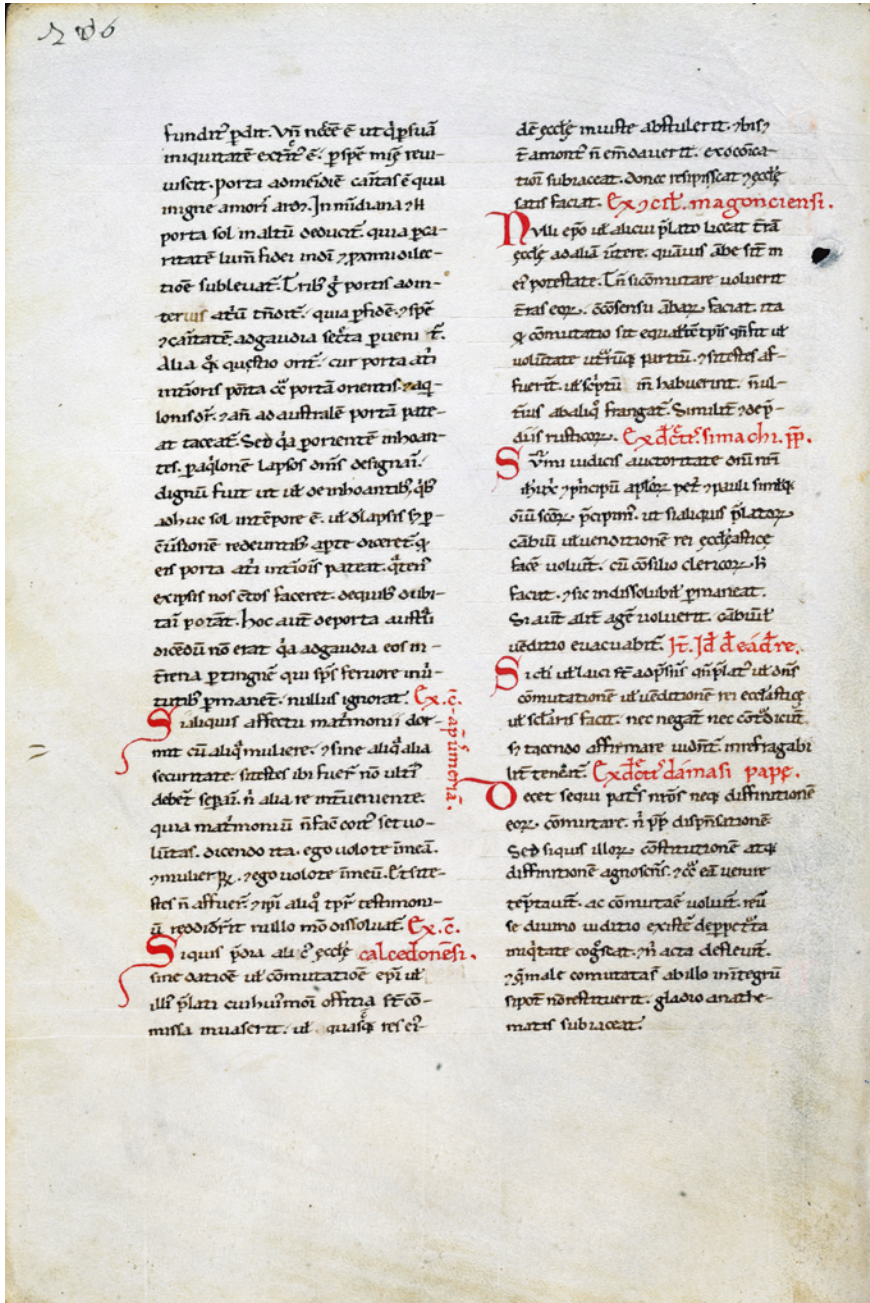


FIGURE 2.3 Sg 206. Collection of excerpts

a) Third text hand. Note the smaller lower bow of g, which almost takes the form of an 8 (left column, l. 7 in *igitur*), the short shaft of round d (l. 3 in *meridiem*), the abbreviation b' for *-bus* (l. 7 in *tribus*), the tironian *et* with an angular horizontal stroke at the top in form of a circumflex (^) and a shaft extending slightly below the baseline (l. 6), the x with both strokes ending on the baseline (l. 6 in *proximi*), q with superscript i for *qui* (l. 1) besides q with a horizontal stroke through its descender.

b) Apart from the missing indication of the *causa* and the *quaestiones*, still the same text articulation as in the *Decretum Gratiani* with red majuscules and red *inscriptiones* by the first text hand.

238

*ad hunc modum ex de
auct*

pietate. tunc in facia q̄met ip̄mō
fide. Jull' uopa sua gl̄ificat̄ iustis
aū opasua condēpnat.

Fidelib; cōgrūi crede. q̄futi d̄m̄t
bonū p̄fite. q̄ peccōre' hōel. q̄ a
clatē potuit. f̄tōy. neq; f̄tā eōm̄.
t̄m̄ p̄destinasse quēlib; ad
peccū. q̄si ad peccū aliquid hōe
p̄destinasse. p̄peccū hōiem n̄ pu
nir. d̄i enī p̄destinatio: aut
peccatorū p̄pate p̄remissio
aū peccōy p̄p̄a p̄uicio. *q̄ nichil*

Nichil enī cor̄ i corporeū i uisibile p̄e
poreū i uisibile int̄a credn̄
dū. n̄ solū d̄m̄. Quō incorporeū
crede. quia uq; ē. iōnā ip̄y atq;
f̄t̄g. rō. i uisibit̄ aū creat̄ ē q̄
i corporeū ē. *q̄ om̄is creatura sit corporeū
ma. auct.*

Creat̄a oīs corp̄a ē. angli
hōel celest̄a. i uisibit̄ corporee. s̄li
et n̄ carne subsistant. Jō aū cor
poree ē eōd̄m̄ i intellectuāle n̄t̄a
qm̄ localit̄ ē cū s̄ bu ē. sic 7 aīa
humana. que carne claudit̄. 7
demonē qui sub ūbra anglice
n̄t̄a s̄t̄. *q̄ ill' q̄ ultima exritudine*

Spenitentiā. i mox r̄cōlūat̄ fuerit ex die
ane d̄q; p̄t̄ i uolūta n̄ cessit̄
tate exritudini sue accepit pen
tentiā. i mox r̄cōlūat̄ fuit. 7
in f̄ie s̄i de corpe. fateor uob
n̄ illi negam̄ s̄ p̄t̄. s̄ nec p̄su
mo dicē. quia hunc b̄m̄ exierit. Sa
secur̄ h̄c exierit egonescia pom
tentiā d̄aē p̄sum. secūit̄ aū

daē n̄ p̄sum. Nūq̄ dico dāpnabit.
Smeo dico q̄a lib̄t̄. uisite adabi
taciōe lib̄am. uis quod i cū eua
d̄t. Age penitentiā dū san' el. Et u
i uertate nouissim' die d̄m̄ i r̄cō
ci uāis. Subic agis secur̄ el. iō d̄uo
t̄ q̄ secur̄ n̄el quia egulū penitentiā
ā q̄m̄ iā peccē nō potē peccata
re dimiserit n̄ tu peccā. *i. n̄ uila mortuaz
p̄ om̄ib; xp̄iani sit cantanda. d̄onū. auct. p̄p̄a*

Dionisi' aropageta d̄c. blas
phemū d̄o facē q̄missā offert
p̄ malo hōe. d̄i. d̄c. p̄ oīb; xp̄ia
nū ē faciedū. gal' el' p̄fic. aut
offere' t̄b; aū pet̄ōn' b; p̄oēt̄.
uod d̄c ego sū quis s̄. uego fili' q̄
ē s̄i cū pat̄e r̄e' uisū s̄cō. quimō
m̄t̄o ce ad saluādū n̄t̄ uerū s̄
sū carne. *Ex p̄t̄e s̄p̄ s̄cō.*

Mari apat̄ r̄ filio d̄i ut de p̄p̄y
sub̄a p̄cedē r̄ unū cū eis op̄ aḡd̄i
noscat̄. r̄ p̄p̄a s̄i d̄eo d̄c p̄act̄
qui apat̄ p̄cedit. N̄ d̄y apat̄ p̄cā
ē. s̄ p̄pat̄re p̄cedit. i. de pat̄re
societate pot̄c̄y. i. de p̄tate n̄t̄
s̄i ex ip̄o sermone eū d̄r apat̄ p̄cā
d̄c. ostēdit̄ cupat̄re m̄cū h̄re.
Quidē aū d̄ ex d̄o pat̄re fili' nasci
d̄r. r̄ s̄p̄ s̄cō p̄cedē s̄iḡat̄. S̄i r̄ḡ
ra' q̄ unū nascēt̄ d̄ist̄. r̄ p̄cedē
t̄. euidēt̄ hoc i ē. q̄a s̄te ex u
no n̄ nascit̄. ille ex uq; p̄ḡdit̄. Q̄
s̄ s̄p̄ s̄cō apat̄re p̄cedit. ea t̄ op̄
uilegia d̄izat̄ ostēdit̄. i. u i n̄ p̄
s̄a sua subsistē. s̄ sine ullo sp̄aao

fabianus. ter in anno quiq; fidelū cōmunic. Et si n̄ frequē: altē ē in anno hōies cōdicēt̄.
n̄ forte qui maiorib; quib; lib; d̄m̄ib; in pedat̄. In pasca undē. 7 pentecosten. 7 natale d̄m̄.
Iē ex cōlō agat̄ s̄. n̄ habeant̄ catholici: qui b̄ i b; dieb; cōmunicare desipitunt.
Seculare qui i natale d̄m̄. pasca. pentecoste. n̄ cōcauunt̄: catholici n̄ credantur.
nec m̄t̄ catholico habeantur.

FIGURE 2.4 Sg 238. Collection of excerpts

- a) Fourth text hand. Note the almost 8-shaped letter g (left column, l. 2 in *glorificatur*), round d with an almost horizontally slanted shaft ending occasionally in a curve to the right (l. 4 in *deum*), the various abbreviations b; (l. 4 in *Fidelibus*), b' (l. 17 in *omnibus*), and b, (right column, l. 13 in *omnibus*) for *-bus*, c with a horizontal bar for *con-* (left column, l. 4 in *congregauit* [corrected]), long s (l. 2 in *istis*), occasionally "fractured" (right column, l. 13–14 in *Christianis*), besides round superscript s at the end of a word.
- b) The *summaria* and the *inscriptiones* in red ink were probably written by the fourth text hand.
- c) Addition of De cons. D.2 c.16 and c.19 by the sixth annotation hand in the lower margin.

All quires are quaternions of four bifolia apart from a single bifolium pp. 227–230, which seems to continue (*uos qui per Adam ...*) the text of the previous quire (*... uos qui*). Since the text of the bifolium runs without interruption from p. 228b to p. 229a,¹⁴ it must have been conceived as a single bifolium. On p. 230, the scribe first intended to finish the right column on the last line prepared by hard-point ruling and wrote the catchwords [*existi*]mo eum at the bottom. Then he decided to adjoin a thirty-seventh line in order to complete the last sentence of the excerpt De cons. D.1 c.53 on this page: [*existi*]mo eum euadere condemnationem. On the next page, a new text, written by a different hand, begins with a minuscule letter (*//peccantium ...*). Above the left text column, a note (*<...>gna pecantium*) in the margin was partly trimmed. The fragmentary beginning of the text on p. 231a resulted from either a mistake during copying or the loss of a quire of at least a bifolium between p. 230 and p. 231.

On the last page of the parchment bookblock, the text breaks off (*... qui ecclesie in oratione//*). Its planned continuation on a new quire is indicated by catchwords (*non participant*) at the bottom of p. 246b. Hence, a quire after p. 230 and a quire after p. 246 were lost or – considering that some text passages were erased – discarded, unless the copy of the missing texts was originally intended but never completed.

Under today's sewing thread in the centerfold of pp. 170/171, located c.7–6.5 cm from the lower edge of the page, a thin strip of (rolled?) parchment is visible that enters the centerfold through two holes and probably forms a loop (Figure 2.5).¹⁵ In other centerfolds, pairs of holes in varying positions can be observed under the sewing thread.¹⁶ It seems therefore likely that the bifolia of all or some of the quaternions were held together provisionally by such little strings, so-called tackets, before the quires were sewn on sewing supports in a proper binding.¹⁷ Unused sewing holes and imprints of a former endband sewing in the centerfolds prove that today's binding is not the first one. Indeed, it probably dates from the sixteenth or seventeenth century, certainly before the librarian P. Pius Kolb added the new shelfmark on p. 1 (D.n. 266) between 1755 and 1759.¹⁸

14 Cf. the end of *Sg* 228b and the beginning of *Sg* 229a with *Venerabilis Bedae commentaria in scripturas sacras*, 1, ed. A. Giles (London, 1844), 83, l. 6–9.

15 Cf. Michel Gullick, "From Scribe to Binder: Quire Tackets in Twelfth Century European Manuscripts," in Roger Powell, *The Complete Binder: Liber Amicorum*, ed. John L. Sharpe, *Bibliologia* 14 (Turnhout, 1996), 240–259; Gumbert, "The Tacketed Quire (n. 10)," 300–301.

16 See e.g. the pairs of holes *Sg* 42/43 and *Sg* 58/59 that are placed c. 7 and 8 cm and c. 4 and 5 cm from the lower edge of the page.

17 Cf. Kwakkel/Thomson, "Codicology (n. 7)," 18, 20.

18 Cf. Johannes Duft, "Die Handschriftenkatalogisierung in der Stiftsbibliothek St. Gallen vom 9. bis zum 19. Jahrhundert," in *Die Handschriften der Stiftsbibliothek St. Gallen:*

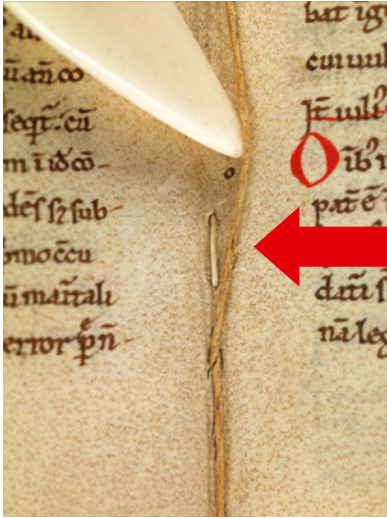


FIGURE 2.5

Sg 170/171 (detail): Centerfold with a parchment tacket under the sewing thread

At that time, an unknown bookbinder adjoined two leaves of paper at the front and two leaves of paper at the end of the parchment bookblock, repaired the centerfold of pp. 227–230 with paper strips, sewed the bookblock onto three sewing supports and attached them to thin boards of beech wood, on which the first and the last paper leaf were pasted down. The spine was covered with dark brown leather with irregular edges. It was decorated by blind tooling with an ornamental role displaying round arches and flowering shrubs. Numerous half-leather bindings with such patterns exist in the Stiftsbibliothek.¹⁹

3 The Palaeography of the Text Hands

Four scribes wrote the bulk of the text of *Sg*. The ink changes between red-brown, light and dark brown tones of color, both between different hands and within the same hand.²⁰ The first text hand copied the beginning of the *Decretum Gratiani* until p. 135a with two short interruptions and a short addition later on, namely pp. 3a–45a, l. 21, pp. 47a–131a, l. 29, pp. 131b–135a, l. 1, and p. 208a, l. 1–10. Furthermore, this hand completed all the rubrics and probably all the capitals and *nota*-signs in red ink on pp. 3a–206b. The first text

Beschreibendes Verzeichnis Codices 1726–1984 (14.–19. Jahrhundert), ed. Beat M. von Scarpatetti (St. Gallen, 1983), 55*–65*.

19 E.g. Cod. Sang. 188, 381, 715.

20 E.g. *Sg* 43b, 44a, 45ab; *Sg* 135a, l. 1. Lenz/Ortelli, *Die Handschriften* 3 (n. 3), p. 17.

hand is characterized by a wide closed lower bow of g,²¹ the abbreviation b; for *-bus*, a 7-shaped tironian *et* going far below the baseline, and an inverted c (c) for *con-* extending slightly below the baseline (Figure 2.1). Final s is usually a superscript round s, whereas long s occurs at the beginning and in the middle of a word apart from the beginning of a new sentence. Straight (Half-Uncial) d is more frequent than round (Uncial) d, which has an especially long shaft. The first text hand stands out due to the round bows, the straight shafts, the relatively long ascenders and descenders, and the regularity of the letter forms. Moreover, it is the only hand to use the ligature *ct* besides the ligature *st*.

The second text hand copied the rest of the *Decretum Gratiani* including an appendix of 20 excerpts on p. 135, l. 1 to p. 203a, l. 12 and probably also pp. 228b–230b in the second part of the manuscript (Figure 2.2).²² This hand differs from the previous one through a different shape of the large lower bow of g, a shorter shaft of round d, the abbreviation b' for *-bus*, a tironian *et* ending on the baseline with a curve upwards to the right, and the exclusive use of c with a horizontal abbreviation stroke for *con-*. Besides superscript round s, long s appears at the end of a word, too. Compared to the first text hand, the ascenders of the second text hand are shorter in relation to the minims.

The collection of excerpts in the second part of *Sg* starts with the third text hand, which wrote the two short passages on p. 203a, l. 16 to p. 207b and p. 208a, l. 11 to p. 228a (Figure 2.3). Its features are a g with a lower bow that is often smaller than the one of the previous two hands and that therefore sometimes resembles the shape of an 8, a short shaft of the round d, an inverted c for *con-* on the baseline besides c and co with a bar, the abbreviation b' for *-bus*, a tironian *et* with an angular horizontal stroke at the top in form of a circumflex (^) and a shaft extending slightly below the baseline. Contrary to the two previous hands, the second diagonal of the letter x does not go or hardly goes below the baseline. Both superscript round s and long s occur at the end of a word. Furthermore, it is the only hand to use q with superscript i for *qui* regularly besides q with a horizontal stroke through its descender.²³ The curves of the letters m and n are angular both in the vertex and where they merge with the minim.

The fourth text hand wrote at least pp. 232b–246b (Figure 2.4). Characteristic for this less careful and less uniform hand are a sometimes 8-shaped, or almost

21 For a similar g in contemporary Bolognese charters, see Gianfranco Orlandelli, *Rinascimento giuridico e scrittura carolina a Bologna nel secolo XII* (Bologna, 1965), tav. 23A & B (1138 and 1145).

22 Lenz, "The Context of Transmission (n. 3)," 96.

23 E.g. *Sg* 205a, l. 14, l. 16; *Sg* 205b, l. 13, l. 15; *Sg* 220b, l. 10, 32, 34; and *Sg* 205a, l. 4; *Sg* 205b, l. 4, l. 9; *Sg* 220b, l. 21.

8-shaped, letter g, a round d with an almost horizontally slanted shaft ending occasionally in a curve to the right, the various abbreviations b;, b, and b' for *-bus*, co and c with a horizontal bar for *con-*, a tironian *et* with a wavy horizontal stroke (~) at the top and a shaft that is sometimes almost vertical, the predominance of long s at the end of a word, and relatively long diacritical strokes over double i. Long s is occasionally “fractured.”²⁴

Some passages cannot be clearly attributed to these four hands. The script on p. 45a, l. 24 to p. 46b differs from the first text hand through the consistent use of b' instead of b; for *-bus* and from all four hands through the use of an extravagant, g-shaped abbreviation for *con-*.²⁵ The passages on p. 131a, l. 29–37 and on pp. 231a–232a are ambiguous, with the latter showing b; for *-bus* and the two different abbreviations for *qui*.²⁶ The sixth annotation hand might have added p. 45a, l. 21–24. In the second part of the manuscript, some selected passages on p. 203a, l. 16 to p. 203b, c. l. 13, p. 211a, l. 1–3 (?), p. 223b, l. 27 to p. 224a, l. 14, p. 230a, l. 26 to p. 230b, l. 6 were completely or partly deleted.

4 Decoration, Text Structure, and Layout

Large colored initials for the *causae* as well as rubrics and capitals in red ink for the *canones* and paragraph marks in text ink for the *dicta Gratiani* provide a sound and uniform structure for the text in two columns on pp. 3a–203a (Figure 2.1, 2.2). The text division is complemented by the numbering of the *causae* in the upper margin and of the *quaestiones* beside the text columns in red ink. The heading in red ink *Incipiunt exserpta ex decretis sanctorum patrum* marks the beginning of the *Decretum Gratiani* on p. 3a. At the beginning of C.2 on p. 28b, the “title” *De symonia de cetero uidendum*, the only “title” that was recorded in *Sg*, is equally written in red ink.²⁷

The initials extend between three and twelve text lines and usually consist of a surface and a letter that are both delimited by red lines, filled with blue, yellow and dark yellow colors and decorated with white leaves and tendrils with shades of green and yellow. Besides the predominating ornamental colored initials (pp. 3a, 28b, 45a, 74a, 79b, 84b, 87b, 90a, 92b, 100a, 109b, 115a, 124a, 139b, 142a, 144b, 145b, 148a, 149b, 158b, 165a, 170a, 176a, 177b, 185b, 187a, 198b, 203a), there are a few initials in the same colors inhabited with a fish (p. 72b),

24 Cf. Derolez, *The Palaeography* (n. 8), 61 (26).

25 Abbreviation for *con-* e.g. *Sg* 45b, l. 24; *Sg* 46a, l. 29.

26 Different abbreviations for *qui* e.g. *Sg* 231b, l. 2 and l. 35.

27 Cf. Lenz, “Die Glossierung (n. 2),” 106.

a dragon (p. 77a), a bird (p. 90a), a snake (p. 118a), a fish (p. 171b), and a bird (p. 180b) standing for the letters I, F, L, I, I and I. On p. 66b, a bird decorates the cauda of the Q (Figure 2.1). After these colored initials, one or more letters in a majuscule script in the same ink as the text usually follow.²⁸ Half a line, a whole line or more than a line of empty space normally precedes the text of each new *causa*.

Rubrics highlighting the *inscriptiones* and *summaria* and two-line red capitals at the beginning of the line of a new *canon* provide the next level of text division (Figure 2.1, 2.2). Contrary to the usual layout of manuscripts of the *Decretum Gratiani*, the *inscriptiones* are mostly written in red ink in *Sg*. *Summaria* do not occur consistently and only in uneven distribution in *Sg*.²⁹ They usually appear after the *inscriptiones* in red ink, but exceptionally before the *inscriptiones* or in text ink, respectively. Paragraph marks in text ink distinguish the *dicta Gratiani*. The *dicta Gratiani* or their final parts were sometimes written in red ink, too.³⁰

The numbering of the *causae* in the upper margin and of the *quaestiones* beside the text columns is essential for structuring the text, not the least because the *causae* are not introduced by an incipit or a numeral in the text column. The indication of the *causae* usually consists of the abbreviation “C.” or “CA.” on the verso and the corresponding Roman numeral on the recto in the middle of the upper margin; at the beginning of *Prima causa*, however, are “P.” and “C.”. Occasionally, the upper margin of a page or of a column displays both the abbreviation for *causa* and the Roman numeral in order to clarify the beginning and the end of a *causa*.³¹ The labelling of the *causa* is missing on p. 202 (verso), probably because the collection of excerpts of the second part starts on the next page (recto) where the Roman numeral and thus the second part of the heading would normally be found. The majuscule Q followed by a Roman numeral in red ink indicates the *quaestio* within a *causa* and is usually placed on the left of the inner or on the right of the outer text column.

28 The letter a, however, is always written as a minuscule, as on *Sg* 3a and *Sg* 90a. The same phenomenon is found in another manuscript from Modena, Munich, Bayerische Staatsbibliothek, Clm 28634, fol. 1r. See below n. 91.

29 E.g. *Sg* 3a–4a has eleven and *Sg* 21a–22a nine consecutive *canones* without *summaria*; *Sg* 7b–9b has twelve and *Sg* 57b–60b nine consecutive *canones* with *summaria*. Cf. Melodie Harris Eichbauer, *From Gratian's Concordia discordantium canonum to Gratian's Decretum: The Evolution from Teaching Text to Comprehensive Code of Canon Law*, PhD The Catholic University of America (Washington, D.C., 2010), 33–52; Lenz, “Die Glossierung (n. 2),” 91–92, 120, 125, 165.

30 E.g. the end of D.61 d.p.c.11 on p. 22b. Larrainzar, “El borrador de la ‘concordia’ de Graciano (n. 3),” 603–604 with n. 21.

31 E.g. *Sg* 28–29, 44–45, 164–165 (Figure 2.2).

The numbering of the *causae* which reflected the original text division of pp. 3a–203a into 33 *causae* was soon adapted to the common division of the *Decretum Gratiani* into 101 *distinctiones* (of the *Pars prima*) and 36 *causae* (Figure 2.2). For this purpose, the Roman numerals were partly erased, written over and complemented with light and dark brown ink; sometimes both inks were used consecutively, witnessing to two stages of correction.³² These corrections transformed C.2 (“C. ii.”) into C.1 (“C. i.”), C.3 into C.2..., C.24 into C.23, C.25 into C.27, C.26 into C.29, C.27 into C.30..., and C.33 into C.36. Moreover, one or several hands – the color of the ink and the form of the letter d (round and straight) vary – added the numbering of the *distinctiones* in the original C.1.³³

While pp. 3a–203a display a uniform articulation system and an artful decoration of the text, the rest of the manuscript on pp. 203a–246b betrays more variety, fewer textual hierarchies and less effort in ordering the text. After p. 203a, the previous articulation system of the text was abandoned gradually. The last multi-colored initial marks the beginning of the collection of excerpts in the second part of *Sg* on p. 203a. The first text hand continuously wrote the rubrics (*inscriptiones*) until p. 206b (Figure 2.3), after which they are lacking up to p. 237b. On pp. 212b–218a, the red capitals occur in the middle of the text columns and are preceded by a paragraph mark in text ink, while from the middle of p. 218a to p. 232a, the text articulation is limited to paragraph marks in text ink and highlighted with red. The fourth text hand gradually took up the previous text division and wrote rubrics (*summaria*, *inscriptiones*) and red capitals at the beginning of the lines on pp. 232b, 233a, 234a, 237b–243b, 246b (Figure 2.4).

Together with the clear text hierarchy, the consistent labelling and numbering of the *causae* in the upper margin and of the *quaestiones* beside the text columns enabled the scholarly use of the *Decretum Gratiani* and was a precondition for following the allegations. In this respect, *Sg* stands apart from most of the first recension manuscripts. *Fd* and *P* are less clearly arranged and display an incomplete, inconspicuous or later added numbering of the *causae*, *distinctiones* and *quaestiones*, whereas *Aa* lacks a numbering of the *causae* in the upper margin.³⁴ The sumptuous decoration of the *Decretum Gratiani* in *Sg* (like in *Bc*) reveals that the milieu responsible for making the manuscript – most

32 E.g. *Sg* 171: “xxvi.” was probably first corrected into “xxviii.”, then into “xxviii.”; *Sg* 179: “xxviii.” was first corrected into “xxxi.”, then into “xxxii.”

33 *Sg* 3a at D.27 c.2: “d. xxvii.”; *Sg* 3b at D.28 c.6: “d. xxviii.”; *Sg* 5a at D.28 c.14: “d. xxviii.” in light brown ink, modified with dark brown ink into “d. xxviii.” (?); *Sg* 5b at D.29 d.a.c.1: “d. xxviii.”; etc.

34 Lenz, “Die Glossierung (n. 2),” 63–64 with n. 61, 91–92, 104–106, 165.

likely a cathedral chapter, collegiate church or monastery – did not forebode that this version of the text would soon be outdated.

5 Palaeographical and Functional Analysis of the Annotations

There are numerous interlinear and marginal annotations in *Sg*. Although Carlos Larrainzar, Kenneth Pennington and José Miguel Viejo-Ximénez have printed many annotations and have investigated the content of some glosses,³⁵ a study combining the function of the annotations with a thorough palaeographical analysis is still lacking. The following part of the chapter aims to identify and describe the main annotation hands, to order the different kinds of annotations and to illustrate them with some examples. For this purpose, I will use a terminology and a typology that I developed and explained in a study of the glosses of other early manuscripts of the *Decretum Gratiani*.³⁶

This model comprises all the annotations that were added outside or in between the lines of the centrally arranged and initially written text. First, we distinguish between the added *canones*, *dicta Gratiani* or parts thereof, which reflect the textual development from the early, shorter versions to the later, longer common form of the *Decretum Gratiani*, on the one hand, and the glosses, which serve the understanding, interpretation, improvement, division and ordering of the text, on the other hand. The glosses consist of corrections and text variants, graphic symbols, *nota*-signs and numerals, discursive glosses, allegations and *notabilia* including simple keywords or excerpted key phrases. The discursive glosses include direct quotations from other sources, which sometimes developed into additional *canones* or *dicta Gratiani*, as well as short lexical and suppletive glosses and more complex, longer glosses that sometimes contain an allegation.

Most annotations can be attributed to six annotation hands. In addition to these, the first text hand, which I omitted among the annotation hands in my

35 Larrainzar, “El borrador de la ‘concordia’ de Graciano (n. 3),” 601, 604–606, 634–635, 662–666. On Kenneth Pennington’s and José Miguel Viejo-Ximénez’ studies see Lenz, “Die Glossierung (n. 2),” 78–82; in addition José Miguel Viejo-Ximénez, “Accusatio in scriptis semper fieri debet: A propósito del método de trabajo de y sobre ‘Graciano,’” *Revista Española de Derecho Canónico* 64 (2007), 309–338; José Miguel Viejo-Ximénez, “Cicerón y Graciano,” *BMCL* 31 (2014), 23–55. See now also the essays by Pennington, “Teaching Canon Law in the Early Twelfth Century (in this volume)” and Viejo-Ximenez, “The *Exserpta* in the Origins of the Science of Canon Law (in this volume).”

36 Lenz, “Die Glossierung (n. 2),” 52–54.

original description of *Sg*,³⁷ wrote some *canones* or parts thereof, red reference signs for adjusting the text order (pp. 6a, 7b), interlinear corrections and lexical glosses and *notabilia* (e.g. pp. 7b, 108a). The first example of *notabilia*, which is exceptionally completely written in red ink, appears on p. 7b. It renders an excerpt from D.32 c.11 in typical form of an *accusativus cum infinitivo* without a finite verb: *Secretorum cognitorem et iudicem deum esse*. In the left margin of p. 14, the first text hand copied D.46 c.4, a *canon* that is to be inserted in the right column according to the red tie mark. Like in the text column, the *inscriptio* “*Item*” was written in red ink. The same hand glossed the word *accusatores* with *id est incriminatores* in the added *canon* and supplied the missing word *vix* over *set* in the text of D.46 c.1.

The first annotation hand, identical with the second text hand, wrote at least 29 annotations in light brown ink on pp. 3b, 17a (?), 17b, 19ab (2), 43b (?), 46a at the top (2) and in the middle (?), 66a, 68a, 106a, 118a, 134a (?), 146a, 153b, 165ab (2), 166ab (2), 167b, 171ab (2), 172a, 178a, 179a, 187b (2), 188a, 193ab (2), 199b and – after the *Decretum Gratiani* in the second part of the manuscript – on p. 231b.³⁸ The ascenders in the first line are often elongated like in charters, and f and long s are “fractured.”³⁹ These annotations comprise *canones*, *dicta Gratiani* or parts thereof, *nota*-signs (e.g. pp. 166a, 193ab), *notabilia* (e.g. p. 193ab), discursive glosses and allegations. Among the added *canones*, there are C.20 q.1 c.10 on p. 146a and C.31 q.2 c.2 on p. 172a, two *paleae*.⁴⁰ The discursive glosses of this hand are frequently quotations from other sources such as Cicero,⁴¹ Isidore of Seville or Justinian’s codification, defining legal terms and concepts. At the beginning of C.27 next to C.27 q.1 d.a.c.1 and next to C.27 q.1 c.20 on p. 165, explanations of terms of marriage law from the *Digestum* and the *Institutiones* are supplied (Figure 2.2):

37 Lenz/Ortelli, *Die Handschriften* 3 (n. 3), 18.

38 This annotation is an important argument for the chronological and material unity of the manuscript. Lenz, “The Context of Transmission (n. 3),” 96–97.

39 Examples of *litterae elongatae* in the first line of Bolognese private charters of 1157 and 1170 and of the “fractured” long s in the latter can be found in Gianfranco Orlandelli, “Ricerche sulla origine della ‘littera bononiensis’: scritture documentarie bolognesi del secolo XII,” in Gianfranco Orlandelli, *Scritti*, ed. R. Ferrara, G. Feo (Bologna, 1994), 95–144, here 108–110, tav. II (1157) and III (1170).

40 Cf. Jürgen Buchner, *Die Paleae im Dekret Gratians: Untersuchung ihrer Echtheit*, Pontificium Athenaeum Antonianum. Theses ad lauream in iure canonico 127 (Rome, 2000), 248–250, 291–293, 323, 486, 512; José Miguel Viejo-Ximénez, “Las Paleae del Decretum Gratiani: Notas para la crítica de su redacción,” *Annaeus* 5 (2008), 107–141, here 109–110, 112–113, 115–117, 120–121, 129, 139.

41 There is a longer version of this gloss in *Bc* and other manuscripts according to Viejo-Ximénez, “Cicerón y Graciano (n. 35),” 41–45.

Cod. l. viiii. t. De calumpniatoribus (Cod. 9.46.10) Imperatores Honorius et Theodosius: Quisquis crimen intendit. R[equire] supra in causa iii circa finem (C.3 = C.2 q.8 c.3).⁴⁴

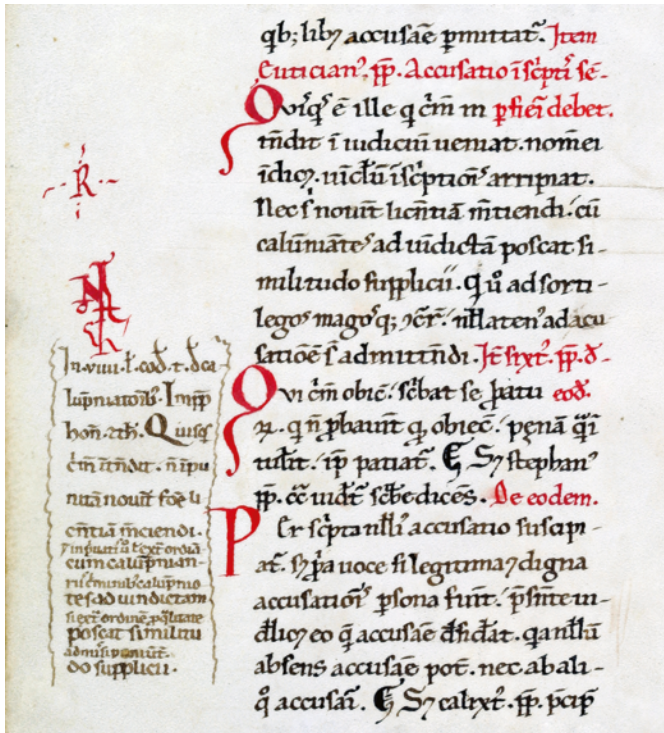


FIGURE 2.7
Sg 66a (detail)

The second allegation refers to C.2 q.8 c.3 on p. 66a, which contains a version of chapters 7 and 8 of a decretal attributed to Pope Eutychian.⁴⁵ Maybe the red majuscule R decorated with four points and strokes around it in the margin serves as a reference sign to the R[equire] in the allegation. Below this R and a red *nota*-sign, the first annotation hand not only added the same *Codex* allegation as on p. 179a, but also the corresponding text and an interlinear explicative gloss with a paragraph mark at its beginning (Figure 2.7):

In viiii. l. cod. t. De calumpniatoribus (Cod. 9.46.10) Imperatores Honorius et Theodosius: Quisquis crimen intendit, non impunitam nouerit fore licentiam menciendi, cum calumpniantes ad uindictam poscat similitudo supplicii.

44 On archaic allegations cf. Lenz, "Die Glossierung (n. 2)," 65–66.

45 Viejo-Ximénez, "Accusatio (n. 35)," 320–325, 330.

§in priuatis uero uel extraordinariis criminibus calumpniosi extra ordinem pro qualitate admissi puniuntur (puniuntur) (Dig. 48.16.3).⁴⁶

The quoted text provides a version of the imperial constitution different from the one that entered the *Decretum Gratiani* in C.2 q.8 c.3.⁴⁷ According to Pennington, the interlinear gloss, which is in fact a quotation from Dig. 48.16.3, appears in manuscripts of the *Codex* of the early twelfth century, too.⁴⁸ Consequently, the first annotation hand – or the scribe of the exemplar of this gloss to this version of the *Decretum Gratiani* in case this is a copy – must have had books of Roman law at their disposal.

The second annotation hand is responsible for 15 internal references on pp. 7a, 35b, 90b, 102a, 111b, 112a, 115b, 125a (4), 126a, 141a (partly), 165b, 166a. At least ten of these allegations follow the original division into 33 *causae* and, therefore, they cannot be a copy or a mechanical copy of a manuscript of the first or second recension. The allegation on p. 90b next to C.10 q.1 c.7 provides a good example. Apart from the paragraph mark at its beginning and the divergent numbering of the *causae*, it corresponds to the conventional form of allegations of the *Decretum Gratiani* (Figure 2.8): *§Infra i. c. xiii. q. iii. c. Episcopus*

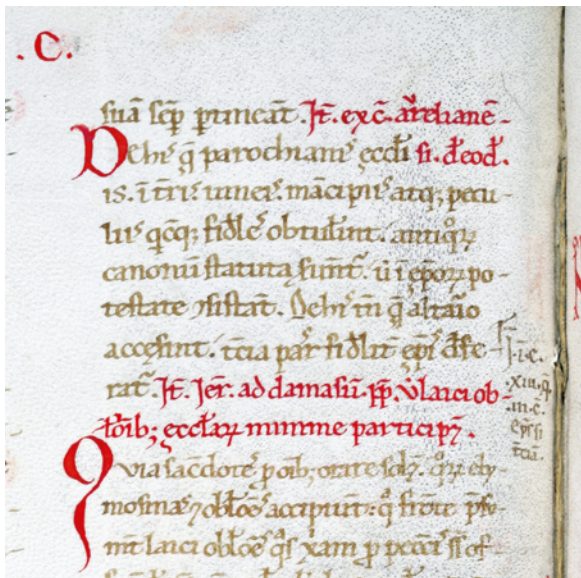


FIGURE 2.8
Sg 90b (detail)

46 *Corpus iuris civilis*, vol. 2: *Codex Iustinianus*, ed. Paul Krüger, 11th ed. (Berlin, 1954), 391; *Corpus iuris civilis* 1 (n. 42), 809.

47 Viejo-Ximénez, "Accusatio (n. 35)," 320–325, 330.

48 Kenneth Pennington, "The 'Big Bang': Roman Law in the Early Twelfth Century," *Rivista internazionale di diritto comune* 18 (2007), 43–70, here 64–65 with n. 85. See also Pennington, "Teaching Canon Law in the Early Twelfth Century (in this volume)," 176 n. 16, where he has identified the quotation from the *Digest*.

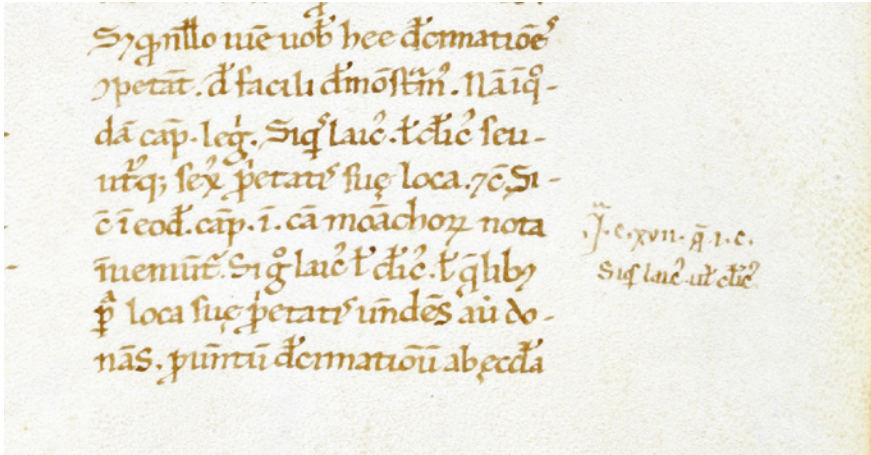


FIGURE 2.9 Sg 111b (detail)

si terciam (C.13 = C.12 q.3 c.4). The reference to C.12 q.3 c.4 on p. 108b is probably based on the term *tertia pars*, indicating the bishop's rights to a third of the altar offerings and his power to dispose over a third of the revenues of a parish church.⁴⁹

While this allegation establishes a new legal relationship between two *canones*, the next allegation simply formalizes an already existing internal reference in the text. On p. 111b in C.13 q.1 d.p.c.1, the words *Nam in quodam capitulo legitur: Si quis laicus uel clericus seu utriusque sexus (om. persona) proprietatis suę loca etc. Sicut in eodem capitulo in causa monachorum nota inueniuntur* point the reader to the corresponding complete text on p. 129b by indicating the incipit (*Si quis laicus ...*) and the "title" (*in causa monachorum*) of C.16 q.1 c.42 (Figure 2.9).⁵⁰

Again, the margin of the referred *canon* displays a red majuscule R decorated with four points and strokes around it (Figure 2.10). Next to the text of C.13 q.1 d.p.c.1 on p. 111b, the second annotation hand added the conventional form (but according to the original division into 33 *causae*) of the same allegation (Figure 2.9): *Infra c. xvii. q. i. c. Si quis laicus uel clericus* (C.17 = C.16 q.1 c.42).⁵¹ Most of the allegations by the second annotation hand represent such formalized renderings of informal references within the text.

49 *Corpus iuris canonici*, ed. Emil Friedberg, vol. 1: *Decretum magistri Gratiani* (Leipzig, 1879), col. 614, 714.

50 Larrainzar, "El borrador de la 'concordia' de Graciano (n. 3)," 617. Cf. Lenz, "Die Glossierung (n. 2)," 65.

51 This allegation exists in *Aa 23* on fol. 194v, too, albeit in agreement with the common text division into 36 *causae*: *Infra xvi. q. i. Si quis laicus* (C.16 q.1 c.42).

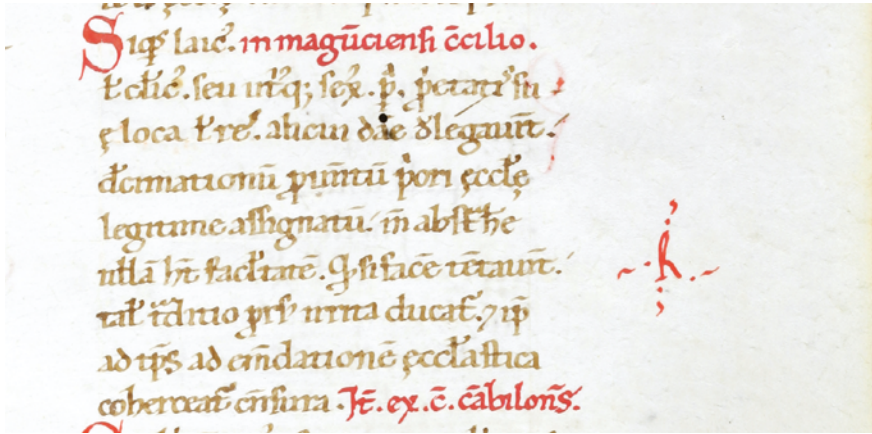


FIGURE 2.10 Sg 129b (detail)

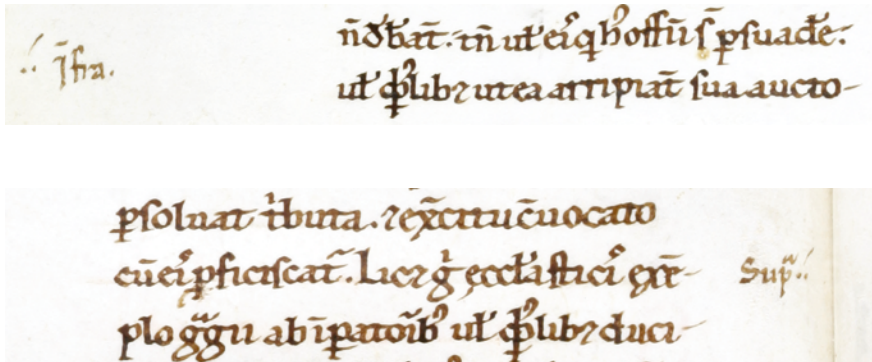


FIGURE 2.11 Sg 164a (detail) and 164b (detail)

Allegations and red majuscule letters R, at least some of which seem to indicate *canones* that are referred to in the text, are not the only reference systems to appear in the margins of *Sg*. Thus, two identical signs in conjunction with *Infra* and *Supra* respectively on p. 164ab at C.23 q.8 d.p.c.17 and C.23 q.8 d.p.c.28 connect two affirmations by Pope Gregory the Great which allow priests to ask for secular military assistance (Figure 2.11).⁵²

Besides frequent red and brown *nota*-signs (Figure 2.1, 2.7), the margins occasionally display various signs in brown ink consisting of mostly symmetrically arranged strokes, dots, lines, and circles. On p. 13ab for instance, there are five or six different brown signs in the margins. I have not been able to confirm the hypothesis that these signs correspond to the system of “red (or brown) signs” which Gero Dolezalek and Rudolf Weigand identified in manuscripts of

52 *Corpus iuris canonici* 1 (n. 49), col. 958, 963.

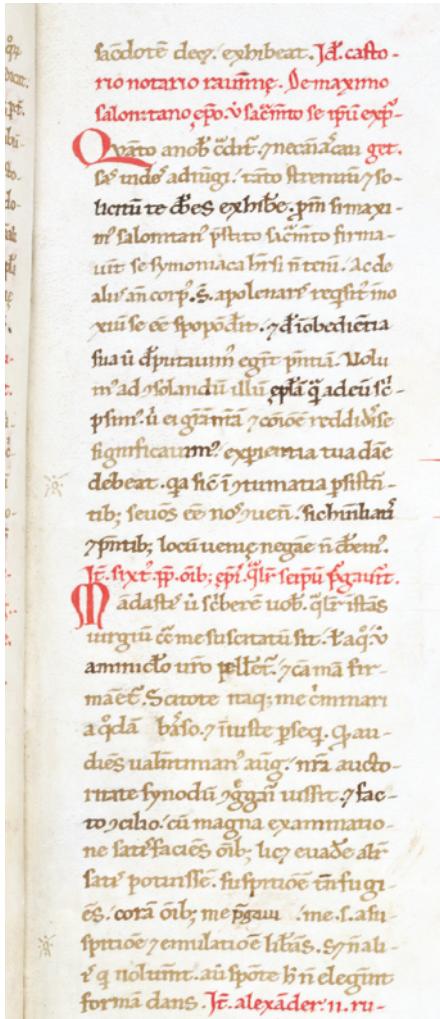


FIGURE 2.12
Sg 51a (detail)

the *Corpus iuris civilis* and the *Decretum Gratiani* c.1150–1190.⁵³ According to them, pairs of these “red signs” or – seldom – “brown signs” indicate identical sources, terms, and rules in text passages that are relatively close to each other. However, only on p. 51a next to the last sentences of C.2 q.5 c.8 (*quia sicut in contumacia persistentibus seueros esse nos conuenit, sic humiliatis et penitentibus locum uenienē negare non debemus*) and of c.10 (*Sed non aliis qui noluerint aut sponte hoc non elegerint formam dans*) have I found a pair of completely identical brown signs (Figure 2.12). Maybe these signs highlight the idea common to

53 Gero Dolezalek, Rudolf Weigand, “Das Geheimnis der roten Zeichen: Ein Beitrag zur Paläographie juristischer Handschriften des zwölften Jahrhunderts,” *ZRG.KA* 69 (1983), 143–199.

the two *canones* that the possibility of self-purgation should be granted to the humble and repentant, but not to the unwilling and stubborn.⁵⁴

The third annotation hand is characterized by an open lower bow of g and by angular curves at the top of e, f, g, o, p, and long s.⁵⁵ This hand wrote at least 40 annotations in greyish and brownish ink. They include *canones*, *dicta Gratiani* or parts thereof (sometimes merely the *inscriptio* or the *summarium*), at least two quotations from the *Codex Iustinianus* without indication of their provenance, *notabilia*, and one complex discursive gloss on pp. 4a, 22a, 35a, 36a, 69ab, 73ab, 113b, 123a, 133b, 154a, 174a, as well as numerous allegations of the *Decretum Gratiani* normally according to the common division of the text on pp. 32b (?), 50a, 62a, 65b, 68ab, 69a, 73a, 74b, 75a, 76a, 79ab, 84a, 89a, 100a, 123b (?), 125ab, 134b, 142a, 144a.⁵⁶ In the left upper margin of p. 69a, for instance, this hand added a tie mark to C.3 q.5 c.1 and a quotation from the *Codex* which would become part of a *dictum* in the vulgate *Decretum Gratiani* (C.4 q.2–3 c.3 §34; Figure 2.13): *Contra. Parentes et liberi inuicem aduersus se nec uolentes ad testimonium sunt admitendi* [!] (Cod. 4.20.6).⁵⁷

To the right on p. 69b, the same hand added an *inscriptio* and a *summarium* or short version of C.3 q.5 c.13, preceded by a tie mark to C.3 q.5 c.4, and an *inscriptio* and the complete *canon* of C.3 q.5 c.10. These additions are characterized by rather sloppy spelling (Figure 2.13):

Gelasius. Qui in[i]mici uel suspe[c]ti sunt et qui odio quo[s]libet insecuntur, ab accusatione remouemus et infames iudicamus, non ergo in accusatione sunt recipiendi.

Item Iulius papa decretum est ne suspe[c]ti aut infames aut crimp[i]nosi aut gratiosi aut calumpnatores au[t] facile litigantes suscipiantur accusatores, set tales qui careant omni suspicione.⁵⁸

54 *Corpus iuris canonici* 1 (n. 49), col. 457, 458.

55 For the latter phenomenon, see Orlandelli, *Rinascimento* (n. 21), tav. 27 (1143).

56 One to four allegations might be based on the old division into 33 *causae*. See Appendix 1, 1. Old *Allegationen* at the end of Viejo-Ximenez, “The *Exserpta* in the Origins of the Science of Canon Law (in this volume),” 213. Among the allegations by the third annotation hand listed there (nos. 2, 3, 5, 7), only no. 7 is without any apparent mistake and, in this sense, unambiguously refers to the old division into 33 *causae*.

57 *Corpus iuris civilis* 2 (n. 46), 158; *Corpus iuris canonici* 1 (n. 49), col. 540. This *dictum Gratiani* is absent in the first recension, too, according to Anders Winroth, *The Making of Gratian’s Decretum*, Cambridge Studies in Medieval Life and Thought, Fourth Series 49 (Cambridge, 2000), 209.

58 Cf. *Corpus iuris canonici* 1 (n. 49), col. 516, 517. Both *canones* are lacking in the first recension, too, according to Winroth, *The Making* (n. 57), 208.

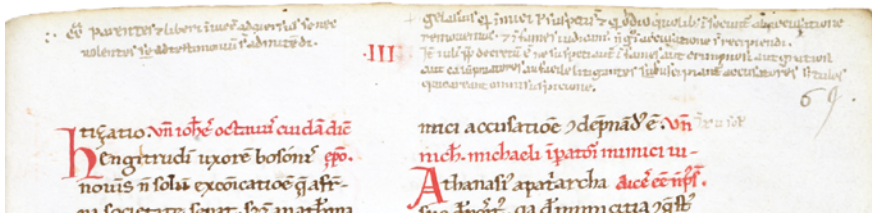


FIGURE 2.13 Sg 69ab (detail)

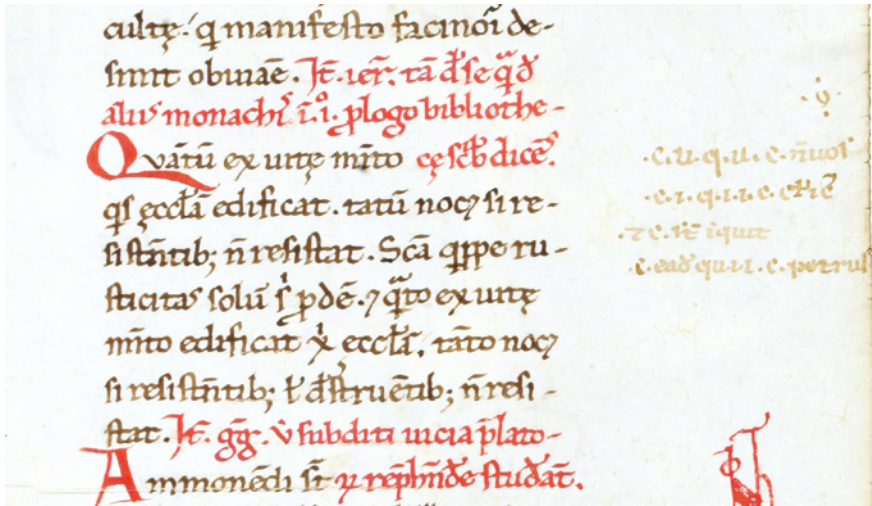


FIGURE 2.14 Sg 65b (detail)

The third annotation hand sometimes wrote the allegations between the lines or without the typical *Infra* or *Supra* at their beginning. Moreover, it was the first or the only hand to note a chain of allegations, as can be seen on p. 65b next to C.2 q.7 c.56. Although there is some unclarity in the third allegation,⁵⁹ all four alleged and identified texts exist in the present version of the *Decretum Gratiani* (Figure 2.14):⁶⁰

C. v. q. v. c. Non uos (C.5 q.5 c.1)

C. i. q. ii. c. Clericus (C.1 q.2 c.6) et c. S[icu]t inquit (C.2 q.7 c.46)

C. eadem q. vii. c. Petrus (C.2 q.7 c.40)

59 Cf. Lenz, “Die Glossierung (n. 2),” 134–137.

60 On Sg 76a, 36a, 64ab, 61b–62a.

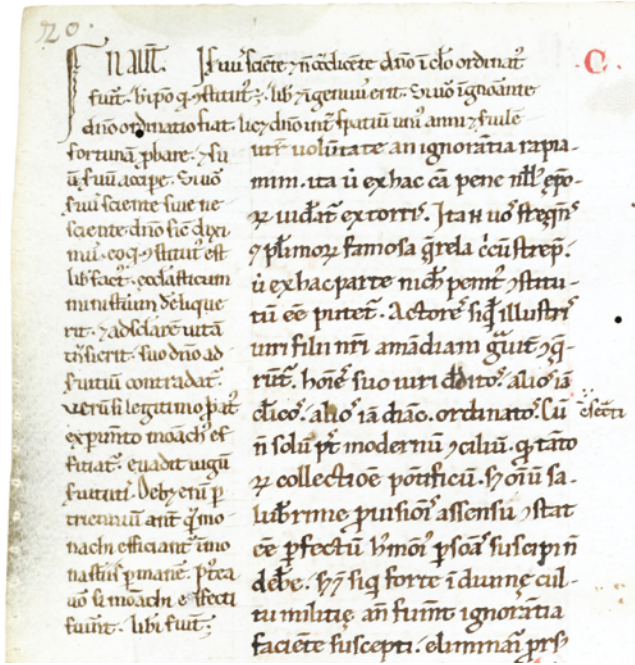


FIGURE 2.15
 Sg 20a (detail)

The fourth annotation hand, maybe anterior to the second and third annotation hands, wrote a *g* with a round back, a round *d* with a shaft that sometimes curves to the right at the very end, the abbreviation *b*; for *-bus*, an inverted *c* for *con-*, and a tironian *et* descending slightly below the baseline. This hand is confined to recording five *authenticae* in the margins of pp. 15b, 20a, 109b, 136a, most of which entered the vulgate *Decretum Gratiani*. On p. 20a next to D.54 c.9, for instance, this hand added two *authenticae* with the incipits *Si seruus* and *Verum*, which were to form the core of the first part of D.54 c.20 in the *Decretum Gratiani* (Figure 2.15). As Viejo-Ximénez has demonstrated, the present *authentica* with the incipit *Si seruus* provides a unique version of the corresponding *novella*.⁶¹

The characteristics of the fifth annotation hand are a letter *a* with a lower lobe reaching to the top of the minim and lacking an upper lobe, a letter *b* followed by a lower set *3* for *-bus*, an inverted *c* for *con-* in the form of a *g* descending below the baseline, an *et*-abbreviation in the form of a vertical zig-zag line,⁶² a *q* with a superscript *i* for *qui*, and the occasional use of the tironian

61 José Miguel Viejo-Ximénez, “Las *novellae* de la tradición canónica occidental y del decreto de Graciano,” in *Novellae constitutiones: L’ultima legislazione di Giustiniano tra Oriente e Occidente da Triboniano a Savigny. Atti del Convegno Internazionale Teramo, 30–31 ottobre 2009*, ed. Luca Loschiavo, Giovanna Mancini, Cristina Vano (Naples, 2011), 207–279, esp. 267–270.

62 The same e.g. also found in Orlandelli, *Rinascimento* (n. 21), tav. 27 (1143).

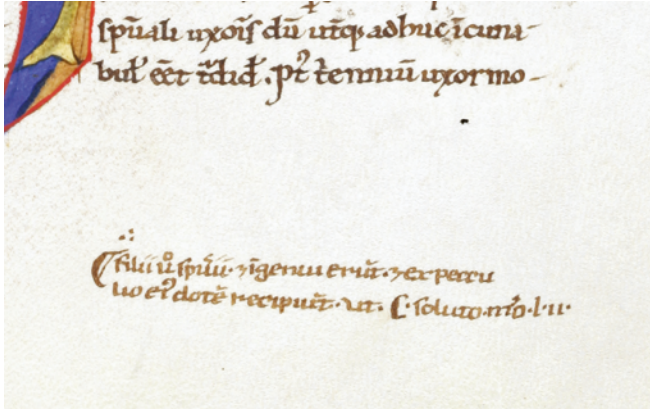


FIGURE 2.16
Sg 171b (detail)

sign for *est*. On pp. 97b, 148b, 156b, 171ab in the middle and at the bottom, and on pp. 173ab, 174a, 178ab, 180a, 187b at the bottom, the fifth annotation hand wrote *canones, dicta Gratiani* or parts thereof and some discursive glosses in brown and dark brown ink. Among these, we encounter text variants and lexical glosses as well as a longer gloss with an allegation. The latter is located in the lower margin of p. 171b with a tie mark to C.29 q.2 c.4, a *canon* about a free person who, unknowingly, married an unfree person (Figure 2.16).⁶³ The gloss summarizes the alleged text in the *Codex Iustinianus* which determines the recovery of the dowry in a similar case and the status of a child born of a free woman and a man of uncertain status: *§Filiū uero spurium et ingenuū erunt et ex pecculo [!] eius dotem recipiunt ut C. Solutio matrimonio l. ii* (Cod. 5.18.3 [instead of *lex 2*]).⁶⁴

The sixth annotation hand added *canones, dicta Gratiani* or parts thereof and missing words or *summaria* on pp. 60a, 63b, 80b, 132a, 140ab–141ab, 178a at the top and – in the second part of the manuscript – on p. 238ab and p. 239ab in red-brown, sometimes pale ink. Its features are the markedly angular curves of m, n, o, p, r, moreover a g with a lower bow that is closed with an angular hairline and finally the letters m and n, the first minims of which end flat on the baseline.

The addition of the excerpts C.17 q.4 c.28 and c.29 below the text with parts of C.17 q.1–4 on pp. 140ab–141ab is typical for early manuscripts of the *Decretum Gratiani*, because it reflects their evolution towards the longer, vulgate *Decretum*. The relation of De cons. D.2 c.16, c.19 (Figure 2.4) and c.21 in the lower margin of pp. 238ab–239ab to the excerpts written in the text columns above, however, still needs elucidating.

63 *Corpus iuris canonici* 1 (n. 49), col. 1093–1094.

64 Cf. *Corpus iuris civilis* 2 (n. 46), 214. See also Viejo-Ximenez, “The *Exserpta* in the Origins of the Science of Canon Law (in this volume),” 203–204.

This analysis of the annotations is far from exhaustive. Nonetheless, it has highlighted the intense study of this early version of the *Decretum Gratiani* by several scholars whose thoughts were written directly into *Sg* or copied from other manuscripts with the same text. It has been demonstrated that some hands, above all the first, second and fourth annotation hands, specialized in writing certain types of glosses. Consequently, the glosses reflect specific interests of the users of the manuscript and the availability of specific sources. It is noteworthy that already the first annotation hand, identical with the second text hand, added legal quotations from and sometimes references to the *Institutiones*, *Digesta*, *Codex*, and *authenticae* (which had been inserted into the *Codex*).⁶⁵ The physical availability of these books or of books summarizing or excerpting them, and the use and mastery of Roman law testify to an intellectually vibrant milieu that produced the text and the earliest annotations of *Sg*.

6 Dating and Localizing *Sg*

The manuscript was doubtlessly written in Italy in the twelfth century.⁶⁶ The script is still firmly rooted in the Caroline minuscule. Real fusions between contrary curves of adjacent letters are entirely lacking; at best, they touch each other sometimes. The ascenders and the descenders of the first and sometimes the fourth text hand are double the height of the minims. The script shows square letter bodies and, overall, rather round lobes of b, (round and straight) d, h, o, q, and the upper part of g. The roundness of the letters characterizes the first text hand in particular. Apart from m and n, the letters show no signs of lateral compression.

The letters display a few Pregothish features. First, broken instead of round strokes appear in the vertex of m, n, o, p, r, and sometimes of e, most clearly in the case of the third text hand, the third annotation hand, and the sixth annotation hand. Second, the shafts of f and long s of the first and the third text hand and the shaft of r of all text hands strictly end on the baseline. Third, the

65 Cf. Kenneth Pennington, "The Beginning of Roman Law Jurisprudence and Teaching in the Twelfth Century: The *Authenticae*," *Rivista internazionale di diritto comune* 22 (2011), 35–53. See Pennington, "Teaching Canon Law in the Early Twelfth Century (in this volume)," 173–176 and Viejo-Ximenez, "The *Excerpta* in the Origins of the Science of Canon Law (in this volume)," 192–202.

66 An Italian origin is indicated e.g. by the round bow of h which ends on the baseline and by the abbreviation q with a horizontal stroke through the shaft for *qui* according to Derolez, *The Palaeography* (n. 8), 62 (30), 68 (82).

feet of the minims and the ascenders curve upward to the right, they have horizontal or upward endstrokes or, less frequently, they are simply cut obliquely.⁶⁷ The lack of uniformity in the treatment of the feet on the baseline even by the same hand indicates an origin of the manuscript south of the Alps, too.⁶⁸

Other Pregothic phenomena are the alternative letter forms of round and straight *d* and of round and straight *s* at the end of a word as well as the high density and variety of abbreviations.⁶⁹ Indeed, the abbreviations in *Sg* seem to be more numerous and more important than in other early manuscripts of the *Decretum* such as *Fd*, *P*, *Bc*, and *Aa*.⁷⁰ The scribes dropped whole word endings, marking them with a horizontal or wavy bar. In these cases, e.g. *subdiac[oni]*, *inuen[it]* and *dixer[unt]*,⁷¹ the reader had to reconstruct the ending through the grammatical function of the abbreviated word in its context. Finally, we record the heavy use of insular abbreviations based on tironian notes for *con-*, *enim*, *et*, and *vel*, of *e caudata*, of superscript vowels and superscript round *s*.

Although the classical fusions between contrary curves and a general narrowing of letters are lacking in *Sg*, the script does employ space saving means that go beyond abbreviations. First, there is the well-known fusion of the lobe

67 Cf. Stefano Zamponi, "La scrittura del libro nel Duecento," in *Civiltà comunale: libro, scrittura, documento. Atti del convegno, Genova, 8–11 novembre 1988*, Atti della società ligure di storia patria, n.s. 29 (Genova, 1989), 316–354; Derolez, *The Palaeography* (n. 8), 56–59; Paolo Cherubini, Alessandro Pratesi, *Paleografia latina: L'avventura grafica del mondo occidentale*, *Littera antiqua* 16 (Vatican City, 2010), 423–427; to be used together with Paolo Cherubini, Alessandro Pratesi, *Paleografia latina: Tavole*, *Littera antiqua* 10, (Vatican City, 2004); Erik Kwakkel, "Biting, Kissing and the Treatment of Feet: The Transitional Script of the Long Twelfth Century," in *Turning Over a New Leaf: Change and Development in the Medieval Book*, ed. Erik Kwakkel, Rosamond McKitterick, Rodney Thomson (Leiden, 2012), 79–126, who, however, omits the development in Italy.

68 Cf. Bernhard Bischoff, "La nomenclature des écritures livresques du IX^e au XIII^e siècle," in *Nomenclature des écritures livresques du IX^e au XVI^e siècle: Premier colloque international de paléographie latine, Paris, 28–30 avril 1953* (Paris, 1954), 7–14, here 11, 14; to be complemented by Gianfranco Orlandelli, "Origini del gotico e scritture scolastiche," in Gianfranco Orlandelli, *Scritti*, ed. R. Ferrara, G. Feo (Bologna, 1994), 249–254.

69 Round *r* seems to be completely absent (except for the abbreviation for *-orum*). Cf. Armando Petrucci, *Breve storia della scrittura latina* (Rome, 1989), 128–132; Zamponi, "La scrittura (n. 67)," 326; Derolez, *The Palaeography* (n. 8), 56–60, 63–64; on the lack of *v* for *u* cf. *ibid.*, 94, 108.

70 Cf. e.g. D.31 c.1. Abbreviations and tironian signs such as *et* and *con-* are given in square brackets. *Sg* 5b: "Ante t[r]enniu[m] o[mn]iu[m] eccl[esi]ar[um] subdiac[oni] Sicilię p[ro]hibiti fu[er]ant u[t] more Romanę eccl[esi]ę s[ui]s uxo[r]ib[us] n[on] misceant[ur] q[uod] in duru[m] [et] i[n]com[pete]nte[s] uid[e]t[ur] u[t] q[ui] usu[m] [con]tine[n]tię n[on] i[n]uen[it]." Compared with *Aa* 23, fol. 36v; *Bc*, fol. 44vb; *Fd*, fol. 1rb; *P*, p. 68.

71 *Sg* 5b, l. 28–29, 32; *Sg* 224b, l. 4.

of the first and the shaft of the second b (or p) in double b (or double p).⁷² Second, two consecutive letters of an abbreviated word are sometimes written in such a way that their bodies, shafts, ascenders or descenders overlap completely.⁷³ Thus, a q with a horizontal stroke through the descender and a straight d coinciding in their bodies stand for *q[ui]d* and, with another horizontal stroke through the ascender, for *q[ui]d[em]*.⁷⁴ Further examples are provided by the complete overlapping of the ascenders of d and b in *d[e]b[er]e* and *d[e]beat*,⁷⁵ of the bow and the shaft in the body of p and b in *p[ro]bat[ur]* and of the shafts in the body of q and b in *q[ui]b[us]*.⁷⁶

The features discussed above, especially the lack of any real fusion of opposing curves, point to a copying of *Sg* before rather than after 1170/1180.⁷⁷ A formulary of appeal dating from 1146 provides a *terminus post quem* for *Sg*, which is supported by other chronological hints to the years 1138–1143 in the first part and to 1139 in the second part of the manuscript.⁷⁸ If we take into account that the second recension of the *Decretum Gratiani* (without all the *paleae*) was commented and summarized in Bologna and known in Paris at the latest in the 1150s,⁷⁹ it is hardly conceivable that the fine, decorated copy of the text of *Sg*

72 E.g. *Sg* 26b, l. 7 *abbatis*, l. 8 *abbati*; *Sg* 66a, l. 9 *papa* (Figure 2.1); *Sg* 57a, l. 18 *oppido*, l. 22 *prepositos*. Cf. Bischoff, “La nomenclature (n. 68),” 11; Derolez, *The Palaeography* (n. 8), 57; Kwakkel, “Biting (n. 67),” 97–99.

73 The same phenomenon e.g. in the *Collectio canonum* of Deusdedit, Vatican City, Biblioteca Apostolica Vaticana, Vat. Lat. 3833, e.g. fol. 1v, l. 17, 25, 34, written in Rome at the beginning of the twelfth century according to Paola Supino Martini, *Roma e l'area grafica romanesca (secoli X–XII)* (Alessandria, 1987), 136, and in a private charter written in Padua in 1135 according to Beniamino Pagnin, *Le origini della scrittura gotica padovana*, Università di Padova, Pubblicazioni della facoltà di lettere e filosofia 6 (Padua, 1933), 22 n. 6.

74 E.g. *Sg* 12b, l. 36; *Sg* 66b, l. 13 (Figure 2.1); *Sg* 229a, l. 36; *Sg* 233b, l. 5.

75 E.g. *Sg* 10b, l. 11; *Sg* 66a, l. 8 (Figure 2.1).

76 E.g. *Sg* 57a, l. 10; *Sg* 165b, l. 5 (Figure 2.2); *Sg* 229a, l. 35.

77 Cf. Armando Petrucci, “Censimento dei codici dei secoli XI–XII: Istruzioni per la datazione,” *Studi medievali*, s. III, 9 (1968), 115–1126. Zamponi, “La scrittura (n. 67),” describes all the changes in Italian book script from the beginning of the twelfth to the first third of the thirteenth century, but he avoids dating them more precisely and cautiously suggests that many of these graphic innovations, in particular the “fusions” and “elisions,” started appearing in the last third of the twelfth century (339–340).

78 Lenz, “The Context of Transmission (n. 3),” 106. For an additional probable *terminus post quem* of 1138–1141 in the second part of *Sg* see Wei, “Miracle Story (in this volume),” 135.

79 Winroth, *The Making* (n. 57), 136–145. He dates the “second recension” to 1139–1157. Carlos Larrainzar, “La firma boloñesa del Decreto de Graciano,” *Initium* 9 (2004), 495–515, dates the “vulgate” *Decretum* (without *paleae*) to around 1150; Kenneth Pennington, “The Biography of Gratian, the Father of Canon Law,” *University of Villanova Law Review* 59 (2014), 679–706, especially 705, to around 1140. According to José Miguel Viejo-Ximénez, “The *Summa Quoniam in omnibus* revisited,” *Folia theologica et canonica* 3 (2014), 153–169,

would have been produced and then studied in a learned environment (where books of Roman law were most probably available and excerpted) after c.1160 or 1165 the latest.

The affinity to the Caroline minuscule, the overall square letter bodies and the partly still round character of the script argue against an origin in southern Italy or Sicily, where the Beneventana and – under the influence of the Norman rulers and the new Cistercian monasteries – a Pregothisc script of mostly Franco-Norman character prevailed during the twelfth century.⁸⁰ The script in *Sg* also differs from the Romanesca, which was used in southern and northeastern Latium, in southern Umbria, and in parts of the Marches in the eleventh and early twelfth centuries, sometimes simultaneously with the late Caroline minuscule.⁸¹

A more precise localization of *Sg* in northern and central Italy solely based on the script appears to be difficult. The complexity of such an attempt becomes evident already when testing the hypothesis of an origin of *Sg* in Bologna, Gratian's place of teaching.⁸² Indeed, there are few twelfth-century manuscripts and only two dated twelfth-century manuscripts that doubtlessly originate from Bologna, even though the law schools there must have produced a considerable amount of writing.⁸³ The two dated Bolognese manuscripts are a homiliary of 1133 and a legendary of 1180.⁸⁴

here 154, 169–160, the oldest Bolognese *summa* of the *Decretum Gratiani* (in second recension) was composed in the middle of the 1150s.

- 80 Cf. Petrucci, *Breve storia* (n. 69), 93, 120–122, 131, 132; Paola Supino Martini, "Orientamenti per la datazione e la localizzazione delle cosiddette Litterae textuales italiane ed iberiche nei secoli XII–XIV," *Scriptorium* 54 (2000), 20–34, here 26–27; Cherubini/Pratesi, *Paleografia latina* (n. 67), 303–305, 313.
- 81 Cf. Supino Martini, *Roma e l'area grafica romanese* (n. 73); Petrucci, *Breve storia* (n. 69), 116; Cherubini/Pratesi, *Paleografia latina* (n. 67), 389–394.
- 82 Cf. Winroth, *The Making* (n. 57), 142–144; Ken Pennington, "The Beginnings of Law Schools in the Twelfth Century," in *A Companion to Twelfth-Century Schools*, ed. Cédric Giraud, Brill's Companions to the Christian Tradition 88 (Leiden, 2019), 226–249, here 243–249.
- 83 Cf. Gianfranco Orlandelli, "Il codice scholastico bolognese," in Gianfranco Orlandelli, *Scritti*, ed. R. Ferrara, G. Feo (Bologna, 1994), 297–341; Roberta Bosi, "Lo studium a Bologna," in *Duecento: Forme e colori del Medioevo a Bologna*, ed. Massimo Medica, coll. Stefano Tumidei (Venice, 2000), 53–61.
- 84 On Venice, Biblioteca Marciana, 1613 see Gianfranco Orlandelli, "'Littera nova' e 'Littera antiqua' fra glossatori e umanisti," in Gianfranco Orlandelli, *Scritti*, ed. R. Ferrara, G. Feo (Bologna, 1994), 213–236, here 226–229 with tav. 2 and 3. On Bologna, Biblioteca universitaria 1473 see Joachim Kirchner, *Scriptura latina libraria a saeculo primo usque ad finem medii aevi LXXVII imaginibus illustrata* (Munich, 1955), Tab. 43; Marco D'Agostino, "Il ms. 1473 della Biblioteca Universitaria di Bologna: esame codicologico e paleografico," in *Vitale e agricola sancti doctores: Città, chiesa, studio nei testi agiografici bolognesi del XII secolo*, ed. Giampaolo Ropa, Giulio Malaguti (Bologna, 2001), 37–42.

The treatment of the ascenders and the shafts and the use of abbreviations distinguish *Sg* from the two liturgical manuscripts. In these, the tops of the ascenders of b, straight d, h, and l are flat or slightly triangular, and the first minims of m and n end flat on the baseline. *Sg*, however, displays obliquely cut, triangular or bifurcated ends of the ascenders at the top, and the minims of m and n sometimes have horizontal or diagonally upward endstrokes on the baseline. In addition, *Sg* abounds in abbreviations foreshadowing the *litterae scholasticae* of the thirteenth century,⁸⁵ while the two liturgical manuscripts possess only few and traditional abbreviations.

Both phenomena – the shaft endings at the top and on the baseline and the numerous and various abbreviations – do, however, occur in charters written in Bologna and in other northern Italian towns in the central decades of the twelfth century.⁸⁶ If one expands the palaeographical study to the charters, an origin of *Sg* in Bologna appears possible, although other places in northern and central Italy cannot be excluded.

The analysis of the book decoration promises a more precise localization.⁸⁷ Marina Bernasconi has attributed the colored initials to the “geometric style,” which developed in the Roman and Romano-Umbrian area at the end of the eleventh century and dominated book illumination in Tuscany and central Italy in the twelfth century. According to Bernasconi, the initials in *Sg* conform to the “late geometric style” of the second half of the twelfth century. She found initials of this kind in the region of Emilia and identified comparable initials that were most probably created in the scriptorium of the cathedral of Modena.⁸⁸ If one compares the reproductions of manuscripts of this

85 Cf. Petrucci, *Breve storia* (n. 69), 135–140; Cherubini/Pratesi, *Paleografia latina* (n. 67), 453–459, 471–478.

86 See the shaft endings and abbreviations, especially the superscript vowels and the tironian signs in Orlandelli, “Ricerche sulla origine (n. 39),” 108–110, tav. II (1157) and III (1170); Orlandelli, *Rinascimento* (n. 21), tav. 34A (1157); Pagnin, *Le origini della scrittura gotica padovana* (n. 73), 22 n. 6, tav. IX (1134); Martina Pantarotto, “La scrittura delle carte bresciane nel sec. XII,” *Scrineum Rivista* 3 (2005), 123–148, here 131–135, tav. 9 (1165) and tav. 5 (1135), tav. 8 (1153).

87 Cf. Johann P. Gumbert, “Writing and Dating – Some General Remarks,” *Scriptorium* 54 (2000), 5–8; Patricia Stirnemann, “Dating, Placing, and Illumination,” and Denis Muzerelle, “Dating Manuscripts: What Is at Stake in the Steps Usually (but Infrequently) Taken,” *Journal of the Early Book Society for the Study of Manuscripts and Printing History* 11 (2008), 155–166 and 167–180.

88 Bernasconi Reusser, “Considerazioni (n. 3),” passim. Cf. Giuseppe Pistoni, “La canonica della chiesa cattedrale di Modena nei secoli XI e XII,” in *La vita comune del clero nei secoli XI e XII. Atti della Settimana di studio, Mendola, settembre 1959, vol. 2*, Miscellanea del centro di studi medioevali 3 (Milan, 1962), 181–191.

scriptorium in publications of art history,⁸⁹ the script of Augustine's commentary on the Gospel of St John in Modena, Biblioteca Capitolare, O III 14, written shortly before the middle of the twelfth century, shares many features with *Sg*, especially with the first text hand: the triangular tops of the ascenders, the horizontal endstrokes for the feet of the first minims of m and n, the wide, closed lower bow of g, and the abbreviation b; for *-bus*.⁹⁰ The majuscule letters in text ink after the colored initial in *Sg* mentioned above are also present in twelfth-century manuscripts of Modena.⁹¹ As a result, the localization of *Sg* in the region of Emilia and especially in Modena on art-historical grounds proves to be palaeographically possible, too.

With regard to a possible origin of *Sg* in Modena, it is noteworthy that the city witnessed an increasing influence of legal practitioners and scholars from the 1150s onwards. Indeed, a council of *iudices* appeared at the court of the Bolognese cardinal Hildebrand Crassus in Modena during his administration of the Modenese church c.1154–1156, and the first learned jurist from Bologna, *magister* Aldricus, and a *dominus* Jacobus, who may be identical with the famous Jacobus de Porta Ravennate, are documented in Modena in the years 1157–1161 and 1160–1161, respectively.⁹²

7 The Provenance of *Sg*

The manuscript is attested in the monastery of Sankt Gallen for the first time in 1461, when it was recorded in a catalogue as *B 22 Excerpta ex decretis sanctorum patrum* (with reference to its rubric at the beginning on p. 3a) under

89 Regrettably, they show only small parts of the text. Besides Bernasconi Reusser, "Considerazioni (n. 3)," 145–146, fig. 2, 4, see Alessandro Conti, "Miniature romaniche per il Duomo di Modena," in *Lanfranco e Wiligelmo: Il Duomo di Modena*, ed. Enrico Castelnuovo et al. (Modena, 1984), 521–542; Lorenza Cochetti Pratesi, "La miniatura del XII secolo a Modena," *Nuovi annali della Scuola Speciale per Archivistici e Bibliotecari* 10 (1996), 83–96; Roberta Bosi, "Libri miniati modenesi di età romanica," *Atti e memorie della Deputazione di storia patria per le antiche provincie modenesi* 20 (1998), 17–96.

90 Cochetti Pratesi, "La miniatura (n. 89)," fig. 6; Bosi, "Libri miniati modenesi (n. 89)," 17–18, 24, fig. 1.

91 Bernasconi Reusser, "Considerazioni (n. 3)," 145–146, fig. 2, 4 (the latter like *Sg* with minuscule a among the majuscules).

92 Johannes Fried, *Die Entstehung des Juristenstandes im 12. Jahrhundert: Zur sozialen Stellung und politischen Bedeutung gelehrter Juristen in Bologna und Modena*, *Forschungen zur neueren Privatrechtsgeschichte* 21 (Cologne, 1974), 187–188, 230–231. Cf. Hermann Lange, *Römisches Recht im Mittelalter, Bd. 1: Die Glossatoren* (Munich, 1997), 178–183, 202–204.

the heading *Libri iuris canonici*.⁹³ Its presence in the former monastic library is well documented.⁹⁴ The question arises as to when and why – by accident or conditioned by someone’s interest into a relevant or outdated manuscript – this important early version of the *Decretum Gratiani* reached the abbey of Sankt Gallen. It should be reminded that the monastery of Sankt Gallen had already passed its intellectual and artistic peak in the twelfth century, even though manuscript production continued up to c.1200.⁹⁵ During the thirteenth and fourteenth centuries, the religious and intellectual life was in decline and partially passed into the hands of secular clerics, while manuscript production ceased.⁹⁶

Larrainzar has pointed out the connection of the monastery of Sankt Gallen to northern Italy which resulted from the ownership of the abbey of Massino near the Lago Maggiore in the province of Novara since 883/904.⁹⁷ In 1134, abbot Wernher of Sankt Gallen (1133–1167) transferred the manor of Massino as a hereditary fief to the Visconti of Milan in exchange for an annual rent. According to this charter issued in Chiavenna, the payments in kind were to be transported over the Alps to Disentis and then to Sankt Gallen. On his return from the Third Lateran Council in Rome, abbot Ulrich von Tegerfeld (1167–1199) confirmed the Visconti’s feudal tenure of the manor of Massino in 1179.⁹⁸ In the fourteenth century, Sankt Gallen’s rights over the abbey of Massino were

93 *Mittelalterliche Bibliothekskataloge Deutschlands und der Schweiz, vol. 1: Die Bistümer Konstanz und Chur*, ed. Paul Lehmann (Munich, 1918), 17, l. 25.

94 Larrainzar, “El borrador de la ‘concordia’ de Graciano (n. 3),” 598–599 with n. 12–15; Lenz/Ortelli, *Die Handschriften* 3 (n. 3), 19.

95 Albert Bruckner, *Scriptoria Medii Aevi Helvetica. Denkmäler schweizerischer Schreibe-kunst des Mittelalters*, 3: *Schreibschulen der Diözese Konstanz. St. Gallen II* (Geneva, 1938), 48; Johannes Duft, Anton Gössi, Werner Vogler, “Benediktiner – St. Gallen,” in *Helvetia Sacra 3.1: Frühe Klöster, die Benediktiner und Benediktinerinnen in der Schweiz*, ed. Elsanne Gilomen-Schenkel (Berne, 1986), 1180–1369, here 1199–1208.

96 Cf. Paul Oberholzer, *Vom Eigenkirchenwesen zum Patronatsrecht: Leutkirchen des Klosters St. Gallen im Früh- und Hochmittelalter*, *St. Galler Kultur und Geschichte* 33 (St. Gallen, 2002), 144–168, 179–198; Philipp Lenz, *Reichsabtei und Klosterreform: Das Kloster St. Gallen unter dem Pfleger und Abt Ulrich Rösch 1457–1463*, *Monasterium sancti Galli* 6 (St. Gallen, 2014), 478–489; Philipp Lenz, “Bibliotheksbenutzung im Hoch- und Spätmittelalter,” in *Arznei für die Seele: Mit der Stiftsbibliothek St. Gallen durch die Jahrhunderte. Sommerausstellung 14. März bis 12. November 2017*, ed. Cornel Dora (St. Gallen, 2017), 60–67.

97 Larrainzar, “El borrador de la ‘concordia’ de Graciano (n. 3),” 636–637 with n. 43. Cf. Ratpert, *St. Galler Klostergeschichten (Casus sancti Galli)*, ed. Hannes Steiner, *MGH Scriptores rerum Germanicarum in usum scholarum separatim editi* 75 (Hannover, 2002), 49–50 with n. 161, 232–233 with n. 406.

98 *Chartularium Sangallense* 3, ed. Otto P. Clavadetscher (St. Gallen, 1983), 15–16, no. 896 (March 1134), 51–52, no. 936 (7 May 1179), 52–53, no. 937 (7 May 1179).

alienated. Attempts to recover the loss at the end of the fifteenth century failed.⁹⁹ It remains an open question as to whether these feudal relations to Massino and the Visconti in Milan in the twelfth century were responsible for *Sg* finding its way to Sankt Gallen. The same applies to the journeys to Rome which – after abbot Ulrich von Tegerfeld in 1179 – abbot Ulrich von Sax (1204–1220) and abbot Rudolf von Güttingen (1220–1226) made in the service of the German king and to obtain papal privileges for the monastery and themselves.¹⁰⁰

Students crossing the Alps to study in Italy are another possible explanation for *Sg*'s destiny. Paul Staerke documented 18 students – but no monk – from today's Canton of Sankt Gallen who attended Italian universities, above all in Bologna, between 1285 and 1399.¹⁰¹ More interesting is the earliest student he recorded, the later abbot Ulrich von Sax (1204–1220), who studied c.1194–1202 in Paris and Bologna. This finding rests on a passage in Conrad de Fabaria's *Casuum sancti Galli continuatio* of 1232/1235, an overall trustworthy chronicle of the history of the monastery of Sankt Gallen from 1203 to 1234.¹⁰² It reports that the monastery's deacon Heinrich von Sax had his younger relative educated in grammar and dialectics before sending him to Paris and Bologna for studies, especially of the laws.¹⁰³ The chronicle mentions his erudition, his knowledge of the laws, and his sense of justice. At the request of king Philip of Swabia, Ulrich von Sax viewed the conflicting arguments and settled a legal dispute between the princes in Basel in 1207. In other instances, the chronicle praises his education in the *trivium* and in philosophy and his ability to present arguments of ecclesiastical and secular law with intelligence and in elegant speech.¹⁰⁴ Against this background, it seems possible that Ulrich von Sax acquired *Sg* either in Italy or north of the Alps, even though the text and the glosses were outdated by then.

99 *Chartularium Sangallense* 3 (n. 98), 342–343, no. 1450 (1250); *Chartularium Sangallense* 5, ed. Otto P. Clavadetscher (St. Gallen, 1983), 209, no. 2806 (1311), no. 2807 (1311); Hans Hirsch, "St. Gallen und die Visconti," *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 21 (1929–1930), 94–119, here 99–104, 114–115.

100 Duft/Gössli/Vogler, "Benediktiner – St. Gallen (n. 95)," 1295, 1297, 1299.

101 Paul Staerke, *Beiträge zur spätmittelalterlichen Bildungsgeschichte St. Gallens*, Mitteilungen zur vaterländischen Geschichte 40 (St. Gallen, 1939), 167–172.

102 Karl Schmuki, "Klosterchronistik und Hagiographie des 11. bis 13. Jahrhunderts," in *St. Gallen. Geschichte einer literarischen Kultur. Kloster – Stadt – Kanton – Region*, 1: *Darstellung*, ed. Werner Wunderlich (St. Gallen, 1999), 181–205, here 198–199.

103 Conradus de Fabaria, *Casuum sancti Galli continuatio: Die Geschehisse des Klosters St. Gallen 1204–1234*, ed. and trans. Charlotte Gschwind-Gisiger (Zürich, 1989), 12/13.

104 Conradus de Fabaria, *Casuum sancti Galli continuatio* (n. 103), 12/13, 14/15. Cf. Duft/Gössli/Vogler, "Benediktiner – St. Gallen (n. 95)," 1296–1298; Lenz, *Reichsabtei* (n. 96), 123, 133.

Maybe *Sg* shared an early common destiny with other important canon law manuscripts of the second half of the twelfth century, an abbreviation *Quoniam egestas* and a glossed *Compilatio prima*.¹⁰⁵ Ulrich von Sax could have acquired the latter from northern France together with other scholastic manuscripts when he was studying in Paris.¹⁰⁶ It is, however, as likely that one or several secular clerics who provided teaching and legal services in the thirteenth and fourteenth centuries owned these manuscripts before they passed into the monastic library.¹⁰⁷

8 Conclusion

Essentially four hands wrote the early version of the *Decretum Gratiani* (pp. 3a–203a) and the collection of excerpts (pp. 203a–246b) in *Sg* between 1146 and, most likely, c.1160 or 1165 at the latest. The manuscript was copied and beautifully decorated in northern or central Italy, according to the colored initials maybe in Modena, though an origin in Bologna is palaeographically also possible.

Sg differs from other early manuscripts of the *Decretum Gratiani* through its small, oblong format, its unique text, its division into 33 *causae*, its layout with *inscriptions* in red ink, and the gradual transition from the *Decretum Gratiani* to the collection of excerpts without a clear end.

The distinctive profile of *Sg* is not limited to the text, but includes the glosses, too. Characterizing the glosses in *Sg* means comparing them to those in other early glossed manuscripts of the *Decretum Gratiani*, above all those transmitting the first recension. Whereas *Sg* allegates only the *Corpus iuris civilis* besides the *Decretum Gratiani*, additional allegations of Burchard's *Decretum* exist in *Aa* and *Bc* and of the *Lombarda* in *Bc*.¹⁰⁸

The investigation of other early manuscripts of the *Decretum Gratiani* has shown that *Fd* displays few discursive glosses and apparently no mere allegations of the *Decretum Gratiani* in the original part with the first recension text, while *Aa* and *Bc* possess numerous glosses and among them many times more allegations than *notabilia* and discursive glosses. However, with the exception

105 Cf. Lenz/Ortelli, *Die Handschriften* 3 (n. 3), xxi–xiv, 175–177, 196–203.

106 E.g. Petrus Lombardus, *Collectanea in epistolas Pauli* in Cod. Sang. 334. Cf. Franziska Schnoor, in *Im Paradies des Alphabets: Die Entwicklung der lateinischen Schrift in den Handschriften der Stiftsbibliothek St. Gallen*, 2nd ed. (St. Gallen, 2018), 82–83.

107 Cf. Staerke, *Bildungsgeschichte* (n. 101), 10–16; Oberholzer, *Vom Eigenkirchenwesen* (n. 96), 179–189.

108 Lenz, “Die Glossierung (n. 2),” 71, 78, 120, 134.

of some isolated glosses, the layers of the glosses in *Aa* and *Bc* presuppose the existence of the second recension including *De consecratione*. Overall, only few direct or indirect traces of a possible glossing of the first recension (*Aa*, *Bc*, *Fd*, *P*) have been identified.¹⁰⁹

The annotations by the first text hand, by the first annotation hand (identical with the second text hand), and maybe also those by the fourth annotation hand, are of special interest in *Sg*, because they were written before the original division of the *Decretum Gratiani* into 33 *causae* was adapted to its common form. Hence, they must have been elaborated early on the basis of the text extant in *Sg*. The *notabilia*, discursive glosses and allegations written by these hands in *Sg* furnish the richest glossing material that emerged before, or at least independent from, the completion of the second recension. The study and interpretation of the *Decretum Gratiani* in *Sg* at that time already relied on different books of Justinian's codification as shown by the first and maybe by the fourth annotation hand.

Even though most of the allegations by the second annotation hand are merely formalized renderings of internal references in the text of *Sg*, they probably provide the oldest witnesses of conventional allegations (albeit with a different numbering and with a paragraph mark at their beginning) of the *Decretum Gratiani*. Moreover, they seem to confirm my hypothesis that (conventional) allegations presuppose a clear division of the text and a clear labelling and numbering of its components, which, contrary to *Fd*, *P*, and to a lesser extent *Aa*, were present in *Sg* from the beginning.¹¹⁰

109 Lenz, "Die Glossierung (n. 2)," 79–80, 93–121, 133–134, 181, Anhang 2.

110 Lenz, "Die Glossierung (n. 2)," 165.

PART 3

Creating Legal Knowledge



The Formation of Marriage according to the Sg-Codex = Sankt Gallen, Stiftsbibliothek, 673, 166–169

Enrique de León

1 Introduction

The natural and sacramental reality of marriage has been the object of ample considerations and studies in the theological and canonistic domain from the foundation of the Church itself, as attested by the wealth of patristic texts on this subject, in particular by Saint Augustine. The abundant and excellent extant bibliography on the configuration of marriage as a canonical or legal institution has solidly retraced the stages of its formation in Western culture, although there remains material for further analysis. To mention a few classic studies: the entry for *Mariage* by Gabriel Le Bras included in the *Dictionnaire de Théologie Catholique* remains a valid and authoritative general rendition of the topic,¹ as do the classic histories of Adhémar Esmein² and Jean Dauvillier,³ and so many others, up to the more recent contributions of Jean Gaudemet.⁴ And this is only the French bibliography.

The anthropological observations provided by the documents pertaining to the Second Vatican Council have reopened ancient topics and produced new areas of inquiry. The non-negligible aspects in which the old and perfect “system” of canonical marriage, elaborated over centuries and contrasted by an

1 Cf. Gabriel Le Bras, “Mariage. III. La doctrine du mariage chez les théologiens et les canonistes depuis l’an mille,” *Dictionnaire de Théologie Catholique* 1X/2 (Paris, 1927), .2123–2317, at 2123–2223.

2 Cf. the classic works of Adhémar Esmein, Robert Génestal, *Le mariage en droit canonique* I (Paris, 1929) and Adhémar Esmein, Jean Dauvillier, *Le mariage en droit canonique* II (Paris, 1935).

3 Jean Dauvillier, *Le mariage dans le droit classique de l’Église depuis le Décret de Gratien (1140) jusqu’à la mort de Clément V (1314)* (Paris, 1933), his doctoral dissertation, and in addition his monograph: Jean Dauvillier, *Le mariage en Droit Canonique orientale* (Paris, 1936).

4 The abundant work of Jean Gaudemet in this field has recently been evaluated by Anne Lefebvre-Teilhard, “Le mariage en Droit Canonique et dans l’Ancien Droit,” in *L’œuvre scientifique de Jean Gaudemet. Actes du colloque tenu à Sceaux et à Pais les 26 et 27 janvier 2012*, ed. Michèle Bégou-Davia, Franck Roumy, Olivier Descamps, François Jankowiak (Paris, 2014), 129–137.

abundant jurisprudence, became subject to review as a whole. For example, it is a fact that the century-old contractual theory seems to have been abandoned by a majority in the search for a canonical reformulation of a definition more in accordance with the true nature of marriage.⁵ But, equally, what in other cases are usually presented as great innovations of the *Codex Iuris Canonici* of 1983 – to quote one: the prescriptions of the new can. 1095, in particular § 3 – have very ancient precedents that were, however, forgotten. In the past, I have pointed out, for example, how Rufinus's gloss *impossibilitas conueniendi est triplex* served to establish a positive concept of capacity from which it was possible to deduce consensual incapacity, although a later *glossa* by Huguccio modified the *impossibilitas conueniendi* to *coeundi*, applying the comment to impotence.⁶

Notwithstanding the above, there is a unanimous recognition that medieval developments of the theory of marriage arose from the formulations of Roman law, the Justinian Roman law in particular, as synthesised in the fragment of the *Institutiones* 1.9.1, which literally states: *Nuptiae autem siue matrimonium est uiri et mulieris coniunctio, indiuiduam consuetudinem uitae continens*. I wish to highlight the final verb, *continens*, which was to be replaced by *retinens* in later canonical reformulation.

I shall focus on the definition of marriage in the first part of Sankt Gallen, Stiftsbibliothek, 673, an appropriate topic for this collection of essays, which, in the words of its editors, is devoted to the “study of the production and reception of ecclesiastical scholarship;” this manuscript – with the acronym *Sg* coined by Carlos Larrainzar exactly twenty years ago – is a “witness to the persistent work in and with twelfth-century canon law.”⁷ I will only touch upon some aspects regarding the nucleus of the canonical concept of marriage. For this analysis, I have selected C.27 q.2 = C.25 q.2 in *Sg*, since, as we shall see below, this is the *Causa* containing the definition of marriage in response to

5 Vid. a sample of this creative, albeit rigorous, revisionism in the study by José María Muñoz de Juana, “La falta de amor como causa de nulidad del matrimonio,” *Revista Española de Derecho Canónico* 67 (2010), 83–137.

6 Cf. Enrique de León, “La glossa *impossibilitas conueniendi* de Ruffino (C.27 pr.),” *Annaeus* 7 (2010), 19–36, which is a revised and extended version of the work Enrique de León, Juan Carreras, “La glossa *impossibilitas conueniendi* di Ruffino (C.27 pr.),” in *Proceedings of the Tenth International Congress of Medieval Canon Law*, ed. Kenneth Pennington, Stanley Chodorow, Keith H. Kendall, M1C C/11 (Vatican City, 2001), 111–134.

7 On the congress in June 2018, see the Introduction to this volume and Thier, “Exploring the Evolution (in this volume).” Vid. the study, now a classic, by Carlos Larrainzar, “El borrador de la *Concordia* de Graciano: Sankt Gallen Stiftsbibliothek MS 673 (= *Sg*),” *Ius Ecclesiae* 11 (1999), 593–666. This research should also be read in connection with his other work: Carlos Larrainzar, “La formación del Decreto de Graciano por etapas,” *ZRG.KA* 87 (2001), 67–83, or its Italian version Carlos Larrainzar, “La formazione del Decreto di Graziano per tape,” in *Proceedings of the Eleventh International Congress of Medieval Canon Law*, ed. Manlio Bellomo, Orazio Condorelli, M1C C/12 (Vatican City, 2006), 103–117.

the question “What is marriage?” However, I wish to start with a personal consideration regarding the method I usually employ in my approach of the texts of Gratian *ius antiquum*. That is, my central reference is at all times to the text of the *Decretum vulgatum* while keeping in mind all material prior to this ‘vulgate text’ appearing in the different manuscripts that contain ancient readings and particular nuances in their composition. Here, I shall compare the text in *Sg* with the block *Aa Fd edF* (*edF* = Emil Friedberg edition), the last three being substantially consistent except for the *paleae*: C.27 q.2 c.4, c.7, c.8, c.18, and c.51 are found only in *edF*.

My considerations here are a brief advance of my research on the whole of C.27 q.2, which remains in progress and waiting for completion of the comparison with formal sources, among other things, as well as other aspects of the *Decretum*. For the texts of *Sg*, we have for many years relied on the complete edition of C.25 q.2 by Carlos Larrainzar in addition to a complete analysis of the rational structure of this recension, of the formal sources of its *auctoritates* and an ongoing assessment of its most significant philological variations.⁸ I have included a complete transcription of this *Causa* in the Appendix of this chapter. I wish to comment on some specific aspects which, in my opinion, quite clearly demonstrate the evolution of the canonistic theory of marriage. For this, I have chosen three aspects for consideration: C.25 q.2 of *Sg* = C.27 q.2 *edF* and the meaning of *desponsatio*, *matrimonium*, and *coniugium*; the lengthening of C.27 q.2 c.3 §1 on the block *Aa Fd edF*; and, finally, the “misadjustment” in the text of C.27 q.2 d.p.c.28 §3 on the block *Aa Fd edF*.

2 The Concept of Marriage: *matrimonium* vs. *coniugium*

C.25 q.2 of *Sg* 166, which corresponds to *edF* C.27 q.2, considers “whether married maidens may renounce this condition and attain another. Firstly, it must be determined whether there has been marriage between them; consequently, whether they may separate.” According to this manner of presenting the matter, we see in *Sg* that a single issue is proposed, in the sense of whether a

8 Vid. Carlos Larrainzar, “Datos sobre la antigüedad del manuscrito Sg: su redacción de C.27 q.2,” in *Panta rei. Scritti dedicati a Manlio Bellomo* 3, ed. Orazio Condorelli (Catania, 2004), 205–237. It is regrettable that the study by Jean Werckmeister, “Le manuscrit 673 de Saint-Gall: un Décret de Gratien primitif?,” *RDC* 60 (2010), 155–170, the stated purpose of which was to be a study of the texts of *Sg* regarding marriage, has taken into account neither the information nor the conclusions of the detailed analysis published in 2004 by Larrainzar on C.25 of *Sg*. Perhaps due to this grave omission, the French author presents as “novel” an accumulation of observations loaded with anachronisms which distort the sense of the objective data of the redaction of the Swiss codex. The defects of this work are not just errors of method.

married maiden may renounce her condition as a married woman and, should this be so, be able to marry another person.

The problem to elucidate remains in knowing whether the term *desponsatio* refers to *matrimonium* in the proper sense. Then, and only then, may we establish whether she may proceed or not to another *desponsatio*. Whilst *Sg* employs the word *matrimonium*, the block of manuscripts *Aa Fd edF* utilises the term *coniugium*: a non-negligible nuance. Let us look at a comparison between the recensions of *Aa Fd* and *Sg*:

Sg 166

Aa 115r, *Fd* 79v

Secunda questio sequitur uidenda, s(cilicet) an puelle alteri desponsate, priori conditioni renuntiare possint, et ad alium transire. *Prius* igitur uidendum occurrit, an inter eos *matrimonium* fuerit, *postmodum*, an separari possint.

Sequitur secunda questio qua queritur, an puelle alteri desponsate possint renuntiare priori conditioni, et transferre (sua uota: edF) se] om. *Aa*, *Fd*; ad alium. Hic *primum* uidendum est an sit *coniugium* inter eos. *Secundo* an possint ab inuicem discedere.

Hence, we must here consider that the concept of *matrimonium* (*Sg*) does not necessarily imply the ‘marital union,’ whilst the term *coniugium* (*Aa Fd edF*) directly alludes to the fact of such ‘marital union.’ The composition of the block *Aa Fd edF* seems to go beyond the mere *desponsatio* by providing a greater technical precision to the consideration of the matter, whilst in *Sg* this does not seem to be the case, rather, it appears that distinctions of the types of *desponsationes* and their effects are not yet borne in mind. Further, the block *Aa Fd edF* articulates the *questio* for development through a *primum* and a *secundum*, two sub-questions structured in a more precise manner.

3 The Individual Unit of Life: *continens* vs. *retinens*

Let us now examine how this development of the second question is initiated:

Sg 166

Aa 115r, *Fd* 79v

Hos uero et ex diffinitione coniugii, coniuges esse, multorum auctoritatibus ostendi potest.

Hos autem coniuges esse, et ex diffinitione coniugii *et* auctoritate multorum facile probatur.

The fact that in *Sg* they, the *coniuges*, are bound by the *desponsatio* is derived from the notion of *coniugium* because this is corroborated by a large number of *auctoritates*. Meanwhile, the block *Aa Fd edF* affirms that the fact that the *coniuges* are bound is easy to prove by two different means: by the definition of *coniugium* and by the authority of many *auctoritates*. Note that the reasoning of *Sg* gives priority to the notion or definition of *coniugium* and the *auctoritates* merely confirm this inasmuch as can be deduced from the definition: the central theme, the only one in the question, is the definition per se. On the other hand, the reasoning of the block *Aa Fd edF* establishes both consideration of the definition and of the criteria of the many authorities or the quotation of *auctoritates*. Thus, this second discourse seems more elaborate, implying a previous analysis of the definition.

There follows the well-known text from the *Institutiones* by Justinian, but in *Sg* this is presented as follows: *sunt enim nuptie uiri mulierisque coniunctio indiuiduam uite c(onsuetudinem) c(ontinens)*; that is, matrimony or marriage is the union of a man and a woman that contains an indissoluble unit of life. There is no doubt about this redaction since *Sg* includes a marginal gloss (p. 165) which includes the Justinian definition in unabbreviated form and even provides a reference to its source: *ex Libro Constitutionum*. It is precisely here that we detect the first essential disparity between redactions: whilst *Sg* remains entirely faithful to the original source by including the Justinian definition ending with the verb *continens*, *Aa*, *Fd* and *edF* all employ the verb *retinens* in their text.

The canonical collections from the first millennium had transmitted the Justinian definition unaltered and, in this sense, *Sg* is entirely faithful to its ancient formal source. It suffices to consult the work of Ivo of Chartres, the *Tripartita*, and also the *Panormia*, formerly attributed to Ivo: both carry *continens*.⁹ See the following comparative table:

9 On the question of authorship, see Christof Rolker, "Ivo of Chartres and the Panormia: The Question of Authorship Revisited," in *Proceedings of the Thirteenth International Congress of Medieval Canon Law*, ed. Peter Erdö, Szabolcs Anzelm Szuromi, MIC C/14 (Vatican City, 2010), 187–206; Christof Rolker, *Canon law and the letters of Ivo of Chartres* (Cambridge, 2010). On the relationship between these three collections, namely *Decretum*, *Tripartita*, and *Panormia*, see also Anzelm Szuromi, *From a Reading Book to a Structuralized Canonical Collection: The Textual Development of the Ivonian Work* (Berlin, 2010) who suggested the use of "living texts"/"living law"/"textual families."

<i>IP</i> 6.1	<i>Tr.</i> 3.15.1	<i>Sg</i> 166	<i>Aa</i> 115r	<i>Fd</i> 75v	<i>edF</i>
Nuptie siue matrimo- nium est uiri mulierisque coniunctio, indiuiduam consuetu- dinem uite continens.	Nuptie siue matrimo- nium est uiri mulierisque coniunctio indiuiduam consuetu- dinem uite continens.	Sunt enim nuptie uiri mulierisque coniunctio indiuiduam uite c(con-sue- tudinem) c(ontinens).	Sunt enim nuptie siue matrimonium uiri et mulie- ris coniunctio, indiuiduam consuetudi- nem uitae retinens.	Sunt enim nuptie siue matrimonium uiri et mulieris coniunctio indiuiduam uite consu- etudinem retinens.	Sunt enim nuptiae siue matrimo- nium uiri mulierisque coniunctio, indiuiduam uitae con- suetudinem retinens.

This difference is not a trivial textual matter, as sometimes occurs with other differing readings of a manuscript tradition testified by a variety of codices; the use of *retinens* in place of *continens* alters the essential meaning of the passage. The text in *Sg* reiterates a specific notion of *matrimonium* taken from the ancient tradition almost inertially through the mere transmission of texts from the past: “contains an indissoluble unit of life”; the block *Aa Fd edF*, however, conveys an evolved concept of marriage by employing the verb *retinens*, which is more in keeping with the Christian idea of indissolubility: “retains an indivisible unit of life.” Consequently, the transition from *continens* to *retinens* points to a logical evolution in thought, an academic or scholarly discussion of greater maturity and, obviously, a diachrony between the redactions. To argue in the opposite direction would be absurd and anachronistic. Moreover, *Sg* is the only codex in the manuscript tradition of the work of *magister Gratianus* known to present the Roman definition as it was testified by the canonical collections of the first millennium.¹⁰

The comparative analysis of the texts provides further revelations. *Sg* follows the *uiri mulierisque coniunctio*-tradition in the manner in which the Roman definition was transmitted by ancient canonical collections. Conversely, at

10 When researching the *Redaktionsgeschichte* of Gratian's work, it is fundamental to distinguish between Roman texts deriving from the ‘canonical tradition’ or transmitted by ancient canonical collections, and those taken directly from the ‘new’ Roman sources rediscovered in the Middle Ages. On this matter it is no longer possible to make generic statements without the endorsement of a rigorous revision of the codices and texts. See a sample of rigorous studies of this kind in José Miguel Viejo-Ximénez, “Las *Novellae* de la tradición canónica occidental y el Decreto de Graciano” in “*Novellae Constitutiones*”. *L'ultima legislazione di Giustiniano tra Oriente e Occidente. Da Triboniano a Savigny. Atti del Convegno Internazionale. Teramo, 30-31 ottobre 2009*, ed. Luca Loschiavo, Giovanna Mancini, Cristina Vano (Napoli, Roma, 2011), 207-279.

this point, *Aa Fd* are more faithful to the genuine Roman text *uiri et mulieris*, although this reading is corrected in *edF* to adjust it to the ancient canonical tradition. Disregarding Friedberg's philological criteria, the contrast in the readings of the older manuscripts confirms the existence of a historical diachrony in the transition from *continens* to *retinens* in defining marriage and in which, obviously, the redaction of *Sg* always maintains precedence.

4 An Appropriate Addition: C.27 q.2 c.3 §1

A second significant aspect of the differences in the treatment of matrimony is the lengthening of C.27 q.2 c.3 §1 in the block *Aa Fd edF*. Here we read: *Indiuidua uero consuetudo est talem se in omnibus exhibere uiro, qualis ipsa sibi est, et e conuerso. Ad indiuiduam itaque consuetudinem pertinet absque consensu legitimi uiri orationi aliquando non posse uacare, nec continentiam profiteri*. Hence, in the final part of this paragraph there is an explicit reference to the *ius in corpus* as a binding dimension, whereas previously the *Causa* only mentioned the *cohabitandi consensus*, the intention of cohabitation for the spouses to be considered *conjuges*. Let us compare the texts contained in the codices:

Aa 115v

Consensus ergo cohabitandi et indiuiduam consuetudinem uite retinendi interueniens eos coniuges facit. Indiuidua uero consuetudo est tale se in omnibus uiro exhibere, qualis ipsa sibi est, et e conuerso. Ad indiuiduam itaque consuetudinem pertinet absque consensu legitimi uiri orationi aliquam non posse uacare, nec continentiam profiteri. Quia ergo iste consensus fuit inter istos, patet hos coniuges fuisse.

Fd 79v

Consensus ergo cohabitandi et indiuiduam uite consuetudinem retinendi interueniens eos coniuges facit. Indiuidua uero consuetudo est talem se in omnibus exhibere uiro, qualis ipsa sibi est, et e conuerso. Ad indiuiduam itaque consuetudinem pertinet absque consensu legitimi uiri orationi aliquam non posse uacare, nec continentiam profiteri. Quia ergo iste consensus fuit inter istos, patet hos coniuges fuisse.

The redaction of *Aa Fd edF* contains at this point a novelty which is, undoubtedly, the result of a scholarly or doctrinal development from a simpler previous redaction. It certainly establishes the conduct *absque consensu legitimi uiri orationi aliquando non posse uacare nec continentiam profiteri* as belonging to the concept of *indiuiduam consuetudinem*. That is, without the consent of one's spouse none can, later, decide unilaterally to keep continence, hence including

copulation in the marital consent and not just the intention to cohabit. Such a claim in the opening lines of *Aa Fd edF* seems out of place, since it is not until C.27 q.2 c.16 that this matter is dialectically introduced in the discourse. And here the authority of Saint Augustine is called upon to present the objection (*Non est inter eos matrimonium quos non copulat commixtio sexuum*), because the issue has not effectively been treated previously. Therefore, C.27 q.2 c.3 §1 in *Aa Fd edF* remains an addition which presupposes a prior critical consideration of the notion of marriage and some conclusion thereof.

In contrast, we read in the parallel passage of *Sg* that the mere *consensus cohabitandi* is sufficient for the spouses to be considered *conjuges* and that such *sponsi* are husband and wife. After discussing the nature of the relationship between Mary and Joseph, the text reads:

Sg 166

Consensit ergo in copulam carnalem se totam Deo committens, non eam appetendo sed diuine dispositioni in utrimque obediendo. Igitur cohabitandi consensus et indiuiduam ui(te) c(onsuetudinem) retinendi eos coniuges fecit.

Thus the bond between Mary and Joseph is justified as a *matrimony* since there always existed a matrimonial *consensus*, even without conjugal acts. But this linearity in the discourse does not impede the treatment of the objection *At Augustinus contra testatur* later in the text, in a position equivalent to C.27 q.2 c.16 of *edF*. Here the Augustinian authority is copied: *Non dubium est illam mulierem ad matrimonium non pertinere cum qua docetur non fuisse commixtio sexus*, with the rubric *quod non sit inter eos matrimonium quos commixtio sexus non copulat* in red ink. We also find an interlinear gloss, of the most ancient stratum, precisely on the word *matrimonium*: *scilicet perfectum*. According to the most ancient patristic tradition, matrimony is *perfect* not so much for the act of carnal union as for the fruit of offspring, since the word itself primarily connotes the duty of the mother: *matris munus*. To analyse this gloss here would require an extended comment, even more so if we approach it within the framework of the doctrinal evolution on the definition of canonical marriage; this must be deferred for now.

5 From a Simple to a Refined and Legal Terminology?

The third and final difference between *Sg* and the block *Aa Fd edF* to be considered here is another phenomenon, which might be called ‘misadjustment’, and which, in my view, clearly reveals the doctrinal progress of the later text when

compared with the plain redaction of *Sg*. The passage in question is found in the final lines of C.27 q.2 d.p.c.28 §3 where the block *Aa Fd edF* adds a very significant phrase: *quod numquam permixtione carnis coniuncti una caro effecti fuissent*. The expression *una caro* is undoubtedly a highly technical one, drawing from very precise and deep biblical and theological roots; however, this phrase does not appear in the redaction of *Sg*. Moreover, the phrase conceptually anticipates – albeit unnecessarily at this point – what is to be developed further, in detail, in C.27 q.2 d.p.c.34. Hence, it is safe to affirm that we are here in the presence of a more elaborate, more perfect redaction which presupposes the existence of other simpler or less complex prior redactions, such as *Sg*, which were modified or revised successively. Let us compare d.p.c.28 in the versions *Sg* and *Aa*:

Sg 168

Vt uterque eorum vii. manu propinquorum tactis sacrosanctis euangelii iurent, quod numquam *permiscuerint*, et tunc mulier deinde si uult secundas ineat nuptias.

Aa 117r

Vt uterque eorum septima manu propinquorum tactis sacrosanctis reliquis iureiurando dicat quod numquam *permixtione carnis coniuncti una caro effecti fuissent*. Tunc mulier secundas nuptias poterit contrahere.

The difference is evident. It would make no sense to say that someone summarised or abbreviated a text, such as that found in *Aa*, by eliminating its accuracy, that is, altering or modifying precisely those expressions that best summarise the passage as whole, thus producing the version found in *Sg*. Such a thought, other than being forced and extravagant, is simply absurd. But let us continue with a comparison of a later portion of d.p.c.34 in the two redactions:

Sg 169

Sciendum uero quod desponsatione coniugium initiatur, coniunctione postea consumatur. Vnde inter sponsos coniugium est initiatum, sed inter copulatos *coniugium est ratum*.

Aa 118r

Sed sciendum est, quod coniugium desponsatione initiatur, commixtione *perficitur*. Vnde *inter sponsum et sponsam coniugium est, sed initiatum; inter copulatos est coniugium ratum*.

Again, we observe the same phenomenon. The use of the term *perficitur* is juridically precise and of an extraordinary technical quality. Furthermore, the

term is repeated shortly after in C.27 q.2 d.p.c.35: *Ecce quod in desponsatione coniugium initiatur, non perficitur*. Such expressions, however, are non-existent in the *Sg*-redaction. When these *dicta* employ the Latin *perficere*, they are affirming that the *desponsatio* reaches its juridical *perfection* by consummation and, hence, the so-called “theory of copulation” is being formulated – a theory typically attributed to the *magister Gratianus* himself or the pioneers of the Bologna School of decretists. This signifies that the matrimonial *consensus* is understood not in the manner of consensual contracts, but of real contracts of Roman law: that is, those contracts that “are perfected” by the transference of a thing, which in this case is the mutual *transmissio corporum* of the carnal consummation. In contrast, the redaction of *Sg* is entirely oblivious to this consideration of the “perfect matrimony” as a Roman real contract since its whole theorisation upon the *desponsatio* does not go beyond the mere formulation of the Gratian distinction between *matrimonium initiatum* and *consummatum* together with the more canonistic notion of *ratum*. Furthermore, *Sg* – unlike *Aa Fd edF* – lacks all technical considerations of the distinction between ‘times’ or stages of the *desponsatio* itself, which were formulated from the analysis of the type of words employed to express the consent.

Curiously, it is this consideration of stages which in the block *Aa Fd edF* (see C.27 q.2 d.p.c.39 §2 to d.p.c.45 §2) opens the way for the transformation of the initial interpretation of matrimony as a real contract into that of a consensual contract if the *desponsatio* is current, not in the future, because it generates a *fides consensus* or, as will be stated at a much later time in the decretal law, because the *desponsatio* was expressed by “words in present tense.” Such is exactly the reason for the inclusion of the *palea* C.27 q.2 c.51, already studied in detail quite some time ago by Larrainzar.¹¹ Hence, *Sg* entirely lacks the technical accuracy we perceive in the redaction of the other manuscripts, including at those points so essential to the doctrine of marriage, as it equally lacks the texts orienting the interpretation of the core of the *Causa* – the distinction between *matrimonium initiatum et consummatum* – towards a consideration of matrimony in the manner of Roman consensual contracts: that is, those that “were perfected” by the mere act of consent.¹²

11 Vid. Carlos Larrainzar, “La distinción entre *fides pactionis* y *fides consensus* en el *Corpus Iuris Canonici*,” *Ius Canonicum* 21 (1982), 31–100. The consideration of Jean Werckmeister on the *postea* of *Sg* present in its text correlative to C.27 q.2 d. p. c.34 (Werckmeister, “Le manuscrit 673 de Saint-Gall (n. 8),” 165–166) is totally anachronic and has nothing to do with the strict sense of the text nor its context; his purported ‘philological’ argument from this issue lacks any historical value.

12 On the question of “simple” and “refined” terminology and the underlying assumption of an evolution, see Dusil, “Fresh Perspectives (in this volume),” 249–250.

6 Summary

In sum, from these considerations there seems to arise, in my opinion, a clear conclusion against which it will be difficult to argue. From the perspective of doctrine on marriage, *Sg* provides a redaction closer to and with more trust in the ancient sources of the canonical tradition, without the technical perfection in terminology found in *Aa Fd edF*. Regardless of when the Swiss codex was crafted, what is copied there is undoubtedly very ancient material, even primary, which can in no manner be derived from the other, more technically and doctrinally perfect manuscripts considered here. The redaction of *Sg* comes from a time or historical moment when substantial technical progress on the doctrine and definition of canonical marriage had not yet been attained nor consolidated. Reverse reasoning – *Aa Fd edF* are less evolved than *Sg* – would simply be anachronistic because of its absurdity: it cannot be taken seriously because it is unfounded.

Appendix: Edition of C.25 q.2 of *Sg*¹³

§ {165a} *Quidam uotum castitatis habens, uxorem sibi desponsauit. Illa tali conditioni renuntians ad alium conuolauit. Prior eam repetit. Vnde prius queritur an inter uouentes possit esse matrimonium, Secundo an sponsa possit a sponso recedere et alii copulari.* C.27 pr.

QUESTIO II

§ *Secunda questio sequitur uidenda, scilicet an puelle alteri desponsate priori conditioni renuntiare possint et ad alium transire. Prius igitur uidendum occurrit an inter eos matrimonium fuerit, postmodum an separari possint.* q.2 pr.

13 This edition follows the edition by Carlos Larrainzar in 2004 (cf. n. 8) with a new format and dispensing with the notes which at the time pointed out some palaeographic peculiarities in the text. I wish to thank Prof. Larrainzar for the revision of this edition, which is adjusted to the same he is preparing himself of the whole codex. Here the correspondences with *edF* are annotated in the right margin, the use of CAPITAL LETTERS is reserved for the texts written in red in the *Sg* codex, and I have removed the continuous numeration of the *auctoritates* and *dicta* of the edition by Larrainzar. The signa for *dicta* (§) are solely those present in the *Sg*.

Hos uero et ex diffinitione coniugii coniuges esse multorum auctoritatibus ostendi potest. 'Sunt enim nuptie uiri mulierisque coniunctio indiuiduam uite c(onsuetudinem) c(ontinens)'. Inter hos igitur coniunctio fuit que indiuiduam uite consuetudinem exigebat. Nam consensus ille fuit inter eos qui causa matrimonii esse intelligitur iuxta illud Ysid(ori) 'consensus matrimonium facit'.

Item Crisostomus super Matheum:

q.2 c.1

Matrimonium non facit coitus sed uoluntas. Vnde corporis separatio non illud soluit sed uoluntatis. Ideo qui dimittit coniugem suam et aliam non accipit adhuc maritus est.

NICHOLAVS PAPA:

q.2 c.2

[858] Sufficit solus secundum leges consensus eorum, de quorum coniunctionibus agitur. Qui solus si defuerit, cetera etiam cum ipso coitu celebrata frustrantur.

§ *Sic igitur cum inter sponsum et sponsam intercedat consensus qui solus matrimonium facit, patet hos coniuges fuisse.*

d.p.c.2

At uero adhuc dubitari potest quis sit ille consensus qui m(atrimonium) faciat, utrum uidelicet cohabitandi an potius carnaliter copulandi an simul uterque. Si cohabitandi, tunc frater cum sorore m(atrimonium) contrahere potest. Si carnaliter copulandi, inter Mariam et Ioseph coniugium non fuit cum uirginitatis uotum ipsa proposuisset. Vnde 'quomodo' inquit 'fiet istud q(uoniam) u(irum) n(on) c(ognosco)', id: me non cognituram proposui. Namque tunc uirum non cognoscet non ideo inqueret quomodo illud fieret, sed quia nullo tempore se cognituram proposuisset.

Queritur si post contra propo {166b} situm consensit carnali copule et utique uirginali uoti ream illa illico mente se constituit. Quod quidem nefas est cogitare.

Quemadmodum autem Augustinus ait:

q.2 c.3

Beata uirginitatis uotum proposuit in corde, sed non expressit ore. Diuine namque dispositioni se subiecit, et perseueraturam se uirginem proposuit, nisi Deus aliter de ea disponderet.

Consensit ergo in copulam carnalem se totam Deo committens, non eam appetendo sed diuine dispositioni in utrimque obediendo. Igitur cohabitandi consensus et indiuiduam ui(te) c(onsuetudinem) retinendi eos coniuges fecit.

Item auctoritate coniuges probantur.

d.p.c.4

Vnde Ambrosius in libro de uirginibus:

q.2 c.5

PACTIO CONIVGALIS NON DEFLOTATIO VIRGINITATIS CONIVGIVM FACIT. Cum initiatur coniugium, coniugii nomen assciscitur. Non defloratio uirginitatis sed pactio coniugalis facit coniugium. Denique cum iungitur uiro coniugium est, non cum uir(i)^{pc} admixtione cognoscitur.

Item Ysidorus Ethimologiarum libro viiii. capitulo vii.:

q.2 c.6

A PRIMA FIDE DESPONSATIONIS CONIVGES APPELLANTVR.

Coniuges uerius appellantur a prima desponsationis fide quamuis adhuc inter eos ignoretur coniugalis concubitus.

ITEM AVGVSTINVS DE BONO CONIVGALI.

q.2 c.9

Coniunx uocatur ex prima desponsationis fide quam concubitu nec agnouerat nec fuerat cogniturus, nec perierat nec mendax manserat illa carnalis commixtio. Propter quod fidele coniugium ambo parentes Christi uocari meruerunt: non solum illa mater, uerum etiam ille pater eius sicut et coniunx matris eius utrumque mente non carne.

§ Item in Leuitico precepit Dominus Moysi 'Si quis sponsam alterius in agro oppresit, morte moriatur, quia uxorem alterius uiolauit'.

d.p.c.10

Item legibus principum sponsa iubetur lugere mortem sponsi tamquam uiri sui.

Item in canonibus inuenitur:

q.2 c.11

FRATER SPONSAM FRATRIS POST EIVS MORTEM DVCERE NON POTEST. Si quis desponsauit sibi aliquam et {167a} preueniente articulo mortis eam cognoscere non potuit, frater eius non potest eam ducere in uxorem.

ITEM GREGORIVS MAVRITIO IMPERATORI OB QVENDAM COMITEM QVI SVI NEPOTIS MORTVI DESPONSATAM DVXIT VXOREM.

ex q.2 c.12

Qui desponsatam puellam proximi sui acceperit in coniugium, anathe(ma) sit, ipse et omnes consentientes ei quia secundum legem Dei mori decernitur. Nam diuine legis mos est sponsas appellari coniuges ut in euang(elio) 'Accipe Mariam c(oniugem) t(uam)' et illud in Deuteronomio 'Si quis cuiuslibet hominis desponsatam puellam in agro uel in quolibet loco oppresserit uel adduxerit in domum suam, moriatur, quia uxorem proximi sui uiolauit', non que iam uxor erat, sed que a parentibus uxor fieri debebat.

§ *Predictis ostenditur tales coniuges esse.*

d.p.c.15

At Augustinus contra testatur:

q.2 c.16

QVOD NON SIT INTER EOS MATRIMONIVM QVOS COMMIXTIO SEXVS NON COPVLAT. Non dubium est illam mulierem ad matrimonium non pertinere cum qua docetur non fuisse commixtio sexus.

ITEM LEO PAPA.

q.2 c.17

Cum societas nuptiarum ita a principio sit instituta ut preter commixtionem sexuum non habeant in se nuptie Christi et ecclesie sacramentum, non dubium est mulierem (illam)^{add. pc} ad matrimonium non pertinere, in qua docetur non fuisse nuptiale misterium.

§ *Item precipit Apostulus uxorem uiro debitum reddere et e conuerso. Vnde intelligitur quod nec propositum uite melioris uir sumere possit sine uxoris consensu uel e conuerso.*

d.p.c.18

Vnde Gregorius Theostite patricie:

ex q.2 c.19

VT CAUSA RELIGIONIS CONIVGIA SOLVERE NON POSSINT. Sunt qui dicunt religionis gratia coniugia debere solui. Verum sciendum est quia etsi hoc lex humana consensit, lex tamen diuina prohibuit. Per se enim ueritas dicit 'Quod Deus coniunxit, homo non s(eparat)'. Qui etiam ait 'Non licet dimittere u(xorem) e(xcepta) causa f(ornicationis)'. Quis ergo huic legislatori contradicat? Scimus quia scriptum est 'Erunt duo in c(arne) u(na)'. Si igitur uir {167b} et uxor una caro sunt et religionis causa dimittit uir uxorem uel mulier uirum in hoc mundo manentem uel forte ad illicita migrantem, que est ista conuersatio in qua una et eadem caro ex parte transit ad continentiam et ex parte remanet in pollutione? Si uero continentiam quam uir appetit mulier non sequitur et e conuerso, diuidi coniugium non potest quia scriptum est 'Mulier potestatem sui c(orporis) non h(abet) sed uir. Similiter et uir' *et cetera.*

IDEM ADRIANO:

ex q.2 c.21

AD VXOREM REDIRE COGITVR, QVI SINE EIVS CONSENSV RELIGIOSAM VESTEM SVSCEPIT. Agathosa latrrix presentium.

ITEM EX VIII. SINODO.

ex q.2 c.22

Si quis coniugatus uult conuerti ad monasterium, non est recipiendus, nisi prius a coniuge castimoniam profitente fuerit absolutus. Nam si illa uiuente illo per incontinentiam alteri nupserit, procul dubio adultera erit. Nec recipitur apud Deum eius uiri^{pc} conuersio,

cuius sequitur coniugalibus federis prostitutio. Tales igitur tunc sine culpa secuntur Christum, derelicto seculo, si habent ex pari uoluntate castitatis consensum.

§ *Sic habemus, quod coniuges sine uicario consensu continere non possunt.* d.p.c.26

Sponsi uero etiam sine consensu earum quas desponsauerint hoc possunt. Sicut Ieronimus de Machario refert, qui inter heremitas precipuus, post nuptias quoque celebratas, cum thalamum ingressurus esset, de urbe exiuit, mare transiuit, heremum elegit. Sic et beatus Alexius, Epiphaniū clarissimi filius, diuinitus de nuptiis uocatus, sponsam reliquit, nudus nudo Christo cohesit. Quibus patet sponso continentiam profiteri posse mutuo consensu minime requisito.

Vnde et Eusebius papa: q.2 c.27

DESPONSATA PVELLA NON PROHIBETVR MONASTERIVM ELIGERE. Desponsatam puellam non licet parentibus alii uiro tradere, tamen licet sibi monasterium eligere.

§ *Vnde osten {168a} dicitur inter sponsum et sponsam coniugium non esse cum, ut superius dictum est, coniuges hoc non possint. Preterea, cum secundum Augustinum 'illa non pertineat ad matrimonium cum qua non fuerit permixtio sexuum', ut secundum Leonem nec illa 'in qua non fuit nuptiale misterium', relinquatur inter sponsum et sponsam non esse coniugium.* d.p.c.28

Similiter Nicholaus papa, de illi qui execantur aut membris aut ab aduersariis detruncantur, precipit ne ob hoc eorum coniugia dissoluantur. Sed de illis qui frigiditatis causa debitum reddere non possunt statuit Gregorius papa ut uterque eorum vii. manu propinquorum tactis sacrosanctis euangelii iurent quod numquam permiscuerint et tunc mulier deinde si uult secundas ineat nuptias.

VNDE VENERIO CAROLITANO EPISCOPO IDEM SCRIBIT: q.2 c.29

VIR AVTEM FRIGIDVS SINE CONIVGE MANEAT. Quod autem interrogasti me de his qui matrimonio iuncti fuerint, et nubere non possunt, si ille aliam uel illa alium accipere possit. De quibus scriptum est 'Vir et mulier si se coniuxerint, et postea dixerit mulier de uiro quod non possit coire cum illa, si potest probare per uerum iudicium quod uerum sit, accipiat alium'.

§ *Sic habemus, quod impossibilitas coeundi si post uel unum coitum inueniatur, coniugium non dissoluit. Verum ante carnis commixtionem iuenta(m), alium accipiendi facultatem mulieri poterit. Ex quo illos non fuisse coniuges apparet. Alias enim ab inuicem discessio* d.p.c.29 pr.

eius non permetteretur nisi forte fornicationis causa inueniretur. Rursus si sponsa coniux esset, sponso decedente, uidua remaneret. Quod si uidua esset, uir eius ad sacros ordines non ueniret, cum uidue maritus, sicut et bigamus ab ordine prohibeatur, ab huius autem copula nemo sacros ordines asciscere defendatur.

VNDE PELAGIVS:

ex d.p.c.29 §1

Nichil est quantum ad istum articulum attinet, {168b} quod ei obuiet de canonicis constitutis.

§ Rursus, si essent coniuges, eorum discessio diuortium esset. Sed talium separationem Ambrosius diuortium esse negat de beata Maria quam Ioseph desponsauit et in suam duxit dicens: 'Ioseph nunquam eam cognouit. Nam si uir iustus eam cognouisset, numquam eam a se discedere passus esset, neque Dominus qui uxorem a uiro non discedere precepit, nisi causa fornicationis, commendans eam discipulo, auctor diuortii fuisset'. Vnde et Iohanni facta commendatio et Ioseph detractio diuortium fuisse negatur, quia Ioseph non cognouerat eam. Vnde eos non fuisse coniuges apparet.

ex d.p.c.29 §2

Sed si uirgo beata quam Ioseph sibi desponsauerat et in suam duxerat coniux fuisse negatur, multo minus quam simpliciter sponsa est coniux est appellanda.

Item ex concilio Aurelianensi:

q.2 c.30

DE EO QVI CVM DVABVS SORORIBVS DORMIT. Qui dormierit cum duabus sororibus et una ex illis ante uxor fuerat, nec unam ex ipsis habeat nec ipsi adulteri umquam in coniugio copulentur.

§ Id, nec uxori proprie quam sibi sororem illicitam reddidit, debitum reddat, nec post mortem eius ei uel adultere alicui coniugari liceat.

d.p.c.30

§ At de sponsa legitur contra in concilio Triburiensi:

q.2 c.31

DE EO QVI DORMIT CVM SPONSA FRATRIS SVI. Quidam desponsauit uxorem et dotaui, cum ea coire non potuit, quam clanculo frater eius corrupit et grauidam reddidit. Decretum est ut, quamuis nupta non potuerit esse legitimo uiro desponsatam, tamen fratri frater he habere non possit, sed mehus et mecha fornicationis quidem uindictam sustineant. Licita uero coniugia eis non negentur.

§ Vnde apparet hanc fratris eius coniugem non fuisse. Item quam causa fornicationis dimittitur aut reconciliabitur aut innupta morabitur.

d.p.c.32

Sed secus de sponsa in i. libro Capitularii inuenitur: q.2 c.33

SI SPONSUS RAPTAM ACCIPERE NOLVERIT LICEAT SIBI NVBERE ALII. {169a} Raptor publica penitentia mulctetur. Raptam uero si sponsus recipere noluerit, et ipsa eidem crimini consentiens non fuit, licentia nubendi alii non negetur.

ITEM EX C(ONCILIO) TOLLETANO. q.2 c.34

Statutum est a sacro conuentu ut, si quis sponsam alterius rapuerit, publica penitentia mulctetur et sine spe coniugii maneat. Et si ipsa eidem crimini consentiens non fuerit, licentia nubendi alii non negetur. Quod si post hec coniugare se presumpserint, utrique usque ad satisfactionem anathematizentur.

§ *Ex quo sponsam non esse coniugem apparet cui sponso uiuente alteri nubere non negatur. Quomodo igitur secundum Ambrosium et reliquos Patres coniuges ipse sponse dicuntur, cum his rationibus coniuges non esse probantur? Sciendum uero quod desponsatione coniugium initiatur, coniunctione postea consumatur. Vnde inter sponso coniugium est initiatum, sed inter copulatos coniugium est ratum.* d.p.c.34

VNDE AMBROSIVS: q.2 c.35

Cum initiatur coniugium, coniugii nomen asciscitur, non cum puella uiri ammixtione cognoscitur.

ITEM IDEM IN LIBRO DE PATRIARCHIS: q.2 c.36

In omni matrimonio, coniunctio intelligitur spiritualis quam confirmat et perficit coniunctorum commixtio corporalis.

ITEM IERONIMVS SVPER ABDIAM. q.2 c.37

‘Quapropter in filiabus uestris fornicabuntur, et sponse uestre adultere erunt’. Notandum quod ‘in filiabus’ dicit ‘futuram fornicationem’, et in coniugiis ‘adulteria’ que sponsali conuentione initiantur et commixtione corporum perficiuntur.

§ *Secundum distinctionem istam, illa Augustini auctoritas intelligitur* ex d.p.c.39

‘Non dubium est illam mu(lierem) non per(tinere) ad ma(trimonium)’ et cetera. ‘Ad matrimonium’ subaudi perfectum, scilicet tale quod sacramentum Christi et ecclesie habet. Sic et illud Leonis pape intelligitur. Quod uero dicit Augustinus ‘inter Mariam et Ioseph perfectum fuisse coniugium’: non ex officio sed ex his que coniugium comitantur perfectum appellauit, scilicet ex fide, prole, sacramento. Que omnia inter Christi parentes fuisse auctoritate {169b} Augustini probatur. Quecumque igitur de non separando coniugio inducta sunt de perfecto intelliguntur. Que uero separabile coniugium ostenditur de initiato accipiuntur. pr. et §1

Vel potest dici sponsas coniuges more scripture appellari et hoc spe futurorum, non effectum presentium. d.p.c.39 §2

Sed concedatur quod sponsa non sit coniunx dicenda, queritur tunc an priori conditioni renuntiare liceat. d.p.c.45 §3

Hoc uero Ancirani concilii auctoritate prohibetur ubi sic legitur: q.2 c.46

PVELLE DESPONSATE PRIORIBVS REDDENDE SI EIS RAPTE
FVERINT. Desponsatas puellas et post aliis raptas, placuit erui et eis
reddi quibus et ante fuerant desponsate.

§ *Notandum sane quod aliud est renuntiare priori conditioni et de nuptiis agere cum alio, aliud est rapti hoc est illicite constuprari.* d.p.c.47

VNDE YSIDORVS ETHIMOLOGIARVM LIBRO V. C(APITVLO)
XXIIII.:

Raptus est illicitus coitus a corrumpendo dictus. Vnde qui rapta
fruitur, stupro potitur.

§ *Sed ista non ab alio rapta sed alii desponsata monstratur.* d.p.c.48

RAPTAM AVTEM TALEM NON ESSE DICENDA OSTENDIT
GELASIVS PAPA.

Lex illa preteritorum principum, ibi raptum dixit esse commis-
sum ubi puella, de cuius ante nuptiis nihil actum fuerit, uideatur
abducta. q.2 c.49

§ *Sed quod in fine capituli subditur 'etiam si eis a raptoribus uis illata constiterit', ideo additur quia alie raptoribus se exponunt, alie uiolenter abducuntur. Quocumque igitur modo rapiantur, semper prioribus reddantur. He uero non inter raptas sed inter aliis desponsatas connumerantur.* d.p.c.49 pr.

Sunt et alie auctoritates quibus ista prohibetur nubere secundo et ad priorem redire iubetur. d.p.c.49 §1

Vnde Siricus papa Himerio episcopo Tarraconensi: q.2 c.50

QVOD PVELLAM ALTERI DESPONSATAM ALTER ACCIPERE
NON VALEAT. De coniugali uiolatione requisisti, si puellam
alteri desponsatam, alter in matrimonium possit accipere. Tale igitur
conubium anathematizemus et modis omnibus ne fiat inhi-
bemus quia {170a} illa benedictio, quam nupture sacerdos imponit,
apud fideles cuiusdam sacrilegii instar est si ulla
transgressione uioletur.

§ *Sed Siricii auctoritate illa prohibetur ad secunda uota transire que in propria iam ducta est et cum sponso uelata et benedicta. Sed istam sponsus in suam adhuc non duxerat nec cum ea benedictionem acceperat. Vnde hac auctoritate huius copula non prohibetur. Item illud Eusebii 'Desponsatam non licet parentibus alii tradere'; similiter de huiusmodi desponsata intelligitur que cum sponso est uelata et benedicta.*

d.p.c.50

Similiter et illud Gregorii adhuc obicitur: 'Que propter frigiditatem a uiro suo separata est et alii nupta, si uir eius aliam cognouerit, illa est detrahenda secundo et primo reddenda'. Sed eodem modo intelligitur quia ista cum illo benedictionem acceperat.

The Uniqueness of *Prima Causa* in Sankt Gallen, Stiftsbibliothek, 673

Melodie H. Eichbauer

1 Introduction

The *Decretum* has deservedly garnered scholarly attention for its representation of canonical thought on particular issues. Gratian collated the *ius uetus*, the “old law” with its conflicting authorities, and reconciled discrepancies in his *dicta* which offered his thoughts on the matter at hand. The *Decretum* also has deservedly garnered scholarly attention for its manuscript tradition. In addition to *summae* commenting upon the text, canonists manipulated it to create abbreviations – such as the *Gratiani opus egregium* or the *Lex alia diuina est, alia humana* – or they adapted the text by reorganizing it – such as those made by Omnebene and Cardinal Laborans, and the *Summa Elegantius in iure diuino* (*Summa Coloniensis*).¹ Compilers made a conscious decision to present the original text in a variant form to suit their needs.

The version of the *Decretum* found in *Sg* has been the subject of much scrutiny for its unique features, as Andreas Thier laid out in the first chapter of this volume.² Whether representing an abbreviation, a student’s notes, or an

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- 1 For a survey of the canonical tradition in the later twelfth century, see Stephan Dusil, *Wissensordnungen des Rechts im Wandel: Päpstlicher Jurisdiktionsprimat und Zölibat zwischen 1000 und 1215*, Mediaevalia Lovaniensia-Series 1/Studia, 47 (Leuven, 2018), 469–508. For abbreviations of Gratian’s *Decretum*, see Stephan Kuttner, *Repertorium der Kanonistik (1140–1234): Prodromus Corporis Glossarum I*, Studi e Testi, 71 (Vatican City, 1937), 260–266. For Omnebene, see Rudolf Weigand, “Die Dekret-Abbreviatio Omnebenes und ihre Glossen,” in *Recht als Heildienst: Mathias Kaiser zum 65. Geburtstag gewidmet*, ed. Winfried Schulz (Paderborn, 1989), 271–287; Adam Vetulani, “L’oeuvre d’Omnebene dans le MS 602 de la bibliothèque municipale de Cambrai,” in *Proceedings of the Fourth International Congress of Medieval Canon Law, Toronto, 21–25 August 1972*, ed. Stephan Kuttner, MIC C/5 (Vatican City, 1976), 11–26. For Cardinal Laborans, see Norbert Martin, “Die ‘Compilatio decretorum’ des Kardinal Laborans,” in *Proceedings of the VI International Congress of Medieval Canon Law, Berkeley, 28 July–2 August 1980*, ed. Stephan Kuttner, Kenneth Pennington, MIC C/7 (Vatican City, 1985), 125–139; idem, *Die “Compilatio Decretorum” des Kardinals Laborans: Eine Umarbeitung des gratianischen Dekrets aus dem 12. Jahrhundert*, Ph.D. Dissertation (University of Heidelberg, 1985). For the *Summa Elegantius in iure diuino*, see *Summa “Elegantius in iure diuino” seu Coloniensis*, ed. Gérard Fransen, Stephan Kuttner, 4 vols, MIC A/1 (Vatican City, 1969–1990).
- 2 Thier, “Exploring the Evolution (in this volume),” esp. at 6–10.

earlier redaction, the debate on the nature of the text points, as José Miguel Viejo-Ximénez has suggested, to the *Redaktionsgeschichte* (historical development of the recensions) of the *Decretum* as more than simply a two-scheme version – first recension to second recension – but rather the result of a continuous process of reflection.³ As such, the text is a fascinating witness to the fluidity of legal knowledge that predates the relative standardization of the *Decretum*. *Prima Causa*, which is the focus of this essay, is a case unique to this manuscript and, by allowing us to trace an early stage of thought on the questions posed, is an excellent example of the formation of legal thought in the early twelfth century.

This essay argues that *Prima Causa* forms a tightly woven case that engages directly with issues central to those working in the late eleventh and early twelfth centuries – clerical celibacy, the worthiness or unworthiness of candidates for the major orders, and election to the prelacy. It, however, does not engage other issues of concern, specifically the importance of ecclesiastical hierarchy and papal primacy. This essay begins by demonstrating that the questions posed form clear, crisp, and streamlined arguments, which is contrary to that found in the *Distinctiones* of the first recension of the *Decretum* despite *Prima Causa* sharing some of the same texts. It is a unique example of a case that organizes legal thought in a format that is more accessible to students than would be the *Distinctiones*. This essay then turns to another marked distinction between *Prima Causa* and the *Distinctiones*: the lack of emphasis on the ecclesiastical hierarchy and papal power in *Prima Causa*. The case, as this essay concludes, underscores that the evolution of ideas was not a linear process.⁴

At its core, the *Decretum* was a teaching text that used *causae* as analytical tools to navigate students through the waters of how to think, how to detangle a legal knot, and how to deconstruct a case. The use of hypothetical scenarios, questions arising from each scenario, the collection of authorities advocating different positions, and Gratian's eventual reconciliation of those authorities taught students how to lay bare the legal issues involved and how to relate those issues to each other with the end goal of arguing the case effectively or passing the appropriate judgment. The hypothetical of *Prima Causa* is attention-grabbing and no doubt piqued the interest of sleepy students. It begins with a

3 José-Miguel Viejo-Ximénez, “Non omnis error consensum euacuat: La C. 26 de los Exserpta de Sankt Gallen (Sg),” in *Iustitia et iudicium: Studi di diritto matrimoniale e processuale canonico in onore di Antoni Stankiewicz*, ed. Janusz Kowal, Joaquín Llobell (Vatican City, 2010), 617–641.

4 On the evolution of legal knowledge as a mixture of approaches that resulted in a textual tradition comprised of layers, see the contributions in *New Discourses in Medieval Canon Law Research*, ed. Christof Rolker, *Medieval Law and its Practice* 28 (Leiden, 2019).

learned layman who had a concubine. Eventually he left her and immediately became a subdeacon. He then took a wife, became a deacon, and in short order was elected bishop. The first question asked whether those who marry after taking a vow should be separated. The second question asked whether a cleric who had a concubine should be ordained a bishop. The third and final question asked whether someone recently received into the sacred orders should be ordained a bishop.⁵

2 *Prima Causa* and the Issues Central to the Late Eleventh and Early Twelfth Century

Prima Causa is a well-constructed case that clearly and methodically articulates the compiler's position on clerical marriage, worthiness to enter the major orders, and election to office. At the core of Question 1 is the distinction between those who married *after* becoming a *sacerdos* (i.e. taking a vow and entering the major orders) and those who were married *before*. Question 2 both laid bare the qualities one should – and should not – possess should he wish to enter the major orders and the parameters of penance should he lapse after ordination. Question 3 served as a referendum on lay interference in episcopal elections. These topics, one could argue, were some of the most aggressively discussed subjects of the period between c.1050 and c.1130, a period commonly referred to as the “Eleventh-Century Reform Movement” or the “Gregorian Reform” after Pope Gregory VII.⁶

Question 1 treats clerical celibacy based on whether one is in the major or minor orders. Those in the major orders – subdeacon, deacon, priest, and bishop – were forbidden to marry and were to remain celibate.⁷ This position

5 Sg 3a: “Laicus quidam litteratus; concubinam habebat. tandem ea dimissa; ad subdiaconum conuolauit. Deinde uxorem sibi asciiuit. post pauca ad diaconum ascendit. sicque in episcopum electus est; Queritur igitur an nubentes post uotum. sint separandi. Secundo; an si concubinam habuerit; in episcopum sit ordinandus. Tercio; utrum in sacro ordine tantum constitutus. elegendus sit in episcopum.”

6 Two staples on the subject are G. Tellenbach, *The Church in Western Europe from the Tenth to the Early Twelfth Century*, trans. T. Reuter (Cambridge, rpt. 1996) and Ian S. Robinson, *The Papacy: Continuity and Innovation* (Cambridge, 1990).

7 Sg 4b (= D.28 d.p.c.13): “Sic per hanc auctoritate. in episcopatum electus; uxorem ac filios habere prohibetur. Set in episcopatum eligi prohibetur nisi sacerdos sit autem diaconus; Subdiaconus. uero non. nisi forte necessitas inmineat. Siue igitur subdiaconus fuerit. siue diaconus. autem etiam presbiter. apparet quod in prefatis ordinibus constituti licite matrimonio uti non possint.” On the subject of clerical celibacy in the canonical tradition, see Dusil, *Wissensordnungen des Rechts im Wandel* (n. 1), 46–60.

countered earlier traditions, such as that espoused by the fourth century synod of Ancyra. There it was held that if deacons could not publicly promise to remain chaste at time of ordination and the bishop accepted that promise, the deacon could retain his ministry if he should marry later.⁸ Such exceptions were no longer the rule and echoed the position taken by reforming popes, such as Alexander II, who mandated celibacy for all clerics above the rank of subdeacon.⁹ Rather, those who handled the sacraments could neither keep concubines nor contract legitimate marriages, and they must swear a solemn vow to remain chaste before being ordained into that position.¹⁰ Simply attributed to Pope Calixtus, c.21 of the First Lateran Council (1123) held that marriages contracted by priests, deacons, subdeacons, and monks were voided and the persons ought to undergo penance.¹¹ The First Lateran Council not only reinforced the view that priests were forbidden to marry, it also reconsidered the legal status of those marriages that had been contracted. While such unions had traditionally been treated as binding even if illicit, the council decreed that the marriages of those in the major orders no longer possessed legal status.¹² Those in the major orders who contracted a marriage illicitly should be separated from their wife and their marriage voided.

Question 1 then turns to marriages legitimately entered into when one was either a layman or in the minor orders and then later ascended into the major orders.¹³ The resolution allowed one legitimately married to progress into the major orders with a profession of continence agreed to by his wife, otherwise

8 Sg 3b (= D.28 d.p.c.7): "An illa priori auctoritate. diaconibus. uideatur permitti coniugium; cum ad sacerdotium tantum coniugati admitti prohibeantur? set et consequenter. subdiaconibus. permitti uidetur; cum de. diaconibus. specialiter precipitur; ut sine castitatis probatione; minime ordinentur"; Sg 4a (= D.28 c.8).

9 James Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago, 1987), 218–219.

10 Sg 3b (= D.27 d.p.c.8): "Distingamus ergo; quod uouentes alii solemniter; alii simpliciter. Simpliciter quibus augustinus. et theodorus loquuntur. Solemniter; quibus post uotum benedictionis consecratio accedit; uel propositum religionis. de quibus et alii. Quoniam igitur ut ostensum est post benedictionem consecrationis nubere non licet; sine uoto continentię ad subdiaconum. non deberet admitti".

11 Sg 3b (= D.27 c.8): "Presbiteris. diaconibus. subdiaconibus. et monachis. concubinas habere; seu matrimonium contrahere; penitus interdiciamus. Contracta quoque matrimonia ab huiusmodi personis disiungi. et. personas. ad penitentiam. debere redigi; iuxta sanctorum canonum diffinitionem iudicamus"; COGD 94/Mansi 21:286. The version in G1 and G2 does not include *et monachis*.

12 Brundage, *Law, Sex, and Christian Society in Medieval Europe* (n. 9), 220; C.N.L. Brooke, "Gregorian Reform in Action: Clerical Marriage in England, 1050–1200," *The Cambridge Historical Review* 12/1 (1956), 1–21.

13 Beginning on Sg 6a.

he would face the loss of being able to minister at the altar. The marriage remained but it was a chaste spiritual marriage.¹⁴ Thus a man who was already married at the point of ordination remained married though he must live with his wife as though she were his sister. Ordination did not dissolve a marriage and a husband could not be ordained without his wife's consent.¹⁵

There does not seem to be the suggestion that legitimate and proper marriages contracted beforehand were considered illegitimate once entering into the major orders. *Prima Causa* did not criminalize these marriages, and thus a proviso remained for those who were married prior to entering into the major orders. In this sense *Prima Causa* did not appear to echo the position of those, such as Pope Nicholas II, who equated priests' wives with concubines.¹⁶ Since a concubine was defined as "she whom is united by invalid legal instruments, and is received into conjugal affection,"¹⁷ the wives of priests who legitimately married prior to entering the major orders were still considered to be wives. He was deposed from the priesthood if he had married and had children while among the laity or in the minor orders and then, with the consent of his wife, professed a vow of continence in order to become a priest only to then remarry after the death of his first wife.¹⁸ Though celibacy was preferred, one could marry in the minor orders, but that marriage must take place before entering the subdeaconate.¹⁹

14 Sg 6a (= D.31 d.p.c.1): "Causa uero huius institutionis munditia fuit sacerdotalis; ut liberius orationibus uacarent. Nam si iuxta apostolum ab uxoribus est cessandum; ut orationi expeditius uacemus. ministris altaris quibus assidua incumbit orandi necessitas; nullo tempore coniugio seruire permittitur"; Sg 6a (= D.31 c.2); Dyan Elliot, *Spiritual Marriage: Sexual Abstinence in Medieval Wedlock* (Princeton, 1995), 51–93.

15 Brooke, "Gregorian Reform in Action (n. 12)," 2, 4; Brundage, *Law, Sex, and Christian Society in Medieval Europe* (n. 11), 217–218. As Brooke noted the policy had been since the fourth century that married men who entered orders were forbidden to have relations with their wives. It was already the law by 1059 that no subdeacon or above might marry and that everyone entering these higher orders must take an oath of chastity.

16 Brundage, *Law, Sex, and Christian Society in Medieval Europe* (n. 11), 218–219.

17 Sg 8b (= D.34 d.p.c.3): "Concubina hic appellamus que cessantibus legalibus instrumentis unica est. et in dubitato affectu asciscitur. hanc et si coniugem faciat affectus; concubina nominat lex."

18 Sg 4b–5a (= D.28 d.p.c.13): "In laicali uero habitu. uel in minoribus constitutus potuit habere uxorem ac filios. post ex consensu uxoris continentiam professus; si superiores gradus fuerit adeptus; et tamen uxori et filiis necessaria subministrare oportebit.... hoc tamen diligenti obseruatione custodiendum est; ut post adeptum sacerdotium defuncta priore uxore. si alteram duxerit deponatur."

19 Sg 6b–7a (= D.32 c.7): "Si quis eorum qui ad clericatum accedit uoluerit nuptiali mulieri copulari; hoc ante ordinationem subdiaconatus. Faciat."

Question 2, on the surface, seems to follow closely on the heels of where Question 1 ended, asking whether one with a concubine was able to advance to the major orders.²⁰ This initial question was answered in the negative at the outset: the quality of the woman married, namely, that she was a virgin of good character, impacted whether he would be permitted into the major orders should he so desire.²¹ Concubinage was simply an inroad to the actual topic at hand: the requirement that candidates for the clerical office be literate and above reproach.²² The qualities and characteristics that a candidate should possess sought to prevent the unworthy from acquiring an ecclesiastical position. As such, those in the major orders must not be ignorant of letters.²³ Prelates railed against the illiteracy of the parish priest who scarcely possessed the rudiments of learning which would enable him to conduct the services of the church.²⁴ *Sacerdotes* should know the scriptures, the canons, and works of preaching and doctrine. They should know the works of pagans and gentiles, but that knowledge should serve a purpose, not simply for indulging in delights, and they should not spread that knowledge either in writing or in speech as they will lead others to ruin. Secular works of poets and fictions were useful for learning grammar. Grammar was important in order to understand the holy scriptures. Dialectic was important for reasoning, speaking rightly, and discerning what was true and false. Both were the foundations needed for legal education.²⁵ Whoever entered the majors orders should be of free status

20 Question begins on *Sg* 8a.

21 *Sg* 8a–10a (= D.33 c.1–c.2; D.34 d.p.c.3–c.10, d.p.c.13–c.18; D.35 d.a.c.1). Brundage, *Law, Sex, and Christian Society in Medieval Europe* (n. 11), 252–253. Constructive bigamy barred someone from ordination: a man who had married twice, or who had married a widow or a divorcée, or whose wife had committed adultery was deemed guilty of (D.26, D.32, D.51). Digamy, or ecclesiastical bigamy, as Gratian called it, consisted in having had sex with more than one woman or in having relations with a woman who had slept with another man. It made no difference whether the relationship occurred in a solemnized and valid marriage or not, nor did it matter which party had participated in the affair. The physical act of intercourse with a woman who had known another man or with more than one woman was a bar to clerical orders, as Gratian read the law. Constructive bigamy was not a crime or an offense; it gave rise to an irregularity. Gratian left open the possibility that candidates for ordination who had incurred the irregularity of constructive bigamy might receive papal dispensation from the strict application of the law, particularly if a shortage of clergymen seemed to require such a concession (D.34).

22 On the laity's demand for better qualified clergy, see Maureen C. Miller, *The Formation of a Medieval Church: Ecclesiastical Change in Verona, 950–1150* (Ithaca, 1993).

23 *Sg* 10a, 12b (= D.36 c.2; D.38 c.1, c.3, c.4).

24 Ross William Collins, "The Parish Priest and His Flock as Depicted by the Councils of the Twelfth and Thirteenth Centuries," *Journal of Religion* 10/3 (1930), 313–332.

25 *Sg* 10b–13a (= D.36 d.p.c.2; D.37 d.a.c.1–c.2, c.7–10, d.p.c.15–16; D.38 c.1, c.3, c.4, c.16).

as opposed to a slave who had not been freed by his lord, even if that lord was a bishop or abbot.²⁶ He should be physically fit, not having voluntarily mutilated himself by becoming a eunuch because he could not remain chaste,²⁷ and he should neither be handicapped nor physically unable to perform his pastoral duties.²⁸ He should not play dice and drink, be a flatterer, be quarrelsome or litigious, a usurer, or seditious.²⁹ Conciliar canons of the twelfth and thirteenth century continued to suggest that one of the most common failings of the clergy was that they frequented taverns and engaged in playing with dice and gambling.³⁰

Clerics, however, could and did commit crimes. Question 2 argues that those in the major orders who committed capital crimes, gave false testimony, or made a false claim were to be deposed and put into a monastery essentially at the rank of laity.³¹ In such cases, clerics were degraded and prohibited from advancing.³² Ross Collins has noted that clergy went about armed with daggers, swords, spears, as well as weapons of other kinds, and they did not hesitate to use them. The wearing of arms coupled with the frequenting of taverns and gambling no doubt led them into many a brawl.³³ Yet, a qualification was made to take intent into consideration. Pope Nicholas I allowed for clerics who killed a pagan defending themselves to return to their rank and progress to another after penance was served. Though he did point out that

26 *Sg* 19a–21a (= D.54 d.a.c.1–c.2, c.4, d.p.c.8, c.9, c.21–d.p.c.22; D.55 c.1); *Sg* 19a (= D.54 d.a.c.1): “Serui quoque ordinari prohibentur; nisi a propriis dominis libertatem legitimam consequantur.”

27 *Sg* 21a–21b (= D.55 d.p.c.3, c.8, c.9); *Sg* 21a–21b (= D.55 c.9): “Si quis pro egritudine naturalia a medicis secta habuerit; similiter et qui a barbaris. aut a dominis suis castrati fuerint; et moribus digni inueniuntur; hos canon admittit ad clerum promoueri. Si quis autem sanus non per disciplinam religionis et abstinentię. set per abscissionem corporis a deo plasmati existimat posse a se carnales concupiscentias amputari. et ideo se castrauerit. non eos admitti decernimus ad quodlibet clericatus officium. quod si iam ante fuerit promotus ad clerum. a suo ministerio deponatur.”

28 *Sg* 21b (= D.55 c.12, c.13); *Sg* 10b (= D.36 c.2): “Qui ecclesiasticis inquit disciplinis per ordinem non est eruditus; et inbutus. et temporum approbatione diuinis stipendiis non est eruditus; nequaquam ad summum ecclesię sacerdotium aspirare presumat; et non solum in eo ambitio inefficax habeatur; uerum etiam ordinatores eius careant eo ordine; quem contra precepta patrum crediderant presumendum.”

29 *Sg* 10a (= D.36 c.1); *Sg* 14a–14b (= D.46 c.2, c.3, c.8; D.50 c.1).

30 Collins, “The Parish Priest and His Flock (n. 24),” 313–319.

31 *Sg* 15a (= D.50 c.7): “Si episcopus. presbiter. aut diaconus capitale crimen commiserit; aut cartam falsauerit; aut falsum testimonium dixerit; ab honoris offitii depositus; in monasterio detrudatur. et ibi quamdiu uixerit; laicam tantum communionem accipiat.”

32 *Sg* 14b (= D.50 d.a.c.1): “Et utique uariis criminibus detentos a propriis ordinibus deiciuntur multorum auctoritatibus probatur. necnon a maiorum progressu arceri.”

33 Collins, “The Parish Priest and His Flock (n. 24),” 313–319.

under normal circumstances it was in no way lawful to kill a man.³⁴ In another example, a cleric who committed murder when besieged with no hope escape could be purged by a two-year penance of vigils, prayer, and alms, after which point he could return to his office and communion.³⁵ A series of examples were offered – Maria being cured of her leprosy, Peter denying Christ and yet remaining an apostle, and those reunited to faith fall into heresy and eventually becoming bishops – to show that it was possible to return to one's rank after penance.³⁶ Those who fall were admonished and, after having accepted that admonishment, could stand up again.

The key issue for the compiler of *Prima Causa* was whether the cleric came to penance, was forced to penance, or performed penance for self-serving reasons. If he came to penance, he could be restored. If he was forced to penance or performed it for self-serving reasons than he could not be restored.³⁷ In other words, those called to, that is, ordered to do, penance for any crime could not be accepted into or remain among the clergy. Likewise, if one was moved to penance in the spirit of pride after the crime was found out, he was not to be admitted to clergy after penance. Those who offered false penance out of fear of poverty (i.e. losing benefice) or ambition, were not to be restored to former their grade because they did not do their penance out of disgust of the crime.

34 *Sg* 15a (= D.50 c.6): “De his clericis pro quibus consuluistis. scilicet qui se defendendo paganum occiderunt. si postea penitentiam emendati; possint ad pristinum gradum redire. aut ad altiorem scandere. Scitote nos nullam occasionem dare; nec ullam eis tribuere licentiam quemlibet hominum quomodolibet occidendi. Verum si contigerit; ut clericus sacerdotalis ordinis saltim paganum occiderit; multum sibi consulit; si ab officio sacerdotali recesserit. Satiusque illi est; in hac uita sub inferiori habitu inreprehensibiliter famulari. quam alta indebite appetendo; dampnabiliter in profundum dimergi.”

35 *Sg* 17b (= D.50 c.36): “... Quod si in hoc inciderint, tam officio quam communione priuentur duobus annis ita ut duobus annis uigiliis, ieiuniis, orationibus et elymosinis pro uiribus, quas Dominus donauerit, expientur; et ita demum officio uel communioni reddantur. ea tamen ratione, ne ulterius ad officia potiora promoueantur.”

36 *Sg* 15b–16a (= D.50 d.p.c.12): “Econtra post per actam penitentiam; et exemplis et auctoritatibus admittendi probatur. et ad maiores promouendi. Maria soror aaron postquam lepra percussa est. quia in moysen murmurauerat; acta penitentia mundata est; et pristinam gratiam prophetandi recepit. aaron post uitulum conflatum in summum sacerdotem est consecratus. dauid post adulterium et homicidium spiritum prophetiæ recepit; ... et ut multa ueterorum exempla pretereamus; petrus christum negauit. et factus est tamen apostolorum princeps. paulus stephanum lapidauit. et tamen a deo in apostolum electus est.”

37 *Sg* 16b (= D.50 d.p.c.24): “Qualiter igitur haec auctoritatum dissonantia concordiam ualeat; uideamus. Sunt non nulli quos non odium criminis. set timor uilitatis. amissio proprii gradus .et ambitio celsioris ad penitentiam cogit. hos sacri canones irrecuperabiliter deiciunt. quia qui simulatione penitentiae autem honoris affectione adeo non consequitur ueniam; nec ab ecclesia repARATIONEM meretur.”

However, those who *offered* penance to God for crimes were able to return to their rank. It was a question of the motive driving the penance. While one could return to his rank, if he performed solemn penance, which should only be performed once, than he could not advance to or within the major orders.³⁸ In the end, Question 2 essentially argues that those in the major orders were distinct from the laity and should conduct themselves by being an example whom the laity could strive to emulate.

By asking whether someone who was recently received into the sacred orders should be ordained a bishop, Question 3 is a tactful indictment on lay investiture.³⁹ It emphasizes that the prospective bishop should have progressed through the orders, that is, he should be steeped in ecclesiastical discipline. To enter the episcopate not only must he be at least a deacon and have progressed through orders (lector, deacon, priest) where he learned ecclesiastical discipline, but he must also be elected and consecrated. In other words, one could not enter the episcopate directly from the laity and he must have been properly trained so he could teach. Irrespective of whether the candidate comes from among the wealthy, from the scholastics at court, or from administration, he must have first been a lector and must have performed in the office of deacon and priest.⁴⁰ He should come from among the priests of the city, and a candidate from another city should be considered only if there were no available or viable options.⁴¹

Question 3 sets forth the proper role the laity played in episcopal elections. A bishop should be elected by the clergy (priests of local parishes and deacons), with the consensus of the people, and be consecrated by the bishops of the province with the consent of the metropolitan. The involvement of the people, however, needed qualification. The people were present at the election; they did not convoke the election. Their consent should be sought but people were taught, they were not to be followed. Local priests and deacons, and people, come together to choose a candidate with attention to the divine. People give consent, they do not lead the deliberations.⁴² In the event a bishop or a priest was ordained or consecrated by those not established as bishops (e.g. laity or schismatic bishops), he could be received and consecrated by the appropriate body so he could perform the sacred ministry only if he was

38 *Sg* 18a–19a (= D.50 d.p.c.53, d.p.c.61–c.63, d.p.c.64–c.66).

39 Question begins on *Sg* 21b.

40 *Sg* 21b–22a (= D.60 c.4, d.p.c.4; D.61 c.1, c.3, d.p.c.8, c.10). *Sg* 27b–28b (= D.77 c.2) sets out how many years one should be at each of the ranks in the minor orders before progressing to the priesthood if they are worked.

41 *Sg* 22b–23a, 26b–27a (= D.61 d.p.c.10, c.12, c.13; D.70 c.1; D.71 d.a.c.1, c.1, c.3; D.72 c.2 c.3).

42 *Sg* 23a–24a, 25a (= D.62 c.1, c.2; D.63 d.a.c.1 c.1, c.6–c.9, c.11–c.13, c.15, c.26, c.27).

catholic (i.e. orthodox), of good actions, and learned in every ministry of Christ and sacred law.⁴³ Care should be taken that the wishes of the people and clergy prevail lest they should despise and hate the one selected. In the election of a metropolitan, the bishops of the provinces met together in the metropolitan city and sifted through the possibilities for the best person from among the priests or deacons from the same church, having considered the wishes of the clerics and the people.⁴⁴ Clerics and people were required to express their wishes. While the Christian community had played an important role in episcopal elections, that role would diminish in the twelfth century as those traditional rights of the people came into conflict with cathedral canons and eventually the papacy.⁴⁵

The very specific and confined role assigned to the laity in episcopal elections parallels that assigned to lay rulers in the election of a pope. The laity was not excluded from elections and princes were not excluded from ordinations to churches. However, no one from among the laity should insert themselves into an election of any patriarch, metropolitan, or bishop. Such actions set the process in turmoil. Cardinals were responsible for electing a pope, though expulsion was reserved for divine judgment. The Lord reserves for himself the ejection of the highest priest. He was deemed an apostate who became pope without a canonical election of cardinals and priests but became pope

43 Sg 26a–26b (= D.68 d.a.c.1–d.p.c.2).

44 Sg 24b (= D.63 c.10): “Metropolitano defuncto; cum in loco eius alius fuerit subrogandus; prouinciales episcopi ad ciuitatem metropolitani conuenire debent. ut omnium clericorum atque ciuium uolunta te discussa; ex presbiteris eiusdem ecclesie uel diaconibus optimus ordinetur.”

45 Andreas Thier, *Hierarchie und Autonomie: Regelungstraditionen der Bischofsbestellung in der Geschichte des kirchlichen Wahlrechts bis 1140*, Recht im ersten Jahrtausend, 1; Studien zur europäischen Rechtsgeschichte 257 (Frankfurt am Main, 2011); Robert Benson, “Election by Community and Chapter: Reflections on Co-Responsibility in the Historical Church,” *The Jurist* 54 (1971), 54–80; idem, *The Bishop-Elect: A Study in Medieval Ecclesiastical Office* (Princeton, 1968), esp. 27–28, 61–62, 264–269; Kenneth Pennington, “The Golden Age of Episcopal Elections 1100–1300,” *BMCL* 35 (2018), 243–253. On elections, see also Fabrice Delivré, “Les lois du genre: Summae, practicae et éléction des évêques en Occident (XII^e–XV^e siècle),” *Revue historique de droit français et étranger* 94 (2016), 62–78; Paul Christophe, *L'éléction des évêques dans l'Eglise latine au premier millénaire* (Paris, 2009); Katherine Harvey, *Episcopal Appointments in England: c.1214–1344: From Episcopal Election to Papal Provision*, Church, Faith, and Culture in the Medieval West (Farnham, 2014); Anne J. Duggan, “Law and Practice in Episcopal and Abbatial Election before 1215: With Special Reference to England,” in *Élections et pouvoirs politiques du VII^e au XVII^e siècle: Actes du colloque réuni à Paris 12 du 30 novembre au 2 décembre 2006*, ed. Corinne Péneau (Bordeaux, 2008), 38–62; Véronique Julerot, “‘Peuple’ chrétien et éléction épiscopale à la fin du XV siècle,” *Revue d'histoire de l'église de France* 91 (2005), 27–49; and Brigitte Basdevant-Gaudemet, “Election,” *Encyclopedia of the Middle Ages* (Chicago, 2000), 1:475.

by money, human grace, or revolt of people with military assistance.⁴⁶ Such was the stain of simony. *Prima Causa* ends with D.101 d.p.c.1: “To this point we have treated the election and ordination of clerics. Now turns to the ordinations of simonics, which is decreed a heresy.”⁴⁷ The clergy, senate, and people consent to the election. Because the death of a pope could lead to violence, the consecration of his successor should not happen without notice given to the emperor and his legates present.⁴⁸ Secular rulers thus played an important role as they saw to the integrity of the election process. While the installment of bishops and popes resulting from the intervention of princes and emperors resulted in the dissensions of heretics and schismatics, the involvement of princes also ensured that schismatics and heretics did not disrupt the process. Emperors who caused a ruckus and did more than ensure that the process went smoothly (i.e. they involved themselves more than simply giving their consent) were anathematized.⁴⁹ By silencing the voices of those who sought to insert themselves into papal elections, *Prima Causa* politely counters the status quo that had begun under the *privilegium* of Otto I in 962 whereby the pope’s consecration took place only after he had sworn an oath to the emperor.⁵⁰

Prima Causa had painstakingly treated matters germane to reformers of the late eleventh and early twelfth century. Clerics in the major order could neither keep a concubine nor contract a valid marriage. If a layman or someone in the minor orders had entered into a legitimate marriage and then progressed into the major orders, the marriage remained valid though chaste. Those to be ordained into the major orders must be learned and must possess particular characteristics. While a cleric may retain his grade after completing penance for a major sin, he may not advance. Finally, a cleric must properly progress

46 Sg 28b (= D.79 d.p.c.10): “Cum ut dictum est summorum sacerdotum electio cardinalibus et religiosis clericis sit facienda; eorum electio soli diuino iudicio est reseruanda”; Sg 28b (= D.79 c.11): “Eiectionem summorum sacerdotum sibi dominus seruauit. licet electionem eorum bonis sacerdotibus et populis spiritualibus concessisset”; Sg 28a–28b (= D.79 d.a.c.1, c.1, d.p.c.7–c.9).

47 Sg 28b (= D.101 d.p.c.1): “huc usque de electione et ordinatione catholicorum aliquantum dictum est. nunc ad simoniacos transeamus.”

48 Sg 24b–25b (= D.63 d.p.c.25, d.p.c.27, c.28).

49 Sg 25b (= D.63 ex d.p.c.28, ex d.p.c.34, d.p.c.35): “Set quem imperatores tamdem modum suum ignorantes. non in numero consentientium. set primi distribuentium; immo magis exterminantium esse uoluerunt. frequenter et in hereticorum perfidiam prolapsi. catholicę ecclesię unitatem impugnare conati sunt; sanctorum patrum instituta aduersus eos prodierunt; ut se electioni non insererent. et quisquis eorum suffragio ecclesiam obtineret anathematis baculo feriretur.”

50 MGH DD O I, no. 235, 325–326; Mario Ascheri, *The Laws of Late Medieval Italy (1000–1500): Foundations for a European Legal System* (Leiden, 2013), 55.

through the ecclesiastical grades prior to being elected bishop or pope. While the laity had their role, they were not to interfere with elections to either an episcopal or papal see.

3 *Prima Causa* within the Context of the *Distinctiones*

The systematic treatment found in *Prima Causa* lies in contrast to the repetition found in the *Distinctiones*. Though limited space prevents a deeper discussion, it is worth mentioning that *Prima Causa* does not include texts found in the *Distinctiones* that are repetitive in nature to the subject discussed or have the potential to cloud the argument being set forth. The differences in the extent to which the ecclesiastical hierarchy and papal primacy were emphasized in *Prima Causa* as opposed to in the *Distinctiones* reflect just how fluid the transmission of legal knowledge and canonical texts were. Texts addressing particular legal concepts circulated, but that does not mean that a compiler agreed with that stance and wanted to incorporate those texts. There was not yet a set and standardized narrative faithfully transmitted in every legal collection.

Prima Causa did not place a premium on an ecclesiastical hierarchy emanating from the papacy and filtering down to parish church. Texts with such a tenor found in the *Distinctiones* are not found in *Prima Causa*. D.66, omitted from *Sg*, dealt with the election of the archbishop. DD.64–65 and 67, also omitted from the text, addressed the election bishops in a manner different from that found in *Prima Causa*. *Prima Causa* emphasized the consent of the people and clergy. However, these distinctions placed the emphasis on the role of the co-provincials and the metropolitan. If there was only one bishop in a province the bishops of surrounding area were to assist. DD.75–76, omitted from *Sg*, reiterated that episcopal ordinations were to be celebrated by all bishops of the province with apostolic authority. The bishops should gather to diligently conduct their examination: they should fast in prayer, lay their hands on holy gospel from which they were to preach, pray at the third hour of the Sabbath, and anoint their heads with holy oil.⁵¹ The canons in D.68 but omitted from *Sg* addressed the duty of the chorbishops versus the duty of the bishop.⁵² D.94, omitted from the text, addressed archdeacons and papal legates, while D.93, also omitted, addressed the number of deacons and their duty

51 D.78 was added to the second recension and deals with the ordination for priests. It stipulates that they are to be mature, able to express obedience, and be learned.

52 D.68 d.p.c.3–c.5.

to be obedient to the bishop and guard him while he preached. D.95, likewise omitted, touched on the relationship between the bishop and the priest while D.67, also omitted, emphasized that priests and deacons were ordained by their own bishop and they should fast beforehand. Bestowing of other ranks in the minor orders could be done with the approval of three trustworthy witnesses named by the bishop. The *Distinctiones* placed a value on hierarchy and the place of each ecclesiastical rank within that hierarchy while *Prima Causa* placed a value on other matters.

Starkly omitted from *Prima Causa* are references to papal primacy found in the *Distinctiones*. DD.21–22, omitted from *Sg*, worked under the premise that an inferior could not judge a superior and that Rome was superior. They then moved into the ranking of the patriarchal sees after Rome. DD.80 and 99, omitted from *Sg*, dealt with the concept of primate and patriarch and their election. D.100, likewise omitted, noted that bishops could not receive the pallium only from the pope, and not from an archbishop, primate, or patriarch. Not only are distinctions referencing papal primacy omitted but so too, for example, is C.9 q.3 d.p.c.9: “Only the Holy roman Church is in a position to judge everybody and no-one is allowed to judge the Church itself.”⁵³ Also omitted are DD.1–20, which addressed the nature, hierarchy of, and relationship between the sources of laws.⁵⁴ So too are DD.96–97, which used the premise that the laity could not possess ecclesiastical goods as a vehicle to emphasize the place of the papacy. D.96 included the concept of the Gelasian swords while D.97 noted that the Roman see would not receive a legate without signed letters. The omissions from D.63 in the Sankt Gallen text dealt with the relationship between the emperor and the pope.⁵⁵

Such omissions reflect that the transmission of legal texts in the late eleventh and early twelfth century remained fluid and that not all knowledge was transmitted with the same weight. The *Collectio Canonum Barberiniana* (Barb. lat. 538), surviving in only one manuscript, also does not address papal primacy.⁵⁶ The collection was compiled in Tuscany (Lucca) between 1050 and 1073, augmented from 1078 to 1080, and completed between 1081 and 1120. *Sg*

53 C.9 q.3 d.p.c.9: “Sola enim Romana ecclesia sua auctoritate ualet de omnibus iudicare; de ea uero nulli iudicare permittitur” (*Bc*, fol. 158r right margin; *Fd*, Add. fol. 132v; *Aa* 23, Add fol. 278r).

54 Ascheri notes that the general legislative issues found in DD.1–20 follow the Roman model, see *The Laws of Late Medieval Italy* (n. 50), 122.

55 D.63 c.18, c.22, c.23, c.29, c.30, c.32, c.33.

56 Mario Fornasari, “Collectio Canonum Barberiniana,” *Apollinaris* 36 (1963), 217–297. The *capitulatio titulorum* does not suggest that papal primacy was addressed at all.

likewise may have been copied in northern Italy at the abbey of Massino (today Stresa), approximately 255km from Bologna and 275km from the monastery of Sankt Gallen, between 1130 and 1140.⁵⁷ Such an omission could reflect northern Italian sentiments that struck a balance between Rome and the Holy Roman Empire: not over-emphasizing papal primacy but concerned with other issues germane to the reform movement, namely clerical marriage, the quality of candidates to the major orders, and lay involvement in elections.

Such omissions could also reflect a possible connection between northern France and Gratian. Andrea Padovani has noted that the *quaestio*, which established itself in the theological milieu of the Paris region, was in a symbiotic relationship with the *distinctio*. As methods of investigation and exposition, they complemented each other.⁵⁸ Both underpin the *Decretum*. Similarly, Atria Larson and John Wei have connected Gratian's intellectual formation to the schools of northern France.⁵⁹ Even if Gratian did not study there, as suggested by John Wei's study, Mario Ascheri has noted the links between Milan, and Tuscany in particular, and France due to Crusades.⁶⁰ Northern French thinking travelled to northern Italy. To that end, ideas about the importance of episcopal rights within the context of papal primacy espoused in France, particularly the archdioceses of Reims and Sens,⁶¹ could have influenced the construction of *Prima Causa* found in *Sg*.

57 Carlos Larrainzar, "El borrador de la 'Concordia' de Graciano: Sankt Gallen, *Stiftsbibliothek MS 673* (=Sg)," *Ius ecclesiae* 11 (1999), 593–666, at 636–645. See also Lenz, "Paleography (in this volume)" where he picks up on the connection between St. Gall and Massino. Lenz suggests that these contacts, together with occasional journeys by abbots to Rome, could explain why *Sg* travelled north at some point between the twelfth and fifteenth century.

58 Andrea Padovani, "Sull'uso del metodo questionante nel *Decretum*: Un contributo," *BMCL* 30 (2017), 61–87. Padovani points to a form of *quaestio* in the *distinctiones*: e.g., q.2, *Sg* 11a (= D.37 pr.): *Sed queritur an secularibus ...*; q.2, *Sg* 20b (= D.54 d.p.c.21): "Queritur utrum clericatui ..."; q.3, *Sg* 26a (= D.68 pr.): *Queritur de illis qui ordinantur ...*; q.3 *Sg* 28a (= D.79 d.p.c.7): *Queritur autem si ...*. He also points to *quaestiones* being articulated according to *distinctiones*: e.g., C.2 q.6 d.p.c.10; C.16 q.2 d.p.c.7, C.16 q.3 d.p.c.7; C.11 q.3 d.p.c.24; C.23 q.4 d.p.c.11; C.28 q.2 d.p.c.2.

59 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, 11 (Washington D.C., 2014); John C. Wei, *Gratian the Theologian*, Studies in Medieval and Early Modern Canon Law, 13 (Washington D.C., 2016).

60 Ascheri, *The Laws of Late Medieval Italy* (n. 50), 80.

61 See for example, Christof Rolker, *Canon Law and the Letters of Ivo of Chartres*, Cambridge Studies in Medieval Life and Thought, Fourth Series (Cambridge, 2010), 193–204; Uta-Renate Blumenthal, *The Investiture Controversy: Church and Monarchy from the Ninth to the Twelfth Century*, trans. eadem, Middle Ages Series (Philadelphia, 1988), 159–167.

4 Conclusions

Prima Causa reflects a certain kind of autonomy to the version of the *Decretum* found in *Sg*, but it is unclear how we can understand this autonomy. It begs the question: Why create a hypothetical out of distinctions or distinctions out of a hypothetical? As this manuscript is the only known example of an original case, we are left to speculate.

The disparity between *Prima Causa* and the *Distinctiones* may reflect a period when the form of the *Decretum* was in flux. Both Mario Ascheri and Andrea Padovani have noted that Gratian probably did not intend for the final organization of the *distinctiones*. Despite scholars frequently referring to DD.1–20, addressing the nature and hierarchy of law, as the *tractatus de legibus*,⁶² at no point did any recension do so. There is a reference to the *tractatus decretalium epistolarum* in C.1 q.1 d.p.c.96, found in the first recension, which directs the reader to D.19 c.9.⁶³ While *Sg* contains a form of the *dictum*, the reference to the canon is omitted.⁶⁴ In fact, *Prima Pars* of the *Distinctiones* never speaks of distinctions, but only of a *Tractatus ordinandorum*, a *Tractatus de promotione clericorum*, and a *Capitulum de ordinatione clericorum*.⁶⁵ *Prima Causa* along with *Causa 1* on simony very well may have constituted this tract, a tract which *Sg* preserved. At some point the *tractatus* may have been divided into *distinctiones*. A slow evolution of the *Distinctiones* may also explain the repetitiveness of DD.80–100. Typically considered a supplement to the previous distinctions, D.81 d.a.c.1 notes: “It is sufficient what we have said about these things concerning those going to be ordained and the ordainers and the distinctions between the individual grades and offices. However, because we are reflecting a little more fully on these things, we commit to memory under an epilogue certain concepts touched upon in the preceding sections.”⁶⁶ DD.80–100 would cover topics similar to those covered in previous distinctions and

62 Most famously see, *The Treatise on Laws (Decretum DD.1–20) with the Ordinary Gloss*, trans. Augustine Thompson and James Gordley, with an introduction by Katherine Christensen, *Studies in Medieval and Early Modern Canon Law*, 2 (Washington D.C., 1993).

63 *Fd*, fol. 22ra, Bc, fol. 107rb; *Aa* 23, fol. 101v; see. *edF* 392; Dusil, *Wissensordnungen des Rechts im Wandel* (n. 1), 393.

64 *Sg* 34b.

65 Ascheri, *The Laws of Late Medieval Italy* (n. 52), 122 n.43; Padovani, “Sull’uso del metodo questionante nel *Decretum* (n. 58),” 86.

66 D.81 d.a.c.1: “Hec de ordinandis et ordinatoribus atque de singulorum graduum distinctionibus et offitiis dixisse nos sufficiat. Verum quia aliquantulum diffusius in his immorati sumus, precedentibus coherentia quedam sub epilogo ad memoriam subiciamus” (see *edF* 281).

contribute additional information. As such, they may be later additions to the distinction tradition.

While speculative, *Prima Causa* may well represent the last vestige of an original teaching tool.⁶⁷ The topics addressed – clerical celibacy, the worthiness or unworthiness of candidates for the major orders, and election to the prelacy – were of central importance to those working in the early twelfth century. Furthermore, Stephan Dusil found that the first recension of Gratian's *Decretum* formed a tightly constructed treatise whereas the second recension, as a canonical collection, served as a repository of legal knowledge.⁶⁸ Both observations are applicable to *Prima Causa*. Many of the canons included in the first recension supplement the argument made in *Prima Causa*. Additionally, the argument is tighter and more coherent in *Prima Causa*. Canons and entire distinctions that do not contribute to the narrative – such as those addressing the nature of law, and those emphasizing ecclesiastical hierarchy and papal primacy – are omitted. *Prima Causa* also contains an interesting textual feature: twelve instances in which the *dicta* would use the first-person plural (one of which uses the first-person singular), as opposed to the third person singular found in Gratian 1. For example, q.1 d.p.c.6 (D.27 d.p.c.8) in *Sg* uses *distingamus* as opposed to *distinguendum est*.⁶⁹ The personal use of the first-person suggests a classroom use. The work of creating a unique hypothetical, posing questions, selecting canons based on the distinctions to address the desired topics while omitting distinctions that do not, and changing of tenses in *dicta* all seem daunting. It may have made more logical sense to have started with a *causa* and then over time and with changing circumstances add to that base, as was done with the evolution from the first to the second recension.

Prima Causa in *Sg* is unquestionably unique. It is a snapshot of a time in the *Decretum's* textual history – prior to the dissemination of decretal collections

67 See Pennington, "Teaching Canon Law in the Early Twelfth Century (in this volume)" which analyzes *Sg* as a teaching tool used in the classroom over a long period of time.

68 Dusil, *Wissensordnungen des Rechts im Wandel* (n. 1), 391–412. Anders Winroth previously argued that a number of the canons added to the second recension of the *Decretum* supplemented the argument made in the first recension. He also found that the argument was tighter and more coherent in the first recension. See Anders Winroth, *The Making of Gratian's Decretum*, Cambridge studies in medieval life and thought, 4th ser., 49 (Cambridge, 2000), 123.

69 *Sg* 3b (= D.27 d.p.c.8): *Distingamus*; q.1 *Sg* 8a (= D.33 d.a.c.1): *habemus*; q.2 *Sg* 8b (= D.34 d.p.c.3): *appellamus*; q.2 *Sg* 9a (= D.34 d.p.c.8): *credimus*; q.2 *Sg* 10a (= D.35 d.a.c.1): *ostendimus* and *uideamus*; q.2 *Sg* 13a (= D.39 d.a.c.1): *ostendamus*; q.2 *Sg* 14b (= D.50 d.a.c.1): *uideamus*; q.3 *Sg* 22a (= D.60 d.a.c.1): *ostendimus* and *uideamus*; q.3 *Sg* 28b (= D.101 d.p.c.1): *deducamus*. On a linguistic analysis of *Sg*, see Lenherr, "Language Features (in this volume)."

in the late-twelfth century – when the collection was still malleable. It shows a time when clerical celibacy, the worthiness or unworthiness of candidates for the major orders, and election to office required a case unto themselves, a case structured in an engaging manner conducive for teaching. It takes us to time in which an emphasis on the ecclesiastical hierarchy was not all-encompassing and when a clear articulation of papal primacy was not ubiquitous. While scholars may continue to debate the relationship of this text to the first recension, the way in which it illustrates the transmission of legal texts and fluidity of legal knowledge at the dawn of the formal schools of law in the early twelfth century seems to rest on firm ground.

‘*aliis in carceribus et latumiis reclusis*’, ‘*aliis carcere et ergastulo reclusis*’: Special Language Features in the *Exserpta ex decretis sanctorum patrum* and Their Interpretation

Titus Lenherr

1 Introduction

The first impulse to embark on this study many years ago was the ‘riddle’ of how one should explain the circumstance that in the *Exserpta*,¹ at the beginning of *Causa 23* when the case is formulated, the strange word *latumie* is used, where the more familiar word *ergastulum* is found in the *Concordia*² and the *Decretum*.³ Could it be that the use of this word indicates the geographical location where the *Exserpta* originated or were used? To whom was this word, the meaning of which a contemporary reader had to look up in the Latin dictionary, so familiar that he could use it without hesitation? Where and when and by whom was this word also used? The difference between *aliis in carceribus et latumiis reclusis* in the *Exserpta* and *aliis carcere et ergastulo reclusis* in the rest of the tradition became the ‘propellant’ for this study.

The linguistic differences between these three traditions have been noticed for a long time and have in some cases also been discussed.⁴ The differences

1 “*Exserpta*” means in this study: *Exserpta ex decretis sanctorum patrum* of Sankt Gallen, Stiftsbibliothek, 673 (*Sg*), 3a–203a.

2 “*Concordia*” indicates in this study the “First Recension” of the *Decretum Gratiani* as we find it in the group of the manuscripts *Aa*, *Bc*, *Fd*, and *P*; cf. Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge, 2000), passim; Carlos Larrainzar, “El Decreto de Graciano del código Fd (= Firenze, Biblioteca Nazionale Centrale, Conventi Soppressi A. I. 402). In memoriam Rudolf Weigand,” *Ius Ecclesiae* 10 (1998), 421–489; Carlos Larrainzar, “El borrador de la ‘Concordia’ de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (=Sg),” *Ius Ecclesiae* 11 (1999), 593–666; Carlos Larrainzar, “La formación del Decreto de Graciano por etapas,” *ZRG. KA* 87 (2001), 67–83.

3 “*Decretum*” indicates in this study the *Decretum magistri Gratiani* in its common version; cf. *Corpus iuris canonici*, ed. Emil Friedberg, 2 vols (Leipzig, 1879–1881, repr. Graz, 1959), vol. 1: *Decretum magistri Gratiani*.

4 Cf. Titus Lenherr, “Die vier Fassungen von C. 3 q. 1 d. p. c. 6 im Decretum Gratiani,” *AKKR* 169 (2000), 351–381, at 362–368; José Miguel Viejo-Ximenez, “Variantes textuales y variantes

have been used to support arguments for or against the classification of the *Exserpta* either as an abbreviation or as the earliest version of what the *Decretum Gratiani* would later become.⁵ However, the extent of these peculiarities only becomes apparent when we make them our central topic. There are surprisingly many of them, and this provokes questions.

This study intends first to track down and describe the special linguistic phenomena in the *Exserpta* and then to attempt to interpret them. The focus is not on trying to find an answer to the question of the position of the *Exserpta* in the editorial history and the transmission of Gratian's work. The goal is to learn more about the *Exserpta* themselves, and especially about the milieu in which they were created. In order to grasp the linguistic peculiarities, a comparison with the versions of the corresponding texts in the *Concordia* and in the *Decretum* will of course be essential.

There is no section in the *Exserpta* in which the linguistic peculiarity of this version is not noticeable compared to the versions of the *Concordia* and of the *Decretum*. This applies first and foremost to the *dicta*, but beyond that, albeit to a much lesser extent, also to the Inscriptions, the Summaries, and the Authorities.⁶

2 A First Example: The *Initium of Causa 23*

The beginning of *Causa 23* – the narration of the case and the formulation of the questions that are linked to it – is an example in which we already encounter almost all of the linguistic peculiarities of the *Exserpta*.⁷

doctrinales in C. 2 q. 8," in *Proceedings of the Twelfth International Congress of Medieval Canon Law, Washington, D.C. 1–7 August 2004*, ed. Uta Renate Blumenthal (Vatican City, 2008), 161–190; José Miguel Viejo-Ximénez, "Non omnis error consensus euacuat. La C. 26 de los Exserpta de Sankt Gallen (Sg)," in *Iustitia et Iudicium* (Vatican City, 2010), 617–641, at 620–625; Kenneth Pennington, "The Biography of Gratian, the Father of Canon Law," *University of Villanova Law Review* 59 (2014), 679–706, at 695.

5 Cf. José Miguel Viejo-Ximénez, "Non omnis error consensus euacuat (n. 4)," 617–641; Titus Lenherr, "Die vier Fassungen (n. 4)," 362–368; Carlos Larrainzar, "El borrador de la 'Concordia' de Graciano (n. 2)," *passim*; Carlos Larrainzar, "La formación del Decreto de Graciano por etapas (n. 2)," *passim*.

6 At least three of the linguistic particularities present in the *Dicta* also occur in the Inscriptions, the Summaries, and the Authorities: shorter versions, transpositions, and synonyms.

7 In the following presentation the two versions are arranged in units of whole sentences or parts of them so that we can better describe and compare the two versions. In some units, subdivisions occur; these are numbered in square brackets.

23 pr	Exserpta/Sg 158b	Concordia-Decretum Gratiani ^a
	A	B
1	[1] Cum plebe sibi commissa [2] episcopi quidam [3] in heresim sunt lapsi.	[1] Quidam episcopi [2] cum plebe sibi commissa [3] in heresim sunt lapsi.
2	Catholicos adiacentes ad heresim compellebant.	Circumadiacentes catholicos minis et cruciatibus ad heresim compellere ceperunt.
3	[1] Vnde apostolicus episcopis catholicis [2] civilem iurisdictionem [3] ab imperatore [4] habentibus imperavit,	[1] Quo conperto apostolicus catho- licis episcopis circumadiacentium regionum, qui [2] ab imperatore [3] civilem iurisdictionem [4] accep- erant, imperavit
4	ut ab hereticis catholicos defend- erent et utcumque possent eos ad fidei rectitudinem reuerti cogent.	ut catholicos ab hereticis defenderent et quibus modis possent eos ad fidei ueritatem redire compellerent.
5	[1] Accipientes episcopi apostolici mandata, [2] militibus conuocatis [3] hereticos manifeste ac insidiis [4] impugnare ceperunt.	[1] Episcopi, hec mandata apostolici accipientes, [2] conuocatis militi- bus [3] aperte et per insidias contra hereticos [4] pugnare ceperunt.
6	Demum multis eorum occisis, multis quoque suis rebus expoliatis, aliis in carceribus et latumiis reclu- sis, ad fidem tandem redierunt.	Tandem nonnullis eorum neci tradi- tis, aliis rebus suis uel ecclesiasticis expoliatis, aliis carcere et ergastulo reclusis, ad unitatem catholice fidei coacti redierunt.
7	Queritur igitur, an sit militare peccatum.	Hic primum queritur, an militare pec- catum sit.
8	Secundo, quod bellum sit iustum.	Secundo, quod bellum sit iustum, et quomodo a filiis israel iusta bella gerebantur.

a Cf. *Aa*, fol. 60r–v, *Fd*, fol. 61va–b, *edF*, 88g. The version is based on the collation of the two relevant manuscripts of the *Concordia* and some earlier manuscripts of the *Decretum*, which are not specified here. The edition of E. Friedberg has the variant reading *apostolica* instead of *apostolici* in section 5.

(cont.)

23 pr	Exserpta/Sg 158b	Concordia-Decretum Gratiani
9	Tercio, an sotios ab iniuria defendere liceat.	Tercio, an iniuria sociorum armis sit propulsanda.
10	Quarto, an sit inferenda uindicta.	Quarto, an uindicta sit inferenda.
11	Quinto, an peccet iudex uel minister occidendo reos.	Quinto, an sit peccatum iudici uel ministro reos occidere.
12	Sexto, an ad bonum mali cogi debeant.	Sexto, an mali sint cogendi ad bonum.
13	Septimo, an suis bonis et ecclesiis heretici debeant expoliari, et [1] an aliena possidere dicantur, [2] qui eis ablata possident.	Septimo, an heretici suis et ecclesie rebus sint expoliandi, et [1] qui possidet ab hereticis ablata, [2] an dicatur possidere aliena.
14	Octauo, utrum episcopis uel quibuslibet clericis [1] sua auctoritate aut etiam apostolici siue imperatoris precepto arma mouere [2] liceat.	Octauo, an episcopis uel quibuslibet clericis [1] liceat [2] sua auctoritate uel apostolici uel imperatoris precepto arma mouere.

The differences between the two versions are displayed and named in detail in the following table:

23 pr	Exserpta Sg 158b	Concordia-Decretum Gratiani	Difference
	A	B	
1	A[1] = B[2] / A[2] = B[1]	B[1] = A[2] / B[2] = A[1]	<i>element transposition</i>
	Episcopi quidam-> sunt lapsi->	<-quidam episcopi <-lapsi sunt	<i>word transposition</i> <i>word transposition</i>
2	Catholicos adiacentes-> adiacentes~ deest minis et cruciatibus finite verb imperfect	<-circumadiacentes catholicos ~circumadiacentes add. minis et cruciatibus infinitive with ceperunt	<i>word transposition</i> <i>word reduction A</i> <i>without adverbial A</i> <i>grammatical</i> <i>difference</i>

(cont.)

23 pr	<i>Exserpta Sg 158b</i>	<i>Concordia-Decretum Gratiani</i>	Difference
3	Vnde~ episcopis catholicis-> deest circumadiacentium regionum A[2] = B[3] participial construction~	~quo conperto -catholicis episcopis add. circumadiacentium regionum B[2] = A[3] ~relative clause	synonym word transposition without adjunct A element transposition grammatical difference
4	habentibus~ Ab hereticis catholicos-> utcumque~ rectitudinem~ reueriti~ cogerent~	~acceperant <-catholicos ab hereticis ~quibus modis ~ueritatem ~redire ~compellerent	synonym word transposition synonym synonym synonym
5	A[1] 1-4 = B[1] 5, 1, 4, 3 deest hec militibus conuocatis-> hereticos <i>beginning of</i> [3] manifeste~ ac~ insidiis~	B[1] 1-5 = A[1] 2, -, 4, 3, 1 adest hec <-conuocatis militibus hereticos <i>end of</i> [3] ~aperte ~et ~per insidias	word transposition without pronoun A word transposition word transposition synonym synonym ablative A, prepositional phrase B
6	demum~ multis~ occisis~ multis~ adest quoque suis rebus-> sine uel ecclesiasticis in carceribus~ latumiis~ ad fidem~ sine coacti	~tandem ~nonnullis ~neci traditis ~aliis sine quoque <-rebus suis add. uel ecclesiasticis ~carcere ~ergastulo ~ad unitatem catholice fidei add. coacti	synonym synonym synonym synonym with conjunction A word transposition without adjunct A plural A / singular B prepositional phrase A / ablative B synonym plural A / singular B short A, long B without adjunct A

(cont.)

23 pr	<i>Exserpta Sg 158b</i>	<i>Concordia-Decretum Gratiani</i>	Difference
7	<i>sine</i> hic primum sit militare peccatum->	<i>cum</i> hic primum <-militare peccatum sit	<i>without adverbial A</i> <i>word transposition</i>
8	<i>sine</i> et quomodo – gerebantur	<i>cum</i> et quomodo – gerebantur	<i>without additional</i> <i>question A</i>
9	an [sotios ab iniuria] defendere liceat->	<- an / iniuria sociorum / sit propulsanda	<i>infinitive + liceat A,</i> <i>gerundive B / ques-</i> <i>tion of permission A,</i> <i>question of duty B</i>
	<i>deest</i> armis	<i>adest</i> armis	<i>without adverbial A</i>
10	sit inferenda uindicta->	<- uindicta sit inferenda	<i>word transposition</i>
11	peccet->	<- sit peccatum	<i>synonym</i> <i>verbal A, substantive</i> <i>+ linking verb B</i>
	occidendo reos->	<- reos occidere	<i>word transposition</i> <i>adverbial with gerun-</i> <i>dive A, infinitive B</i>
12	ad bonum / mali cogi debeant-> cogi debeant->	<- mali sint cogendi / ad bonum <- sint cogendi	<i>element transposition</i> <i>infinitive passive with</i> <i>debeant A, gerun-</i> <i>dive B</i>
13	suis bonis et ecclesiis heretici-> bonis~ ecclesiis->	<- heretici suis et ecclesie rebus ~rebus <- ecclesie	<i>word transposition</i> <i>synonym</i> <i>object A, attributive</i> <i>genitive B = differ-</i> <i>ence of meaning</i>
	debeant expoliari->	<- sint expoliandi	<i>infinitive passive with</i> <i>debeant A, gerun-</i> <i>dive B</i>
	A[1] = B[2], A[2] = B[1] aliena possidere dicantur->	B[1] = A[2], B[2] = A[1] <-dicatur possidere aliena	<i>element transposition</i> <i>word transposition</i>
	eis ablata possident->	<- possidet ab hereticis ablata	<i>word transposition</i>

(cont.)

23 pr	<i>Exserpta Sg 158b</i>	<i>Concordia-Decretum Gratiani</i>	Difference
	dicantur ... qui possident->	<- qui ... possidet / dicatur	plural A, singular B
	eis->	<- ab hereticis	pronoun A, substantive B / dative object A, ab with ablative B
14	utrum~	~an	synonym
	A[1] = B[2], A[2] = B[1]	B[1] = A[2], B[2] = A[1]	element transposition
	aut~	~uel	synonym
	cum etiam	sine etiam	with particle A
	siue~	~uel	synonym

The text from the *Exserpta* has 143 words; the text from the *Concordia* has 168 words. There are more than 60 differences between the two versions, which can be summarised and categorised as follows:

- a) transposition of words (cf. 2× no. 1, 1× nos. 2, 3, 4, 6, 10, 11, 2× no. 13);
- b) transposition of elements that consist of several words (cf. 1× nos. 1, 3, 2× no. 5, 1× nos. 7, 12, 2× no. 13);
- c) synonyms (cf. 1× no. 3, 4× no. 4, 3× no. 5, 1× nos. 7, 12, 2× no. 13);
- d) grammatical differences (cf. 1× nos. 2, 3, 5, 6, 7, 12, 2× no. 14, 4× no. 13);
- e) differences in the extent of the text (omissions – additions) (cf. 1× nos. 2, 3, 5, 8, 9, 14, 4× no. 6, 2× no. 7);
- f) shortening of a word (1× no. 2).

In terms of content, however, there are only slight differences. We find one in section 6, where the *Exserpta* use *multi* twice, while the *Concordia-Decretum* have *nonnulli* and *alii*. We have another one in section 9, where the *Exserpta* pose a question concerning a permission, while the *Concordia-Decretum* have a question concerning a duty, since the *Exserpta* ask “whether it is allowed to defend the companions from iniquity,” while the question in the *Concordia-Decretum* is “whether we have to repel the iniquity from the companions.” Another difference regarding content appears in section 13, where we have the difference between the dative object *ecclesiis* in the *Exserpta* and the genitive attribute *ecclesie* in the *Concordia-Decretum*: “Whether the heretics have to be deprived of their goods and churches” versus “Whether the heretics have to be deprived of their goods and those of the church.”

3 A Second Example: the *Principium* of the 1. *Questio* of *Causa* 29

The linguistic differences in the *Initium* of C.23 are easily nameable. However, there are *Dicta* where it is much more difficult to name the differences on the grid of a common language substrate. Even if the same issue is discussed in the two versions of such *Dicta* and there is no doubt that the two versions are ‘cognate’ with one another, the linguistic differences are so great that one has to ask: *Qualiter igitur hanc (...) dissonantiam concordari ualeat.*⁸ The differences are no longer simply ‘countable.’

Such uncountable differences can be found in the *Dictum* at the beginning of *Quaestio* 1 of *Causa* 29.

C.29,1 pr	<i>Exserpta</i> (Sg 171a)	<i>Concordia-Decretum Gratiani</i> ^a
[introduction]	Similiter raciocinamur et de eo	Item,
[section 1]	qui in sectam illius quem putaret ambrosium uel augustinum, cum esset arrius uel sabellius se transisse fateretur.	si quis hereticorum, nomine Augustini, uel Ambrosii, uel Ieronimi, alicui catholicorum se ipsum offerret, atque eum ad suae fidei imitationem prouocaret, si ille preberet assensum,
[section 2]		in cuius fidei sententiam diceretur consensisse? Non in hereticorum sectam, sed in integ- ritatem catholicae fidei, quam ille hereticus se mentiebatur habere.
[section 3a]	Vnde quoniam ista personali errore ducta esse dicitur, non in hunc set in eum quem hic se mentiebatur esse consensit.	Quia ergo hec persona decepta errore non in hunc, sed in eum, quem iste se mentiebatur esse, consensit,
[section 3b]	Quare nec illius esse coniunx perhibetur.	patet [ergo <i>add. Fd</i>] quod eius coniunx non fuerit.

a Cf. *Aa*, fol. 126v, *Fd*, fol. 83ra, *edF* 1092 (within paragraph § 4).

The two versions have two widely different introductions, a ‘personal’ one in the *Exserpta*: *Similiter raciocinamur et de eo qui (...)*, and an ‘impersonal’ one

8 Cf. D.50 d. p. c.24 in the version of the *Exserpta* (Sg 16b); cf. the version of *Concordia-Decretum*: *Quomodo igitur huiusmodi (...) dissonantia ad concordiam reuocari ualeat* (*edF* 1092).

in the *Concordia-Decretum: Item*. These different introductions require a different continuation with respect to the grammar. In the *Exserpta*, a relative clause follows; in the *Concordia-Decretum*, two conditional clauses follow (cf. section 1). In the *Exserpta*, the 'Catholic' is the subject of the action; he admits that he had converted to a heretical sect. The sect is characterised in an apposition, a genitive attribute with a relative clause in which the 'Catholic' is the one acting: (the sect) of that person whom he had assumed was Ambrose or Augustine, while it was Arius or Sabellius. In the *Concordia-Decretum*, 'a heretic' is the subject of the action in the first conditional clause. He presents himself as Augustine or Ambrose or Jerome and calls for imitation, whereupon in the second conditional clause the 'Catholic' becomes the subject of the action and gives ('the heretic') his assent.

In section 2 the *Concordia* expresses the solution to the problem that results from the example, while such an explicit solution to the problem cannot be found in the *Exserpta*. For the two versions, this once again means that they have to continue in quite different ways (see section 3a–b).

Section 3a–b deals with the application of the example of section 1 and section 2 to the subject of matrimonial law. Two sentences follow in the *Exserpta*, only one sentence in *Concordia-Decretum*. The first sentence in the *Exserpta* begins with a causal subordinate clause: *quoniam ista personali errore ducta esse dicitur*, which is followed by the main clause with the predicate *non in hunc set in eum (...) consensit*. The second sentence draws the conclusion: *Quare nec illius esse coniunx perhibetur*. The single sentence in the *Concordia-Decretum* begins with a causal subordinate clause: *Quia hec persona (...) non in hunc, sed in eum (...) consensit*, followed by the main clause with the predicate *patet*, after which the subject *quod eius coniunx non fuerit* follows.

There are also 'countable' differences. In section 1: difference in the extent of the text / *Arrius uel Sabellius* <-> *quis hereticorum* / difference in the extent of the text / *se transisse* <-> *preberet assensum*. In section 3a: *unde* <-> *quia* / *Ista* (subject) <-> *hec persona* (subject) / *adest personali* <-> *deest personali* / *dicitur ducta esse* (predicate) <-> *ducta* (adjunct) / *hic* <-> *iste*. In section 3b: *quare* <-> *patet* / *nec esse perhibetur* <-> *non fuerit* / *illius* <-> *eius*.

4 Other Linguistic Features

In addition to the linguistic peculiarities already described, further features can be identified and characterised, three of which are dealt with here.⁹

9 Within the scope of this study we cannot discuss the consequences of the linguistic particularities concerning the prosody, emphasis, etc.

(a) Personal formulations

The ‘personal’ introduction in the *Dictum* at the beginning of the first *Questio* of *Causa 29: Similiter raciocinamur* (as opposed to *Item* in the *Concordia-Decretum*) is an example of another peculiarity of the *Exserpta*. The ‘Magister’ often uses verbs in the first person plural when he looks back on what has been done or what has happened or when he tries to foresee what is to come.

The examination of the *Exserpta* from beginning to end leads to a list of 62 instances of such ‘personal’ formulations.¹⁰ We learn from this compilation that such personal formulations occur in the *Concordia-Decretum*, too, and that there are also ‘impersonal’ formulations in the *Exserpta*. However, the number of personal formulations is much higher in the *Exserpta* than in the comparable texts of the *Concordia-Decretum*, as the following overview shows:

Type of personal wording	Number in the <i>Exserpta</i>	Number in <i>Concordia-Decretum</i> <i>Gratiani</i>
Verb in the 1st person plural	71	16
Possessive pronoun in the 1st person plural	3 [no. 5, no. 62]	2 [no. 62]
ut puta	1 [no. 48]	–
inquam	1 [no. 35]	1 [no. 35]
Verb in the 1st person singular – opinor	1 [no. 46]	–

Of particular interest is the passage of C.22 q.3 *principium* (cf. no. 46), because there we come upon the verb *opinari* in the first person singular: *Cum igitur, ut monstratum esse opinor, reus perituri non esset episcopus (...)*. Considering this passage, we cannot doubt that the ‘Magister’ is pointing to himself and is speaking personally. This instance stands out from the cases in which the first person plural is used; the use of the first person plural could perhaps still be a mode of expressing oneself in writing. The same could also be true for *inquam*, because with this expression it is conceivable that it is used formulaically, but certainly not with *opinor*.

It is interesting to pay attention to the formulations in the *Concordia-Decretum* that differ from the *Exserpta* which use the personal form of the verb in the first person plural:

¹⁰ Cf. Appendix 1.

<i>Exserpta</i>	<i>Concordia-Decretum Gratiani</i>	Cf. No. ^a
1st person plural active		
<i>e. gr.</i> sic habemus	Ecce	2, 10, 22, 27, 31, 32, 39, 45, 49, 50, 56, 58, 59, 60
<i>e. gr.</i> credimus / disputauimus	<i>3rd person singular passive</i> <i>e. gr.</i> creditur / disputatum est	4, 29, cf. also 6, 11, 13, 14, 20, 21, 24, 30, 33, 36, 38, 46, 62, cf. also 3, 16
<i>e. gr.</i> debemus intelligere / demonstremus	<i>3rd person singular</i> <i>gerundive</i> <i>e. gr.</i> intelligendum / demonstrandum est	40, 24, cf. also 1, 13, 17, 28, 43, 44, similar 51
<i>e. gr.</i> ratiocinamur + <i>auctoritas</i>	<i>new paragraph</i>	53, cf. also 19, 25, 54
<i>e. gr.</i> intelligere debemus	<i>oportet + infinitive</i> <i>e. gr.</i> oportet intelligi	7
<i>e. gr.</i> ducere possimus	<i>liceat + infinitive</i> <i>e. gr.</i> ducere liceat	62
<i>e. gr.</i> ostendamus	<i>active participle present</i> <i>e. gr.</i> ostendentes	21

a Cf. Appendix 1.

With 14 occurrences, the most common parallelism is that between *Sic habemus* (*Exserpta*) and *Ecce* (*Concordia-Decretum*). Then follows that between *uideamus* in the *Exserpta* (examples nos. 6, 11, 13, 17, 20, 28, 55) and various impersonal forms in the *Concordia-Decretum*: *sequitur* (no. 6), just quoting the *auctoritas* (no. 55), *queritur* (nos. 11, 20), *considerandum est* (no. 13), *est pertractandum* (no. 17) and *uidendum est* (no. 28).

(b) The use of *predictis auctoritatibus* in the *Exserpta*

It is also striking that in the *Exserpta* the expression *predictis auctoritatibus* is often used where we find *premissis* (or *his*) *auctoritatibus* in the *Concordia-Decretum*. Beyond that, other similar forms appear in the *Exserpta*: *supradictis auctoritatibus*, *propositis auctoritatibus*, and *explicatis auctoritatibus*, always where we find *premissis* (or *his*) *auctoritatibus* in the *Concordia-Decretum*. It is also remarkable that in the *Dicta* of the *Concordia-Decretum* the expression *predictis*

auctoritatibus does not appear at all.¹¹ On the other hand, we learn from the overview,¹² that *premissis auctoritatibus* appears in the *Exserpta*, too, namely in six passages where this wording also occurs in the *Concordia-Decretum*.

(c) Peculiarities in the vocabulary of the *Exserpta*

The *Exserpta* make use of rare words or common words with an uncommon meaning. We cannot yet see how often this linguistic particularity occurs. We would need a minutely detailed examination of the entire text of the *Exserpta* to answer this question because this phenomenon is, by its very nature, not as manifest as the already characterised linguistic particularities. Three examples taken from the material already used and an example from a passage that has not been cited yet will have to suffice here.

(aa) *latumie*

The word *latumie* occurs in the *Exserpta* at the beginning of C.23 in the phrase *aliis in carceribus et latumiis reclusis* (“others [were] locked up in dungeons and quarries”). It is the parallel of the phrase *aliis carcere et ergastulo reclusis* (“others [were] locked up in a dungeon and in a penitentiary”) in the *Concordia-Decretum*. The main spellings of this word in the feminine plural are *latomiae* (from the Greek *latomia*) and *lautumiae*. Alternative spellings are *laotomiae*, *lautomiae*, *latumiae*, and *lautumniae*.¹³ According the *Thesaurus linguae latinae* the spelling *latumiae*, as we have it in the *Exserpta*, occurs in MS ‘O’ of Eusebius’ *Chronicle* as reworked by Jerome.¹⁴ The word means “quarries” and is used both in a narrower sense to indicate places where stones are actually broken, as well as in a broader sense to indicate special quarries that were

11 In the *Concordia-Decretum* the word *predictus* can only be found in *auctoritates*, which are quoted as arguments, cf. *Wortkonkordanz zum Decretum Gratiani*, ed. Timothy Reuter, Gabriel Silagi, MGH Hilfsmittel 10 (München, 1990), v. *praedicere*, 3662–3664. The *Wortkonkordanz* mentions only one exception, i.e. C.20 q.2 d. p. c.3. This passage reads in the edition of Emil Friedberg: *Hac auctoritate predicta (...) docetur*, and at the same time it is noted in footnote 45 concerning *predicta*: “deest ABDF” (cf. 848). The word *predicta* is absent in the manuscripts of the *Concordia*, too (cf. *Aa*, fol. 45r; *Fd*, fol. 57va).

12 Cf. Appendix 2.

13 Cf. *Thesaurus linguae latinae*, vol. VII, Pars altera, Sectio KK, L–Lyxipyretos (Leipzig, 1970–1979), v. *latomiae*, 1010, 3–17.

14 The Codex ‘O’ is a manuscript that is kept in the Oxford Bodleian Library today and dates from the first half of the sixth century, cf. Alfred Schöne, *Die Weltchronik des Eusebius in ihrer Bearbeitung durch Hieronymus* (Berlin, 1900), 29–30; cf. also *The Bodleian Manuscript of Jerome’s Version of the Chronicle of Eusebius. Reproduced in ColloTYPE*. With an Introduction by John Knight Fotheringham (Oxford, 1905).

used as prisons in antiquity. These kind of quarries are mentioned in Cicero for Syracuse, in Livy and Seneca for Rome, and in Pliny for Sparta.¹⁵ Beyond that the word is used in this broader meaning of “prison” for unnamed places, too.¹⁶ The references mentioned in the *Thesaurus linguae latinae* are likewise possible ‘sources’ for the author of the *Exserpta*, scilicet two passages in the digests¹⁷ and the source from which Jerome (and also Isidore) took a text for his continuation of the *Chronicle* of Eusebius.¹⁸ The word also occurs in this meaning in some, if only a few, other texts dating from the temporal proximity of Gratian.¹⁹

(bb) *oculatus*

In C.1 q.7 d. p. c.27 the following phrase appears: *Vt autem liquidius pateat, que dicturi sumus, sub oculis exemplum quasi oculatum ponamus* (“But in order to make more clearly manifest what we are going to say, let as put an example quasi gifted with insight before the eyes”).²⁰ The peculiarity of this way of speaking is evident from the following circumstances. An *exemplum* [*quasi*] *oculatum* has not been documented in the texts of the Middle Ages to this day.²¹ The word *quasi* which is put before *oculatum* obviously shows that the author was aware of the fact that it is uncommon to use *oculatum* in connection with *exemplum*. The word *oculatus* is already infrequent in itself; it appears most often in connection with the four living creatures of the Apocalypse who are “covered with eyes, in front and in back” (Revelation 4.6), in the expression

15 Cf. *Thesaurus linguae latinae* (n. 16), v. latomiae, 1010, 21–51.

16 Cf. *ibid.* 52–57.

17 Dig. 4.6.9, Callistratus: “vinculorum autem appellatio latius accipitur: nam etiam inclusos veluti lautumiis victorum numero haberi placet”; Dig. 11.5.1.4, Ulpianus: “ut aut multa multetur aut in lautumiis vel in vincula publica ducatur”.

18 Cf. *Thesaurus linguae latinae* (n. 16): “ORIGO Rom. chron. I p. 145, 1 *Tarquinius Superbus* invenit – as, tormenta fustos eqs. (inde HIER. chron. a. Abr. 1470 et ISID. l. 61)” (1010, 55–56).

19 Cf. Romuald of Salerno: *Iste* [sc. *Tarquinius*] *primum excogitavit uincla, taureas, fustes, lautomias, carceres, compedes, catenas, exilia, atque metalla*, cf. *Romuladi Salernitani Chronicon*, a cura de C.A. Garufi (Città di Castello), 26 l. 22–23. It occurs also in *Vita Aniani* from the ninth century, where it reads: *qui lantumniis aut ergastulis tenebantur inclusi*, cf. *Vita s. Aniani episcopi Aurelianensis*. – B. Krusch, MGH, Script. rer. Merov. III (1896) 108–117, 109, 14.

20 Cf. Appendix 1, no. 21; Sg 44b. In the *Concordia-Decretum* it reads simply: *Et ut facilius pateat quod dicturi sumus, exemplum ponatur sub oculis* (edF 438).

21 This result is based on searches in the *Patrologia Latina Database*, *Library of Latin Texts*, Brepols Publishers n.v. (Turnhout, 2001), and the *Database of Latin Dictionaries* (DLD) by CTLO, Brepols Publishers (Turnhout, 2018).

testis oculatus (“eyewitness”) and in figurative expressions such as *fide oculata*, *oculata cognitio*, and *oculata veritas*.

(cc) *uicarius*

In C.27 q.2 d. p. c.26 we find in the *Exserpta* the passage: *Sic habemus, quod coniuges sine uicario consensu continere non possunt*, while the same content is formulated in the *Concordia-Decretum* as *Ecce, quod coniugati sine consensu alterius continentiam profiteri non possunt*.²² A reader of the *Exserpta* has written the gloss *pari* over the word *uicario*. This shows two things. First, the reader was aware of the fact that the word *uicarius* does not mean “vicarious,” as usual, but is used here in the sense of “mutual,” “reciprocal” and “alternating.” Second, the reader must also have been conscious of the fact that the word in this sense was in need of explanation and a gloss was therefore appropriate.²³ In the *Concordia-Decretum* the word *uicarius* is never used with this meaning.²⁴ Examples of the use of *uicarius* with this meaning can be found in the works of Hugh of Saint-Victor (*ope vicaria*), Peter Damian (*vicarius amor, in comparatione vicaria, vicaria inter se impactione*), Rabanus Maurus (*vicaria dilectio, vicaria revolutione*), Gregory the Great (*ope uicaria, uicaria confessione*), and other authors.²⁵

(dd) *anathematis baculo*

The fourth example is taken from a text that has not yet been cited, namely D.63 d. p. c.28. In the *Exserpta* the phrase *anathematis baculo* appears here, while the *Concordia-Decretum* read *anathematis uinculo*.²⁶

The phrase *anathematis baculo* occurs neither in the *Dicta* nor in the *Auctoritates* of the *Concordia-Decretum*.²⁷ This is all the more astonishing since the *Concordia-Decretum* contains, besides *anathematis uinculo*, a lot of other expressions synonymous with it: *anathematis sententia*, *anathematis obproprio*,

22 Cf. Appendix 1, no. 49; Sg 167b; edF 1070.

23 It is notable, too, that the gloss does not use the same word found in the *Concordia-Decretum*, sc. *alterius*.

24 Cf. *Wortkonkordanz zum Decretum Gratiani* (n. 14), v. *vicarius*, 4831–4832.

25 For evidence cf. *Database of Latin Dictionaries (DLA)*, Brepols Publishers (Turnhout, 2018) v. *vicarius*. Cf. also *Patrologia Latina Database* and *Library of Latin Texts*.

26 *Exserpta: et quisquis eorum suffragio ecclesiam optineret anathematis baculo feriretur* (p. 25b). *Concordia-Decretum: et quisquis eorum suffragio ecclesiam obtineret anathematis uinculo inmodaretur* (edF 244).

27 Cf. *Wortkonkordanz zum Decretum Gratiani* (n. 14), v. *baculus*, 393.

*anathematis mucrone, anathematis conclusione, anathematis obligatione, anathematis ultione, anathematis gladio, sub distractione anathematis, anathematis interdictione, and anathematis pena.*²⁸ In the *Patrologia Latina Database* there are more than 800 hits for *anathematis vinculo*, while for *anathematis baculo* there is only a single passage from a tenth-century text.²⁹

(d) Linguistic features in a broader sense

In addition to linguistic peculiarities in the proper sense, the *Exserpta* contain some sentences in which appear, in comparison to the *Concordia-Decretum*, ‘alternative’ comparisons, conceptual pairs, or enumerations. Thus, in C.22 q.5 d. p. c.11 in the *Concordia-Decretum*, in a discussion concerning the subjectively intended content of a rather general oath, we find the following phrase: *uidelicet ne Padum in Nilum conuertant, uel aliquid huiusmodi faciant.*³⁰ The *Exserpta* speak of “mountains” and “seas” instead of two rivers: *Vt puta ne montes in maria conuertant, aut tale aliquid faciant.*³¹ Similarly, in C.29. q.1 *principium* the two people in a discussion of the error as to the person bear the names *Virgilius* and *Plato*; in the *Exserpta*, however, they are called *Stichus* and *Pamphilus.*³² Finally, the *Exserpta* speak in C.29. q.1 *principium* of *Arrius* and *Sabellius*, where the *Concordia-Decretum* read *quisdam hereticorum.*³³

5 Attempt to Interpret the Language Particularities of the *Exserpta*

The comparative overview of the manifold linguistic differences between the *Dicta Gratiani* in the *Exserpta* and in the *Concordia-Decretum* makes apparent that the two versions differ from each other significantly in their styles. The style of the *Exserpta* in comparison to that of the *Concordia-Decretum* is less

28 *Ibid.* v. *anathema*, 208–211.

29 Cf. PL 155: 198B; Paulus S. Petri Carnotensis *Liber primus sive Hagani Praesulis, Vetus Agano*, cap. 1.: *anathematis baculo percussus.*

30 Cf. *edF* 885–886.

31 *Sg* 157b.

32 Cf. *edF* 1091; *Sg* 170b.

33 Cf. the quotation of this passage above in the paragraph “A second example,” see 102.

'common,' less 'calm,' less 'smooth,' and less 'dry.' It is more 'original,' more 'wild,' and sometimes 'exuberant.'³⁴ A striking example is the *Dictum C.1 q.7 p.c. 27*:³⁵

His breuiter explicatis ad ea, que ecclesie discipline seueritate parata sunt ulcisci, *ueniamus, et* quibus accusantibus uel testificantibus sint conuincendi *liquido ostendamus. Et* quo quisque iudice uel dampnari uel absolui debeat *demonstremus. Et* si causa uiciata fuerit quo possit remedio subleuari, si accusatores defecerint, an reus ad purgationem sit cogendus *in medium proferamus. Vt autem liquidius pateat, que dicturi sumus, sub oculis exemplum quasi oculatum ponamus, ubi auctoritate[s] hinc inde controuersantes commode distinguantur, et quid auctores sancti exinde sentiant liquidius liquido intimetur.*³⁶

This means that with the *Exserpta* we are not in the 'Compiler's study.' We are not with 'Gratian' who has, so to speak, his formal sources lying in front of him. We are not witnesses who can observe how he compiles the texts concerning the items he has set out to discuss, how he arranges them, how he connects them by his own remarks, comments on them, and brings them into concordance. Rather, with the *Exserpta* we are 'in the classroom.' It is delivered orally. The master says: "I think it was shown ... Now we want...." We get an insight into a place of teaching, of lively lectures, of arguing. Passages with extreme emphasis bring such a space to life:³⁷ *Vt autem liquidius pateat, que dicturi sumus, sub oculis exemplum quasi oculatum ponamus. Vbi auctoritatem hinc inde controuersantes commode distinguantur, et quid auctores sancti exinde sentiant liquidius liquido intimetur.*

This is not written language, but spoken language. Moreover, there are passages that make very clear that you have to speak the *Exserpta*, not read them silently. This will become clear immediately when we discuss the example of

34 Cf. Titus Lenherr, "Die vier Fassungen (n. 4)," 375: "Auffällig ist [...] dass [...] fast kein Stein auf dem anderen geblieben ist [...] [Sg] unterscheidet sich wesentlich im Stil, und zwar in der Wortwahl, in der Grammatik, in der Wortstellung und im Gebrauch von nominalem und verbalem Ausdruck. Dabei ist der Stil von Sg 'ungewöhnlich', ja, von originärer Kraft [...] Die verschiedenen Stile [...] legen [...] nahe, Sg mehr in einem 'mündlichen Milieu' anzusiedeln, Aa (Bc) Fd P mehr in einem 'schriftlichen'. Daher der Gedanke, ob sich die Merkmale von Sg nicht am ehesten erklären lassen, wenn man Sg als die (Abschrift einer) Nachschrift einer Vorlesung betrachtet, die sich auf die Fassung von Aa Bc Fd P stützte."

35 The emphatic elements in comparison to the version of *Concordia-Decretum* are put in italics.

36 Sg 44b–45a; cf. the version of *Concordia-Decretum*, edF 438.

37 The emphatic elements are not italicized.

C. 1 q. 5 p. c.3 where the meaning only comes from the strong emphasis on the word *forte* in its special meaning of “casual” or “accidental.”

And the impression comes to mind that here a man is speaking who is a theologically, legally, literarily, semantically and grammatically highly educated person who sprinkles his discourse with knowledge, who cannot refrain from contributing his knowledge and can ‘call it up’ at any time. He enjoys the variation. He enjoys rare expressions. He finds joy in teaching. One is often tempted to think of an *esprit de contradiction* because this teacher is provoked by the text at hand, as it were, to change it linguistically, to vary it, even to extemporise it. It therefore makes sense to imagine the *Exserpta* in the following ‘ambience’: there is a given text. And there is a teacher who teaches using this text. And there are students who listen and take notes. The thing happens *in praesenti* – “The artist is present.”

This ‘ambience’ of the *Exserpta* becomes visible in a special way in the *dictum* that is included in the *Exserpta* between C.1 q.5 c.3 and C.1 q.6 *principium*, a *dictum* that does not appear in the *Concordia* or the *Decretum*. The passage is not only an example of the ‘personal’ formulations in the *Exserpta*;³⁸ it can also help to determine the ‘literary genre’ of the *Exserpta*.

The *dictum*, which for the sake of easier understanding, has been structured according to grammatical aspects, reads:

Quid autem de his fieri debeat qui ignoranter a symoniacis ordinati sunt,
quod quidem vi. loco quesitum est,
supra in capitulo urbani dictum est,
quod
 – *quia forte ibi quantum ad negotium pertinebat –*
integre poni non fuit necessarium,
*in presenti ad euentiam adducamus.*³⁹

The text has been the subject of several discussions, particularly in the context of the controversy concerning the placement of the *Exserpta* in the editorial history of Gratian’s *Decretum*. It is obviously not easy to decipher its meaning in such a way that Gratian’s way of proceeding is clearly recognisable.⁴⁰

38 Cf. Appendix 1, no. 18.

39 *Sg* 41b.

40 Cf. Kenneth Pennington, “The Biography of Gratian (n. 4),” who translates: “What more-
 over ought to be done with those clerics who unknowingly are ordained by symoniacs,
 which is asked in the sixth question, [can be found] in the chapter of Urban that has been
 cited above, but indeed, because it was not necessary to place the entire text there as far
 as it pertained to the issue, I bring it forward here” (679). Cf. Anders Winroth, “Recent

This text certainly contains the following three clear statements: (1) What has to happen to those who were unknowingly ordained by simoniacs (which is now being asked at the “6th place” [i.e. in the 6th *Quaestio*]) is said above in a chapter of Urban. (2) We now want to cite this chapter. (3) This chapter was not fully cited “above” because a full citation “there” was not necessary.

The reason why it was not necessary to fully quote the chapter there is found in the inserted passage: *quia forte ibi quantum ad negotium pertinebat*. The understanding of this sentence depends on the meaning and emphasis of the word *forte* in the sense of “casual” or “accidental” as opposed to “substantial.” The sentence is therefore to be translated as: “because it was only an accidental part of the topic.”

There is no doubt that *supra* here indicates that the passage C.1 q.4 p. c.10. C.1 q.4 also has the effects of knowledge or ignorance as its subject. However, it was not directly about “persons who unknowingly were ordained by simoniacs,” which is what C.1 q.6 is about now. Dealing with them was only an argument for dealing with other people, namely children whose fathers had done something punishable without the children knowing.

Against this background, the translation of the *dictum* could be as follows:

But what ought to be done with those who unknowingly were ordained
by simoniacs,
which is asked in the sixth place,
is said above in a chapter (*capitulum*) of Urban;
[whereas] it was not necessary to put it [there] in its integrity,
because, with regard to the issue, it belonged there [only] accidentally,
let us presently bring it in the middle as evidence.

If the word “above” (*supra*) indicates the passage C.1 q.4 d. p. c.10, we find there in the *Exserpta* a short summary of the text which the master intends to cite now, but no “chapter” (*capitulum*) that (1) would be explicitly attributed to Urban and that (2) would reproduce the wording of a chapter even to some extent, let alone “completely” (*integre*):

Item si excusatur qui a symoniaco ordinatur ignoranter, et utique iste excusari potest, qui per ignorantiam symoniace ordinatur.⁴¹

Work on the Making of Gratian’s Decretum,” *BMCL* 26 (2006), 1–29, who translates: “What is to be done about those, who unknowingly were ordained by a simoniac (which was asked in the sixth place), is said above in the ‘capitulum’ of Urban, which was not necessary to put there in its entirety in that context, but which we now bring forth as evidence” (21).

41 *Sg* 38b.

The chapter which it is about (and which shall be quoted in the *Exserpta in presenti*) is therefore not available “further up” in the *Exserpta*. However, it can be found in the *Concordia-Decretum* under C.1 q.1 c.108, which reads:⁴²

De quibus Vrbanus papa ait.

De his qui non symoniace a symoniaciis ordinantur.

Si qui⁴³ a symoniaciis non symoniace ordinati sunt,⁴⁴ siquidem probare potuerint⁴⁵ se, cum ordinarentur,⁴⁶ nescisse eos symoniacos esse,⁴⁷ et tunc pro catholicis habebantur⁴⁸ in ecclesia, talium ordinationes misericorditer⁴⁹ sustinemus, si tamen eos laudabilis uita commendat. Qui uero scienter se a symoniaciis consecrari immo execrari permiserint, eorum consecrationem omnino irritam⁵⁰ esse decernimus.

This corresponds – with four minor variations – to the text in the *Exserpta*, which is cited after C.1 q.5 p. c.3.⁵¹

If we (a) consider the wording of the chapter of Urban, which the “Master” now wants to quote, and (b) consider what he says about the (“incomplete”) “quotation” of this chapter “above” (i.e. C.1 q.4. d. p. c.10), and (c) add what was actually written in C.1. q.4. d. p.c.10, we come to the following conclusion: the “Master” has something in front of him that is more than what he reads. It differs from the manuscript. The speaker must have had a complete chapter of Urban with inscription before his eyes – both with C.1 q.4 d. p. c.10, as now with C.1 q.5 d. p. c.3. Now (“in the present”), with C.1 q.5 d. p. c.3, he quotes it completely. There are (only) two options for having it before his eyes: either the speaker had one of his “formal sources” in front of him (in this case the *Collectio trium librorum*, 2, 9, 11), or he had the *Concordia*, where the text in C.1 q.1 c.108 is located.

So the text was there (in the book the teacher had in front of him) and was skipped by him at a previous time for the reasons mentioned. Now the text is just right as the answer to the sixth question. Therefore, Gratian says: Now – *in*

42 Cf. *Aa*, fol. 104va, *Bc*, fol. 109vb–110ra, *Fd*, fol. 23ra, *Mk*, fol. 81ra, *edF* 400–401.

43 quis *Bc*, inquit *add. Sg*.

44 ordinati sunt] ordinantur *Sg*.

45 potuerit *Sg*.

46 ordinaretur *Sg*.

47 *deest Aa ac, 3L*.

48 habeantur *Sg*.

49 sustinemus misericorditer *tr. Mk edF*.

50 irrita *Aa*.

51 *Sg* 41b; see footnotes 48, 49, 50, 51, 53 above. The insertion of *inquit* is noteworthy – this is also an indication of the ‘orality’ of the current lecture.

presenti – we want to cite it to get a clear insight into this question. The text, therefore, was not at this place before (but also not with C.1 q.4 d. p. c.10).

This means that we are in the middle of the class. It is currently taking place, *in presenti*. The “Master” is teaching. He comes to *Quaestio* 6 of the *Causa* 1. He uses a text that he has skipped. He deviates from the written order of the book he uses for the lesson. He goes back and quotes the text. And apparently someone takes notes. If this interpretation is correct, then one can suppose a ‘starting point’ and interpret what occurs in the *Exserpta* as a variation of this ‘starting point,’ as documentation of a lesson in execution, live.

This means that the *Exserpta* in the manuscript Sankt Gallen, Stiftsbibliothek, 673 is the, albeit beautifully designed, copy of a work that was created when a lecture was listened to, and was written down while listening, while the teacher who lectured used a text which he freely handled according to the requirements – omitting, varying, extemporising.

The *Exserpta* bear the traces of a speaking process that has been documented.⁵² The manuscript of the *Exserpta* that has come down to us was created in the scriptorium, which means that it was copied from a prototype and also illuminated. The prototype, however, must have been something like ‘lecture notes’ that were created in the classroom. The teacher probably had the *Concordia* of Gratian as the basis for his ‘lecture.’⁵³ The *Exserpta* give us a precious insight into the way in which the work of Gratian was conveyed in the classroom.

Appendix 1: List of the Linguistic Peculiarity “Personal Formulations”⁵⁴

- 1) D.27 d. p. c.8 / 3b: *distinguamus* (*distinguendum est*)
- 2) D.33 pr. / 8a: *sic habemus* (*ecce*)
- 3) D.34 d. p. c.3 / 8b: *appellamus* (*intelligitur*)
- 4) D.34 d. p. c.8 / 9a: *credimus* (*creditur*)

52 Moreover, of course, the manuscript bears the traces of a *copy* of this ‘documentation’ with the errors that occurred during the copying.

53 Two arguments for using the “1. Recension” are: (1) The ‘complete’ chapter of Urban has the same scope in *Sg* and the 1. Recension (in contrast to the 3-book collection, where a first part precedes the text cited by *Sg* and the 1st Recension); (2) *Sg* has the same *summarium* for the text as the 1. Recension.

54 After the list number follows the reference in the *Decretum Gratiani*, then the page number in *Sg*, and after the colon the version of the *Exserpta* and in brackets the version in the *Concordia-Decretum*.

- 5) D.34 d. p. c.16 / gb: defectui nostre infirmitatis (temporum defectui)
- 6) D.35 pr. / 9b–10a: ostendimus (monstratum est) / nunc uideamus (sequitur)
- 7) D.36 pr. / 10a: debemus (oportet)
- 8) D.37 d. p. c.7 / 11b: inueniamus (inueniremus) / uertamus (uertamus) / iubemur (iubemur)
- 9) D.39 pr. / 13a: ostendamus (queritur)
- 10) D.46 d. p. c.1 / 14a: sic habemus (ecce)
- 11) D.50 pr. / 14b: uideamus (queritur)
- 12) D.50 d. p. c.24 / 16b: uideamus (inspiciamus)
- 13) D.60 pr. / 21b: ostendimus (ecce ostensum est) / uideamus (considerandum est)
- 14) D.101 d. p. c.1: dictum est (tracatauimus) / transeamus (transeamus) / deducamus (deducatur)
- 15) C.1 q.1 d. proprium (*inter* d. p. c. 96 *et* d. p. c. 112) / 34b: uideamus (-)
- 16) C.1 q.2 pr. / 34b: adducamus (conprobatur) / intendimus (-) / accedamus (-)
- 17) C.1 q.4 pr. / 38a: uideamus (pertractandum est)
- 18) C.1 q.5 d. proprium p. c. 3 / 41b: adducamus (-).
- 19) C.1 q.7 d. a. c.4 / 42a: habemus (item)
- 20) C.1 q.7 d. p. c.23 / 44a: ostenso (ostendimus) / uideamus (queritur)
- 21) C.1 q.7 d. p. c.27 / 44b–45a: ueniamus (ueniamus) / ostendamus (ostendentes) / demonstramus (-) / proferamus (-) / dicturi sumus (dicturi sumus) / ponamus (ponatur)
- 22) C.2 q.1 d. p. c.18 / 52a: hic habemus (ecce)
- 23) C.2 q.7 pr. / 56b: accedamus (-)
- 24) C.2 q.7 d. p. c.39 / 61a: ostendimus (ostensum est) / demonstramus (demonstrandum est)
- 25) C.2 q.7 d. p. c.39 / 61b: rursus habemus (item)
- 26) C.2 q.7 d. p. c.44 / 64a: agamus (agamus)
- 27) C.5 q.3 d. p. c.1 / 75a: sic habemus (ecce)
- 28) C.6 q.1 d. p. c.16 / 77b: uideamus (uidendum est)
- 29) C.6 q.1 d. p. c.19 / 78a: disputauimus (disputatum est)
- 30) C.6 q.2 pr. / 78b: inspiciamus (inspiciatur)
- 31) C.7 q.1 d. p. c.16 / 81b: sic habemus (ecce)
- 32) C.7 q.1 d. p. c.41 / 83a: sic habemus (ecce)
- 33) C.8 q.1 d. p. c.24 / 86a: diximus (dictum est)
- 34) C.11 q.3 d. p. c.40 / 97a: precibimur (iubemur)
- 35) C.11 q.3 d. p. c.43 / 97a: inquam (inquam)
- 36) C.12 q.2 d. p. c.75 / 108a: ostendimus (ostensum est)
- 37) C.14 q.1 d. p. c.1 / 115b: legimus (legimus)
- 38) C.15 q.1 d. p. c.13 / 120a–b: respondemus (respondetur)
- 39) C.18 q.2 d. p. c.8 / 143a: sic habemus (ecce)

- 40) C.18 q.2 d. p. c.29 / 144a: intelligere debemus (intelligendum est)
 41) C.22 q.1 pr. /150a: - (prohibemur)
 42) C.22 q.1 d. p. c.14 / 150b: labamur (labamur)
 43) C.22 q.1 d. p. c.15 / 150b: uti debeamus (sit utendum)
 44) C.22 q.2 d. p. c.7 / 151b: distinguamus (distinguendum est)
 45) C.22 q.2 d. p. c.21 / 152b: sic habemus (ecce)
 46) C.22 q.3 pr. /153a: monstratum esse opinor (monstratum est) / diximus (monstratum est)
 47) C.22 q.4 d. p. c.21 / 154a: diximus (diximus)
 48) C.22 q.5 d. p. c.11 / 157a: ut puta (uidelicet)
 49) C.27 q.2 d. p. c.26 / 167b: sic habemus (ecce)
 50) C.27 q.2 d. p. c.29 /168a: sic habemus (ecce)
 51) C.29 q.1 pr. / 170b: dicemus (dicendi sunt)
 52) C.29 q.1 pr. / 171a: legimus (-)
 53) C.29 q.1 pr. / 171a: similiter ratiocinamur (item)
 54) C.29 q.2 pr. / 171a: transeamus (proposita est)
 55) C.30 q.5 pr. / 174b: uideamus (-)
 56) C.31 q.1 d. p. c.1 / 177a–b: sic habemus (ecce) / intelligimus (intelligendum est)
 57) C.32 q.1 d. p. c.13 / 178b: – (diximus) / patet (patet)
 58) C.32 q.6 pr. / 179a: sic habemus (ecce)
 59) C.32 q.7 d. p. c.16 / 179b: sic habemus (his monstratur)
 60) C.33 q.1 d. p. c.3 /181b: sic habemus (ecce)
 61) C.33 q.3 [de pen.] pr. / 183a – (euagati sumus) / accedamus (-)
 62) C.35 q.1 pr. / 187b: nostras (nostras) / nostrarum (nostrae) / possumus (liceat) / respondemus (respondetur)

**Appendix 2: List Concerning *predictis auctoritatibus* –
*premissis auctoritatibus***

- A. Concordia-Decretum:* premissis [auctoritatibus] / *Exserpta:* predictis [auctoritatibus]
 1) D.37 d. p. c.15 (*Sg* 12a; 2); C.11 q.3 d. p. c.40 (97a); 3) C.15 q.1 d. p. c.2 (119a);
 4) C.22 q.1 d. p. c.14 (150b); 5) C.22 q.5 d. p. c.19 (158a); 6) C.30 q.5 d. p. c.8 (171a);
 7) C.35 q.2–3 d. p. c.19 (189a).
B. Concordia-Decretum: his [auctoritatibus] / *Exserpta:* predictis [auctoritatibus]
 1) C.27 q.2 d. p. c.15 (167a); 2) C.31 q.2 d. p. c.4 (177a); C.36 q.2 d. p. c.6 (200a).
C. Concordia-Decretum: premissis [auctoritatibus] / *Exserpta:* propositis [auctoritatibus]
 1) C.10 q.1 d. p. c.14 (91a); 2) C.30 q.5 d. p. c.11 (176a).
D. Concordia-Decretum: premissis [auctoritatibus] / *Exserpta:* supradictis [auctoritatibus]
 1) C.23 q.8 d. p. c.18 (164b).

E. Concordia-Decretum: premissis [auctoritatibus] / *Exserpta*: explicatis⁵⁵ [auctoritatibus]
 1) C.1 q.7 d. p. c.22 (44b).

F. Concordia-Decretum: premissis [auctoritatibus] / *Exserpta*: premissis [auctoritatibus]
 1) D.50 d. p. c.51 (17b–18a); 2) D.63 d. p. c.25 (24b); 3) C.1 q.7 d. p. c.4 (42b); 4) C.2 q.5
 d. p. c.17 (51b); 5) C.33. q.2 d. p. c.9 (182b); 6) C.36 q.2 d. p. c.7 (200a).

⁵⁵ *pc, expli[ci]tis (?) ac.*

A Miracle Story Allegedly *in decretis Bonifacii pape*

John C. Wei

1 Introduction

Sankt Gallen, Stiftsbibliothek, 673 (*Sg*) presents itself as a collection of *Excerpta ex decretis sanctorum patrum*.¹ The actual contents of the manuscript, however, are considerably more diverse, both as to material and as to formal sources. *Sg* contains many texts attributed to popes, councils, and Church Fathers but not actually authored by them. And these texts, both the genuine and the spurious, often form part of larger, more recent works – most obviously *Sg*'s unique version of Gratian's *Decretum*, but also other contemporary compositions.²

This paper focuses on one such collection of real and purported excerpts from the Fathers found in *Sg*: a miracle story allegedly taken from the decrees of a Pope Boniface. The miracle story claims to be a record, made by a Pope Boniface and confirmed in conciliar fashion by the pope's "brothers" under pain of anathema, of supernatural events involving the pope, including a lecture from the (arch)angel Michael, supported by patristic and pseudo-patristic authorities, proving to the pope that true penance requires the prior restitution of all ill-gotten gains.³ As will be discussed, the author of this text appears to have had a basic familiarity with contemporary canon law and scholastic theology and used this knowledge to give his story the appearance of a scholastic disquisition embedded within a canonical authority. While it is unclear whether the author of the miracle story knew Gratian's *Decretum* – there are

1 *Sg* 3. This designation (*Excerpta ex decretis sanctorum patrum*) would seem to refer to the contents of the manuscript as a whole, rather than to just *Sg*'s unique version of Gratian's *Decretum*.

2 *Sg* contains an abbreviation and reworking of the first recension of the *Decretum*, with select material taken from the second recension. See John C. Wei, *Gratian the Theologian*, *Studies in Medieval and Early Modern Canon Law* 13 (Washington, D.C., 2016), 26–33; John C. Wei, "A Reconsideration of St. Gall, Stiftsbibliothek 673 (*Sg*) in Light of the Sources of Distinctions 5–7 of the *De penitentia*," *BMCL* 27 (2007), 141–180.

3 Jude 1.9 refers to Michael as an archangel. As was not atypical in the Middle Ages, however, the miracle story describes Michael simply as an angel.

no demonstrable borrowings from Gratian – the miracle story may be roughly contemporaneous with the *Decretum*, because it appears to draw on the *Summa sententiarum*, a theological sentence collection completed around 1138 at the earliest. The miracle story's presence in *Sg* together with other school texts suggests that the story originated and circulated in a "scholastic" environment (in the etymological sense of the word), and perhaps sheds light on the milieu that gave rise to and made use of *Sg*'s version of the *Decretum*.

This paper consists of the following parts: (2.) an overview of the text of the miracle story; (3.) an analysis of its contents; (4.) an analysis of its sources; (5.) a discussion of the larger context in which the miracle story appears in *Sg*; and, by way of conclusion, (6.) a discussion of the miracle story's dating, place of origin, and authorship. An appendix contains the full Latin text of the miracle story, together with an English translation.

2 Overview of the Miracle Story

Pages 204–205 of *Sg* contain a miracle story allegedly found in the decrees of a Pope Boniface (see Figure 6.1). The story begins with a man named Stephan, whose wealth is the result of theft and usury. After becoming ill, Stephan asks Boniface to come and administer penance to him. The pope, however, tells Stephan that before he can receive penance, he must first restore all that he has acquired from theft and usury, if he is able. This news disturbs Stephan greatly because he has five sons that he must provide for. Accordingly, Stephan refuses to make restitution. After being entreated by his relatives, Stephan reaches a compromise (*ad medietatem pervenit*) with the pope. Stephan, it is implied, returns a portion of his ill-gotten wealth. Boniface, in turn, administers penance to Stephan and absolves him from his sins. Immediately thereafter, Stephan dies. The (arch)angel Michael and the devil appear over Stephan, and the devil takes his soul to hell. Michael then admonishes Boniface for having caused Stephan's damnation.

Brother, we lost the soul of this man because you did not judge according to authority, and thence the Lord is greatly angered, because God does not wish the death of the sinner but that he be converted and live. This man was not truly converted, nor did you give true penance to him but rather false [penance], because we say that false penance is that which is not imposed according to the authorities of the Holy Fathers according to the quality of crimes, and because of this you did not judge him according to

the keys committed to you but rather sent his soul to Hell. Therefore, run to penance that you may be reconciled with the Lord, because you are dead in spirit. And if you do not immediately accept penance, lightning will come from heaven and devour you, and shut you up in Tartarean fire with the devil and his servants.

Boniface is struck with terror and begins to leave. Outside the gates of St. Peter, he falls to the ground as if his legs had broken. Then Michael appears and announces that Boniface has been forgiven because he has penance in his heart. Michael commands Boniface to write down the following *capitula*, so that he and all the ministers of the Church will always remember that true penance requires the complete restitution of ill-gotten gains.

As long as a thing on account of which there is sin can be returned and is not returned, penance is not performed but feigned. If, however, [penance] is truly performed, sin will not be remitted unless what has been stolen is restored, if, as I said, it can be restored.

Moreover, you have that which Blessed Jerome says: "There is no difference between seeking usury or to defraud or to seize by force, because usury is where more is required than is given." For instance, if you give 10 solidi and demand more in return, that is usury and is a damnable crime ...

Moreover, write down another capitulum: "Whoever gives his money at usury and at the end of his life can return [what has been taken] to the last quarter and does not return [it], will never have or enter paradise."

Boniface then shows the text to his brothers. They declare *placet*, confirm it, and place those who would violate it under anathema.

3 The Contents of the Miracle Story

To my knowledge, *Sg* is the only manuscript to contain this miracle story. While the text purports to be taken from the decrees of a Pope Boniface, there is no reason to believe this attribution. Instead, all the evidence indicates that the text is a twelfth-century forgery, not a composition from Late Antiquity or the early Middle Ages. As will be discussed in the next section, the miracle story quotes a canon from a 1078 council held by Pope Gregory VII and appears to have been familiar with the *Summa sententiarum*, a theological sentence collection from the mid-twelfth century that circulated widely and served as a

2034

dies sic legitur in daniel. sic die aug:
 missis. xl. .v. diebus appareret. xv. sig:
 p. xv. dies a n. die iudicii. sic beat' ier:
 narrat in lib' diuino ap' ebraos. dicit
 q' apparuit ei dñs in formis. 704 sig:
 sibi ostendit: h' q' se sig' pma die cre:
 go se mare matu. xv. cubitis st' alti:
 tudine mortu. 7 manebit q' simur.
 Secda die descnd' usq' ad ma. ita ut
 illi summas uix ab aliq' cspici p'st.
 Tercia die erit in equitate sic ab econdo.
 quarta die p'ces 7 os maris bestis co:
 ggabunt sup' aquas maris. 7 dab' m:
 ugre. 7 uocet ad muoc. quib' cogita:
 toem nemo scy n' d'. Quarta die areb'
 os aquas abortu sol' usq' ad occasu. vi.
 die om' herbe 7 arbores sanguineu ro:
 ne dab'. vii. die edificia oia destrue:
 t. Octaua die debellab' p' ad muoc.
 7 unaq' i. iii. partes se diuis. 7 unaq'
 collido adu' altam donec manere re:
 stant. Nona die tremor' tal' qual' n' fu:
 it ab inicio mudi nec apl' erit. Decima
 die os montes 7 ualles implancti' iudi:
 e. 7 erit t'p' equalitas. xi. die erit
 hoies decaluis' 7 er' quasi amies. nec
 portu' at' ab' p' d' ueniet usq' roma
 7 inficiet multos. xii. die cadet st'ly
 7 sig' deceto. xiii. die ggabunt oia mor:
 tuu. illic ubi sepulta fuit. xiiii. die
 om' hoies morient' ut resurgat cumor:
 tuus. xv. die arebit' tra cicus q' p' p' t'
 q' ocul' usq' ad infernu nouissima.
 7 stati uenit q' uox amensie. 7 dies
 surgat mortu. h' uox erit ta mag'
 7 ra tribu' q' n' solum hoies s' 7 angl' arc:
 hangli 7 apli 7 om' sc'i ceteris. 7 re:
 resurg' om' hoies boni. 7 mali met:
 te. xxx. annoz. 7 puen' 7 pueri qui
 i matris corporib' fuer' mortu. Et
 stati unq' sc'i ueniet 7 accipiet sua
 plebe. 7 ibe m'p' t'ra di' d' potest. 7 re:
 redd' d' unicuq' s. q' g' sit bonu ut
 m'li. **In d'ca' bonifacii. pp.**
Legit quida' b' noe' stefan' fuisse
 rom' in t'p' bonifacii pp' q' erat pu:
 nuu' derapina diues. adu'su' puenit
 ad infirmitate. misit ad papa' boni:
 ficiu' ut ad eu' uenir' 7 sibi peniten:
 tia' dar' sup' uen' illi dixit. si uis
 penitentia'. 7 ip' d'. uolo. 7 pp' dixit:
 ff' tu n' potes accip' penitentia' p' q'
 ualeas h'c' uita' etna' n' redidit oia
 q' h' derapina aduersa furede' pot'
 usq' ad unu' q' t'ant' 7 ip' d'. Sugo
 reddet' q' faceret' filiu' m'. ego habo
 xi. filios. n' pot' h' fieri. Tandem ita fuit como:
 tus' a parentib' n' q' ad medietate' puenit
 7 ex alia medietate abe'it' bonifacio pe:
 nitentia' accepit. 7 ut non pena' adu'olo
 ex hoc sustinet' apl' ap' solu' fuit. p' t'
 accep'ta penitentia' demundo transiit.
 atq' oib' uidentib' michael' angl' 7 diaboli
 sup' eu' aparuer'. Diaboli stati' ai' am' illus
 cora' anglo' accep'. 7 st'cu' inferno detulit.
 Vn' locutus' angl' ad bonifaciu'. dixit. boni:
 fici fr'. amilim' ai' ist' uiri. pp' h' quod
 p' ueritate' illu' n' iudicasti. 7 in d'ni' ual:
 de nate' q' d' n' uult' mori' peccator' s'c'
 ut dicit' 7 uiuat. Iste n' uenit fuit d'ns' n'c'
 tu uenit penitentia' dedit' h' falli. Qui falli
 penitentia' dñs' e' que n' ueritate' s'c'o

FIGURE 6.1 Sg 204

major source for Peter Lombard's *Four Books of Sentences*, among other works.⁴ It is thus impossible that the miracle story in its current form was authored under a Pope Boniface. All the popes and antipopes who were named Boniface and came before Boniface VIII died prior to the year 1000.

There is also no reason to think that the miracle story itself was originally composed under a Pope Boniface and then expanded or reworked in the twelfth century with material taken from contemporary canon law and scholastic sources. Rather, we should understand the miracle story's attribution to a Pope Boniface as reflecting the forger's desire to endow the text with the authority of the early Church. Like many contemporaries, the forger of the miracle story probably viewed earlier popes as possessing more authority than later popes.⁵ And a reader of the miracle story would likely have identified the Boniface mentioned therein with one of the first five Pope Bonifaces, each of whom was a pope of the early Church. It is unlikely that a reader would have thought of Boniface VI (896), whose pontificate lasted only 15 days, or with Boniface VII (984–985), who was an antipope.

Based on the miracle story's contents, it seems clear that the forger's primary purpose in composing the story was to provide further support for the teaching that a sinner cannot perform penance without first making complete restitution of his ill-gotten gains. In the miracle story, Boniface permits the usurer Stephan to return just a portion of his ill-gotten gains.⁶ But not only does such partial restitution fail to save Stephan's soul, it also nearly brings about the pope's own damnation.

Following a long tradition stretching back to before the Epistle of Jude, the miracle story depicts the (arch)angel Michael as a psychopomp, who disputes with Satan over each person's soul at death.⁷ When Stephan dies, both

4 On the *Summa sententiarum*, see generally Marcia L. Colish, *Peter Lombard*, 2 vols (Turnhout, 1994), 63–65; D.E. Luscombe, *The School of Peter Abelard* (Cambridge, 1970), 198–213. On Peter Lombard's use of the *Summa sententiarum*, see Ludwig Ott, "Die Trinitätslehre der Summa sententiarum als Quelle des Petrus Lombardus," *Divus Thomas* ser. 3, 21 (1943), 159–186; Heinrich Weisweiler, "La 'Summa Sententiarum' source de Pierre Lombard," *Recherches de théologie ancienne et médiévale* 6 (1934), 143–183.

5 See, e.g., Greta Austin, *Shaping Church Law Around the Year 1000: The Decretum of Burchard of Worms* (Farnham, Surrey, England, 2009), 111: "In the case of popes, antiquity seems to have conferred authority."

6 I believe that is the sense of the phrase *ad medietatem pervenit*. Stephan initially refused to return any of his ill-gotten gains. But after being entreated by his relatives, he met Boniface halfway, which suggests that Stephan agreed to return a portion (but not all) of his ill-gotten gains.

7 On the origins and history of Michael as psychopomp, see John Muddiman, "The Assumption of Moses and the Epistle of Jude," in *Moses in Biblical and Extra-Biblical Traditions*, ed. Axel

Michael and the devil appear. Michael's intervention, however, does not result in Stephan's salvation. Instead, in the presence of Michael, the devil takes Stephan's soul off to hell.

Michael, who has remained behind, takes the opportunity to lecture the pope and his companions. Michael blames Boniface for Stephan's damnation because the pope did not administer penance according to the authorities of the Holy Fathers and failed to judge according to the power of the keys committed to him. Michael's language appears to imply that Stephan's soul could have been saved if the pope had simply adhered to authority. The underlying logic, presumably, would be that if the pope had remained adamant about not administering penance to Stephan until the latter had returned all his ill-gotten gains, Stephan would have eventually capitulated, returned all his ill-gotten gains, performed true penance, and thus been saved.

Michael's language also suggests that the author of the miracle story subscribed to a narrower conception of papal power, particularly the papal dispensing power, than the one that came to prevail in the later Middle Ages. As is well known, the medieval canonists developed an expansive conception of the pope's ability to dispense from the commands of the positive law. The pope, it was said, could dispense from anything that was not an article of faith. For instance, the pope could dispense a monk from his vow of poverty and chastity or a cleric from various impediments to ordination.⁸ The miracle story, however, indicates that the pope cannot dispense from the requirement that a sinner first make complete restitution of all ill-gotten gains before being admitted to penance.

The miracle story's focus on usury suggests that the forger was particularly concerned with that specific means of acquiring ill-gotten gains rather than with ill-gotten gains in general or with other means of acquiring ill-gotten gains, such as theft or fraud. The rich man, Stephan, is a usurer. Moreover, the authorities and examples placed in the mouth of Michael focus specifically on usury rather than other forms of ill-gotten gains. The miracle story does not elaborate on the specific ways in which Stephan engaged in usury. But it seems likely that the forger had in mind more than simply the lending of money at interest. Sources from the twelfth and thirteenth centuries testify to the prevalence of a wide variety of credit transactions involving disguised interest and

Graupner and Michael Wolter (Berlin, 2012), 169–180; Richard Freeman Johnson, *Saint Michael the Archangel in Medieval English Legend* (Woodbridge, 2005), 22–23, 87–88.

8 On the high and later medieval doctrine, see Ludwig Buisson, *Potestas und Caritas: Die päpstliche Gewalt im Spätmittelalter*, Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht, 2 (Cologne, 1982).

which contemporary theologians and canonists recognized as generally or potentially usurious: for instance, in-kind loans, where the price of the good being lent was greater at the time of repayment than at the time of the original loan; installment sales, where the sales price included a disguised interest component; repurchase transactions, where the buyer of property was under an obligation to sell the property (but not any of the income collected on the property in the interim) back to its former owner; and loans in which the borrower performed services for the lender while the loan was outstanding.⁹

After Michael announces that the pope's sins have been forgiven, he commands Boniface to write down several patristic and pseudo-patristic authorities, which, adopting the terminology of canon law, he describes as *capitula*. At least one reader of *Sg* appears to have regarded these authorities as particularly important, since he placed a *nota* symbol in the margin.¹⁰ The *nota* symbol appears directly beside the sentence, "If ... [penance] is truly performed, sin will not be remitted unless what has been stolen is restored, if ... it can be restored." The margins to the miracle story do not contain any other *nota* symbols or marginalia.

Michael's recitation of a series of authorities is atypical for a medieval miracle story,¹¹ but was commonplace in contemporary canonistic and scholastic literature.¹² The inclusion of these authorities in the miracle story thus strongly suggests that the miracle story was composed with a learned, clerical audience in mind, i.e., the milieu from which students and teachers of canon law and theology were drawn. The forger did not compose this miracle story to frighten usurious laymen into compliance with divine and canon law. Rather,

9 See John W. Baldwin, *Masters, Princes and Merchants: The Social Views of Peter the Chanter and His Circle*, 2 vols (Princeton, NJ, 1970), 1:270–279.

10 *Sg* 205a. On the use of *nota* symbols in *Sg*, see the essays by Larson, "Nota (in this volume)" and Viejo-Ximénez, "Science of Canon Law (in this volume)."

11 Caesarius of Heisterbach's *Dialogus miraculorum* (c.1220–1235), for instance, likewise contains numerous miracle stories dealing with repentant usurers and their need to restore all of their ill-gotten gains. Many of these miracle stories cite the Bible. But none of them recites a series of patristic and pseudo-patristic authorities to justify the events recounted therein. See Caesarius of Heisterbach, *Dialogus miraculorum* 2.31–34, ed. Joseph Strange, 2 vols (Cologne, 1856), 1:103–108.

12 Examples from contemporary canonistic works include Alger of Liege, *De misericordia et iustitia*, ed. Robert Kretschmar (Sigmaringen, 1985); Gratian, *Decretum (Corpus iuris canonici)*, vol. 1, ed. Emil Friedberg (Leipzig, 1879). Examples from contemporary scholastic theological literature include *Deus non habet initium vel terminum*, ed. John C. Wei, "The Sentence Collection *Deus non habet initium vel terminum* and its Reworking, *Deus itaque summe atque ineffabiliter bonus*," *Mediaeval Studies* 73 (2011), 1–118, at 39–118; the *Summa sententiarum* (PL 176, 41–154); Peter Lombard, *Sententiae in IV libris distinctae*, ed. Ignatius Brady, 3rd rev. ed., 2 vols (Grottaferrata, 1971–1981).

as Michael explicitly states, the miracle story and authorities recited therein are aimed at the pope and “ministers of the Church who are and will be.” In other words, the text is addressed to judges of the internal (and possibly also external) forum.¹³

The miracle story concludes in a manner reminiscent of certain canonical authorities. First, like many conciliar canons from the patristic and early medieval periods, it contains an acclamation of assent.¹⁴ The pope reads the *capitulum* to his “brothers,” presumably the cardinals mentioned earlier in the miracle story. They, in turn, reply *placet* and confirm the *sententia*. Second, the last line of the miracle story contains an anathema: *qui huius uestri decreti contradictor, conuulsor ac temerator existerit, gladio anathematis ex parte dei et omnium sanctorum et uestri et nostri subiaceat*.¹⁵ Thus, in addition to laying claim to angelic, papal, and patristic authority, the miracle story also evokes conciliar authority.

4 The Sources of the Miracle Story

Through the persona of Michael, the miracle story quotes several texts that circulated in contemporary canonical collections and scholastic sentence collections. For ease of discussion, I shall refer to these texts as Text 1, Text 2, Text 3a, and Text 3b, as noted below. As shown in Table 6.1, Michael takes Text 1, which contains his definition of false penance, almost verbatim from the sixth canon of a council celebrated by Gregory VII in Rome in the autumn of 1078.¹⁶ In a section not quoted by Michael, that canon emphasizes the miracle story’s

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- 13 On the two fora, see Antonio Mostaza Rodríguez, “Forum internum – Forum externum,” *Revista española de derecho canónico* 23 (1967), 253–331 and 24 (1968), 339–464.
- 14 See, e.g., Council of Sardica cc.3, 6, 8, 10, 11, ed. Hamilton Hess, *The Early Development of Canon Law and the Council of Sardica* (Oxford, 2002), 214, 216, 218; Synoda Romana a. 499 c.5, ed. Andreas Thiel, *Epistolae Romanorum pontificum genuinae et quae ad eos scriptae sunt a S. Hilario usque ad Pelagium II* (Braunsberg, 1868), 96.
- 15 A similarly worded anathema can be found in a decretal of Pope Leo IX that circulated widely in the canonical tradition as well as in eleventh- and twelfth-century diplomata. See JL 4269, *Relatum est auribus nostris* (April 20, 1052); Letter of Nicholas II to King Edward of England (PL 151, 1202C) (1061); Privilege from King William, ed. W. Dunn Macray, *Chronicon Abbatiae Ramesiensis*, no. 174 (London, 1886), 200–204, at 203 (December 29, 1077); Acta of Ralph d’Escures no. 43, ed. Martin Brett and Joseph A. Gribbin, *English Episcopal Acta 28: Canterbury 1070–1136* (Oxford, 2004), 45 (forged charter dating to mid-twelfth century or later).
- 16 *Das Register Gregors VII.* 6.5b, ed. Erich Caspar, MGH Epp. sel. 2.2 (Berlin, 1923), 404 lines 4–6.

central teaching: that a person who unjustly holds another person's goods cannot perform penance, through which eternal life can be obtained, without restoring the ill-gotten gains.¹⁷ The canon circulated in a wide variety of canonical collections, including version A' of Anselm's canonical collection,¹⁸ the *Collection in Three Books*,¹⁹ and the *Polycarpus*,²⁰ as well as the second recension of Gratian's *Decretum* at De pen. D.5 c.6.²¹ The brevity of the reference and lack of variants make it impossible to determine which, if any, of these formal sources the forger drew upon in composing the miracle story.²²

Sg 204–205 = Text 1

Gregory VII^a

<p><i>Quia falsam penitentiam dicimus esse que non secundum auctoritates sanctorum patrum pro qualitate criminum inponitur ...</i></p>	<p><i>Falsas penitentias dicimus, que non secundum auctoritatem sanctorum patrum pro qualitate criminum imponuntur ...</i></p>
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a *Das Register Gregors VII.* 6.5b (n. 16), 404 lines 4–6.

Moreover, in explaining to the pope the principles according to which penance should be administered, Michael quotes several texts found in canonical collections and scholastic theological sources. Text 2 contains an excerpt from a letter by Augustine of Hippo to Macedonius, the vicar of Africa,²³ which Michael quotes anonymously (*Quamdiu res propter quam peccatum est ... restitui potest*). And Text 3 is an authority that Michael attributes to Jerome, but which in fact is an amalgamation of two separate texts: (a) a *sententia* that circulated under the name of Jerome from at least the time of the *Collectio*

17 Ibid., 404 lines 6–14: “Ideoque quicumque miles vel negotiator vel alicui officio deditus, quod sine peccato exerceri non possit, culpis gravioribus irretitus ad penitentiam venerit vel qui bona alterius iniuste detinet vel qui odium in corde gerit, *recognoscat se veram penitentiam non posse peragere, per quam ad eternam vitam valeat pervenire, nisi arma deponat ulteriusque non ferat nisi consilio religiosorum episcoporum pro defendenda iustitia vel negotium derelinquat vel officium deserat et odium ex corde dimittat, bona, que iniuste abstulit restituat.*”

18 Ans. 7.176.

19 *3L* 3.19.62, *Collectio canonum trium librorum: Pars altera (Liber III et Appendix)*, ed. Joseph Motta, Monumenta Iuris Canonici, B: 8/II (Vatican City, 2008), 230–231.

20 *Polycarpus* 6.19.29.

21 See Wei, “A Reconsideration of St. Gall, Stiftsbibliothek 673 (Sg) (n. 2),” 159–161.

22 The canon is also found in *Sg* 223b.

23 Augustine, *Epistola ad Macedonium* (PL 33, 662).

Hibernensis (*Usuras querere aut fraudare aut rapere nichil interest*);²⁴ and (b) a *sententia* from Jerome's *Breviarium in Psalmos LIV* (*Usura est ubi plus requiritur quam datur*).²⁵

Text 2 circulated widely in the Middle Ages. Numerous pre-Gratian canonical collections reproduce Augustine's words verbatim or nearly so.²⁶ Gratian's *Decretum* also transmits the *sententia*, though with several variants not found elsewhere.²⁷ Many theological works quote Augustine as well, though loosely.²⁸

Text 3a did not circulate as widely in the canonical tradition. According to *Clavis canonum*, it is found only in the *Collectio Hibernensis* and two collections dependent on it: the *Collection in 5 Books* of Vat. lat. 1339, and the *Collection in 9 Books* of Vat. lat. 1349.²⁹ But the *sententia* did find its way into many twelfth-century theological works, most notably for our purposes the *Summa sententiarum*.³⁰

24 *Collectio Hibernensis* 33.12.e, *Die irische Kanonensammlung*, ed. Hermann Wasserschleben (Leipzig, 1885), 121.

25 Jerome, *Breviarium in Psalmos LIV* (PL 26, 982); see also Augustine, *Enarrationes in Psalmos LIV*, n. 14 (PL 36, 638).

26 Pre-Gratian canonical collections transmit the *sententia* in two main forms: as part of a shorter excerpt beginning with the words *Si res aliena* and ending with *in hominem seuiat*; and as part of a longer excerpt beginning with the words *Penam cupiunt sibi* and ending with *qui male uititur*. According to Linda Fowler-Magerl, *Clavis canonum: Selected Canon Law Collections Before 1140; Access with Data Processing*, MGH Hilfsmittel, 21 (Hannover, 2005), seven collections contain the shorter form of the *sententia*, including Ivo's *Decretum* 13.4 and 15.25 (in a further abbreviated form) and *Tripartita* 3.23 and 3.28.6 (in a further abbreviated form), and fourteen collections contain the longer form of the *sententia*.

27 C.14 q.6 c.1 (up to §2) was already present in the first recension. The formal source was probably *Tripartita* 3.23 or Ivo's *Decretum* 13.4. The rest of C.14 q.6 c.1 is a second-recension addition. The formal source was likely 3L 3.19.10 (n. 19), 212–213.

28 For instance, *Cum remissione peccatorum*, ed. Franz Bliemetzrieder, *Anselms von Laon Systematische Sentenzen* (Münster, 1919), 120–125, at 123; *Ysagoge in theologiam*, ed. Artur Michael Landgraf, *Écrits théologiques de l'école d'Abélard: Textes inédits* (Louvain, 1934), 62–285, at 136; Robert of Melun, *Quaestiones de divina pagina*, ed. Raymond M. Martin, *Oeuvres de Robert de Melun*, 1 (Louvain, 1932), 41.

29 HR33.12e (*Collectio Hibernensis alpha*); HS34.15e (*Collectio Hibernensis beta*); FY06.009.13d (*Collection in 9 Books of Vat. lat. 1349*); FU04.310e (*Collection in 5 Books of Vat. lat. 1339*). See Paul Fournier, "De l'influence de la collection irlandaise sur la formation des collections canoniques," *Nouvelle revue historique de droit français et étranger* 23 (1899), 27–78; Paul Fournier, "Un groupe de recueils canoniques italiens des X^e et XI^e siècles," *Mémoires de l'académie des inscriptions et belles-lettres* 40 (1915), 95–213.

30 *Summa sententiarum* 4.4 (PL 176, 122).

Text 3b does not appear to have circulated in the canonical tradition, but is found in scholastic theological works, where it circulated under the patronage of Augustine.³¹

Text 2, Text 3a, and Text 3b appear close together in the *Summa sententiarum*, which appears to have been their formal source. As shown in Table 6.2, Text 2 follows the *Summa sententiarum* and the *Summa sententiarum*'s formal source, the sentence collection *Principium et causa omnium*, in changing the first word of the Augustinian *sententia* from "Si" to "Quamdiu." Text 2, however, also includes material omitted from *Summa sententiarum* and *Principium et causa omnium*. So if Text 2 does, as I think, depend on the *Summa sententiarum*, it nevertheless also supplemented the text of the Augustinian *sententia* from another source.

Material Source	<i>Principium et causa</i> (p. 98)	<i>Summa sententiarum</i> 4.4	Sg 205 = Text 2
Si enim <i>res</i> aliena, <i>propter quam peccatum est, cum reddi potest, non redditur, non agitur penitentia, sed fingitur. Si autem ueraciter agitur, non remittetur peccatum, nisi restitatur ablatum;</i> sed, ut dixi, cum restitui potest.	De rapina dicit Augustinus, ... <i>quamdiu enim, inquit, res, propter quam peccatum est, non redditur, penitentia non agitur, sed fingitur.</i>	De qua inquit Augustinus: <i>Quandiu res propter quam peccatum est non redditur, non agitur poenitentia sed fingitur.</i>	<i>Quamdiu res propter quam peccatum est cum reddi possit et non redditur, non agitur penitentia sed fingitur. Si autem ueraciter agitur, non remittetur peccatum nisi restitatur ablatum, si ut dixi restitui potest.</i>

Moreover, as shown in Table 6.3, both the miracle story and the *Summa sententiarum* reproduce Text 3a exactly as it appears in the *Collectio Hibernensis*. However, the *Summa sententiarum* also reproduces the immediately following authority from Origen. The miracle story also only paraphrases the authority actually by Jerome (Text 3b), whereas the *Summa sententiarum* reproduces it exactly.

31 See, e.g., Peter the Chanter, *Summa de sacramentis et animae consiliis*, ed. Jean Albert Dugauquier, 5 vols (Louvain, 1954–1967), 3:666.

<i>Collectio Hibernensis</i> 33.12.e, f ^a	<i>Summa sententiarum</i> 4.4	<i>Sg</i> 205 = Text 3a and 3b
<i>Hieronimus: Usuras querere aut fraudare aut rapere nihil interest.</i>	<i>Hieronimus: Usuras querere aut fraudare aut rapere nihil interest:</i>	Item habes quod dicit beatus Ieronimus: <i>Usuras querere aut fraudare aut rapere nichil interest,</i>
Origenes: Accomoda fratri tuo et accipe, quod dedisti, nihil superfluum queras.	Commoda fratri tuo et accipe quod dedisti, et nihil superfluum queras.	quia <i>usura est ubi plus requiritur quam datur.</i>
Jerome ^b <i>Usura est plus accipere quam dare.</i>	<i>Summa sententiarum</i> 4.4 Augustinus: <i>Usura est plus accipere quam dare.</i>	

a *Collectio Hibernensis* (n. 25), 121–122.

b Jerome, *Breviarium in Psalmos LIV* (PL 26, 982D).

5 The Miracle Story in the Context of *Sg*

Sg contains numerous texts that clearly originated or circulated in a medieval school environment. As noted above, *Sg* presents itself as a collection of *Exserpta ex decretis sanctorum patrum*.³² These *exserpta* can be grouped into six textual unities based on their contents and paleographical and codicological features.³³

The first and most extensive textual unity (*Sg* 3–201a) contains *Sg*'s unique version of Gratian's *Decretum*. As Titus Lenherr convincingly argues, *Sg*'s text of the *Decretum* probably derives from lectures delivered by a master who taught canon law on the basis of Gratian's *Decretum*.³⁴ In addition, *Sg*'s version of the *Decretum* may itself have served as a teaching text, since it contains glosses.³⁵

32 *Sg* 3.

33 My identification of textual unities differs somewhat from Enrique De León in his article on the "appendix" to *Sg*. See Enrique De León, "Collectio Sangallensis," *BMCL* 27 (2007), 57–70.

34 See Lenherr, "Language Features (in this volume);" see also Winroth, "Sankt Gallen, Stiftsbibliothek, 673 in Context (in this volume)."

35 See Anders Winroth, "Recent Work on the Making of Gratian's *Decretum*," *BMCL* 26 (2004–2006), 1–29, at 22. On the glosses in *Sg*, see the essays by Lenz, "Paleography (in this volume);" Larson, "Nota (in this volume);" Pennington, "Teaching Canon Law in the early Twelfth Century (in this volume);" and Viejo-Ximenez, "The *Exserpta* in the Origins of the Science of Canon Law (in this volume)."

The second textual unity (*Sg* 201a–203a) follows immediately after *Sg*'s unique version of the *Decretum*. It shares the same layout, illumination, and organization as the first textual unity and was written by one of the two hands responsible for *Sg*'s version of the *Decretum*.³⁶ The second textual unity begins with *De universis que ad nostrum spectare videntur officium*, a forged decretal letter attributed to a pope and martyr named Alexander and addressed to a Patriarch Sisinn(i)us of Antioch.³⁷ The forgery appears to have originated in the Italian schools of law, since its first known mention is in Rufinus's *Summa*,³⁸ which dates to the 1160s.³⁹ The forgery purports to provide authority for Gratian's copula theory of marriage, by which betrothal (i.e., consent) initiates a marriage, while consummation perfects it. The forgery does not appear to have circulated widely, as the only other mentions of the letter appear to be in the *Collectio Lipsiensis* and the *Summa* of Johannes Faventinus, both of which give the incipit as *Si de universis, quemadmodum ad nostrum spectare videtur officium*, probably a corruption of the incipit given in *Sg* and by Rufinus.⁴⁰ No other manuscripts appear to preserve the letter itself.

The third textual unity (*Sg* 203a–207a), to which the miracle story belongs, contains several texts that appear to be connected to the medieval schools. The first text in this unity (*Sg* 203a–204b) is a partially erased commentary on the Apocalypse. Philipp Lenz hypothesizes that the partial erasure may be the result of a later reader, who was bothered by the lack of a clear end to

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- 36 On the paleographical and codicological features of the second textual unity, see Philipp Lenz, "The Context of Transmission of the *Decretum Gratiani* in Sankt Gallen, Stiftsbibliothek, Cod. 673 (= *Sg*): An Investigation of pp. 201a–246b," in *Proceedings of the Fourteenth International Congress of Medieval Canon Law*, Toronto, 5–11 August 2012, ed. Joseph Goering, Stephan Dusil, and Andreas Thier, MIC C/15 (Vatican City, 2016), 95–114, at 96. Lenz refers to the second textual unity as the "appendix" to *Sg*'s version of the *Decretum*. See also the essay by Lenz, "Paleography (in this volume)."
- 37 *Sg* 201a–b: "Alexander papa et martyr in epistola decretali ad Sisinnum antiochenum patriarcham. De universis que ad nostrum spectare videntur officium ... in posterum observanda mandamus."
- 38 Rufinus, *Summa* ad C.27 q.2 pr., ed. Heinrich Singer (Paderborn, 1902), 448.
- 39 On the date, see André Gouron, "Sur les sources civilistes et la datation des Sommes de Rufin et d'Étienne de Tournai," *BMCL* 16 (1986), 55–70.
- 40 *Collectio Lipsiensis* 59.6, ed. Emil Friedberg, *Quinque compilationes antiquae nec non collectio canonum lipsiensis* (Leipzig, 1882), 205; Johannes Faventinus, *Summa* ad C.27 q.2, ed. Johann Friedrich von Schulte, "Die Rechtshandschriften der Stiftsbibliotheken von Göttweig Ord. S. Bened., Heiligenkreuz Ord. Cisterc., Klosterneuberg Can. Regul. Lateran., Melk Ord. S. Ben., Schotten in Wien Ord. S. Ben.," *Sitzungsberichte der kaiserlichen Akademie der Wissenschaften, philosophisch-historische Classe* 57 (1868), 559–616, at 590.

Sg's version of the *Decretum* (considered for this purpose as including the second textual unity) and the different nature of the first text in the third textual unity.⁴¹ I have not been able to identify the source or author of the first text in the third unity, which thus may be a contemporary composition. The work incorporates almost verbatim Pseudo-Bede on the signs of the end times.⁴² Unfortunately, the dating of Pseudo-Bede is uncertain.

The second text belonging to the third textual unity (*Sg* 204b–205a) is the miracle story.

The third and fourth texts belonging to the third textual unity (*Sg* 205a–b and 205b–206a) are excerpts from Gregory the Great's homilies on Ezekiel.⁴³ The first of these excerpts was well known in the schools and frequently quoted and discussed in connection with questions of penitential theology. It is quoted, for instance, in the anonymous treatise *Baptizato homine*⁴⁴ and by Gratian in *De penitentia*.⁴⁵

The twelfth and thirteenth texts belonging to the third textual unity (both found on *Sg* 207a) are not actually freestanding authorities. Rather, as shown in Table 6.4, they contain a summary and exposition of an interpolation to a letter by Gregory the Great to Secundinus (JE 1673), which explains why some canons forbid clerics who have performed penance from remaining in office, when in fact they can remain in office.⁴⁶ It is possible that these texts are an artifact of the contemporary teaching of canon law, as numerous canonical collections transmit the interpolation to Gregory's letter, including *Tripartita* 1.55.77, Ivo's *Decretum* 6.85, and, in an abbreviated form, *Panormia* 3.147.⁴⁷

41 Lenz, "The Context of Transmission (n. 36)," 96.

42 Pseudo-Bede, *Excerptiones patrum* (PL 94, 555).

43 Gregory the Great, *Homiliae super Ezechielem* 1.10.23 (PL 76, 895B–896A), 2.7.13 (PL 76, 1021C–1022A).

44 Ed. John C. Wei, "Penitential Theology in Gratian's *Decretum*: Critique and Criticism of the Treatise *Baptizato homine*," *ZRG.KA* 95 (2009), 78–100, at 93 lines 92–97.

45 De pen. D.3 c.40.

46 Gregory the Great, *Registrum epistolarum* 9.147, ed. Paul Ewald and Ludwig Hartmann, *MGH Epp.*, 2 (Berlin, 1899), 142–149, at 146 line 12–147 line 36.

47 The relationship of the twelfth and thirteenth texts to the interpolation is reminiscent of the relationship that many of the sentence collections attributed to the school of Laon bear to their formal and material sources. See Heinrich Weisweiler, "Die Arbeitsweise der sogenannten Sententiae Anselmi: Ein Beitrag zum Entstehen der systematischen Werke der Theologie," *Scholastik* 34 (1959), 190–232; Heinrich Weisweiler, "Wie entstanden die frühen Sententiae Berolinenses der Schule Anselms von Laon? Eine Untersuchung über die Verbindung von Patristik und Scholastik," *Scholastik* 34 (1959), 321–369.

Sg 207a

 Gregory's Letter to Secundinus
 (JE 1673), MGH Epp., 2, 146
 line 12–147 line 36

Hec est causa quare interdictum est ne clerici penitents in suis offitiis uel ordinibus maneant, uel ad ordines non accedant, ut hoc scilicet audientes altitudinem temporalem desperent et ad eternam celsitudinem solummodo inhiantes, uerius et humilius penitentiam agat, quod si fatiunt possunt secundum beatum Gregorium restitui.

Nam et sanctus Dauid de criminibus mortiferis penitentiam egit, et tamen in zhonore suo perstitit.

146 lines 20–28, which refers to David simply as Psalmist, king, and prophet without mentioning his name

Et beatum Petrum quando amarissimas lacrimas fudit utique Deum negasse penituit, et tamen apostolus mansit.

147 lines 31–34

Sciendum est quod multe auctoritates sunt hic intermissee, quibus beatus Gregorius probat lapsum in suo gradu posse restitui, scilicet 'Peccator in quacumque die conuersus f<uerit> et ing<emuert>, omnes iniquitates eius obliuioni traduntur'

146 lines 33–34

et in alio loco: 'Nolo mortem p<eccatoris> sed ut conuertatur et ui<uat>'.

146 line 32

Introducitur etiam de Dauid propheta qui post dignam penitentiam de adulterio et omicidio uias Dei docuit, et sacrificium obtulit.

Sicut ipse dicit: 'Docebo iniquos uias t<uas>' et alibi: 'Sacrificium Deo' etc.

146 line 28

146 lines 30–31

Interserit etiam illud apostoli: 'Si Deus iustificat quis est qui condempnet'.

146 line 36

Et illud: 'Gaudeo super uno peccatore pe<nitentiam> a<gente> quam s<upper> n<onaginta> n<ouem> iustis, qui non in<digent> p<enitentia>'.

146 line 37–147 line 27

(cont.)

<i>Sg</i> 207a	Gregory's Letter to Secundinus (JE 1673), MGH Epp., 2, 146 line 12–147 line 36
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Et illud quod ouem perditam nonaginta viii. non erantibus relictis humero ad ouile reportauit. Per que euidenter probat satis lapsum post penam ad ministerium reuocari posse.	147 lines 27–28
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The fourth textual unity (*Sg* 207b–218a), which contains sermons by Peter Damian, among other longer texts, does not contain material obviously connected to the schools.

The fifth textual unity (*Sg* 218a–230) contains prefatory material found in certain manuscripts of the *Glossa ordinaria* to the Psalms. In the earliest manuscripts of the *Glossa ordinaria* to the Psalms, i.e., those containing the *Glosatura parva* attributed to Anselm of Laon, various *sententiae* of the Fathers and contemporary masters often precede the glossed text of the Psalms.⁴⁸ Based on the Psalms commentaries of Gilbert of Poitiers and Peter Lombard, both of which depend on the *Glosatura parva*, it is clear that (one of) the function(s) of these texts was to serve as an *accessus*, i.e., as an introduction to the reading and interpretation of the Psalms.⁴⁹ Both Gilbert and Lombard incorporate many of the prefatory texts to the *Glosatura parva* into their own *accessus* to the Psalter.⁵⁰ Pages 226a–228a of *Sg* copy many of these texts as

48 For instance: Paris, Bibliothèque nationale, lat. 17213, fol. 5v (orig. Paris, prov. Notre-Dame, 1140–1150); Troyes, Bibliothèque municipale, 726, fol. 1r–2r (orig. and prov. Clairvaux, 1140–1150). On the dating and origin of these manuscripts, see Patricia Stirnemann, “Où ont été fabriqués les livres de la glose ordinaire dans la première moitié du XII^e siècle?”, in *Le XII^e siècle: Mutations et renouveau en France dans la première moitié du XII^e siècle* (Paris, 1994), 257–301.

49 See generally Edwin A. Quain, “The Medieval *Accessus Ad Auctores*,” *Traditio* 3 (1945), 215–264.

50 See Troyes, Bibliothèque municipale, 488, fol. 3r–v (introduction to Gilbert’s commentary) and PL 191, 55–62 (prologue to the Lombard’s commentary). On the commentaries in general, see Theresa Gross-Diaz, *The Psalms Commentary of Gilbert of Poitiers: From Lectio*

well,⁵¹ though in an expanded form that I have hitherto come across only in Troyes, BM 881, fols. 1va–3ra, which reproduces the texts that appear in *Sg* in a partially different order and alongside other texts not incorporated into *Sg*. Troyes, BM 881 dates to the twelfth century and comes from Clairvaux.⁵²

The final textual unity (*Sg* 231–246) begins in the middle of a sentence.⁵³ The text is a scholastic summary of penitential theology, which adopts Hugh of St. Victor's theory for explaining why absolution from sin requires both contrition and confession to a priest. According to Hugh and the text in *Sg*, sin creates two bonds (*ligamina*) in the sinner: mental blindness and debt of future damnation. Contrition absolves the sinner of mental blindness, while confession to a priest frees the sinner from the debt of future damnation.⁵⁴

The preservation of the miracle story in a manuscript and as part of a textual unity containing numerous school texts suggests that the intended audience of the miracle story was not merely confessors (and perhaps ecclesiastical judges) in general, but clergy studying in the medieval schools of theology and canon law in particular. The author of the miracle story may have been a teacher or a clergyman who ministered to students, or some other person with the ability to disseminate texts in a school environment, e.g., a person connected with the book trade. We might explain the presence of the miracle story and various other texts in *Sg* as originating from notes taken by students while attending classes or through the borrowing and reading of texts available in a school environment.⁵⁵

Divina to the Lecture Room (Leiden, 1996); Marcia L. Colish, "Psalterium Scholasticorum: Peter Lombard and the Emergence of Scholastic Psalms Exegesis," *Speculum* 67 (1992), 531–548.

- 51 The first such text is "Debemus intelligere ut cantemus ... sonant quod nesciunt." The last such text is "Quod in fine psalorum gloria patri canimus ... optatio sic fiat."
- 52 *Catalogue general des manuscrits des bibliothèques publiques des départements*, vol. 2 (Paris, 1855), 364.
- 53 A folio appears to be missing, because the catch words on the previous page (*mo eum*) do not match the first words on *Sg* 231a.
- 54 For an overview of Hugh's penitential theology, see Wei, *Gratian the Theologian* (n. 2), 94–95.
- 55 This would be consistent with the argument advanced by Lenherr, "Language Features (in this volume)" that the first part of *Sg* preserves classroom lectures delivered by a master on the basis of Gratian's *Decretum*.

6 Dating, Place of Origin, and Authorship

The probable dependence of the miracle story on the *Summa sententiarum* gives a *terminus post quem* of 1138–1141.⁵⁶ The date of the manuscript *Sg* gives the *terminus ante quem* – probably between 1146 and 1165.⁵⁷ Thus, the miracle story was likely composed around the time of or somewhat later than Gratian's *Decretum*, whose first recension dates to 1139–1150.⁵⁸

The miracle story perhaps originated in Bologna or some other scholastic center in Italy. *Sg* is a manuscript of Italian, perhaps northern Italian, origin.⁵⁹ And the textual unities of the manuscript contain numerous works that originated in an Italian scholastic environment, most notably *Sg*'s unique version of the *Decretum* and the forged decretal from Alexander to Sisinn(i)us. It is thus possible that the author of the miracle story was familiar with Gratian, although there do not seem to be any direct borrowings.

The author of the miracle story appears to have composed the work primarily to provide further support for the position that true penance requires the prior restitution of all ill-gotten gains. The miracle story purports to provide fourfold authority for this teaching: angelic, in the form of a revelation from Michael; papal, in the form of the recipient and recorder of the revelation; conciliar, in the form of approval by the pope's "brothers;" and patristic, in the form of a pope from the early Church as well as in the patristic and pseudo-patristic authorities quoted by Michael. It is unclear why the author of the miracle story thought forgery was necessary, given that there was already good canonical authority for the position that true penance requires the prior restitution of all ill-gotten gains, namely, a *sententia* by Augustine

56 On the dating of the *Summa sententiarum*, see Ferruccio Gastaldelli, "La *Summa sententiarum* di Ottone da Lucca: Conclusione di un dibattito secolare," *Salesianum* 42 (1980), 537–546 (repr. in idem, *Scritti di letteratura, filologia e teologia medievali* (Spoleto, 2000), 165–174).

57 See Lenz, "Paleography (in this volume)." See also Giovanna Murano, "Graziano e il *Decretum* nel secolo XII," *Rivista internazionale di diritto comune* 26 (2015), 61–139, at 86 n. 83: "terzo quarto del sec. XII." But see also Marina Bernasconi Reusser, "Considerazioni sulla datazione e attribuzione del *Decretum Gratiani* Cod. Sang. 673: Un manoscritto di origine italiana in terra nordalpina," in *Schaukasten Stiftsbibliothek St. Gallen: Abschiedsgabe für Stiftsbibliothekar Ernst Tremp* (St. Gallen, 2013), 142–147, at 145: "scritto nella seconda metà, probabilmente nell'ultimo quarto del XII secolo."

58 On the dating of the *Decretum*, see Wei, *Gratian the Theologian* (n. 2), 24–26.

59 See Lenz, "Paleography (in this volume);" Bernasconi Reusser, "Considerazioni sulla datazione e attribuzione del *Decretum Gratiani* Cod. Sang. 673 (n. 57)," 145.

and a canon from a council held under Gregory VII, both of which circulated widely.⁶⁰

The author of the miracle story clearly possessed at least some familiarity with contemporary canon law and scholastic theological sources. His resort to forgery, however, suggests a different mindset from that of masters like Gratian, whose methodological sophistication rendered forgery superfluous.⁶¹ It may also indicate more limited skill or facility with the dialectical techniques of contemporary canon law and scholastic theology.⁶² Whoever the author of the miracle story may have been, he – like the author of *Sg*'s unique version of the *Decretum* – was no Gratian.

Appendix: The Text of the Miracle Story⁶³

In the decrees of a Pope Boniface.

It is read that there lived in the time of Pope Boniface a man by the name of Stephan, who was exceedingly wealthy as a result of theft and usury. He became ill. He sent to Pope Boniface, so that [the pope] might come to him and give him penance.

In decretis Bonifacii pape.

Legitur quidam homo nomine Stefanus fuisse Rome in tempore Bonifatii (ex Bonifatii *corr.*) pape, qui erat per nimium de rapina diues de usura. Peruenit ad infirmitatem, misit ad papam Bonifatium ut ad eum ueniret et sibi penitentiam daret.

60 Alexander III paraphrases Augustine's *sententia* in a decretal to the Archbishop of Salerno (JL 14093, WH 322) that was subsequently incorporated into a number of decretal collections, including *Compilatio I* (Comp. I. 5.15) and the *Liber extra* (x 5.19.5). With the *Liber sextus*, Augustine's *sententia* became a *regula iuris*. *Liber sextus*, lib. 5, *de regulis iuris* 4 (*Corpus iuris canonici*, vol. 2: *Decretalium Collectiones*, ed. Emil Friedberg (Leipzig, 1881), col. 1122): "Peccatum non dimittitur, nisi restituatur ablatum." *Glossa ordinaria* to the *Liber sextus* (ed. Rome, 1582, col. 786): "Hic ponitur pro regula verbum Augustini quod habet 14 q.6 cap. 1 [=C.14 q.6 c.1], supra de vsur. cum tu [=x 5.19.5]."

61 See Peter Landau, "Gefälschtes Recht in den Rechtssammlungen bis Gratian," *Fälschungen im Mittelalter*, 6 vols, MGH Schriften 33 (Hannover, 1988), 2.11–49.

62 But see Dusil, "Fresh Perspectives (in this volume)," 250: "A teacher may have used a less refined terminology in a teaching situation to explain problems, but he may have also summarized a problem more 'to the point' than his written *Vorlage*. The – often – underlying assumption of an evolution from vague to precise, from imprecise to clear-cut, is questioned by a text originating in an oral sphere, in which the categories of a *Textkritik* may be valid (or not). If *Sg* is really rooted in an oral milieu, this may explain some insufficiencies and oddities of its content, but also some clarifications made by a teacher in the classroom."

63 *Sg* 204–205.

The pope came and said to him, "Brother, do you desire penance?" And he responded: "I do." And the pope said: "Brother, you cannot accept penance by which you may have eternal life, unless you return all that you have from theft and usury, if you can return it, to the last quarter." And he responded: "If I return [what I have taken], what will my sons do? I have five sons. This cannot happen."

In the end, [Stephan] was so moved by his relatives that he compromised and accepted penance from blessed Boniface and so that he might not sustain any punishment from the devil on account of this, he was furthermore released [from sin] by the pope.

After having accepted penance, he immediately left the world and while everyone watched, the angel Michael and the devil appeared above him. In the presence of the angel, the devil immediately accepted his soul and took [it] with him into hell. Whence the angel spoke to Boniface and said: "Brother, we lost the soul of this man because you did not judge according to authority, and thence the Lord is greatly angered, because God does not wish the death of the sinner but that he be converted and live. This man was not truly converted, nor did you give true penance to him but rather false [penance], because we say that false penance is that which is not imposed according to the authorities of the Holy Fathers according to the quality of crimes, and because of this you did not judge him according to the keys committed to you but rather sent

Papa uenit et illi dixit: "Frater uis penitentiam?" Et ipse respondit: "Volo." Et papa dixit: "Frater, tu non potes accipere penitentiam per quam ualeas habere uitam eternam nisi reddideris omnia que habes de rapina et de usura si reddere potes usque ad unum quadrantem." Et ipse respondit: "Si ego redderem, quid facerent filii mei? Ego habeo v. filios. Non potest hoc fieri."

Tandem ita fuit com<u>otus a parentibus suis, quod ad medietatem peruenit et ex alia medietate a beato Bonifatio penitentiam accepit, et ut non penam a diabolo ex hoc sustineret amplius a papa solutus fuit.

Post acceptam penitentiam statim (*add. sup. lin.*) de mundo transiuit atque omnibus uidentibus Michael angelus et diabolus supra eum apparuere (*ex aparuere corr.*). Diabolus statim animam illius coram angelo accepit, et secum in inferno detulit. Vnde locutus angelus ad Bonifatium, et dixit Bonifaci: "Frater, amisimus animam istius uiri, propter hoc quod secundum auctoritatem illum non iudicasti, et inde dominus ualde iratus est, quia deus non uult mortem peccatoris set ut conuertatur et uiuat. Iste non uere fuit conuersus, nec tu ueram penitentiam ei (*add. sup. lin.*) dedisti set falsam. Quia falsam penitentiam dicimus esse que non secundum auctoritates sanctorum patrum pro qualitate criminum inponitur, et propter hoc quod non secundum clauas tibi commissas illum iudicasti sed in inferno animam illius misisti. Ideo curre ad

his soul to Hell. Therefore, run to penance that you may be reconciled with the Lord, because you are dead in spirit. And if you do not immediately accept penance, lightning will come from heaven and devour you, and shut you up in Tartarean fire with the devil and his servants.”

The pope, when he heard this from the angel, was struck with terror. He rose and began to leave with the cardinals. While he was before the gates of Blessed Peter, he fell as if his legs had broken. And behold, the angel Michael appeared over him and said: “Brother Boniface, because you have penance in your heart, may [your sin] be forgiven to you by Almighty God and henceforth so that this may not befall you anymore be on the lookout, and I similarly command the ministers of the Church who are and who will be, arise and go, write down this capitulum so that you always have it in memory when you wish to judge someone and they all who ought to judge [will similarly have it in memory]. As long as a thing on account of which there is sin can be returned and is not returned, penance is not performed but feigned. If, however, [penance] is truly performed, sin will not be remitted unless what has been stolen is restored, if, as I said, it can be restored. Moreover, you have that which Blessed Jerome says: “There is no difference between seeking usury or to defraud or to seize by force, because usury is where more is required than is given.’ For instance, if you give 10 solidi and demand more in return, that is usury and is a damnable crime. Moreover, write down another

penitentiam ut cum domino reconcilieris quia mortuus es (*add. sup. lin.*) in anima. Et si statim penitentiam non acceperis, iam ueniet fulgur de celo et te deuorabit, et te recludet in tartareo igne cum diabolo et eius ministris.”

Papa cum hoc ab angelo audiuit, ualde timuit. Sur< r >exit et cum cardinalibus ire cepit. Dum fuit ante ianuas beati Petri quasi cruribus fractis cecidit. Et ecce angelus Michael supra eum aparuit et dixit: “Frater Bonifaci, ex hoc quod habes penitentiam in corde ex parte Dei omnipotentis sit tibi dimissum, et deinceps ne amplius tibi contingat prospice et ministris ecclesiarum qui sunt et qui futuri erunt similiter precipio: Surge et vade, scribe hoc capitulum ut semper illud habeas in memoria dum uelles iudicare aliquem, et omnes illi qui iudicare debent. Quamdiu res propter quam peccatum est cum reddi possit et non (*add. sup. lin.*) redditur, non agitur penitentia sed fingitur. Si autem ueraciter agitur, non remittetur peccatum nisi restituatur ablatum, si ut dixi restitui potest. Item habes quod dicit beatus Ieronimus: Vsuras querere aut fraudare aut rapere nichil interest, quia usura est ubi plus requiritur quam datur. Verbi gratia, si dederis sol. x. et amplius quesieris, usura est et damnable est crimen. Item scribo [*lege scribe*] aliud capitulum. Quicumque pecuniam suam ad usuram dederit, et in fine uite sue si poterit reddere usque ad unum quadrantem non reddierit, numquam paradisum habere uel intrare (*ex uel intrare habere corr.*) poterit.”

capitulum: "Whoever gives his money at usury and at the end of his life can return [what has been taken] to the last quarter and does not return [it], will never have or enter paradise."

The pope rose, and wrote that which the angel said to him, and showed [it] to his brothers and said: "Does it please you?" They all replied: "It pleases [us] and we confirm your *sententia*, so that he who is a contradictor, uprooter, or violator of your decree will be subject to the sword of anathema from the side of God and all the saints and you and us."

Papa surrexit, et hoc quod angelus ei dixit scripsit, et ostendit fratribus suis, et dixit: "Placet uobis?"

Responderunt omnes: "Placet et confirmamus sententiam uestram, ut qui huius uestri decreti contradictor, conuulsor ac temerator existerit, gladio anathematis ex parte dei et omnium sanctorum et uestri et nostri subiaceat."

PART 4

Sharing Legal Knowledge



Nota: What the Scribes of Sankt Gallen, Stiftsbibliothek, 673 Found Noteworthy in Gratian's *Decretum*

Atria A. Larson

1 Introduction

Sankt Gallen, Stiftsbibliothek, 673 contains many simple marginal notations that were not uncommon to twelfth-century manuscripts of texts that were considered useful and worthy of teaching and study. “Simple” notations or annotations might consist of a single letter (“R” or, in a few instances, “F”) or a single word (most often *Nota*), possibly accompanied by another word or short phrase (such as *Arg[umentum]* or *contra* or *bona distinctio*). Also included are a few instances of face profiles or symbols such as a fleur-de-lis. Not included in my category of “simple marginal notations” are lengthy glosses, additional texts from Roman law or canon law, or citations to other texts.¹

1 See Pennington, “Teaching Canon Law in the early Twelfth Century (in this volume)” and Viejo-Ximénez, “The *Excerpta* in the Origins of the Science of Canon Law (in this volume)” for treatment of the longer glosses, Roman *leges*, and *canones*. The simple marginal notations that I am examining in *Sg* are of a type not studied as much in the scholarly literature as glosses, presumably because they constitute symbols and have little-to-no content internal to them. *Sg* also contains more fulsome marginal glosses (see other essays in this volume). Glosses on legal manuscripts appeared prior to the twelfth century and are part of a widespread textual and interpretive culture of glossing in the medieval period. On Carolingian glosses in legal texts, see Abigail Firey, “How Carolingians Learned Canon Law,” in *Proceedings of the Fourteenth International Congress of Medieval Canon Law*, ed. Joseph Goering, Stephan Dusil, Andreas Thier, MIC C/15 (Vatican City, 2016), 355–368. On glosses in legal manuscripts and glossaries with legal content in the tenth and eleventh century, see Roldán Jimeno Aranguren, “The Origins of *Ius commune*: Glosses and Glossaries from the Tenth and Eleventh Centuries,” *Glossae: European Journal of Legal History* 14 (2017), 806–817, who distinguishes “rhetorical-dialectic” glosses in the tenth and eleventh centuries from the “exegetical reflections on a complex legal construction” in twelfth-century glosses (815). On glosses as part of juridical science, see Bruno Paradisi, “Le glosse como espressione del pensiero giuridico medievale,” in *Fonti medioevali e problematica storiografica. Atti del Congresso Internazionale tenuto in occasione de 90° anniversario della fondazione dell’Istituto Storico Italiano (1883–1973)*, Roma, 22–27 ottobre 1973, vol. 1 (Roma, 1976), 191–200. On the dialectical methods evident in glosses on the *Corpus iuris civilis* in the twelfth century, see Bruno Paradisi, “Osservazioni sull’uso del metodo dialettico nei glossatori del sec. XII,” in *Atti del*

The simple marginal notations vary in when they were added, in their ink color, and in their frequency across the manuscript. Multiple users were thus responsible for them, and they would seem to give clues about what topics were of most interest to the users. Many of these notations, which total 293 *nota* symbols and 83 instances of “R”, are contemporary with the main text. Most of these, especially in the first half of the text of Gratian’s *Decretum*, are in red ink that appears to be the same ink used either for the rubrics (often no more than inscriptions) or for the red initials. Others of these, especially in the second half of the text of the *Decretum*, are in black ink that appears to be the same as the ink used for copying the main text in those sections. Many others are written in a black or brown ink, sometimes very faint, and were clearly added by a later, but still twelfth-century, user of the manuscript. The symbols appear with greatest frequency in the middle third of the manuscript, with some individual pages having as many as ten marginal symbols.² Only *nota* symbols appear for the first 65 pages; the first “R” appears on p. 66, the first face profile on p. 90, and the first “F” of only three (two red and one faint black) appears on p. 93. Those responsible for copying early quires thus desired only to use red *nota* symbols, putting the rubricator in charge of adding the symbols; those responsible for copying the middle quires preferred a wider variety of symbols; those responsible for the later quires restricted themselves to *nota* and “R” marks and preferred to use black ink, suggesting that the copier of the main text was in charge of adding these symbols in the final parts of the manuscript.³ Occasional red *nota* still appear, so apparently the rubricator also added a few markings in this section.⁴

convegno internazionale di studi accursiani, Bologna 21–26 ottobre 1963, ed. G. Rossi, vol. 2 (Milan, 1968), 621–636.

On marks in books and simple annotations, see Roger Stoddard, *Marks in Books, Illustrated and Explained* (Cambridge, MA 1985). With specific reference to *nota* symbols common in twelfth- and thirteenth-century manuscripts, see the chapter “Correction, Glossing, and Annotation,” in *Introduction to Manuscript Studies*, ed. Raymond Clemens, Timothy Graham (Ithaca, NY, 2007), 35–49, at 44. On annotations in early medieval books (with attention mostly on literature and theology), see the excellent collection of articles in *The Annotated Book in the Early Middle Ages: Practices of Reading and Writing*, ed. Mariken Teeuwen, Irene van Renswoude, Utrecht Studies in Medieval Literacy (Turnhout, 2017).

2 E.g. *Sg* 91 contains two *nota* and four “R”s; *Sg* 93 contains four *nota*, one profile, one “R”, and one “F”; *Sg* 94 contains three *nota* and three “R”s; *Sg* 96 has three *nota* and four “R”s; *Sg* 97 has a total of ten: three *nota*, one “F”, and six “R”s; *Sg* 104 has five *nota* and one “R”. For an accounting of the number of symbols per *causa*, see Appendix 1.

3 See the black *nota* on *Sg* 143 and *Sg* 151.

4 E.g., on *Sg* 152. See the essay by Lenz, “The Codicology (in this volume)” on the order in which elements of the text were copied; any additions in red, in the columns and in the margins,

The basic meaning of the *nota* is of course clear: “note this; here is an important point.” The style of each *nota* differs, from large and highly elaborate to narrow, smaller, and simpler, but they always include each of the four letters: N – O – T – A.⁵ Sometimes there seems to be an “S” appended to it, perhaps to mean *specialiter*: “especially note [this].” I have not been able to determine the meaning of “F”. The rare instances of profiles and other non-alphabetical symbols cannot be determined to function any differently from the *nota* symbols. The “R”, however, is different. Although Larrainzar surmised that the “R” might stand for *respondeo*,⁶ and although some occurrences of “R” contain a short line across the final leg of the “R”, very much looking like the symbol for *responsio* or *respondeo*, most of them are plain and do not function in any way to indicate a response or conclusion or solution to a question. Rather, the “R” appears to stand for *regula*, which fits usage in many other legal manuscripts as studied by Dolezalek and Weigand.⁷

This essay will investigate most particularly the *nota* and the *regula* annotations. On their own, these markings have several functions, the most important of which are to serve like rubrics when no rubric exists and to direct the reader to a small selection of critical texts in a lengthy section so that Gratian’s main points and arguments can be better understood. The “R” usually draws attention to a general principle or even what might be called a maxim. The usage is not entirely consistent, however. When combined with short glosses, these markings add further evaluative commentary on the usefulness or elegance of a certain formulation in Gratian’s text. They also reveal early study of Gratian’s text in a mode that would develop into important later twelfth-century pedagogical genres of *brocarda* and *distinctiones*. In sum, the *nota* and *regula* annotations enhance the pedagogical dimensions of Gratian’s text – they better enable this copy of Gratian’s *Decretum* to teach and be taught by its users.⁸ They thereby collectively make this unique copy of Gratian’s text a

followed the copying of the main columns of text in various shades of brown ink. He also distinguishes the various text and annotation hands in the manuscript.

- 5 A wide variety in the shape of *nota* symbols has also been observed in Carolingian manuscripts. See Teeuwen, “Voices from the Edge: Annotating Books in the Carolingian Period,” in *The Annotated Book* (n. 1), 31.
- 6 Carlos Larrainzar, “El Borrador de la ‘Concordia’ de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (=Sg).” *Ius Ecclesiae* 11 (1999), 593–666, at 664.
- 7 Gero Dolezalek, Rudolf Weigand, “Das Geheimnis der roten Zeichen: Ein Beitrag zur Paeographie juristischer Handschriften des zwölften Jahrhunderts,” *ZRG.KA* 69 (1983), 143–199, at 155. I thank Susan L’Engle for bringing this article to my attention.
- 8 I would note that annotations can have pedagogical purposes without necessarily being evidence of the manuscript being used in a physical classroom setting. Other aspects of the text of *Sg* might indicate a classroom setting (see the essays by Lenherr, “Language Features (in

testimony to the system of legal knowledge that was taking shape at the time and give the manuscript wider import beyond the question of which recension of Gratian's text it contains. Whatever the recension or recensions, *Sg* testifies in its margins that people were reading, absorbing, and digesting the *Decretum's* contents; drawing out main points; tracing complicated argumentation; and distinguishing concepts that illuminated different legal principles that pertained to various circumstances.

2 Functions of the *Nota* Symbols

Specific examples illuminate the varied functions of the *nota* and "R" symbols. The *nota* symbols have more variety in their usage, but, first and most basically, they draw attention to sentences of canons that present the main point, and they thus indirectly create rubrics. As Melodie Eichbauer has mapped out, *Sg's* usage of rubrics as compared to the vulgate recension of Gratian's text is sporadic.⁹ An examination of the various *nota* nevertheless demonstrate that they often step in to serve the function that rubrics otherwise would. This is visually evident in some pages where there is a string of red *nota* symbols within a single question that contains no rubrics, only inscriptions.¹⁰ In other words, the *nota* symbols would appear to direct the reader to a sentence containing the main point to be gained from the passage cited.

A closer examination of content confirms this function. For instance, in *causa prima* q.2, the scribe inserted a red *nota* in the middle of a text of Gelasius for which there was no rubric. This portion of the text notes that laypersons whose lives have not been examined should not receive clerical office; first it has to be determined if they are tainted by some evil act, or if they are illiterate, or if they are a bigamist, etc.¹¹ The vulgate rubric makes essentially the same

this volume)" and Eichbauer, "Uniqueness of Prima Causa (in this volume)," but, at the very least, these annotations facilitated the comprehension of Gratian's text – it could be *read* better, *comprehended* better, and thus *learned* better by the reader; the annotations helped Gratian's text *teach* its readers. On not automatically assuming that manuscript annotations indicate classroom use, see Teeuwen and Renswoude, "Introduction," in *The Annotated Book* (n. 1), 4.

9 Melodie Harris Eichbauer, "St. Gall, Stiftsbibliothek 673 and the Early Redactions of Gratian's *Decretum*," *BMCL* 27 (2007), 105–139.

10 E.g., *Sg* 108, on C.13 q.3 [C.12 q.3 d.a.c.1, c.1, c.2, c.3, c.4]. Throughout this essay, I will first provide the textual citation as numbered in *Sg* followed by the *edF* (Friedberg edition) numbering in brackets.

11 *Causa prima* q.2, *Sg* 21a [D.55 c.1]: "*Etiam de laicis anteacta eius uita requiratur, ne sit aliquo facinore infectus uel illitteratus uel bigamus uel adolescentia sortiter...*" Emphasis added to highlight overlap with rubric in next note.

point, applying it also to monks.¹² A few folios later, a red *nota* appears next to a closing line from one of Gratian's *dicta* and the opening line of text of a papal decretal attributed to Anacletus but not introduced by a rubric.¹³ That opening line of the canon would become, almost word for the word, the vulgate rubric.¹⁴ The *Sg* scribe does not always wish to note a summary sentence that makes precisely the same point as the vulgate rubric. He puts a *nota* beside a statement asserting that a priest should not weigh down his church with his own expenses, which he ought to handle from his own resources.¹⁵ The vulgate rubric makes a rather different, albeit related point, namely that those who do not wish to give up their own possessions ought not be supported with the expenses of the church.¹⁶ The sentence of the *auctoritas* that makes this point does not appear in *Sg*. In another place, the scribe added two red *nota* symbols beside a canon pertaining to the age of witnesses. The preceding *dictum* notes that someone younger than fourteen cannot be an accuser or witness, but the following *auctoritas* does not carry a rubric in *Sg*.¹⁷ The first *nota* is beside a sentence that states that those who are prohibited from being witnesses are also prohibited from being accusers. The second *nota* stands beside a sentence stating that witnesses cannot be younger than fourteen years old.¹⁸ Combined, the two places logically result in what Gratian stated in the *Sg dictum* and what the vulgate rubric asserted.¹⁹

Later users of the manuscript might also add *nota* symbols to supplement material present in existing rubrics. One sees, for instance, some light brown *nota* markings highlighting previously unnoted procedural matters in what would become C.2. No red *nota* marks appear between *Sg* 41 and 60, but this section contains many rubrics. Several light brown *nota* marks nevertheless do

12 *edF* D.55 c.1 rubric: "Qui de monasterialibus disciplinis ad clericale munus accedit *et de laicis, anteaecta eius uita examinetur.*"

13 *Causa prima* q.3, *Sg* 28b [D.79 d.p.c.10–c.11]: "... eorum eiectione soli diuino iudicio est reseruanda. *Unde Anacletus papa.* Eiectionem summorum sacerdotum sibi dominus seruauit."

14 *edF* D.79 c.11 rubric: "Summorum sacerdotum eiectionem sibi Dominus reseruauit."

15 C.2 q.2, *Sg* 36b [C.1 q.2 c.8]: "... qui ecclesiam, quam propriis de facultatibus iuuare debeat, suis expensis insuper grauant."

16 *edF* C.1 q.2 c.8 rubric: "Qui sua relinquere non uult sumptibus ecclesiae sustentari non debet."

17 C.5 qq.2–3 *dictum*, *Sg* 73a: "Ut qui ad annum xiii. non peruenit, nec accusator nec testis esse possit." A later gloss identified this as the rubric or *titulus*.

18 C.5 qq.2–3, *Sg* 73a [C.4 qq.2–3 c.1]: "[1.] Testes autem ad testimonium non admittendos censemus qui nec ad accusationem admitti iussi sunt ... [2.] Ad testimonium autem intra annos xiiii. etatis sue constituti non admittantur."

19 *edF* C.4 qq.2–3 c.1 rubric: "Qui ab accusatione repelluntur, aut ad annum xiv. nondum peruenerunt, testes esse non possunt."

appear, bringing attention to specific matters not emphasized in the original rubrics present. One marked text stresses the procedural point that something should not be commuted in a case while a report is still pending, and a cleric who has not yet been convicted should not be suspended from communion;²⁰ another concerns canonical purgation, highlighting clear authority that states that a priest can be purged through seven peers of his same rank and deacons by three;²¹ a third draws attention to a statement by Leo I indicating that he voluntarily underwent purgation but does not compel others to do so.²² The implication, then, is that purgation should be performed voluntarily by a cleric. In sum, in many places, the original scribes or later users of the manuscripts utilized *nota* symbols to direct a reader's attention to a passage that could serve as a summary point for the entire *auctoritas*; later users might also add *nota* symbols to indicate important points that supplemented rubrics or summary sentences already noted by earlier scribes.

A second and correlated major function of the *nota* symbols consists in leading a reader through the argumentation in Gratian's text, whether in a long series of canons or in a lengthy *dictum* or in both within a complex back and forth of position and counter-position as Gratian sought to reconcile authorities on particular questions. A fairly simple example of this occurs within *causa prima*, where a *nota* symbol stands at the juncture between two apparently opposing canons right at the point where Gratian explains the discord. The previous canon seemed to say that only those ranked deacon or higher could be elected as a bishop or archbishop. In light of the fact that the next canon will say that even those ranked as subdeacons can be elected bishop, this *dictum*, marked by the *nota*, attempts to explain why the texts suggest two different rules. The *dictum* maintains that the first stipulation (only deacons and higher) was established on account of the impudence of certain men who, not wanting to become priests, showed contempt for the office of one who has attained the name of one to lead. If this were not the specific meaning, the

20 C.3 q.1, *Sg* 46a [C.2 q.1 c.12]: "ut pendente relatione aliquid audeant commutare. In episcoporum quoque iudicio constitutum est, nullum clericum qui nondum conuictus est suspendi a communione debere." There is a short rubric for this canon, but it asserts a different point, namely that no judgment can be given in uncertain and dubious cases.

21 C.3 q.5, *Sg* 51b [C.2 q.5 c.12]: "et ipse [sacerdos] negauerit, cum septem sociis eius ordinis si ualeat a crimine semper ipsum expurget. Diaconus uero si eodem crimine accusatus fuerit, cum tribus semetipsum excuset."

22 C.3 q.5, *Sg* 52a [C.2 q.5 c.18]: "hoc autem faciens, non prescribo ceteris legem qua id facere cogantur." The rubric is vague. In *Sg* it reads, "Ex auctoritate leonis papae quod data purgatione de seipso ait." The *nota* directs one's attention to the more specific point, that the pope does not prescribe purgation for others even though he did it himself.

previous canon would not make sense, for those ranked as subdeacons can also be elected bishop.²³

A more elaborate example occurs within a lengthy *dictum* where Gratian is discussing whether subordinates can accuse their ecclesiastical superiors. He utilizes the Old Testament story of Balaam's ass, who speaks out against the prophet. Here, at the point where the red *nota* occurs, Gratian observes that the ass does indeed represent subordinates and Balaam a prelate, but the biblical story only serves to show that a subordinate can refuse to obey a superior if his superior is trying to compel him to commit an evil deed. This red *nota* emphasizes the place where Gratian explains that the case in view in the vulgate C.2 is when a superior is requiring, by beatings and tortures, that his inferiors support and help him in his evil. Also, the angel of the Old Testament story is likened to any preacher who calls people back from consent to evil with preaching about future punishment.²⁴ In other words, this *nota* occurs at a pivotal point in the *dictum* where Gratian explains that the story of Balaam cannot be used generally to argue that subordinates can accuse their superior. The *dictum* continues with Old Testament examples and Gratian asserting what can and what cannot be extracted as normative principles from them. The next red *nota* appears next to a statement affirming the general validity of the power of the keys by ecclesiastical authorities, on the one hand, and the power of the sword by secular authorities, on the other. Gratian had discussed Old Testament prophets rebuking kings, but he also elicits the example of Ambrose barring Theodosius from the church before performing penance, and the *nota* begins at this point.²⁵ This is a *dictum* with wandering argumentation and many twists; the *nota* signs serve as guideposts for the reader so that he can follow the main points and turns. The next one appears beside a more general exegetical point that is guiding Gratian's utilization of Old

23 *Causa prima* q.3, *Sg* 21b [D.60 d.p.c.3]: "Horum unum propter procacitatem quorundam statutum est, qui nomen prepositure adepti officium contempnunt, sacerdotes fieri nolentes; alias autem inane esset, cum etiam in episcopum eligi possunt in subdiaconatu constituti."

24 C.3 q.7, *Sg* 62a [C.2 q.7 d.p.c.41]: "... eos designat qui uerberibus et cruciatibus a subditis exigunt, ut eis in malo fautores et coadiutores existant. Set quoniam angelus, id est quilibet predicator, euaginato gladio aperte scilicet predicato timore [et terrore future uindictae a consensu aliene malicie illos reuocat.]" The section in brackets appears below where the *nota* is.

25 C.3 q.7, – *Sg* 62b [C.2 q.7 d.p.c.41]: "Sic et beatus Ambrosius imperatorem excommunicauit, et ab ecclesie ingressu prohibuit. Sicut enim non sine causa iudex gladium portat, ita non sine causa clauis ecclesie sacerdotes accipuerint. [Ille portat gladium ad uindictam malefactorum et laudem bonorum, isti habent clauis ad exclusionem excommunicandorum et reconciliationem penitentium.]"

Testament *exempla*, asserting that not everything in the Old Testament is present as a model for the present day but might appropriately be admired even when things commanded then are prohibited now.²⁶ The next *nota* highlights where Gratian cites an example of subordinates wrongly accusing a superior, namely when Pope Damasus was accused of adultery.²⁷ On the following page, the same scribe marks with a red *nota* a canon that resolves all the ambiguities of the argument so far, clearly asserting that subordinates should seek to correct wayward superiors, lest a cancer spread and infect the entire body of the church.²⁸ Here there is also a rubric, so the scribe provides a double emphasis on this chapter that in many ways brings resolution to the question.

Another excellent example of *Sg*'s original scribes guiding the reader through a complex argument appears in the section on clerical immunity from secular judgment, or the privilege of the forum. With a mixture of *nota* and "R" symbols, and even a profile and an "F", the scribes highlight main points: that no one should presume to accuse, or draw before a secular court, a cleric of any rank, except by permission of the pope; that a clerical accuser of a layman should take his case before a secular judge; that, as a general rule, the plaintiff in a case follows the court of the defendant; that accused clerics come before an episcopal court; that disobedient clerics should be deposed and sent to the curia.²⁹ Then Gratian's argument turns to consider whether in civil cases clerics should be heard before the emperor/secular ruler, since certain authorities assert that property ultimately belongs to the emperor. The *nota*

26 C.3 q.7, *Sg* 63a [C.2 q.7 d.p.c.41]: "[Ad que respondeo: Miracula maxime ueteris testamento potius sunt admiranda] quam ad exemplum nostre actionis trahenda. Multa enim tunc concedebantur que nunc penitus prohibentur."

27 C.3 q. 7, *Sg* 63a [C.2 q.7 d.p.c.41]: "[Ecce puer meus, qui iudices iniquitatis, scribas et phariseos falsis criminibus Susannam,] id est, ecclesiam, accusantes et ream adulterii pronunciantos eo quod Christum sequeretur, conuiceret et condempnaret. Item Ieronimus refert in libris uirorum clarissimorum uirorum illustrium quod [Damasus papa a subditis de adulterio accusatur ...]."

28 C.3 q.7, *Sg* 64a [C.2 q.7 c.46]: Rubric: "Ut uitam prelatorum subditi nulla simulatione negligere debeant." Noted text: "ita rectitudinis et dei timoris est si qua in eis indentur corrigenda, nulla dissimulatione postponere, ne totum quod absit corpus morbus inuadat."

29 See *nota* markings at C.12 q.1, *Sg* 93a [C.11 q.1 c.1–c.3, c.16]; an "R" and "F" at C.12 q.1, *Sg* 93b [C.11 q.1 c.16]; another *nota* at C.12 q.1, *Sg* 93b [C.11 q.1 c.18]; another *nota* at C.12 q.1, *Sg* 94a [C.11 q.1 d.p.c.26], which asserts "Ab imperatore prediorum possessiones nanciscuntur"; two "R"s at C.12 q.1, *Sg* 94a [C.11 q.1 cc.27–28]; a *nota* at C.12 q.1, *Sg* 94b [C.11 q.1 c.29], asserting "[Neque iudicem neque cognitorem secularium negotiorum hodie te ordinare] uult Christus, ne prefocatus presentibus hominum curis, non possis uerbo dei uacare," while the rubric asserts, "Ut de secularibus iudiciis episcopus cognoscere non debeat." Gratian will later disagree with, or at least qualify, this rubric, and the place where he reconciles the relevant authorities is also noted with a *nota* (see n. 31, below).

and “R” symbols likewise walk the reader through this part of the argument, which includes a rather famous section of a *dictum* where Gratian argues that he who has the power to make laws is the one who has the power to interpret (and judge by) them.³⁰ This line is noted by an “R”. Then the symbols mark the turn in Gratian’s argument and his conclusion, for he comes to assert that, no matter the type of case – criminal or civil – a cleric’s case should be heard in an ecclesiastical forum.³¹ Altogether, the symbols make the lengthy argumentation back-and-forth far easier to comprehend (see fig. 7.1).

Less significant functions of the *nota* symbols are to double-emphasize a point already made in a rubric and, in one case, to provide a cross-reference. An example of the former is found where Gratian inserts a *capitulum* to establish that family members of accusers are not allowed to be witnesses. A rubric states explicitly that “blood relatives and those from one’s household are not to give testimony against those outside [the family].” The noted section makes the same point, standing next to a sentence that does help clarify a key point, however, namely that the blood relatives and members of a household are those of the accuser.³² The one cross-reference occurs in a later hand; it consists of a *nota* plus the word *mediana* at two different places in the manuscript about 100 pages apart. These mark a duplicate canon that appears in both places and contains the word *mediana*, indicating that priests may be ordained mid-week.³³ Regardless of the meaning or the significance of this canon, the

30 “R” at C.12 q.1, *Sg* 94b [C.11 q.1 d.p.c.30]: “ita ciuiliū nonnisi ciuilib debet esse executor. Sicut enim ille solus ius habet interpretandi canones qui habet potestatem eos condendi, sic solus ille legum ciuiliū debet esse interpret qui ius et auctoritatem eis impertit.”

31 Two *nota* at C.12 q.1, *Sg* 95 [C.11 q.1 c.38 and d.p.c.47]: “Imperator Iustianus Augustus Petro reuerentissimo papae, cap. liii: Si quis contra aliquem clericum, aut monachum, aut diaconissam, aut monasteriam, aut assistriam habet aliquam actionem, doceat prius sanctissimum episcopum cui horum unusquisque subiacet.” This imperial decretal does not specify a type of case – presumably any case against a priest or monk or even deaconess should be brought before the bishop in charge. The concluding *dictum*, which also explains an earlier authority originally cited to argue that civil cases against clerics should be heard in civil courts, reads, “Prohibentur ergo clerici a cognitione negotiorum secularium uirorum, non secularium causarum [cf. c.29, marked with an ‘R’]. Negocia quippe clericorum, siue criminalia siue ciuilia fuerint, nonnisi apud ecclesiasticum iudicem uentilanda sunt.” Thus, clerics were not to be embroiled in the affairs of secular men, but this did not bar them from all participation in secular cases and courts; clerical affairs, however, were to be brought forward only to an ecclesiastical judge.

32 C.4 q.5, *Sg* 69a [C.3 q.5 c.1]: Rubric: “Ut consanguinei uel familiares aduersos extraneos testimonium non dicant.” *Nota* at: “Consanguinei accusatoris aduersus extraneos testimonium non dicant, nec familiares uel de domo prodeutes, sed si uoluerint et inuicem consenserint inter se parentes testificentur et non in alios.” A second example of double-emphasis, at C.3 q.7, *Sg* 64a [C.2 q.7 c.46], is discussed above, at n. 28.

33 See *Causa prima* q.3, *Sg* 24a [D.63 c.15], and C.17 q.1, *Sg* 128a [C.16 q.1 c.31].

.C. .X. 93

cepta ep̄i sui s̄t̄t̄a. offm̄ suū am-
 m̄st̄i. h̄. p̄to. ep̄s s̄m̄ spē i restitua
 ois̄ i eū s̄t̄t̄ā d̄ed̄. s̄t̄t̄ē ḡ p̄m̄ū.
 an̄ d̄ic̄ an̄ cur̄t̄ iudiciū p̄duced̄
 sit̄. Sed̄o. si p̄duced̄ n̄ ē. an̄ h̄ d̄
 pa digna sit̄ sus̄p̄ns̄ioe. T̄cio. si di-
 gna n̄ fuit̄. an̄ r̄p̄tore s̄t̄t̄t̄e s̄u
 r̄p̄t̄ n̄ r̄p̄abil̄r̄ oport̄eat d̄p̄o. **g**
Q. 1. **N** d̄ic̄ ap̄ iudicē s̄cl̄are n̄ sit̄ accu-
 sm̄o t̄ū q̄ ep̄m̄. **ad. gai. p̄. d̄ic̄ s̄cl̄e.**
 aū reliq̄s̄ d̄ic̄o. ap̄ iudicē s̄cl̄are.
 accus̄t̄io p̄sumat̄. **Je. m̄ d̄cl̄. p̄. de**
C l̄ic̄ū d̄cl̄y ord̄m̄. ab̄q̄. p̄ōn̄ed̄.
 f̄ic̄a s̄u p̄m̄iss̄ū. n̄ll̄ p̄sumat̄ ad
 s̄cl̄are iudiciū. **Je. nec̄ laicoq̄**
T lib̄ d̄ic̄ū liceat̄ accus̄t̄ā. **Je. nab̄**
ym̄an̄. r̄hodos̄. p̄arch̄d̄. aaa. d̄ed̄.
C om̄m̄ua lege sanc̄m̄. i n̄ll̄ p̄
 p̄o. **Leoz̄ q̄ necess̄itat̄ib̄. eed̄. d̄.**
 f̄uit̄. ad iudicia s̄u ord̄m̄at̄oz̄
 s̄u ex̄t̄ord̄m̄at̄oz̄ iudiciū p̄h̄at̄.
 h̄m̄t̄ illi s̄u iudicē. nec̄ q̄q̄ h̄i pu-
 b̄lic̄a ē c̄p̄e c̄a leḡib̄. **Je. s̄cl̄ar̄. p̄.**
T e s̄t̄m̄on̄iū d̄ic̄i ad̄h̄. laicū ne-
 mor̄ recip̄at̄. nemo d̄ic̄ū q̄lib̄ in
 p̄blico ex̄am̄inat̄e p̄sumat̄. n̄ in
 eccl̄a. **Je. d̄ic̄ ad̄ civilē iudicē d̄i.**
S iq̄ d̄ic̄ū cū p̄duced̄. an̄ t̄h̄ma sit̄.
 accus̄t̄as̄ d̄ic̄ū i cūā r̄t̄e. an̄ a-
 t̄h̄ma sit̄. **S̄. Sub̄iudiciū ē. si pu-**
 b̄licoz̄ iudic̄oz̄ coḡnit̄ioe pet̄ue-
 rit̄. **S̄. p̄ile naq̄. iudiciū. nich̄ ob-**
 ē ab̄ iur̄t̄e postulā. **vn̄ i car̄.**
P lac̄t̄. i q̄c̄q̄ ab̄ m̄. **ē. leḡ. vn̄.**
 par̄t̄e coḡnit̄ioe p̄ub̄licoz̄ iudici-
 oz̄ pet̄it̄. honore p̄o p̄uct̄. **S̄. iū**

ab̄ iur̄t̄e ep̄ale iudiciū i p̄t̄it̄.
 7 postulāuit̄. nich̄ ei ob̄str̄. **S̄. d̄**
 7 seq̄nt̄e auct̄orit̄e i n̄ll̄ ḡnd̄e.
 q̄b̄. d̄ic̄oz̄ c̄as̄. n̄ h̄ d̄ic̄i coḡnit̄ioe
 iudic̄i. **vn̄ pelaḡ. actor̄. foz̄ r̄er̄.**
U bi quāq̄ seq̄t̄. **Sergio c̄iccl̄ano.**
 d̄ic̄ s̄u i f̄er̄t̄o s̄u pot̄ior̄ q̄ d̄u-
 p̄ent̄or̄ ex̄ist̄it̄. 7 c̄ laicū p̄. s̄uā
 d̄m̄ḡ. act̄ioe. n̄t̄e m̄o. n̄. n̄ alib̄
 q̄ ap̄ p̄uic̄e iudicē s̄uū negoci-
 ū d̄ic̄t̄ur̄. occur̄at̄. S̄iq̄ aū laic̄
 d̄ic̄ū c̄q̄. q̄ d̄ux̄it̄ c̄e p̄s̄t̄ād̄ū. ad
 ep̄oz̄ iudiciū i ead̄ c̄uit̄ate l̄t̄n̄
 tor̄io s̄t̄r̄uitor̄ p̄p̄at̄ c̄a q̄s̄ s̄cl̄a-
 t̄e ex̄ist̄imat̄ act̄ioe. q̄ ord̄m̄e lo-
 ḡib̄. p̄ oia r̄uen̄t̄e atq̄. s̄t̄r̄uim̄e
 ū. d̄m̄ o s̄t̄t̄ illa reḡla m̄an̄ifest̄a.
 q̄ p̄p̄ actor̄e s̄ep̄ foz̄ seq̄ p̄s̄t̄ar̄.
 d̄ic̄ū ū p̄s̄t̄ar̄ i ep̄ali iudicio. fo-
 z̄ q̄ pet̄e p̄m̄ap̄at̄ū q̄. l̄ic̄t̄ionū
 d̄ignat̄ auct̄orit̄e. **Je. i. c̄. agathe-**
h̄. q̄o n̄ p̄m̄t̄it̄e ap̄ s̄cl̄arē iudicē.
C l̄ic̄ū n̄ll̄ p̄esu c̄e d̄ic̄ p̄s̄t̄ar̄ n̄ d̄y.
 mat̄ ap̄ s̄cl̄arē iudicē ep̄o n̄ p̄m̄t̄i-
 t̄ite postulāe s̄u p̄s̄t̄ar̄. **S̄. si p̄-**
 s̄t̄ar̄ fuit̄. n̄ s̄d̄at̄. **l̄. p̄p̄at̄. nec̄ au-**
 deat̄ c̄m̄male iudiciū s̄uū negoci-
 ū i iudicio s̄cl̄ar̄ p̄p̄on̄d̄. **Je. p̄ul̄. p̄.**
C̄h̄e suo ep̄o iobah̄es d̄p̄o s̄t̄e am̄q̄ ē.
S i q̄ s̄ac̄dot̄ū l̄ r̄el̄iq̄z̄ d̄i. **dat̄.**
 oz̄ suo ep̄o iobah̄es fuit̄. aut̄
 ei i s̄cl̄ar̄ p̄auit̄. aū p̄t̄im̄cl̄ā. aū
 calūp̄niā 7 r̄uic̄ia i t̄uū. 7 r̄uic̄ia
 pot̄uit̄. mox̄ d̄p̄o s̄t̄e. cur̄t̄e d̄cl̄at̄.
 7 recip̄at̄ q̄m̄q̄. ḡess̄it̄. **Je. inoē-**
 ū. **Je. vn̄ m̄e d̄ic̄o. laic̄o c̄e ex̄t̄e. ab̄ ep̄i.**
 7 iudic̄ar̄.

FIGURE 7.1 Sg 93

scribe took a somewhat unusual or distinctive word appearing in the repeated canon (*mediana*), attached it to a *nota* symbol at both places where the repeated canon occurred, and thereby directed himself and other users to seek out the other instance of this canon (marked by the same *nota* plus *mediana*) when he or they came across the first instance of it. In other words, the primary functions of the *nota* symbols in *Sg* were (1) to mark out a summary sentence or clause in a canon to highlight a main point (much like a rubric) and (2) to indicate main arguments pro and contra and the conclusion in Gratian's scholastic treatment of a question so that a complex argument could be comprehended more easily. Additionally, in far fewer cases, a *nota* could serve to reiterate a point made by an existing rubric or direct the reader to another passage in the manuscript. In general, the *nota* symbols help the reader read the text, understand its argumentation, and readily identify important points made.

3 Function of the "R" Symbols

As already shown in the example of whether subordinates can accuse their superiors (vulgate C.2), the "R" symbols interact with the *nota* symbols and should not be considered as completely separate from them. Nevertheless, their function can also be appreciated individually, for, in many cases (though it is not always consistent), they draw attention to general principles that can be extracted out of their context. A later scribe, for instance, put an "R" next to the canon preceding the famous *Duae sunt*, highlighting the rule that no one can receive a cleric without his bishop's consent.³⁴ That principle is a more important one within canon law than *Duae sunt's* assertion that a cleric of his own initiative, by the "private law" of the Spirit, could enter a monastery. As Peter Landau has shown, the principle of episcopal consent to a cleric's change of place or position governed in many ways the interpretation of and restriction upon the seeming looseness envisioned in *Duae sunt*.³⁵ Meanwhile a series of six red "R" markings in vulgate C.11 highlight statements speaking out against

34 "R" at C.20 q.2, *Sg* 144b [C.19 q.2 c.1]: "Alienum clericum inuito episcopo eius nemo suscipiat." Possibly the same later scribe also put a *nota* beside *Duae sunt*.

35 Peter Landau, "Die 'Duae leges' im kanonischen Recht des 12. Jahrhunderts," in *Europäische Rechtsgeschichte und kanonisches Recht im Mittelalter: Ausgewählte Aufsätze aus den Jahren 1967 bis 2006*, ed. Peter Landau (Badenweiler, 2013), 149–183, esp. at 176. Note as well that Landau observes that "Gratian himself did not use the distinction of *Duae sunt* in the sense of a general legal principle" (156). Neither did the users of *Sg*, who instead drew attention to the previous canon, C.19 q.2 c.1, as providing a general legal principle.

the abuse of power by bishops and priests, also giving the principle that those who abuse their power are to be deprived of it and that no one should undergo a canonical punishment when the judgment is not canonical.³⁶

What the *Sg* scribes highlight often could stand as a legal maxim but sometimes are more like moral proverbs. For instance, two red “R” symbols close to one another within *Sg* C.15 (vulgate C.14) make the respective points that usury is tantamount to robbery and that one who steals from the poor or cheats them out of their food is “a man of blood.”³⁷ Another red “R”, with double apostrophes running up and down the margin for nine lines, marks out a series of biblical Proverbs quoted by Gratian.³⁸

Sometimes a *nota* is close at hand, and the “R” directs one’s attention to the general principle for which the noted text provides an example or a specification. Thus, Gratian cites a canon to make the specific procedural point that an accusation must be made in writing. The rubricator adds an “R” in the margin next to a chapter making this point. On the other hand, the previous canon seems to make the point in more abstract terms, but that canon has a rubric and a *nota* in a later hand next to it. Presumably that scribe wanted the more general statement to be noted, while the rubricator made it stand out through the usage of the rubric. All the same, between the rubric on one canon and the “R” on the next canon, the general principle is highlighted, and then another *nota* symbol stands beside a section giving a specification restricting who cannot be accusers, namely those involved in magic and divination, presumably whether they follow the formal guidelines of submitting the accusation in writing or not (see fig. 7.2).³⁹ Together, the original rubrics, “R” symbols, and

36 “R” symbols at C.12 q.3, *Sg* 97b [C.11 q.3 c.46]: “quanto apud deum et eius ecclesiam neminem potest prauare iniqua sententia. Ita ergo ea non absolui desiderat, qua se nullatenus perspicit obligatum.” [c.57]: “Si quis dixerit iustum iniustum, abhominabilis est utique apud deum.” [c.60]: “Ille ligandi ac soluendi potestate se priuat, qui hanc pro suis uoluntatibus, non subditorum moribus exercet.” [c.61]: “Iudicare digne de subditis nequeunt qui in subditorum causis sua uel odia uel gratiam sequuntur.” [c.63]: “Priuelegium omnino meretur amittere qui permissa sibi abutitur potestate.” [c.64]: “Non debet is penam sustinere canonicam in cuius dampnatione canonica non est prolata sententia.”

37 C.15 q.4, *Sg* 117 [C.14 q.4 c.10]: “Si quis usuram accipit, rapinam facit; uita non uiuit.” C.15 q.5, *Sg* 117 [C.14 q.5 c.2]: “Panis egentium uita pauperum est. Qui defraudat illum, homo sanguinis est.”

38 C.6 q.5, *Sg* 76b [C.5 q.5 d.p.c.5]: “Verba impiorum insidiantur sanguini, os iustorum liberabit eos. Et infra: Qui quod nouit loquitur, iudex est iusticie; qui autem mentitur testis est fraudulentus. Item: Labium ueritatis firmum erit in perpetuum; qui autem testis est repentinus concinnat linguam mendacii. Item: Qui custodit os suum, custodit animam suam; qui autem inconsideratus est ad loquendum, sentiet mala. Verbum mendax iustus detestabitur; inpius autem confundet et confundetur.” The Proverbs cited are Prov. 12.6, 12.17, 12.19, 13.3, and 13.5.

39 C.3 q.8, *Sg* 66a [C.2 q.8 c.1]: Rubric: “Accusatio semper fiat in scriptis.” Later hand notes: “Accusatorum persone sine scripto numquam recipiantur.” Red “R” at C.3 q.8, *Sg* 66a [C.2

These are more common in the second half of the *Decretum* text and are more commonly by later hands, not the original copier of the text or rubricator. A few notable exceptions exist, however. For instance, a red “ARG.”, for *argumentum*, as well as a red *Nota contra* appear on *Sg* 79. The question at hand is whose judgment should be sought if elected judges begin to disagree with one another. The “ARG.” is set right beside the practical solution: call a neighboring metropolitan with some of his bishops and let them decide.⁴⁰ The other “ARG.” occurs in conjunction with a red *nota* at a *dictum* that resolves a preceding discussion debating a metropolitan’s involvement in the affairs of suffragan bishops’ dioceses without their involvement or consent. The marked section, which could be labeled as the solution, makes a distinction, namely that a metropolitan should not act out of presumption but rather out of love, and the necessity of love might result in the metropolitan doing ecclesiastical business, condemning those who should be bound and absolving those who should be reconciled, without the involvement of his suffragans or against their wishes, if they are not behaving rightly, are supporting evil among their parishioners, and are unjustly remitting what should be corrected. On the other hand, if the suffragans are performing their duties honorably, building up the good with word and example, and dealing with the vices of the evil, then the metropolitan should use them, and it is then not permissible for him to act and administer within their parishes without consulting them.⁴¹ The *Nota contra* stands beside a question, namely whether there is ever a reason for the accused being required to prove his case.⁴² The vulgate rubric, not present in *Sg*, states that the “burden of proof” (*onus probationis*) does not fall on the accused. The previous *dictum*, which is present in *Sg*, states that, when an accuser is lacking or deficient in proof, the accused is not to be compelled to prove his case.⁴³ The *contra* here seems to function to clarify that the answer to the question posed is an emphatic “no” – *no*, the accused is *never* to be required to prove

40 C.7 q.4, *Sg* 79a [C.6 q.4 c.1]: “... propter huiuscemodi controuersiam amputandam, placuit sancte synodo metropolitanum episcopum alterius prouincie aduocari...”

41 C.10 q.3, *Sg* 89b [C.9 q.3 d.p.c.21]: “[Cum archiepiscoporum suffraganei subditis suis fauere in malo ceperint, et circa correctionem eorum remissiores extiterint,] tunc equum est metropolitanorum auctoritatem etiam suffraganeis inuitis sese interponere, et ligandos dampnare et reconciliandos absoluere. Cum autem episcopi diuine karitatis zelo accensi [bonos uerbo et exemplo edificant, malorum uicia aspera increpatione redarguunt, absque talium consultu in eorum parrochia aliquid agere uel dispondere metropolitanus non licet.]”

42 C.7 q.5, *Sg* 19b [C.6 q.5 c.1]: “[postulas] ... si unquam ratio ei qui accusatus necessitatem probationis imponeret.”

43 *edF* C.6 q.5 c.1 rubric: “Onus probationis reo non incumbit.” C.7 q.5 *dictum*, *Sg* 19b: “Quod deficientis accusatione non sit reus ad probationem cogendus.”

his innocence. What is not entirely clear is why the rubricator used an “ARG.” and *nota contra* to mark out important points instead of a simple *nota*. But, of course, if someone tried to systematize modern scholars’ and readers’ personal markings in books, many questions about consistency of usage would similarly emerge.

Later users more commonly added mini-glosses to pre-existing *nota* symbols or their own. Presumably the same user identified a text as an *Utile capitulum* early in the manuscript and another text as an *Utile quid* toward the end.⁴⁴ Likely in the same hand, an *appellatio* appears under a *nota* and beside the formula for making an appeal. This text is important for dating the manuscript, as Larrainzar has discussed in detail, since the names and the date in this form letter and the next have been changed in a way that is unique to *Sg*.⁴⁵ Possibly the same hand is responsible for other mini-glosses appended to his own *nota* symbols. Four simple glosses occur with *nota* symbols in the marriage *causae* (vulgate CC.27–36, which has comparatively fewer markings). The first, which reads *Nota diffinitionem*, was added next to the definition of marriage as the joining of man and woman having a single way of life.⁴⁶ The second reads *quartum digitum*, referring to the ring finger. The third reads *uouentes*, referring to those who have taken religious vows and are barred from contracting marriages.⁴⁷ The fourth adds a *nuptiae* to a *nota* at a canon that lists the times in the liturgical calendar when marriages should not be contracted.⁴⁸ In all these instances, with the exception of the noted definition of marriage, it is impossible to decipher why these particular passages attracted the notice of these users, and one cannot be sure why they sometimes added a term but usually added only a *nota*.

The additional annotations that are most interesting, perhaps, are the distinctions. At times, these are in the original hand of the scribe; sometimes they

44 See *Sg* 17a and 195a.

45 At C.3 q.6, *Sg* 55a [C.2 q.6 d.p.c.31]. See Larrainzar, “El borrador de la ‘Concordia’ de Graciano (n. 6),” 634–645. Larrainzar reads the marginal word as *appellationis littera*. Rather, it appears simply to read *appellatio* or *appellationem*. The unique bishop named in *Sg* is Lanfranc, bishop of Parma (1133–c.1160). The altered date in the next form letter is 1146, where other *Decretum* manuscripts read 1105.

46 At C.25 q.2, *Sg* 166a [C.27 q.2 d.a.c.1]: “Sunt enim nuptie uiri mulierique coniunctio indiuiduam uite c[onsuetudinem] c[ontinens].” The manuscript reads c. c. at the end. *edF* reads *consuetudinem retinens*. Likely the *Sg* scribe intended *continens* for the final word. The Digest text (Dig. 23.2.1.pr.1) reads, “Nuptiae sunt coniunctio maris et feminae et consortium omnis uitae, diuini et humani legis communicatio.” On this change, see also the essay by de León, “Formation of Marriage (in this volume).”

47 See *Sg* 175, at C.27 q.5 [C.30 q.5 c.7] and C.27 q.5 [C.30 q.5 d.p.c.8].

48 At C.30 q.4, *Sg* 185a [C.33 q.4 c.10].

are later additions. Sometimes, a word like *distinctio* or *bona distinctio* appears; at others, there is a concise summary of the distinction in the form of *aliud est ... aliud est....* A later hand, likely the same active in the places discussed in the previous paragraph, wrote *Nota quod aliud est prodere et aliud accusare*. The text comes from a *dictum* where Gratian is distinguishing proper legal accusation, when proof is at hand, from personal betrayal, when proof is lacking.⁴⁹ In this case, the words of the gloss come directly out of Gratian's text. The same hand noted a distinction on the issue of testation: those who entered a monastery and gave up their possessions no longer have the right to create a last will and testament, since they already gave away their things and cannot designate to give them to others; those who have lived solitary lives, perhaps even in a monastery, but have not yet given their possessions away, however, do retain the right to make a last will and testament.⁵⁰ A final example occurs in a marriage case involving a man who took a prostitute as a wife. The first question asks whether this can be done, and the same hand added *Nota distinctionem* in the margin beside the place where Gratian distinguished taking a prostitute as a wife and retaining one for one's pleasure but not as a wife.⁵¹ This particular user was interested in highlighting distinctions in Gratian's text.

While later users made several of the *distinctio* glosses, the main scribe and rubricator also wrote a few. The rubricator added a red *bona distinctio* beside a complicated text using Augustine to distinguish sin as guilt from sin as punishment in the context of a discussion of imputing sins to a person. The phrase appears a few lines below the same rubricator's "R" and a few lines above one of his *Nota* symbols, which also has the mini-gloss *quid sit peccatum*.⁵² Perhaps

49 C.3 q.7, *Sg* 58a [C.2 q.7 d.p.c.27]: "Aliud est enim prodere, aliud accusare; [prodit qui non probanda defert; accusat qui reo presente iudici crimen offert, probaturus quod intendit.]"

50 *Nota* and *distinctionem* at C.20 q.3, *Sg* 145b [C.19 q.3 d.p.c.8]: "Sed aliud est de his qui monasterium ingressi se et sua tradiderint, aliud de his qui solitariam uitam ducentes se nulli ecclesie dederint. [Illi namque semel tradita enuo alteri tradere nequeunt. Isti nulli oblata libere testari possunt.]"

51 At C.29 q.1, *Sg* 178b [C.32 q.1 d.p.c.13]: "Sed aliud est meretricem ducere, aliud meretricem retinere, cum alterum prohiberatur, alterum laudabiliter scribatur." The prostitute Rahab and the prophet Hosea's prostitute wife are brought forward as examples seeming to show that taking a prostitute as a wife is allowed and even praiseworthy.

52 "R" and *bona distinctio* at C.16 q.1, *Sg* 119a [C.15 q.1 d.a.c.1]: R: "Cui illud Augustini de uera religione obuiare uidetur, usque adeo peccatum uoluntarium malum est, ut nisi uoluntarium sit, nullo modo peccatum sit." Then comes the section marked by the *bona distinctio*: "hoc non de omnibus peccatis uidetur intelligendum. Nam quod ait Augustinus de illo peccato intelligendum est quod sic est culpa, quod non pena. [Quamuis et illa que tantum culpa sunt, non inmerito uoluntarium dicantur, quia uel a nescientibus uel coactis que perpetrantur, non omnino non uoluntaria possunt dici.]" Note that this text differs substantially from the version in *edF*. Then comes what is marked by the *Nota* and *quid*

the rubricator found this section particularly difficult, perhaps simply particularly instructive. In either case, he drew extra attention to the passage with these additional phrases. The main scribe in the latter sections of the manuscript seems himself to have made some similar annotations. At one place, he wrote a black “R” followed by this summary distinction: “An illicit act of swearing *ex re* is one thing, *ex modo* another.”⁵³ The point is that sometimes what one swears to do is illicit, and sometimes the way that one makes the oath is illicit. This gloss helps make sense of a lengthy *dictum* by drawing out one of its main points. Two pages later, the same scribe wrote a black *Bona distinctio* in the margin, which the rubricator later accented in red. In this section, Gratian distinguishes modes of making or receiving oaths, for it is one thing to swear cunningly and another to do so simply indicating one’s intention, and it is one thing to receive an oath simply and another to receive it with cunning.⁵⁴ In short, some of those originally copying the *Decretum* were intent to point out select distinctions. Gratian himself often used a *Distinktionstechnik* as part of his methodology; it was an important pedagogical and exegetical technique within early scholasticism for reconciling passages and understanding how different passages applied to different situations with different circumstances, emerging out of a long tradition of rhetoric and rhetorical methods.⁵⁵ The *Sg* scribes pursued similar methods.

5 Connection of *Nota* Symbols to Later Decretist Genres

These mini-glosses in *Sg* appended to the *nota*, as well as the *nota* and other symbols themselves, should be recognized as early precursors to later decretist genres. The *nota* symbols developed into *notabilia*, entire works devoted to listing significant points from the *Decretum*. Most broadly, this might be considered to include lists of rubrics. In a narrow sense, this genre consisted of sentences extracted from the *Decretum* that presented abstract formulations

sit peccatum, at C.16 q.1, *Sg* 119a [C.15 q.1 d.a.c.1]: “Item in eodem: Peccatum est uoluntas retinendi uel consequendi que iusticia uetat unde liberum est abstinere. [Unde uerum est quod diffinitur, quod tantum peccatum est, non etiam quod pena.]”

53 C.23 q.4, *Sg* 155b [C.22 q.4 d.p.c.23 §4]: “Aliud ex re aliud ex modo iurandi illicitum.”

54 C.23 q.5, *Sg* 157b [C.22 q.5 d.p.c.13]: “Aliud est enim callida uerborum arte iurare, aliud suam intentionem simpliciter iurando enuntiare; similiter quos aliud est iuramentum simpliciter accipere, aliud calliditatem in recipiendo adhibere.”

55 Christoph H.F. Meyer, *Die Distinktionstechnik in der Kanonistik des 12. Jahrhunderts: Ein Beitrag zur Wissenschaftsgeschichte des Hochmittelalters*, Mediaevalia Lovaniensia Series 1, 29 (Leuven, 2000). On definitions and distinctions as basic elements of the methods of rhetoric and as applied to the study of Roman law, in ancient jurists and in Irnerius and later glossators, see Paradisi, “Il metodo dialettico (n. 1),” *passim*, and esp. 627.

or general principles.⁵⁶ Some *notabilia* opened with the words *Argumentum quod* or *Argumentum contra*.⁵⁷ As Kuttner notes, it is logical that these originated in *nota* symbols in manuscripts of the *Decretum*, and such markers certainly were applied to various texts prior to Gratian's *Decretum*. Scholars have long observed how these could emphasize summary statements within a passage to serve as a rubric in addition to marking key passages in already fully rubricated copies of the *Decretum*.⁵⁸ In *Sg*, as we have seen, a *nota* could mark a summary statement of a particular canon or indicate main points in Gratian's argument in his *dicta*; beginning about a third of the way through the text, an "R" more clearly indicated general principles or maxims. The *Sg* scribes also used *Argumentum* and *Nota contra*, as explained above.

The symbols with the *distinctio* notations connect to another genre, that of *distinctiones*. As Kuttner observed, this genre represents a method and form of scientific thinking common to all medieval knowledge; it can be attributed to, in Paradisi's terminology, "the rhetorical culture, widely diffuse for centuries."⁵⁹ The decretist *distinctiones* could become very elaborate, sometimes presented in table or schematic form, with branches and sub-branches of concepts, with references to the text in the *Decretum* that defined or explained each one. In *Sg*, we simply see scribes and users drawing attention to some of the distinctions that Gratian himself had made. Such notations were essential first steps in the direction of the more sophisticated and comprehensive analytical works of the later twelfth century.⁶⁰ In sum, the markings of *Sg* place the

56 Stephan Kuttner, *Repertorium der Kanonistik, 1140–1234: Prodomus corporis glossarum*, Studi e testi 71 (Vatican City: Biblioteca Apostolica Vaticana, 1937), 232–233; Stephan Kuttner, "Réflexions sur les brocards des glossateurs," in *Mélanges Joseph de Ghellinck, SJ* (Gembloux, 1951), vol. 2, 767–792, at 770–771 (repr. in *Gratian and the Schools of Law, 1140–1234*, 2nd edition, ed. Peter Landau (London: Routledge, 2018), 251–271, at 253–254); Kenneth Pennington, Wolfgang Müller, "The Decretists: The Italian School," 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, Kenneth Pennington (Washington DC, 2008), 121–172, at 162–163.

57 See examples *Argumentum a minori*, in Fulda, Landesbibliothek D.10, fol. 82–87; *Argumentum quod religiosi*, in Cambridge, Pembroke College *101, fol. 56–61; and *Argumentum contra religiosos*, in Città del Vaticano, Biblioteca Apostolica Vaticana, Borgh. 287, fol. 10 (Kuttner, *Repertorium der Kanonistik* (n. 56), 135–137).

58 Kuttner, *Repertorium der Kanonistik* (n. 56), 3–4.

59 Kuttner, *Repertorium der Kanonistik* (n. 56), 209; Pennington, Müller, "The Decretists (n. 56)," 161–162. Paradisi, "Il metodo dialettico (n. 1)," 624.

60 See, e.g., Città del Vaticano, Biblioteca Apostolica Vaticana, Pal. lat. 653, fol. 117v–128v, containing the *distinctiones* of Petrus Blesensis, which appears in paragraph form with marginal *allegationes* to the *Decretum*. An example of a schematic *distinctiones* is Ricardus Anglicus's as found, for instance, in Vat. lat. 2691, fol. 1–20. This manuscript was

scribes and users of it in the main trajectory of decretist scholarship on the *Decretum*, at its earliest stages.⁶¹ That scholarship would, within half a century, transform legal knowledge, as Stephan Dusil has recently argued, into a “relational *Rechtswissen*,” fashioning an entire, unified system of law out of the complex presentation of Gratian’s textbook.⁶² As a cultural artifact, then, *Sg* demonstrates early scribes’ active absorbing of the content and argumentation of Gratian’s textbook, in a way that would become fundamental to more advanced study of and commentary on it; all of this activity transformed how practitioners of canon law learned and thought about individual *canones* and how they related to one another within a legal system.

6 Conclusion: What the *Sg* Scribes Found Noteworthy

While it is comparatively easy to analyze how the simple marginal notations functioned in *Sg*, it is less easy to decipher if their placement and frequency corresponds to heightened interest in the specific topics and norms that they mark. It is possible, after all, that the original scribes simply utilized more *nota* and other symbols when the exemplar they were copying had fewer rubrics, not necessarily because the content of those sections attracted their interest more. Appendix 1 tabulates the original markings and later additions in each *causa* of *Sg* and calculates the average number of symbols per page in each *causa*.⁶³ An average number equal to or greater than 3 is considered high; an average number under 0.5 is considered low. Appendices 2–3 take the *causae* with the greatest and lowest frequency of original symbols, respectively, and identify their rubric cluster as categorized by Eichbauer.⁶⁴ The data is not clear-cut, but, in general, with some exceptions, a higher frequency of *nota* and “R” symbols occur in *causae* where fewer than 50% of the canons

the foundational one for the edition in Giulio Silano, *The Distinctiones decretorum of Ricardus Anglicus*, PhD dissertation (University of Toronto, 1981).

- 61 See Viejo-Ximénez, “The *Exserpta* in the Origins of the Science of Canon Law (in this volume)” for substantial connections to early decretist scholarship. In other words, not just method but actual content is shared between *Sg* and early decretist literature.
- 62 Stephan Dusil, *Wissensordnungen des Rechts im Wandel: Päpstlicher Jurisdiktionsprimat und Zölibat zwischen 1000 und 1215* (Leuven, 2018), esp. at 413–468.
- 63 “Original” is taken to mean, by my best determination, which symbols were made by the scribes copying the main text or the rubrics, inscriptions, and initials. These symbols may be in red (much more common in earlier parts of the manuscript) or black (more common in later parts of the manuscript).
- 64 Eichbauer, “St. Gall, Stiftsbibliothek 673 and the Early Redactions of Gratian’s *Decretum* (n. 9)”.

have rubrics (Eichbauer's clusters A, B, and C). This is the case in five out of seven (72%) of the *causae* with the highest frequency of original annotations. The data is more mixed for the *causae* with the lowest frequency of original annotations, among which six out of the ten (60%) are *causae* where more than 50% of the canons have rubrics. In general, then, there is not an obvious or strong correlation of more rubrics with fewer original annotations or fewer rubrics with greater numbers of original annotations. The data tends only slightly toward this conclusion. The inconclusive results suggest, then, that their markings did not simply fill in the function of rubrics when rubrics were absent.

In other words, content – not just the presence of rubrics or lack thereof – did play at least some role in what the scribes chose to highlight; the scribes seem to have been interested more in some topics than in others, and they marked what interested them with a *nota* or “R” or mini-gloss. Perhaps most significantly, all the *causae* with a higher frequency of original *nota* and “R” symbols fall within the middle third of this copy of the *Decretum*, sections with an emphasis on procedure and ecclesiastical property. Taking a frequency of two symbols per page as a minimum, all of the *causae* that meet this requirement, a total of eleven, fall between C.4 and C.18 (*Sg* 73–144, out of 201 pages), and only a few *causae* within that section do not meet the requirement. Perhaps the scribes at work on this section were particularly active; it is also possible that they had particular interest in matters of judicial procedure and just judgments within ecclesiastical discipline and matters pertaining to the administration of church and monastic property. The original *Sg* scribes certainly seem to have had far less interest in issues of marriage. No marriage *causa* appears among the group of *causae* with the highest frequency of original *nota* and ‘R’ symbols, while six of the nine marriage *causae* present in the manuscript (66%) fall within the group with the lowest frequency of them. Later users did make numerous *nota* markings in these *causae*, but the original producers seem to have had little reason to pay close attention to Gratian's treatment of marital matters.

No matter their individual interests, all the scribes involved in writing these simple annotations demonstrate how teachers and students of Gratian's text began to digest it and transmit it for their own and others' benefit. They were active readers of Gratian's text, not mindless copyists. These anonymous scribes participated in the nascent canonistic science emerging from reflection on Gratian's *Decretum*. What the *Sg* scribes perhaps found most noteworthy in Gratian's text, then, were the scholastic methods on display within it, which they then imitated as they indirectly, through their simple marginal notations, fashioned rubrics, laid out arguments pro-and-con, synthesized

various claims into general rules, turned statements in particular cases into abstract principles, and distinguished related concepts that would help harmonize discordant canons.

In short, *Sg* constitutes a manuscript witness to the pedagogical and methodological import and impact of Gratian's work. What at first glance may appear to be simple marks in the margins of a manuscript upon closer inspection emerge as tools for the sophisticated reading of the text: tools for instructing and comprehending main ideas, tools for dissecting complicated arguments, tools for extracting normative general principles, and tools for distinguishing when different facts of the case warranted the application of different laws or the same laws in different ways. These were the tools, forged out of long-standing rhetorical practice and applied in new ways to the church's canons, that were employed to build canonistic science and jurisprudence in the decades to come.

Appendix 1: *Nota* and "R" Symbols in *Sg* by *Causa*

Note: The term "original" indicates the same black or red ink was used as for the main text or its rubrics/inscriptions/initials.

<i>Sg</i> Causa [Vulgate Causa]	# of pages in <i>Sg</i> (rounded to nearest quarter)	# of original <i>Nota</i>	# of original "R" (plus profiles, "F")	# of <i>Nota</i> added later	# of "R" added later	Avg. # of original symbols per page	Avg. # of later symbols per page
<i>Sg</i> C. prima [<i>distinctiones</i>]	26	15	0	8	0	0.58	0.3
<i>Sg</i> C.2 [C.1]	16	9	0	9	0	0.56	0.56
<i>Sg</i> C.3 [C.2]	21.5	10	1	13	0	0.47	0.6
<i>Sg</i> C.4 [C.3]	6.75	7	0	0	0	1.04	0
<i>Sg</i> C.5 [C.4]	1.25	3	1	0	0	3.2	0
<i>Sg</i> C.6 [C.5]	3	7	2	0	0	3.0	0
<i>Sg</i> C.7 [C.6]	3	5	0	0	0	1.67	0
<i>Sg</i> C.8 [C.7]	4.5	2	0	0	0	0.44	0
<i>Sg</i> C.9 [C.8]	3	6	0	0	0	2.0	0
<i>Sg</i> C.10 [C.9]	2.5	5	0	0	0	2.0	0
<i>Sg</i> C.11 [C.10]	3	7	4	0	0	3.67	0

(cont.)

<i>Sg</i> Causa [Vulgate Causa]	# of pages in <i>Sg</i> (rounded to nearest quarter)	# of original <i>Nota</i>	# of original "R" (plus profiles, "F")	# of <i>Nota</i> added later	# of "R" added later	Avg. # of original symbols per page	Avg. # of later symbols per page
<i>Sg</i> C.12 [C.11]	9.5	21	20	0	0	4.32	0
<i>Sg</i> C.13 [C.12]	10	24	9	2	0	3.33	0.2
<i>Sg</i> C.14 [C.13]	6	7	2	1	0	1.5	0.17
<i>Sg</i> C.15 [C.14]	3	4	4	2	0	2.67	0.67
<i>Sg</i> C.16 [C.15]	5	17	9	0	0	5.2	0
<i>Sg</i> C.17 [C.16]	15.5	23	11	15	8	2.19	1.23
<i>Sg</i> C.18 [C.17]	2.25	0	0	3	1	0	1.78
<i>Sg</i> C.19 [C.18]	2.5	7	2	1	0	3.6	0.4
<i>Sg</i> C.20 [C.19]	1.5	2	0	2	2	1.33	2.67
<i>Sg</i> C.21 [C.20]	2.25	1	0	1	0	0.44	0.44
<i>Sg</i> C.22 [C.21]	2	1	0	1	1	0.5	1.0
<i>Sg</i> C.23 [C.22]	8.75	16	7	5	3	2.62	1.49
<i>Sg</i> C.24 [C.23]	6.5	4	0	2	1	0.62	0.46
<i>Sg</i> C.25 [C.27]	5.25	4	3	0	6	1.33	1.14
<i>Sg</i> C.26 [C.29]	1.5	0	0	0	0	0	0
<i>Sg</i> C.27 [C.30]	4.5	2	0	4	1	0.44	1.11
<i>Sg</i> C.28 [C.31]	1.5	1	0	0	0	0.67	0
<i>Sg</i> C.29 [C.32]	3	1	0	2	0	0.33	0.67
<i>Sg</i> C.30 [C.33]	5	3	0	2	0	0.6	0.4
<i>Sg</i> C.31 [C.34]	1.75	0	0	0	0	0	0
<i>Sg</i> C.32 [C.35]	11.5	5	0	5	0	0.43	0.43
<i>Sg</i> C.33 [C.36]	2.5	1	0	1	0	0.4	0.4

Appendix 2: Highest Frequency of Original Symbols per Vulgate Causa, Compared to Eichbauer’s *Sg* Rubric Clusters

Cluster A = 0–3% of canons have rubrics
 Cluster B = 5–19% of canons have rubrics
 Cluster C = 26–43% of canons have rubrics
 Cluster D = 55–75% of canons have rubrics
 Cluster E = 80–86% of canons have rubrics

<i>Causae</i> with > or = 3 symbols/page	Avg. # of symbols per page	Rubric cluster
C.4	3.2	E
C.5	3.0	B
C.10	3.67	D
C.11	4.32	C
C.12	3.33	B
C.15	5.2	A
C.18	3.6	B

**Appendix 3: Lowest Frequency of Original Symbols per Vulgate
Causa, Compared to Eichbauer's *Sg* Rubric Clusters**

Cluster A = 0–3% of canons have rubrics

Cluster C = 26–43% of canons have rubrics

Cluster B = 5–19% of canons have rubrics

Cluster D = 55–75% of canons have rubrics

Cluster E = 80–86% of canons have rubrics

<i>Causae</i> with < 0.5 symbols/page	Avg. # of symbols per page	Rubric cluster
C.2	0.47	E
C.7	0.44	D
C.17	0	A
C.20	0.44	A
C.29	0	D
C.30	0.44	E
C.32	0.33	C
C.34	0	A
C.35	0.43	D
C.36	0.4	D

Teaching Canon Law in the Early Twelfth Century: The Evidence of Sankt Gallen, Stiftsbibliothek, 673

Kenneth Pennington

1 Introduction

Ever since Carlos Larrainzar announced his discovery of Sankt Gallen, Stiftsbibliothek, 673 and argued that it was a first stage of Gratian's *Decretum*, scholars have debated his conclusions as they have explored this manuscript further.¹ Some have been convinced it is an abbreviation. Others, including me, believe it represents a redacted version of an early draft of Gratian's *Concordia discordantium canonum*.² The manuscript and textual evidence we have indicates that there were other "drafts" of the *Decretum* that are no longer extant. As I have written before if someone produced the St. Gall manuscript by abbreviating a pre-Vulgate version of Gratian's text he was almost impossibly clever. The "anomalies" that have been cited to prove the manuscript was an abbreviation are few, insignificant, and open to other explanations. Further, if there were an abbreviator he worked from a pre-Vulgate manuscript of the *Decretum* that no longer exists. The parts of the pre-Vulgate versions of Gratian that Winroth

1 Carlos Larrainzar, "El borrador de la 'Concordia' de Graciano: Sankt Gallen, *Stiftsbibliothek* MS 673 (=Sg)," *Ius ecclesiae* 11 (1999), 593–666.

2 For this discussion among scholars see Anders Winroth, *The Making of Gratian's Decretum*, Cambridge Studies in Medieval Life and Thought, 4th ser., 49 (Cambridge, 2000). See Melodie H. Eichbauer, "Gratian's Decretum and the Changing Historiographical Landscape," *History Compass* 11/12 (2013), 1111–1125 for the most recent discussion of the historiographic problems discussed in the recent literature with a rich bibliography. The most recent biography of Gratian is Orazio Condorelli, "Graziano," *Dizionario dei giuristi italiani (XII–XX secolo)*, ed. Italo Birocchi, Ennio Cortese, Antonello Mattone, Marco Nicola Miletta, 2 vols. (Bologna, 2013), 1.1058–1061; Kenneth Pennington, "The Biography of Gratian, the Father of Canon Law," in *A Service Beyond all Recompense: Studies Offered in Honor of Msgr. Thomas J. Green*, ed. Kurt Martens (Washington D.C., 2018), 359–391; 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 11 (Washington, D.C., 2014), and John Wei, *Gratian the Theologian*, Studies in Medieval and Early Modern Canon Law 13 (Washington, D.C., 2015).

discovered (Florence *Fd*, Paris *P*, Admont *Aa*, and Barcelona *Bc*) which are omitted from the Sankt Gallen manuscript are too extensive to be labelled an abbreviation. Gratian's *Tractatus de legibus* was a key component of the pre-Vulgate and Vulgate texts. It is hard to imagine why an abbreviator would have eliminated that text. *Sg* also did not contain distinctions 80–99 which had material on clerical discipline that the abbreviator would have found pertinent for his *Causa prima* but was, as Rudolf Weigand noted, “an epilogue to the earlier distinctions on ‘de ordinatione’ and was most likely not a part of earlier stages of the distinctions.”³ This is a crucial and perhaps the most convincing piece of evidence that St. Gall could not be an abbreviation of the texts in Florence, Paris, Barcelona or Admont. No abbreviator could have known that Gratian had probably added these distinctions after he had composed a yet undiscovered version of the *Decretum*, but one whose existence is attested by *Sg*.

Sg did not contain all of the *causae*. It omitted *Causa 24* in which Gratian treated heretical bishops, *Causa 25* on privileges that offered protection to ecclesiastical institutions, and *Causa 26* on divination. These were very important topics. One is hard-pressed to understand why an abbreviator would have omitted them if he had been working with a text that contained these *causae*. One is also hard-pressed to understand why an abbreviator would have invested the enormous labor into creating *Sg*'s unique *Causa prima* from distinctions 27 to 79 with a brief dictum from distinction 101. No other extant abbreviation exhibits such anomalies. These are the most significant reasons for my considering *Sg* a very important stage in the development of Gratian's *Decretum*. It is also further proof that Gratian worked and taught over a long period of time.

In this essay I will focus primarily on the evidence contained in the margins of *Sg* to answer these questions: How long and where was the manuscript used to teach canon law? What were the sources that these early teachers had to supplement the contents of *Sg*? What was the relationship of this version of Gratian's *Decretum* to the other pre-Vulgate manuscripts and to the Vulgate manuscripts of the *Decretum*? Can we find any textual influences of St. Gall and the pre-Vulgate versions of the *Decretum* in the later textual traditions?

3 This omission is particularly important; see my remarks in “Gratian, *Causa 19*, and the Birth of Canonical Jurisprudence,” in *Panta rei: Studi dedicati a Manlio Bellomo*, ed. Orazio Condorelli, 5 vols. (Rome, 2004), 4:339–355, at 351–353.

2 Gratian's Teaching Methodology

The first question to consider is what does *Sg* tell us about Gratian's teaching methodology? We have known part of the answer to that for centuries: Gratian used hypotheticals and dialectical explorations of the sources to establish a methodological basis for the new discipline. The *causae* were Gratian's stroke of genius. If we may judge by the manuscript evidence, his early attempts to construct hypotheticals did not produce promising classroom texts. In *Sg* the compiler crafted a hypothetical on clerical discipline that he called *Causa prima* in which he posed three simple questions; however, he clogged his answers with over two hundred contradictory canons. His second attempt when he composed *Causa secunda* in *Sg* was not much better. He asked seven questions about the crime of simony and required his students to consider over one hundred texts. The third *causa* treated another pressing concern in the first half of the twelfth century, the norms and rules for procedure in the courts. In St. Gall this *causa* is one quarter longer than the previous one on simony. Although these three topics were of great importance in the first half of the twelfth century, the length at which the issues were belabored would have tested the patience of even the most devoted student. Only the *causae* on tithes C.17 (16) and marriage C.32 (C.35) approach the first three in length in *Sg*. What do the length of the *causae* indicate? They can and do give evidence about the topics that were important to the compiler. They give some indication about how the *causae* were used in the classroom. They also demonstrate how Gratian gradually refined his methodology.

3 *Sg*'s Use in the Classroom: Glosses

Sg's use in the classroom can be seen in the margins and falls into three categories of notations: glosses, Roman law, and canonical texts. There are a set of glosses that are written in the same hand citing relevant canons in different parts of the St. Gall manuscript. They cite the canons as they appear in *Sg*, not in other recensions of the *Decretum*.

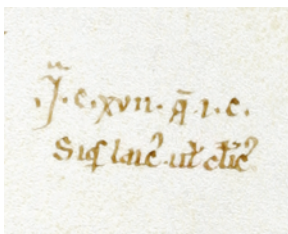


FIGURE 8.1

Sg III: C.17 (C.16) q.1 c.42

Infra causa xvii. quaestio i. capitulum Siquis laicus uel clericus

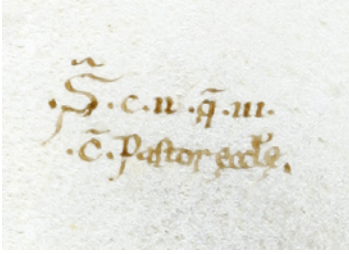


FIGURE 8.2

Sg 115: C.2(C.1) q.2 c.7

Supra causa ii. Quaestio iii. c. Pastor aecclesae

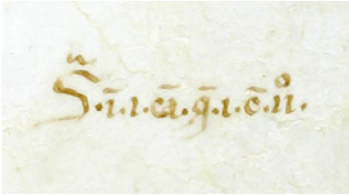


FIGURE 8.3

Sg 165: Causa prima q.1 c.2

Supra in prima causa quaestio i. c.ii

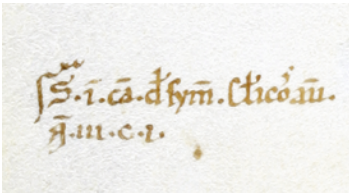


FIGURE 8.4

Sg 102: C.2 (C.1) q.2 c.6, q.3 c.1

Supra in causa de symonia, Clericos autem, quaestio iii. c.i

Two especially interesting glosses cite the *causae* by name and by content, *Causa prima* and *De symonia*. If the later versions of Gratian's *Decretum* were circulating when these glosses were written, their format is difficult to explain.

I will present evidence below that *Sg* must have been used to teach in a significant center for the study of law. It is impossible to know where but could not have been in a provincial center for reasons that I will outline shortly. If I am right, these citations raise interesting questions. If later versions of Gratian's *Decretum* were circulating at the time these glosses were written, why were these canons not cited as they are in the expanded, later recensions of Gratian's texts? An obvious but not conclusive explanation would be that the expanded version did not yet exist when these glosses were written.

The method of citing legal texts in the books of Roman law and in the *Decretum* is a very good guide to the age of a manuscript, much better than the script or the illuminations. Figures 8.1–8.4 illustrate that the glosses citing the *Decretum* in the margins of *Sg* are very early paleographically. Especially striking and unusual are the cedillas under “q.” to signify the “ae” – diphthong in *quaestio* that reveal an early form of allegation. This “style” of the glosses is also more primitive than the later, standard style that the jurists adopted. We can observe similar “non-standard” styles when Roman law jurists cited the

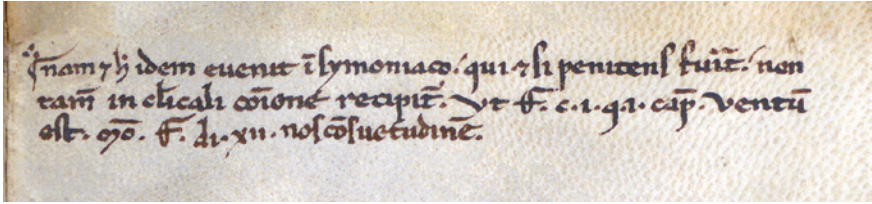


FIGURE 8.5 Justinian: Stuttgart, Württembergische Landesbibliothek, Cod. iur. 2° 71, fol. 13r
ut D. c.i q.i cap. Ventum est. Mon. D. di. xii. Nos consuetudine

Decretum in a Stuttgart manuscript of Justinian's *Codex* before the standard style emerged ca. 1135–1140. The scribe used a capital “D” very similar to the capital “D” used to refer to Justinian's *Digest* to cite the *Decretum*.

Dolezalek dates the Stuttgart manuscript to the first half of the twelfth century and attributes the siglum *Mon.* cited in the text to several possible jurists, but without any certainty.⁴ A reference to Roman law in the margin of *Sg* also reflects the style used only in the first half of the twelfth century. In a reference to Justinian's *Codex* the annotator wrote:

In viiii. libro cod. titulo de calumpniatoribus, Imperatores Honorius et
Theodosianus (Cod. 9.46.10)
[See below Figure 8.14.]

The canonists no longer used this form of citation after 1140–1150.

References to Roman law in the early recensions of the *Decretum* in Barcelona and Admont manuscripts reflect early, non-standard forms of citations to Roman law but do not conform to the earliest methods of citation that are found in other twelfth-century legal texts.⁵ In any case the legal citations in the margins of *Sg* are good evidence for dating it to the first half of the twelfth century.

Most of the glosses to *causae* 2 through 33 ignore other recensions, but the running headers were changed throughout the manuscript so that readers would know which *causae* in *Sg* corresponded to the augmented *causae* in the

4 Gero Dolezalek, *Repertorium manuscriptorum veterum Codicis Iustiniani*, Ius Commune, Sonderhefte 23, 2 vols, (Frankfurt am Main, 1985) 1.392–404, at 398–399. Dolezalek describes the earliest forms of Roman law citations in some detail on pages 1.466–469.

5 Barcelona, Arxiu de la Corona d'Aragó Ripoll, 78, fol. 184va; Admont, Stiftsbibliothek, 23, fol. 9va; In two essays I have illustrated the various early forms of citation: Kenneth Pennington, “The Birth of the Ius commune: King Roger II's Legislation,” *Rivista internazionale del diritto comune* 17 (2006), 1–40; Kenneth Pennington, “The *Constitutiones* of King Roger II of Sicily in Vat. lat. 8782,” *Rivista internazionale di diritto comune* 21 (2010), 35–54.

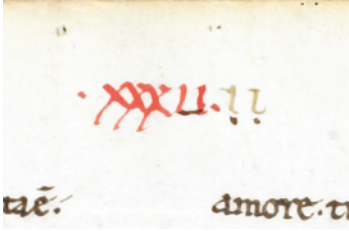


FIGURE 8.6
Sg 193: C.32 = C.35 post correctionem

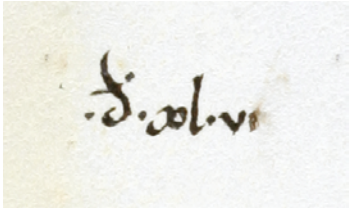


FIGURE 8.7
Sg 14 (detail)

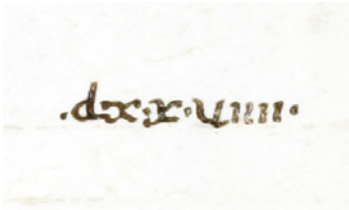


FIGURE 8.8
Sg 5 (detail)

later versions. Several different hands identified the canons in *Causa prima* and informed readers where these canons were located in the later recensions' Distinctions. This is evidence that *Sg* was still used and considered to be useful when Pre-Vulgate and perhaps, less likely, Vulgate recensions of the *Decretum* were circulating around it.

Generally, the running titles were altered by erasure but, as in this example, also by rather crude corrections. The allegations to the canons in the distinctions were written by hands that exhibit varying degrees of skill and sophistication but show that they were done over a period of time: They were not only done over time, but they were all non-standard citations, with a simple "d" preceding the number. The references to the distinctions in the margins of Barcelona, Arxiu de la Corona d'Aragó Ripoll, 78, fol. 122v conform to the style prevalent ca. 1140–1150, that is di. xxvii, but the Admont citations do not, indicating that Admont's glosses may be earlier than Barcelona's.

It is easy to understand why later teachers or students wanted to know where the texts in *Sg* could be found in the later versions of the *Decretum*. It is more difficult to understand why the original compiler of *Sg* would have introduced his own numbering scheme – unless the later versions did not yet

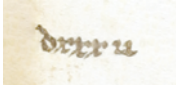


FIGURE 8.9
Sg 10 (detail)

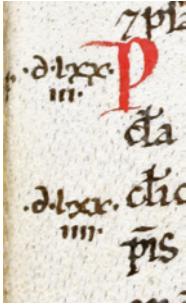


FIGURE 8.10
Sg 27 (detail)

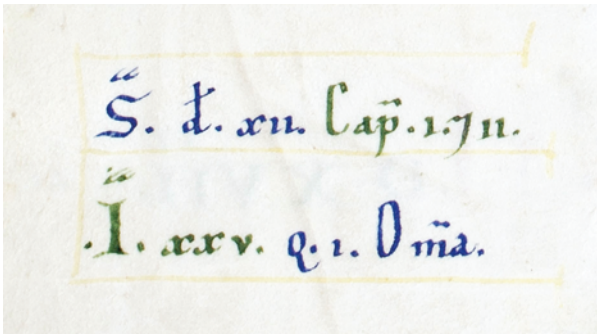


FIGURE 8.11
Admont, Stiftsbibliothek
23, fol. 22v
Supra d. xii. cap. i. et ii.

exist. That fact is another piece of evidence that *Sg* is not an abbreviation of a pre-Vulgate Decretum.

4 Additions of Roman Law

There were significant additions of Roman law to the margins of the manuscript. It is particularly noteworthy that the *authenticae* were added. The great Roman law jurist Imerius was responsible for crafting the earliest *authenticae* from Justinian's *Novellae*, and they were added to manuscripts of the Justinian's *Codex* and *Institutes*.⁶ In his final version of his *Decretum*, Gratian included ca. 30 *authenticae*. Five *authenticae* were added to *Sg*, and their texts also

⁶ Kenneth Pennington, "The Beginning of Roman Law Jurisprudence and Teaching in the Twelfth Century: The *Authenticae*," *Rivista internazionale di diritto comune* 22 (2011), 35–53.

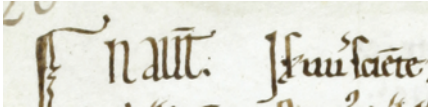


FIGURE 8.12
Sg 20 (detail)

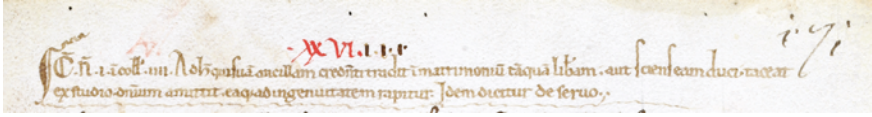


FIGURE 8.13 Sg 171: C.26 (C.29), Authentica *Ad hec qui suam ancillam* to Cod. 7.6.1 (Nov. 22.11), Rubric: *Constitutio nova i. collation iii.* (Authen. 4.1=Nov. 22.1) <*De nuptiis*>

provide evidence that these additions were made over a period of time.⁷ Two of them do not have rubrics that would identify them as *authenticae* (Sg 15 and Sg 136). One has a rubric that is typical of the earliest *authenticae* in the earliest *Codex* manuscripts. When Irenaeus' *authenticae* were first placed in the margins of *Codex* manuscripts, they were given the rubric "C.N." for *Constitutio nova* or "In aut." for *In Authentico*.

The missing letter in the rubric is probably a capital "I" but could have been a "C."⁸ As the *authenticae* were added to the manuscripts the jurist added more information about the place of the *authenticae* in the *Authenticum*, the mysterious collection of Justinian's *Novellae*.⁹ Two *authenticae* that have these later rubrics are in the margins of Sg. They are further evidence that Sg was used to teach canon law over an extended period of time. The most interesting *authentica* was added to C.26 (C.29).

It is an *authentica* that Gratian should have or could have added to *Causa* 29 but did not. It was a central issue for Gratian's hypothetical. The *authentica* established that if an owner tacitly consented to his servant girl's marrying a free man, the girl became free. Gratian had discussed the case of a male slave's marrying a free and noble woman in *Causa* 29. He never raised the question

7 Sg 15, 20, 68, 136, 171.

8 Franck Roumy's edition of a collection of *authenticae* in Paris, Bibliothèque nationale, lat. 3922A shows that the compiler alternated between "C.N." and "In aut." See Franck Roumy, "Une collection inédite d'authenticae composée en Normandie à la fin du XII^e siècle," in *Novellae constitutiones: L'ultima legislazione di Giustiniano tra Oriente e Occidente, da Triboniano a Savigny: Atti del Convegno Internazionale, Teramo, 30–31 ottobre 2009*, ed. Luca Loschiavo, Giovanna Mancini, Cristina Vano, Università Degli Studi Di Teramo, Collana della Facoltà di Giurisprudenza 20 (Naples, 2011), 155–204. The *authenticae Ad hec qui suam ancillam* appears in that collection at 188.

9 Hermann Lange, *Römisches Recht im Mittelalter*, vol. 1: *Die Glossatoren* (München, 1997), 82–85.

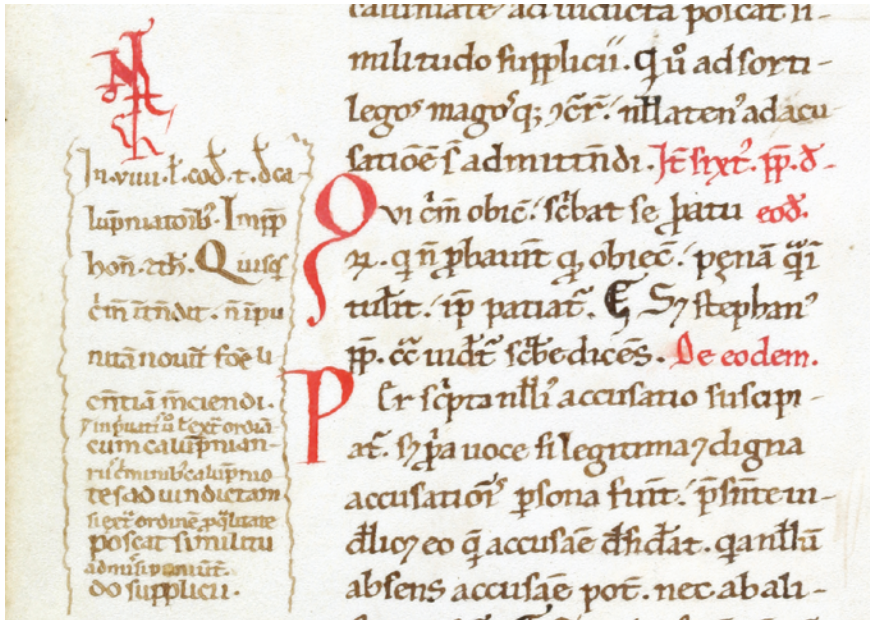


FIGURE 8.14 Sg 66: C.3 (C.2) q.8 c.4
In viiii. libro cod. titulo de calumpniatoribus, Imperatores Honorius et
Theodosianus (Cod. 9.46.10)

about the slave's master's rights in his discussion. It was certainly an issue for deciding whether the marriage was legitimate. The addition, *Idem dicitur de seruo*, to the *authentica* is present only in the later manuscripts and clarified a remaining issue, whether a male slave would gain his freedom if he contracted marriage with a free woman with the tacit consent of his owner.¹⁰ The addition confirmed that a slave was also free if he or she married a free person with the owner's tacit consent. Further, not only the script of the *authentica* is later than the other *authenticae*, but the rubric conforms to how the *authenticae* were entered into later *Codex* manuscripts.¹¹ It is significant that the marginal addition in Sg is the later version of the *Ad hec qui suam ancillam* text, not the earlier one. This text is yet another piece of evidence that the manuscript was used for a long time in the classroom.¹²

10 And the phrase is not present in the collection of *authenticae* that Roumy edited (Roumy, "Collection inédite (n. 8)," 193).

11 The *authentica* on Sg 68 also has these characteristics.

12 Pennington, "The Authenticae (n. 6)," 44–45.

Gratian and the canonists often used texts of Roman law to explain and to justify the canons. They taught their students that the authority of Roman law complemented and enhanced canonical jurisprudence.¹³ There is a splendid example in the margin of *Sg* as well as a primitive form of citation to Justinian's *Codex* (Figure 8.14).

Two Roman law texts were put in the margin next to a canon attributed to Pope Sixtus that was taken from the *Pseudo-Isidorean Decretals*. The forgers also included the same text in a letter attributed to Pope Fabianus that circulated widely in the pre-Gratian canonical collections. There is a third canon related to a text that Gratian attributed to Pope Adrianus that also had its origins in Pseudo-Isidore.¹⁴ Where Gratian got the canon with the Adrianus inscription is impossible to say. No other canonical collection attributed this Pseudo-Isidorian text to a Pope Adrianus. All three texts are included in *Sg* and illustrate the creative editorial practices of the early twelfth-century canonists. Sixtus' text in *Sg* and the other two canons made the point that an accusation that failed was subject to the penalty of the *lex talionis*. The text from the *Codex* warned litigants not to lie when they brought accusations.¹⁵ Another short text from the *Digest* was entered between the lines of the *Codex* text as an interlinear gloss. However, it is not a gloss, but an exact quote from the *Digest*. In it the jurist Paul admonished those who brought accusations not to make them with calumny.¹⁶ These Roman law texts were useful to illustrate the close connection between the principles of Roman and canonical jurisprudence.

5 Canonical Texts

Canonical texts were also added to the margins. Their purpose was to supplement *Sg* and to clarify or to extend and expand arguments. Three canonical texts added to C.17 (C.16), a causa on tithes, are a good case study.

13 Kenneth Pennington, "Legista sine canonibus parum valet, canonista sine legibus nihil," *BMCL* 34 (2017), 249–258.

14 *Decretales Pseudo-Isidorianae et Capitula Angilramni*, ed. Paul Hinschius (Leipzig, 1863), JK † 397, 168 and 563. The three letters, all with the incipit *Qui crimen* are C.2 q.8 c.4, C.3 q.6 c.1, and C.3 q.6 c.18 with the inscriptions of Sixtus, Fabianus, and Adrianus respectively. C.3 q.6 c.1 with the same incipit is found only in *Deusededit* 1.61 but with a longer text.

15 *Cod.* 9.46.10.

16 *Dig.* 48.16.3: "Et in privatis et in extraordinariis criminibus calumpniosi extra ordinem pro qualitate admissi plectuntur (MS: paniuntur male)."

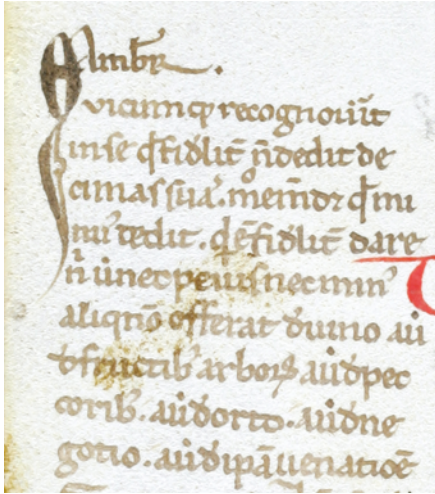


FIGURE 8.15
Sg 138: C.17 (C.16) q.1 c.1 Margin

The first additional marginal text (Figure 8.15) is from Ambrose and is not found in the Florence, Paris, and Barcelona manuscripts. It only appears in Admont 43, fol. 34v and became C.16 q.7 c.4 in the Vulgate Gratian.¹⁷ The inscription and the text of the canon is different from the Vulgate and that makes it unlikely that it was taken from a Vulgate manuscript. The second marginal addition (Figure 8.16) is the second half of C.16 q.7 c.5 in the Vulgate. In Gratian and 16 other collections of canon law it is transmitted as the second half of *Omnes decimae* (c.5), *Sed quia modo – congruam*, and is uniformly attributed to *Ex concilio Rotomagensi*. Only one collection has it as a separate canon. There it is identified as *Ex concilio Romano*. The marginal addition in *Sg* has the inscription *Item concilium Tolletanum*. That inscription is found in no other collection. Consequently, the canon could not have been taken from a pre-Vulgate or Vulgate Gratian. That is also evidence that *Sg* was being used in the classroom before those later versions of Gratian's text circulated and that the person who inserted this text in the margin must have had an extensive collection of texts from which this text was taken.

The last marginal addition is the most intriguing. The notation in the margin indicates that a text with the incipit of *Pervenit* (Figure 8.16) was to be inserted into Gregory VII's conciliar canon, *Decimas quas in usum*.¹⁸ There is no

17 It is not found in any of the other pre-Vulgate Gratian manuscripts. In addition, c.5–7 are also found in Admont and not in the other pre-Vulgate manuscripts.

18 C.17 q.7 c.1.

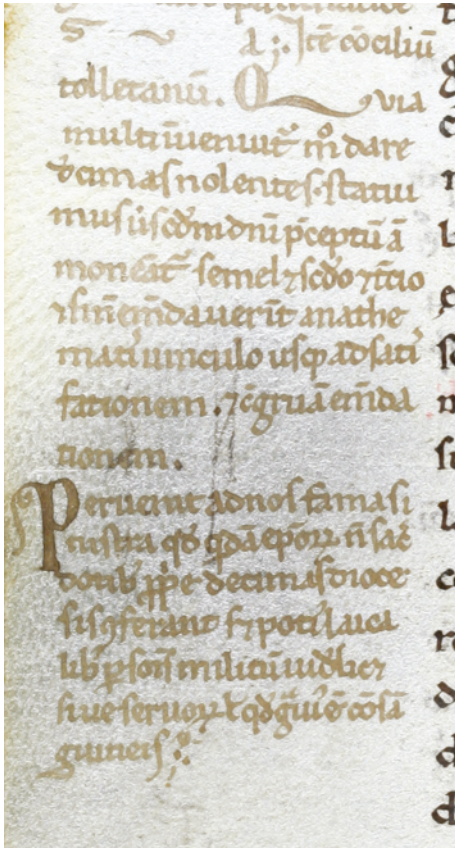


FIGURE 8.16
Sg 138: C.17 (C.16) q.7 Margin

inscription attached it. A siglum indicates that it is an addition to Gregory VII's conciliar canon after the notation *Et paulopost* in *Sg*. This excerpt is evidence that the owner of *Sg* may have known the text in Gregory cardinal presbyter of S. Grisogono's *Polycarpus*.¹⁹ It may not be a stretch to conclude that he knew that the second part of *Pervenit* was separated from the first part in the pseudo-African Council's canon. A much more extensive text of Gregory VII's canon is found in the Florence pre-Vulgate Gratian manuscript that was taken most likely from *Three Books*.²⁰ Polycarpus' text is a forgery. Gregory VII's conciliar canon *Decimas quas in usum* ends at *damnationis periculum incurrere*. No one has yet found the source of the next section *Oportet autem congruentius* –

19 Polycarpus 3.11.4.

20 Florence, Biblioteca Nazionale Centrale, Conventi sopressi, A.1.402, fol. 54v, C.17 (C.16) q.7 c.1.

fideliter distribuatur. A source has been found for the last section with the incipit of *Pervenit ad nos fama*. It is a very clever forgery excerpted from an “African council” with the same incipit as the text contained in Polycarpus and three other collections.²¹ It is not known where Gregory of S. Grisogono got that text or who the forger was. Of course, the forger could have been the cardinal himself. The following text shows how the forger of *Pervenit* created the canon out of the forged text in *Polycarpus*.

Pervenit: Polycarpus 3.11.5

Ex concilio Africano.

Pervenit fama sinistra ad magnam conventus nostri synodum, quod etiam ipso relatu lugubre valde est satisque universali ecclesie lacrimabile, quia quicquid patitur unum membrum, compatiuntur omnia membra, **quod quidam episcoporum** suam suorumque adulatorum voluntates magis quam sacrorum canonum vel patrum decreta secantantes **non sacerdotibus** et presbiteris **proprie diocesis decimas atque christianorum oblationes** conferre renuerunt, sed potius, quod catholicis auribus absurdissimum est, **laicalibus personis, militum videlicet sive servitorum, vel quod adhuc gravius est, consanguinitatis** sibi gratia coniunctis inconsulte ac precipiti more concedere soliti sunt. Quod videlicet inmanissimum nefas quam monstruosum quamque execrabile sit, redemptori nostro eiusque sacrosanctę ecclesię quam intollerabile, omnes penę utriusque testamenti pagine protestantur, in quibus terribiliter ipse rex regum et dominus pontificum omnibus intonate dicens: Si quis tetigerit sacerdotes meos, qui in tabernaculo meo deserviunt, tangit pupillam oculi mei, et rursus: Omnes, inquit, filii Israel offerunt decimas de omnibus frugibus suis ad templum Domini, quia his, qui altario deserviunt, dedi eas, ut participantur de omnibus bonis Domini, ut orare valeant, pro populo meo. Habemus autem ad hanc pessimam heresim destruendam ipsam veritatem in evangelio dicentem: Dignus est operarius mercede sua. Quod alius evangelista evidentius dicit: Dignus est operarius cibo suo. Unde apostolus: Qui, inquit, altario deserviunt, de altario participantur. Sunt quippe presbiteri sors specialis Dei, et ipse hereditas eorum, pro cuius amore atque honore arma deposuere secularia, ut ipsum habere mererentur patrem atque defensorem, dicentes cum propheta: Quis adversarius meus est? Accedat ad me. Ecce Dominus auxiliator meus, ideo non sum confusus. Quapropter placuit unanimitati

²¹ Polycarpus 3.11.5.

vestre, ut in unum convenientes comitati et preventi gratia spiritus sancti, sine quo nichil facere possumus, quod divinitati placitum sit, uno ore eodemque consensu vigorabiliter censemus, ut **si quis amodo episcopus inventus fuerit huius divini precepti transgressor, inter maximos hereticos et antichristos non minimus habeatur. Et sicut sancta Nicena synodus de simoniaciis hereticis omnino censuit, et qui dat episcopus, et qui accipiunt ab eo laici sive pretio sive beneficio, æterni incendii ignibus deputentur** et a sanctę ecclesie corpore utpote inutilia sarmenta evangelica falce precipiantur, quatenus arescant. Ad hec tota synodus: Ut hec, inquit, spiritu sancto auctore fiant, qui nos congregari voluit, ad confirmandam legem mandatorum suorum simul ista fieri sancimus, et ut ascendat fumus huius rei prevaricatorum eorumque tormentorum in secula seculorum. Responsumque est ab omnibus: Amen amen, fiat fiat.

The text in bold face is what Gratian included in *Pervenit ad nos fama sinistra* at C.1 q.3 c.13 and C.16 q.7 c.3 in his last, Vulgate recension with the rubric *Item Gregorius VII*. However, the canon is not found in Gregory's letters or conciliar canons. Someone edited and excerpted Polycarpus' text and created *Pervenit*. The edited version is found only in the *Collection in Three Books* (1111–1124) and the *Collection in Nine Books* (ca. 1125). The long version above can be found in *Polycarpus* 3.11.5, *Caesaraugustana* Augmented, *Collectio Ambrosiana*, *Collectio Pragensis*.

The canonists were perplexed by the text and seem to have been skeptical of it. Admont 43, fol. 34v separated the text from *Decimas quas in usum*, did not give it an inscription, and provided it with a rubric, *De eodem*, indicating the canon treated the same material as Gregory VII's canon. The second part of *Pervenit*, *Unde* (om. *Sg*) *si quis amodo – deputentur* is set off as a separate paragraph in Admont.²² Early manuscripts of Gratian's *Decretum* exhibit a variety of solutions as to how *Pervenit* should be treated. The owner of *Sg* may have known that *Pervenit* was edited from the African council text in *Polycarpus*, and he may have known the second half of the canon was separated from the first. He certainly knew that the text was united with Gregory VII's conciliar canon by the *Collection in Three Books* and the *Collection in Nine Books*, which are the only two collections that contain the entire text as it appears in the Florence

22 It may be significant that the African canon omits *Unde*, which would mean the compiler of *Sg* was most likely taking the canon from *Polycarpus*, which also omits *Unde*.

manuscript.²³ With the evidence of *Sg* and the Florence manuscript, we can be fairly certain how Gratian finally arranged C.16 q.7, which is very different from the Friedberg edition. Canon 1 was the long text as in Florence, *Three Books* and *Nine Books*. Canon 2 was *Quicumque recognoverit* attributed to Ambrose. Titus Lenherr told Regula Gujer fifteen years ago that Munich Clm 28161 would be a very good base manuscript for D.16.²⁴ It is also a very good base manuscript for C.16 q.7, because it presents the text as Gratian finally edited it.

6 Conclusion

In conclusion the textual evidence and marginal evidence in *Sg* indicates that the manuscript was used in the classroom over a long period of time.²⁵ One cannot imagine that an abbreviation would have had that importance in the classroom. No other abbreviation provides evidence of such extended classroom use. The manuscript was used in a place where the various owners who entered marginal glosses and additions knew and used Roman law materials. That would preclude its having been used outside of Northern Italy where Irnerius' *authenticae* were not yet known. Further, the writing of the marginal additions, legal citations, and the abbreviations used for citations to canon and Roman law date to the first half of the twelfth century. That leads me to my final conclusion that no one would have used the *Sg* manuscript to teach if the later recensions of Gratian's *Decretum* were available. I am not arguing that *Sg* is a pristine version of an early "recension"; rather it reflects the general organization of an early recension that was used for many years (from ca. 1125 until ca. 1133) and was augmented in the marriage *causae* (C.27–36) at some time. The corrections to the running titles are proof that it was still used after Gratian compiled the version of the *Decretum* found in the Florence, Paris, Barcelona and Admont manuscripts and that the owner tried to create a concordance with the later recension. If I am right about the evolution of the *Decretum's* text, it confirms my opinion that Gratian began teaching in the

23 *Collectio canonum trium librorum: Pars Prior (Liber I et II)*, ed. Joseph Motta, MIC B/8 (Vatican City, 2005), 2.8.69, 177 and *Nine Books* 3.4.7.

24 Regula Gujer, *Concordia discordantium codicum manuscriptorum? Die Textentwicklung von 18 Handschriften anhand der D.16 des Decretum Gratiani*, Forschungen zur kirchlichen Rechtsgeschichte und zum Kirchenrecht 23 (Cologne, 2004), 2.

25 On the teaching of law in the first half of the twelfth century see Kenneth Pennington, "The Beginnings of Law Schools in the Twelfth Century," in *Les écoles du XII^e siècle*, ed. Cédric Giraud (Leiden, 2019), 226–249.

1120's and ended his teaching career ca. 1140.²⁶ However, my opinion will be tested by scholars in the future, and eventually a scholarly "communis opinio" will emerge. Until then the various disparate opinions in this volume of essays represent the state of the question.

26 For much more evidence for these concluding remarks see Kenneth Pennington, "The Biography of Gratian: The Father of Canon Law," *University of Villanova Law Review* 59 (2014), 679–706 and a slightly expanded version "The Biography of Gratian, the Father of Canon Law (n. 2)," 359–391, and an Italian translation of the expanded version "La biografia di Graziano, il Padre del diritto canonico," *Rivista internazionale di diritto comune* 25 (2014), 25–60. For contrary opinions see Wei, *Gratian the Theologian* (n. 2), 27–33 and the essays of Wei, "Miracle Story (in this volume)" and Winroth, "Sankt Gallen, Stiftsbibliothek, 673 in Context (in this volume)."

The *Exserpta* in the Origins of the Science of Canon Law

José Miguel Viejo-Ximénez

1 Introduction

Who used the *Exserpta ex decretis Sanctorum Patrum* preserved in the codex Sankt Gallen, Stiftsbibliothek, 673? When? Where? The spaces between the lines and the margins of the manuscript register the characteristic activities of a teaching centre: there are both interlinear and marginal glosses, as well as additional texts.¹ Some of the glosses and added texts are close to the crafting of the copy, since they come from the hand(s) of the main scribe(s).² Others are subsequent, and in some cases even much later. There are also corrections that reveal diverse timid attempts to align redirect the 33 causes of the *Exserpta* with the systematic structure of the *Decretum vulgatum* and, in some

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- 1 Carlos Larrainzar, “El borrador de la Concordia de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (= Sg),” *Ius Ecclesiae* 11 (1999), 593–666 counted 56 additions going with the *Exserpta* (plus 4 in the second part of the manuscript), and 200 glosses (14 in the second part) (662–663); Kenneth Pennington, “The Beginning of Roman Law Jurisprudence and Teaching in the Twelfth Century: The *Authenticae*,” *Rivista Internazionale di Diritto Comune* 22 (2011), 35–53, studied the marginal *authenticae* as well as José M. Viejo-Ximénez, “Las Novellae de la tradición canónica occidental y del Decreto de Graciano,” in *Novellae Constitutiones. L’Ultima legislazione di Giustiniano tra Oriente e Occidente da Triboniano a Savigny*, ed. Lucca Loschiavo, Giovanna Mancini, Cristina Vano (Naples, 2011), 207–279.
 - 2 Philipp Lenz, Stefania Orтели, *Die Handschriften der Stiftsbibliothek St. Gallen Band 3 Abt. V: Codices 670–749 Iuridica. Kanonisches, römisches und germanisches Recht* (Wiesbaden, 2014), 17–20: after having distinguished four main hands (from 1. *Hauptband* to 4. *Hauptband*, 17) and six marginal hands (from 1. *Marginalienhand* to 6. *Marginalienhand*, 18), they concluded: “1. *Marginalienhand*, wohl identisch mit der 2. *Hauptband*” (18). Marina Bernasconi Reusser, “Considerazioni sulla datazione e attribuzione del Decretum Gratiani Cod. Sang. 673: un manoscritto di origine italiana in terra nordalpina,” in *Schaukasten Stiftsbibliothek St. Gallen. Abschiedsgabe für Stiftsbibliothekar Ernst Tremp*, ed. Franziska Schnoor, Karl Schmuki, Silvio Frigg (Sankt Gallen, 2013), 142–147: the red and black *Nota* signals and some *marginalia* “sembrino contemporanei al lavoro di copia e forse di mano del primo copista” (145).

cases, with the text of their *dicta* and *auctoritates*. Here, my focus will be on the glosses.³

During the manuscript's making and just after the copying was concluded it was used in an academic milieu. As far as I know, I think it is possible to distinguish at least six people whose work on the codex begins between the end of the 40s and the end of the 60s of the twelfth century.⁴ The first person who worked on the *Exserpta* was not far from master Gratian, and his notes reflect a level of knowledge that places him close to the origins of the science of canon law.⁵ I do not find any evidence that leads me to place his comments outside of the Bolognese context. I also do not think that the comments of those who came after him could have been composed elsewhere.

From the quantitative point of view, the glosses of *Sg* are few and do not form a systematic whole: they are occasional glosses because they do not cover all the sections of the *Exserpta*.⁶ They are anonymous and they were not written at the same time: the handwriting and ink, as well as the cross-references allow the modern reader to establish the relative chronology of these comments.

3 Rudolf Weigand, "Die Dekretabbreviatio 'Quoniam egestas' und ihre Glossen," in *Fides et Ius. Festschrift für Georg May zum 65. Geburtstag*, ed. Winfried Aymans, Anna Egler, Joseph Listl (Regensburg, 1991), 249–265, printed two glosses to C.27 (*Sg* p. 165ab) and three glosses to C.30 q.4 (*Sg* p. 174a); he concluded: "Die Glossen dieser Handschrift wurden von mehreren Händen eingetragen" (265). Larrainzar, "El borrador de la Concordia de Graciano (n. 1)," counted 215 glosses and edited ten to C.2 q.7 d.p.c.27, C.12 q.2 d.p.c.56, C.24–27, C.27 q.1, C.27 q.2 *pr.*, C.29 q.2 c.4, C.30 q.3 c.1, C.32 q.6 c.1, and C.35 qq.1–2 *pr.* (two glosses). José M. Viejo-Ximénez, "Non omnis error consensum euacuat. La C.26 de los Exserpta de Sankt Gallen (*Sg*)," in *Iustitia et Iudicium. Studi di Diritto Matrimoniale e Procesuale canonico in onore di Antoni Stankiewicz*, ed. Janusz Kowal, Joaquín Llobell (Vatican City, 2010), 617–641 edited two glosses to C.29 q.2 (637–638).

4 See Lenz, "The Codicology (in this volume)."

5 As an autonomous scientific discipline, canon law began with the *Decretum*: Stephan Kuttner, "The Father of the Science of Canon Law," *The Jurist* (1941), 2–19; Peter Landau, "Bologna. Die Anfänge der europäischen Rechtswissenschaft," in *Stätten des Geistes – Große Universitäten Europas von der Antike bis zur Gegenwart*, ed. Alexander Demandt (Köln, Weimar, Wien, 1999), 59–74. The very origins of the science of canon law should be placed during Gratian's life, but nothing is sure about the master: José M. Viejo-Ximénez, "Graciano," in *Diccionario General de Derecho Canónico*, ed. Javier Otaduy, Antonio Viana, Joaquín Sedano (Pamplona, 2012) IV: 239–46. For Gratian's work Kenneth Pennington, "La Biografia di Graziano, il Padre del Diritto Canonico," *Rivista Intenzionale di Diritto Comune* 25 (2014), 25–60 suggests a timespan of about 15 years, from 1125 to 1140.

6 Rudolf Weigand, "The Development of the *Glossa Ordinaria* to Gratian's *Decretum*," in *The History of the Medieval Canon Law in the Classical Period, 1140–1234*, ed. Winfried Hartmann, Kenneth Pennington, History of Medieval Canon Law 6 (Washington, D.C. 2008), 55–97, distinguishes between "gloss composition" and "apparatus of glosses" (58). The glosses of *Sg* do not form a "composition," nor an *apparatus*.

From the qualitative point of view, most of the glosses are *Allegationen*, *Nota* and *Rubrikenglossen*. There is a significant number of *Wörterklärungen* (explanations of words) and some *diskursive Erörterung* (discursive discussion). Therefore, the majority of glosses in *Sg* belong to the primitive set that Kuttner called the *erste Typus* of *vor-johanneischen* (pre-John) glosses, which are distinctive of the *erste Glossenkomposition* (first composition of glosses) described by Weigand.⁷ These glosses are linked to the school of Bologna and date to the 40s and 50s of the twelfth century when the first decretists, of whom we only know the name of *Paucapalea*, picked up the baton from Gratian. That said, while some glosses of *Sg* are prior to the *erste Glossenkomposition*, others should be dated to the 60s of the twelfth century.

The selected examples discussed below are arranged into six sections: *Allegationen*, *Nota* and *Rubrikenglossen*, interlinear glosses, marginal definitions, the *erste Glossenkomposition* and glosses related to the *Stroma Rolandi*.

2 *Allegationen*

The oldest pre-John glosses are the *Allegationen*, that is, quotations of parallel and opposite *auctoritates*.⁸ When they are compared with the manuscripts that contain the *erste Glossenkomposition*, the *Allegationen* of *Sg* are scarce in number and simple in their formulation. These cross-references do not lead anywhere outside the *Exserpta* or the *Decretum*. From the reference systems it is possible to distinguish two successive series of *Allegationen* (Appendix 1).⁹ Some are contemporary or very close to the copy of the *Exserpta* because they identify Gratian's *auctoritates*, taking as reference 33 causes.¹⁰ On the other hand, the *Allegationen* of the second series quote the *auctoritates* according

7 Stephan Kuttner, *Repertorium der Kanonistik (1140–1234). Prodomus Corporis Glossarum* (Vatican City, 1937), 3–9: glosses written before Johannes Teutonicus' *apparatus*. The *Erste Glossenkomposition* has been described by Rudolf Weigand, *Die Glossen zum Dekret Gratians. Studien zu den frühen Glossen und Glossenkompositionen*, *Studia Gratiana* 25/26 (Rome, 1991), 401–425; and idem, "The Development (n. 6)," 58–59.

8 Kuttner, *Repertorium* (n. 7), 3. Philipp Lenz, "Die Glossierung und die Glossen in den frühesten Handschriften des *Decretum Gratiani*," *BMCL* 35 (2018), 41–184.

9 Larrainzar, "El borrador de la Concordia de Graciano (n. 1)," 617; Lenz, Ortelli, *Die Handschriften* (n. 2), 18.

10 The author of the *Exserpta* arranged his materials into 33 *Causae*: Larrainzar, "El borrador de la Concordia de Graciano (n. 1)," 653–662. The headings of the pages, with the original numbering of the *Causae*, were changed twice: Viejo-Ximénez, "Non omnis error consensus euacuat (n. 3)," n. 6.

to the *distinctiones* and *causae* of the *Decretum vulgatum*.¹¹ The *Allegationen* of both series constitute closed systems of cross-references. Unlike the *Allegationen* appearing in Omnibene's abbreviation, those of *Sg* do not mention any decretal of the *ius novum*, nor any parallel or contrary authority of the *Corpus Iuris Civilis*.¹²

The probability that they were written later in a teaching centre far from the Bolognese epicentre is very unlikely because the copy of some of the Roman fragments that appear in the margins of *Sg* is contemporary with those *Allegationen*. The knowledge of the *Corpus Iuris Civilis* and its gloss that these marginal additions reveal could hardly be acquired in a modest provincial study centre.¹³ Weigand suggested that the *Allegationen* in the margins of the abbreviation *Exceptiones Ecclesiasticarum* could come from the margins of the *Decretum* preserved in Sankt Florian, III.5.¹⁴ On the contrary, the two series of *Allegationen* in *Sg* are not a copy of the *Allegationen* written in the margins of one alleged model – a *Concordia* or a *Decretum vulgatum* – used by the author or the users of the *Exserpta*. Since some of the *Allegationen* of *Sg* mention other glosses, or *auctoritates* and *dicta* of the *Exserpta*, they serve as a milestone to establish a chronology of the scribal history of the manuscript.¹⁵ The *Allegationen* show a systematic understanding of the work, a particular skill of

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- 11 In the present essay, *Exserpta* means the work copied in the first part of *Sg*; *Concordia* is the work known thanks to the manuscripts *Aa Bc Fd P Pr*; *Decretum vulgatum* is the work attributed to Gratian that circulated from the mid-twelfth century. Carlos Larrainzar, "L'edizione critica del Decreto di Graziano," *Folia Canonica* 9 (2006), 69–92 and idem, "Métodos para el análisis de la formación literaria del Decretum Gratiani. 'Etapas' y 'esquemas' de redacción," in *Proceedings of the XIIIth International Congress of Medieval Canon Law*, ed. Peter Erdö, Anzelm Szuromi (Vatican City, 2010), 85–115, offers a more detailed description of Gratian's *Redaktionsgeschichte*.
- 12 Rudolf Weigand, "Die Dekret-Abbreviatio Omnebenes und ihre Glossen," in *Recht als Heildienst. Mathias Kaiser zum 65. Geburtstag gewidmet*, ed. Winfried Schulz (Paderborn, 1989), 271–287, at 275–281. Rudolf Weigand, "Die frühen kanonistischen Schulen und die Dekretetabbreviatio Omnebenes," *AKKR* 155 (1986), 79–91, at 91: "1156 entstandenes oder abgeschlossenes Werk."
- 13 Kenneth Pennington, "The Big Bang: Roman Law in the Early Twelfth Century," *Rivista Internazionale di Diritto Comune* 18 (2007), 43–70. From the additional texts, the glosses and the cross-references, Pennington concluded that *Sg* was used to teach canon law and that the "manuscript could not have been the product of a provincial school" (64).
- 14 Rudolf Weigand, "Die Dekretabbreviatio 'Exceptiones ecclesiasticarum regularum' und ihre Glossen," in *Christianità ed Europa. Miscellanea di studi in onore di Luigi Prosdocimii*, ed. Cesare Alzati (Milano, 1992), 1:511–529, at 523–524.
- 15 *Cod. Just.* 9.46.10 was copied twice on the margins of *Sg* by the same hand: next to C.2 q.8 c.4 (p. 66a) and to C.32 q.6 c.1 (p. 179a). The second marginal addition ends with: *R. supra in causa iii. circa finem*. The person behind this hand (1. *Marginalienhand* according to Lenz, Orтели, *Die Handschriften* (n. 2), 18) used *Sg*'s original division into 33 *Causae*.

the interpreters and lectures of legal texts. The presence of this academic tool in the margins of *Sg* suggests that the *Exserpta* were used in the classroom.

3 *Nota and Rubrikenglosse*

Most of the glosses of *Sg* belong to the *Nota*-type.¹⁶ They appear in almost all sections of the *Exserpta*, although they are not contemporary since different users of *Sg* wrote *Nota*. This activity started immediately after the copy was finished: some *Nota* are written in red ink like many of the “R.’s” scattered throughout the manuscript.¹⁷ They both – the *Nota* and the “R.’s” – draw the reader’s attention to an *auctoritas* or a *dictum*.¹⁸ On four occasions the *Nota* symbol is accompanied by the word *distinctio*: *Nota distinctio/Nota distinctionem*.¹⁹ This more complex form can be equated with the five *Bona distinctio*,²⁰ the three

16 Acronyms of *Nota/Nota quod* on the margins. They could be considered schematic (sometimes ornamental) symbols on the margins that highlight relevant points of the text: Weigand, “The Development (n. 6),” 55–56.

17 Bernasconi Reusser, “Considerazioni (n. 2):” “quelli [*Nota*] in rosso sembrano contemporanei al lavoro di copia e forse di mano del primo copista” (145).

18 The meaning of “R.” is unclear: the symbol appears for the first time on p. 66a (next to C.2 q.8 c.3) and on p. 169a (next to C.27 q.2 c.37) for the last time. Two times the marginal “R.” corresponds with the abbreviation “R(espondetur)” inside the *Exserpta*: on *Sg* 126a a (red) marginal “R.” was written beside *Istis omnibus sic respondetur: Auctoritas illa Nicene synodi prohibet monachos ...* (C.16 q.1 d.p.c.12); on *Sg* 159a the (brown) marginal “R.” appears next to *Ad quod respondetur: Precepta patientie non tam corporis preparatione quam cordis sunt obseruanda* (C.23 q.1 d.p.c.1). As a rule, the symbol “R.” directs the reader’s attention to a significant sentence of the *Exserpta*: on p. 106b, for example, there are two “R.’s” beside *Episcopus rebus ecclesie tanquam commendatis non tanquam propriis utatur* and *Irrita enim episcoporum uenditio uel conmutatio rei ecclesiastice erit absque conniuentia et subscriptione clericorum* of C.12 q.2 c.52. A special case on *Sg* 155b is *R. Aliud est re, aliud ex modo iurandi illicitum* (dark brown ink) in the margin of C.22 q.4 d.p.c.23 §4 (*cum in re iurata uitium inuenitur*). On the “R,” see also the contribution by Larson, “Nota (in this volume).”

19 Next to C.2 q.6 d.p.c.10 (*Quidam tamen ita distinguere uolunt... , Sg* 54a), C.2 q.7 d.p.c.39 §3 (*Aliter quoque respondi potest: aliud est quod de discipline rigore seruare cogimur, aliud quod... , Sg* 61b), C.19 q.3 d.p.c.8 (*Sed aliud est de his qui monasterium ingressi se et sua tradiderunt, aliud de his, qui solitariam uitam ducentes se nulli ecclesie dedicauerint, Sg* 145b) and to C.32 q.1 d.p.c.13 (*Sed aliud est meretricem ducere aliud meretricem retinere, Sg* 178b). These four *Nota distinctio* were written by the same hand.

20 Next to C.1 q.1 d.p.c.39 (*Ad quod notandum quod sacramentorum alia sunt necessitatis alia dignitatis, Sg* 32a), C.1 q.4 c.12 (*Notandum quoque quod non omnis ignorantia excusat. Nam alia est facti alia iuris, Sg* 40a), C.2 q.1 d.p.c.16 (*Sciendum quoque est quod eorum que manifesta sunt alii sunt cogita iudici et alia incognita, alia sunt aliis manifesta et iudici occulta, alii et iudici et aliis sunt manifesta, Sg* 46b), C.15 q.1 pr. (*Sed hoc non de omnibus peccatis*

Bonum quod,²¹ and also with the two *Pulchra distinctio*.²² In these cases, the author(s) of the glosses highlight(s) the usefulness of a dialectical distinction within a *dictum* or an *auctoritas*.²³

A variety of these type of gloss is that in which the abbreviation *Nota* is followed by words sometimes taken from a *dictum* or an *auctoritas*: *Nota magnum quid*,²⁴ *Nota auctoritate*,²⁵ *Nota ignem*,²⁶ *Nota de his quibus sua suffici uiuere*,²⁷ *Nota appellatio*,²⁸ *Nota quod aliud est prodere et aliud accusare*,²⁹ *Nota quos infames uocatur*,³⁰ *Nota testes*,³¹ *Nota quod sit peccatum*,³² *Nota medianam*,³³ *Nota quartum digitum*,³⁴ *Nota uouentes*,³⁵ *Nota quantum debeat consanguinitatem firmare*,³⁶ *Nota iuramentum huiusmodi debet prestari in separatione consanguineorum*.³⁷ Some were written in red ink (*Nota quos infames uocatur*, *Nota quod sit peccatum*), indicating they would be contemporary to the making of the copy – like many other *Nota* symbols in red ink.³⁸ Most of these

uidetur intelligendum. Nam quod ait Augustinus de illo peccato intelligendum est quod sic est culpa quod non pena, Sg 119a) and C.22 q.5 d.p.c.13 (*Aliud est enim callida uerborum arte iurare aliud suam intentionem simpliciter iurando enuntiare, Sg 157b*). The word *Distinctio* was written in the margin of p. 42b close to C.1 q.7 d.p.c.5 (*Multorum enim crimina dampnabilia sunt que tamen ab ecclesia toleratur pro tempore pro persona intuitu pietatis uel necessitate aut etiam utilitatis*). The person responsible for the four *Nota distinctio* also wrote three *Bona distinctio* (*Sg 32a, 41b, 46b*) and one *Distinctio* (*Sg 42b*).

- 21 Next to C.16 q.2 c.1 (*Sg 133a*), C.16 q.3 c.13 (*Sg 136a*) and C.18 q.2 c.26 (*Sg 144a*). The first and the last were written by the same hand as the *Nota distinctio*, *Bona distinctio* and *Distinctio*.
- 22 Next to C.7 q.1 d.p.c.4 (*Inter eum autem quod necessitate hostilitatis et quod causa utilitatis transfertur...*, *Sg 83a*) and C.30 q.5 d.p.c.9 (*Illa coniugia que clam contrahuntur nec esse coniugia negatur nec dissolui iubentur si utriusque confessione probari poterunt, Sg 175b*) written by the same hand.
- 23 Or even a definition: on *Sg 66a* the words *Nota diffinitionem* next to C.29 q.2 pr. highlight the definition of marriage.
- 24 Next to D.63 d.p.c.34 (*Sg 25b*).
- 25 Next to D.63 d.p.c.34 (*Sg 25b*).
- 26 Next to C.1 q.1 c.29 (*Sg 31a*).
- 27 Next to C.1 q.2 c.6 (*Sg 36a*).
- 28 Next to C.2 q.6 d.p.c.31 (*Sg 55a*).
- 29 Next to C.2 q.7 d.p.c.27 (*Sg 58a*).
- 30 Next to C.6 q.1 c.17 (*Sg 77b*).
- 31 Next to C.14 q.2 pr. (*Sg 116a*).
- 32 Next to C.15 q.1 pr. §5 (*Sg 119a*).
- 33 Next to C.16 q.1 c.31 (*Sg 128a*).
- 34 Next to C.30 q.5 c.7 (*Sg 175a*).
- 35 Next to C.30 q.5 d.p.c.8 (*Sg 175a*).
- 36 Next to C.35 q.6 c.3 (*Sg 193a*).
- 37 Next to C.35 q.6 c.5 (*Sg 193b*).
- 38 On *Sg 37a* the *Nota*-symbol next to C.1 q.2 c.6 was written in red while the words *de his quibus sua suffici uiuere* were written in brown by another hand (the hand responsible for the glosses taken from the *Stroma Rolandi*, see below).

more complex *Nota* were written in brown ink and they are the work of the same hand that introduced other glosses immediately after the completion of the copy. This more elaborate variation approaches the *Nota* glosses to the *Rubrikenglossen*, that is, the calls of attention that are composed by words and sentences taken from a *dictum* or an *auctoritas*: *Secretorum cognitorem et iudicem Dominum esse*,³⁹ *Sacerdotes absconse criminaliter quotidie delinquentes per ieiunia et dignam satisfactionem spem ueniens de Dei misericordia consequi*,⁴⁰ *Presbiteros uel diaconus penitentiam solemnem facere non debere*,⁴¹ *Quod sicut nulli clericorum penitentiam agere conceditur post eadem penitentiam honorem clericatus acquirere*,⁴² *quando rectoribus ecclesiarum ab ingressuri aliquid accipere liceat*,⁴³ *Duo necessaria*,⁴⁴ *Neque emphyteotica pacta*,⁴⁵ *Episcopum potestas dispendendi Deo contemplante habet*,⁴⁶ *Rerum ecclesie uenditiones irrita esse*,⁴⁷ *Episcopum tertiam de rebus parochialium sibi debitam ecclesiarum cuilibet ecclesie dare posse*,⁴⁸ *de iure funerandi*,⁴⁹ *Leges uenerandas etiam*,⁵⁰ *per exorcismos*,⁵¹ and *Mundanis non constringitur legibus*.⁵² There are *Rubrikenglossen* written in red ink (*Secretorum cognitorem et iudicem dominum esse*, *Leges uenerandas etiam*), although most of them are written in brown ink (the brown being by different hands). Both the red and the brown *Rubrikenglossen* are not contemporary with the copying of the *Exserpta*.

The schematic symbols presented in the canonical manuscripts of the first Christian millennium would have been added by private users and do not reflect academic activity.⁵³ Manuscripts of Gratian's work dating back to the second half of the twelfth century that were used in the classrooms and whose margins are dotted with *Nota*-symbols and *Rubrikenglossen* are not rare.⁵⁴ The

39 Next to D.32 c.11 (*Sg* 7b).

40 The words belong to D.50 c.34 (*Sg* 17b). The opening "ss." refer to *Nota. Vitale capitulum* (*Sg* 17a).

41 To place beside D.50 c.65 (*Sg* 19a).

42 To place beside D.50 c.66 (*Sg* 19b).

43 At the beginning of C.1 q.2 (*Sg* 35ab).

44 Next to C.12 q.1 c.10 (*Sg* 101a).

45 Next to C.12 q.2 c.13 (*Sg* 104a).

46 Next to C.12 q.2 c.19 (*Sg* 104b).

47 Next to C.12 q.2 c.19 (*Sg* 104b).

48 To place beside C.12 q.3 c.4 (*Sg* 108a).

49 Next to C.13 q.2 d.p.c.5 (*Sg* 113b).

50 Next to C.16 q.3 c.17 (*Sg* 136b).

51 Next to C.33 q.1 c.4 (*Sg* 181b).

52 Next to C.33 q.2 c.6 (*Sg* 182b).

53 Weigand, "The Development (n. 6)," 56 n. 6: important words or clauses rewritten in the margins also testify to "individuals' personal use of the text."

54 There are *Nota*-symbols in *Aa* 23 and 43, *Bc* (fols. 79vb, 96rb, 121va, 123va, 125rb, 131rb, 140ra, 141va) and *Fd* (fol. 8ra, 98va). These symbols also appear in *Bi*, *Gf*, *Gg*, *Hk*, and *Mv* (abbreviations are taken from Weigand, *Die Glossen* (n. 7), xxi–xxiv).

Nota and the *Rubrikenglossen* of *Sg* are not far from the *Notabilien*, i.e., the marginal sentences arranged in staggered lines in the form of an inverted triangle that sometimes begin with the word/words *Nota/Nota quod* or even with the *Nota* symbol.⁵⁵ Along with the *Allegationen*, these *Notabilien* belong to the 1. *Glossenkomposition*.

The *Nota* and *Rubrikenglosse* show that the *Exserpta* could have been used by judges, lawyers, lecturers or students, that is, persons interested in doing quick searches. Other glosses and additions also point to a formal academic study centre as the locus in which the work was used.

4 *Worterklärungen: Interlinear Glosses*

Those who worked on *Sg* took advantage of the spaces between the lines and the margins to introduce *Worterklärungen*. Interlinear *Worterklärungen* explain the meaning of a word with a synonym or with another word that has been omitted in the text, but this new word does not belong to its canonical tradition (or to the *Redaktionsgeschichte* of the *Decretum*, namely the evolution of its different recensions). Marginal *Worterklärungen* are definitions; more elaborate interlineal clarifications are scarce.⁵⁶

Simple interlinear glosses can be found, for example, in the discussion on simony, C.1 q.1 d.p.c. 22 (p. 30a), where the following objection is posed: While it is true that prophecy is a gift of the Holy Spirit, the Old Testament mentions how holy men used to profit from it. Saul, for example, rewarded Samuel's prediction with presents. Jeroboan's wife approached the man of God with offerings. An interlinear gloss explains that this "man of God" was Elisha: *i(d est) Eliseum*. The *dictum* continues with a third, less fortunate example as the connection with simony is unclear: "Christ healed the ear of the servant" (p. 30a). An interlineal gloss gives the name of this servant: *s(cilicet) Malchi*. The answer to this objection, which offers examples that seem to legitimize simony, comes in the form of a quotation from Jerome, who, in his commentary on Micah, called those who accepted these offerings "evil." An interlinear gloss over the word *malos* in the Jerome passage clarifies who is evil by adding *prophetas*

55 *Nota liber Clementis ab hereticis sub nomine eius compositum et dicitur itinerarius quod actibus Petri et Dei uia sua ibi agit* (Hk fol. 25rb, next to D.16 c.3).

56 Some interlinear glosses are *Allegationen*: (i) over *Quapropter* (C.2 q.7 c.47): *s. c. ii.* (*Sg* 64b); (ii) over *Si quid* (C.2 q.7 c.48): *s. c. ii.* (*Sg* 64b); (iii) over *aliorum rerum* (C.6 q.4 c.1): *cc. c. iii c. non liceat* (*Sg* 79a); (iv) over *aliquibus iudicatis* (C.6 q.4 c.2): *c. iii. q ui /// ///* (*Sg* 79a); (v) over *pruilegium* (C.9 q.3 c.4): *c. xu. i. q. u. ii. episcopus* (*Sg* 89a). The present essay does not consider marginal and interlinear corrections.

(p. 30b). Next, a fragment of the third chapter of Jerome's commentary is copied. It begins with these words: *Duces inquit* (C.1 q.1 c.23). An interlineal gloss says: *Micheas*.⁵⁷

Some interlinear *Wörterklärungen* are more extensive. In the next chapter, C.1 q.1 c.23, the same hand makes two comments. The first comment is about the words *Ierusalem ut custodia pomerii erit* and says: *amodo urbis Iero* (p. 30b, marg.). The second comment explains the meaning of the sentence *Spiritus enim sanctus nec uendi nec emi potest* with *i(d est) dona Spiritus Sanctus uendere non debet uel ipse S(piritus) S(anctus) in essentia sua uendi non potest* (p. 30b, intl. and marg.). These explanations do not appear in the *Summa Quoniam in omnibus* attributed to *Paucapalea*, the *Summa Alençonensis*, the *Summa Sicut Vetus*, the *Stroma Rolandi*, nor in the *Summae* of Rufinus nor in the *Summae* of Etienne de Tournai.

At least one interlinear *Wörterklärung* is repeated in the margin. On p. 43a, the word *incuria* (negligence) of C.1 q.7 c.12 – a fragment of Pope Gelasius I's letter to Italian bishops (J³ 1270: JK 636, 494) – is the object of a comment in the space between the lines: *i(d est) dissuetudine* (disuse). The gloss is duplicated on the right margin of the same folio: *Incuria i(d est) dissuetudo* (p. 43b marg.). Palaeography will determine if both glosses come from the same hand.⁵⁸ The person who wrote the interlinear gloss of C.1 q.7 c.12 repeated it again on p. 135a, with regard to the expression *per incuriam* of C.16 q.3 d.p.c.7: *i(d est) dissuetudinem*.⁵⁹ The author of the marginal gloss on p. 43 is also the person who copied some of the definitions in the margins of the *Exserpta*.

57 Stephen of Tournai commented C.1 q.1 c.23 as follows: *Verba sunt Micheae usque nemo. sup. dom. requiesc, i. e. gratiam eius habebant, sicut ipsi dicebant; vel sub obtentu domini, cui placere credebant deliciis afluebans* (Stephan von Doornick [Étienne de Tournai, Stephanus Tornacensis], *Die Summa über das Decretum Gratiani*, ed. Johann F. von Schulte (Giessen, 1891, repr. Aalen, 1963), 127).

58 The marginal gloss belongs to 1. *Marginalienhand*: Lenz, Ortelli, *Die Handschriften* (n. 2), 18.

59 This hand made the following interlinear glosses: (i) over *pergrauari* (C.2 pr.): *a sententia prouocatum* (Sg 45a); (ii) over *depositione* (C.2 q.1 c.7): *uel deporta(tione)* (Sg 45b); (iii) over *in accusatione* (C.2 q.3 pr.): *de pena* (Sg 49a); (iv) over *sciens* (C.2 q.6 d.p.c.31): *uel scenciens* [!] (Sg 55a); (v) over *et oppido* (C.2 q.7 c.5): *i(d est) multum* (Sg 56b); (vi) over *Ecce puer meus* (C.2 q.7 d.p.c.41 §8): *e. l. t. q.* (Sg 63a); (vii) over *dumtaxat* (C.2 q.7 c.47): *i(d est) tantummodo* (Sg 64b); (viii) *Vbi q(ui) ad annum x. iiii. non peruenit nec accusator nec testis esse possit* (C.4 qq.2–3 c.1 summarium: in Sg these words are not in red ink): *titulus* (Sg 73a); (ix) over *cum legibus* (C.11 q.1 c.5): incomprehensible interlinear gloss (Sg 93a); (x) over *impossibilitate* (C.33 q.1 d.p.c.3): *frigiditate uel* [//]; and (xi) over *munia ecclesiastica* (C.33 q.1 c.4): *offitia* (Sg 181b).

5 *Wörterklärungen: Marginal Definitions*

In the margins of the *Exserpta* there are 17 definitions. At first glance they come from four different hands:⁶⁰

a) 1. *Marginalienhand*: *Causa* (p. 3b), *Calumpniari* (p. 46a), *Preuaricari* (p. 46b), *Tergiuersari* (p. 46a), *Manumissio* (p. 106a), *Prescriptio* (p. 134a), *Primogenitura* (p. 153b), *Sponsalia* (p. 165ab), *Nuptie* (p. 165b), *Coniugium* (p. 166ab), *Coniugium* (p. 166ab), *Cognatio* (p. 187b), *Affinitas* (p. 187b), and *Affinitas* (p. 188a).

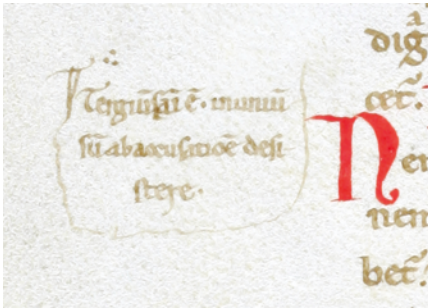


FIGURE 9.1 *Sg 46a left margin: 1. Marginalienhand* (see below [4])

- [1] *Causa* est res que habet in se controuersiuam in dicendo positam cum certarum personarum interpositione. (*Sg 3b*)
- [2] *Calumpniari* est falsa crimina intendere. (*Sg 46a*)
- [3] *Preuaricari* est uera crimina abscondere. (*Sg 46b*)
- [4] *Tergiuersari* est in uniuersum ab accusatione desistere. (*Sg 46a*)
- [5] *Manumissio* est datio i(d est) detectio libertatis. Tecta est enim naturalis libertas. Quod non habent dari non possunt. Naturaliter enim omnes homines sunt liberi. Iure uero ciuili non. (*Sg 106a*)
- [6] *Prescriptio* siue exceptio est actionis exclusio. (*Sg 134a*)
- [7] *Primogenitura* autem uestis erat sacerdotalis qua maiores natu cum benedictione patris induti uictimas Deo uelut pontifices offerebant. (*Sg 153b*)
- [8] *Sponsalia* sunt mentio et compromissio futurarum nuptiarum. (*Sg 165ab*)

⁶⁰ Lenz, Ortelli, *Die Handschriften* (n. 2), 18.

- [9] Ex libro constitutionum. Nuptie siue matrimonium est uiri mulieris coniunctio indiuiduam uite consuetudinem continens. (Sg 165b)
- [10] Coniugium est manifestus consensus legitimarum personarum. (Sg 166ab)
- [11] Vel coniugium est legitima federatio maris et femine per quam sine culpa ad usum carnis commisceri possunt. (Sg 166ab)
- [12] Cognatio est diuersarum personarum (ab una stipite descendentium)]^{gloss} per nationem coniunctio. Dicta sit quasi communis natio. Fit autem dupliciter uel tripliciter. Aut enim tu ab illo nationem traheris uel econuerso aut cum illo ab alio. (Sg 187b)
- [13] Affinitas est regularitas personarum ex nuptiis nobis coniunctarum omni carens parentela. (Sg 187b)
- [14] Affinitas est regularitas personarum ex nuptiis nobis coniunctarum omni carens parentela. (Sg 188a)

b) 5. Marginalienhand: *Linea* (p. 187b), *Gradus* (p. 187b).

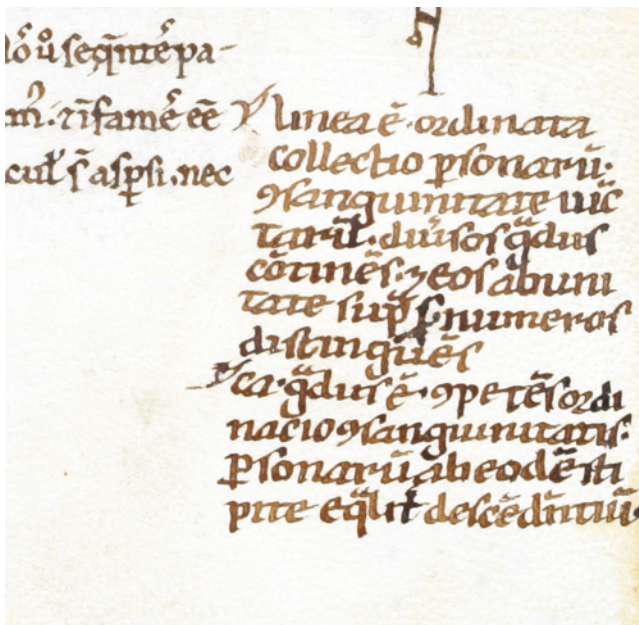


FIGURE 9.2 Sg 187b lower margin: 5. Marginalienhand

- [15] Linea est ordinata collectio personarum consanguinitate iunctarum diuersos gradus continens et eos ab unitate /// secundum numeros distinguens. (*Sg* 187b)
- [16] /// gradus est competens ordinatio consanguinitatis personarum ab eodem stipite equaliter descendentium. (*Sg* 187b)

c) Hand A: *Originarii* (p. 20b).

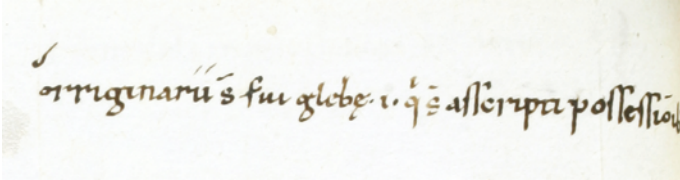


FIGURE 9.3 *Sg* 20b upper margin: Hand A

- [16] Originarii sunt serui glebe i(d est) qui sunt ascripti possessionibus. (*Sg* 20b)

d) 2. *Marginalienhand* (?): *Tergiuersator* (p. 46a).

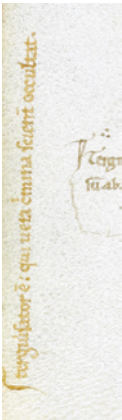


FIGURE 9.4

Sg 46a left margin: perpendicular gloss, 2. *Marginalienhand*?

- [17] Tergiuersator est qui uera crimina scienter occultat. (p. 46a)

Except for “hand A,” the rest of the hands add *auctoritates* and *dicta* and make other glosses to the *Exserpta*.⁶¹ The person behind 1. *Marginalienhand*, for example, copied four fragments of Roman law: *Cod. Just.* 9.46.10 on p. 66a and again on p. 179a; auth. *Ei qui* (*ex Nov.* 49 pr. et c.1: *Aut.* 58 pr. et c.1: *Coll.* 5.11. pr: *inserta* in *Cod. Just.* 7.63.2) on p. 68a; auth. *Ad hec* (*ex Nov.* 22.11: *Auth.* 4.1: *inserta* in *Cod. Just.* 7.6.1.9) on p. 171ab; and *Cod. Just.* 9.9.2 and 5 on p. 178.⁶² This hand is also responsible for some corrections and other glosses. The 5. *Marginalienhand* copied *Cod. Just.* 5.18.3, on p. 171b.⁶³ The person responsible for 5. *Marginalienhand* worked after the person responsible for 1. *Marginalienhand* (see Figure 9.5).

Rhetoric, Roman law and theology are the main sources of inspiration for the cultivated person behind 1. *Marginalienhand*. The notion of *Causa* comes from Cicero’s *De inventione*, although it could be borrowed from some of the medieval commentaries to the *Rhetorica prima*, such as *Ut ait Petronius* written by Thierry de Chartres in the 30s of the twelfth century.⁶⁴ The first marginal *Wortklärung* of *Sg* (*Causa*) precedes the *erste Glossenkomposition* where the definition has been enriched with the distinction of four types of causes – *iudicium*, *iustitia*, *negotium*, *lis* –, according to Isidore of Seville (*Etim.* 18.15.2–4). In the manuscripts of the *Decretum* with the *erste Glossenkomposition* the gloss reads as follows:⁶⁵

61 Hand “A” has not been described by Lenz, Orтели or Bernasconi.

62 Larrainzar, “El borrador de la Concordia de Graciano (n. 1),” 663–665; Viejo-Ximénez, “Las Novellae (n. 1),” 246, 277–79; Pennington, “The Big Bang (n. 13),” 60–61, 64–65, and n. 66, 67, 72, 74, 84, 85, 88. The person behind 1. *Marginalienhand* copied 6 *dicta* and *auctoritates*: C.20 q.1 c.10 *palea* (*Sg* 146a), C.27 q.2 c.21 (*Sg* 167b), C.29 q.2 d.p.c.7–c.8 (*Sg* 171b), C.31 q.2 c.2 *palea* (*Sg* 172a) and C.36 q.2 c.3 (*Sg* 199b). He could also be responsible for C.16 q.7 c.4, c.5 and c.3a (*Sg* 138a).

63 Viejo-Ximénez, “Non omnis error consensum euacuat (n. 3),” 638.

64 José M. Viejo-Ximénez, “Cicerón y Graciano,” *BMCL* 31 (2014), 23–55, at 46.

65 From the manuscripts with the *erste Glossenkomposition* listed by Weigand (*Die Glossen* (n. 7), 401–425; “The Development (n. 6),” 58, and Placidus Kuhlkamp (“Die erste Glossenkomposition zu C.16 des Decretum Gratiani,” in *Ius et Historia. Festgabe für Rudolf Weigand zu seinem 60. Geburtstag von seinen Schülern, Mitarbeitern und Freunden*, ed. Norbert Höhl, Forschungen zur Kirchenrechtswissenschaft 6 (Würzburg, 1989), 102–120) the following have been used: *Bc* = Barcelona, Archivo de la Corona de Aragón, Ripoll, 78; *Bi* = Biberach an der Riss, Spitalarchiv, B 3515; *Gf* = Grenoble, Bibliothèque municipale, 11 (474); *Gg* = Grenoble, Bibliothèque municipale, 34 (475); *Hk* = Heiligenkreuz, Stiftsbibliothek, 44; *Mc* = München, Bayerische Staatsbibliothek, lat. 4505; *Mv* = Montecassino, Biblioteca Abbaziale, 64; *Pk* = Paris, Bibliothèque nationale de France, lat. 3890. Rudolf Weigand, “Die ersten Jahrzehnte der Schule von Bologna: Wechselwirkung von Summen und Glossen,” in *Proceedings of the IXth International Congress of Medieval Canon Law*, ed. Peter Landau, Jörg Müller (Vatican City, 1997), 445–465, edited the gloss on C.1 (451–452,

Causarum alia dicitur iudicium alia iustitia alia negotium alia lis. Causa est res que habet in se controuersiam in dicendo positam cum certarum personarum interpositione.

Bc Bi Gf Gg Hk Mc Mv1 Mv2 Pk

dicitur] deest *Mv2*

iudicium alia iustitia alia negotium] iudicium alia negotium alia dicitur iustitia *Gg Mv*

negotium] negotium alia iurgium *Bi Gf Hk Mc Mv2*

alia lis] aliam autem dicimus litem *Bi /// Hk*

est res] est ius *Gf^{ac}*

que habet in se] /// *Hk*

positam] depositam *Mv*

certarum] ceterarum *Gg*

The author of the *Summa Quoniam in omnibus* opened his comment to C.1 with the quadripartite division of the *Etymologie*, which goes before the definition taken from the Ciceronian *Rhetorica prima*.⁶⁶

Ceterum quia causarum alia iudicium, alia iustitia, alia negotium, alia iurgium, alia lis vocatur, horum uniuscuiusque vocabulorum definitionem utile existimo ignorantibus aperire. Causa est res habens in se controuersiam in dicendo positam cum certarum personarum interpositione. Aliter causa est impulsus animi ad aliquid agendum. Causa vocata a casu, qui evenit. Est enim materia et origo negotii necdum discussionis examine facta. Quae dum proponitur causa est, dum discutitur iudicium est, dum firmatur, iusticia est. Vocatum autem iudicium quasi iuris dictio, et iustitia quasi iuris status. Negotium vero multa significat, modo actum rei alicuius, cui contrarium est otium, modo actionem causae, quod est iurgium litis. Et dictum negotium, quod sit sine otio. Negotium autem in causis, negotium in commerciis dicitur, ubi aliquid datur, ut maiora lucrentur. Iurgium dictum quasi iuris garrum, eo quod bi qui causam

31 manuscripts). Viejo-Ximénez, "Cicerón (n. 64)," 43, transcribed the gloss from *Bc. Mv* transmits two versions of the gloss: *Mv1* next to C.1 pr. and *Mv2* next to C.1 q.1 c.1.

66 José M. Viejo-Ximénez, "Una composición sobre el Decreto de Graciano: la suma 'Quoniam in omnibus rebus animaduertitur' atribuida a Paucapalea," *Helmántica* 190 (2012), 419–473, edited *Paucapalea's* comment to C.1 on 454–455.

agunt, iure disceptant. Lis a contentione limitis nomen sumpsit, de qua Virgilius: Limes erat positus litem ut disceret agri.⁶⁷

Causa est – interpositione : Cicero., *De inv.* 1.8 (=Thierry de Chartres, *Ut ait Petronius*, 74.18–29)

Aliter causa – agendum : Thierry de Chartres, *Ut ait Petronius*, 60.30–31

Causa vocata – agri : Isidore, *Etymologiarum*, 18.15.2–4

The evidence shows the date of the activity of the 1. *Marginalienhand* (literally translated: first marginalia hand) to be around the end of the 40s or at the beginning of the 50s of the twelfth century.

It does not seem that the work of the 1. *Marginalienhand* – when adding texts and making glosses – was conditioned by the structure or by the content of the *Decretum vulgatum*, nor by the comments of the early decretists. The marginal definitions of *Calumpniari*, *Praevaricari* and *Tergiversari* are the consequence of the misuse of the word *tergiuersatio* in C.2 q.1 d.p.c.16: when the crime is evident, says Gratian, the criminal cannot hide it by distorting the facts, that is, by forcing their sense to deceive. Whoever knew the meaning of *tergiuersari* in the field of lawsuits would be confused by this vulgarism. The person behind 1. *Marginalienhand* remembered the comment *ad senatus consultum Turpillianum* by *Marcianus*: *tergiuersare* means to withdraw absolutely from the exercise of a criminal action. Hence, this glossator copied the technical definition in the left margin of p. 46a, and he completed it with the definitions of *Calumpniari* and *Praevaricari* at the top of the same page.⁶⁸ Later, the person behind 2. *Marginalienhand* offered a definition of *tergiuersator* which recovers the vulgar meaning: *tergiuersator* is the person who intently conceals a crime.⁶⁹

The three definitions of *Marcianus* were subsequently included in C.2 q.3 d.p.c.8.⁷⁰ It is improbable that the person behind 1. *Marginalienhand* took

67 *Die Summa des Paucapalea über das Decretum Gratiani*, ed. Johann F. von Schulte (Giessen 1890, repr. Aalen 1965), 51.

68 Also taken from *Dig.* 48.16.1.1 (*Marcianus libro singulari ad senatus consultum Turpillianum*): *Calumpniari est falsa crimina intendere, praevaricari vera crimina abscondere, tergiuersari in universum ab accusatione desistere.*

69 José M. Viejo-Ximénez, “La composición del Decreto de Graciano,” *Ius Canonicum* 45 (2005), 431–485, comments the four glosses on 459–460.

70 José M. Viejo-Ximénez, “El Derecho romano nuevo en el Decreto de Graciano,” *ZRG.KA* 119 (2002), 1–19, and idem, “Las etapas de incorporación de los textos romanos al Decreto de Graciano,” in *Proceedings of the Eleventh International Congress of Medieval Canon Law*, ed. Manlio Bellomo, Orazio Condorelli (Vatican City, 2006), 139–152.

them from a *Decretum vulgatum* for two reasons: first, when he transcribed other Roman fragments in the margins of *Sg*, he showed great detachment and independence;⁷¹ and second, it is very likely that the *Corpus Iuris civilis* was at his fingertips.⁷² Indeed, the definitions of *Manumissio* (p. 106a), *Prescriptio* (p. 134a), *Nuptie* (p. 165b), and *Affinitas* (p. 187b) – also written by *1. Marginalienhand* – are related to the *Institutiones* by Justinian.

The marginal gloss to the word *manumissio* of C.12 q.2 d.p.c.56 begins with the short version of Ulpian's definition which ended up being included in the *Institutiones*: *Manumissio autem est datio libertatis*.⁷³ The marginal annotation of *Sg* incorporates the gloss *id est detectio*, a common interlinear clarification in the medieval copies of Justinian's handbook.⁷⁴ In *Sg*, the definition is expanded with considerations on natural freedom and the civil law that echo some of the issues that appear in the glosses of *Inst.* 1.3 and *Inst.* 1.5.⁷⁵ The decretists of the first generation of the Bologna School did not explain the meaning of the word *manumissio*.⁷⁶

The person behind *1. Marginalienhand* could also borrow the definition of *Prescriptio* (*Sg* p. 134a) from a commented copy of the *Institutiones*. In the title *De exceptionibus* (*Inst.* 4.13), the interlinear gloss to the word *defendendorum*

71 On *Sg* 66a and 179a *1. Marginalienhand* copied *Cod. Just.* 9.46.10, a fragment that never found its place in the *Decretum* (José M. Viejo-Ximénez, "Accusatio in scriptis semper fieri debet. A propósito del método de trabajo de y sobre Graciano," *Revista Española de Derecho Canónico* 64 (2007), 309–338, 330 and n. 29). On *Sg* 178a he copied *Cod. Just.* 9.9.2 and 5; while the first fragment was included in the *Decretum* (C.32 q.1 d.p.c.10), the second one is unknown to Gratian (Pennington, "The Big Bang (n. 13)," 65 and n. 86–87). The person behind *1. Marginalienhand* was not conditioned by the Roman law included in the *Decretum vulgatum*.

72 When copying *Cod. Just.* 9.46.10 – a fragment that never arrived to the *Decretum vulgatum* –, *1. Marginalienhand* added a gloss taken from his exemplar of the *Codex: In viiii. l. cod. t. de calumpniatoribus. Impp. Hon. et Th. Quisquis crimen intendit, non impunitam noverit fore licentiam menciendi, cum calumpniantes (in priuatis uero uel extraordinariis criminibus calumpniosi extra ordinem pro qualitate admisi ponuntur)*^{gloss intl ad uindictam poscat similitudo supplicii} (*Sg* 66a). In the margin of *Sg* 68a, auth. *Ei qui* has an inscription – *De his qui ingrediuntur ad appellat(ionem)* – that is missing in C.2 q.6 c.41.

73 *Inst.* 1.5 pr.: *Manumissio autem est datio libertatis. Dig. 1.1.4 (Ulpianus libro primo Institutionum): Est autem manumissio de manu missio, id est datio libertatis.*

74 For instance in München, Bayerische Staatsbibliothek, lat. 3509, fol. 2rb: *uel detectio*.

75 Severino Caprioli, Victor Crescenzi, Giovanni Diurni, Paolo Mari, Piergiorgio Peruzzi, *Glosse preaccursiane alle Istituzioni. Strato Azzoniano. Libro primo* (Roma, 1984), glosses nn. 134, 135, 138 and 165.

76 It does not appear in the manuscripts with the *erste Glossenkomposition* nor in the *Summae* attributed to *Paucapalea*, Roland, Rufinus or Etienne de Tournai.

says: *quia exceptio est actionis exclusio contra quem excipit agitur ut. d. e. l. i. ii.*⁷⁷ As the appendices to the *Petri Exceptionum legum romanorum*, the *Libellus de verbis legalibus*, the *Ulpianus de edendo* and the *Summa Quoniam in omnibus* show, the definition was common among jurists, both civilists and canonists.⁷⁸

The rubric *Ex libro constitutionum* that introduces the definition of *Nuptie*, next to C.27 q.1 c.20, also refers to the Institutions (*Inst.* 1.9.1). The definition that the person behind *l. Marginalienhand* has copied in the margin of *Sg* retains the original *continens*.⁷⁹ Some canonical collections picked up Justinian's definition with the same rubric as the gloss of *Sg*.⁸⁰ However, the principle of economy of sources can be applied to this case: a few pages later, the person behind *l. Marginalienhand* copies the definition of affinity twice, which is a marginal gloss to *Inst.* 1.10.6:

Gloss to <i>Inst.</i> 1.10.6 (Clm 3509, fol. 3vb) ⁸¹	Gloss to C.35 qq.2–3 c.1 <i>Sg</i> 187b	Gloss to C.35 qq.2–3 c.3 <i>Sg</i> 188a	<i>Summa</i> <i>Quoniam in</i> <i>omnibus</i> Comment to C.35 pr. ⁸²
<i>Adfinitas.</i> Affinitas est regularitas regularitas personarum ex nuptiis nobis adiunctarum, omni carens parentela	Affinitas est regularitas personarum ex nuptiis nobis coniunctarum omni carens parentela	Affinitas est regularitas personarum ex nuptiis nobis coniunctarum omni carens parentela	Affinitas est regularitas personarum ex nuptiis proueni- ens omni carens parentela

77 München, Bayerische Staatsbibliothek, lat. 3509, fol. 41rb. The gloss could have been inspired by *Dig.* 44.1.2 pr. (Ulpianus libro 74 ad edictum): *Exceptio dicta est quasi quaedam exclusio, quae opponi actioni cuiusque rei solet ad excludendum id, quod in intentionem condemnationemve deductum est.*

78 Examples taken from José M. Viejo-Ximénez, "La Summa Quoniam in omnibus de Paucapalea: una contribución a la Historia del Derecho Romano – Canónico en la Edad Media," *Folia Theologica et Canonica* 1 (2012), 151–196, at 189–190 (n. 98 should say Clm 3509, not Clm 4505).

79 The definition also reads *continens* in the text of *Sg* (C.29 q.1): Viejo-Ximénez, "Non omnis error consensum euacuat (n. 3)," 622–623.

80 Viejo-Ximénez, "Non omnis error consensum euacuat (n. 3)," n. 18 registers 6 Italian and 8 transalpine collections.

81 Caprioli et al., *Glosse preaccursiane* (n. 75), n. 268.

82 Schulte, *Die Summa* (n. 67), 137.

As the words *nuptiis nobis coniunctarum* show, it is very unlikely that the definition on the margins of *Sg* came from the *Summa* attributed to *Paucapalea*.

The definition of *cognatio* (p. 187b) is similar to the definition transcribed by the author of the *Summa Quoniam in omnibus*, but the gloss written by the person behind 1. *Marginalienhand* is longer than the definition of the *summa* attributed to *Paucapalea*:⁸³

Gloss to C.35 q.1 <i>Sg</i> 187b	<i>Quoniam in omnibus</i> Comment to C.35 pr. ⁸⁴	<i>Per tractatis his</i> to C.35 q.1 ⁸⁵	Rufinus to C.35 qq.2–3 ⁸⁶	Etienne de Tournai to C.35 ⁸⁷
Cognatio est diuersarum personarum (ab una stipite des[cendentium]) gloss per nationem coniunctio. Dicta sit quasi communis natio. Fit autem dupliciter uel tripliciter. Aut enim tu ab illo nationem traheris uel econuerso aut cum illo ab alio.	Vel cognatio est diuersarum personarum per nationem coniunctio. Dicta cognatio quasi communis natio.	Est ergo consanguinitas diuersarum personarum uinculum ab eodem stipite descendenti-um carnali propagatione contractum.	Est ergo consanguinitas diuersarum personarum uinculum ab eodem stipite descendenti-um, carnali propagatione contractum.	Consanguinitas est uinculum diuersarum personarum ab eodem stipite procedenti-um carnali propagatione contractum.

Again, the first *Summae* of the Bologna School could not be the source of inspiration for the person behind 1. *Marginalienhand*.

The definition of *Sponsalia* (p. 125ab) taken from the *Digestum* is another example of the skill with Roman law possessed by the person behind

83 The remote source of inspiration could be *Dig.* 38.8.1.1: *Cognati autem appellati sunt quasi ex uno nati, aut, ut Labeo ait, quasi commune nascendi initium habuerint.*

84 Schulte, *Die Summa* (n. 67), 137.

85 Kerstin A. Jacobi, *Der Ehetraktat des Magister Rolandus von Bologna. Redaktionsgeschichtliche Untersuchung und Edition (Studienausgabe)* (Hamburg, 2004), 440–441.

86 *Die Summa decretorum des Magister Rufinus*, ed. Heinrich Singer (Paderborn, 1902), 510.

87 Schulte, *Stephan* (n. 57), 247.

1. *Marginalienhand*.⁸⁸ However, his knowledge also encompassed the ordinary gloss to the Bible and other theological writings. As it is well known, Jacob snatched the birth right from Esau (Gen. 25.29–34; 27). According to C.22 q.2 d.p.c.22, when Jacob appeared before his father saying that he was Esau, he did not lie because he did not claim to be a firstborn by birth but by right, that is, he was protected by the right that he had bought from his brother in exchange for lentil stew. The expression *ius primogeniture* provoked the person behind 1. *Marginalienhand* to copy the definition of *primogenitura* in the margin of *Sg* p. 153b. He took this definition from the gloss to Gen. 25.31–32.⁸⁹ No decretist was interested in this detail.

The theological inspiration of the person behind 1. *Marginalienhand* can also be recognized in the two definitions of *Coniugium* that comprises the gloss on p. 166ab. Each one emphasizes a different dimension of the marital union. The first one defines marriage from its efficient cause: *Coniugium est manifestus consensus legitimarum personarum*. The treatise *In coniugio figure et uestigium* from Anselm of Laon's school enumerates the three causes that make marriage, the first one being *manifestus consensus legitimarum et presentium personarum*.⁹⁰

The second definition of *coniugium* in the margins of *Sg* focuses on the moral issue, since it highlights the legitimacy of the connubial intercourse: *Vel coniugium est legitima federatio maris et femine per quam sine culpa ad usum carnis commisceri possunt*. This subject appears in the *Epitome theologiae christianae* attributed to Peter Abelard: *Coniugium est maris et feminae foederatio legitima, propter quam licet eis sine culpa commisceri*.⁹¹ The author of the gloss of *Sg* was not the only one who considered these two dimensions of marriage jointly: both the legal and the moral aspects appear in the commentary to the concord of the four Gospels by the Premonstratensian Zacharias Chrysopolitano (c.1150), *In unum ex quatuor sive de concordia*, 1.29: *Est autem coniugium viri et feminae foederatio legitima, per quam licet eis ad usum carnis permisceri, secundum divinas et humanas leges.... Coniugium vero facit manifestus consensus legitimarum personarum*.⁹²

88 *Dig.* 23.1.1 (Florentinus libro tertio institutionum): *Sponsalia sunt mentio et repromissio nuptiarum futurarum*. Paucapalea (Schulte, *Die Summa* (n. 67), 121), Rufinus (Singer, *Die Summa* (n. 86), 445) and Etienne de Tournai (Schulte, *Stephan* (n. 57), 236) knew the definition. The fragment of the *Digestum* was copied next to C.27 q.2 c.13 in the margin of *Mv*, a manuscript with the *erste Glossenkomposition*: *Sponsalia sunt mentio et repromissio futurarum nuptiarum ut ff. de sponsalibus l. i. ...* (fol. 411r).

89 *Glossa ordinaria* to Gen. 25.31–32: *Primogenitura autem uestis erat sacerdotalis, qua induti maiores natu cum benedictione patris uictimas Deo, uelut pontifices, offerebant: hoc dono, terreni amoris desiderio, caruerunt Iudaei, cum gloria futuri regni* (PL 113.147B).

90 Franz P. Bliemetzrieder, *Anselm von Laon systematische Sentenzen* (Münster, 1919), 112–113.

91 PL 178.1745C.

92 PL 186.131D and 132A.

Definitions and etymologies are characteristic of the propaedeutic phase of any teaching activity. *Ulpianus* advised those who apply themselves to the study of law that they should know from whence the word *ius*/law is derived. Since the law obtains its name from justice, the great Roman jurist defined this virtue: “Justice is the constant and perpetual desire to give to everyone that to which he is entitled.”⁹³ In the middle of the twelfth century in Bologna, Gratian’s direct disciples used the same tools. The first comprehensive comment to the *Decretum* begins with a reflection on hermeneutics: as the force of a verb or a noun is linked to its origin, the interpreter’s task is to discover and express its etymology.⁹⁴ Included in the *Summa Quoniam in omnibus* are etymologies and definitions.⁹⁵ The definitions with which the person behind the *1. Marginalienhand* explained the meaning of some words of the *Exserpta* are typical of a teacher, not of a judge or a lawyer. If this person was actually responsible for the materials copied in p. 135a–203a, the making of the *Exserpta* could be located in an academic environment.⁹⁶ Moreover, those who used the *Exserpta* after *1. Marginalienhand* were not disconnected from the teachings of the masters of Bologna.

6 The Erste Glossenkomposition

As it was said above, the person behind *5. Marginalienhand* wrote the definitions of *Linea* (*Sg* p. 187b) and *Gradus* (*Sg* p. 187b). This person was working after *1. Marginalienhand*, since he also wrote a gloss on the definition of *Cognatio* added by *1. Marginalienhand* on the same page:

93 *Dig.* 1.1.1 pr. (*Ulpianus libro primo Institutionum*) and 1.1.10 (*Ulpianus libro secundo regularum*).

94 Schulte, *Die Summa* (n. 67), 4: *Est enim etymologia origo vocabulorum cum vis nominis et verbi per interpretationem colligitur*, taken from Isidore, *Etymologiarum*, 1.29.1 (PL 82.105B).

95 Definitions, *inter alia*: *Hostes sunt, quibus bellum publice populus romanus decrevit, vel ipsi populo romano, ceteri latrunculi vel praedones appellantur* (Schulte, *Die Summa* (n. 66), 7). Etymologies, *inter alia*: *Vel ideo liberi dicti sunt, quia ex libero matrimonio sunt orti* (Schulte, *Die Summa* (n. 66), 5); *Depositum est pignus commendatum ad tempus quasi diu positum. Deponere autem quis videtur, cum aliquid metu furti, incendii, naufragii apud aliam custodiam causa deponit* (Schulte, *Die Summa* (n. 66), 6).

96 The long *diskursive Erörterung* on C.15 q.5 d.p.c.14 by *1. Marginalienhand* also points to the classrooms: *Salomon. ‘Qui de rapina dat pauperibus ac si mactet filium ante patrem’. Quidam dicunt quod nullus potest saluari nisi reddat quod rapuit, uerum quidem est, si bene intelligatur. In ‘reddere’ intelligitur si possit. In ‘posse’ duo. Si habet unum reddat, si cui reddat sciat. Si non habet unum, peniteat et reddat in corde quod redditio longe meliorem est quia sine ista non saluaretur cum ipso, cum alia possit dampnari. Si habet unum reddat et possit ne scit cui debeat reddere, reddat ecclesie et consulat eam et secundum eius consilium det pauperibus et quod sibi unum igitur faciat* (*Sg* 118a).

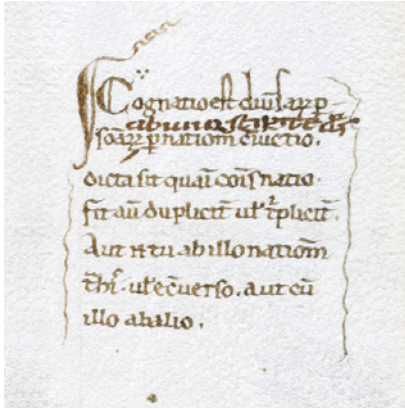


FIGURE 9.5
Sg 187b upper margin: gloss by 5.
Marginalienhand on another gloss written by 1.
Marginalienhand

The definitions of *Linea* and *Gradus* can be traced back to the *erste Glossenkomposition*, from which the gloss on the definition of *Cognatio* could also have been taken. The manuscript of Biberach, for example, has the definitions of *Consanguineum* and *Linea*:

Gloss beside C.35 qq.2–3 c.2 <i>Sg</i> 187b	Glosses below C.35 qq.2–3 c.1 <i>Bi</i> fol. 318vb
–	§ Consanguineum diuersarum personarum ab eodem stipite descendentium carnali propagatione contractum
Linea est ordinata collectio personarum consanguinitate iunctarum diuersos gradus continens et eos ab unitate /// secundum numeros distinguens	§ Linea est ordinata collectio personarum consanguinitate coniunctarum diuersos gradus in se continens et eos secundum diuersos numeros ab unitate stipitis distinguens

The activity of the person behind the 5. *Marginalienhand* begins on p. 97b, where he corrected C.11 q.3 c.47, and extends to p. 187, where he wrote a couple of glosses to C.35 qq.1–3. On the one hand, 5. *Marginalienhand* copied 16 texts taken from *dicta* and *auctoritates* that belong to the *Decretum vulgatum*: C.21 q.1 d.p.c.4 (p. 148b, top margin); C.21 q.2 d.p.c.4–c.5 (p. 148b, lower margin); C.22 q.5 c.1b (p. 156b, top margin); C.22 q.5 c.2 and c.3 (p.156b, lower margin); C.30 q.1 d.p.c.7 (p. 173a, lower margin); C.30 q.4 pr. (p. 173b); C.32 q.2 pr.–c.1a, d.p.c.1, c.2, d.p.c.2, d.p.c.4 and d.p.c.16 (p. 178ab, lower margin); and C.32 q.8 pr.–c. un.

(p. 180ab, lower margin). On the other hand, he wrote 19 glosses to the following sections of the *Exserpta*: C.22 q.5 c.1 (p. 156b), 1 interlinear gloss; C.29 q.2 c.4 (p. 171ab), 1 gloss; C.29 q.2 c.4 (p. 171b, lower margin), 1 gloss; C.30 q.1 d.p.c.2 (p. 172b), 1 gloss; C.30 q.3 c.1 (p. 173b), 1 gloss; C.30 q.4 c.4 (p. 174a), 2 glosses; C.30 q.4 c.5 (p. 174a), 1 gloss; C.31 q.1 c.1 (p. 176a), 1 gloss; C.31 q.1 d.p.c.2 (p. 176b, top margin), 1 gloss; C.31 q.3 c.1 (p. 177a), 1 or 2 gloss(es); C.32 pr. (p. 177b), 2 glosses; C.32 q.1 c.2 (p. 178a), 2 glosses; C.32 q.1 c.3 (p. 178a), 1 gloss; C.33 q.1 d.p.c.3 (p. 181b), 1 gloss; and C.35 qq.2–3 c.2 (p. 187b), 2 glosses.

5. *Marginalienhand*'s glosses agree with the glosses of the *erste Glossenkomposition*.

Within C.29 q.2 c.6, the decision taken by the council celebrated *apud Vermeriam* (753) allows whoever has married a slave girl thinking that she was free to redeem her or to marry another woman.⁹⁷ Should he have known that she was a slave, he would have her as his legitimate wife. The person behind the 5. *Marginalienhand* makes two comments: first, it is not a precept, but an advice; and second, the children will be *spurii et ingenui* and will receive their dowry from the asset (of the mother), just as it was established by a constitution of the Emperor Antoninus of the year 215 (*Cod. Just.* 5.18.3). Both comments appear in the manuscripts with the *erste Glossenkomposition*, for example in *Mc*:

Glosses to C.29 q.2 c.4
Sg 171ab

Glosses to C.29 q.2 c.4
Mc fol. 265ra marg.

n(on) est h(oc) p(receptum) set
c(onsilium)

Consilium esse non preceptum⁹⁸

Filii uero spurii et ingenui erunt et
ex peculio eius dotem recipiunt ut C.
soluto matrimonio l. ii.

Filii uero spurii et ingenui erunt et
ex peculio eius dotem recipiunt ut C.
soluto matrimonio l. ii⁹⁹

The gloss to C.30 q.1 d.p.c.2 also belongs to the *erste Glossenkomposition*. With regard to spiritual kinship, the first two *auctoritates* of the question – C.30 q.1 c.1,

97 C.29 q.2 c.4. The canon belongs to the early versions of Gratian's *Decretum*: José M. Viejo-Ximénez, "La redacción original de C.29 del Decreto de Graciano," *Ius Ecclesiae* 10 (1998), 149–185.

98 *Bi*: *Consilium esse et non preceptum*. *Gf*: *Concilium non potest esse preceptum*. *Hk*: *Concilium est preceptum <sic>*. *Pk*: *Consilium est non preceptum*.

99 *Bi*: *Filii uero spurii et ingenui erunt et ex peculio eius dotem recipiunt*. *Vt C. Solutio matrimonio l. ii*. *Gf*: *uero spurii et ingenui erunt et ex peculio dotem receperint*. *Vt C. Solutio matrimonio l. ii*. *Hk*: *Filii uero spurii et ingenui erunt et ex peculio eius dotem recipient*. *Vt C. Solutio matrimonio*. *Pk*: *Filii uero spurii ingenui erunt et ex peculio eius dotem recipient*. *Vt C. Solutio matrimonio l. iii*.

Deusdedit (J³ †3203; JE †2003, 615–618) and C.30 q.1 c.2, Council of Compiègne (757), c.15 – forbid the man who godparented to his son to give the marital duty (*sue uxore debitum reddere non ualeat*). This prohibition (known as *cognatio spiritualis superueniens*) seems to go against the following *auctoritates* cited by Gratian: *E contra uero ...* (d.p.c.2). The master solved the apparent contradiction – *separe(n)tur*: C.30 q.1 cc. 1 and 2; *non separe(n)tur*: cc. 3, 4, 6, 7 – in C.30 q.1 d.p.c.10 without giving a proper explanation. Gratian did not respond to all heterogeneous situations considered by his predecessor popes, bishops and councils, because he confined himself within the limits of the original question.¹⁰⁰ The person behind 5. *Marginalienhand* suggested a starting point for the harmonization of the contradicting authorities: *supra dicta rigorem seruant, sequentia temperant* (p. 172b). This gloss to C.30 q.1 d.p.c.2 appears, for instance, in *Bi Gf* (*conseruant*) *Hk Mc*.¹⁰¹

Canon 4 of the council of Tribur (895) – that is, C.30 q.4 c.4 – allows the male to marry his deceased godfather's wife, as long as there is no other impediment, such as consanguinity or spiritual kinship. The person behind 5. *Marginalienhand* makes two comments: *subaudi ex quodam marito* and *Quia postea eam accepit, uel postea rem cum ea non habuit*. Both glosses belong to the *erste Glossenkomposition*, such as found in *Mc*:

Glosses to C.30 q.4 c.4
Sg 174a

Glosses to C.30 q.4 c.4
Mc fol. 258rb

subaudi ex quodam marito

Subaudi ex eodem marito¹⁰²

100 Enrique de León, *La "cognatio spiritualis" según Graciano* (Milano, 1996), edits C.30 qq.1, 3 and 4 (138–168), and analyses the intricate content of the *auctoritates* of C.30 q.1 (241–247).

101 On *Sg* 173a lower margin, 5. *Marginalienhand* copied C.30 q.1 d.p.c.7, although he indicated that it should be inserted before c.6. Larrainzar, "El borrador de la Concordia de Graciano (n. 1)," 660, describes the structure and content of C.30 q.1 in *Sg*.

102 Weigand, *Die Glossen* (n. 6), gloss n. 1500a. *Bi*: although the microfilm is not clear, the gloss *Subaudi* could go before *Commatrem*; there is no trace of *Qui postea*. *Gf*: the order of the three glosses is *Subaudi*, *Quia postea* and *Commatrem*. *Hk*: has the glosses *Subaudi* and *Commatrem*, but the copyist wrote *Commatrem* beside C.30 q.4 c.5. *Mv*: glosses *Subaudi* and *Commatrem*; *Subaudi ex eodem filio marito* /// (Weigand, *Die Glossen* (n. 7), gloss n. 1500b); *Compatrem uiduam sui compatris post eius mortem licite posse ducere*. *Pk*: *Quia postea eam accepit, uel postea rem non habuit*. *Commatrem uiduam sui compatris post eius mortem licite ducere non posse*. Weigand, "Die Dekretabbreviatio Quoniam (n. 3)," 265, found *Subaudi* in 19 manuscripts.

103 Weigand, *Die Glossen* (n. 7), gloss n. 1482.

104 Weigand, *Die Glossen* (n. 7), gloss n. 1468. Weigand, "Die Dekretabbreviatio Quoniam (n. 3)," 265, found *Quia postea* in 15 manuscripts.

table (*cont.*)

–	Commatrem uiduam sui compa- tris post eius mortem licite posse ducere ¹⁰³
Quia postea eam accepit, uel postea rem cum ea non habuit	Qui postea eam accepit, uel postea rem non habuit cum ea ¹⁰⁴

Appendix 2 offers more examples of the relationship between the glosses made by the person behind 5. *Marginalienhand* and the glosses of the *erste Glossenkomposition*. This correspondence places his corrections and comments on the *Exserpta* in the early 50s of the twelfth century.¹⁰⁵ Unlike 1. *Marginalienhand*, 5. *Marginalienhand* could have had a glossed copy of the *Decretum vulgatum* close at hand. This person, however, was not the last one that worked on the *Exserpta* of *Sg*.

7 The *Stroma Rolandi*

The hand that on *Sg* p. 20b comments the word *originarios* of D.54 c.11 worked after the 5. *Marginalienhand*. The definition *Originarii sunt serui glebe i(d est) qui sunt asscripti possessionibus* does not belong to the *erste Glossenkomposition*: at least it does not appear in *Bc Bi Cf Gg Hk Mc Mv Pk*. In *Bi* an interlinear gloss to D.54 c.11 says: (*originarios*) *qui serui glebe dicitur*. The manuscripts *Hk Mv* share the following gloss to the words *filia originarii* of C.32 pr.: *Originarius seruus uel seruus ab origine*. In Bologna, the author of the *Summa Quoniam in omnibus* and *Rufinus* explained the word *originarii* of D.54 c.11 by means of its relationship with the ground (*gleba*), but they do not use the more abstract expression *possessionibus* as the gloss of *Sg* does.¹⁰⁶ When commenting on the C.32 pr., Etienne de Tournai preferred the word *colonus*: *Est enim originarius colonus qui natus est in gleba et eius cognatio agriculturam peragit*.¹⁰⁷ The person behind the hand who copied the definition of *originarii* in *Sg* could also

¹⁰⁵ Weigand, “The Development (n. 6),” 58, dates the *erste Glossenkomposition* to “about 1150.”

¹⁰⁶ Schulte, *Die Summa* (n. 67), ad D.54 c.11: *Originarii idem sunt qui et ascripticii, eo quod glebae ita sunt ascripti, ut eam sine dominorum voluntate deserere non possint. Dicti originarii, quia terram alicuius ab ipsa origine patris vel avi aut proavi ad conditionale servitium reddendum retinent. Qui vulgo manentes a manendo, secundum leges vero servi glebae appellantur* (37). Singer, *Die Summa* (n. 86), ad D.54 c.11, 141: *Rufinus* used the same words.

¹⁰⁷ Paris, Bibliothèque nationale de France, lat. 14609, fol. 254ra; and München, Bayerische Staatsbibliothek, lat. 17162, fol. 162rb.

be responsible for the glosses to C.1 q.1 c.2, c.3 and c.12 on p. 29b. I have not yet found any evidence to date these glosses:

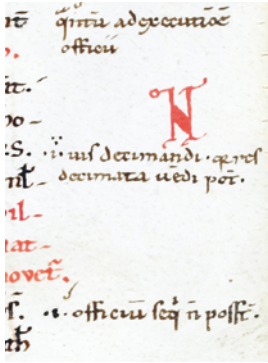
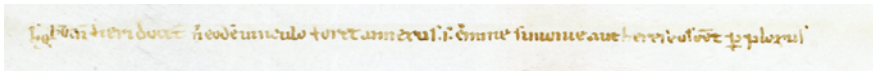


FIGURE 9.6

Sg 29b glosses to C.1 q.1 c.2, c.3 and c.12

On the contrary, two glosses in the margins of *Sg* agree with the comments of Master Rolandus.¹⁰⁸ These annotations belong to 3. *Marginalienhand*, the person who marked some *distinctiones* and *questiones* and whose *Allegationen* mention the numbering of the *distinctiones* and *causae* according to the *Decretum vulgatum* (Appendix 1).¹⁰⁹ The first gloss by 3. *Marginalienhand* refers to C.4 and the second one to C.16:

FIGURE 9.7 *Sg* 73ab upper margin 3. *Marginalienhand*

Can one excommunicated person accuse another one? It is the first question that Gratian poses in the prologue of C.4. The master denies this possibility quoting two *auctoritates*, c.1 and c.2 of the VII Council of Carthage (419), and the response of Pope Nicholas I to Emperor Michael (J³ 5980: JE 2796, 865).¹¹⁰ Only the Council of Carthage's canon appears in the *Exserpta*. The author of the *Summa Quoniam in omnibus* accepted Gratian's explanation and even added new *auctoritates* in its favour.¹¹¹ On his part, the author of the gloss of

108 At least with the *recensio mixta* (3, 4, 5 recensions) of his *Stroma: Die Summa magistri Rolandi, nachmals Papstes Alexander III*, ed. Friedrich Thaner (Innsbruck, 1874).

109 Lenz, Ortelli, *Die Handschriften* (n. 2), 18. The person behind 3. *Marginalienhand* also copied 8 *dicta* and *auctoritates* that belong to the *Decretum vulgatum*: D.28 c.12 (*Sg* 4a); D.34 c.13 (*Sg* 10ab, top margin); D.61 c.4 (*Sg* 22a); ex C.3 q.5 c.13 (*Sg* 69b, top margin); ex C.3 q.5 c.10 (*Sg* 69b, top margin); ex C.15 q.6 c.2 (*Sg* 123a, top margin); C.30 q.4 c.3 (*Sg* 174a) and C.30 q.4 c.6a (*Sg* 174a, lower margin). He also could be responsible of C.6 q.3 c.4 (*Sg* 79a, top margin) and C.6 q.4 c.5b (*Sg* 79b).

110 C.4 q.1 c.1 and c.2.

111 *Quarum prima est*, an in excommunicatione constitutus alium accusare valeat? *Quod autem excommunicatus ad accusationem non admittatur, auctoritate Nicolai*,

Sg remembered three exceptions, also found in *Master Rolandus*: when the accuser was accused either of the same crime as the one accusing the accused, or of the crime of simony, or of the crime of heresy:

Gloss to C.4 q.1

Sg 73 upper margin

/// fieri docetur nisi eodem uinculo foret annexus s(iue) crimine simonie aut hereseos esset perplexus

Comment to C.4 q.1

*Stroma Rolandi*¹¹²

Hic primum quaeritur, an aliquis in excommunicatione constitutus alium valeat accusare. Hoc fieri minime debere multis auctoritatibus docetur, nisi eodem vinculo foret annexus, vel crimine simoniae aut haeresos esset perplexus

While Rufinus seemed more interested in explaining what an ecclesiastical crime is, Etienne de Tournai followed the teachings of *Rolandus*, although he added the crime of lese majeste.¹¹³

The second gloss inspired by the teachings of *Master Rolandus* is one of the rare *Diskursive Erörterung* of *Sg*:

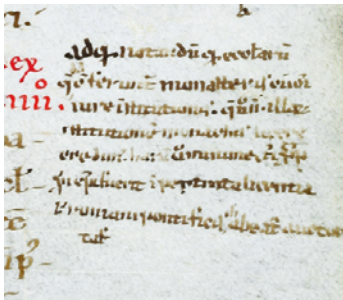


FIGURE 9.8

Sg 133b gloss beside C.16 q.2 (q.5) c.9 (c.2) 3.

Marginalienhand

The issue discussed in C.16 q.2 is whether monks are granted the investiture of those who are going to take charge of the pastoral care in the churches of

Carthaginensis concilii, Stephani, Fabiani aliorumque multorum declaratur (Schulte, *Die Summa* (n. 67), 68).

¹¹² Thaner, *Die Summa* (n. 108), 19–20.

¹¹³ Rufinus: *Crimen ecclesiasticum illud dicitur, cuius examinatio et condempnatio pertinet tantum ad iudicem ecclesiasticum, ut crimen symonie, hereseos, periurii et adulterii* (Singer, *Die Summa* (n. 86), 274). Etienne de Tournai: *Sed sunt tamen casus, in quibus credimus, etiam in excommunicatione positos accusare posse, ut in crimine simoniae, haeresos, laesae maiestatis* (Schulte, *Stephan* (n. 57), 200).

their property. According to c. 34 of the IV Council of Toledo (633), the newly built basilicas belong to the bishop, which seems to give him the right of appointment.¹¹⁴ The gloss of *Sg* and *Master Rolandus* propose the following distinction: while some churches are entrusted to the monks solely, in other cases the concession does not include the right of institution. They read as follows:

Gloss beside C.16 q.2 (q.5) c.9 (c.2) <i>Sg</i> 133b	Comment to C.16 q.2 <i>Stroma Rolandi</i> ¹¹⁵
Ad quod notandum quod ecclesiarum quedam conferuntur monasteriis cum omni iure institutionis, quedam uero non. Illarum institutione monachis licere credimus, harum uero minime nisi proprii episcopi fuerit impetrata licentia uel Romani pontificis habeatur auctoritas	Ad quod notandum quod ecclesiarum quaedam conferuntur monasteriis cum omni iure institutionis, quaedam uero minime. Illarum institutionem licere monachis credimus, harum uero minime, nisi proprii episcopi fuerit impetrata licentia uel Romani pontificis habeatur auctoritas

Master Rolandus was active in the 50s or even in the early 60s of the twelfth century which could provide a *terminus a quo* to date these comments on the *Exserpta*¹¹⁶ Two additional glosses written by the person behind 3. *Marginalienhand* would also belong to this modern stage.

The first additional gloss refers to the word *parentes* of C.3 q.5 c.1.¹¹⁷

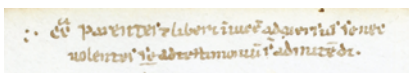


FIGURE 9.9 *Sg* 69a upper margin: gloss to C.3 q.5 c.1 3. *Marginalienhand*

- 114 C.16 q.2 (q.5) c.9 (c.2). Glosses of the *erste Glossenkomposition* link the appointment to the possession: *Cuius est possessio eius sit institutio* or *Eidem esse institutionem cuius possessionem* (Kuhlkamp, "Die erste Glossenkomposition (n. 65)," gloss n. 37 to C.16 q.2 c.1).
- 115 Thaner, *Die Summa* (n. 108), 46. *Rufinus'* comment was more accurate: *Sciendum quod capelle alie traduntur monachis ab episcopis cum omni iure suo; alie sunt, quas ipsi monachi suis possessionibus edificant: prime capelle per monachos instituende sunt, secunde per episcopos* (Singer, *Die Summa* (n. 86), 357).
- 116 Rudolf Weigand, "Magister Rolandus und Papst Alexander III," *AKKR* 149 (1980), 3–44; idem, "Glossen des Magister Rolandus zum Dekret Gratians," in *Miscellanea Rolando Bandinelli Papa Alessandro III*, ed. Filippo Liotta (Siena, 1986), 389–423; and idem, *Die Glossen* (n. 7), 570–572.
- 117 This hand is also responsible for the addition of C.3 q.5 c.13 and C.3 q.5 c.10 on *Sg* 69b upper margin.

The author of the comment noticed the contradiction between the decretal of Pope Calixtus I (J³ †162: JK †86, 217–222), who allowed the *parentes* to testify against each other – *si uoluerint et inuicem consenserint* –, with the fourth book of the Code of Justinian, where parents are forbidden to testify – *nec volentes* – against each other or their children (*Cod. Just.* 4.20.6 [Diocletianus et Maximianus, 286] = C.4 qq.2–3 c.3).¹¹⁸ The author of the gloss of *Sg* did not solve the dilemma. *Rufinus* and Etienne de Tournai proposed a broad interpretation of the term *parentes*: Pope Calixtus, they both state, does not speak of parents, but of relatives (*consanguinei*):

Gloss to C.3 q.5 c.1 <i>Sg</i> 69 upper margin	Comment to C.3 q.5 c.1 <i>Rufinus</i> ¹¹⁹	Comment to C.3 q.5 c.1 Etienne de Tournai ¹²⁰
Contra: parentes et liberi inuicem aduersus se nec uolentes se ad testimonium sunt admitendi	Consanguinei (usq.) inter se, i. e. contra se inuicem, parentes, i. e. consanguinei, sicut vulgo dicitur; nam si proprie hic intelligantur parentes, occurret tibi quoddam legis contrarium, ubi dicitur quod parentes et liberi inuicem aduersus se nec volentes ad testimonium sunt admitendi, ut infra Ca. IV. q. III. Item in criminali. Nisi forte diceretur illud in criminali, hoc in civili causa exaudiendum fore	c. 1. <i>parentes</i> . largo modo intellige, sicut vulgariter dicitur, i. e. qui sunt de eadem parentela, ne si proprie dixeris <i>parentes</i> , contrarium sibi occurrat illius legis de testibus, quae prohibet parentes et liberos inuicem aduersus se nec volentes ad testimonium admitti. <i>inter se</i> , i. e. alter contra alterum. <i>et non in alteros</i> , i. e. non pro altero contra extraneos

The person behind 3. *Marginalienhand* would also be the author of the second additional gloss:

118 A gloss of the *erste Glossenkomposition* alludes here to *Cod. Just.* 4.20.3 (*Valerianus et Gallienus*, 255): *C. de testibus etiam* (Gf Gg Hk Mc Mv Pk).

119 Singer, *Die Summa* (n. 86), 267.

120 Schulte, *Stephan* (n. 57), 195.

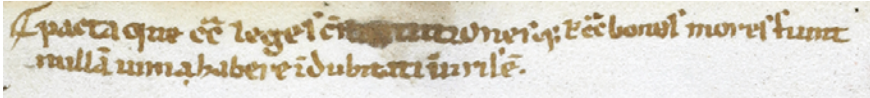


FIGURE 9.10 Sg 154 upper margin: gloss on C.22 q.4 c.12 and c.13 3. *Marginalienhand*

While reading C.22 q.4 on illicit oaths – the story thread of the question is *illicita iuramenta seruare non liceat* –, the person responsible for this gloss had a rule in mind: *Pacta que contra leges, constitutiones uel contra bonos mores fiunt nullā uim habere indubitati iuris est* (*Cod. Just.* 2.3.6, Antoninus, 213). He placed the rule on the margin of the *Exserpta* after a series of ten conciliar canons and fragments of the Church Fathers from which Gratian concluded: *iuramenta illicita laudabiliter soluta, dampnabiliter obseruantur* (C.22 q.4 d.p.c.19).¹²¹ The person behind 3. *Marginalienhand* reinforced the canonical *auctoritates* with the Roman law.

The marginal annotations by 3. *Marginalienhand* result in the following photofit portrait: this person knew the structure and content of the *Decretum vulgatum*, was aware of the explanations of the first generation of Bolognese teachers on certain sections of Gratian's work, and he was skilled enough to relate canon and Roman law. These are traits distinctive of someone that frequented classrooms, not of someone engaged in lawsuits. His brief activity on the *Exserpta* is subsequent to the *Stroma Rolandi* from the late 50s or the early 60s of the twelfth century, but it is unlikely that it should be dated in the following decades when the great commentaries on the *Decretum* were widespread.

8 Conclusive Summary

The glosses to the *Exserpta Sanctorum Patrum* collect a handful of teachings from the masters of the first two generations of Bolognese decretists. From the notes made on Gratian's *auctoritates* and *dicta* that were copied in the first part of Sg, those attributed to the marginal hands 1, 5 and 3 have a special significance when answering the questions initially raised: who used the *Exserpta* preserved in Sankt Gallen and also where and when did they use it?

¹²¹ Structure of C.22 q.4 according to the *Exserpta*: C.22 q.4 c.1 (VIII Toletanus, c.2), c.2 (Ambrosius, *De Offitiis*, 1.50), c.3 (Augustinus, *Sermo* 308), c.5 (Ysidorus, *Sinonimiis*, 58), c.6 (Beda, *Hom.*, 43), c.8 (Ambrosius, *De Offitiis*, 3.12), c.11 (*Ylerdensi*, c.8), c.12 (Ambrosius, *De Offitiis*, 3.12), c.13 (Ysidorus, *Sententiarum*, 2.31), c.17 (*Eliberitano*, c.1), d.p.c.19, c.21 (Augustinus, *De bono coniugale*, c.4), d.p.c.21, c.22 (Augustinus, ?), d.p.c.22, c.23 (Ambrosius, *De Offitiis*, 3.10) and d.p.c.23: Larrainzar, "El borrador de la Concordia de Graciano (n. 1)," 660.

1. *Marginalienhand*'s definitions correspond to a primitive state of the decretistic: they reflect a level of development of the reflections on Gratian that is previous to the first comprehensive commentaries of the school of Bologna, the *Summa Quoniam in omnibus* and the glosses of the *erste Glossenkomposition*. Since this person also collaborated in the copying of the *Exserpta*, the making and the first use of this singular work took place in an academic environment. In this initial phase, the reading of some sections of the first part of *Sg* provoked the copying of a few fragments of Roman law and some canonical texts. These supplements were not taken from a *Decretum vulgatum*. Nor do they come from an old version of the *Decretum* of which the first part of *Sg* would be an abbreviation. Whoever was the author of the glosses and the additions to the 1. *Marginalienhand* – the same copyist-glossator? a teacher whose lectures he heard? – his work took place in a study centre led by people who were familiar with the liberal arts, theology and Roman law. The Justinian fragments that he transcribed point unequivocally to Bologna.

The people who are behind the 5. and the 3. *Marginalienhand* thought that the glosses of the *erste Glossenkomposition* and the explanations of the *Stroma Rolandi* clarified the meaning of certain passages of the *Exserpta*. They also completed some sections of the work with canonical texts, for which they used a *Decretum vulgatum*. Whether they did this work in the classrooms or in the courts has less interest than the fact that in the 50s and beginning of the 60s of the twelfth century, the *Exserpta* were still being used to teach or apply canon law. In this late stage the attempts to redirect the structure and content of the work to the structure and content of the *Decretum vulgatum* were so timid that it is necessary to doubt that those responsible for these annotations – the few distinctions and questions marked by the 3. *Marginalienhand* and the few *auctoritates* copied by the marginal hands 1, 2, 3, 5 and 6 – had the purpose of doing so: no one intended to transform the *Exserpta* into a *Decretum vulgatum*.

All these facts, together with the coexistence of *Allegationen* prepared according to the structure of the *Exserpta* with *Allegationen* that follow the structure of the *Decretum vulgatum* – the work of the marginal hands 2 and 3 –, invite the modern reader to locate the elaboration and use of the first part of *Sg* to a time and a place close to the time and place where Gratian's work was composed and commented for the first time: the time and place in which modern scholars locate the origins of the science of canon law.

Within the family tree of Gratian's *Decretum*, the *Exserpta* of Sankt Gallen and the *Concordia* of *Aa Bc Fd P* are collateral relatives. They both transmit old material, so they can help in the search of the lost *Ur-Gratian*. Although the *Exserpta* did not have offspring, from the late 40s of the 12th century some teachers, students, or lawyers used the first part of the manuscript to write down the lectures of decretistic teachers. This fact gives a certain degree of

authority to the *Decretum Gratiani in fieri* that is preserved in Sankt Gallen, Stiftsbibliothek, 673.¹²²

Appendix 1: *Allegationen*

1. Old *Allegationen*

1	[p. 35b]	I. c. xiii. q. i. c. Illi autem qui tam	from C.1 q.2 c.2	to C.12 q.1 c.25
2	[p. 62a]	q. u. i. ii. c. negligere	from C. 2 q.7 d.p.c.41	to C.2 q.7 c.55
3	[p. 76a]	. c. iii. q u iii. c. negligere	from C.5 q.5 c.1	to C.2 q.7 c.55
4	[p. 90b]	I. i. c. xiii. q. iii. c. episcopus si tertiam	from C.10 q.1 c.7	to C.12 q.3 c.4
5	[p. 100a]	. c. iii. q u iii. c. negligere . c. ii. q. ii. c. ///	from C.11 q.3 c.100	to C.2 q.7 c.55 to ///
6	[p. 102a]	S. i. ca. de sym. Clericos autem q. iii. c. i.	from C.12 q.1 c.22	to C.1 q.2 c.6
7	[p. 104ab]	. c. xi. q. ii. c. capselas	from C.12 q.2 c.20	to C.10 q.2 c.1
8	[p. 111b]	i. c. xvii. q. i. c. Si quis laicus uel clericus	from C.13 q.1 d.p.c.1	to C.16 q.1 c.42
9	[p. 112a]	i. c. xvii.	from C.12 q.2 d.p.c.1	to C.16
10	[p. 115b]	S. c. ii. q. iii. c. Pastor ecclesie	from C.14 q.1 d.p.c.1	to C.1 q.2 c.7
11	[p. 126a]	S. i. xiiii ca. q. ii. c. Vbicumque temporum uel locorum	from C.16 q.1 c.16	to C.13 q.2 c.6
12	[p. 165b]	S. i. i. ca. q. i. c. ii.	from C.27 q.1 c.43	to D.27 c.3
13	[p. 166a]	S. c. i. q. i. c. ii.	from C.27 q.1 d.p.c.43	to D.27 c.3

2. *Marginalienhand* (cedilla under “q” of *quaestio*) wrote the *Allegationen* 1, 4, 6, 8, 9, 10, 11, 12 and 13.

3. *Marginalienhand* wrote *Allegationen* 2, 3, 5 and 7.

2. Modern *Allegationen*

14	[p. 7a]	S. e. d. px. c. vii.	from D.31 d.p.c.9	to D.28 c.14?
15	[p. 20b]	I. d. e. si serus. Hoc dicitur de /// qui factus est //aconus /// dictione domini ///	from D.54 c.11	to D.54 c.20
16	[p. 32b]	c. e. q. uii. quod pro re.	from C.1 q.1 c.41	to C.1 q.7 c.7

¹²² On the question whether *Sg* preserves a *Decretum Gratiani in fieri*, see also Winroth, “Sankt Gallen, Stiftsbibliothek, 673 in Context (in this volume).”

(cont.)

17	[p. 65b]	.c. u. q. u. c. non uso .c. i. q. i. i. c. clericus .et c. sicut inquit .c. ead. q. uii. c. petru.	from C.2 q.7 c.56	to C.5 q.5 c.1 to C.1 q.2 c.6 to C.2 q.7 c.46 to C.2 q.7 c.40
18	[p. 68a]	i. x.i. cp. ii.	from C.3 q.3 c.1	to C.11 ?
19	[p. 68a]	s. ii. q. uii. alieni	from C.3 q.4 c.1	to C.2 q.7 c.23
20	[p. 68ab]	i. xxxii. q. iii. c. ii.	from C.3 q.4 c.4	to C.32 q.3 c.2
21	[p. 68ab]	i. xi. q. i. contra si quis	from C.3 q.4 c.5	to C.11 q.1 c.10 or c.18
22	[p. 68ab]	i. xxx. q. u. iudicantem	from C.3 q.4 c.7	to C.30 q.5 c.11
23	[p. 68b]	qualiter coniungantur legitime ostenditur in ca(usa) xxx. cap. aliter	from C.3 q.4	to C.30 q.5 c.1
24	[p. 68b]	i. ui. q. i. infames	from C.3 q.4 c.6	to C.6 q.1 c.17
25	[p. 75ab]	Nullius accusatio per scripta sus- cipiatur /// c ii q u iii per scripta et c iii q u iiii absente	from C.5 q.2	to C.2 q.8 c.5 to C.3 q.9 c.3
26	[p. 75a]	S. c ii q i ///	from C.5 q.3 c.1	to C.2 q.1 c.10? to C.2 q.1 c.11? to C.2 q.1 c.12?
27	[p. 84a]	c. xu.i. q. i. c. monachi	from C.7 q.1 c.46	to C.16 q.1 c.33? to C.16 q.1 c.35?
28	[p. 89a]	c. xu. i. q. u. ii. episcopus	from C.9 q.3 c.4	to C.16 q.6 c.6? to C.15 q.7 c.7?
29	[p. 125a]	i. xviii. q. i. cap. i.	from C.16 q.1 c.3	to C.18 q.1 c.1,
30	[p. 125a]	s. vii. q. i. precepit hoc nequaquam	from C.16 q.1 c.4	to C.7 q.1 c.45
31	[p. 125a]	i. xxii. q. ii. in ipsarum	from C.16 q.1 dictum proprium	to C.22 q.2 c.7
32	[p. 125b]	i. xviii q. i.i. peruenit	from C.16 q.1 c.8	to C.18 q.2 c.20 (missing in <i>Sg</i>)
33	[p. 141a]	Sup. uel in ca. monachorum c. xui. c. xli.	from C.17 q.4 c.1	to C.16 q.1 c.61
34	[p. 142a]	i. c. x vi de monachis	from C.18 q.1 c.1	to C.16 q.1 c.3

2. *Marginalienhand* was responsible for nn. 29, 30 and 31. That nn. 14 and 33 belong to 2. *Marginalienhand* is not clear (Lenz, Orтели, *Die Handschriften* (n. 2), 18). The first *Allegation* on p. 125a could also belong to 2. *Marginalienhand*, but its meaning is unclear: *x v iiii. ? x iiii ? q. ii. ubicumque* (from C.16 q.1 c.2 to C.13 q.2 c.6 or c.26?).

3. *Marginalienhand* was responsible for nn. 16, 17, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28, 32 and 34.

The *Allegationen* written by 3. *Marginalienhand* on p. 69a, 73a, 79a, 89a, 123b, 134b and 144a are difficult to understand.

Appendix 2: Other Glosses by 5. *Marginalienhand*

<i>5. Marginalienhand</i>	<i>Erste Glossenkomposition</i>
[1] contra ea que ualent ad salutem iurat <i>Sg</i> 156b interlinear gloss next to C.22 q.5 c.1	Contra ea que ualent ad salutem iurare <i>Mc</i> marginal gloss to C.22 q.5 c.1 Contra ea que /// /// ad salutem <i>Pk</i> marginal gloss next to C.22 q.5 c.1
[2] non debet coniugium inter (tales) ^{pc} personas fieri sed si fiat non est separandum <i>Sg</i> 173 marginal gloss next to C.30 q.3 c.1	Non debet coniugium inter tales perso- nas sed si fiat non est separandum <i>Bi</i> marginal gloss next to C.30 q.3 c.5 Non debet coniugium inter tales perso- nas fieri sed si fiat non est separandum <i>Gf</i> marginal gloss to C.30 q.3 c.5 Non debet coniugium inter tales perso- nas fieri si fiat non est separandum <i>Hk</i> marginal gloss next to C.30 q.3 d.p.c.4 Non debet coniugium inter tales fieri sed si fiat non est separandum <i>Mc</i> marginal next to gloss to C.30 q.3 c.5 Non debet coniugium inter tales perso- nas fieri sed si fiat non est separandum <i>Pk</i> marginal gloss next to C.30 q.3 c.5
[3] duas tales quis habere potest quam alterius filium tenuerunt que quodam modo commatres dicuntur <i>Sg</i> 174a marginal gloss to C.30 q.4 c.5	Vel Triburiense concilium et Paschalis de illis loquitur que autem <sic> sunt commatres quam superest uir alteram accepit uxorem uel duas tales potest quis habere quam alterius filium tenuerunt que dicuntur quodam modo commatres <i>Gf</i> marginal gloss next to C.30 q.4 c.6 <i>Hk</i> marginal gloss next to C.30 q.4 d.p.c.5 <i>Mc</i> marginal gloss next to C.30 q.4 c.5 <i>Pk</i> marginal gloss next to C.30 q.4 c.1

(cont.)

<i>5. Marginalienhand</i>	<i>Erste Glossenkomposition</i>
[4] i(d est) uiro primo uiuente <i>Sg</i> 176a marginal gloss next to C.31 q.1 c.1	i(d est) uiuente uiro primo <i>Mc</i> marginal gloss next to C.31 q.1 c.1 uiuente uiro primo <i>Hk</i> interlineal gloss to C.31 q.1 c.1
[5] et in mortem uiri fuit machinata <i>Sg</i> 176b marginal gloss next to C.31 q.1 c.3	et in morte uiri est machinata <i>Gf</i> interlineal gloss to C.31 q.1 c.3 in morte uiro non est machinata <i>Hk</i> interlineal gloss to “coniugale debi- tum” C.31 q.1 d.p.c.2
[6] qui uoluntas sine effectu /// ecclesiam – periurii crimine non tenentur dum effectu tenentur <i>Sg</i> 177a marginal gloss next to C.31 q.3 c.1	–
[7] non si non est ibi spes continentie – <i>Sg</i> 177b marginal gloss next to C.32 pr	–
[8] corporis non mentis – <i>Sg</i> 177b marginal gloss next to C.32 pr.	–
[9] i(d est) illicitum facit – <i>Sg</i> 178a interlineal gloss to C.32 q.1 c.2 (Sola fornicatio est que uxoris uincit affectum)	–
[10] i(d est) manifesta <i>Sg</i> 178a interlineal gloss to C.32 q.1 c.2 (uel fornicationis suspitio)	manifeste legitimis testibus <i>Gf</i> gloss interlineal to C.32 q.1 c.2 manifeste legitimis testibus comprobare <i>Hk Mc</i> interlineal gloss to C.32 q.1 c.2

(cont.)

<i>5. Marginalienhand</i>	<i>Erste Glossenkomposition</i>
[11] si cum ea postea dormierit ex quo eum adulterium cognouerit <i>Sg</i> 178a marginal gloss next to C.32 q.1 c.3	Si cum ea postea dormierit ex quo fecit eum adulterium <i>Gf</i> interlinear gloss to C.32 q.1 c.3 Si cum ea postea dormierit ex quo sit enim adulterium <i>Mc</i> marginal gloss next to C.32 q.1 c.3

PART 5

Sg in Its Context



Sankt Gallen, Stiftsbibliothek, 673 in Context: Twelfth-Century Transformations and Abbreviations of Gratian's *Decretum*

Anders Winroth

1 Introduction

The middle of the twelfth century was a golden time for abbreviations and transformations of Gratian's *Decretum*.¹ Such texts survive in dozens of manuscripts. It is not difficult to imagine why that should be. In its second recension, the complete *Decretum* was a very large book that required a great investment of time and money to produce. Twelfth-century manuscripts of Gratian's work typically weigh in at more than 300 parchment leaves in large folio. Hundreds of calves had to sacrifice their skins just to produce the parchment for such a volume, and a trained scribe would work for many months to inscribe laboriously the more than half a million words of the *Decretum* onto parchment. In the one case for which we have exact information, we know that it took the scribe Adalbert at the Bavarian monastery of Schäftlarn two years to copy out Gratian's text. His case might, however, not be typical.² Only the wealthiest ecclesiastical institutions with good scriptoria could afford the investment required to produce a complete *Decretum*.

The compiler of the twelfth-century abbreviation known by its incipit as the *Quoniam egestas* acknowledged how expensive the *Decretum* was. In his preface he wrote. "Since poverty, which often used to oppress many, more than usual was weighing down our shoulders in such a way, that I could by no effort have that book of decrees which Gratian from many canons redacted into a single volume, I have collected in these quires some general and most necessary

1 I thank the participants in the St. Gall workshop for their comments and inspiration. I also thank John Burden for reading a draft of this article and for sharing his work in progress.

2 Munich, Bayerische Staatsbibliothek, Clm 17161 (siglum *Mm*), fol. 182ra: "Sciunt hoc omnes tam posterī quam presentes hunc librum per biennium ab Adalberto indigno presbitero scriptum in honorem gloriosi preciosi et post apostolos secundo loco positi sunt [*add. supra lin.*] martiris Dionisii, defensoris ac patroni nostri, et in laude sancte matrone uirginis Iuliane ea conditione, ut amorum intercessione muniatur in huius uite conuersatione ac finite temporis, quod ei residuum est, conclusione aliquantula fruatur celestis regni portione."

canons.”³ He produced a shortened version of Gratian’s work with what he thought was the most useful passages, so that others similarly oppressed by poverty would be able to afford it.

Gratian’s work was expensive, but it was also very attractive; it was the right book at the right time. As bureaucratic government and new approaches to judicial processes were developing by bounds and leaps all across Europe, people needed the kind of sophisticated law that Gratian provided. This explains the large number of manuscripts of the various versions of the *Decretum* which has come down to us from the twelfth century.⁴

In this article, I want to argue that the several abbreviations found in some of those manuscripts provide us with a privileged, if indirect view of the state of the text of the *Decretum* at the time they were compiled in the twelfth century, particularly around its middle. The image they paint is not a pretty one. Gratian’s text was then in a state of flux, confusion, and fluidity. We get an immediate impression of the confusion when we look into first-recension manuscripts such as the well-known ones from Barcelona (*Bc*), Admont (*Aa*), and especially Florence (*Fd*).⁵ But at some point after the middle of the century, the confusion abated at least somewhat, and the text of the *Decretum* became more standardized and less fluid.

I want to focus, in particular, on two abbreviations from the middle of the twelfth century beyond that found in St. Gallen, Stiftsbibliothek, 673 (*Sg*) which has been the subject of so much scholarly debate in the last two decades. One is the *Quoniam egestas* and the other is an abbreviation from Trier that has been little studied, if at all. These early abbreviations bear witness to the state of Gratian’s text during the confusion after the second recension first began to circulate, which is the reason why my attention has been attracted to them while working on new editions of the *Decretum*.⁶

3 “Quoniam egestas, que plures sepe consuevit oprimere nostris humeris plus solito supersebat et ita uidelicet quod librum illum decretorum quam Gracianus ex multis canonibus in uno redigit uolumine nullo conamine poteram habere, prefati uoluminis decreta quedam generalia maximeque necessaria in istis quaternionibus collegi.” Transcribed from Prague, Knihovna Metropolitni Kapituli, J. 74, fol. 10r. St. Gallen, Stiftsbibliothek, 711, 18, has no significant variants. The Prague text was already transcribed in Johann Friedrich von Schulte, “Über drei in Prager Handschriften enthaltene Canonen-Sammlungen,” in *Österreichische Akademie der Wissenschaften, Philosophisch-Historische Klasse: Sitzungsberichte* 57 (1868), 222–223.

4 Giovanna Murano, “Graziano e il Decretum nel secolo XII,” *Rivista internazionale di diritto comune* 26 (2015), 61–139.

5 Barcelona, Arxiu de la Corona d’Aragó, Ripoll 78 (*Bc*); Admont, Stiftsbibliothek, 23 and 43 (*Aa*); and Florence, Biblioteca Nazionale Centrale, Conv. Soppr., A. 1. 402 (*Fd*).

6 Gratian.org.

2 Abbreviations for Teaching and Reference

I have previously argued that abbreviations came out of minor educational contexts, law schools away from the great centers of Bologna and Paris. The smaller schools taught a shortened curriculum on the basis of abbreviations, rather than the complete works which took considerable time to work through.⁷ Others have pointed out that at least the *Quoniam egestas* was obviously used in a teaching context, since its manuscripts contain glosses that follow the standard format of cross references in Bologna, although they do not refer to the complete lawbooks as taught there.⁸ The references to Roman law are not to the usual Corpus, but to the so-called *Exceptiones Petri*, which is a brief abbreviation of Justinian's Roman law books, however also containing some snippets of canon law. The Prague manuscript of *Quoniam egestas* in fact contains also the *Exceptiones Petri*. The idea is close at hand that a minor law school somewhere was teaching canon law on the basis of *Quoniam egestas* and Roman law on the basis of *Exceptiones Petri*. Rudolf Weigand and André Gouron have suggested on good evidence that this school was situated in southern France. Gouron, additionally, thinks he can identify the author of *Quoniam egestas* as Eleazar of Avignon, but his evidence is flimsy.⁹

There are glosses also in other abbreviations, such as in some manuscripts of the abbreviation of Omnebene, which is preserved in nine manuscripts and which was produced in Bologna itself, perhaps in 1156.¹⁰ Similarly, the abbreviation *Exceptiones ecclesiasticarum regularum*, preserved in at least nine manuscripts, is glossed, and other scholars have concluded it was used in teaching.¹¹ Titus Lenherr has pointed out that the reformulation of the dicta

7 Anders Winroth, "The Teaching of Law in the Twelfth Century," in *Law and Learning in the Middle Ages*, ed. Helle Vogt, Mia Münster-Swendsen (Copenhagen, 2006), 41–62; Anders Winroth, "Law Schools in the Twelfth Century," in *Mélanges en l'Honneur d'Anne Lefebvre-Teillard*, ed. Bernard d'Aleroche, Florence Demoulin-Auzary, Olivier Descamps, Franck Roumy (Paris, 2009), 1057–1064.

8 Rudolf Weigand, "Die Dekretabbreviatio 'Quoniam egestas' und ihre Glossen," in *Fides et ius: Festschrift für Georg May zum 65. Geburtstag*, ed. Winfried Aymans (Regensburg, 1991), 249–265; André Gouron, "Die Entstehung der französischen Rechtsschule: Summa Iustiniani est in hoc opere und Tübinger Rechtsbuch," *ZRG.RA* 93 (1976), 138–160.

9 Weigand, "Quoniam egestas (n. 8)"; André Gouron, "Le manuscrit de Prague, Metr. Knih. J. 74: à la recherche du plus ancien décrétiste à l'Ouest des Alpes," *ZRG.KA* 83 (1997), 223–248.

10 Kenneth J. Pennington, "Bio-Bibliographical Guide to Medieval and Early Modern Jurists," <http://amesfoundation.law.harvard.edu/BioBibCanonists/>.

11 Stephan Kuttner, *Repertorium der Kanonistik (1140–1234)*, vol. 1. *Prodromus corporis glossarum*, Studi e testi (Vatican City, 1937), 260–261; Rudolf Weigand, "Die Dekretabbreviatio 'Exceptiones ecclesiasticarum regularum' und ihre Glossen," in *Christianità ed Europa*:

in the St. Gallen codex suggests that its text was used in teaching.¹² Alfred Beyer has characterized the Bamberg abbreviation as a “Lehrbuch,” thus also suggesting an educational context.¹³ All in all, these circumstances suggest that the teaching of canon law on the basis of *Decretum* abbreviations was quite lively around and after the middle of the twelfth century.

Seven manuscripts of the *Quoniam egestas* survive.¹⁴ The abbreviation has been dated to 1150, because that is the date of the form letter at C.2 q.6 d.p.c.31.¹⁵ One should, however, be careful not to take such dates as necessarily the date of compilation; no one any longer understands the date of the same form letter in the unabbreviated *Decretum*, 30 April 1105, as the date when Gratian worked on that passage.¹⁶ Gundula Grebner has, in fact, shown that it is must here be a symbolic date that is tied to episcopal succession in Bologna.¹⁷ In any case, 1150 is in fact not an unattractive date to assign to *Quoniam egestas*. It was surely not produced very much later.

For some other abbreviations, the impression one gets when reading is that they were compiled to be useful compendia for ecclesiastical administration, books that bishops, abbots, and their administrative assistants would find easier to deal with than the full *Decretum* in their daily work. Alfred Beyer suggested that the Pommersfelden abbreviation was used as such a reference

Miscellanea di studi in onore di Luigi Prosdocimi, ed. Cesare Alzati (Milan, 1992), 1:511–529; Bruce C. Brasington, “The Abbreuiatio ‘Exceptiones evangelicarum’: A Distinctive Regional Reception of Gratian’s Decretum,” *Codices manuscripti* 17 (1994), 95–99; Pennington, “Bio-Bibliographical Guide (n. 9),” 2004. I thank Professor Brasington for kindly sending me a scan of his article.

- 12 Titus Lenherr, “Ist die Handschrift 673 der St. Galler Stiftsbibliothek (Sg) der Entwurf zu Gratians Dekret? Versuch einer Antwort aus Beobachtungen an D. 31 und D. 32,” www.mgh-bibliothek.de/dokumente/a/a117039.pdf. See also Lenherr, “Language Features (in this volume)” and Eichbauer, “The Uniqueness of Prima Causa (in this volume).”
- 13 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 6 (Frankfurt am Main, 1998), 215.
- 14 Pennington, “Bio-Bibliographical Guide (n. 9),” 2594.
- 15 Gouron, “Manuscrit de Prague (n. 8),” 230.
- 16 As was suggested by Adam Vetulani, “Nouvelles vues sur le Décret de Gratien,” in *La Pologne au X^e Congrès international des sciences historiques à Rome, 1955* (Warsaw, 1955), 83–105 (repr. in Adam Vetulani, *Sur Gratien et les Décrétales*, ed. Waclaw Uruszczak, *Variorum Collected studies* 308 (Aldershot, 1990), no. v) and by Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-twelfth Century: The Ecclesiology of Gratian’s Decretum* (Berkeley, 1972), 256–259.
- 17 Gundula Grebner, “‘omnis ratio vel contempcio bona fidei, que vite homines aguntur’. Notarielle Kultur und Wechsel der Generationen in der Entstehung von Kommune und ‘studium’ in Bologna (1050–1150)” (PhD thesis, Universität Frankfurt am Main, 1999).

book.¹⁸ Reading an abbreviation preserved in Trier (about which more below), I get the impression that this might also have been useful in an administrative context, say as a handbook of canon law for a smaller monastery or cathedral that simply could not afford the full *Decretum*. Or who preferred their law more pre-digested than what Gratian supplied.

When distinguishing between works used in teaching and works used as administrative handbooks, I think we should be careful not to draw too strong a line between these two uses. A good textbook is also a good handbook! The presence of glosses, however, as well as the fact that abbreviations such as *Quoniam egestas* and that by Omnibene are preserved in multiple copies all across Europe, do point to educational situations.

3 The Trier Abbreviation (*Tp*)

The unique manuscript of the Trier abbreviation comes from the rich library of the monastery of St. Matthias in Trier.¹⁹ It is a large octavo of about 20 by 30 centimeters. The volume is written in a neat and regular late Carolingian bookhand or Praegothica, with initials and rubrics in red, while each *causa* begins with a larger, blue initial. A late medieval ownership notice appears on the inside of the cover: *Codex monasterii sancti Mathie apostoli*. Just below, the contents are suggested in the same hand, which also claims that Gratian was a Benedictine monk. I have given this manuscript the siglum *Tp*.²⁰

As we understand already from *Tp* containing only 91 leaves, this is a shorter abbreviation than the one found in *Sg* with its 124 leaves. Like *Sg*, it contains only *causae*, excluding the *de consecratione*. Unlike *Sg*, *Tp* contains all the *causae* of the normal *Decretum*, but nothing from the first part.²¹ *De penitentia*

18 Beyer, *Lokale Abbreviationen* (n. 12), 366.

19 Bibliothek des bischöflichen Priesterseminars Trier 91. The library of St. Matthias has been virtually reconstructed with digital photos of all its manuscripts as the *Virtuelles Scriptorium St. Matthias*, <http://stmatthias.uni-trier.de/>.

20 Jacob Marx, *Handschriftverzeichnis der Seminar-Bibliothek zu Trier*, Trierisches Archiv: Ergänzungsheft 13 (Trier, 1912), 72, catalogued the manuscript as a complete text of the *Decretum*, thus misleading Kuttner, *Repertorium* (n. 10), 105. The error was pointed out by Alfons Maria Stickler, "Decretistica Germanica adaucta," *Traditio* 12 (1956), 593–605, at 595 and 604. See also Petrus Becker, *Die Benediktinerabtei St. Eucharius – St. Matthias von Trier*, *Germania Sacra* n.s. 34 (Berlin, 1996), 125, no. 85.

21 *Sg* famously frames its excerpts from Gratian's Part 1 as a *causa* that has not been found anywhere else in the tradition of Gratian's *Decretum*. In this, it is similar to the text of Munich, Bayerische Staatsbibliothek, Clm 17161 (*Mm*), which also contains an otherwise unknown *causa*, see José Miguel Viejo-Ximenez, "The Introduction to the Tractatus

is present very much abbreviated. The order of chapters is sometimes transposed, and the compiler added some explicatory and summarizing *dicta* of his own composition. Most of the content appears already in Gratian's first recension, and when Gratian 2 changed the text of Gratian 1, *Tp* sometimes has the text of Gratian 1, sometimes that of Gratian 2, much as in *Sg*.²² A few second-recension chapters are present, again analogously to *Sg*. My sample edition of *causa 2* in the Trier abbreviation is available on the internet.²³ In many respects *Tp* is parallel and analogous to the text found in *Sg* manuscripts, and it will be well to include the Trier text in any discussion of exactly what *Sg* is. It would be hard to argue, as has been done, that *Sg* is a version of Gratian's *Decretum* earlier than the one found in the first recension, unless one also argues that *Tp* predates that recension, something that would be logically impossible.²⁴ The arguments that have been used to argue that the text of *Sg* preceded the first recension (shorter than the first recension, only *causae*, mostly first-recension texts, transpositions, unique texts) also apply to *Tp*. I certainly do not want to argue that the text of *Tp* preceded that of the first recension, that it contained

coniugii and the Case relating to the prosecution of clerics in the *Discordantium canonum Concordia* of Schäftlarn," in *Sacri canones editandi: Studies on Medieval Canon Law in Memory of Jiří Kejř*, ed. Pavel Krafl (Břno, 2017), 64–80. Like *Sg*, *Tp* excludes the so-called *Tractatus de legibus* (D.1–20), providing further evidence that abbreviators might indeed leave out that passage, irrespective of modern expectations, cf. Pennington, "Teaching Canon Law in the early Twelfth Century (in this volume)."

- 22 For the two recensions of Gratian's *Decretum* and the concepts of Gratian 1 and 2, see Anders Winroth, *The Making of Gratian's Decretum*, Cambridge studies in medieval life and thought, 4th ser., 49 (Cambridge, 2000).
- 23 Anders Winroth, *Abbreviatio Treverensis decreti Gratiani in codice 91 seminarii episcopalis Treverensis reperta: Causam secundam diplomatice edidit* (New Haven, 2018), available at gratian.org. Prints of the edition have been deposited in the Institute of Medieval Canon Law, New Haven, and in the Monumenta Germaniae Historica, Munich.
- 24 The claim that *Sg* represents a very early stage of the textual development of the *Decretum* was first made by Carlos Larrainzar, "El borrador de la Concordia de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (=Sg)," *Ius ecclesiae* 11 (1999), 593–666. It is supported (with some modification by Kenneth Pennington, "Gratian, Causa 19, and the Birth of Canonical Jurisprudence," in *La cultura giuridico-canonica medioevale: Premesse per un dialogo ecumenico*, ed. Enrique De León, Nicholas Álvarez de las Asturias (Milan, 2003), 209–232 expanded and reprinted in "Panta rei": *Studi dedicati a Manlio Bellomo*, ed. Orazio Condorelli, 5 vols. (Rome, 2004), 4:339–355; Melodie H. Eichbauer, "St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian's Decretum," *BMCL* 27 (2007), 105–139. This argument has been repeatedly refuted from several different points of view, see e.g., Anders Winroth, "Recent work on the Making of Gratian's *Decretum*," *BMCL* 26 (2004–2006), 1–29; Lenherr, "Ist die Handschrift 673 der St. Galler Stiftsbibliothek (Sg) der Entwurf zu Gratians Dekret? (n. 11)"; John Wei, "A Reconsideration of St. Gall, Stiftsbibliothek 673 (Sg) in Light of the Sources of Distinctions 5–7 of De Poenitentia," *BMCL* 27 (2007), 141–180; Jean Werckmeister, "Le manuscrit 673 de Saint-Gall: Un Décret de Gratien primitif?," *RDC* 60 (2010), 155–170; and Lenherr, "Language Features (in this volume)."

some kind of “first draft” of the *Decretum*. My discussion aims to highlight the methodological problems inherent in the various arguments presented by those attempting to argue that *Sg* represents an early stage in the development of Gratian’s text. The conclusion must be that the methodology is unsound, as should be obvious already from the criteria used. Neither *Tp* nor *Sg* contains a version of the *Decretum* logically prior to that found in the first recension (defined as the original text in *Bc*, *Fd*, and *P*).

In what follows, I will attempt to explain why *Tp* looks the way it does, with mostly first-recension chapters and readings, but some chapters and readings added from the second recension. That explanation applies *mutatis mutandis* also to *Sg*. The conclusion is that both abbreviations bear witness to the state of the text of the *Decretum* at the time when they were put together.

4 Comparing Abbreviations

We may begin with some comparative numbers. I have made a closer study of *causa 2* in a few abbreviations. Table 10.1 gives the number of chapters and dicta in each version of Gratian’s text of C.2. This is a very rough count of chapters and dicta, not comparable to Alfred Beyer’s more precise percentages that are based on line counts and also includes the abbreviations in their entirety.²⁵ The table is still useful, I believe, for a first orientation. The percentages represent what proportion of these categories of *Decretum* texts are reproduced in the various abbreviations of C.2.

	Chapters	1st rec.	2nd rec. only	Dicta	1st rec.	2 rec. only	Propria
<i>Decretum</i>	169	112	57	68	60	10	
<i>Sg</i>	99 (59%)	98 (88%)	1 (1.8%)	67 (99%)	59 (98%)	2 (20%)	6
<i>Tp</i>	67 (40%)	60 (53%)	7 (12%)	57 (84%)	46 (77%)	6 (60%)	5
<i>Quoniam eg.</i>	46 (27%)	31 (28%)	15 (26%)	30 (44%)	24 (40%)	6 (60%)	–
<i>Bamb.</i>	31 (18%)	26 (23%)	5 (8.7%)	18 (26%)	17 (28%)	1 (10%)	–

Sources: Emil Friedberg, ed., *Decretum magistri Gratiani* (Leipzig, 1879); *Sg*; *Tp*; St. Gallen, Stiftsbibliothek 711 and Prague, Knihovna metropolitni Kapituli J.74 (*Quoniam egestas*); Beyer, *Abbreviationen*, 30–168

²⁵ Beyer, *Lokale Abbreviationen* (n. 12).

Obviously, the abbreviations make selections of differing size (the first column provides an immediate sense of this). More interestingly, however, is a comparison between the percentages in the second and third columns, which register how large a proportion of first-recension texts and of second-recension additions, respectively, made it into the abbreviations. The abbreviation *Quoniam egestas* includes 28 percent of chapters from the first recension and 26 percent of chapters that were only added in the second recension. It would be hard to argue that the abbreviator had a bias one way or another between the recensions: he excerpted about the same proportion from both groups of texts. The conclusion must be that he was working with a copy of the second recension. In contrast, *Sg* drew primarily on the first recension (including 88 percent of such chapters) and very little on texts that only appear in the second recension (a single chapter, corresponding to 1.8 percent). The approach of the *Sg* abbreviator is, however, not unique. Both the Trier and the Bamberg abbreviations were biased against second-recension texts. *Tp* include only 12 percent of second-recension additions, while including 53 percent of first-recension chapters. The corresponding figures for Bamberg are 8.7 and 23 percent, respectively. The Bamberg manuscript abbreviates so radically that it is probably wisest to leave it aside in the discussion, but it is notable how *Tp* is similar to *Sg* in including mainly first-recension texts, with a sprinkling of second-recension additions.

At least on the evidence of C.2, it seems clear that *Quoniam egestas* derives from a straight-forward copy of the *Decretum* containing the second recension. With *Sg* and *Tp*, we cannot say so; they, and particularly *Sg*, mostly excerpt the first-recension contents. This must mean something, and I shall get back to what it probably means.

But I want also to share another table. I have followed Alfred Beyer's lead and studied what weight the abbreviations give to certain important sections in the *Decretum*. Again, I have only studied certain sections of the *Decretum*, while Beyer studied the entire text.

What is perhaps most striking is that *Sg* and *Tp* both (like the Pommersfelden abbreviation) are very interested in legal procedure, the rules for which are found in *causae* 2–6. Legal procedure was being redefined in the twelfth century, so it makes sense that people interested in law would have been interested in procedure. *Sg* and *Tp* also excerpt richly from the sections devoted to monastic law (C.16–20), as does the *Quoniam egestas*.²⁶ This is perhaps not surprising for the cases of *Sg* and *Tp*, which both come from monastic libraries,

26 The findings of Larson, "Nota (in this volume)," present further support for *Sg*'s interest in these areas of law. See, especially, her Table 1 (163).

	1st rec.	2nd rec.	Bamberg	Pommersfelden	Lichtenthal	<i>Sg</i>	<i>Tp</i>	Quoni. eg.
D.21–80	14.7%	15.0%	20.4%	18.9%	6.91%	13.9%	0	5.87
C.2–6	8.96%	8.99%	9.94%	15.0%	9.60%	16.0%	14.8%	9.53%
C.16–20	6.86%	6.91%	10.0%	7.70%	19.2%	11.8%	10.4%	9.96%

Sources: The same as for table 1. Beyer, *Abbreviationen*, 193, 348, 439 contains the figures found in the second, third, fourth, and fifth column. In *Sg*, *Tp*, and the manuscripts of *Quoniam egestas*, I have counted columns

although we should note that *Sg* may have been written at the cathedral of Modena.²⁷ Notable is also how *Tp* and *Quoniam egestas* are little or not at all concerned with the law of ordination in D.21–80; is such uninterest perhaps also a monastic trait?

One could speculate more about what these numbers means, and one obviously should expand the comparisons to the rest of the *Decretum* and to more abbreviations. This is as much as I have been able to do, given that most of this work has to be done in the manuscripts and not in printed editions.

5 The Texts of the Abbreviations in the Context of the Transmission of the *Decretum*

Sg and *Tp* are akin in reproducing mainly first-recension texts but with a sprinkling of second-recension texts thrown in. How would an abbreviation like that come about? A concrete example that might help us answer that question is C.24 q.2 c.2. This is one of those canons that are particularly interesting in the textual history of the *Decretum*, since its compilers used two different formal sources for the two recensions. First, Gratian 1 copied the text from the *Panormia* 5.119. This was a shorter text with the incipit *Mortuos suscitasse* and an inscription that identified the writer as Pope Gregory and the addressee as a

27 Marina Bernasconi Reusser, “Considerazioni sulla datazione e attribuzione del Decretum Gratiani Cod. Sang. 673: Un manoscritto di origine italiana in terra nordalpina,” in *Schaukasten Stiftsbibliothek St. Gallen: Abschiedsgabe für Stiftsbibliothekar Ernst Treppe*, ed. Franziska Schnoor, Karl Schmuki, Silvio Frigg (St. Gallen, 2013), 142–147. On the origin of *Sg* and its paleographical features, see also Lenz, “The Codicology (in this volume).”

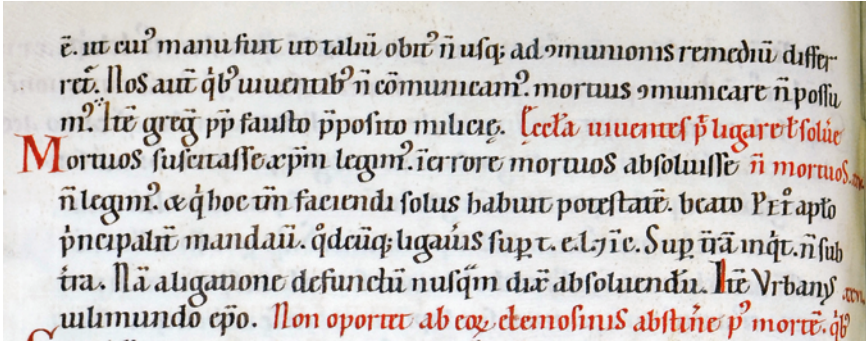


FIGURE 10.1 Admont, Stiftsbibliothek, 43 (Aa), fol. 92v: C.24 q.2 c.2

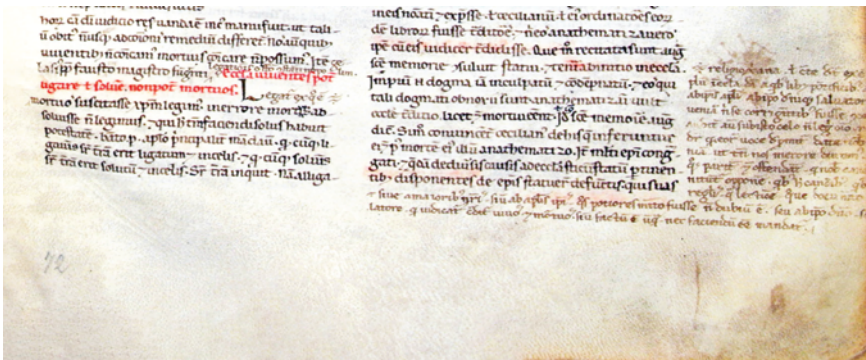


FIGURE 10.2 Florence, Biblioteca Nazionale Centrale, Conv. Soppr., A.1.402 (Fd), fol. 72ra: C.24 q.2 c.2

magister militum called Faustus: *Gregorius papa Fausto magistro militum*.²⁸ The shorter text corresponding to what Gratian 1 found in the *Panormia* appears written by the main hand in the Florence (Fd) and Admont (Aa) manuscripts.

The Trier abbreviation, *Tp*, contains the same shorter text beginning with *Mortuos* as the first recension and the *Panormia*. This suggests that the exemplar from which the abbreviator worked was a copy of the first recension. However, the Trier text carries the second-recension inscription, which ascribes the text (correctly) to Pope Gelasius (not Gregory) and gives the addressee his proper title of *magister* (not *militum*) and papal legate in Constantinople: *Item Gelasius papa Fausto magistro fungenti legationis officio Constantinopolim*.²⁹

28 Martin Brett and Bruce C. Brasington, *Panormia*, <https://ivo-of-chartres.github.io/panormia.html>.

29 *Tp* fol. 62va.

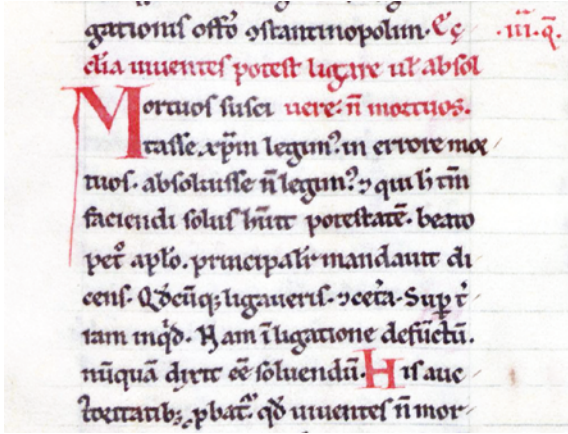


FIGURE 10.3
Trier, Bibliothek
des Bischöflichen
Priesterseminars 91 (*Tp*),
fol. 62v: C.24 q.2 c.2

Even though the length of the excerpt in *Tp* reflects the first recension, the inscription is that associated with the second recension. The compiler of that recension (Gratian 2) had found the text in his copy of the *Collectio Tripartita* 1.46.2, which contains a canon longer than that found in the *Panormia*. The *Tripartita* and the second recension of Gratian's *Decretum* ascribe the chapter to Gelasius with a longer inscription. Gratian 2 used the *Tripartita* to expand the text of this chapter as it existed in the first recension (which version Gratian 1 had found in the *Panormia*), and to correct the inscription. The corrector of *Fd* had access to the second recension, so he also corrected the inscription as well as the incipit over erasures, and he expanded the canon in the margin, tying the expansion to the correct place in the text with a tie mark.

Tp is far from the only Gratian manuscript that reflects the first-recension version of this particular chapter without actually being a manuscript of the first recension. A manuscript in the Stadtbibliothek of Mainz (*Mz*), for example, divides the chapter into two, the second one of which corresponds to the shorter version in the first recension (beginning *Mortuos*).³⁰ This is one feature that makes it into an example of what should be called “mixed-recension texts,” which contain texts extending to the full length of the second recension but openly flaunting their provenance from a first-recension manuscript that has been expanded.³¹ In *Mz*, the second half-chapter lacks its own inscription and

30 Mainz, Stadtbibliothek, II 204 (*Mz*), fol. 184ra.

31 I have earlier labelled such manuscripts “first-recension manuscripts in disguise,” but I am persuaded that “mixed recension” is a better label. John Burden coined the new term and Ken Pennington helped persuade me. I thank them both, and especially that Burden allowed me to read his then unpublished article in manuscript: John Burden, “Mixed

rubric, and the first half-chapter is inscribed as in the second recension, attributing the text to Pope Gelasius and giving Faustus his proper, non-military title.

I suggest that the text in *Mz* was the result of its copyist using a model that was a first-recension manuscript with second-recension additions and corrections. It may have looked like *Fd* in having corrected the inscription from Gregorius to Gelasius, and by a tie mark suggesting that a marginal text should be included here. And it may have looked like *Aa* in having copied out the initial M in *Mortuos* in larger red script. Similarly, *Tp* may have been copied from a model looking like *Aa* in clearly beginning a new chapter with the word *Mortuos* – as in the first recension – and like Florence in having corrected the inscription to *Gelasius*.

Alas, *Sg* entirely excludes *causa* 24, so we cannot know how its abbreviator would have dealt with the canon I have discussed. There is a parallel case, however, in C.2 q.1 c.7, where Gratian 1 excerpted a shortish canon from either the *Panormia* 4.82 or the *Collectio Tripartita* 1.57(55).79, beginning *Quod quidam frater de falsis*.³² Gratian 2 found the same text in Anselm of Lucca's collection 3.90, within a very much longer canon beginning *Imprimis*, so he expanded it to make it one of the longest chapters in the *Decretum*.³³ The beginning of the sentence that introduces that part of the text in the first recension is differently formulated in the longer text found in the second recension (at §3 in the editions): *Quia igitur Stephanus episcopus in odio suo quedam ficta et de falsis*.³⁴

The four manuscripts of the first recension all have the shorter text beginning *Quod quidam frater*, as does *Sg*.³⁵ As in the previous case, some manuscripts of the second recension also contain tell-tale signs that they derive from manuscripts of the first recension. This is quite clear, e.g., in the manuscript from Biberach (*Bi*).³⁶ In this manuscript, C.2 q.1 c.7 begins as in the second recension with *Imprimis* on fol. 99ra, goes on through the end of §2 and then continues with only the first words of §3: *Quia igitur Stephanus episcopus, etc.* The text then breaks off and a tie mark in the form of a cross refers the reader to the

Recensions in the Early Manuscripts of Gratian's Decretum," in *Deutsches Archiv für Erforschung des Mittelalters* 76 (2020), 533–584.

32 Brett and Brasington, *Panormia* (n. 26); Martin Brett, *Tripartita*, <https://ivo-of-chartres.github.io/tripartita.html>. When referring to the *Tripartita*, I use the numbering employed in *Clavis canonum* with Brett's numbering within parenthesis, if different. Cf. <http://www.mgh.de/ext/clavis>.

33 *Anselmi episcopi Lucensis Collectio canonum*, ed. Friedrich Thaner (Innsbruck, 1906–1915), 168–172.

34 Anders Winroth, "Critical Notes on the Text of Gratian's Decretum, 7: A First Attempt at a Workable Plan for Editing the Second Recension," <https://sites.google.com/a/yale.edu/decretumgratiani/critical-notes-7>.

35 *Aa* fol. 122v, *Bc* fol. 121va, *Fd* fol. 27ra, *P* fol. 106rb, *Sg* 45b. *Tp* leaves out c.7 entirely.

36 Biberach an der Riss, Stadtarchiv, Spitalsarchiv, B 3515.

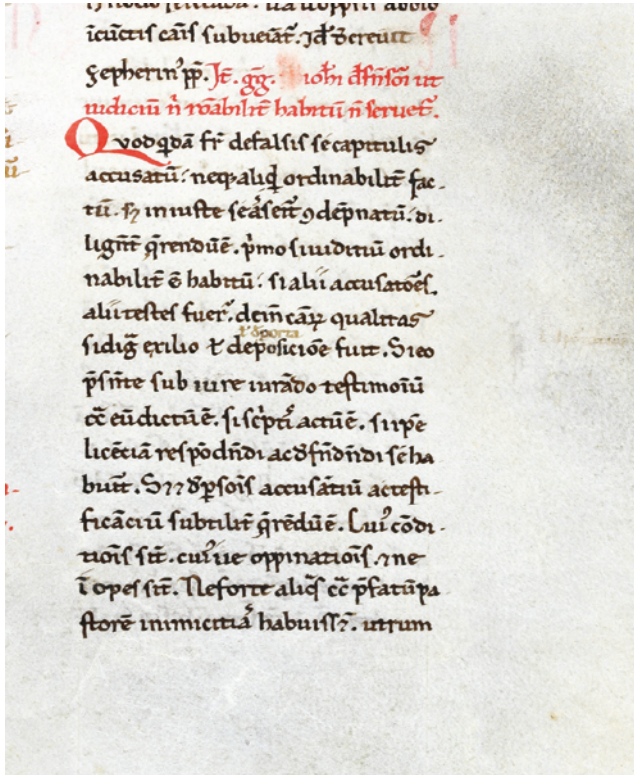


FIGURE 10.5 Sg 45b: C.2 q.1 c.7

initial, inscription and rubric, as if it were a new chapter. In addition, a corrector has signaled in the margin that the word *Item* should have been added before the beginning of the first-recension fragment of the canon, before *Quia igitur Stephanus*. That *Item* turns up in many second-recension manuscripts, for example in most manuscripts of the Σ -recension. When the first-recension fragment ends and the final part of the canon found only in the second recension begins, the scribe of *Ka* gives this section its own initial, inscription and rubric: *Item. De his qui condempnant innocentes*.

Similarly, the other early Cologne manuscript, *Kb*, also divides what follows after the first-recension fragment from the rest of the second-recension canon with a new initial and the same rubric.³⁸

Why do *Bi*, *Ka*, *Kb*, and *Mz* look the way they look? The answer must quite obviously be that the exemplar from which they (or their exemplars) were

³⁸ Cologne, Erzbischöfliche Diözesan- und Dombibliothek, 128 (*Kb*), fol. 94vb.

copied looked something like *Fd* or *Bc*: a first-recension text with second-recension additions and also tie marks and other instructions for how to string together the second-recension text. We should not be surprised if a copyist working with such models sometimes would lose focus and overlook or misinterpret the tie marks, ending up copying the “wrong” text, in the wrong place. Or he would mark the beginning of a chapter at the wrong place. A glance at how *Bc* presents the text of C.2 q.1 c.7 emphasizes the difficulties faced by any copyist who was using this manuscript as an exemplar for producing a second-recension text of Gratian’s *Decretum*. The text column of fol. 121va contains the first-recension fragment (beginning *Quod quidam frater*). At the end of its rubric appears a tie mark in red looking like an “S” with two dots, suggesting that a text found in the margins of the preceding page (fol. 121r) should be inserted after the rubric. That text ends with *Quod igitur Stephanus episcopus in odio suo quedam ficta et de falsis*, but nowhere is there a suggestion that the words *Quod quidam frater* of the first recension should be replaced by these words.

Against this background, it is easy to explain why the St. Gallen (*Sg*) and the Trier (*Tp*) abbreviations mainly reproduce first-recension texts with a few second-recension texts thrown in. Their models were manuscripts looking rather much like the Florence manuscript (*Fd*): A first-recension text with some additions in the margins. The abbreviator worked on the assumption that what he saw on the page in his exemplar, including the marginal additions, represented the complete text. He either overlooked leaves added later in the volume, did not think they brought much of value to Gratian’s discussion, or his exemplar simply did not contain such a supplement.

We know that the model of the Admont manuscript (*Aa*) looked like that, which lead to the scribe copying what he found in the margins of his exemplar into the main text block of his copy. He then copied the additional leaves found at the end of his exemplar at the end of his own text. What I suggest is that the exemplars that *Sg* and *Tp* used for their abbreviated texts similarly contained some second-recension texts in the margins, and those are the second-recension texts that are found in these abbreviations.

6 Towards a More Standardized Text

In conclusion, I would like to draw out some lines about what this means for how we should imagine the early transmission of Gratian’s text. At the middle of the twelfth century, the text of Gratian’s *Decretum* was a mess. The keywords are fluidity, flux, and uncertainty. The additions of the second recension, or at

least most of them, had been made by 1150, but we should not from that fact jump to the conclusion that many or even any well-organized copies of the usual second-recension text of Gratian existed by that point.³⁹ What existed was mostly messy manuscripts looking like Florence (*Fd*), or Barcelona (*Bc*), or Admont (*Aa*), in addition to many copies of such manuscripts where various copyists and editors had attempted to produce a smooth, coherent text of the complete *Decretum*. We have seen that Mainz (*Mz*), Biberach (*Bi*), and the two Cologne (*Ka* and *Kb*) manuscripts are more or less successful attempts to create such texts on the basis of confused exemplars. I suggest that the abbreviations found in St. Gallen 673 (*Sg*) and Trier 91 (*Tp*) similarly are attempts to distill the most important contents of such a text. Many more manuscripts fit this description.

This situation, with many slightly different texts circulating obviously quickly became unsustainable. For teachers of canon law to be effective teachers, they needed a standardized text; this is one of the reasons why they seem to have begun each lecture by reading out the text that they intended to comment on it, so their students might correct their copies.⁴⁰ This practice is, obviously, an important source of “contamination” in the textual transmission. At the same time, editors (some of whom surely were law teachers) worked out corrected texts, in which they also smoothed out some of the rougher syntax. They worked at a time when the second recension had been around for a couple of decades in a very confused state. The changes they introduced into the text obviously confused matters further, but tended in the long run to unify and standardize the text. The commercial book sellers of the university towns ought to have contributed to such standardization, especially as they came under increasing control from the universities.⁴¹ Their activities should have led to a large number of copies having been copied from a few exemplars, but if those exemplars were different in, say, Bologna and Paris, then the “standard text” would have differed between these two law schools, at least initially.

39 Notably, some *paleae* had not yet been added to the *Decretum*, see Jürgen Buchner, *Die Paleae im Dekret Gratians: Untersuchung ihrer Echtheit*, Pontificum Athenaeum Antonianum, Theses ad Lauream in Iure Canonico 127 (Rome, 2000).

40 “Tertio legam literam corrigendi causa.” Gero Dolezalek has, as part of his *Manuscripta juridica* website, transcribed the famous lecture announcement sometimes (but surely wrongly) attributed to the teacher of Roman law Odofredus de Denariis, from Paris, Bibliothèque nationale, lat. 4489, fol. 102ra, at <http://manuscripts.rg.mpg.de/item/19401/>. See also fol. 107va. This notice concerns Roman law and a later century, but I do not expect that teaching methods would have been radically different in twelfth-century lectures on canon law.

41 Richard H. Rouse, Mary A. Rouse, *Manuscripts and Their Makers: Commercial Book Producers in Medieval Paris, 1200–1500* (Turnhout, 2000).

I want to give an example of the kind of minor textual interventions that they made, in addition to attempting to order the chapters in their “correct” order. In C.2 q.1 c.7, Gratian 1 had copied from his source a long and complex sentence that begins: “If a brother [i.e., a bishop] complains that he has been unjustly condemned, then it should be carefully inquired....” Then follows the six separate things that should be carefully inquired, each one introduced by the conjunction *si*. This makes for a particularly thorny sentence, that even Friedberg for all his skills had problems punctuating. Here is my edition of the first-recension version of the sentence:⁴²

Quod quidam frater de falsis se capitulis accusatum neque aliquid ordinabiliter factum, set iniuste se asserit condempnatum, diligenter querendum est primo, si iudicium ordinabiliter est habitum, si alii accusatores, alii testes fuerunt, deinde^a causarum qualitas^b si digna exilio vel depositione fuit^c, si eo presente^d sub iureiurando testimonium contra eum dictum est, si scriptis actum est, si ipse licentiam respondendi ac defendendi se habuit^e.

^a examinanda *add. Br:* examinanda est *add. Py* ^b examinanda *add. Aa^{Pc} Ad Ba Bi^{Pc} Bm Er Gc Ka^{Pc} Kb Mc Mm^{Pc} Mz^{Pc} Pk Sb Σ:* est examinanda *add. Fd^{Pc} Ab Bb Bn Bp Gg Gr Ks Ma Tx Rom.* ^c fuerit *Fd^{Pc} Bi Bn Br Gc Gr Sb Σ Fr.* ^d qui accusatus est *add. Ad Bb Bm Bn Bp Er Gc Gg Ks Ma Mc Mm Tx Rom.:* qui accusatur *add. Ba Br Pk, om. Aa Ab Bc Fd Ka Kb P Σ Fr.* ^e habuerit *Aa^{ac} Sg Bn Br Gc Mv Σ Fr.*

The scholars revising the second recension of Gratian’s text in the twelfth century to produce a better text added a word and a phrase to help readers make sense of this somewhat messy sentence, which, however, is what Gratian 1 found in his source, whether that was the *Panormia* 4.82 or the *Tripartita* 1.57(55).79. They also changed the mode of two of the verbs (*habuit* and *fuit*), which they must have thought should have been in the subjunctive.⁴³ The third *si*-clause, which puts three words before the conjunction *si* is particularly thorny, and here the editors added the gerundive *examinanda* to make clear what should be done to the *qualitas causarum*: the nature of the cases should be examined. Originally, the clause asked, however, whether the quality of the cases was

42 Anders Winroth, *Decretum Gratiani: Prima recensio*, gratian.org. Sigla are expanded at gratian.org/home/sigla. For Σ, I have collated *Cd Ck Di In Md Sa Sf*.

43 Martin Brett signals in his provisional edition of the *Tripartita* that he has seen three manuscripts of that collection that make the same change of *habuit* into *habuerit*. In their provisional edition of the *Panormia* (n. 26), Brett and Bruce C. Brasington read *habuerit* without any indication that any manuscript they have seen reads *habuit*.

worthy of exile or deposition, which makes good sense without any addition, although *qualitas* is vague and the plural of *causarum* perhaps unexpected. The two different placements of the gerundive give it away as an addition, especially since *Aa^{ac} Bc Fd^{ac} P Sg Bi^{ac} Mm^{ac} Mv Mz^{ac}* as well as all the potential sources do not include it. The Roman edition of 1582 adds *est examinanda* after *qualitas* and, thus, puts a period before *deinde* (despite those words missing from at least the modern editions of Gregory I's *Register*). In his 1879 edition, Emil Friedberg removed *est examinanda* but kept the period from 1582, producing a sentence whose main clause unhelpfully lacks a verb.

In the fourth *si*-clause (*si eo presente sub iureiurando testimonium contra eum dictum est*), readers must have felt that it was unclear who it was that should be present when testimony against him was to be given under oath. Our twelfth-century editors added that it was he, "who has been (is) accused" (*qui accusatus est* or *qui accusatur*), in other words, the defendant should hear the sworn testimony given against him. Again, the addition is missing from the potential sources and also from many manuscripts.

These four or five words, *est examinanda* and *qui accusatus est*, were added in the process that produced a standardized text. They belonged to the vulgate university text that was standard in the later Middle Ages and thus appear in the early printed editions, including the Roman edition of 1582. The words do not appear anywhere in the canonical transmission before Gratian nor in Gregory's *Register*. They do not appear in the early manuscripts, nor in the early abbreviations. Since most of these words were not included in the two Cologne manuscripts, *Ka* and *Kb*, Friedberg chose to exclude them from his edition, although *examinanda* actually appears (without *est*) in both Cologne manuscripts (although above the line in *Ka*).⁴⁴ In other words, Friedberg's text in this and many other instances is not the vulgate university text, but the text of the textually confused early period. The words will not appear in my edition of the first recension, but they (or at least *examinanda*) should appear in an edition of the second recension, which in my mind should strive to reproduce the readings of one of the standardized law school versions.

Whether two slightly different versions of the *Decretum* were used in Bologna and in Paris will remain unknown until more collations have been made in relevant manuscripts. My working hypothesis is that the text differed between the two main law schools and that the difference may be traceable in the manuscript groupings that have been identified. A group of manuscripts associated with France (and thus, assumedly, with Paris) seems to contain a separate recension of the text, as noticed by Emil Friedberg, Titus Lenherr,

44 Cf. Friedberg's note 69, which claims that *Ka* and *Mm* lack both words.

and Regula Gujer. This is the so-called Σ (sigma)–recension, and I assume it to reflect the text of the *Decretum* as it was available in Paris.⁴⁵ Another grouping of manuscripts have been identified as the Π (pi)–group, and this group may be associated with Bologna, since its manuscripts contains a Bolognese gloss apparatus and also every *palea* that Huguccio commented on in his *summa*, which reflects his teaching in Bologna.⁴⁶ My initial collations in some Π –manuscripts seem to support the idea that they contain a standardized recension of the *Decretum*, but much more needs to be done.

Some version of these latter recensions won out in the end and was printed in 1471, which means that it served as the basis for the work of the sixteenth-century *correctores* and the 1582 Roman edition. Then Friedberg came along and attempted to restore the twelfth-century text by relying, in the first place, on the two Cologne manuscripts *Ka* and *Kb*, which both contain mixed-recension texts. Thus he gave us a snapshot of the mid-twelfth-century confusion, and not actually the second recension or what has been called the vulgate version of the *Decretum*. Friedberg was also under the influence of the Roman edition of 1582, which strove to reconstruct each chapter in Gratian as it had been composed by the authorities he quoted. Neither edition is very good at reconstructing the medieval vulgate text or the second recension. The schematic stemma I present is to be considered a working hypothesis (see Figure 10.6).

I believe this messy confusion has a lot to do with the lack of a robust and centralized infrastructure for book production in Bologna and other law school sites around the middle of the twelfth century. At that time, only the great monasteries possessed scriptoria with the level of expertise and professionalism required to produce such a complex and large work as the *Decretum*, which explains why many of the early manuscripts are monastic productions, as Giovanna Murano has observed.⁴⁷ This means that they were produced away from the center, i.e., the law schools. Decentralized production made for a non-standardized and not fixed text.

When the professional book trade with its writing shops and in due time *pecia* appeared in Bologna and Paris, the situation changed. Book production came under watchful eyes. The text became standardized simply by being centralized, but it is quite clear from the transmission that care was taken that

45 John C. Wei, “Gratian’s *Decretum* in France and Halberstadt,” in *Rechtshandschriften des deutschen Mittelalters: Produktionsorte und Importwege*, ed. Patrizia Carmassi, Gisela Drossbach (Wiesbaden, 2015), 363–383.

46 Rudolf Weigand, “Paleae und andere Zusätze in Dekrethandschriften mit dem Glossenapparat *Ordinatus Magister*,” *AKKR* 159 (1990), 448–463; John C. Wei, “ Π -group (P-group),” <https://sites.google.com/site/repertoriumiuriscanonic/home/gratian/p-group>.

47 Murano, “Graziano e il *Decretum* nel secolo XII (n.4).”

that preserve, e.g., the *Quoniam egestas* and Omnibene's abbreviation. Like many other abbreviations (including *Tp*), *Sg* modified the order and content of Gratian's chapters and *dicta*, and also added passages of its author's own composition. *Sg* stands out as unusual in some respects, notably in its radical and extensive reformulations of Gratian's *dicta*, but in this, the text simply does more than other contemporary texts. Against the background of other Gratian manuscripts from the mid-twelfth century, abbreviations as well as complete texts, *Sg* does not stand out in such a way that we must posit a unique position for it in the stemma for the *Decretum*. *Sg* was certainly not Gratian's first draft.

Who produced the text of *Sg*, and where was he and his school active? I cautiously accept Marina Bernasconi Reusser's attribution of the manuscript to the cathedral in Modena. That the manuscript originated in Italy is also suggested by the several Roman law texts that have been added to its margins at an early date.⁴⁸ If the teacher who abbreviated Gratian's work, thus, taught in Italy, he may have been a contemporary competitor to Omnibene, who also abbreviated the *Decretum* and who also added many *dicta* of his own composition. A closer comparison between the two abbreviations may turn out to be informative.

48 Pennington, "Teaching Canon Law in the Early Twelfth Century (in this volume)."

PART 6

Summarizing Observations



Sankt Gallen, Stiftsbibliothek, 673: a Copy of Gratian's *Decretum* at the Beginning of Decretistic Teaching. Fresh Perspectives, New Insights, and Open Questions

Stephan Dusil

1 Fresh Perspectives for a Well-Known Manuscript: Introduction

In 1999, Carlos Larrainzar pointed to a copy of the *Decretum Gratiani* that was preserved in the Stiftsbibliothek of Saint Gall with the call number 673 (*Sg*). He put the idea forward that this copy reflects a very early stage of the *Decretum*, even prior to the first recension, often labelled as “Gratian 1.”¹ His discovery sparked a heated debate. Whereas some colleagues supported his idea, others contradicted it vehemently. They argued that *Sg* was close to the first recension, but interspersed with bits and chunks from the second version.² *Sg* was thus in the center of academic research on Gratian. This debate, however, died down a decade ago, around 2010, due to a kind of “oversaturation.”³ *Sg*'s place in the redaction history of the *Decretum* remains unclear, though the manuscript continues to be a treasure trove of new insights on canon law in general.

The intent was not to reopen the old debate on *Sg* and the redaction history of the *Decretum* anew by inviting leading scholars to Saint Gall in June 2018 to share their insights about *Sg*. Rather, it was to explore new perspectives in order to learn more about the manuscript and thereby rule making and teaching at the very beginning of what was later called the “learned law” of the Middle Ages. Three paths helped to approach this manuscript. The first was to ask questions about its origin. When, where and why was *Sg* produced? Philipp

1 Carlos Larrainzar, “El borrador de la ‘concordia’ de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (= *Sg*),” *Ius Ecclesiae* 11 (1999), 593–666.

2 The state of research is summarized by Thier, “Exploring the Evolution (in this volume),” and before by Melodie Harris Eichbauer, “Gratian's *Decretum* and the Changing Historiographical Landscape,” *History Compass* 11/12 (2013), 1111–1125, and Stephan Dusil, *Wissensordnungen des Rechts im Wandel. Päpstlicher Jurisdiktionsprimat und Zölibat zwischen 1000 und 1215* (Leuven, 2018), 331–334.

3 Thier, “Exploring the Evolution (in this volume).”

Lenz undertook this arduous task and his essay pinpoints the origin of *Sg* to northern or central Italy (Modena?, though Bologna is also possible) and dates the manuscript to the mid-twelfth century, written between 1146 and, most likely, c. 1160 or 1165 at the latest.

The second path focused on the production and creation of legal knowledge by scrutinizing how the author(s) of *Sg* dealt with older texts, how he – or they – developed legal ideas, coined legal terms and concepts, and presented them in the manuscript. In this respect, Enrique de Leon dedicates his essay to marriage law and compares the legal terminology and the legal concepts of *Sg* to manuscripts of the first recension of the *Decretum*. He concludes that *Sg* is less refined and elaborated than other first recension manuscripts. The presentation of legal ideas is also at the heart of Melodie Eichbauer's comparison of *Causa prima* in *Sg* to the *Distinctiones* in the manuscripts of the first recension and the vulgate form of the *Decretum*. She observes that the content and the emphasis on the addressed topics differed. The topics to be studied were thus not yet fixed, but fluid. Titus Lenherr studies the language of *Sg* and points to the use of special words and verb forms, especially the use of the first person (instead of the third). He argues that these anomalies hint to a classroom atmosphere from which the manuscript might stem; *Sg* might thus be a copy of a student's notes taken in a lecture on the *Decretum*. Therefore, *Sg* arose from an oral, not a written milieu. John Wei, finally, analyzes a text on the performance of "true penance" which is part of the canons added to the copy of the *Decretum* in *Sg*. This rare text campaigns against tendencies in contemporary canon law and strives for a strict penitential policy. It also points to a school atmosphere.

The third path focused on how the legal knowledge of *Sg* was shared with the reader. How did readers react to the text? How did they comment on it? *Nota*-signs, glosses and other marginal notes are at the center of this third approach. Atria Larson, Kenneth Pennington, and Viejo-Ximénez underwent the laborious task to study the notes in the margins. Their contributions – although different in their approach – reveal that the marginal notes are quite early and lead to the beginning of academic teaching of canon law. Therefore, they allow a glimpse at very early decretistic work on Gratian's text. Furthermore, their contributions emphasize the extended use of *Sg* in a classroom, possibly for more than twenty years. *Sg* was not only of interest in the 1140s or 1150s, but remained a teaching tool even in the 1160s.

Pursuing these three paths toward a better understanding of *Sg* simultaneously demonstrates the emergence of an academic, learned study of canon law and its dissemination in the middle of the twelfth century. *Sg* is a prime example of this evolution, but not the only one. Anders Winroth sheds light on

another reworking of Gratian's *Decretum* now preserved in Trier. His meticulous study of this manuscript reveals, again, the fluidity of the textual form and, additionally, the need for abbreviations of the *Decretum*. A comparison of these manuscripts allows a better understanding of the internal mechanisms that led to the creation of the learned canon law in the Middle Ages.

2 New Insights: Consensuses

The fresh perspectives – explored by all contributors to this volume – led to new insights and shed new light on an – allegedly – well-known manuscript. On which points has consensus been reached? First, scholars generally agree on the dating and localizing of *Sg*. On paleographical grounds, it dates to 1146–1160/1165 and stems from northern or central Italy; some authors tend to date the glosses quite early, namely to the 1140s.⁴ Based on the paleography and the glosses, there is no doubt that *Sg* is a witness from the early days of canon law as an academic discipline. Paleography and art history suggest the manuscript's origin in northern Italy, possibly in Modena; but Bologna is also not out of the question. The content, however, and the plethora of Roman law glosses point to it being used at a place with erudite and learned readers – in fact, Bologna might have been the place where *Sg* was read and commented upon.⁵ The importance of *Sg* as a witness of teaching law around 1150 can thus not be underestimated. Scholars would agree on this point.

Second, the debate about *Sg* some ten years ago was focused on the textual links between the second version, the first version and *Sg*. Findings were often based on the scrutiny of just a part of the manuscript. The contributions in this volume, however, include the complete text of *Sg*, at least with regard to the glosses. More importantly, the understanding of the textual development of Gratian's *Decretum* has shifted from a somewhat static to a more fluid one. Whereas the former debate was based on the idea of – more or less – clear-cut recensions (an idea which is here labelled as static), further research led to a refined understanding of the early days of Gratian. The *Decretum* was – even

4 See Lenz, "The Codicology (in this volume)" on the one hand, Viejo-Ximenez, "The *Exserpta* in the Origins of the Science of Canon Law (in this volume)" and Pennington, "Teaching Canon Law in the Early Twelfth Century (in this volume)" on the other hand.

5 On this point, Viejo-Ximenez, "The *Exserpta* in the Origins of the Science of Canon Law (in this volume)" and Pennington, "Teaching Canon Law in the early Twelfth Century (in this volume)."

until the end of the twelfth century – not yet fixed, but fluid and malleable.⁶ There was not only a plethora of different manuscripts with divergent additions or abbreviations like *Quoniam egestas*, but also manuscripts like *Sg* that point to the idea that the *Decretum* did not exist as a single unified text, but as different copies with different content and different user groups. *Sg* is – among other manuscripts – a witness of this fluid transmission in the early period of the *Decretum*.⁷

This fluidity can be studied close-up at *Causa prima*. *Causa prima* of *Sg* corresponds to some of the *distinctiones* in the first recension as well as the vulgate version. Gratian's ideas on the ordination of clerics was presented in a *causa*-form, including a catching hypothetical to wake up “sleepy students” (Eichbauer). If one interprets the structure with hypotheticals as a remnant of teaching activities, the transformation in *Sg* points – again – to a classroom. Why, where and when the distinctions became a *causa* – or the other way around? – remains unclear. With regard to the exterior form, one can label these transformations as a fluid transmission of this text. With regard to the content, one can also observe a similar evolution, namely floating legal knowledge. Enrique de Leon points to such an evolution when scrutinizing marriage law in *Sg* and first recension manuscripts, observing a more refined terminology in the latter witnesses.⁸ Legal terms and concepts were not yet stable.⁹ How to interpret these findings, however, remains under discussion: is *Sg* an abbreviation of the first recension (interspersed with the second) or prior to the first? In this regard, unanimity has not yet been reached.¹⁰

Third, the contributions in this volume indicate to what extent *Sg* reflects the early teaching of the decretists as of the middle of the twelfth century. The glosses, annotations and different signs in the margins underline that *Sg* was used by different readers for an extended time. It therefore mirrors the teaching of law in the middle of the twelfth century (1140s?–1160s).¹¹ The glosses themselves stem partly from a very early and “primitive state of the decretistic” (Viejo-Ximénez), and partly from the more elaborated *Stroma Rolandi* (1150s, early 1160s; again Viejo-Ximénez). No doubt, the different contributions prove

6 This is highlighted by Eichbauer, “The Uniqueness of Prima Causa (in this volume)” and Winroth, “Sankt Gallen, Stiftsbibliothek, 673 in Context (in this volume).”

7 See especially Winroth, “Sankt Gallen, Stiftsbibliothek, 673 in Context (in this volume).”

8 de Leon, “Formation of Marriage (in this volume).”

9 See the contributions in *Dogmatisierungsprozesse in Recht und Religion*, ed. Georg Essen, Nils Jansen (Tübingen, 2011).

10 See below 3 (249).

11 Pennington, “Teaching Canon Law in the Early Twelfth Century (in this volume)” and Viejo-Ximenez, “The *Exserpta* in the Origins of the Science of Canon Law (in this volume).”

that consensus has been reached on the importance of *Sg* as a snapshot of the early decretistic literature, pointing to the creativity of scholars in the middle of the twelfth century (Larson, Pennington).

3 Open Questions: Dissents

The different contributions in this volume indicate a high degree of consensus with regard to fundamental points; nonetheless, the contributions also reveal open questions and some areas of dissent, two of which will be presented here.

First, no-one would doubt that *Sg* shows a certain degree of “autonomy” (Eichbauer) compared to other first recension manuscripts. And, supposedly, no-one would disagree that *Sg* is a “snapshot of a time in the *Decretum*’s textual history [...] when the collection was still malleable” (Eichbauer).¹² The explanations, however, differ. Whereas some scholars assume that *Sg* predates the first recension, others presume that it is posterior. The old question of how *Sg* and the other copies of Gratian’s *Decretum* are linked pops up again; the old and new arguments, however, are not to be evaluated anew. Nonetheless, Titus Lenherr’s observation may help to move the discussion to new ground. He argues – based on linguistic analysis – that *Sg* reflects an oral milieu rather than a written one. *Distinguamus, nunc uideamus, opinor*, and many other instances of such first-person expressions suggest an oral teaching situation – *Sg* might thus be a copy of a student’s notes taken in a classroom. Arguments pro and con the posteriority of *Sg* are often based on a close comparison of texts (“Lachmann’sche Methode”). But is this still a valid method if *Sg* stems from an oral milieu? Is it possible that a teacher used a less refined terminology in a teaching situation? That he skipped ideas, reformulated phrases, and even forgot a topic when teaching eager students? Briefly, are we still allowed to apply the usual criteria of *Textkritik* in dealing with *Sg*?

Second, Lenherr’s suggestion is not only important for the textual comparison of manuscripts, it is also essential for the analysis of *Sg*’s content. One example may help to illustrate this idea. Enrique de Leon shows in his meticulous study of terms, terminologies and concepts of marriage law a “logical evolution” from *Sg* to the first recension. According to his findings, *Sg* must be anterior to the first recension. A different part of *Sg*, however, suggests otherwise: the vulgate *distinctiones* appear in *Sg* as *Causa prima*. Gratian dealt in this part with ordinations, among which is the question of whether or not a

¹² Eichbauer, “The Uniqueness of Prima Causa (in this volume);” in a similar vein: Winroth, “Sankt Gallen, Stiftsbibliothek, 673 in Context (in this volume).”

marriage is illicit after a vow of chastity. Gratian distinguished between a simple vow (*simpliciter voventes*) and another vow, after which the promising party went to corroborate this vow (*benedictio consecrationis vel propositum religionis*; D.27 d.p.c.8). The later decretistic writings based their distinction between a simple vow and a solemn vow exactly on this part, although Gratian did not name the difference with these key terms. *Sg*, however, uses the distinction *alii solemniter alii simpliciter*, displaying thereby a more refined terminology and legal understanding than Gratian.¹³ Obviously, *Sg* contains opposed findings with regard to the evolution of legal ideas. Does this passage contradict de Leon's observation? My proposition is that the older categories of 'evolution,' 'better,' 'more refined,' etc. are not valid any longer. Why? A teacher may have used a less refined terminology in a teaching situation to explain problems, but he may have also summarized a problem more 'to the point' than his written *Vorlage*. The – often – underlying assumption of an evolution from vague to precise, from imprecise to clear-cut, is questioned by a text originating in an oral sphere, in which the categories of a *Textkritik* may be valid (or not). If *Sg* is really rooted in an oral milieu, this may explain some insufficiencies and oddities of its content, but also some clarifications made by a teacher in the classroom. Dating and ordering manuscripts based on the emergence of legal terms, their legal ideas and the evolution of legal concepts has possibly become a difficult business.¹⁴

4 ... and Beyond

The manuscript *Sg* and its collection is an astonishing document of the early days of university teaching. It reveals, amongst other things, the fluidity of legal ideas, the malleability of the form in which these ideas were presented, and also the quest for mastering the enormous bulk of canons and harmonizing them. This fluidity is rooted in the quest for finding the best way to explain

13 *Sg* 3b: "Distingamus ergo quod uouentes alii solemniter alii simpliciter. Simpliciter quibus augustinus et theodorus loquuntur. Solemniter quibus post uotum benedictionis [uel benedictio *interl.*] consecratio [uel consecrationis *interl.*] accedit uel propositum religionis de quibus et alii. Quoniam igitur ut ostensum est post benedictionem [uel benedictionis *interl.*] consecrationis [uel consecrationem *interl.*] nubere non licet sine uoto continentię ad subdiaconum non deberet admitti." On this passage, see also Eichbauer, "The Uniqueness of Prima Causa (in this volume)," 81 and Dusil, *Wissensordnungen* (n. 1), 353–355.

14 But even if one hesitates to follow this idea, *Sg* underlines the emergence of a new literary genre, namely student's notes reflecting a teaching situation in a classroom. *Sg* bears witness of a new text group that emerged around 1150.

and to interpret the plethora of canons handed down to scholars around 1150. The changing appearances of ideas on ordinations – namely as *causa* or as *distinctiones* – underlines this openness; the emphasis on different topics in this first part highlights the alternating interests of various authors, whether the scribes (Eichbauer) or the annotators (Larson).

Sg is not only a product of the early teaching of canon law, but also a means to teach law, as the glosses, signs and other annotations suggest. The marginal notes were added over an extended period of time which underlines the importance of *Sg* for early teachers and early teaching. These annotations, however, are a new means of interpreting older texts; they were a hermeneutical tool that was massively employed in the twelfth century. This tool, however, also changed the legal knowledge of *Sg*: the single canons, first lined up in a row, were interlinked with each other by allegations, combining both concurrent and contradictory ideas. The linear reading of texts was replaced by a more complex one that allowed other passages to be included and to add even more – contradicting or supporting – texts and ideas to a given one.¹⁵ Canon law hand-in-hand with Roman law added in the margins of *Sg* (Pennington) formed a homogeneous knowledge. Under the very hands of the early decretists, the earlier linear knowledge transformed to an interlinked, relational one. In the long run, decretists and decretalists constructed the Gothic cathedrals of distinctions to whose humble beginnings *Sg* bears witness.

Finally, is such a laborious and meticulous study of leading scholars in the field of the history of canon law worthwhile? Would it not have been more fruitful to give an overview of the development instead of focusing on one manuscript? I doubt it. I am convinced that an in-depth study like this leads to new insights that form the basis for more general conclusions. Sometimes, just the analysis of a detail sheds light on the whole.

15 Dusil, *Wissensordnungen* (n. 1), esp. 413–468; Stephan Dusil, “Require retro ... require in antea ... Verweiskulturen im mittelalterlichen Recht am Beispiel des *Decretum Gratiani*,” in *Verweiskulturen des Mittelalters*, ed. Sabine Griese, Claudine Moulin (Wolfenbüttel, 2022), 23–46.

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Index of Manuscripts

- Admont, Stiftsbibliothek, 23 and 42 (Aa) 18,
33, 39, 47, 54-5, 61-9, 90, 92, 97, 102,
106, 110, 113, 168, 171-3, 177, 180-1, 186,
189, 212, 222, 230, 232, 235, 236-8
- Barcelona, Arxiu de la Corona d'Aragó, Santa
Maria de Ripoll 78 (Bc) 18, 33, 35, 47,
54-5, 90, 92, 110, 113, 168, 171-2, 177,
181, 186, 189, 195-6, 206, 212, 222, 227,
232-3, 235-8
- Biberach an der Riss, Spitalarchiv, B 3515 (Bi)
195-6, 203-6, 215, 232-3, 236-8
- Bologna, Biblioteca universitaria, 1473 49
- Cambridge, Pembroke College, *101 160
- Cologne, Erzbischöfliche Diözesan- und
Dombibliothek, 127 (Ka) 233-4, 236-9
- Cologne, Erzbischöfliche Diözesan- und
Dombibliothek 128 (Kb) 234, 236-9
- Florence, Biblioteca Nazionale Centrale,
Conv. Soppr. A. I. 402 (Fd) 18, 33, 47,
54-5, 61-9, 90, 92, 95, 97, 102, 106, 110,
113, 168, 177-8, 180-1, 186, 189, 212, 222,
227, 230-40
- Fulda, Landesbibliothek, D.10 160
- Grenoble, Bibliothèque Municipale, 11 (474)
(Gf) 189, 195-6, 204-6, 210, 215-7
- Grenoble, Bibliothèque Municipale, 34 (475)
(Gg) 189, 195-6, 206, 210, 237
- Heiligenkreuz, Stiftsbibliothek, 44 (Hk)
189-90, 195-6, 204-6, 210, 215-6
- Mainz, Stadtbibliothek, II 204 (Mz) 231-2,
234, 236-8
- Modena, Biblioteca Capitolare, O III 14 51
- Montecassino, Biblioteca Abbaziale, 64 (Mv)
189, 195-6, 201, 205-6, 210, 237-8
- Munich, Bayerische Staatsbibliothek, Clm
3509 198-9
- Munich, Bayerische Staatsbibliothek, Clm
4505 (Mc) 195-6, 199, 204-6, 210, 215-7,
237
- Munich, Bayerische Staatsbibliothek, Clm
17161 (Mm) 221, 225, 237-8
- Munich, Bayerische Staatsbibliothek, Clm
17162 206
- Munich, Bayerische Staatsbibliothek, Clm
28161 (Mk) 113, 181
- Munich, Bayerische Staatsbibliothek, Clm
28634 32
- Paris, Bibliothèque Nationale, lat. 3884 I
(Pfr) 18
- Paris, Bibliothèque Nationale, lat. 3890
(Pk) 195-6, 204-6, 210, 215, 237
- Paris, Bibliothèque nationale, lat. 3922A 174
- Paris, Bibliothèque nationale, lat. 4489 236
- Paris, Bibliothèque nationale, lat.
14609 206
- Paris, Bibliothèque Nationale, lat. 17213 133
- Paris, Bibliothèque Nationale, n.a.l. 1761 (P)
18, 33, 47, 55, 110, 168, 177, 181, 186,
212, 227, 232, 237-8
- Prague, Knihovna Metropolitni Kapituli J. 74
222-3, 227
- Sankt Florian, Stiftsbibliothek, III.5. (Sf)
186, 237
- Sankt Gallen, Stiftsbibliothek, 334 54
- Sankt Gallen, Stiftsbibliothek, 188 29
- Sankt Gallen, Stiftsbibliothek, 381 29
- Sankt Gallen, Stiftsbibliothek, 673 (Sg)
- 1 28
- 3 31-3, 35, 51, 80-1, 93, 114, 118, 129,
192, 250
- 4 32, 42, 80-2, 207
- 5 33, 47, 82, 172
- 6 19, 35, 81-2
- 7 35, 38, 82, 189, 213
- 8 82-3, 93, 114
- 9 19, 83, 93, 114-5
- 10 48, 83-4, 93, 115, 173, 207
- 11 83, 91, 115
- 12 48, 83, 116
- 13 40, 83, 93, 115
- 14 35, 84, 93, 115, 172
- 15 18-9, 44, 84-5, 174

- 16 85, 102, 115
- 17 35, 85, 117, 157, 189
- 18 86, 117
- 19 35, 84, 86, 156, 189
- 20 44, 84, 91, 174, 194, 206, 213
- 21 32, 84, 86, 115, 146
- 22 32, 42, 86, 93, 207
- 23 86
- 24 86-8, 117, 151
- 25 86, 88, 108, 188
- 26 48, 86-7, 91
- 27 86, 173
- 28 31-2, 86, 88, 91, 93, 147
- 29 32, 207
- 30 190-1
- 31 188
- 32 42, 187-8, 213
- 34 92, 115
- 35 38, 42, 189, 213
- 36 42-3, 147, 188
- 37 18, 188
- 38 18, 112, 115
- 40 187
- 41 111, 113, 115, 188
- 42 115, 117, 188
- 43 29, 35, 191
- 44 29, 32, 107, 110, 115, 117
- 45 29, 31-2, 110, 115, 191, 232, 234
- 46 31, 35, 187-8, 192, 194
- 47 18
- 48 18-9
- 49 18, 191
- 50 42
- 51 41, 117
- 52 115
- 54 187
- 55 12, 157, 188, 191
- 56 115, 191
- 57 48
- 58 188
- 60 45
- 61 43, 115, 187
- 62 42-3, 213
- 63 45, 150, 191
- 64 43, 115, 150-1, 190-1
- 65 42-3, 213
- 66 20, 32, 35-6, 48, 144, 154-5, 175,
186-8, 195, 198
- 68 35, 42, 174-5, 195, 198, 213-4
- 69 42-3, 151, 207, 209-10, 214
- 71 19
- 72 31
- 73 42, 147, 191, 207-8, 214
- 74 31, 42
- 75 42, 115, 214
- 76 42-3, 154, 213
- 77 18, 32, 115, 188
- 78 18, 115
- 79 31, 42, 156, 190, 207, 214
- 80 45
- 81 115
- 83 115, 188
- 84 31, 42, 214
- 86 115
- 87 31
- 89 42, 156, 190, 214
- 90 31-2, 38, 144, 213
- 91 116, 144
- 92 31
- 93 144, 150, 152, 191
- 94 144, 150-1
- 95 151
- 96 144
- 97 45, 115-6, 144, 154, 203
- 100 31, 42, 213
- 101 189
- 102 38, 170, 213
- 104 144, 189, 213
- 106 35, 187, 192, 198
- 108 35, 39, 115, 146, 189
- 109 31, 44
- 111 38-9, 169, 213
- 112 38, 213
- 113 42, 189
- 115 31, 38, 115, 170, 213
- 116 188
- 117 18, 154
- 118 18, 32, 35, 202
- 119 116, 159, 188
- 120 115
- 121 235
- 123 42, 207, 214
- 124 31
- 125 38, 42, 200, 214
- 126 38, 187, 213
- 128 151, 188

- 129 39-40
 - 131 31
 - 132 45
 - 133 42, 188, 208, 209
 - 134 35, 42, 192, 198, 214
 - 135 29, 30, 191
 - 136 44, 174, 188-9
 - 138 177-8, 195
 - 139 31
 - 140 45
 - 141 38, 45, 214
 - 142 31, 42, 214
 - 143 18, 115, 144
 - 144 18, 31, 42, 116, 153, 188, 214
 - 145 31, 187
 - 146 35, 195
 - 148 19, 31, 203
 - 149 19, 31
 - 150 116
 - 151 116, 144
 - 152 116, 144
 - 153 35, 116, 192, 201
 - 154 42, 116, 211
 - 155 159, 155
 - 156 45, 204, 215
 - 157 109, 116, 159, 188
 - 158 31, 97-101, 116
 - 159 187
 - 164 32, 40, 116
 - 165 22, 31-2, 35, 38, 48, 63, 170, 184,
 192-3, 198, 213
 - 166 35-6, 38, 62, 64, 66, 70, 157, 192-3,
 201, 213
 - 167 35, 71-2, 108, 116, 195
 - 168 67, 73-4, 116
 - 169 67, 75, 187
 - 170 28-9, 31, 76, 109, 116
 - 171 28-9, 32-3, 35, 45, 102, 116, 174, 195,
 203-4
 - 172 35, 195, 204-5
 - 173 45, 203-5, 215
 - 174 42, 45, 116, 184, 203-5, 207, 215
 - 175 157, 188
 - 176 31, 116, 204, 216
 - 177 31, 116, 204, 216
 - 178 35, 45, 116, 187, 195, 198, 203-4, 216-7
 - 179 33, 35-7, 116, 186, 195, 198
 - 180 45, 204
 - 181 116, 189, 191, 204
 - 182 117, 189
 - 183 116
 - 185 31, 157
 - 187 31, 35, 45, 116, 192-4, 198-204
 - 188 35, 192-3, 199
 - 189 116
 - 193 35, 172, 188
 - 195 157
 - 198 31
 - 199 35, 195
 - 200 116-7
 - 201 130
 - 202 32, 130
 - 203 30-1, 33, 130
 - 204 119, 121, 126, 131, 136
 - 205 30, 119, 124, 126, 128-9, 131, 136
 - 206 24, 131
 - 207 132-3
 - 208 29
 - 211 31
 - 220 30
 - 221 18
 - 222 18
 - 223 18, 31, 126
 - 224 18, 31, 47
 - 226 133
 - 227 133
 - 228 28, 133
 - 229 28, 48
 - 230 28, 31
 - 231 18, 28, 31, 35, 134
 - 232 28, 31, 33
 - 233 33, 48
 - 234 33
 - 238 18, 26, 45
 - 239 45
 - 246 18, 28, 33
 Sankt Gallen, Stiftsbibliothek, 711 222, 227
 Sankt Gallen, Stiftsbibliothek, 715 29
 Stuttgart, Württembergische
 Landesbibliothek, Cod. iur. 2^o71 171
 Trier, Bibliothek des bischöflichen
 Priesterseminars Trier, 91 (Tp) 222,
 225-32, 235-6, 241, 247
 Troyes, Bibliothèque municipale, 488 133
 Troyes, Bibliothèque municipale, 726 133

Troyes, Bibliothèque municipale, 881 134
Vatican City, Biblioteca Apostolica Vaticana,
 barb. lat. 538 90
Vatican City, Biblioteca Apostolica Vaticana,
 borgh. lat. 287 160
Vatican City, Biblioteca Apostolica Vaticana,
 pal. lat. 653 160
Vatican City, Biblioteca Apostolica Vaticana,
 vat. lat. 1339 127

Vatican City, Biblioteca Apostolica Vaticana,
 vat. lat. 1349 127
Vatican City, Biblioteca Apostolica Vaticana,
 vat. lat. 2691 160
Vatican City, Biblioteca Apostolica Vaticana,
 vat. lat. 3833 48
Venice, Biblioteca Marciana, 1613 49

Index of Persons

- Adalbert, scribe at Schäftlarn 221
Adrian I, pope (772–795) 176
Aldricus, *magister* 51
Alexander, *pope and martyr* (?) 130, 135
Alexander II, pope (1061–1073) 81
Alexander III, pope (1159–1181) 136, 198,
207–9
Ambrose, bishop of Milan (373/374–397)
103, 149, 177, 181, 211
Anselm of Laon, theologian († 1117) 133,
201
Anselm II, bishop of Lucca (1035–1086) 126,
232
Arius, theologian (256?–336) 103, 109
Augustine, bishop of Hippo (396–430) 51,
59, 66, 102–3, 126–9, 135–6, 158, 211
- Balaam, diviner in the Old Testament 149
Beda Venerabilis, theologian (672/673–735)
211
Boniface, pope as literary figure 118–39
Boniface VI, pope (896) 122
Boniface VII, pope (974–985) 122
Boniface VIII, pope (1294–1303) 122
Burchard I, bishop of Worms (1000–1025)
54
- Caesarius, prior of Heisterbach abbey
(around 1227–after 1240) 124
Calixtus I, pope (217?–222) 81, 210
Cicero, Roman statesman (106 BC–43 BC)
35, 195–7
Conrad de Fabaria, monk in Sankt Gallen
(13th c.) 53
Cresconius, author (7th c.) 4
- Damasus I, pope (366–384) 150
- Elisha, prophet in the Old Testament 190
Etienne de Tournai *see* Stephen
Eutychian, pope (274?–282?) 37
- Fabianus, pope (236–250) 176
- Gelasius I, pope (492–496) 42, 90, 146, 191,
230–2
Gilbert of Poitiers, theologian (1080?–1155)
133
Gregory I, the Great, pope (590–604) 40,
108, 131, 133, 238
Gregory VII, pope (1073–1085) 80, 120,
125–6, 136, 177–8, 180
Gregory of S. Grisogono, cardinal († 1113)
178–9
- Heinrich von Sax, deacon in Sankt Gallen
53
Hildebrand Crassus, cardinal (12th c.) 51
Hugh of Saint-Victor, theologian (1096–1141)
108, 134
Huguccio of Pisa, bishop of Ferrara
(1190–1210) 60, 239
- Inerius, Roman law scholar in Bologna
(1050?–1130?) 159, 173–4, 181
Isidore of Seville, bishop († 636) 35, 107,
195, 197, 202, 211
Ivo, bishop of Chartres (1090–1115/16) 63
- Jacobus de Porta Ravennate, jurist (12th c.)
51
Jerome, Church father († 419/420) 103,
106–7, 120, 126–9, 138, 190–1
Johannes Faventinus, canonist (12th c.)
130
Justinian I, Byzantine Emperor (527–565)
11, 55, 63, 171, 173–4, 176, 198–9, 210,
212
- Kolb, Pius, librarian at Sankt Gallen
(1712–1762) 28
- Laborans, cardinal (1120?–1189?) 78
Leo I, pope (440–461) 148
- Michael, archangel 118–26, 135, 137–8

- Nicholas I, Pope (858–867) 84, 207
 Nicholas II, pope (1059–1061) 82, 125
- Odofredus de Denariis, Roman law scholar
 († 1165) 236
- Omnibonus (Omnebene), bishop of Verona
 († 1185) 78, 186, 225, 241
- Otto I, Holy Roman Emperor (912–973) 88
- Paucapalea, canonist (12th c.) 185, 191,
 196–8, 201
- Peter Abelard, theologian (1079?–1142) 201
- Peter Damian, cardinal (1057–1072) 108, 133
- Peter Lombard, bishop of Paris (1159–1160)
 54, 122, 124, 133
- Rabanus Maurus, archbishop of Mainz
 (780?–856) 108
- Ralph d'Escures, archbishop of Canterbury
 (1114–1122) 125
- Ricardus Anglicus, prior at Dunstable Priory
 (1161–1242) 160
- Rudolf von Güttingen, abbot of Sankt Gallen
 (1220–1226) 53
- Rufinus of Bologna, canonist († latest in
 1192) 60, 130, 191, 198, 201, 206, 208–10
- Sabellius, theologian (3rd c.) 102, 109
- Sisinn(i)us of Antioch, patriarch (?) 130,
 135
- Sixtus III, pope (432–440) 176
- Stephen, bishop of Tournai, canonist
 (1192–1203) 191, 198, 200–1, 206, 208,
 210
- Theodosius, Roman Emperor (379–395) 12,
 149
- Thierry of Chartres, theologian († 1155?)
 195, 197
- Ulpianus, Roman law scholar († 223?) 107,
 198–9, 202
- Ulrich von Sax, abbot of Sankt Gallen
 (1204–1220) 53–4
- Ulrich von Tegerfeld, abbot of Sankt Gallen
 (1167–1199) 52–3
- Wernher, abbot of Sankt Gallen (1133–1167)
 52
- Zacharias Chrysopolitanus, theologian in
 Laon († around 1155) 201

Index of Works, Councils and Decretals

Works

Abbreviation of Decretum Gratiani

- Bamberg 224–9
- Pommersfelden 224–9
- Trier 221–41
- see *Exceptiones ecclesiasticarum regularum*; *Gratiani opus egregium*;
Lex alia divina, alia humana;
Omnibonus; *Quoniam egestas*

Alger of Liège, *De misericordia et iustitia* 124

Ambrosius, *De officiis* 211

Anselm of Laon

Cum remissione peccatorum 127

Glosatura parva 133

In coniugio figure et vestigium 201

Anselm II of Lucca, *Collectio Canonum* 126, 232

Augustinus

De bono coniugale 211

Enarrationes in Psalmos LIV 127

Epistola ad Macedonium 126

Sermones 211

Authentica 44, 46, 173–5, 181, 183, 195

Baptizato homine 131

(Pseudo-)Bede, *Excerptiones patrum* 131

Burchard of Worms, *Decretum* 54

Caesarius of Heisterbach, *Dialogus miraculorum* 124

Chartularium Sangallense 52–3

Chronicon Abbatiae Ramesiensis 125

Cicero, *De inventione (Rhetorica prima)* 195–7

Codex Iuris Canonici / 1983 60

Codex Justinianus 11, 35–7, 42, 45, 171, 173–6, 186, 195, 198, 204, 210–1

Codex Theodosianus 12

Collectio III librorum 113–4, 126–7, 178, 180–1

Collectio v librorum (vat. lat. 1339) 127

Collectio IX librorum 127, 180–1

Collectio Ambrosiana 180

Collectio Caesaraugustana 180

Collectio canonum see Anselm II of Lucca, *Deusdedit*

Collectio Canonum Barberiniana 90

Collectio Dionysio-Hadriana 4

Collectio Hibernensis 126–9

Collectio Lipsiensis 130

Collectio Pragensis 180

Compilatio Prima 54, 136

Concordia canonum see Cresconius

Conrad de Fabaria, *Casuum sancti Galli continuatio* 53

Corpus iuris civilis 11–2, 41, 54, 143, 186, 198

Cresconius, *Concordia canonum* 4

Decretum see Burchard, *Decretum Gratiani*, Ivo

Decretum Gratiani

- D.1 28

- D.2 27, 45

- D.16 181, 190

- D.19 92

- D.21 90

- D.22 90

- D.26 83

- D.27 33, 81, 93, 114, 250

- D.28 33, 80–2, 207

- D.29 33

- D.31 47, 82

- D.32 35, 82–3, 189

- D.33 83, 93, 114

- D.34 82–3, 93, 114–5, 207

- D.35 83, 93, 115

- D.36 83–4, 115

- D.37 83, 91, 115–6

- D.38 83

- D.39 93, 115

- D.46 35, 84, 115

- D.50 84–6, 93, 102, 115, 117, 189

- D.51 83

- D.54 44, 84, 91, 206

- D.55 84, 146–7

- D.60 86, 93, 115, 149

- D.61 32, 86, 207

- D.62 86

- D.63 86–8, 90, 108, 117, 151, 188
- D.64 89
- D.65 89
- D.66 89
- D.67 89–90
- D.68 87, 89, 91
- D.70 86
- D.71 86
- D.75 89
- D.76 89
- D.77 86
- D.78 89
- D.79 88, 91, 147
- D.80 90
- D.81 92
- D.93 89
- D.94 89
- D.95 90
- D.96 90
- D.97 90
- D.99 90
- D.100 90
- D.101 88, 93, 115
- Causa Prima of *Sg* 79, 89, 146–51, 168–72, 246, 248–9
- C.1 163, 170, 181, 195–6
 - C.1 q.1 92, 113, 115, 187–8, 190–1, 196, 207
 - C.1 q.2 43, 115, 147, 170, 188–9
 - C.1 q.3 149, 151, 180
 - C.1 q.4 112–5, 187
 - C.1 q.5 111, 113, 115
 - C.1 q.6 111–2, 114
 - C.1 q.7 107, 110, 115, 117, 188, 191
- C.2 20, 31, 147, 153, 163, 166, 175, 191, 227–8
 - C.2 q.1 115, 148, 187, 191, 197, 232–5, 237
 - C.2 q.2 147, 170
 - C.2 q.3 170, 191, 197
 - C.2 q.5 41, 117, 148
 - C.2 q.6 11, 91, 157, 187–8, 191, 198, 224
 - C.2 q.7 43, 115, 149–51, 158, 184, 187–8, 190–1
 - C.2 q.8 21, 37–8, 154–5, 175–6, 186–7
- C.3 20–1, 163, 169
 - C.3 q.1 148
- C.3 q.5 42, 148, 151, 207, 209–10
- C.3 q.6 157, 176
- C.3 q.7 149–51, 158
- C.3 q.8 154–5
- C.4 21, 42, 147, 151, 163, 165, 191, 207–8, 210
- C.5 43, 115, 147, 154, 163, 165
- C.6 163
 - C.6 q.1 115, 188
 - C.6 q.2 115
 - C.6 q.3 207
 - C.6 q.4 156, 190, 207
 - C.6 q.5 154, 156
- C.7 115, 156, 163, 166, 188
- C.8 115, 163
- C.9 90, 156, 163, 190
- C.10 38, 116, 156, 163, 165
- C.11 153, 163–5
 - C.11 q.1 150–1, 191
 - C.11 q.3 91, 115–6, 154, 203
- C.12 164–5
 - C.12 q.1 150–1, 189
 - C.12 q.2 115, 184, 187, 189, 198
 - C.12 q.3 39, 146, 154, 189
- C.13 39, 146, 164, 189
- C.14 115, 127, 136, 154, 164, 188
- C.15 154, 164–5
 - C.15 q.1 115–6, 158–9, 187–8
 - C.15 q.4 154
 - C.15 q.5 154, 202
 - C.15 q.6 207
- C.16 164, 169, 176
 - C.16 q.1 39, 151, 158–9, 169, 177, 187–8
 - C.16 q.2 91, 188, 208–9
 - C.16 q.3 91, 188–91
 - C.16 q.5 156, 208–9
 - C.16 q.7 177–8, 180–1, 195
- C.17 45, 151, 164, 166, 176–8
- C.18 115–6, 162–5, 188
- C.19 27, 153, 158, 164, 187
- C.20 35, 106, 153, 158, 164, 166, 195
- C.21 164, 203
- C.22 164
 - C.22 q.1 115–6
 - C.22 q.2 116, 201
 - C.22 q.3 104, 116
 - C.22 q.4 116, 159, 187, 211
 - C.22 q.5 109, 116, 159, 188, 204, 215

Decretum Gratiani (cont.)

- C.23 40, 91, 96, 102, 106, 116, 159, 164, 187
 - C.24 164, 168, 229–32
 - C.25 23, 60–1, 69, 157, 164, 168
 - C.26 164, 168, 174
 - C.27 22–3, 35, 164, 184
 - C.27 q.1 23, 35, 184
 - C.27 q.2 36, 60–1, 65–8, 108, 116, 157, 184, 187, 195
 - C.27 q.5 157
 - C.28 91, 164
 - C.29 164, 166, 174
 - C.29 q.1 11, 102, 104, 109, 116, 158
 - C.29 q.2 45, 116, 184, 188, 195, 203–4
 - C.30 164, 166
 - C.30 q.1 203–5
 - C.30 q.3 116, 184, 204–5, 215
 - C.30 q.4 157, 184, 203–5, 207, 215
 - C.30 q.5 116, 157, 188
 - C.31 35, 116, 164, 195, 204, 216
 - C.32 164, 166, 169, 172, 204, 206, 216
 - C.32 q.1 116, 158, 187, 204, 216–7
 - C.32 q.2 203
 - C.32 q.6 36, 116, 184, 186
 - C.32 q.7 116
 - C.32 q.8 203
 - C.33 164
 - C.33 q.1 116, 189, 191, 204
 - C.33 q.2 117, 189
 - C.33 q.3 (de pen.) 8, 116, 126, 131
 - C.33 q.4 157
 - C.34 164, 166
 - C.35 116, 164, 166, 169, 172, 184, 188, 199–200, 203–4
 - C.36 116–7, 164, 166, 195
- Deusdedit, Collectio Canonum 48, 176
- Deus itaque summe atque ineffabiliter bonus 124
- Deus non habet initium vel terminum 124
- Digesta 171, 176, 200–1
 - Dig. 1 198, 202
 - Dig. 4 107
 - Dig. 11 107
 - Dig. 23 23, 36, 157, 201
 - Dig. 38 200
 - Dig. 44 199
 - Dig. 48 38, 176, 197
- Eusebius, Chronicle 106–7
- Exceptiones ecclesiarum regularum 186, 223
- Exceptiones Petri 223
- Gratiani opus egregium 78
- Gregory I., the Great
 - Homiliae super Ezechielem 131
 - Registrum epistolarum 131
- Hostiensis [Henricus de Segusio], Lectura 9
- Huguccio, Summa 239
- Institutiones 23, 36, 60, 63, 173, 198–9
- Isidor of Seville, Etymologiae 195–7, 202
- Ivo of Chartres, Decretum 63, 127, 131
- Ivo of Chartres, Panormia see Panormia
- Ivo of Chartres, Tripartita see Tripartita
- Jerome, Breviarium in Psalmos LIV 127, 129
- Johannes Faventinus, Summa 130
- Lex alia divina est, alia humana 78
- Lex Ribuaria 11
- Liber Extra 136
- Liber Papiensis 11
- Liber Sextus 136
- Liber Tarraconensis 9
- Novellae [Iustinianus] 44, 173–4, 195
- Omnibonus, Abbreviatio Decreti 223, 225, 241
- Panormia 63–4, 131, 229–32, 237
- Paucapalea, Summa see Summa Quoniam in omnibus
- Per tractatis his 200
- Peter Abelard, Epitome theologiae christianae 201
- Peter Lombard
 - Collectanea in epistolas Pauli 54
 - Sententiae 122, 124
- Peter of Blois, Distinctiones 160
- Peter the Chanter, De sacramentis et animae consiliis 128
- Petri exceptionum legum romanorum 199
- Polycarpus 126, 178–80

Principium et causa omnium 128
 Pseudo-Isidore, Decretals 9, 176

Quoniam egestas 54, 221–5, 227–9, 241, 248

Richard de Morins [Ricardus Anglicus],
 Distinctiones 160

Rufinus of Bologna, Summa
 decretorum 130, 191, 198, 206

Scripture / Bible 107, 118, 122, 133, 190, 201
 Commentaries on Psalms 133
 Glossa ordinaria 133, 201

Stephen of Tournai, Summa 191, 198, 200–1, 206, 208, 210

Stroma Rolandi 185, 188, 191, 198, 206–9, 211–2, 248

Summa Alenconensis 191

Summa Coloniensis (Summa Elegantius in iure divino) 78

Summa Quoniam in omnibus 48–9, 191, 196, 198–202, 206–7, 210, 212

Summa sententiarum 119, 120, 122, 124, 127–9, 135

Summa Sicut vetus 191

Thierry de Chartres, Ut ait Petronius 195, 197

Tripartita 9, 63–4, 127, 131, 231–2, 237

(Pseudo-)Ulpianus, De edendo 199

Vita Aniani episcopi Aurelianensis 107

Zacharias Chrysolitanus, In unum ex quatuor 201

Councils

Ancyra (314) 81

Carthage VII (419) 207

Compiègne (757) 205

Lateran I (1123) 81

Lateran III (1179) 52

Nicaea (325) 180
 (Pseudo-)African Council 178–80

Rome (?) 177

Rome (499) 125

Rome (1078) 120, 125, 136

Rouen (?) 177

Sardica (343?) 125

Toledo (?) 177

Toledo IV (633) 209

Toledo VIII (653) 211

Tribur (895) 205, 215

Vaticanum II (1962–1965) 59

Vermeriam (753) 204

Decretals

Alexander III, Cum tu, sicut (JL 14093) 136

Calixtus I, Plurimorum relatu (J³ †162/
 JK †86) 210

Deusdedit, Pervenit ad nos (J³ †3203/
 JE †2003) 205

Eutychian, Benedictus deus est (J³ †298/
 JK †146) 37

Gregory I, the Great, Dilectionis tuae scripta (J³ 2781/JE 1673) 131–2

Leo IX, Relatum est (J³ 9653/JL 4269) 125

Nicholas I, Proposueramus quidem (J³ 5980/
 JE 2796) 207

Nicholas II, Omnipotenti Deo (J³ 10484/
 JL 4462) 125