

LAW AND MONASTICISM IN GRATIAN'S
DECRETUM

Submitted to the Faculty of History for the degree of Doctor of
Philosophy
Travis R Baker
Keble College, University of Oxford
Hilary term 2017

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Short Abstract

This thesis takes part in what some scholars have called a 'mini revolution.' Since Anders Winroth first announced in 1996 his startling discovery of what he calls the first recension of Gratian's *Concordia discordantium canonum*, commonly known as the *Decretum*, numerous articles have appeared examining some portion of the *Decretum* in light of Winroth's findings. But as productive as this 'mini revolution' has been, much work remains to be done. One such area ripe for investigation is *Causae* 16 to 20, where Gratian examines the extent to which the monastic order was subject to episcopal authority. Although a number of individual canons and *Quaestiones* have received competent scholarly attention, there exists no systematic study of *Causae* 16 to 20, whether of the first or second recension. My thesis then provides the first detailed examination of the composition and substance of the first recension of this portion of the *Decretum*.

It consists of two chapters and a critical edition of the first recension of *Causae* 16 to 20, which is found in Appendix 1. Chapter one examines the process by which Gratian organized and constructed these *Causae*. It argues that Gratian composed the bulk of these *Causae* around the *3L*, the *Tripartita* and Anselm's *Collectio canonum*. For C.16, the *3L* served as the inspiration for all but one of the seven questions, while the *Tripartita* served as the starting point for *Causae* 17 and 20. The inspiration and making of C.18 came from the *Tripartita* and the *3L*. While Anselm's *Collectio canonum* served as the starting point for C.19. Chapter two explores in detail the substance of *Causae* 16 to 20. It argues that as a whole these *Causae* reveal Gratian to be 'pro-monastic' in outlook, that is, his views on individual topics favour monks more often than not. It argues that this can be seen not only in the views which he held, but also in how he arrived at his conclusions. This chapter also argues that such an outlook did not mean that Gratian thought that monks and monasteries should always be free from episcopal control or that bishops had no positive role to play in the life of monks and monasteries.

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Long Abstract

This thesis takes part in what some scholars have called a 'mini revolution.' Since Anders Winroth first announced in 1996 his startling discovery of what he calls the first recension of Gratian's *Concordia discordantium canonum*, commonly known as the *Decretum*, no less than six doctoral theses and tens of articles have appeared examining some portion of the *Decretum* in light of Winroth's findings. But as productive as this 'mini revolution' has been, much work remains to be done. One such area ripe for investigation is *Causae* 16 to 20, where Gratian examines the extent to which the monastic order was subject to episcopal authority. Although a number of individual canons and *Quaestiones* have received competent scholarly attention, there exists no systematic study of *Causae* 16 to 20, whether of the first or second recension. My thesis then provides a detailed examination of the composition and substance of the first recension of this portion of the *Decretum*. Since the first recension remains unedited, my study of these *Causae* is based on my critical edition of them found in Appendix 1.

The *Decretum* was the first, and in many ways the last, comprehensive treatise on the law of the Church in the Middle Ages. The first recension contains around 1,860 authoritative texts and nearly a thousand *dicta*, that is, Gratian's own comments on these texts. The majority of these texts derive from Church councils, papal letters and writings of the Church Fathers. The remaining texts derive from sources such as the Bible, penitentials and imperial constitutions. Gratian's overarching purpose, which is reflected in the *Decretum's* original title, *Concordia discordantium canonum*, was to show how those texts which seemed to be in conflict with each other on a given topic were in fact in harmony. The first recension is divided into two principal parts. The first part consists of 101 *Distinctiones*, with the first twenty distinctions primarily concerned with the nature and sources of Church law. The remaining eighty-one *Distinctiones* deal primarily with issues relating to the election, ordination and discipline of the clergy. The second part is divided into thirty-six *Causae*, which is further divided into *quaestiones*. Here Gratian treats topics such as judicial procedure, monasticism, heresy and marriage. In the second recension Gratian or some unknown person(s) added a third principal part, which is generally called the *De consecratione*. It is divided into five *distinctiones*, which deal with topics such as the consecration of churches, baptism and confirmation. It is the only part of the *Decretum* which does not contain any *dicta*.

Chapter one of the thesis documents the process by which Gratian organized and constructed *Causae* 16 to 20. Contrary to the views of several scholars who have also worked on the compositional history of the *Decretum*, this chapter argues that 'untidy seams' detected within first-recension manuscripts do not *necessarily* prove the existence of still earlier recensions of the *Decretum*. Although it is possible that they may point towards the possible existence of a still earlier recension, until either a hitherto unknown manuscript(s) is unearthed containing such a recension or a relatively complete hypothetical recension is reconstructed from the 'untidy seams' detected within first-recension

manuscripts, this chapter argues that it is wiser to conclude that what we are seeing in such 'untidy seams' are evidences of remnants of drafts composed by Gratian within his own 'study,' not remnants of now lost earlier recensions which were made available for copying. This is not to suggest that the first recension was necessarily composed over a short period of time. Although it may have been, it does seem more likely that it was in the making for a number of years, a claim which most 'two-recension' proponents would have no problem entertaining. But believing that the first recension was in the making for a long time is not the same thing as believing that Gratian 'published' the *Decretum* in earlier recensions which predate the publication of the first recension (c. 1140). It seems to me that if this distinction between the 'making/composition' and the 'publication' of the *Decretum* was borne in mind when studying and writing on the history of the composition of Gratian's treatise on canon law, many of the disagreements among scholars concerning this topic would be reduced considerably and that some of them might even be resolved.

When Gratian composed the first recension of *Causae* 16 to 20, he made use of 141 canons which he thought were relevant to the themes he wanted to address, and constructed a case that covered some of the questions, and incorporated other questions and canons along the way. Unfortunately it is not possible to know for sure how well-planned each *Causa* was in its entirety before he wrote, and how far he found additional canons and questions after he began. What we do know with some certainty is that Gratian composed the bulk of these *Causae* around three canon law collections: Anselm's *Collectio canonum*, the *Collectio Tripartita* and the *3L*. For C.16, the *3L* served as the starting point for six of the seven questions, with question 2 being the exception. The canons which were added to the core canons mainly derive from the *Tripartita* and Anselm's *Collectio Canonum*. For C.17, Gratian first turned to the *Tripartita* for inspiration, which not only lies behind the making of question 2 but also behind the crafting of the case narrative found at the beginning of the *Causa*. While the *Tripartita* lies at the very origins of C.17, the *3L* served as the starting point for the making of question 4, with the *Tripartita* and Anselm's *Collectio canonum* providing additional canons which were added after the core canons. The *3L* and the *Tripartita* were both part of the original plan in the making of C.18. Here the first half of the case narrative and first question were inspired by a canon from the *Tripartita*, while the second half of the case narrative and second question were inspired by two canons emanating from the *3L*. Gratian combined the two topics addressed by these canons in the case narrative due to the fact that they are closely related. The additional canons which are found in C.18 q.2 derive from Anselm's *Collectio canonum*, the *Tripartita* and the *3L*. *Causa* 19 was most likely inspired by a canon deriving from the same area of Book 7 of Anselm's *Collectio canonum* as those found at the end of C.18 q.2. Anselm's collection not only served as the starting point for the making of C.19, it also served as primary source for the making of questions 2 and 3. Like *Causa* 19, C.20 was primarily constructed around one formal source, but unlike C.19 that source was the *Tripartita*. All four questions in this *Causa* find their origins in this collection.

Chapter two examines the substance of *Causae* 16 to 20. *Causa* 16 is about the rival claims of the local bishop and the abbot to control over churches which belong to, or are given to, an abbey. The other *Causae* are about a variety of legal problems connected with entry to or exit from the monastic life. *Causa* 17 is about whether a secular cleric who promises to become a monk and surrenders his benefice to the patron but then recovers his health and changes his mind can recover his benefice. *Causa* 18 is about whether a former monk who becomes a bishop can and should influence the choice of his successor. *Causa* 19 is about whether secular clerics with churches can enter monasteries only with the consent of the

bishop. *Causa* 20 is about whether monks who entered monasteries while under age are able to leave their monasteries on reaching puberty or able to transfer to a stricter monastery.

When taken as a whole, the substance of *Causae* 16 to 20 reveals Gratian to be 'pro-monastic' in outlook, that is, his views on individual topics favour monks more often than not. This 'pro-monastic' outlook is not just seen in the fact that Gratian believed that monks could perform pastoral care or that monks who were not also priests could withhold tithes from their own estates or that churches could be relinquished to abbots by laymen with the permission of the bishop. It is also seen in the way he arrived at his 'pro-monastic' conclusions. It was not as if the canonical tradition, for example, overwhelmingly supported monks doing pastoral care and thus left Gratian with little choice but to side with the weight of tradition. In fact, for this particular example, the opposite was the case. Gratian himself even admitted that up until about the fifth century monks were not clerics and thus did not engage in pastoral work. Yet this historical fact did not prevent him from coming to the conclusion that monks could perform pastoral care if certain criteria were met. While it is hard then not to come to the conclusion after reading *Causae* 16 to 20 that Gratian was 'pro-monastic' in outlook, such an outlook did not mean that he thought that monks and monasteries should always be free from episcopal control or that bishops had no positive role to play in the monastic life. Whether in his role as distributing tithes to monks or giving abbots permission to hold churches wrongly possessed by laymen or allowing clerics to transfer to the monastic life or intervening in abbatial elections in special circumstances, the bishop played an important role in *Causae* 16 to 20, even if at times monks could contradict the will of the bishop if divinely inspired or be free from episcopal oversight if a bishop had abused his rights on visitation of a monastery. In the end, then, monks certainly come out on top in the *Causae monachorum* but not without the protection and assistance of the bishop.

The final part of the thesis presents a critical edition of the first recension of *Causae* 16 to 20, which is preceded by an introduction. The edition is based on two manuscripts, Aa and Fd, the only first-recension manuscripts to contain this part of the *Decretum*. It contains 141 canons, the majority of which are found in *Causa* 16, with the remaining canons distributed relatively evenly among the rest of the *Causae*. In addition to the edition, Appendix 1 provides a brief description of the contents of Aa and Fd, a discussion of some of the most important recent scholarship on these manuscripts, an examination of the textual relationship between Aa, Fd, and Sg, a description of the edition itself and a discussion of the editorial principles behind it. Appendix 2 contains a *tabula synoptica*. Here I tabulate the earlier canon law collections and indicate which canons I have identified as serving as the formal source.

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This thesis has benefited from the assistance and kindness of several people and institutions. I would like to thank Jörg Müller of the Stephan Kuttner Institute of Medieval Canon Law for lending me several microfilms of medieval canon law manuscripts in the Institute's possession. I am also grateful to the Keble Association for awarding me three Study Awards which enabled me to purchase several medieval manuscripts on CD from various libraries throughout Europe. Due to family circumstances, the majority of this thesis was researched and written in San Diego, California. As a consequence, it depended heavily on the Interlibrary Loan services of the San Diego Public Library. I would like to thank in particular Albert Elguira and Lisa Rutherford for obtaining the overwhelming majority of my ILL requests. Although numerous American libraries have either lent me books or made copies of journal articles for me or done both, I am particularly grateful to UCLA, The Catholic University of America and the Library of Congress. I would like to thank my two examiners, Benjamin Thompson and Martin Brett, for their detailed comments and wise criticisms. This thesis has benefited greatly from the incomparable expertise of my supervisor, Paul Brand. Many errors have been avoided and many insights have been gained because of his erudition. I would also like to thank Paul for his continued patience and generosity. Finally, I would like to thank my wife, Hannah. It is not an exaggeration to say that without her patience, support and encouragement this thesis would never have been completed.

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Abbreviations

MODERN WORKS AND SERIES

<i>AKKR</i>	<i>Archiv für katholisches Kirchenrecht</i>
<i>BMCL</i>	<i>Bulletin of Medieval Canon Law, New Series</i>
<i>CCSL</i>	Corpus Christianorum, Series Latina
<i>MGH</i>	Monumenta Germaniae Historica
<i>MIC</i>	Monumenta Iuris Canonici
<i>PL</i>	<i>Patrologiae cursus completus, series Latina</i> , ed. Migne
<i>RDC</i>	<i>Revue de droit canonique</i>
<i>REDC</i>	<i>Revista española de derecho canonico</i>
<i>ZRG KA</i>	<i>Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanonistische Abteilung</i>

MANUSCRIPTS OF GRATIAN'S *DECRETUM*¹

Aa	Admont, Stiftsbibliothek 43
Bi	Biberach, Spitalsarchiv B 3515
Br	Bremen, Universitätsbibliothek a. 142
Cd	Cambridge, Mass., Harvard Law Library 64
Fd	Florence, Biblioteca Nazionale Centrale, Conventi Soppressi A 1.402
Hk	Heiligenkreuz, Stiftsbibliothek 44
In	Innsbruck, Universitätsbibliothek 90
Ka	Cologne, Erzbischöfliche Diözesan- und Dombibliothek 127
Kb	Cologne, Erzbischöfliche Diözesan- und Dombibliothek 128
Mk	Munich, Bayerische Staatsbibliothek, clm 28161
Mz	Mainz, Stadtbibliothek II.204
Pk	Paris, BN, lat. 3890
Sa	Salzburg, Stiftsbibliothek St. Peter a.XII.9
Sb	Salzburg, Stiftsbibliothek St. Peter a.XI.9
Sg	St Gall, Stiftsbibliothek 673
Tr	Trier, Stadtbibliothek 906
Ty	Troyes, Bibl. municipale 60
Tz	Troyes, Bibl. municipale 103
Vd	Vatican, BAV, Vat.lat. 3529
Vp	Vatican, BAV, Pal.lat. 622

¹ For the manuscripts of Gratian's *Decretum*, I have adopted the sigla found in Rudolf Weigand's *Die Glossen zum "Dekret" Gratians: Studien zu den frühen Glossen und Glossenkompositionen*. *Studia Gratiana* 26-27 (Rome, 1991).

Introduction

This thesis takes part in what some scholars have called a ‘mini revolution.’² Since Anders Winroth first announced in 1996 at the Tenth International Congress of Medieval Canon Law his startling discovery of what he calls the first recension of Gratian’s *Concordia discordantium canonum*,³ commonly known as the *Decretum*, no less than seven doctoral theses⁴ and numerous articles have appeared examining some portion of the *Decretum* in light of Winroth’s findings.⁵ But as productive as this ‘mini revolution’ has been, much work remains to be done. One such area ripe for investigation is *Causae* 16 to 20, where Gratian examines the extent to which the monastic order was subject to episcopal authority.

Although there exist numerous studies dealing with some aspect of *Causae* 16 to 20,⁶ there

² This phrase was first coined by Franck Roumy and Stéphane Boiron in their article, “Chronique d’histoire du droit canonique,” *L’année canonique* 42 (2000): 249-282, at 253-255. Brigitte Basdevant-Gaudemet also uses it in her article, “La composition des distinctions 62 et 63 du Décret de Gratien sur les élections épiscopales,” in *“Panta rei”*: *Studi dedicati a Manlio Bellomo*, ed. Orazio Condorelli, 5 vols. (Rome: Il Cigno, 2004), 1: 213-238, at 213.

³ For a published version of Winroth’s paper presented at the Tenth International Congress of Medieval Canon Law, see his article “The Two Recensions of Gratian’s *Decretum*,” *ZRG KA* 83 (1997): 22-31.

⁴ Justiniano García Arias, “C.1 q.7 del Decreto de Graciano: el origen de la doctrina canónica sobre la dispensa,” (Tesis Doctoral, Pontificia Universidad de la Santa Cruz, 1999); Luis Pablo Tarín, “Graciano de Bolonia y la literatura latina. La distinción treinta y siete del decreto,” (Tesis Doctoral, Universidad Complutense de Madrid, 2004); Marcelo Parma, “El Favor Fidei en el Decretum Gratiani,” (Tesis Doctoral, Pontificia Universidad de la Santa Cruz, 2007); John Wei, “Law and Religion in Gratian’s *Decretum*,” (Ph.d diss. Yale University, 2008); Melodie H. Eichbauer, “From Gratian’s *Concordia discordantium canonum* to Gratian’s *Decretum*: The Evolution from Teaching Text to Comprehensive Code of Canon Law,” (Ph.d diss. The Catholic University of America, 2010); Thibault Joubert, “La formation du lien entre l’évêque et son Eglise dans les versions successives du ‘Décret’ de Gratien,” (Thèse de doctorat, Université de Paris-Sud, 2010); Atria A. Larson, “Gratian’s *Tractatus de penitentia*: A Textual Study and Intellectual History,” (Ph.d diss. The Catholic University of America, 2010)

⁵ For many of these articles, see the bibliography at the end of Anders Winroth article, “Recent Research on the Making of Gratian’s *Decretum*,” *BMCL* 26 (2004-6): 1-29.

⁶ For studies which have identified some of the formal sources of the canons in the *Causae monachorum* according to the second recension, see James A. Brundage, *Medieval Canon Law and the Crusader* (Madison: The University of Wisconsin Press, 1969), 40; Peter Landau, “Seelsorge in den Kanonensammlungen von der Zeit der gregorischen Reform bis zu Gratian,” in *La pastorale della Chiesa in Occidente dall’età ottoniana al concilio lateranense IV* (Milan: Vita e Pensiero, 2004), 93-123, at 103, n. 51; idem, “Das Dominium der Laien an Kirchen im Decretum Gratiani und in vorgratianischen Kanonensammlungen der Reformzeit,” *ZRG KA* 83 (1997): 209-222; Titus Lenherr, “Zur Überlieferung des Kapitels ‘Duae sunt, inquit, leges (Decretum Gratiani C.19 q.2 c.2),” *AKKR* 168 (1999): 359-384. For two studies on the compositional history of C.19 q.3, see Kenneth Pennington, “Gratian, Causa 19, and the Birth of Canonical Jurisprudence,” in *La cultura giuridico-canonica medioevale: Premesse per un dialogo ecumenico* (Milan: Giuffrè, 2003), 209-232; José Miguel Viejo-

has never been a systematic and comprehensive study of the composition and substance of these *Causae*, whether of the first or second recension. What follows then is a study of the composition and substance of this portion of the *Decretum* as it is found in the first recension. Since the first recension remains unedited, my study of these *Causae* is based on my own critical edition of them, which can be found in Appendix 1 of this thesis, along with an introduction.

What is the *Decretum*?

The *Decretum* was the first, and in many ways the last,⁷ comprehensive treatise on the law of the Church in the Middle Ages.⁸ The first recension contains around 1,860 authoritative texts and nearly a thousand *dicta*, that is, Gratian's own comments on these texts. The

Ximénez, " 'Costuras' y 'descosidos' en la versión divulgada del Decreto de Gracian," in *Proceedings of the Thirteenth International Congress of Medieval Canon Law* (BAV: Vatican City, 2010), 337-356. For detailed studies dealing with some aspect of the substance of *Causae* 16 to 20, see Vincentius F. Muzzarelli, *De Professione Religiosa a primordiis ad saec. XII* (Rome, 1938), especially at 117-189; Mario Sinopoli, "Influenza di Graziano nell'evoluzione del diritto monastico," in *Studia Gratiana* 3 (Bologna, 1955): 323-348; Caesarius M. Figueras, *De impedimentis admissionis in religionem usque ad Decretum Gratiani*, *Scripta et Documenta* 9 (In Abbatia Montiserrati, 1957); Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian's Decretum* (Los Angeles: University of California Press, 1972), especially pages 170-172 and 196-197; Lars-Arne Dannenberg, *Das Recht der Religiosen in der Kanonistik des 12. und 13. Jahrhunderts*, *Vita Regularis: Ordnungen und Deutungen religiösen Lebens im Mittelalter* 39 (Münster: LIT, 2008).

⁷ On this point see, Sir Richard Southern's *Scholastic Humanism and the Unification of Europe*, 2 vols (Oxford: Blackwell, 1995) 1: 304: "Everything that was later designed to facilitate the study of canon law was either a commentary on, or an addition to, or a simplification of, Gratian's work, and the only later medieval collections of authoritative canon law texts were issued by popes. So in a curious way he was both the first and the last of his kind."

⁸ For other scholars who refer to the *Decretum* as a treatise, see Joseph de Ghellinck, *Le mouvement théologique du XII siècle*, 2nd edition (Bruges: Éditions "De Tempel," 1948) at 205: 'Il a composé un traité pour l'enseignement du droit, en lui donnant une forme nouvelle et en précisant de tendances dont quelques-unes se dessinaient déjà chez ses prédécesseurs.'; Harold J. Berman, *Law and Revolution: The Formation of the Western Legal Tradition* (Cambridge, Mass.: Harvard University Press, 1983), at 143: 'This work, which in a modern edition fills over 1400 printed pages, was the first comprehensive and systematic legal treatise in the history of the West, and perhaps the history of mankind—if by "comprehensive" is meant the attempt to embrace virtually the entire law of a given polity, and if by "systematic" is meant the express effort to present that law as a single body, in which all the parts are viewed as interacting to form a whole.'; Jean Werckmeister, "The Reception of the Church Fathers in Canon Law," in *The Reception of the Church Fathers in the West: From the Carolingians to the Maurists*, ed. Irena Backus, 2 vols. (New York: Brill, 1997) 1: 51-81, at 65: 'The Decree [Decretum] is presented in the form of a treatise of canon law, or an instruction manual, with its *distinctiones*, its *quaestiones*, its *solutiones*: it is therefore much more than a simple collection or compilation of texts.'

majority of these texts derive from Church councils, papal letters and writings of the Church Fathers. The remaining texts derive from sources such as the Bible, penitentials and imperial constitutions. Gratian's overarching purpose, which is reflected in the *Decretum's* original title, *Concordia discordantium canonum*, was to show how those texts which seemed to be in conflict with each other on a given topic were in fact in harmony. To achieve this end, Gratian drew "distinctions between the conflicting authorities that would enable him either to reject one set or adopt the other, or else to apply each set of authorities to a different situation or context."⁹ Unlike the second recension, which consists of three principal parts,¹⁰ the first recension contains only the first two principal parts of the *Decretum*. The first part consists of 101 *Distinctiones*, with the first twenty distinctions primarily concerned with the nature and sources of Church law. The remaining eighty-one *Distinctiones* deal primarily with issues relating to the election, ordination and discipline of the clergy. The second part is divided into thirty-six *Causae*, which is further divided into *quaestiones*. Here Gratian treats topics such as judicial procedure, monasticism, heresy and marriage.

Who was Gratian?

Despite composing "one of the most famous law books of all time,"¹¹ little is known about Gratian's life. For most of the twentieth century the standard account was that he was a teacher and a Camaldolese monk at the monastery of Saints Felix and Nabor in Bologna and

⁹ James A. Brundage, *Medieval Canon Law* (New York: Longman, 1995), 48.

¹⁰ The third principal part of the *Decretum* is generally called the *De consecratione*, which is divided into five *distinctiones*. It deals with topics such as the consecration of churches, baptism and confirmation. Unlike the first two principal parts, it contains only a couple of *dicta*. For a recent study which examines *De consecratione*, see chapters 7 and 8 of John C. Wei's *Gratian the Theologian* (Washington D.C.: The Catholic University of America Press, 2016).

¹¹ John T. Noonan Jr., "Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law," *Traditio* 35 (1979): 145-172, at 145.

that he was dead by 1159.¹² Then in 1979 John T. Noonan Jr asked in a seminal article on Gratian's biography if this standard account was "more reliable than a twelfth-century glossator's indication that Gratian was a bishop, a thirteenth-century law teacher's description of him as a rubricator, or a fourteenth-century chronicler's characterization of him as the victim of a plagiarizing cardinal."¹³ He did not think it was. However, he also did not think that the alternative views outlined above were any more reliable. As a consequence, Noonan could only write that Gratian "worked in Bologna in the 1130s and 1140s. Beyond these conclusions, we have unverified hearsay, palpable legend, and the silent figure in the shadows of S. Marco."¹⁴

While many of Noonan's criticisms have been accepted by scholars, some continue to believe that Gratian was a monk, if not necessarily a Camaldolese one.¹⁵ The main reason given for thinking this is that the anonymous author of the *Summa Parisiensis*, a commentary on the *Decretum* finished around 1170, claimed that Gratian had been a monk.¹⁶ Although Noonan was aware of this claim, he concluded that we should treat it cautiously, since it comes from an anonymous author who failed to mention the source of his information.¹⁷ For other scholars, the view that Gratian was a bishop seems more

¹² Ibid., 145.

¹³ Ibid., 145-146.

¹⁴ Ibid., 172.

¹⁵ See Manlio Bellomo's *The Common Legal Past of Europe 1000-1800*, trans. Lydia G. Cochrane (Washington D.C.: The Catholic University Press, 1995) at page 66: 'Gratian was probably a monk, and he may first have lived near Ravenna in the monastery of Classe.'

¹⁶ See Ennio Cortese, *Il diritto nella storia medievale*, 2 vols. (Rome: Il Cigno Galileo Galilei, 1995), 2: at 200, n. 9: 'Molti dubbi sono stati affacciati da J.T. Noonan Jr. (*Gratian Slept Here*, 145-172) sul luogo di nascita, sull'appartenenza all'ordine camaldolese, sulla dimora nel monasterio bolognese dei Santi Felice e Naborre, persino sulla sua qualità di monaco: ma su questo punto almeno la testimonianza della *Summa Parisiensis*, scritta quando Graziano era morto da poco, non sembra contestabile...' See also Peter Landau, "Gratian and the *Decretum Gratiani*" in *The History of Medieval Canon Law in the Classical Period, 1140-1234, From Gratian to the Decretals of Pope Gregory IX* (Washington D.C.: The Catholic University Press, 2008), 22-54, at 24: 'The tradition that Gratian was a monk was first asserted by the author of the *Summa Parisiensis* on the *Decretum*, around 1168. The same *Summa* also mentions Gratian's Italian origin. The great attention paid to monks in the *Decretum* in C.16-20 is significant evidence for the claim of the *Summa Parisiensis*.'

¹⁷ Noonan Jr., "Gratian Slept Here," 152.

likely.¹⁸ There are three main reasons given for thinking this. First, there are nine twelfth- and thirteenth-century *Decretum* manuscripts which contain an opening gloss asserting that Gratian was a bishop.¹⁹ Second, Robert of Torigni, abbot of Mont-St Michel, states in his chronicle around 1180 that Gratian was bishop of Chiusi.²⁰ Third, an entry in the necrology of the cathedral chapter of Siena states that a certain “Gratianus Clusinus episcopus,” died on 10 August.²¹ Although the year is not given in the necrology for when this Gratian died, Francesco Reali has recently argued on paleographical grounds that this Gratian probably died in 1145.²² Anders Winroth has also recently argued on paleographical grounds that “the notice about the death of Bishop Gratian Chiusi must have been entered at some point between, roughly and conservatively, 1136 and 1160.”²³ Winroth goes on to suggest on the basis of what we know about Gratian from the *Decretum* itself that Gratian became “bishop soon after his appearance in Venice in 1143, dying on 10 August in 1144 or 1145.”²⁴

Although Kenneth Pennington also thinks it likely that Gratian was a bishop,²⁵ he does not

¹⁸ Francesco Reali, “*Magister Gratianus* e le origini del diritto civile europeo,” in *Graziano da Chiusi e la sua opera: Alle origini del diritto comune europeo*, ed. Francesco Reali, vol.1, Pubblicazioni del Centro studi magister Gratianus (Chiusi: Edizioni Lui, 2009), 17-130; Anders Winroth, “Where Gratian Slept: The Life and Death of the Father of Canon Law,” *ZRG KA* 99 (2013): 105-128; Kenneth Pennington, “The Biography of Gratian, The Father of Canon Law,” *Villanova Law Review* 59 (2014): 679-706.

¹⁹ Until 2003, scholars were only aware of eight manuscripts which contained this gloss (see Noonan Jr., ‘Gratian Slept Here,’ 154). Then in that year Enrique De León claimed in a published article that he had discovered another manuscript containing this gloss. For a discussion of this manuscript, see his article ‘La biografia di Graziano,’ in *La Cultura giuridico-canonico medioevale: Premesse per un dialog ecumenico*, eds., Enrique De León and Nicolás Álvarez de las Asturias, (Milan: Giuffè Editore, 2003), 89-107, at 94.

²⁰ Richard Howlett, ed., *Chronicles of the Reigns of Stephen, Henry II and Richard I*, *Rerum britannicarum medii aevi scriptores*, Rolls series (London, 1884-1889), 4.118: ‘Gratianus, episcopus Clusinus, coadunavit decreta valde utilia ex decretis, canonibus, doctoribus, legibus Romanis, sufficientia ad omnes ecclesiasticas causas decidendas, quae frequentantur in curia Romana et in aliis curiis ecclesiasticis.’

²¹ Siena, Biblioteca comunale degli Intronati F 12, fol.5v.

²² Reali, “*Magister Gratianus*,” 96: ‘In un antico necrologio senese (sec.XII) si dice che “Graziano chiusino vescovo” morì il “10 agosto”: *augusti [...] IV idus obit [...] et gratianus clusinus episcopus*. Le parole che ricordano Graziano (*gratianus clusinus episcopus*) sono scritte in minuscola carolina, priva d’influssi gotici. L’anno è probabilmente il 1145.’

²³ Winroth, “Where Gratian Slept,’ 123.

²⁴ *Ibid.*, 125.

²⁵ Pennington, “The Biography of Gratian,’ 704: ‘In the end, after reviewing the evidence, I think John T. Noonan would have concluded that, yes, Gratian was probably a bishop. When was he bishop? Difficult to say. Was he the bishop of Chiusi? The evidence, I think he would say, is inconclusive.’

think that the entry in the Sienese necrology should necessarily be interpreted to mean that Gratian was bishop of Chiusi. He writes: "If one adheres to the rules of Latin syntax, the text reads: 'Gratian of Chiusi, bishop.' 'Clusinus' cannot normally be applied to 'Gratianus' and 'episcopus' at the same time. If one can assume the scribe knew his Latin well, one can interpret the text as stating that Gratian from Chiusi was a bishop."²⁶ But then in a footnote, Pennington writes that "I do not completely exclude the possibility that the scribe did intend to write that Gratianus was from Chiusi and was bishop of Chiusi. Professor Anne Duggan has pointed out to me that Pope Gregory VII referred to another bishop of Chiusi, Lanfrancus, with the same syntactical phrase 'confrater noster Lanfrancus Clusinus episcopus.'"²⁷ In light of the evidence pointed out to Pennington by Anne Duggan as well as the fact that all the other entries in the Sienese necrology give the name, ecclesiastical office and place where the ecclesiastical office was held by the dead person to be remembered, it seems clear that the entry in the Sienese necrology should be interpreted to mean that a certain Gratian was bishop of Chiusi, not that this Gratian was 'from' Chiusi' and a bishop, or even that this Gratian was 'from' Chiusi and bishop of Chiusi. But the question remains: was the Gratian in the Sienese necrology the same person as the one who wrote the *Decretum*? Given that Robert of Torigni thought that he was and given that there is no good reason to doubt the reliability of his claim, it seems reasonable to conclude that the Gratian mentioned in the necrology is the same Gratian as the one who wrote the *Decretum*.²⁸

²⁶ Ibid., 703.

²⁷ Ibid., 703, n.76.

²⁸ For a useful discussion of the reliability of Robert of Torigni's claim before the significance of the necrology of Siena had been discovered in 2009, see the late Jean Werckmeister's article "Wer war eigentlich Gratian?" in *Iustitia in caritate: Festgabe für Ernst Rößler zum 25 jährigen Dienstjubiläum als Offizial der Diözese Rottenburg-Stuttgart*, eds., Richard Puza and Andreas Weiß (New York: Peter Lang, 1997), 183-192, at 186-87: 'Von diesen sechs Behauptungen lassen sich fünf nachweisen, die fünf letzten: Es stimmt, daß Gratian in den Jahren 1120-1130 die kirchenrechtlichen Texte zu einem 'Decretum' zusammenfaßte; dieses Dekret wurde

The Two-Recension Theory of Gratian's *Decretum*

In his groundbreaking book *The Making of Gratian's Decretum*, Anders Winroth set out to prove that four medieval manuscripts and a single-leaf fragment “contain an earlier version of the *Decretum* and not a later abbreviation.”²⁹ To prove his thesis, Winroth relied on three main arguments. First, the first-recension manuscripts contain numerous readings which correspond more closely to Gratian's formal source than the readings found in the second recension. For example, in C.24 q.3 c.6 we find that both the *Panormia* and the first-recension manuscripts contain the word *dicta*, while in the second recension *dicta* has become *predicta*. Secondly, the two recensions “draw on different sets of sources.”³⁰ In *Causa 24*, for example, we find that the first recension draws on the *Panormia* and the *Polycarpus*, while the second recension draws on the *3L* and the *Tripartita*. On the basis of this fact, Winroth concludes that “It is most unlikely that someone who already possessed the *Tripartita* and *Collection in Three Books* would make a copy of the *Decretum* and systematically exclude the canons present in these collections. Such a procedure is not only inherently implausible, but even if it did occur it would not produce the text of Aa Bc Fd P Pfr, since these manuscripts contain many canons appearing in one or both of those collections although Gratian had found them elsewhere.”³¹ The final reason Winroth gives in support of his thesis is that the first-recension manuscripts are “better organized, less

wirklich ab 1150 in den Kurien benutzt; auch stimmt es, daß OMNIBONUS in Bologna Kirchenrecht studiert hat. OMNIBONUS ist auch Bischof von Verona geworden und hat eine *Abbreuiatio Decreti* verfaßt. Man sieht es, Robert von Torignys Behauptungen sind gut begründet Robert, der viel reiste, zu dessen Bekanntenkreis die Großen seiner Zeit (auch Könige und Päpste) gehörten, ist sichtlich gut informiert. Augenscheinlich kennt er selbst GRATIAN'S Dekret, denn er ist imstande, dessen Quellen genau aufzuzählen: Dekretalen, Canones, Texte der Kirchenväter und römische Gesetze. Nur die erste seiner Behauptungen, nach der GRATIAN Bischof von Chiusi gewesen wäre, bleibt unnachprüfbar. *Da aber die anderen fünf richtig sind, warum sollte man diese anzweifeln? Nichts verbietet uns a priori zu glauben, daß auch die Aussage 'Gratianus episcopus Clusinus' der Wahrheit der Bischöfe von Chiusi (italics mine).'*

²⁹ Anders Winroth, *The Making of Gratian's Decretum* (Cambridge: Cambridge University Press, 2000), 123.

³⁰ *Ibid.*, 123.

³¹ *Ibid.*, 125-126.

contradictory, and more tightly argued than the usual text.”³² For example, in C.11 q.3 d.p.c.24, we find Gratian in the second recension making the distinction between ‘anathema’ and ‘excommunication,’ with the former meaning the “full social and religious exclusion traditionally associated with excommunication,” while the latter meant the “mere exclusion from the Eucharist and the other sacraments.”³³ This distinction is not found in the first recension, “which explains the inconsistency which readers may find between C.11 q.3 d.p.c.24 and other sections of the text.”³⁴

Although Winroth’s thesis concerning these four medieval manuscripts and one-leaf fragment has won universal acceptance, some scholars have rejected his terminology of first and second recension as well as his assertion that the first recension “was not a living text.”³⁵ The main reason they have done so is because they accept the main conclusions of Carlos Larrainzar concerning two *Decretum* manuscripts: manuscript 673 of the Abbey library of St Gall (Sg) and manuscript A.1.402 of the Biblioteca Nazionale Centrale in Florence (Fd). Sg, according to Larrainzar, contains a version of the *Decretum* which predates the four first-recension manuscripts,³⁶ while Fd, which happens to be one of Winroth’s first-recension manuscripts, contains for Larrainzar not only the first recension but also the original draft of the second recension and thus reveals that the *Decretum* was a living text which developed

³² Ibid., 126.

³³ Ibid., 127.

³⁴ Ibid., 127.

³⁵ Ibid., 130. For scholars who reject Winroth’s terminology of first and second recension, see Melodie H. Eichbauer, “St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian’s *Decretum*,” *BMCL* 27 (2007): 105-139; Atria A. Larson, *Master of Penance: Gratian and the Development of Penitential Thought and Law in the Twelfth Century* (Washington D.C.: The Catholic University Press, 2014); Kenneth Pennington, “The Biography of Gratian, The Father of Canon Law,” *Villanova Law Review* 59 (2014): 679-706; José Miguel Viejo-Ximénez, “La recepción del derecho romano en el derecho canónico,” *Ius Ecclesiae* 14 (2002): 375-414.

³⁶ Carlos Larrainzar, “El borrador de la ‘Concordia’ de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (=Sg),” *Ius Ecclesiae* 11 (1999): 593-666.

in stages.³⁷ Winroth has rejected both of Larrainzar's claims. With regard to Sg, he has done so for a variety of reasons, one of which is "The fact that the text of Sg in C.15 draws on a section of the *Decretum* that is not included in Sg."³⁸ As for Fd, one of the reasons that Winroth has rejected Larrainzar's thesis concerning this manuscript is found in C.3 q.9 c.15.³⁹ The first-recension version of this canon omits a passage which appears in all of Gratian's major sources and the second recension. Winroth believes that this omission in Fd was probably the result of a scribal error. The canon makes better sense with the missing passage, but it is not included in Fd by any correcting hand: not in the margins, not in between the lines, not in the supplement. Yet, it is found in Bc and Aa, two other first-recension manuscripts. In Bc it is found in between the lines, with an indication as to where it should be added in the main text, while in Aa it is found in the margin. Winroth asked how are we to explain this phenomenon if Fd is in fact the *borrador* of the second recension, and how are we to explain the source of this correction if the original exemplar does not contain it? For Winroth, the answer is clear: Fd does not contain the original draft of the second recension. Although the nature of Sg and Fd continue to be debated, I think the evidence favours the view that Sg is an abbreviation/transformation of the first recension with interpolations from the second recension and that Fd was not the primary source for the entire manuscript tradition of the post-1150 vulgate edition of the *Decretum* as Larrainzar suggests.⁴⁰

³⁷ Idem., "El Decreto de Graciano del código Fd (=Firenze, Biblioteca Nazionale Centrale, Conventi Soppressi A.1.402): In memoriam Rudolf Weigand," *Ius Ecclesiae* 10 (1998): 421-89.

³⁸ Anders Winroth, "Gratian's *Decretum* and the Transformation of Sankt Gallen," on the web at <http://patheon.yale.edu/~haw6/Critique2.htm>; for further arguments against the view that Sg represents the earliest known version of the *Decretum*, see Wei, *Gratian the Theologian*, 27-33.

³⁹ Idem., "Le manuscrit florentin du Décret de Gratien: une critique des travaux de Carlos sur Gratien," *RDC* 51 (2001): 211-231, at 218-220.

⁴⁰ On Larrainzar's belief that Fd was the source for the entire manuscript tradition of the post-1150 vulgate edition of the *Decretum*, see his article: "La firma Boloñesa del Decreto de Graciano," *Initium: Revista Catalana d'història del dret* 9 (2004): 495-515, at 503-504: 'En mi studio sobre el código Fd, en ningún lugar he

The Date and Place of the *Decretum*

With the discovery of the first recension, the question of the date of the *Decretum* has once again become a debated topic. For Winroth and several other scholars,⁴¹ the first recension as we know it could not have been completed before 1139, since Gratian refers to canon 28 of the Second Lateran Council (1139) in *dictum* 34 of *Distinction* 63 and since this canon was inserted immediately after this *dictum* in the second recension.⁴² However, since there are no other references to the Second Lateran Council in the first recension and since “the first recension contains no text which may be confidently dated after 1119,”⁴³ Winroth granted the possibility that D.63 d.p.c.34 may be a later addition and therefore may not have been part of Gratian’s original work.⁴⁴ However, since all four first-recension manuscripts contain the reference to the Second Lateran Council and since “a large number of second-manuscripts” contain it too, Winroth concluded that “the evidence indicates that the reference to the Second Lateran Council was present in Gratian 1’s completed text when it began to circulate.”⁴⁵ Although it seems clear then that the first recension was completed after 1139, Atria Larson has challenged this dating.⁴⁶ She has done so because she is not

planteado el problema de la atribución de la autoría del *Decretum* a ningún concreto personaje de la historia, como si *Fd* fuse su original autógrafa, salvo a la ‘anónima’ mano del códice por mí denominada *G*, que no es la mano de un copista; mi afirmación central es que las modificaciones hechas por ‘esta mano’ sobre el texto están mostrando la voluntad del autor de la obra en ese momento de evolución de la redacción, y que esos cambios hechos sobre su textualidad son la fuente primera de toda la tradición manuscrita del *Decretum vulgatum* o divulgado: es decir: *Fd* es el códice ‘original’ del que pende la tradición del Decreto difundido después de 1150. Por eso he escrito que *Fd* es ‘el códice original’ que, conteniendo una *primera redacción* de la *Concordia*, fue utilizado por su autor para elaborar la *secunda redacción* de su obra.’

⁴¹ See for example Rudolf Weigand, “Chancen und Probleme einer baldigen Kritischen Edition der ersten Redaktion des Dekrets Gratians,” *BMCL* 22 (1998):53-75, at 66; Peter Landau, “Gratian and the *Decretum Gratiani*,” in *The History of Medieval Canon Law in the Classical Period, 1140-1234* (Washington D.C.: The Catholic University Press, 2008), 25.

⁴² Winroth, *The Making of Gratian’s Decretum*, 137.

⁴³ *Ibid.*, 136.

⁴⁴ *Ibid.*, 137.

⁴⁵ *Ibid.*, 138.

⁴⁶ Atria A. Larson, “Early Stages of Gratian’s *Decretum* and the Second Lateran Council: A Reconsideration,” *BMCL* 27 (2007): 21-56.

convinced that D.63 d.p.c.34 refers to canon 28 of the Second Lateran Council. She thinks it is referring to an unattested Roman council convened by Pope Innocent II in June 1133. However, she writes that “regardless of whether or not Gratian was in fact referring to a council in June 1133, (which cannot be proven with the evidence available), a letter from Innocent II’s chancery from the same period proves that Gratian was active and influential in the early 1130s and thus that the completion of the early stages of his work could not have been as late as 1139.”⁴⁷ This papal letter (JL 7625), which Innocent II sent to Bishop Asser of Lund in 1133, contains the phrase ‘*ius naturale*,’ which, according to Larson, proves that the *Decretum* was known and used by the papal chancery at this time, since “Gratian’s predecessors and contemporaries always used the term *lex naturalis*; Gratian was the first to exchange *ius* for *lex*...Since he was the first and only person in his time to do this, Innocent and/or Haimeric had to be familiar with his work.”⁴⁸ The main problem with Larson’s argument concerning JL 7625, however, is that it is based on the edition of JL 7625 found in the *Patrologia Latina* (PL), which, according to Winroth, is unreliable.⁴⁹ Winroth has shown that the editor of the first printed text of JL 7625, the seventeenth-century Church historian Philipp Caesar, never included the words ‘*ius naturale*’ in his original edition of this papal letter.⁵⁰ The reason he did not do so was because “Innocent’s letter appeared on the first, damaged folio of the manuscript. Its text was badly affected by being on the first page of a book that apparently at some point had lacked a proper binding, so much in fact that Caesar could not read every word.”⁵¹ The ‘*ius naturale*,’ then, appeared in

⁴⁷ Ibid., 26-27.

⁴⁸ Ibid., 51-52.

⁴⁹ Anders Winroth, “Innocent II, Gratian, and Abbé Migne,” *BMCL* 23 (2008): 145-151, at 147.

⁵⁰ Ibid., 147-148.

⁵¹ Ibid., 148.

Caesar's edition "only when he in a note guessed how the lacunae should be filled."⁵²

Although most subsequent editors of JL 7625 printed both of Caesar's versions of this papal letter, the editor of the PL, J.P. Migne, did not.⁵³ Furthermore, Winroth has shown that if Caesar had compared the arenga of JL 7625 with two other letters of Innocent II, JL 7568 and JL 8063, whose arengas "are almost exactly the same, and they are very similar to what Caesar could read in JL 7625," he might have inserted 'iuris praecepta' instead of 'ius naturale' into his conjectural version of this text.⁵⁴ The main conclusion to be drawn from all this is that JL 7625 cannot be used to date Gratian's *Decretum*. Anne Duggan has recently also criticised Larson's proposal that Innocent held a council at the Lateran in 1133.⁵⁵ Based on Georg Gresser's research on the councils of the reformed popes (1049-1123), Larson wants to expand our definition of council in the early twelfth century, claiming that "any gathering of several bishops (and there certainly were several in Rome in June 1133) which dealt with ecclesiastical issues, both of broad and local significance, constituted a council, and, very often, such councils do not garner attention in contemporary sources."⁵⁶ Duggan rightly points out that this view "is mistaken...The assortment of bishops who accompanied the emperor did not *ipso facto* constitute a council, although their advice could be sought; and a formal session (consistory) of the cardinals (bishops, priests, and deacons) was normal administrative process."⁵⁷

⁵² Ibid., 149.

⁵³ Ibid., 149-150.

⁵⁴ Ibid., 150-151.

⁵⁵ Anne J. Duggan, "*Iura sua unicuique tribuat*: Innocent II and the advance of the learned laws," in *Pope Innocent II (1130-1143): The World vs The City*, eds. John Doran and Damian J. Smith (London: Routledge, 2016), 272-310.

⁵⁶ Larson, "Early Stages," 46.

⁵⁷ Duggan, "*Iura sua*," 309.

As for the date of the second recension, Peter Landau has recently argued that it “was completed only around 1145.”⁵⁸ The problem with Landau’s claim is that he provides no evidence in support of it, except for a footnote which says “see my discussion of the recensions of the *Decretum* below.”⁵⁹ However, after reading Landau’s “discussion of the recensions of the *Decretum* below,” it is still not clear to me why he dates the completion of the second recension to around 1145. Paolo Nardi, on the other hand, has provided strong evidence for believing that a second-recension copy of the *Decretum* was cited in a court case heard in Siena in 1150, suggesting that the second recension must have been completed by this year.⁶⁰

As for the place of composition of the *Decretum*, most scholars believe that Gratian worked in Bologna.⁶¹ Although the main reason for thinking this has often had more to do with the fact that Bologna was the premier city for legal studies in the Middle Ages, there is some internal evidence pointing to Bologna as the place of origin for the making of the first and second recension of the *Decretum*. The internal evidence is found in C.2 q.6 d.p.c.31. This *dictum* contains standard forms for judicial appeals. One of these forms has Adelinus, bishop of Reggio Emilia appealing against the sentence of archbishop Walter of Ravenna. In a collection of model letters apparently deriving from the school of *ars dictaminis* in Bologna, “there is a letter from ‘A.’ bishop of Reggio Emilia to Cardinal John of St. Grisogono, in which the bishop complains about the (unnamed) archbishop of Ravenna, who has imposed a sentence of excommunication on him.”⁶² Winroth has suggested that

⁵⁸ Landau, ‘Gratian and the *Decretum Gratiani*,’ 25.

⁵⁹ *Ibid.*, 25.

⁶⁰ Paolo Nardi, “Fonti canoniche in una sentenza senese del 1150,” in *Life, Law and Letters: Historical Studies in Honour of Antonio García y García Studia Gratiana* 29 (Rome, 1998): 661-670.

⁶¹ Winroth, *The Making of Gratian’s Decretum*, 136.

⁶² *Ibid.*, 143.

since Gratian's standard form and the model letter are most likely referring to the same controversy, it seems reasonable to conclude that Gratian's inspiration for this standard form for judicial appeal was this model letter deriving from a collection of model letters of the rhetorical school of Bologna.⁶³ The main reason for thinking that the second recension was also composed in Bologna is that we find added at the very beginning of C.2 q.6 d.p.c.31 a reference to Henry, bishop of Bologna from 1130 to 1140s.⁶⁴ In addition to this reference, Winroth points out that "The inclusion of a large number of extracts from the sources of Roman law also points to Bologna with its Roman law school."⁶⁵

Organization of the Thesis

This thesis contains two chapters, a critical edition of the first recension of *Causae* 16 to 20, which is found in Appendix 1, and a table containing the results of my formal-source analysis, which is found in Appendix 2. Chapter one documents the process by which Gratian organized and constructed these *Causae*. It argues that Gratian composed these *Causae* around three canon law collections: the *3L*, the *Tripartita* and Anselm's *Collectio canonum*. Chapter two explores in detail the substance of *Causae* 16 to 20. It argues that as a whole these *Causae* reveal Gratian to be 'pro-monastic' in outlook, that is, his views on individual topics favour monks more often than not. It has also argued that such an outlook did not mean that Gratian thought that monks and monasteries should always be free from episcopal control or that bishops had no positive role to play in the life of monks and monasteries.

⁶³ Ibid., 143.

⁶⁴ Ibid., 144.

⁶⁵ Ibid., 144.

Chapter 1: The Making of *Causae* 16 to 20

This chapter attempts to document the process by which Gratian organized and constructed *Causae* 16 to 20.⁶⁶ But before doing so, it is necessary to make clear at the outset what I am *not* arguing for in this chapter. Contrary to the views of several scholars who have also worked on the compositional history of the *Decretum*, I am not of the opinion that ‘untidy seams’ detected within first-recension manuscripts *necessarily* prove the existence of still earlier recensions of the *Decretum*.⁶⁷ Although it is possible that they may point towards the possible existence of a still earlier recension, until either a hitherto unknown manuscript(s) is unearthed containing such a recension or a relatively complete hypothetical recension is reconstructed from the ‘untidy seams’ detected within first-recension manuscripts, I think it is wiser to conclude that what we are seeing in such ‘untidy seams’

⁶⁶ For recent scholarship on this theme, see Mary E. Sommar, “Gratian’s Causa VII and the Multiple Recension Theories,” *BMCL* 24 (2000-2001): 78-96; Titus Lenherr, “Zur Redaktionsgeschichte von C.23 q.5 in der ‘1. Rezension’ von Gratians Dekret: ‘The Making of a Quaestio,’” *BMCL* 26 (2004-2006): 31-58; José Miguel Viejo-Ximénez, “La composición del Decreto de Graciano,” *Ius Canonicum* 45 (2005): 431-485; Frederick S. Paxton, “Gratian’s Thirteenth Case and the composition of the *Decretum*,” in *Proceedings of the Eleventh International Congress of Medieval Canon Law*, 119-131; John Noël Dillon, “Case Statements (Themata) and the Composition of Gratian’s Cases,” *ZRG KA* 92 (2006): 306-336; José Miguel Viejo-Ximénez, “*Accusatio in scriptis semper fieri debet*. A propósito del método de trabajo de y sobre Graciano,” *REDC* 64 (2007): 309-338; John C. Wei, *Gratian the Theologian* (Washington D.C.: The Catholic University of America Press, 2016), ch. 6.

⁶⁷ The phrase ‘untidy seams’ was first coined by Stephan Kuttner in his paper, “Research on Gratian: Acta and agenda,” in *Proceedings of the Seventh International Congress of Medieval Canon Law*, ed. Peter Linehan, MIC, Series C: Subsidia 8 (Vatican City: BAV, 1988), 3-26, at 13. This paper has been reprinted in Stephan Kuttner, *Studies in the History of Medieval Canon Law*, Collected Studies CS 325 (Aldershot, 1990), no. V. Scholars who hold to the view that ‘untidy seams’ detected in *Decretum* manuscripts more often than not prove the existence of now lost recensions include Carlos Larrainzar, “La formación del Decreto de Graciano por etapas,” *ZRG KA* 87 (2001): 67-83; Enrique De León, “Observaciones sobre la futura edición crítica del Decreto de Graciano,” in “*Panta rei*” *Studi dedicati a Manlio Bellomo*, ed. Orazio Condorelli, 5 vols. (Roma: Il Cigno 2004), 2: 89-98; Marcelo Parma, “El favor fidei en el *Decretum Gratiani*.” (Tesis Doctoral, Pontificia Universidad de la Santa Cruz, Roma, 2007); Luis Pablo Tarín, *Graciano de Bolonia y la Literatura Latina: La distinción y siete del Decreto* (Fundación Pastor de Estudios Clásicos: Madrid, 2008); José Miguel Viejo-Ximénez, “‘Costuras’ y ‘descosidos’ en la versión divulgada del Decreto de Graciano,” in *Proceedings of the Thirteenth International Congress of Medieval Canon Law*, eds., Peter Erdö and Sz. Anzelm Szuromi, MIC, Series C: Subsidia 14 (Vatican City, BAV, 2010), 337-356; Brigitte Basdevant-Gaudemet, “Les désignations épiscopales d’après les versions successive du Décret de Gratien,” *Studia Canonica* 37 (2003): 55-98; Cecilia Natalini, “Il Diritto Giustiniano nella Causa III del *Decretum*,” *Studia et Documenta Historiae et Iuris* 70 (2004), 379-405; Kenneth Pennington, “Gratian, Causa 19, and the Birth of Canonical Jurisprudence,” in “*Panta rei*,” 4: 339-355.

are evidences of remnants of drafts composed by Gratian within his own 'study,' not remnants of now lost earlier recensions which were made available for copying.⁶⁸ This is not to suggest that the first recension was necessarily composed over a short period of time. Although it may have been, it does seem more likely that it was in the making for a number of years, a claim which most 'two-recension' proponents would have no problem entertaining.⁶⁹ But believing that the first recension was in the making for a long time is not the same thing as believing that Gratian 'published' the *Decretum* in earlier recensions which predate the publication of what is commonly known as the first recension (c. 1140). It seems to me that if this distinction between the 'making/composition' and the 'publication' of the *Decretum* was borne in mind when studying and writing on the history of the composition of Gratian's treatise on canon law, many of the disagreements among scholars concerning this topic would be reduced considerably and that some of them might even be resolved.

⁶⁸ In coming to interpret the 'untidy seams' in this way, I have been particularly influenced by Richard Sharpe's recent article "Anselm as Author: Publishing in the Late Eleventh Century," *Journal of Medieval Latin* 19 (2009): 1-87, especially at 40: 'The unfinished draft of the opening section and the sketch towards chs. 10-11 both have a discernible transmission from Anselm himself; so does the first sketch towards *De casu diaboli* attached to Ep. 97 to Brother Maurice. The passages in Hereford demand explanation, but unauthorized copying of such short disconnected passages during the process of composition does not make much sense. Anselm stayed at Gloucester abbey at the beginning of Lent 1093. Could he have left behind a few scraps of parchment with these jottings, saved by the monks and later copied? These texts do take us into Anselm's study and allow us to see him at work. To write of recensions, however, is surely to mislead: *Epistola de incarnatione Verbi* is not an example of a complete text, revised and worked over, but rather an incomplete draft, sketches of evolving ideas for eventual inclusion, and a finished version. Indeed, contrary to the trend of Schmitt's thinking, nowhere among Anselm's writings is there clear-cut evidence that Anselm revised any work to a significant degree after it was finished and published.'

⁶⁹ Anders Winroth, for example, is open to the possibility 'that each recension as preserved in the manuscripts represents the result of a process of development, which might have been slow but also could have been rapid.' On this point, see his article "Marital Consent in Gratian's *Decretum*," in *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, eds. Martin Brett and Kathleen G. Gushing (Farnham: Ashgate, 2009), 111-121, at 111. John Wei, on the other hand, is more convinced than Winroth that the first recension developed over an extended period of time. On this point, see his article "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, at 177: 'The untidy seams, present already in the first recension, indicate that Gratian's work was not composed in two simple stages: the process was much more complex. A long development preceded the emergence of the first recension, while the transformation of the first recension into the second recension also took place over a period of time.'

The Making of *Causa 16*

At the beginning of C.16, Gratian puts the following legal dispute and asks the following seven questions:

Quidam abbas habebat parrochitanam ecclesiam; instituit ibi monachum, ut officium populo celebraret. Possedit eam per xl. annos sine aliqua interpellatione. Tandem querela aduersus abbatem mouetur a clericis baptismalis ecclesie, in cuius diocesi parrochitana illa ecclesia consistebat. Hic primum queritur, utrum liceat monachis officia populis celebrare, penitentiam dare et baptizare? Secundo, si contigerit eos capellam habere episcopali beneficio, an ab eis sint instituende, an ab episcopis? Tertio, an iura ecclesie prescriptione tollatur? Quarto, si ecclesia aduersus ecclesiam prescribat, an etiam monasterium aduersus ecclesiam prescribere possit? Quinto, si capellam in suo territorio edificatam iure territorii sibi uendicare ualeat? Sexto, si archipresbiter uel episcopus sua auctoritate, non iudiciaria sententia, capellam illam inreperit, an cadat a causa, ut ecclesia, cui presidet, non ultra habeat ius reposedendi quod suus pastor illicite usurpauit? Septimo queritur, si laici capellam illam tenebant, ut quibusdam moris est, et in manibus abbatis eam refutauerunt et ordinandam tradiderint, an consensu episcopi et clericorum abbas possit eam tenere?

(A certain abbot had a parish church; there he instituted a monk to celebrate Mass for the people. He possessed it for forty years without any challenge. At last, a complaint was brought against the abbot by the clerics of the baptismal church in whose district the parish church was located. Here the first question is whether monks are allowed to celebrate the offices for the people, to give penance and to baptize? Second, if it happens that they (monks) have a chapel by the bishop's favour, whether (priests) should be instituted by them or by bishops? Third, whether the rights of a church can be taken away by prescription? Fourth, if a church can prescribe against a church, whether a monastery can also prescribe against a church? Fifth, whether it is able to claim a chapel built in its territory by right of that territory? Sixth, if an archpriest or bishop enters into that chapel by his own authority and not by judicial sentence, whether he loses his case so that the church over which he presides has no further right to claim what its pastor illegally usurped? The seventh question is if laymen were holding that chapel, as is customary in some parts, and they surrender it in the hands of the abbot and hand it over to his control, whether the abbot can hold it with the consent of the bishop and clergy?)

This case narrative and seven questions are followed by ninety-four canons, fifty-one of which are found in *Quaestio* 1. Gratian found thirty-nine of these ninety-four canons in the *3L*, making it the most influential source for the composition of *Causa* 16.⁷⁰

Quaestio 1, which asks if monks are allowed to perform pastoral duties, is by far the longest in C.16, containing fifty-one of the ninety-four canons in this *Causa*. Although there is the intriguing possibility that these fifty-one canons derive from as many as thirteen different sources, it seems more likely that Gratian found them in only five sources, one of which might have been a now lost tract on monastic rights which probably looked very similar to the tracts found in Leipzig, Universitätsbibliothek 276 and Florence, Biblioteca Riccardiana 3006 (fols. 203r-205v). In addition to this hypothetical tract on monastic rights, which might have served as the formal source for nineteen canons,⁷¹ the other major source for this question was the *3L*, which served as the formal source for twenty canons.⁷² The remaining twelve canons derive from three sources: the *Collectio Tripartita*,⁷³ the *Collectio canonum* of Anselm⁷⁴ and perhaps the *9L*.⁷⁵

Gratian began to compose *Quaestio* 1 by first turning to the *3L*. This is seen not only in the fact that the first three canons of this *Quaestio* derive from the *3L* but also in the fact that the first four *dicta*, which are found between canons 1 and 10, are primarily concerned

⁷⁰ For a study of the formal sources of the canons of the first recension of *Causae* 16 to 20, see my article "Gratian's 'Tract on Monks and the Outside World' and Its Sources," in *Proceedings of the Fourteenth International Congress of Medieval Canon Law*, MIC, Series C: Subsidia 15, eds. Joseph Goering, Stephan Dusil and Andreas Thier (Vatican City: BAV, 2016), 117-147.

⁷¹ C.16 q.1 c.6; C.16 q.1 c.7; C.16 q.1 c.8; C.16 q.1 c.9; C.16 q.1 c.10; C.16 q.1 c.11; C.16 q.1 c.12; C.16 q.1 c.15; C.16 q.1 c.16; C.16 q.1 c.18; C.16 q.1 c.19; C.16 q.1 c.20; C.16 q.1 c.21; C.16 q.1 c.22; C.16 q.1 c.23; C.16 q.1 c.24; C.16 q.1 c.25; C.16 q.1 c.47; C.16 q.1 c.51

⁷² C.16 q.1 c.1; C.16 q.1 c.2; C.16 q.1 c.3; C.16 q.1 c.26; C.16 q.1 c.29; C.16 q.1 c.30; C.16 q.1 c.31; C.16 q.1 c.32; C.16 q.1 c.33; C.16 q.1 c.34; C.16 q.1 c.35; C.16 q.1 c.36; C.16 q.1 c.38; C.16 q.1 c.39; C.16 q.1 c.40; C.16 q.1 c.41; C.16 q.1 c.42; C.16 q.1 c.44; C.16 q.1 c.49; C.16 q.1 c.50

⁷³ C.16 q.1 c.4; C.16 q.1 c.5; C.16 q.1 c.13; C.16 q.1 c.17; C.16 q.1 c.27; C.16 q.1 c.28

⁷⁴ C.16 q.1 c.37; C.16 q.1 c.43; C.16 q.1 c.45; C.16 q.1 c.46; C.16 q.1 c.48

⁷⁵ C.16 q.1 c.14

with interpreting the content of these first three canons, not the content of the canons deriving from the *Collectio Tripartita* and the hypothetical tract on monastic rights.⁷⁶ For example, after inserting canons 6 to 10, all of which most likely derive from the hypothetical tract on monastic rights, Gratian included a *dictum* after canon 10. This *dictum* makes no mention of the content of these five canons or canons 4 and 5, which derive from the *Collectio Tripartita*, but instead interprets canon 1.⁷⁷ This pattern continues in the second half of the *Quaestio*. Beginning with canon 32, Gratian considers a new topic, namely, whether or not monks should pay or receive tithes. Of the twenty canons which comprise Gratian's so-called 'tract on monks and tithes,' thirteen derive from the *3L*,⁷⁸ with five of the remaining seven canons deriving from Anselm's *Collectio canonum*.⁷⁹ As was the case in the first half of the *Quaestio*, the first canons in the second half of the *Quaestio* derive from the *3L*, with the *dicta* found here primarily concerned with interpreting the content of the *3L* canons.⁸⁰ For instance, instead of interpreting canon 45 in d.p.c. 45, a canon which derives from Anselm's *Collectio canonum*, Gratian interprets canon 44, a canon which derives from the *3L*, suggesting that canon 45 was inserted as an afterthought some point after the

⁷⁶ d.a.c.1; d.p.c.3; d.p.c.5; d.p.c.10

⁷⁷ d.p.c.10: 'His ita respondetur: Auctoritas illa Nicene synodi prohibet monachos de monasteriis exire et per capellas sepulturas celebrare mortuorum, confluere uidelicet more clericorum ad cuiuslibet exsequias celebrandas. Ceterum, si apud monasterium aliquis semetipsum tumulari uoluerit, non est prohibendus.' Canon 1 is attributed to 'illa sancte Nicene Sinodi,' with the second half of it: 'Quamobrem firmiter et insolubiliter omnes precipimus, ut aliquis monachus penitentiam nemini tribuat, nisi inuicem, ut iustum est. Mortuum non sepeliat, nisi monachum in monasterio secum commorantem, uel si fortuito quemquam aduenientium fratrum ibi mori contigerit,' being interpreted in d.p.c.10.

⁷⁸ C.16 q.1 c.32/3L App.17.3; C.16 q.1 c.33/3L App.16.3; C.16 q.1 c.34/3L App.16.4; C.16 q.1 c.35/3L 2.8.70; C.16 q.1 c.36/3L App.17.2; C.16 q.1 c.38/3L 2.31.13; C.16 q.1 c.39/3L 2.31.14; C.16 q.1 c.40/3L 2.2.17; C.16 q.1 c.41/3L 2.8.64; C.16 q.1 c.42/3L 2.8.65; C.16 q.1 c.44/3L App.14.1; C.16 q.1 c.49/3L 2.8.62; C.16 q.1 c.50/3L 2.8.63

⁷⁹ C.16 q.1 c.37/Ans.A 6.96; C.16 q.1 c.43/Ans.A 5.40; C.16 q.1 c.45/Ans.A 5.43; C.16 q.1 c.46/Ans.A 6.159; C.16 q.1 c.48/Ans.A 6.160

⁸⁰ See d.a.c.35, which interprets canon 35 in particular, a canon which derives from the *3L* 2.8.70; d.p.c.35 which interprets canons 32 to 35, all of which derive from the *3L* (c.32/3L App.17.3; c.33/3L App.16.3; c.34/3L App.16.4), as well as canon 36, which derives from the *3L* App.17.2); d.p.c.39, which interprets canon 39, a canon which derives from the *3L* 2.31.14; d.p.c.41, which interprets canon 41, a canon which derives from the *3L* 2.8.64; d.p.c.42, which interprets canon 42, a canon which derives from the *3L* 2.8.65;

inclusion of canon 44.⁸¹ While it is clear then that Gratian began his composition of both halves of *Quaestio* 1 with canons deriving from the *3L*, it also clear that Gratian inserted most of the canons from the other four sources at a time not too long after the canons from the *3L* had been inserted. We know this because several *dicta* allude to the content of canons deriving from these four sources, a strong indication that they too were part of the original plan of *Quaestio* 1, though not its starting point. In d.p.c. 14, for example, Gratian alludes to the content of canons 11 to 14, canons which derive from the hypothetical tract on monastic rights, the *Collectio Tripartita* and the *9L*.⁸² In the second half of *Quaestio* 1, we find two *dicta* interpreting canons deriving from Anselm's *Collectio canonum*,⁸³ suggesting that Gratian had all five sources on his desk as he composed *Quaestio* 1, with the *3L* serving as the foundation on which the other sources built.

While the *3L* was at the centre of the making of *Quaestio* 1, it was not at the centre of the making of *Quaestio* 2. Instead, Gratian seems to have first turned to the *Collectio IX librorum* (*9L*), a canon law collection closely related to the *3L* not generally considered to have been known and used by him, with the *3L* only consulted at the end of the making of this *Quaestio*. In Book 3 Title 5 of the *9L* Gratian found two canons which offered two different answers to the question of whether or not monks should be allowed to institute priests in their own chapels. The first canon, which is attributed to a certain Pope John,

⁸¹ D.p.c.45 reads: 'Sed illud Tolletani concilii ita intelligendum est, ut episcopi preter quartam uel tertiam, que secundum locorum diuersitates eis debetur, nichil contingant.' This is a clear reference to the inscription and content of canon 44, which derives from the *3L* App.14.1. Canon 45 is attributed to Pope Symmachus and derives from Anselm's *Collectio canonum* 5.43 (A).

⁸² D.p.c.14 reads: 'Ecce his auctoritatibus patet quod si quis apud monasterium sepulturam sibi eligere uoluerit, libere a monachis potest sepeliri. Vnde liquido colligitur, prohibitionem illam Nicene synodi propter improbitatem circumuagantium factam esse.' Canons 11 and 12 most likely derive from the hypothetical tract on monastic rights, while canon 13 derives from the *Collectio Tripartita* 1.46.45 and canon 14 from the *9L* 7.9.18.

⁸³ D.p.c.40 begins by interpreting canon 37, which derives from Anselm's *Collectio canonum* 6.96 (A); d.p.c.43 interprets canon 43, which derives from Anselm's *Collectio canonum* 5.40.

answers the question in the affirmative,⁸⁴ while the second, which is attributed to Pope Urban II, answers it in the negative, unless abbots have obtained consent from their bishop.⁸⁵ Following these two canons is a *dictum* which attempts to reconcile these two conflicting authorities. At the end of it, Gratian interprets the meaning of the canon from Pope Urban II with the help of the concept of the *ius territorii*, the right of territory, which is the theme of *Quaestio* 5, not *Quaestio* 2.⁸⁶ Having linked *Quaestio* 5 to *Quaestio* 2 in d.p.c. 2, Gratian then adds two canons which presumably were originally intended for inclusion in *Quaestio* 5 but which were included in *Quaestio* 2 since *Quaestio* 5 was never composed and since part of the answer to the latter question was contained in the canons relating to the former question.⁸⁷ In other words, while composing *Quaestio* 2, especially d.p.c.2, Gratian seems to have realized that the solution to the conflict between the two popes was to be found in the doctrine of the *ius territorii*. Once he had recognized this, he departed from his original plan of treating the *ius territorii* in *Quaestio* 5, addressing it in *Quaestio* 2 instead, which, though an odd place to address this topic in light of the case statement, is actually the most natural place in C.16 to consider it.

To compose *Quaestio* 3, Gratian looked primarily to Book 2 Title 31 of the *3L*. That he would do so is not surprising, since a large portion of this title of twenty-nine canons is dedicated to this very topic.⁸⁸ In this title he found eleven of the seventeen canons which comprise *Quaestiones* 3 and 4, with the first four canons of Title 31 serving as the first four

⁸⁴ C.16 q.2 c.1/9L 3.5.25

⁸⁵ C.16 q.2 c.2/9L 3.5.27

⁸⁶ C.16 q.2 d.p.c.2: 'Ecce Urbanus Papa prohibet inuestituras parrochialium ecclesiarum per monachos fieri, quas Iohannes papa eis concessit. Sed illud Iohannis papa intelligendum est de illis capellis que cum omni iure suo ab episcopis monachis conceduntur. Istud autem Urbani intelligitur de illis quas abbates in propriis prediis edificant in uillis et castellis suis. Tales, et si ius territorii habeant, tamen potestatem gubernandi populum et spiritualia ministrandi non habent. Quod etiam de episcopo intelligendum est.'

⁸⁷ C.16 q.2 c.3/9L 3.2.1; C.16 q.2 c.4/3L 2.31.3.

⁸⁸ The title of Title 31 is 'De tricennali possessione et de observanda integritate locorum.'

canons of *Quaestio* 3. As for the remaining five canons in *Quaestio* 3 deriving from the *3L*, they are found scattered throughout Title 31.⁸⁹ Although the *3L* served as Gratian's starting point for his treatment of this topic, it was not his end point. He also made use of the *Collectio Tripartita*, with the remaining six canons deriving from this collection.⁹⁰ Although none of the eight *dicta* present in *Quaestio* 3 refer explicitly to canons deriving from the *Collectio Tripartita*, either by citing the relevant authority or by quoting an important passage from it, as was the case with the majority of the canons deriving from the *3L*,⁹¹ we do find allusions nevertheless to the content of *Tripartita* canons in a couple of *dicta*,⁹² suggesting that Gratian composed *Quaestio* 3 with both canon law collections before him. Having addressed the larger question of the legitimacy of prescription in *Quaestio* 3, Gratian then considered the more narrow question of whether or not monasteries could legitimately apply the law of prescription against churches in *Quaestio* 4. To answer this question, Gratian included only three canons, two of which derive from Book 2 Title 31 of the *3L*. The formal source for the third canon is unknown. Given that the *dicta* cite each canon in *Quaestio* 4, it is not clear how Gratian went about constructing it.⁹³

⁸⁹ C.16 q.3 c.5/*3L* 2.31.7; C.16 q.3 c.6/*3L* 2.31.10; C.16 q.3 c.9/*3L* 2.31.22; C.16 q.3 c.10/*3L* 2.31.20; C.16 q.3 c.13/*3L* 2.31.15

⁹⁰ C.16 q.3 c.5/*Trip.*1.46.25; C.16 q.3 c.7/*Trip.*1.46.29; C.16 q.3 c.8/*Trip.*1.46.23; C.16 q.3 c.11/*Trip.*2.29.18; C.16 q.3 c.12/*Trip.*2.49.1; C.16 q.3 c.14/*Trip.*1.63.4

⁹¹ See d.p.c.4, which refers to the content of canons 1 to 4, canons which all derive from the *3L*; d.p.c.5, which refers to the second half of canon 5, which, beginning with 'Nulla igitur presumptione,' derives from the *3L* 2.31.7, and to canon 6, which derives from the *3L* 2.31.10; d.a.c. 9, which interprets canon 9, a canon which derives from the *3L* 2.31.22; d.a.c.10, which first makes mention of canon 10, which derives from the *3L* 2.31.20; d.a.c.13, which interprets canon 13, a canon which derives from the *3L* 2.31.15.

⁹² See d.a.c. 10, 'Item ea qua in beneficiis possidentur siue que metu hostilitatis interueniente diutius possessa fuerint, prescribi non possunt,' with 'metu hostilitatis interueniente' referring to canon 12, which derives from the *Collectio Tripartita* 2.49.1; and d.a.c.14, '...Sed sola prescriptio xxx annorum et deinceps, a qua tamen prescriptione priuilegia Romane ecclesie sunt exclusa, que non nisi centum annorum spatio prescribi possunt,' which is an interpretation of canon 14, a canon which derives from the *Collectio Tripartita* 1.63.4.

⁹³ d.a.c.2 interprets canons 1 and 2, with canon 2 deriving from the *3L* 2.31.5, while d.p.c.3 interprets canon 3, a canon which derives from the *3L* 2.31.17.

Quaestio 6 asks whether or not an archpriest or bishop can reclaim a church by his own authority and not by judicial sentence, something which the archpriest of the baptismal church in the case narrative of C.16 might have in fact done, even though the ‘clericis’ of the baptismal church are the only ones explicitly mentioned there. It contains four canons, two of which derive from the *3L* while the sources for the remaining two canons remain unidentified.⁹⁴ Since each canon has a *dictum* attached to it, it is difficult to retrace the process by which Gratian composed this small *Quaestio*. That said, given the prominence of the *3L* in the making of C.16, it seems likely that Gratian began to compose *Quaestio 6* with the two canons deriving from this collection. This claim is supported by the fact that the *3L* provided canons which answer *Quaestio 6* both in the affirmative and the negative, thus providing the basic structure for this *Quaestio*.

Quaestio 7 asks if an abbot can receive a chapel from the hands of a layman with the consent of the bishop and clergy. It contains eighteen canons, six of which derive from the *3L*⁹⁵ while another six derive from an unknown source(s).⁹⁶ The remaining six canons derive from three sources, Anselm’s *Collectio canonum*,⁹⁷ the *Collectio Tripartita*⁹⁸ and the *9L*.⁹⁹ Keeping with the pattern of composition for the majority of the *Quaestiones* in C.16, Gratian began to compose *Quaestio 7* by first turning to the *3L*. Here he found not only the first three canons for *Quaestio 7* but also its last two canons, with three of the four *dicta* of this *Quaestio* found attached to three of the six canons deriving from the *3L*, suggesting once again that Gratian initially organized his thoughts around canons deriving from this

⁹⁴ C.16 q.6 c.1/*3L* 2.22.42; C.16 q.6 c.2/source unknown; C.16 q.6 c.3/source unknown; C.16 q.6 c.4/*3L* 2.29.58

⁹⁵ C.16 q.7 c.1/*3L* 2.8.67-69; C.16 q.7 c.2/*3L* 2.8.71; C.16 q.7 c.3/*3L* 2.8.72; C.16 q.7 c.6/*3L* 2.9.9; C.16 q.7 c.17/*3L* 2.28.8; C.16 q.7 c.18/*3L* App.33.21

⁹⁶ C.16 q.7 c.4; C.16 q.7 c.5; C.16 q.7 c.7; C.16 q.7 c.10; C.16 q.7 c.12; C.16 q.7 c.13

⁹⁷ C.16 q.7 c.8/*Ans.* 6.194.6(A)

⁹⁸ C.16 q.7 c.9/*Trip.A* 1.66.4-5; C.16 q.7 c.11/*Trip.A* 2.49.5

⁹⁹ C.16 q.7 c.14/*9L* 3.2.5; C.16 q.7 c.15/*9L* 3.2.3; C.16 q.7 c.16/*3L* 3.2.7

anonymous Italian canon law collection.¹⁰⁰ While it seems clear that Gratian first looked to the *3L* to construct *Quaestio 7*, it is not entirely clear which canon law collection he turned to next, since the remaining *dictum* in *Quaestio 7*, d.a.c.14, interprets both the immediately preceding canon, which derives from an unknown source,¹⁰¹ as well as the following three canons, which derive from the *9L*.¹⁰² That said, it seems likely that canons 4 to 13, which derive from at least three sources, Anselm's *Collectio canonum*, the *Collectio Tripartita* and the unknown source(s), were added after the canons from the *3L* were inserted, with Gratian slightly modifying d.p.c.3 in order to take account of the content of canon 4. This seems probable not only because they immediately follow the canons deriving from the *3L* but also because they speak to the central issue of *Quaestio 7*, namely, whether or not clergy should be allowed to receive churches from the hand of the laity, while the three canons deriving from the *9L* are concerned with the closely related but distinct issue of founders of churches and their rights.

The Making of *Causae 17 to 20*

Causa 17 puts the following legal dispute and raises the following four questions:

Quidam presbiter infirmitate grauatus se fieri uelle monachum dixit; ecclesie et beneficio in manu aduocati renuntiauit. Postquam conualuit, mox se futurum monachum negauit, ecclesiam et beneficium reposit. Hic primum queritur, utrum reus uoto teneatur, an liceat ei a proposito sui cordis discedere? Secundo, an si ecclesia et beneficium ei reddenda sint que proprius libera uoluntate refutauit? Tertio, si contigisset eum et se et sua monasterio tradidisse, et an licentia abbatis liceret ei ad priora redire? Quarto, si sine licentia abbatis retro abierit, an sua sibi ab abbate reddenda sunt?

¹⁰⁰ C.16 q.7 c.1/*3L* 2.8.67-69; C.16 q.7 c.2/*3L* 2.8.71; C.16 q.7 c.3/*3L* 2.8.72; C.16 q.7 c.6/*3L* 2.9.9; C.16 q.7 c.17/*3L* 2.28.8; C.16 q.7 c.18/*3L* App.33.21. D.p.c 3 interprets the content of canons 1 to 3, which derive from the *3L*. D.p.c.17 and d.p.c.18 both interpret the canons which they follow, with both of these canons deriving from the *3L*.

¹⁰¹ C.16 q.7 c.13

¹⁰² C.16 q.7 c.14/*9L* 3.2.5; C.16 q.7 c.15/*9L* 3.2.7; C.16 q.7 c.16/*9L* 3.2.7

(A certain priest burdened with illness said he wanted to become a monk; he surrendered his church and benefice into the hand of the patron. Upon recovering his health he soon denied he would become a monk, demanding his church and benefice back. Here it is first inquired whether the defendant is to keep his vow or if he is allowed to depart from the intention of his heart? Second, whether the church and benefice should be returned to him who surrendered them by his free will? Third, if it had happened that he had handed himself and his property over to a monastery, whether with the permission of the abbot he would be allowed to return to what was before? Fourth, if he leaves without the permission of the abbot, whether his property should be returned to him by the abbot?)

This *Causa* contains ten canons, four of which derive from the *Collectio Tripartita*,¹⁰³ while three derive from the *3L*.¹⁰⁴ Of the three remaining canons, one derives from Anselm's *Collectio canonum*,¹⁰⁵ while the formal source for the final two canons remains unidentified.¹⁰⁶

Quaestio 1 asks if the defendant is to keep his vow or if he is allowed to depart from the intention of his heart. It is a short *Quaestio*, consisting of only two canons, both of which derive from an unidentified formal source which may have been a patristic florilegium, since canon 1 is attributed to St Augustine and canon 2 is attributed to St Jerome. Both canons must have been part of Gratian's original plan and therefore included in the *Decretum* at the same time since the contents of both are interpreted in the *dicta* found in *Quaestio* 1.

Quaestio 2 asks if a priest can reclaim his church and benefice which he has freely surrendered. It also consists of only two canons, both of which derive from the *Collectio Tripartita B*, with canon 1 serving as the initial inspiration for the making of *Causa* 17. This canon, which Gratian found in canon 52 of Title 10, recounts an actual court case that came before Pope Alexander II in 1066/67.¹⁰⁷ The papal court case is centred on the story of a priest

¹⁰³ C.17 q.2 c.1/*Trip.B* 3.10.52; C.17 q.2 c.2/*Trip.B* 3.11.7; C.17 q.4 c.5/*Trip.A* 2.28.55; C.17 q.4 c.6/*Trip.B* 3.3.19

¹⁰⁴ C.17 q.4 c.1/*3L* 2.8.25; C.17 q.4 c.2/*3L* 2.8.28; C.17 q.4 c.3/*3L* 2.8.29

¹⁰⁵ C.17 q.4 c.4/*Ans.*5.41(A)

¹⁰⁶ C.17 q.1 c.1 and C.17 q.1 c.2

¹⁰⁷ *Trip.B* 3.10.52 reads: 'Presentium lator Cosaldus presbiter ad limina apostolorum ueniens querelam apostolice sedi deposuit, beneficium et altaria que per canonicam Viridunensis ecclesie obtinere solebat, a quodam dyacono Richerio nomine sibi ablata esse. Dixit enim quod quondam in infirmitatem feruore passionis propressus monachum se facere promiserit, non tamen ut monasterio uel abbati se tradiderit uel

named Cosaldus, who received a canonry in the cathedral of Verdun which a certain deacon by the name of Richerius took away from him. Cosaldus said that when he was burdened with illness he had promised to become a monk, but that he had not handed himself over to a monastery or abbot or made any kind of promise in writing, though he confessed that he had surrendered the canonry into the hand of the patron of the church. But after recovering his health, he denied having become a monk. He said that while he was lying ill Richerius had been able to acquire his canonry from the bishop of Verdun, since Richerius told the bishop that he had already been made a monk. The case was heard at a synod of Trier, where Richerius was convicted of acquiring the canonry by usurpation and bad faith. Since St Benedict, the sacred canons, the Church Fathers and Pope Gregory the Great all prohibit anyone from being made a monk before completing a one-year probationary period, Pope Alexander II judged that Cosaldus should regain his canonry. It is clear then that canon 52 of Title 10 of the *Collectio Tripartita B* served as the initial inspiration for the making of *Causa 17*. Since the content of canons 1 and 2 is interpreted in the *dicta* found in *Quaestio 2*, it stands to reason that both canons were part of Gratian's original plan for this *Quaestio* and thus included in it at the same time.

Quaestio 3 asks if it happens that the priest hands himself and his property over to a monastery, whether with the permission of the abbot he is be allowed to return to what was before. This *Quaestio* has no canons, only a relatively long *dictum*.¹⁰⁸ Why Gratian failed to

promissionem scripserit, sed confitetur quod prefatum beneficium in manu aduocati ecclesie refutauerit. At postquam conualuit, monachum se facere mox negauit. Dixit etiam quod cum infirmus iaceret predictus Richerius beneficium suum ab episcopo Viridunensi acquirere potuisset, quia dixit eum monachum iam factum esse. Causa differtur in Treuerensem synodum, in qua prefatus Richerius mala fide acquisisse ac male intrasse est conuictus. Quapropter quia et Beati Benedicti canonicaque et precipue patris et predecessoris nostri sancti Gregorii pape constitutio interdicit monachum, ante unius anni probationem effici, si ita est ut dixit, iudicamus et auctoritate apostolica precipimus, ut uestra diligentia atque clementia horum portitor Cosaldus presbiter uidelicet beneficium et altaria recipiat, habeat, et quiete retineat.'

¹⁰⁸ C.17 q.3 d.init.: 'Quod autem queritur, an post traditionem sit ei fas cum licentia abbatis ad priora redire facile monstratur non posse fieri. Ipsum enim redire criminis est. Qui autem manifesto facinori desinit

include any canons in this *Quaestio* is not clear, though it might have been due to the simple fact that he did not find any canons which addressed this issue.¹⁰⁹

Quaestio 4 is concerned with whether or not an abbot is allowed to return property to a monk who has left his monastery without his permission. It is made up of six canons, with three of these deriving from the *3L*.¹¹⁰ Of the remaining three canons, two derive from the *Collectio Tripartita*¹¹¹ while the remaining canon derives from Anselm's *Collectio canonum*.¹¹² Although Gratian has left us few clues as to how he put this *Quaestio* together, given the fact that the first three canons of this *Quaestio* are found in close sequence in Book 2 Title 8 of the *3L*, it seems likely that the *3L* served as the starting point for the composition of it, with the canons deriving from the *Collectio Tripartita* and Anselm's *Collectio canonum* added afterwards.

Causa 18

At the beginning of *Causa 18*, Gratian puts the following case, which is followed by two questions:

Quidam monachus consecratus in episcopum prius monasterio multa contulit, postea in episcopatu plurima acquisiuit. Cui dum fratres successorem quererent, episcopus loci semet electioni uolebat inserere, ut per ipsum abbas in monasterio ordinaretur; fratres renituntur. Queritur, an monasterium possit petere que ab episcopo sunt acquisita, an episcopalis ecclesia possit sibi uendicare que monasterio fuerant contradita? Secundo, an per episcopum abbas sit eligendus et ordinandus et an tantummodo a propriis fratribus sit instituendus?

(A certain monk who was consecrated a bishop had previously conferred many things on the monastery. Afterwards, he acquired several possessions during his episcopate. When the brothers were seeking a successor to him, the local bishop wanted to take part in the election so that the abbot of the monastery would be ordained by him. The

obuiare, cum potest consentit. Hic autem non solum non obuiat, sed etiam permittendo fautor existit. Non ergo licet abbati dare licentiam alicui retro abeundi nec itaque illi licet retrorsum abire, quia ex quo semel se abbati subiecit, absque eius permissione nichil agere potest.'

¹⁰⁹ None of his known formal sources contain a text which address this issue.

¹¹⁰ C.17 q.4 c.1/3L 2.8.25; C.17 q.4 c.2/3L 2.8.28; C.17 q.4 c.3/3L 2.8.29

¹¹¹ C.17 q.4 c.5/Trip.A 2.28.55; C.17 q.4 c.6/Trip.B 3.3.19

¹¹² C.17 q.4 c.4/Ans.5.41(A)

brothers refused. It is inquired whether a monastery can lay claim to that which has been acquired by the bishop or whether an episcopal church can claim for itself that which has been handed over to a monastery? Second, whether an abbot should be chosen and ordained by a bishop or if he should be instituted only by his own brothers?)

This *Causa* contains thirteen canons, five of which derive from the *3L*,¹¹³ while Anselm's *Collectio canonum*¹¹⁴ and the *Collectio Tripartita* each served as the formal source for three canons.¹¹⁵

Although the remaining two canons are found in each of Gratian's major sources, I have not been able to determine which of these sources served as Gratian's formal source.¹¹⁶

Of these thirteen canons, it seems likely that canon 14 of Title 9 of the *Collectio Tripartita B* inspired the first half of the case narrative,¹¹⁷ while canons 59 and 61 of Title 29 of the *3L* inspired the second half of it,¹¹⁸ and that Gratian combined the two topics addressed by these canons in the case narrative due to the fact that they are closely related. What better place to discuss abbatial elections than after the promotion of an abbot to the office of bishop?

Although the topic of abbatial elections naturally follows the topic of an abbot who has been promoted to the office of bishop, it is nonetheless not a topic which seems to have been part of the original plan of C.18. The chief reason for thinking this is found in the first half of the

¹¹³ C.18 q.2 c.1/*3L* 2.29.61; C.18 q.2 c.2/*3L* 2.29.59; C.18 q.2 c.3/*3L* 2.28.2; C.18 q.2 c.9/*3L* 2.28.3; C.18 q.2 c.10/*3L* 2.28.4

¹¹⁴ C.18 q.2 c.4/*Ans.*7.167(A); C.18 q.2 c.6/*Ans.*7.166(A); C.18 q.2 c.8/*3L* 7.174(A)

¹¹⁵ C.18 q.1. c.1/*Trip.B* 3.9.14; C.18 q.2 c.7/*Trip.B* 3.13.4; C.18 q.2 c.11/*Trip.A* 1.55.38

¹¹⁶ C.18 q.2 c.5 and C.18 q.2 c.12

¹¹⁷ *Trip.*3.9.14 reads: 'Statutum est et rationabiliter secundum sanctos patres a sinodo confirmatum est ut monachus, quem canonica electio a iugo regule monastice professionis absoluit et sacra ordinatio de monacho episcopum facit, uelut legitimus heres paternam sibi hereditatem postea iure uendicandi potestatem habeat. Sed quicquid adquisierat, uel habere uisus fuerat, monasterio relinquat et abbati sui, qui fuerat, secundum regulam Sancti Benedicti, arbitrio. Postquam enim episcopus ordinatur ad altare, ad quod sanctificatur et titulatur, secundum sacros canones quod acquirere poterit restituat.'

¹¹⁸ *3L* 2.29.59 reads: 'Abbas in monasterio non per episcopum aut per aliquem extraneorum ordinetur neque ab episcopo missa ibi celebretur, ut nulli ecclesie subiciatur.' *3L* 2.29.61 reads: 'Hoc tantum sibi uendicent in monasteriis sacerdotes quod precipiunt canones, id est monachos ad conuersionem sanctam premonere, abbates aliaque officia instituere atque extra regulam acta corrigere. Quod si aliquid in monachis canonibus interdictum presumpserit aut usurpare quippiam de monasterii rebus temptauerit, non deerit ab eis sententia excommunicationis.'

case narrative. Here we read that a certain ‘monachus’ was consecrated as bishop. The choice of ‘monachus’ here is an odd one if the topic of abbatial elections was in fact part of the original plan of C.18. Would it not be more appropriate to write ‘abbas’ here rather than ‘monachus’? The author of the second recension thought so. In the seventeen second-recension manuscripts I have checked, all of them have substituted the first-recension reading of ‘monachus’ with ‘abbas’ in order to bring the first half of the case narrative in line with the rest of the details of C.18, since it makes little sense to talk about abbatial elections in *Quaestio 2* if it was not the abbot who was in fact promoted to the office of bishop in the first half of the case narrative.¹¹⁹ Why then did Gratian originally include ‘monachus’ in the first half of the case narrative instead of ‘abbas’? The answer lies in canon 14 of Title 9 of the *Collectio Tripartita B*, which is the source of the only canon found in *Quaestio 1* of C.18. Here we read that a ‘*monacho episcopum facit*,’ not an ‘abbas,’ which explains why Gratian inserted ‘monachus’ into the first half of the case narrative: it was the word which he found in his formal source. What this finding suggests is that Gratian initially conceived of this *Causa* only in terms of *Quaestio 1*, with *Quaestio 2*, which asks who has the right to elect and ordain abbots, being conceived of and drafted at a slightly later point in time. When that time came, Gratian only added the second half of the case narrative and *Quaestio 2*, leaving the language of the first half of the case narrative completely unaltered, even though the new additions, the second half of the case narrative and *Quaestio 2*, require that ‘monachus’ be changed to ‘abbas’ if all the details of the case narrative are to cohere.

¹¹⁹ I have checked the following second-recension manuscripts: Biberach, Spitalsarchiv B 3515 (**Bi**); Bremen, Universitätsbibliothek a.142 (**Br**); Cambridge, Mass., Harvard Law Library 64 (**Cd**); Heiligenkreuz, Stiftsbibliothek 44 (**Hk**); Innsbruck, Universitätsbibliothek 90 (**In**); Cologne, Erzbischöfliche Diözesan- und Dombibliothek 127 (**Ka**) and 128 (**Kb**); Munich, Bayerische Staatsbibliothek, clm 28161 (**Mk**); Mainz, Stadtbibliothek II.204 (**Mz**); Paris, Bibliothèque Nationale, lat. 3890 (**Pk**); Salzburg, Stiftsbibliothek Saint Peter a.XII.9 (**Sa**) and a.XI.9 (**Sb**); Trier, Stadtbibliothek 906 (**Tr**); Troyes, Bibliothèque municipale 60 (**Ty**) and 103 (**Tz**); Vatican City, BAV, vat.lat. 3529 (**Vd**) and Pal.lat. 622 (**Vp**).

Although *Quaestio 2* contains twelve canons, only the first five deal directly with the question of who has the right to elect and ordain abbots, with the first two serving as the inspiration for this *Quaestio*. These two canons are found in close sequence in Title 29 of the *3L*, with canon 61 of this title serving as the source for canon 1. This canon, which is correctly attributed to the Fourth Council of Toledo (633), decrees that abbots are to be instituted by bishops. The second canon, which immediately derives from canon 59 of Title 29 of the *3L* and is attributed by Gratian to Pope Gregory the Great, states that abbots are to be instituted by the brothers of the monastery, not by the bishop. Since these first two canons answer *Quaestio 2* both positively and negatively and thus provide Gratian with his usual *sic et non* structure, and since they are found in close sequence in Title 29 of the *3L*, it seems highly likely that they lie at the origins of *Quaestio 2*. Although canons 3, 4 and 5 also answer *Quaestio 2* directly, they do not appear to lie at the origins of this *Quaestio* since they are found in two different locations, with canons 3 and 5 deriving from Title 28 of the *3L* while canon 4 derives from book 7 of Anselm's *Collectio canonum*, suggesting that they were included by Gratian to support the position of one of the core canons, namely, canon 2.¹²⁰ Although the remaining seven canons in *Quaestio 2* do not answer the question raised in *Quaestio 2* directly, they do address the general issue of the grounds for episcopal intervention in monasteries and thus were mostly likely inserted into the *Decretum* at the same time as the first five canons. This view is supported by the fact that four of these remaining seven canons are found in close proximity in his formal sources to those canons which he had already included in *Quaestio 2*.¹²¹

Causa 19

¹²⁰ C.18 q.2 c.3/*3L* 2.28.2; C.18 q.2 c.4/*Ans.*7.167(A)

¹²¹ C.18 q.2 c.6/*Ans.*7.166(A); C.18 q.2 c.8/*Ans.*7.174(A); C.18 q.2 c.9/*3L* 2.28.3; C.18 q.2 c.10/*3L* 2.28.4

At the beginning of *Causa* 19, Gratian puts the following case, which is followed by three questions:

Duo clerici ad monasterium transire uolunt; uterque licentiam ab episcopo suo petiit. Modo queritur, si episcopus debeat permittere ut relicta propria ecclesia clericus monasterium ingrediatur? Item secundo queritur, si episcopus licentiam dare noluerit, an eo inuito monasterium possit adire? Tertio, si contigerit ipsos regulares canonicos fuisse, utrum concedendus esset eis monasterii ingressus.

(Two clerics want to transfer to a monastery; both request permission from their bishop to do so. It is inquired if a bishop should permit a cleric to leave his own church to enter a monastery? Secondly, it is inquired if a bishop is unwilling to give permission, whether one can enter a monastery against the (bishop's) will? Third, if it happens that these (clerics) were regular canons, whether or not they should be allowed to enter a monastery?)

This *Causa* is made up of ten canons, six of which derive from Anselm's *Collectio canonum*,¹²² while one derives from the *Collectio Tripartita*.¹²³ The formal sources for the remaining three canons are unknown, though there are good reasons for believing that two of them might derive from the same source and that that source was closely related to the *3L* and the *9L*.¹²⁴

Causa 19 was most likely inspired by a canon deriving from the same area of Book 7 of Anselm's *Collectio canonum* as those canons found at the end of C.18 q.2. This fact suggests that the idea of a *Causa* like C.19 first arose in Gratian's mind while he was inserting canons from Anselm's collection into *Quaestio* 2 of C.18, thus making Anselm's canon law book the starting point for the making of C.19. The canon which sparked the making of C.19 was canon 169 of Book 7. This canon ultimately derives from the Fourth Council of Toledo (633). It states that clerics who desire to become monks ought to be allowed to do so by their bishop, which

¹²² C.19 q.1 c.1/Ans.7.169(A); C.19 q.2 c.1/Ans.7.152(A); C.19 q.3 c.4/Ans.5.51(A); C.19 q.3 c.5/Ans.7.162(A); C.19 q.3 c.6/Ans.7.171(A); C.19 q.3 c.7/Ans.7.172(A)

¹²³ C.19 q.3 c.3/*Trip.B* 3.10.43

¹²⁴ C.19 q.2 c.2; C.19 q.3 c.1; C.19 q.3 c.2. The two canons which might derive from the same source are C.19 q.2 c.2 and C.19 q.3 c.2. On this point, see Titus Lenherr, "Zur Überlieferung des Kapitels 'Duae sunt, inquit, leges (Decretum Gratiani C.19 q.2 c.2),' " *AKKR* 168/2 (1999): 359-384, at 381.

of course is the very issue raised in the case narrative of C.19.¹²⁵ Anselm's collection, however, did not just serve as the starting point for C.19, it was also used in the composition of the second and third *Quaestiones*. Although *Quaestio 2*, which asks if a cleric can enter the monastic life without permission from his bishop, was clearly inspired by the content of canon 2 of this *Quaestio*, a canon attributed to Pope Urban II which allows clerics to go against the will of their bishop and enter a monastery if led by the Holy Spirit to do so and which derives from an unknown formal source,¹²⁶ the first canon of this question derives from the end of Book 7 of Anselm's collection. This canon, which is correctly attributed to Pope Leo I, answers *Quaestio 2* negatively, thus providing Gratian with one half of his usual *sic et non* structure.¹²⁷

Like *Quaestio 2*, *Quaestio 3*, which asks if canons regular can transfer to the monastic life, was also not inspired by a canon from Anselm's *Collectio canonum*, even though more than half the canons in this *Quaestio* derive from it. Instead, this *Quaestio* was inspired by a canon deriving from Title 10 of the *Collectio Tripartita B*. Of the three canons which answer the question raised in *Quaestio 3* directly, only canon 3, the canon which derives from Title 10 of the *Collectio Tripartita B*, answers it positively.¹²⁸ Since Gratian is in agreement with the position of this canon,¹²⁹ it seems likely that canon 3 rather than the first two canons of

¹²⁵ C.19 q.1 c.1/Ans.7.169(A) reads: 'Clerici qui monachorum propositum appetunt, quia meliorem uitam sequi cupiunt, liberos eis ab episcopo in monasterii largiri oportet ingressus.'

¹²⁶ C.19 q.2 c.2 reads: 'Due sunt, inquit, leges: una publica, altera priuata. Publica lex est, que a sanctis patribus scriptis est confirmata, ut est lex canonum. Lex uero priuata est que instinctu Sancti Spiritus in corde scribitur. Si quis horum qui priuata lege ducuntur Spiritu Sancto afflatus proprium quod sub episcopo retinet, dimittere et in monasterio se saluare uoluerit, quoniam priuata ducitur publica lege non tenetur. Dignior enim est priuata lex quam publica. Quisquis ergo hac lege ducitur, etiam episcopo suo contradicente, erit liber nostra auctoritate.'

¹²⁷ C.19 q.2 c.1/Ans.7.152(A) reads: 'Alienum clericum inuito episcopo ipsius nemo suscipiat.'

¹²⁸ The other two canons are C.19 q.3 c.1 and c.2. C.19 q.3 c.3/*Trip.B* 3.10.43 reads: 'Statuimus, ne professionis canonice quispiam postquam Dei uice super caput sibi hominem imposuerit, alicuius leuitatis instinctu uel districtioris religionis obtentu ex eodem claustrum audeat sine patris totius congregationis permissione discedere. Discedentem uero nullus abbatum uel episcoporum et nullus monachorum sine communi litterarum cautione suscipiat.'

¹²⁹ C.19 q.3 d.a.c.3: 'Subaudiendum uero est, nisi cum patris sui licentiam religionis propositum induerit. Vnde Urbanus II scribit abbati sancti Rufi.'

Quaestio 3, which both happen to derive from an unknown source and do not allow canons regular to enter the monastic life, served as the foundation on which this question was built.

As alluded to above, the remaining four canons which comprise this *Quaestio* do not answer the question raised in *Quaestio* 3. Instead, we find these four canons addressing three different topics. This fact led Gratian to introduce three questions at the end of *Quaestio* 3 which are not found in the case statement. The first of these is whether or not monasteries once they have been dedicated can be turned into houses for clerics and laymen.¹³⁰ It consists of two canons.¹³¹ The second question asks at what time monks should be tonsured.¹³² It consists of one canon.¹³³ The final question asks if monks can draw up a will after entering a monastery.¹³⁴ It also consists of only one canon.¹³⁵ These three questions have been interpreted by some scholars as being later additions to C.19, since they address topics not raised in the case statement.¹³⁶ Although interpreting these canons as later additions is understandable, there is good evidence suggesting that they were in fact included in *Quaestio* 3 at the same time as the other canons. The first and most important reason for thinking this is that all four of these canons derive from Anselm's *Collectio canonum*, three of which are found

¹³⁰ C.19 q.3 d.a.c.4: 'Queritur, si monasteria que semel dedicata sunt possint transire in clericorum uel secularium habitacula?'

¹³¹ C.19 q.3 c.4 and C.19 q.3 c.5

¹³² C.19 q.3 d.a.c.6: 'Queritur de his qui ad conuersionem ueniunt, quo tempore debeant tonsorari?'

¹³³ C.19 q.3 c.6

¹³⁴ C.19 q.3 d.a.c.7: 'Queritur, si ingressis monasterium ultra relinquatur licentia testandi?'

¹³⁵ C.19 q.3 c.7

¹³⁶ See for example Kenneth Pennington, "Gratian, Causa 19, and the Birth of Canonical Jurisprudence," in *La cultura giuridico-canonica medioevale: Premesse per un dialogo ecumenico*, eds., Enrique De León and Nicolás de las Asturias (Milan: Giuffrè Editore, 2003), 209-232, at 228: 'I would guess that the core of Gratian's work on Causa 19 was from C.19 q.1 d.a.c.1 to C.19 q.3 c.3. Everything after c.3 was probably added later.'; and José Miguel Viejo-Ximénez, "'Costuras y 'descosidos en la versión divulgada del Decreto de Graciano,'" in *Proceedings of the Thirteenth International Congress of Medieval Canon Law*, eds. Peter Erdö and Sz. Anzelm Szuromi, MIC, Series C: Subsidia 14 (Vatican City: BAV, 2010), 337-356, at 347: 'Sin embargo, la *Concordia* breve y los Exserpta también conservan este tipo de adiciones. C.19 es un ejemplo de desajuste entre división sistemática y unidades temáticas desde las etapas más antiguas de redacción. A propósito del caso, la introducción de C.19 propone tres cuestiones. La Causa resuelve un total de seis. La división en tres cuestiones de *edR* y *edF* correspondería al proyecto original. Las cuestiones nuevas han quedado al final de la actual cuestión tercera (q.3)...Por tanto, C.19 es un *patchwork* susceptible de ser descosido.'

in the same vicinity of Book 7 as canon 1 of *Quaestio* 1 and canon 1 of *Quaestio* 2, with the remaining canon deriving from Book 5.¹³⁷ Gratian then seems to have returned to his notes on Anselm's collection once the main concern of *Quaestio* 3 had been addressed, namely, whether or not canons regular can transfer to the monastic life. It was at this point that Gratian added the four canons from Anselm's collection which answer the three different questions outlined above. He seems to have included them here for the simple reason that he found them in Anselm's collection near the canon which inspired C.19 as well as canon 1 of *Quaestio* 2. Rather than rewriting the case statement in light of these three questions, Gratian left the case statement as is and added the three additional questions to the end of *Quaestio* 3. Considering that we only have evidence of Gratian moving in one direction in the *Decretum*, namely, forward, it seems unlikely that Gratian would have gone back and modified the case statement to account for these three additional questions.¹³⁸ The second reason for thinking that Gratian added these final four canons of *Quaestio* 3 at the same time as the first three canons is that we find a fairly lengthy *dictum* after canon 7 which interprets the content of this canon.¹³⁹ Later additions in other parts of the *Decretum* are generally found without *dicta* attached to them.¹⁴⁰ Thus, the fact that canon 7 has a *dictum* attached to it suggests, along with the other evidence presented above, that these four canons were included in C.19 at the same time as the rest of the canons which comprise this *Causa*.

¹³⁷ C.19 q.3 c.4/Ans.5.51(A); C.19 q.3 c.5/Ans.7.162(A); C.19 q.3 c.6/Ans.7.171(A); C.19 q.3 c.7/Ans.7.172(A)

¹³⁸ On this point, see Dillon, "Case Statements," 319: 'One wonders why Gratian would cite the text attributed to the 'Holy Roman Synod,' since it would appear more likely he would have preferred the named authority found in the *Tripartita* for the important first canon of question 7. The fact that he did not delete or replace the 'Holy Roman Synod' is not an indication that Gratian included it because of some significance in the inscription that is hidden to us: the editing of the *Decretum* appears always to have been a one-way process, namely the constant accretion of material.'

¹³⁹ C.19 q.3 d.p.c.7: 'Econtra Paulus primus heremita in testamento colobium suum Athanasio Alexandrino episcopo reliquit, tunicam uero beato Antonio. Sed aliud est de his qui monasterium ingressi se et sua tradiderunt. Aliud de his qui solitariam uitam ducentes se nulli ecclesie tradiderunt. Illi semel tradita nulli tradere possunt, isti nulli oblata libere testari ualent.'

¹⁴⁰ On this point, see Dillon, "Case Statements", 326.

Causa 20

At the beginning of *Causa 20*, Gratian puts the following case, which is followed by four questions:

Duo pueritiae annos agentes a parentibus monasterio traditi sunt: unus inuitus, alter spontaneus cucullam induitur. Ad annos pubertatis uenientes, inuitus ad secularem militiam redit, spontaneus monasterium districtius petit. Nunc primum queritur, si in pueritiae annis traditi cogantur religionis propositum tenere? Secundo, si preter uoluntatem parentum tonsuram uel religionis uestem quis in pueritia accipiat, an possit sibi detrahi, an non? Tertio, qui preter uoluntatem propriam cucullam induitur, an cogatur eam retinere, an non? Quarto, si ab uno monasterio in aliud districtius liceat transire alicui?

(Two children were handed over to a monastery by their parents: one put on the cowl unwillingly, the other of his own free will. When they came to the years of puberty, the unwilling one returned to the secular world, while the other requested a stricter monastery. Now, it is first inquired if those who have been handed over as children should be forced to keep the profession of religion? Second, if anyone accepts tonsure or religious clothing as a child against the will of their parents whether it is possible for the child to be taken back or not? Third, whoever wears the cowl against his own will whether he is to be forced to retain it or not? Fourth, if it is permissible to transfer from one monastery to a stricter one?)

This *Causa* contains fifteen canons, ten of which derive from the *Collectio Tripartita*,¹⁴¹ while one derives from the *3L*.¹⁴² The formal sources for the remaining four canons remain unidentified, though three of these canons are found in the *Collectio Tripartita*.¹⁴³

The *Collectio Tripartita* not only provided Gratian with the majority of the canons in C.20, it also served as the inspiration for all four *Quaestiones* in it, suggesting that the making of the individual *Quaestiones* lie at the origins of this *Causa*, not the case statement.

Supporting the belief that Gratian crafted the *Quaestiones* before drawing up the case statement is the absence of the topic addressed in *Quaestio 2* in the case narrative. This

¹⁴¹ C.20 q.1 c.2/*Trip.A* 1.55.9; C.20 q.1 c.4/*Trip.A* 2.50.1; C.20 q.1 c.6/*Trip.A* 1.43.18; C.20 q.2 c.1/*Trip.A* 2.42.3; C.20 q.2 c.2/*Trip.A* 3.13.5; C.20 q.3 c.1/*Trip.A* 1.43.17; C.20 q.3 c.2/*Trip.A* 2.38.2; C.20 q.3 c.4/*Trip.A* 1.62.28; C.20 q.4 c.1/*Trip.B* 3.12.3; C.20 q.4 c.2/*Trip.B* 3.11.2

¹⁴² C.20 q.1 c.5/*Trip.A* 2.29.38

¹⁴³ C.20 q.1 c.1; C.20 q.1 c.3/*Trip.A* 2.37.16; C.20 q.2 c.3/*Trip.A* 2.14.17; C.20 q.3 c.3/*Trip.A* 2.10.7

Quaestio is concerned with whether or not parents can take back their child who had entered the monastic life against their will. Although the case narrative of C.20 makes mention of parents, the parents mentioned there are handing their children over to a monastery, not removing them from it.¹⁴⁴ To create a realistic hypothetical case which moves naturally from one event to the next, Gratian obviously had to exclude the topic of *Quaestio* 2 from the case narrative of C.20, since its inclusion would have made *Quaestio* 1 nonsensical and *Quaestiones* 3 and 4 unnecessary. But since the topic of *Quaestio* 2 is closely related to the topics of the other three *Quaestiones* of C.20, Gratian decided that its inclusion in this *Causa* made the most sense of the five *Causae monachorum* which he had created.

Quaestio 1, which asks if child oblates are to be forced to keep the profession of their parents, was inspired by canons 1.55.9, 2.37.16 and 2.50.1 of the *Collectio Tripartita A*, which are canons 2, 3 and 4 of this *Quaestio*. Of the six canons which comprise *Quaestio* 1, only these three canons answer the question raised in it directly, suggesting that these canons provided the inspiration for the making of this *Quaestio*. Although the remaining three canons in this *Quaestio*, canons 1, 5 and 6, do not directly answer *Quaestio* 1 in the way canons 2, 3 and 4 do, they nonetheless do seem to have been inserted into this *Quaestio* at the same moment of composition as the core canons. This is because all these canons have *dicta* attached to them, with only canon 5 not being explicitly mentioned in the *dictum* which follows it.¹⁴⁵ This fact suggests that canon 5 might have been the last canon included in this *Quaestio*. Given that the formal source of this canon was the *3L*,¹⁴⁶ not the *Collectio Tripartita*, which was the source for

¹⁴⁴ C.20 d.init.: ‘Duo pueritiae annos agentes a parentibus monasterio traditi sunt...’

¹⁴⁵ C.20 q.1 c.5: ‘Quem progenitores ad monasterium tradiderunt et in ecclesia cepit canere et legere nec uxorem ducere nec monasterium deserere poterit, sed si discesserit, reducatur. Si tonsuram dimiserit, rursum tondeatur. Uxorem si usurpauerit, dimittere compellatur.’ C.20 q.1 d.p.c.5: ‘Ex his auctoritatibus colligitur quod paterna professio pueros tenet obligatos nec licebit eis a proposito discedere quod in puerilibus annis paterna deuotione susceperunt.’

¹⁴⁶ C.20 q.1 c.5/3L 2.29.38

three of the six canons¹⁴⁷ and given the fact that this canon has the ‘progenitores,’ not the ‘parentes,’ handing over the children to a monastery, makes this suggestion seem highly plausible.

Quaestio 2, which asks if parents can take their child back who has taken the monastic habit against their will, was inspired by canon 1 of this *Quaestio*, which Gratian found in canon 3 of Title 42 of the second part of the *Collectio Tripartita A*. This canon, which is correctly attributed to the Tenth Council of Toledo (656), is the only canon of the three canons which make up this *Quaestio* to contain all the details mentioned in this *Quaestio*.¹⁴⁸ While the language of canon 2 does not echo the language of *Quaestio 2* in the same way canon 1 does, it nonetheless speaks to the topic of children entering the monastic life against the will of their parents and therefore was most likely included in *Quaestio 2* to support the position stated in canon 1.¹⁴⁹ Given that canon 2, which ultimately derives from the Council of Tribur (895), was found by Gratian in the *Collectio Tripartita* suggests that Gratian included it in *Quaestio 2* at the same time as canon 1.¹⁵⁰ The last canon found in *Quaestio 2* was also the last canon inserted into this *Quaestio*. It states that child oblates are to be received from their parents in the

¹⁴⁷ C.20 q.1 c.2/*Trip.A* 1.55.9; C.20 q.1 c.4/*Trip.A* 2.50.1; C.20 q.1 c.6/*Trip.A* 1.43.18

¹⁴⁸ C.20 q.2 c.1: ‘Si in qualibet minori etate uel religionis tonsuram uel religioni debitam uestem, in utroque sexu filiis aut unus aut ambo parentes dederint forte, aut nolentibus aut nescientibus se susceptam non mox uisam in filiis abdicauerint, sed uel coram episcopo palamque in conuentu eosdem filios talia habere permiserint, ad secularem reuerti habitum ipsis filiis quandoque penitus non licebit, sed conuicti quod tonsuram aut religiosam uestem aliquando habuerint, mox ad religionis cultum habitumque reuocentur et sub strenua districtione huiuscemodi obseruantie inseruire cogantur. Parentibus sane filios suos religioni contradere non amplius quam usque ad decimum annum etatis eorum licentia poterit esse, postea uero, an cum uoluntate parentum, an si sue deuotionis sit solitarium uotum, erit filiis licitum religionis assumere cultum. Quisquis autem uel abolitione tonsure uel secularis uestis assumptione detectus fuerit attigisse transgressionem, etiam excommunicationis censuram accipiat et religioni semper inhereat.’

¹⁴⁹ C.20 q.2 c.2: ‘Puella, si ante xii annos etatis sponte sua sacrum sibi uelamen assumpsit, possunt statim parentes eius uel tutores id factum irritum facere, si uolunt. At si annum et diem dissimulando consenserint, ulterius nec ipsi nec ipsa mutare poterunt. Si uero in fortiori etate adulescentula uel adolescens seruire Deo elegerit, non est parentibus potestas prohibendi.’

¹⁵⁰ C.20 q.2 c.2/*Trip.B* 3.13.5

presence of many witnesses.¹⁵¹ Although the question raised in *Quaestio 2* does not address this topic directly, it nonetheless is an important topic and one which fits best in *Quaestio 2*, hence its inclusion here rather than elsewhere in C.20.

Quaestio 3, which asks whether someone who has received the cowl against his will is to be forced to retain it or not, was inspired by canon 4 of this *Quaestio*, which is canon 28 of Title 62 of the first part of the *Collectio Tripartita A*. This canon, which is correctly attributed to Pope Nicholas I, recounts the story of a father whose son, a cleric, was forced to put on the cowl against his will.¹⁵² This of course is at the heart of *Quaestio 3* and is a detail not found in the other canons which make up this *Quaestio*, suggesting that it served as the inspiration for this *Quaestio*. After starting with canon 28 of Title 62, Gratian then inserted canons 1.43.17 and 2.38.2 from the *Collectio Tripartita A*, with canon 17, which ultimately derives from Pope Leo I, serving as canon 1. This canon states that those who make a monastic profession freely are not to depart from it. Canon 2 of Title 38, which served as canon 2 and ultimately derives from the Seventh Council of Toledo (646), also states that anyone who receives the monastic habit freely is not to depart from it, and if he does, he is to be forced to return to it. The final and third canon, which ultimately derives from the Council of Chalcedon (451), states that those who become monks are not to return to the world. It does so, however, without specifying if those who had entered the monastic life had done so willingly or against their will. Given that this canon is the least specific of the three remaining canons in this *Quaestio* and given that it is not clear where Gratian found it, it seems likely that Gratian inserted it last and that he included it at all because it ultimately derives from an ecumenical council. But whether

¹⁵¹ C.20 q.2 c.3: 'Oportet infantes cum uoluntate parentum et consensu immo ab ipsis oblatos, sub testimonio plurimorum suscipi, ut omnis occasio maledicti gratia excludatur hominum pessimorum.'

¹⁵² C.20 q.3 c.4: 'Presens clericus nomine Lambertus, una cum patre suo, nomine Atto...Sub testificatione autem iurando firmaret, quod, quando primitus ei cucullam induit, idem Lambertus semper restitit, et numquam se fieri monachum consensit...'

canon 3 was included after or before canons 1 and 2, what seems clear is that this *Quaestio* began with canon 4 and that these three canons were added after the inclusion of canon 4.

Quaestio 4, which asks if a religious can transfer to a stricter monastery, was inspired by canon 1, which derives from Title 12 of the *Collectio Tripartita B*.¹⁵³ To show that the principle laid out in canon 1 was not confined to nuns, Gratian included canon 2, which derives from Title 11 of the *Collectio Tripartita B*.¹⁵⁴ It states that a monk is not to make a vow without the consent of his abbot, and if he does so, he is to break it.¹⁵⁵ Since Gratian found canons 1 and 2 in the *Collectio Tripartita B* and since both canons have a *dictum* attached to them, it seems likely that both canons were part of Gratian's original plan for this *Quaestio* and therefore included at the same time in it.

Conclusion

To sum up, the evidence from this chapter suggests that Gratian went about assembling canons which he thought were relevant to answering a number of questions he had on a variety of related topics, and constructed a case, often inspired by the content of the canons themselves, that covered some of the questions, and inserted other questions and canons along the way. Unfortunately it is not possible to know for sure how well-planned each *Causa* was in its entirety before he wrote, and how far he found additional canons and questions after he began. What we do know with some certainty is that Gratian composed the bulk of these *Causae* around three canon law collections: Anselm's *Collectio canonum*, the *Collectio Tripartita* and the *3L*. For C.16, the *3L* served as the starting point for six of the seven

¹⁵³ C.20 q.4 c.1: 'Virgines sacre si pro lucro anime sue propter districtiorem uitam ad aliud monasterium pergere disposuerint, ibidemque commanere decreuerint, sinodus concedit. Si uero fuga discipline alium locum quesierint, redire cogantur.' *Trip.B* 3.12.3

¹⁵⁴ C.20 q.4 c.2/*Trip.B* 3.11.2

¹⁵⁵ C.20 q.4 c.2: 'Monachum non licet uotum uouere sine consensu abbatis sui. Si autem uouerit, frangendum erit.'

questions, with question 2 being the exception. The canons which were added to the core canons mainly derive from the *Tripartita* and Anselm's *Collectio Canonum*. For C.17, Gratian first turned to the *Tripartita* for inspiration, which not only lies behind the making of question 2 but also behind the crafting of the case narrative found at the beginning of the *Causa*. While the *Tripartita* lies at the very origins of C.17, the *3L* served as the starting point for the making of question 4, with the *Tripartita* and Anselm's *Collectio canonum* providing additional canons which were added after the core canons. The *3L* and the *Tripartita* were both part of the original plan in the making of C.18. Here the first half of the case narrative and first question were inspired by a canon from the *Tripartita*, while the second half of the case narrative and second question were inspired by two canons emanating from the *3L*. Gratian combined the two topics addressed by these canons in the case narrative due to the fact that they are closely related. The additional canons which are found in C.18 q.2 derive from Anselm's *Collectio canonum*, the *Tripartita* and the *3L*. *Causa 19* was most likely inspired by a canon deriving from the same area of Book 7 of Anselm's *Collectio canonum* as those found at the end of C.18 q.2. Anselm's collection not only served as the starting point for the making of C.19, it also served as primary source for the making of questions 2 and 3. Like *Causa 19*, C.20 was primarily constructed around one formal source, but unlike C.19 that source was the *Tripartita*. All four questions in this *Causa* find their origins in this collection.

Chapter 2: Interpreting the Law

This chapter examines the substance of *Causae* 16 to 20. *Causa* 16 is about the rival claims of the local bishop and the abbot to control over churches which belong to, or are given to, an abbey. The other *Causae* are about a variety of legal problems connected with entry to or exit from the monastic life. *Causa* 17 is about whether a secular cleric who promises to become a monk and surrenders his benefice to the patron but then recovers his health and changes his mind can recover his benefice. *Causa* 18 is about whether a former monk who becomes a bishop can and should influence the choice of his successor. *Causa* 19 is about whether secular clerics with churches can enter monasteries only with the consent of the bishop. *Causa* 20 is about whether monks who entered monasteries while under age are able to leave their monasteries on reaching puberty or able to transfer to a stricter monastery.

***Causa* 16**

Causa 16 begins by putting the case of an abbot who was in possession of a parish church; there he instituted a monk to celebrate Mass for the people. He possessed it for forty years without any challenge. At last, a complaint was brought against the abbot by the clerics of the baptismal church in whose district the parish church was located.¹⁵⁶ The first question Gratian raised was whether or not monks are allowed to celebrate the offices for the people, to give penance and to baptize?¹⁵⁷ To answer this question, Gratian begins his so-called ‘tract on monks and pastoral care’ by including three canons from the *3L*, all of which

¹⁵⁶ C.16 d.init: ‘Quidam abbas habebat parrochitanam ecclesiam; instituit ibi monachum, ut officium populo celebraret. Possedit eam per xl. annos sine aliqua interpellatione. Tandem querela aduersus abbatem mouetur a clericis baptismalis ecclesie, in cuius diocesi parrochitana illa ecclesia consistebat.’

¹⁵⁷ C.16 d.init: ‘Hic primum queritur, utrum liceat monachis officia populis celebrare, penitentiam dare et baptizare?’

have been abbreviated and reworked by him to some degree but only for the sake of economy not because he disagreed with the content of those portions of the text he had omitted. Canon 1, which Gratian, following the *3L*, attributes falsely to the Council of Nicea, states that according to the etymology of their name monks are to live solitary lives, separate from everyone else.¹⁵⁸ Thus, they are prohibited from giving penance and burying the dead, except to any monk living with them in the monastery or perhaps to a brother who has come to the monastery from elsewhere for whatever reason.¹⁵⁹ Canon 2, which ultimately derives from Pope Gregory the Great, states that it is impossible to live the monastic life and carry out ecclesiastical duties at the same time.¹⁶⁰ Canon 3, which is correctly attributed to Pope Innocent I, prohibits monks who have been promoted to the priesthood from departing from their monastic profession.¹⁶¹ In d.p.c.3, Gratian concludes that since Innocent did not allow monks to depart from their monastic profession and since Gregory did not think it possible to live the monastic and ecclesiastical life simultaneously, it is clear that monks are not to oversee parish churches.¹⁶²

The next seven canons in *Quaestio 1*, two of which derive from the *Tripartita* while the remaining five most likely derive from a now lost tract on monastic rights, seem to strengthen this conclusion. The first four of these, all of which have been abbreviated and

¹⁵⁸ C.16 q.1 c.1: 'Placuit omnibus residentibus in sancta Nicena sinodo, ut monachorum conuersatio et uita secundum ethimologiam nominis ab omnibus discrepet. Monachus enim grece, latine singularis, unde monachum per omnia singulariter agere oportet...'

¹⁵⁹ C.16 q.1 c.1: '...Quamobrem firmiter et insolubiliter omnes precipimus, ut aliquis monachus penitentiam nemini tribuat, nisi inuicem, ut iustum est. Mortuum non sepeliat, nisi monachum in monasterio secum commorantem, uel si fortuitu quemquam aduenientium fratrum ibi mori contigerit.'

¹⁶⁰ C.16 q.1 c.2: 'Nemo potest ecclesiasticis obsequiis deseruire et in monachica regula ordinate persistere, ut ipse districcionem monasterii teneat, qui cotidie in ministerio ecclesiastico cogitur permanere.'

¹⁶¹ C.16 q.1 c.3: 'De monachis, qui diu morantes in monasteriis si postea ad clericatus ordines peruenerint, statuimus non debere eos a priori proposito discedere.'

¹⁶² C.16 q.1 d.p.c.3: 'Si ergo, sicut Innocentius diffinit, a suo proposito eis discedere non licet, et sicut Gregorius testatur in monastica regula deuote persistere et ecclesiasticis obsequiis simul deseruire non possunt, patet quod parrochitanis ecclesiis monachi prefici non possunt.'

edited by Gratian to some degree for the sake of economy, are attributed to St Jerome. The first of these, canon 4, states that monks do not have the office of teaching but of weeping.¹⁶³ In canon 5, St Jerome asks the recipient of his letter, a certain Paulinus, why he is visiting cities if he wants to be a monk, since cities are not places for solitaries, but for the many.¹⁶⁴ In canon 6, St Jerome highlights the differences between the work of monks and clerics, with the latter feeding Christ's sheep, while the former feed themselves.¹⁶⁵ In canon 7, we read that the church has as its senate a meeting of priests and that monks are not allowed to act without receiving its approval. The author of this text also reminds his readers that Rehoboam, the son of King Solomon, lost his kingdom because he was unwilling to listen to his own priests.¹⁶⁶ Canon 8, which Gratian attributed to a certain pope Eugenius but which is actually a forgery produced in the late eleventh or early twelfth century, prohibits monks from giving penance, baptizing, visiting the sick, burying the dead and being involved in secular affairs. Just as a fish cannot live outside of water, the author says, so also a monk cannot live outside his monastery. Since a monk is dead to the world and alive to God, he is to live the life of a solitary. The etymology of his name, according to the author, suggests as much.¹⁶⁷ Canon 9, which is correctly attributed to Pope Alexander II,

¹⁶³ C.16 q.1 c.4: 'Monachus non doctoris sed plangentis habet officium, qui uel se uel mundum lugeat et Dominus pavidus pretoletur aduentum.'

¹⁶⁴ C.16 q.1 c.5: 'Si cupis esse quod diceris, monachus, id est solus, quid facis in urbibus, que utique non sunt solorum habitacula, sed multorum.'

¹⁶⁵ C.16 q.1 c.6: 'Alia causa est monachi, alia clerici. Clerici oues pascunt: ego pascor; illi de altari uiuunt: mihi uero securis quasi ad radicem infructuose arboris ponitur, si munus ad altare non defero. Mihi ante presbiterum sedere non licet. Illi, si peccauero, licet me tradere sathane in interitum carnis, ut spiritus sit saluus in die Domini.'

¹⁶⁶ C.16 q.1 c.7: 'Ecclesia habet senatum cetum presbiterorum, sine quorum consilio nichil monachis agere licet. Roboam filius Salomonis ideo perdidit regnum, quia audire noluit presbiteros suos. Senatum quoque Romani habebant quorum consilio cuncta agebant et nos habemus senatum nostrum cetum presbiterorum.'

¹⁶⁷ C.16 q.1 c.8: 'Placuit communi nostro concilio, ut nullus monachorum pro lucro terreno de monasterio exire nefandissimo ausu presumant, neque penitentiam dare neque filium de baptismo accipere neque baptizare neque infirmum uisitare neque mortuum sepelire neque ad ecclesiam secularem transire neque qualibuscumque negotiis esse implicare. Sit contentus suo claustro, quia sicut piscis sine aqua caret uita, ita sine monasterio monachus. Sedeat itaque solitarius, et taceat, quia mundo mortuus est, Deo autem uiuit.'

stresses the importance of monks remaining within the walls of the monastery and not preaching to those in the secular world.¹⁶⁸ Canon 10, which is correctly attributed to the Council of Chalcedon, also highlights the duty of monks to live a quiet life behind the walls of the monastery and to obey their bishop.¹⁶⁹

Although Gratian inserted a *dictum* after canon 10, he made no attempt in it to interpret the previous seven canons, instead turning his thoughts back to canon 1. That he would do so is not all that surprising since he makes no mention of canon 1 in d.p.c.3 and since he initially composed *Quaestio* 1 around canons deriving from the *3L*, which is where canon 1 immediately derives from while canons 4 to 10 do not. Gratian begins d.p.c.10 by acknowledging that the Council of Nicea prohibits monks from leaving their monastery and performing burials for the dead in chapels, since this is a service customarily carried out by priests. However, if someone wants to be buried in a monastery, they should not be prohibited.¹⁷⁰ He supports this claim with four canons, with the first two deriving from Pope Gregory the Great. Canon 11, which is an excerpt from letter twelve of Book 1 of the *Register*, states that the bishop had forbidden the abbot of the monastery of St George, Agapitus, the celebration of Mass and the burial of the dead in his monastery. Astonished by this fact, Gregory orders the bishop in whose diocese the monastery is located to remove

Agnoscat nomen suum, monos enim grece, latine unus, achos enim grece, latine tristis. Vnde dicitur monachus, id est unus tristis. Sedeat igitur tristis et officio suo uacet.'

¹⁶⁸ C.16 q.1 c.9: 'Iuxta tenorem Calcedonensis optimi concilii monachis quamuis religiosus ad normam Sancti Benedicti intra claustrum morari precipimus. Vicos, castella, ciuitates peragrarare prohibemus, a populorum predicatione omnino cessare censuimus...'

¹⁶⁹ C.16 q.1 c.10: '...Eos uero qui per singulas ciuitates seu possessiones in monasteriis sunt placet nobis episcopo esse subiectos et quieti operam dare atque obseruare ieiunia et orationes in locis in quibus semel se Deo deuouerint permanentes...'

¹⁷⁰ C.16 q.1 d.p.c.10: 'His ita respondetur: Auctoritas illa Nicene synodi prohibet monachos de monasteriis exire et per capellas sepulturas celebrare mortuorum, confluere uidelicet more clericorum ad cuiuslibet exsequias celebrandas. Ceterum, si apud monasterium aliquis semetipsum tumulari uoluerit, non est prohibendus.'

these prohibitions.¹⁷¹ Canon 12, which ultimately derives from letter nine of Book 4 of the *Register*, states that the pious wishes of the dead are to be carried out.¹⁷² This is followed by two short canons, one of which ultimately derives from Pope Gelasius I while the other derives from the Council of Tribur (895), with Gelasius stating that the will of a testator is to be kept.¹⁷³ Although it is clear that Gratian saw these particular *auctoritates* as supporting the view that monks can bury non-monks in their monastery, how did he think they were to be reconciled with canon 1, which does not seem to allow such a practice?¹⁷⁴ His solution was to see the prohibition of the Synod of Nicea as having been made on account of the impropriety of wandering monks.¹⁷⁵ The implication seems to be that for monks acting under the authority of their abbots in serving parish churches, which is what is going on in C.16, conducting burials was permissible.

Although monks could bury non-monks in their monastery, the question still remained: could monks legitimately perform pastoral care at a parish church? Despite the previous nine *auctoritates* seemingly answering this question in the negative, Gratian thought they could, so long as certain criteria were met. First, they needed to be or become ordained priests,¹⁷⁶ a view he supported with five *auctoritates*, all of which happen to be

¹⁷¹ C.16 q.1 c.11: 'Agapitus, abbas monasterii sancti Georgii, insinuauit nobis plurima se a uestra sanctitate grauamina sustinere quod in eodem monasterio missas prohibeas celebrari, mortuos etiam interdicas sepeliri. A qua inhumanitate uos hortamur suspendi, et sepeliri mortuos ibidem missas celebrari, nulla ulterius habita contradictione permittas.'

¹⁷² C.16 q.1 c.12: 'Ammonere te uolumus, ne pie defunctorum uoluntates tua, quod absit, remissione cassentur.'

¹⁷³ C.16 q.1 c.13: 'Consideratio ecclesiastice utilitatis hoc postulat ex iusta dispensatione testatoris seruandum arbitrium.'

¹⁷⁴ C.16 q.1 d.p.c.14: 'Ecce his auctoritatibus patet quod si quis apud monasterium sepulturam sibi eligere uoluerit, libere a monachis potest sepeliri...'

¹⁷⁵ C.16 q.1 d.p.c.14: '...Vnde liquido colligitur, prohibitionem illam Nicene synodi propter improbitatem circumuagantium factam esse.'

¹⁷⁶ C.16 q.1 d.p.c.16: 'Monachi autem, et si in dedicatione sui presbiteratus, sicut et ceteri sacerdotes, predicandi, baptizandi, penitentiam dandi, peccata remittendi, beneficiis ecclesiasticis perfruendi rite potestatem accipiant, ut amplius et perfectius agant ea, que sacerdotalis officii esse sanctorum patrum constitutionibus comprobantur...'

forgeries produced in either the mid eleventh or early twelfth century.¹⁷⁷ Is there any evidence that he suspected that at least one of these five canons was a forgery? If he did, he left no traces of such thoughts in the *Decretum*. That this is the case is only to be expected, of course, since revealing such suspicions would have undermined his position on this topic, something which he could not afford to do in light of the number of *auctoritates* which seemed to prohibit monks from engaging in pastoral care. That said, I do think that Gratian, along with the great majority of twelfth-century readers of these texts, genuinely believed that these five canons were authentic since they all derive from either a letter of a pope or a letter of a church father, sources whose very nature would have made it difficult to determine if they had been forged or not. The second criterion was that monks needed to be chosen by the people of the church they were about to serve, which he supported with two canons, one of which is correctly attributed to St Jerome while the other is a forgery attributed to Pope Gelasius I.¹⁷⁸ Thirdly, they needed to be instituted by the bishop, a view he supported with three canons, one of which is the forgery attributed to Pope Gelasius I cited above while the remaining two are genuine texts deriving from Pope Pelagius I and Pope Gregory the Great's *Register*.¹⁷⁹ Finally, they needed to obtain the consent of their abbot, which he supported with two canons, one of which derives from the Council of Agde (506) while the other derives from the Council of Hilerda (546).¹⁸⁰ While the first condition, being ordained to the priesthood, can be found in other tracts on monks and

¹⁷⁷ C.16 q.1 c.18; C.16 q.1 c.19; C.16 q.1 c.20; C.16 q.1 c.21; C.16 q.1 c.22. For a recent study which discusses these five canons in some depth, see Peter Landau, "Seelsorge in den Kanonensammlungen von der Zeit der gregorianischen Reform bis zu Gratian," in *La pastorale della Chiesa in Occidente dall'età ottoniana al concilio lateranense IV* (Milan, 2004), 93-123.

¹⁷⁸ C.16 q.1 d.p.c.22: 'Quod uero populi electione...potestatem suam exequi ualeant...'; C.16 q.1 c.23 (St Jerome); C.16 q.1 c.24 (Pope Gelasius).

¹⁷⁹ C.16 q.1 d.p.c.22: 'Quod uero...episcoporum institutione...potestatem suam exequi ualeant...'; C.16 q.1 c.24; C.16 q.1 c.25 (Pope Pelagius I); C.16 q.1 c.26 (Gregory the Great)

¹⁸⁰ C.16 q.1 d.p.c.22: 'Quod uero...abbatis consenu potestatem suam exequi ualeant...'; C.16 q.1 c.27 (Council of Agde); C.16 q.1 c.28 (Council of Hilerda)

pastoral care, Gratian is the only writer, as far as I know, who explicitly requires these three additional criteria.¹⁸¹ Why did Gratian feel the need to add these extra criteria? The answer is to be found in d.p.c.16. Here Gratian points out that monks are not allowed to go around administering penance wherever they want. Although monk-priests have the power (*potestas*) to preach, baptize, give penance, forgive sins and enjoy ecclesiastical benefices like any other priest, they do not have the execution of the power (*executio potestatis*), that is, the right to exercise the powers given them by ordination to the priesthood, before these three additional requirements have been met.¹⁸²

How was Gratian's position to be squared with those canons in *Quaestio 1* which seem to prohibit monks from performing the *cura animarum*? The remainder of his 'tract on monks and pastoral care' attempts to answer this question. First, Gratian considers two texts attributed to Pope Gregory the Great. The first is canon 2, which states that it is impossible to carry out the life of a monk while also engaging in ecclesiastical business. Gratian claims that Gregory is talking about cardinals and bishops, who, he says, claim that they are still bound to the observation of the monastic life.¹⁸³ The second canon is canon

¹⁸¹ I have not found these three additional requirements in any of the following works: the *florilegium* in Ms, Florence, Biblioteca Riccardiana 3006, fols, 203r-205v; the *florilegium* in the Ms, Pisa, Seminario Santa Catarina 59, fols. 1-16; the *Collectio canonum* (dossier) in the Ms, Leipzig, UB 276, fols 70r-85v; Giles Constable, "The Treatise 'Hortatur nos' and Accompanying Canonical Texts on the Performance of Pastoral Work by Monks," in *Speculum historiale: Festschrift für Johannes Spörl*, eds, Clemens Bauer, Laetitia Boehm and Max Müller (Munich, 1966), 567-577; Rupert of Deutz, *Altercatio monachi et clerici quod liceat monacho praedicare* (PL 170.537-42); the "Tractatus de professionibus monachorum" in Giles Constable, ed., and Bernard S. Smith, trans., in *Three Treatises from Bec on the Nature of Monastic Life* (Toronto, 2008).

¹⁸² C.16 q.1 d.p.c.16: '...Quod uero penitentiam dare prohibentur, inde est, quia nulli sacerdotum licet parrochianum alterius ligare uel soluere. Monachi autem, et si in dedicatione sui presbiteratus, sicut et ceteri sacerdotes, predicandi, baptizandi, penitentiam dandi, peccata remittendi, beneficiis ecclesiasticis perfruendi rite potestatem accipiant, ut amplius et perfectius agant ea, que sacerdotalis officii esse sanctorum patrum constitutionibus comprobantur: tamen executionem sue potestatis non habent, nisi a populo fuerint electi et ab episcopo cum consensu abbatis ordinati.'

¹⁸³ C.16 q.1 d.p.c.28: 'His omnibus auctoritatibus monstratur quod monachi qui a populo sunt electi et ab episcopo cum consensu sui abbatis sunt ordinati, legitime potestatem suam exsequi ualeant. Illud uero Gregorii: Nemo potest obsequiis ecclesiasticis deseruire, etc., de illis intelligendum est, qui, in numero cardinalium uel episcoporum ordinati dispensationibus sibi reseruare contendunt.'

30, which is an excerpt from letter 11 of Book 4 of the *Register*. It prohibits priests and deacons from becoming abbots of monasteries.¹⁸⁴ Gratian states that this canon does not prevent abbots from becoming priests, since St Benedict ordered abbots to give a benediction to brothers leaving and entering the monastery, which Gratian says is the duty of a priest.¹⁸⁵ Gratian supports this claim by also pointing out that the reading of the Gospel and the following prayer are to be done by the abbot, both of which are duties which belong to the priesthood.¹⁸⁶ Gratian goes on to say that abbots cannot become priests or deacons of the kind who are engaged continually in the business of the church.¹⁸⁷ Secondly, Gratian considers three texts attributed to St Jerome. The first is canon 4, which teaches that monks do not have the office of teaching but of weeping. Gratian states that this canon must not be understood to mean that monks in general are not allowed to assume the office of teaching, since to do so would force us to deny that Gregory the Great, Augustine, bishop of the English, St Martin and numerous others who were promoted from the monastic life to the priesthood did not hold the office of teaching or that on the day of consecration they departed from their profession, which is not an option for Gratian, since Pope Innocent I prohibited such an action.¹⁸⁸ The second is canon 6, which states that

¹⁸⁴ C.16 q.1 c.30: 'Presbiteros, diaconos, ceterosque cuiuslibet ordinis qui ecclesiis quoquomodo militant, abbates per monasteria esse non permittas, set aut omitta clericatus militia monachicis promoueantur ordinibus aut, si in abbatis loco permanere decreuerint, clericatus nullatenus permittantur habere militiam. Satis enim incongruum est, si cum unum ex his pro sui magnitudine diligenter quis non possit explere, ad utrumque uideatur idoneus.'

¹⁸⁵ C.16 q.1 d.p.c.30: 'Hac superiori auctoritate non prohibentur abbates sacerdotes fieri, cum Beatus Benedictus iubeat abbatem fratribus egredientibus et regredientibus benedictionem dare, quod non nisi sacerdotum est...'

¹⁸⁶ C.16 q.1 d.p.c.30: '...Lectionem quoque euangelii similiter abbati ad legendum tribuit quam subsequenti oratione legere similiter sacerdotalis officii est...'

¹⁸⁷ C.16 q.1 d.p.c.30: '...Sed tales sacerdotes uel diaconos fieri prohibet qui ecclesiastica militia cogantur iugiter permanere...'

¹⁸⁸ C.16 q.1 d.p.c.30: '...Item illud Ieromini ad Riparium et Desiderium: 'monachos non doctoris, sed plangentis habet officium,' et ad Eliodorum: 'alia est monachi, alia clerici,' et ad Rusticum: 'sine consilio presbiterorum monachis nichil agere licet.' Non ita generaliter intelligendum est, ut nulli monachorum liceat docendi officium assumere, ne Beatum Gregorium aut Augustinum Anglorum episcopum beatum quoque Martinum in numeros etiam, quos de monachica conuersatione ad summum sacerdoti gradum scriptura testatur esse promotos,

monks and clerics have different callings. Gratian begins by stating that St Jerome wanted to distinguish between the person of the monk and cleric, showing that each had his own particular office. Some things were better suited for monks, while other things were better suited for clerics.¹⁸⁹ Monks have the office of weeping for their own sins as well as others, while clerics have the office of teaching and pastoring God's people.¹⁹⁰ What Gratian says next is quite interesting, for it shows that he was willing to use history to make a point. He writes that monks up until the time of Eusebius, Sozomen and Siricius, all of whom were Church historians of the early Church, were not clerics and that St Jerome himself refers to the monks of Sciathus coming together in order to find a priest to celebrate Mass for them.¹⁹¹ The third is canon 7, which prohibits monks from doing anything without the counsel of priests. Gratian agrees with St Jerome on this point, but with one major qualification: if a monk has been inspired by divine grace, then he does not need to obtain the counsel of priests, supporting his view by recalling how St Benedict himself was sent to preach by divine inspiration.¹⁹²

Before bringing his 'tract on monks and pastoral care' to a close, Gratian summarizes his answer to *Quaestio 1*, writing that 'it has been sufficiently demonstrated that monks

cogamur negare eos officium docendi habuisse, aut in die consecrationis sue asseramus eos a priore proposito discessisse, quod, ut Innocentius testatur, nulli facere licet...'

¹⁸⁹ C.16 q.1 d.p.c.30: '...Voluit ergo Ieronimus distinguere inter personam monachi et clerici, ostendens quid cuique ex proprio officio conueniat. Aliud enim conuenit cuique ex eo, quod monachus est: aliud ex eo, quod clericus...'

¹⁹⁰ C.16 q.1 d.p.c.30: '...Ex eo, quod monachus est, sua et aliorum peccata deflendi habet officium: ex eo, quod clericus, docendi et pascendi populum...'

¹⁹¹ C.16 q.1 d.p.c.30: '...Monachus autem usque ad tempus Eusebii, Zosimi et Siricii, monachos simpliciter et non clericos fuisse, ecclesiastica testatur historia. Idem etiam Ieronimus refert monachos Scithi conuenisse in unum, ut sacerdotem sibi inuenirent qui eis missarum sollempnia celebraret.'

¹⁹² C.16 q.1 d.p.c.31: 'Ostendit ergo Ieronimus quod simpliciter monachis nichil liceat agere sine consilio presbiterorum nec officium docendi sibi assumere liceat sine auctoritate clericorum, nisi forte diuina gratia intus conmoniti, sicut Beatus Gregorius refert in dialogo de Beato Benedicto, qui homines montis Cassini ad fidem adduxit, et aram Apollinis, que ibi erat erecta, subuertit, et de quodam Equitio, cui angelus in somnis apparuit et eum ad predicandum misit, qui, cum de uitio lingue conquereretur, angelus flebotomo linguam eius tetigit et totum illud uitium curauit...'

who have been adorned with the honour of priest, elected by the people and instituted by their bishop are allowed to do the same things as other priests.¹⁹³ While Gratian's use of the word 'sufficiently' here would seem to suggest that he believed no further proofs were needed to support his position, he actually included one more proof before ending his tract. That proof was the similarity of their consecration. There are not two types of consecration, one for priests, another for monk-priests. Both receive the same blessing from the bishop in equal measure at the time of their consecration.¹⁹⁴ However, Gratian is quick to remind his readers that the power received by both at this time is distinct from the execution of that power, with the latter only taking effect at the time when the bishop appoints them to a particular church.¹⁹⁵

The remainder of *Quaestio* 1 is taken up with the question of whether or not monks in monasteries who do not have any people committed to their care should receive or give tithes.¹⁹⁶ To answer it, Gratian made a distinction between those fields and vineyards which monks cultivate for their own use and those which they receive either by purchase or gift. For the former, monks are allowed to withhold tithes,¹⁹⁷ which Gratian supports by turning

¹⁹³ C.16 q.1 d.p.c.31: '...Ecce, sufficienter monstratum est quod monachis presbiterii honore decoratis, a populo electi, ab episcopo institutis, eadem liceant, que et aliis sacerdotibus...'

¹⁹⁴ C.16 q.1 d.p.c.31: '...Probatum hoc etiam ex similitudine consecrationis. Non enim in consecratione eorum aliud dicitur et aliud in consecratione aliorum. Utrique enim in commune a Domino benedictionem infundi episcopus obnixè deposcit. Et dum consecrate, cunctis sacerdotibus singillatim dicit: 'consecrantur et sanctificantur, Domine, manus iste, ut quicquid consecrauerint consecratum sit, et quecumque benedixerint benedicta sint. Ecce communis est benedictio. Vnde igitur diuortium?'

¹⁹⁵ C.16 q.1 d.a.c.32: 'Sicut ergo in benedictione utrique communem nanciscuntur potestatem, ita in institutione communiter assecuntur potestatis executionem...'

¹⁹⁶ C.16 q.1 d.a.c.32: 'De his uero qui intra monasterii castra consistunt, quibus populus ad regendum non committitur, queritur utrum decimas debeant dare uel recipere?..' For scholarship on this topic, see Paul Viard, *Histoire de la Dime Ecclesiastique: Principalement en France jusqu'au Décret de Gratien* (Dijon: Jobard, 1909), ch. 8; Giles Constable, *Monastic Tithes: from their origins to the twelfth century* (Cambridge: Cambridge University Press, 1964), especially pages 264-267; Cécile Caby, "Les moines et la dîme (XIe-XIIIe siècle): construction, enjeux et évolutions d'un débat polymorphe," 369-409, in *La Dîme, L'Église et la Société Féodale*, ed. Michel Lauwers (Turnhout: Brepols, 2012).

¹⁹⁷ C.16 q.1 d.a.c.32: '...In quibus hec discretio seruanda est, ut de agris et uineis, que ad proprium stipendium coluntur, decimas sibi retineant...'

to the Old Testament, writing that if tithes were rendered by the people to the sons of Levi for ministry, by whom the Lord was served in the tabernacle, then it is clear that monks are not to be forced to pay tithes from their own estates anymore than other priests.¹⁹⁸ As for those estates which monks had acquired by purchase or gift, Gratian states that the tithes and first-fruits from these are to be given to the baptismal church or some other church to which they had been assigned.¹⁹⁹ To support this view, Gratian turned to the *3L*, which provided him with four canons, all of which he left virtually untouched. The first of these, canon 32, which Gratian attributes to a certain council of Mainz but which actually derives from the Council of Coblenz (922), prohibits the taking away of tithes which have been legitimately assigned to a previous church.²⁰⁰ Canon 33, which Gratian attributes to a certain council of Chalon-sur-Saône but which in fact derives from the Council of Mainz (813), states that old churches must not be deprived of their tithes or any possession on account of new oratories.²⁰¹ Canon 34, which Gratian attributes to a certain council of Worms but which derives from a capitulary of 803, also states that old churches are not to lose their rights on account of new churches.²⁰² Canon 35, which Gratian correctly

¹⁹⁸ C.16 q.1 d.a.c.32: ‘...Si enim decime a populo filiis Leui reddabantur pro ministerio, quo Domino deseruiebant in tabernaculo, offerendo sacrificia et holocausta pro populo, patet quod monachi de propriis prediis non magis quam alii sacerdotes decimas soluere coguntur.’

¹⁹⁹ C.16 q.1 d.a.c.32: ‘Sed dicitur predia monachorum siue pretio sint empta siue pro salute animarum oblata, antequam in ius eorum uenirent, baptismalibus ecclesiis siue quibuslibet aliis primitias et decimas persoluebant, ille autem ecclesie suo iure priuari non possunt.’

²⁰⁰ C.16 q.1 c.32: ‘Si quis uel clericus seu utriusque sexus persone proprietatis sue uel res alicubi dare delegauerit decimationum prouentum priori ecclesie legitime assignatum inde abstrahere nullam habeat potestatem...’

²⁰¹ C.16 q.1 c.33: ‘Ecclesie antiquitus constitute nec decimis nec ulla possessione priuentur, ita ut nouis oratoriis tribuantur.’

²⁰² C.16 q.1 c.34: ‘Quicumque uoluerit in sua proprietate ecclesiam edificare et consensum et propriam uoluntatem episcopi habuerit, in cuius parrochia est, licitum sit. Verumtamen prouidendum est episcopo, ut alie ecclesie antiquiores propter nouas suam iustitiam aut decimam non perdant, sed semper ad antiquiores ecclesias persoluantur.’

attributes to Pope Leo IV (847-855), states that tithes are to be given to baptismal churches.²⁰³

Although these four *auctoritates*, according to Gratian, seem to suggest that monks are to be forced to give tithes from their own estates,²⁰⁴ a closer analysis of the substance of these canons, according to Gratian, suggests otherwise. Canon 32, for example, does not address the issue of whether or not monks can withhold tithes or not. Instead, it is concerned with pointing out that sellers and donators of property cannot take away tithes from the churches to which they had been assigned.²⁰⁵ On this point, Gratian is in full agreement, stating that monks do not have the authority of selling or donating tithes and first-fruits.²⁰⁶ However, they do have the right to withhold tithes from their own estates, which Gratian says is supported by the same Council of Mainz and Pope Paschal II.²⁰⁷ Although the first recension as it has come down to us in the first-recension manuscripts does not contain any text attributed to Pope Paschal II after *d.p.c.* 35, it is possible that such a text was omitted from the hypothetical single ultimate defective exemplar behind the manuscripts of the first recension (Aa Fd Sg) since the second recension contains a Paschal II canon after this *dictum*.²⁰⁸ Although it is uncertain if the Paschal II canon found in the second recension was already present in the first recension, what is clear is that Gratian included a text which he believed derived from a certain council of Mainz but which actually

²⁰³ C.16 q.1 c.35: 'De decimis iusto ordine non tantum nobis, sed etiam maioribus uisum est plebibus tantum, ubi sacrosancta baptismata dantur, debere dari.'

²⁰⁴ C.16 q.1 d.p.c.35: 'Si ergo nulli licet decimationum prouentum a priori ecclesia, cui assignatus fuerat; abstrahere; si ius antiquioris ecclesie nouis tribuendum non est; si decime tantummodo baptismalibus ecclesie danda sunt: patet quod monachi ex propriis prediis decimas dare coguntur...'

²⁰⁵ C.16 q.1 d.p.c.35: '...Sed auctoritas illa Magotiensis concilii de uenditore uel donatore loquitur, diffiniens quod ille qui uendit aut donat non potest prouentum decimationum illi ecclesie detrahare cui propriis fuerat legitime assignatus...'

²⁰⁶ C.16 q.1 d.p.c.35: '...Monachi autem decimas et primitias non auctoritate uendentis aut donantis...'

²⁰⁷ C.16 q.1 d.p.c.35: '...sed auctoritate eiusdem concilii et Pascalis Papa detinent, a quibus diffinitum est, ut monachi de propriis prediis decimas non soluant.'

²⁰⁸ The Pope Paschal II canon is C.16 q.1 c.47 (JL 6443).

derives from the Council of Chalon-sur-Saône (813).²⁰⁹ This canon tells us that some brothers were complaining that some bishops and abbots were not allowing tithes to be given to the church where their peasants heard Mass.²¹⁰ As a consequence, the council decreed that bishops and abbots were to pay tithes deriving from their own fields and vineyards to their own churches, while their peasants were to pay tithes to the churches where their children were baptised and where they heard Mass throughout the year.²¹¹ It was probably this canon which provided the inspiration for Gratian's distinction between those estates which monks cultivated for their own use and those which they had acquired by purchase or gift, even though this canon makes no mention of estates which monks had received by purchase or gift. As for canons 33 and 34, Gratian tells us that these canons should not be understood in such a way as to deprive bishops of their right to distribute to a church for a time any part of the possessions and tithes of another church.²¹² To support this claim, Gratian says that just as the pope can reduce two bishoprics into one and divide one into two with the consent of the bishop,²¹³ so also bishops can reduce and divide baptismal and parish churches with the consent of their clerics.²¹⁴ It was only under these types of circumstances, according to Gratian, that people who had been placed in new

²⁰⁹ C.16 q.1 c.36 was taken from *3L* App.17.2. This canon does not have any inscription before it in the *3L*, but the previous canon does, and the inscription before it is 'Mogotiensi,' explaining how Gratian attributed this canon to a council of Mainz though it in fact comes from canon 19 of the Council of Chalon-sur-Saône (813).

²¹⁰ C.16 q.1 c.36: 'Questi sunt preterea quidam fratres, quod essent aliqui episcopi et abbates, qui decimas non sinerent dari ad ecclesiam ubi illorum coloni missam audiunt...'

²¹¹ C.16 q.1 c.36: '...Proinde decreuit sacer iste conuentus, ut episcopi et abbates de agris et uineis que ad suum et fratrum stipendium habent ad ecclesias suas deferri faciant, famili

²¹² C.16 q.1 d.p.c.36: 'Quod autem dicitur ut antiquiores ecclesie propter nouas nec decimis nec ulla possessione priuentur, non ita intelligendum est ut nullomodo credatur licere episcopo aliquam partem possessionum uel decimationum unius ecclesie alteri pro tempore tribuere...'

²¹³ C.16 q.1 d.p.c.36: '...Sicut enim papa duos episcopatus in unum potest redigere, ita et unus consentiente proprio episcopo in duos potest diuidi.'

²¹⁴ C.16 q.1 d.p.c.40: '...Sicut duos episcopatus supradicto modo in unum possunt redigi et unus in duobus ualet diuidi, sic episcopus etiam de baptismalibus et parrochitanis ecclesiis facere potest cum consensu suorum clericorum.'

churches were free from paying tithes to their prior church.²¹⁵ After including three canons which supported his view that bishops have the right to distribute tithes as they see fit and that no one is to distribute tithes to churches without the consent of the bishop,²¹⁶ Gratian points out that a canon from a council of Toledo (633) seems to contradict this.²¹⁷ This canon, canon 44, states that bishops are to rule their own dioceses in such a way that they do not presume to take away anything which rightfully belongs to the diocese.²¹⁸ Gratian interprets this canon to mean that bishops are not to distribute more than the fourth or the third of the tithe which is owed to them, with the actual amount owed depending on local custom.²¹⁹ He arrived at this conclusion because the portion of canon 33 of the Fourth Council of Toledo which he had omitted from canon 44 of q.1 states that bishops are allowed to acquire a third of oblations, taxes and fruits.²²⁰ Gratian ended his 'tract on monks and tithes' by stating that tithes can be given to monks with the consent of bishops, which he supported with a text attributed to St Jerome.²²¹ Although Gratian does not specify whose tithes monks are allowed to receive with the consent of the bishop, he probably had in mind grants of some existing tithes and oblations as discussed in canons 41, 42 and 43.

²¹⁵ C.16 q.1 d.p.c.40: '...Quod cum factum fuerit illa pars populi que nouis ecclesiis supponitur, a iure prioris ecclesie absoluatur.'

²¹⁶ See canons 41, 42 and 43.

²¹⁷ C.16 q.1 d.p.c.43: 'Cum ergo preter conscientiam episcopi uel eius, cui huiusmodi officia commissa sunt, quilibet prohibetur oblationes ecclesie distribuere, liquido apparet quod cum episcopi consensu quibuslibet ecclesiis possint distribui. Huic interpretationi uidetur contraire auctoritas illa Tolletani Concilii.'

²¹⁸ C.16 q.1 c.44: 'Constitutum est a presenti concilii episcopos dioceses suas ita regere, ut nichil ex earum iure presumant auferre.'

²¹⁹ C.16 q.1 d.p.c.45: 'Sed illud Tolletani concilii ita intelligendum est, ut episcopi preter quartam uel tertiam, que secundum locorum diuersitates eis debetur, nichil contingant.'

²²⁰ The formal source of C.16 q.1 c.44 was the *3L* App.14.1: 'Constitutum est a presenti concilio episcopos ita dioceses suas regere, ut nichil ex earum iure presumant auferre. Sed iuxta priorum auctoritatem conciliorum tam de oblationibus quam de tributis ac frugibus tertiam consequantur...'

²²¹ C.16 q.1 d.a.c.51: 'Quod autem decime episcoporum consensu monachis licite tribuantur Beatus Ieronimus Damaso Papa scribit, dicens.'

In *Quaestio 2*, whether priests should be instituted by abbots or by bishops in chapels which monks have received by the bishop's favour.²²² To answer this question, Gratian included four canons, with the first two canons answering it directly. Canon 1, which Gratian found in the *9L* but which ultimately derives from Pope John IV (640-642), states that churches handed over to monks are to be looked after by their priests.²²³ In the *dictum* following this canon, Gratian writes that 'by this authority monks are granted investiture of their own churches, but it seems that Pope Urban II contradicts this.'²²⁴ The text which Gratian is referring to is canon 4 of the Council of Clermont (1095), which Pope Urban II presided over. This canon, which Gratian also found in the *9L*, states that abbots cannot institute priests without the counsel of the bishop.²²⁵ How then were these two texts to be reconciled? Gratian writes that Pope John was talking about those chapels which are given to monks by bishops with all their rights (*cum omni iure*), while Pope Urban II was concerned with those chapels which abbots build on their own estates.²²⁶ For the latter, even though monks have the right of territory, they nonetheless do not have the right to

²²² C.16 d.init.: '...Secundo, si contigerit eos capellam habere episcopali beneficio, an ab eis sint instituende, an ab episcopis?...

²²³ C.16 q.2 c.1: '...Delegavit enim nobis pia mansuetudo uestra, utrum ecclesie pro quiete monachorum a sanctis catholicisque episcopis eis tradite per sacerdotes ab eis ordinatos et inuestitos debeant institui. Addidit quoque fraternitas tua, litem et seditionem inter clericos monachosque ex hac causa non modicam esse ortam; quod instigatione uersuti hostis nemo fieri ambigat. Habet enim mille nocendi modos, nec ignoramus astutiam eius. Conatur namque a principio ruine sue unitatem ecclesie rescindere, caritatem uulnerare, sanctorum operum dulcedinem inuidie felle inficere. Dolet enim satis et erubescit caritatem, quam in celo nequiuisset habere homines constantes ex lutea materia in terra tenere. Vnde oportet, quantum fragilitati nostre conceditur, ut omnes aditus nocendi eius uersutie muniamur ne mors ingrediatur portas nostras. Consilio itaque multorum fratrum diligenter exquisito decreuimus, ut amodo ecclesie monachis tradite per suos sacerdotes instituantur...'

²²⁴ C.16 q.2 d.p.c.1: 'Hac auctoritate monachis conceditur inuestitura suarum ecclesiarum. Sed uidetur contraire Urbanus Papa secundus...'

²²⁵ C.16 q.2 c.2: 'Sane quia monachorum quidam episcopis ius suum auferre contendunt, statuimus ne parrochialibus ecclesiis, quas tenent, absque episcoporum consilio presbiteros collocent, sed episcopi parrochie curam cum abbatum consensu sacerdoti conmittant, ut eiusmodi sacerdotes de populi quidem cura episcopis ratione reddant, abbati uero pro rebus temporalibus ad monasterium pertinentibus debitam subiectionem exhibeant, et sic sua cuique iura seruentur...'

²²⁶ C.16 q.2 d.p.c.2: '...Sed illud Iohannis papa intelligendum est de illis capellis que cum omni iure suo ab episcopis monachis conceduntur. Istud autem Urbani intelligitur de illis quas abbates in propriis prediis edificant in uillis et castellis suis...'

govern the people and administer the *spiritualia*, which Gratian says is the responsibility of the bishop.²²⁷ To support this belief, Gratian included two canons, one from Pope Nicholas I (858-867) the other from the Fourth Council of Toledo (633), with the former prohibiting bishops who have built a church in the diocese of another bishop from consecrating said church, though the bishop who built the church does seem to have the right to present a cleric of his choice to the bishop in whose diocese the church was built. As for the canon from the Fourth Council of Toledo, it states that newly constructed basilicas belong to the bishop in whose territory it is located. On these two *auctoritates*, Gratian writes that it is easily shown that whether an abbot or a bishop builds a church in his own castle or on his own country estate, the priests of these churches cannot be appointed to them against the will of the bishop in whose diocese the churches were built and without the consent of the bishop who had the church built in the first place.²²⁸

In *Quaestio 3*, Gratian asks if the rights of churches are taken away by prescription.²²⁹ To answer this question, Gratian turned to the *Tripartita* and the *3L*. That he was able to do so was quite fortunate. Although the Roman law of prescription continued to be invoked by church councils, popes and lay courts in the early Middle Ages, it was not a topic which made its way into many of the canon law collections compiled during this period.²³⁰ Of the one hundred and twenty or so canon law collections included in Linda

²²⁷ C.16 q.2 d.p.c.2: ‘...Tales, et si ius territorii habeant, tamen potestatem gubernandi populum et spiritualia ministrandi non habent. Quod etiam de episcopo intelligendum est.’

²²⁸ C.16 q.2 d.p.c.4: ‘Quod de iure ordinandi, non possidendi intelligendum est. His auctoritatibus facile perpendi potest quod siue abbates siue episcopi in suis castellis uel uillis ecclesias edificauerint, non omnino ideo episcopo, in cuius diocesi fuerint conuentus adimitur et ideo sacerdotes, iuxta illud Urbani et Nicholai, in eis non nisi per episcopos cum consensu edificantium, ordinari possunt.’

²²⁹ For an older study of this theme, see Noël Vilain, “Prescription et Bonne Foi: du Décret de Gratien (1140) a Jean d’André (1348),” *Traditio* 14 (1958): 121-189.

²³⁰ On the use of the Roman law of prescription in the early medieval Church, see Sotero Sanz Villalba, “Los elementos éticos de la prescripción romana y su aceptación en el fuero eclesiástico hasta el Decreto de Graciano,” *REDC* 3/7 (1948), 35-59, at 52-59.

Fowler-Magerl's *Clavis Canonum* database, I have only found ten collections which include any canons dealing with the law of prescription.²³¹ What is more, apart from the *Lex Romana canonice compta*, an anonymous canon law collection compiled between 825 and 882 at Pavia or Bobbio, which contains eleven canons dealing with some aspect of the law of prescription, all of which derive from Justinianic Roman law, the *3L* is the only pre-Gratian canon law collection which treats this topic relatively comprehensively, including twenty-nine canons in Title 31 of Book 2.²³² Furthermore, although the *3L* was not the first pre-Gratian canon law collection to include a separate title on the law of prescription, it is the only collection to place such a title immediately after titles dealing with different aspects of monasticism.²³³ That the anonymous compiler of the *3L* chose to do so suggests that he also saw a close connection between the law of prescription and monasticism, which may have been inspired by his own familiarity with court cases similar to the one described in the case narrative of C.16.

Gratian began q.3 by including the first four canons of Title 31 of Book 2 of the *3L*. Canon 1 contained canon 17 of the Council of Chalcedon;²³⁴ canon 2 contained an excerpt from a letter of Pope Gelasius I (492-496);²³⁵ and canons 3 and 4 contained canons 34 and 35 from the Fourth Council of Toledo (633), respectively.²³⁶ Although Gratian abbreviated

²³¹ They are the *Lex Romana canonica compta*; the *5L*; Vat.lat.3830; the *183T*; Ivo's *Decretum*; the *Tripartita*; the *Panormia*; the *Polycarpus*; the *3L*; the *9L*.

²³² See *Lex Romana canonica compta* c.107; c.108; c.109; c.110; c.111; c.112; c.113; c.114; c.115; c.116; c.117.

²³³ The *183T* seems to be first pre-Gratian canon law collection to devote a separate title to the law of prescription (title 43).

²³⁴ C.16 q.3 c.1: 'Per singulas ecclesias rusticanas parrochias permanere immobiles apud eos qui eas tenent episcopos decreuimus et maxime si eas sine uolentia per xxx annos gubernauerit. Si uero intra xxx annos facta fuerit de eis dubitatio, liceat eis, qui se dixerint lesos, pro ea mouere apud synodum prouincie certamen.'

²³⁵ C.16 q.3 c.2: 'Illud etiam annecti placuit ut si, quod absit, facultates ecclesie nec non dioceses ab aliquibus possidentur episcopis, iure sibi uendicent quod tricenalix lex conclusit, quia et filiorum nostrorum principum ita emanauit auctoritas.'

²³⁶ C.16 q.3 c.3: 'Sicut diocesim alienam tricenalix possessio tollit, ita territorii conuentum non adimit.' C.16 q.3 c.4: 'Quicumque episcopus alterius episcopi diocesim per xxx. annos sine aliqua interpellatione possederit, quamuis secundum legis ius eius non uideatur esse diocesis, admittenda tamen non est contra eum actio

and edited canons 1 and 3 and slightly edited canons 2 and 4, he did so only for the sake of economy, not because he was trying to conceal any particular passage or word which he thought conflicted with his own interpretation of these canons. In the *dictum* following canon 4, Gratian writes that “from these authorities it is proven that the right of possessing and governing can be taken away by prescription.”²³⁷ Canon 5, however, which ultimately derives from Pope Gelasius I, seems to contradict this. It states, among other things, that the status of churches cannot be changed by the running of time.²³⁸ Interestingly, this canon was used by the canons of the cathedral church of Massa Marittima against the abbot of the rural monastery of St Bartholomew of Sestinga over the rightful ownership of the parish church of St Andrew in a court case of 1150.²³⁹ How then was canon 5 to be reconciled with canons 1 to 4?

To answer this question, Gratian first made a distinction between dioceses whose boundaries are certain and those whose boundaries are not. For dioceses with certain boundaries, which is what we find in canon 5, prescription could not be applied, while for dioceses with uncertain boundaries, which for Gratian included those dioceses whose boundaries had only recently been defined, prescription was permitted.²⁴⁰ He supports this distinction with two papal letters, one of which derives from Pope Innocent I while the

reopscendi, sed hoc intra unam prouinciam, extra uero nullo modo ne, dum diocesis defenditur, prouinciarum termini confundantur.’

²³⁷ C.16 q.3 d.p.c.4: ‘Ecce his auctoritatibus probatur quod possessionis et gubernationis iura prescriptione tolluntur...’

²³⁸ C.16 q.3 c.5: ‘...Nulla igitur presumptione statum parrochiarum, qui perpetue etatis firmitate durauit, patimur immutari. Quia nec negligentia pontificum nec temporalis obiectio, que per incuriam forte generatur, neque ignauia faciente consensus nec subripiente supplicatione preceptio diuellere potest semel diocesim constitutam, exqua semper ad regenerationem atque consignationem plebs deuota conuenit...’

²³⁹ See Paolo Nardi, “Fonti canoniche in una sentenza senese del 1150,” in *Life, Law and Letters: Historical Studies in Honour of Antonio García y García*, *Studia Gratiana* 29 (1998): 661-671, at 662.

²⁴⁰ C.16 q.3 d.p.c.5: ‘Hoc multipliciter distinguitur. Sunt quedam dioceses que certis limitibus distincte sunt; hec nullomodo prescribi possunt. Alie uero que non sunt certis limitibus distincte et de quibus certa diffinitio non olim processit, prescriptione tolluntur.’

other derives from Pope Gelasius I, with each prohibiting the law of prescription from being applied to churches with defined boundaries.²⁴¹ The second point which Gratian makes is that prescription cannot be applied where someone has acquired a church by usurpation, since the usurper never begins to possess title. This, Gratian says, is what happened in canon 5.²⁴² However, Gratian points out that if a person begins to possess by the authority of a judge or by a long-established privilege, then the objection of time imposes silence on the plaintiff.²⁴³ This even applies, Gratian says, to those ecclesiastical disputes where the decision of the judge is unjust, since possession began not by usurpation but by the authority of a judicial decision.²⁴⁴ In these types of cases, however, the date of prescription does not begin at the time of the giving of the decision but at the time of the death of the one who gave it, which he supported with canon 8 from the Ninth Council of Toledo (655).²⁴⁵ The third and final point Gratian wanted to make about canon 5 is that Pope Gelasius might have had a different prescription period in mind from the thirty-year prescription period found in the first four canons.²⁴⁶ In order to prove this, he refers his readers to the 'ex legibus,' where he says the prescription period is understood to be ten or

²⁴¹ C.16 q.3 c.6 (Pope Innocent I); C.16 q.3 c.7 (Pope Gelasius I)

²⁴² C.16 q.3 d.p.c.7: 'Potest et aliter distingui. Que quisque sua auctoritate usurpat, quia nullo titulo possidere incipit, prescribere non potest, et in hoc casu intelligenda est illa auctoritas Gelasii: 'Temporalis obiectio, que per incuriam forte generatur, non potest diuellere diocesim semel constitutam'...'

²⁴³ C.16 q.3 d.p.c.7: '...Si uero iudicis auctoritate et priuilegiorum longa consuetudine possidere coepit, tunc temporalis obiectio actori silentium imponit.'

²⁴⁴ C.16 q.3 d.a.c.9: 'Item si de rebus ecclesie controuersia mota est et diffinitio subsecuta et si iniusta sit, tamen quia non sua sed diffinientis auctoritate possidere cepit tricenis prescriptio petitori silentium imponit...'

²⁴⁵ C.16 q.3 d.a.c.9: '...ita tamen, ut prescriptionis supputatio non a tempore diffinitionis, sed a decessu diffinientis exordium sumat.' C.16 q.3 c.9: 'Si sacerdotes uel ministri, dum gubernacula ecclesiarum administrare uidentur, contra patrum sanctissimas sanctiones de rebus ecclesie diffinisce aliqua dinoscuntur, non ex die quo talia de scribendo decreuerunt, sed ex quo talia moriendo definita reliquerunt, supputationis ordo substabit. Nusquam et etenim poterit ad tricennium temporis pertinere uita irrita iudicantis, quia status contractuum non sumpsit initia ab origine equitatis.'

²⁴⁶ C.16 q.3 d.a.c.14: 'Potest etiam aliter intelligi prescriptio illa longi temporis, qua Gelasius negat statum parrochiarum posse mutari...'

twenty years.²⁴⁷ Gratian says that it is this prescription period which Pope Gelasius and the secular laws prohibit from being applied to churches.²⁴⁸ However, churches can lose their rights by prescription after a period of thirty years, with the exception of the Roman church, which can only lose its rights after a period of one hundred years.²⁴⁹

In *Quaestio 4*, Gratian turned to the question of whether or not monasteries can prescribe against churches. He thought they could, but only after forty years had passed. To support this view, he included a text from Pope Gregory the Great's *Register*, which he found in Title 31 of Book 2 of the 3L. This canon is preceded by another prohibiting abbots and monks from prescribing against churches after thirty years. Although Gratian has attributed it to Pope Urban II, it ultimately derives from canon 19 of the First Lateran Council (1123).²⁵⁰ In the *dictum* following this canon, Gratian states that though monks cannot prescribe after thirty years, Gregory the Great granted them the right to prescribe after forty years, a claim he supports with an excerpt from letter 9 of Book 1 of the *Register*.²⁵¹ In addition to this text, Gratian also included a text from the *Novels* of Justinian, which states that religious houses can only lose their rights by way of prescription after forty years.²⁵² This led Gratian to conclude that just as religious houses cannot lose their rights by

²⁴⁷ C.16 q.3 d.a.c.14: 'Longum enim tempus, sicut ex legibus habetur, decennium uel uicennium intelligitur...'

²⁴⁸ C.16 q.3 d.a.c.14: '...Huius ergo longi temporis prescriptio auctoritate Gelasii et secularium legum ecclesiis obici non potest...'

²⁴⁹ C.16 q.3 d.a.c.14: 'Sed sola prescriptio xxx annorum et deinceps, a qua tamen prescriptione priuilegia Romane ecclesie sunt exclusa, que non nisi centum annorum spatio prescribi possunt.'

²⁵⁰ C.16 q.4 c.1: 'Possessiones ecclesiarum et episcoporum tricenales abbates uel monachos habere omnimodis prohibemus.'

²⁵¹ C.16 q.4 d.a.c.2: 'Sed si tollitur eis tricenal possessio, a beato Gregorio conceditur eis quadragenalis prescriptio.' C.16 q.4 c.2: 'Volumus accedente te ad Panormitanam ciuitatem questionem ipsam tali ratione discutere, dominio rei apud possessorem, sicut hactenus possessum est, uidelicet permanente ut si, monasterium prefatum sancti Theodori fines, de quibus causatio mota est inconcussos xl. annis repereris possedis, nullam deinceps, etiam si quid sancte Romane ecclesie competere potuit, patiaris sustinere calumpniam, sed quietem eorum inconcussam omnibus modis procurate. Sin uero auctores ecclesie non eos possedis xl. annis inconcussos iure monstrauerint, sed aliquam intra tempora hec motam fuisse aliquando questionem eorumdem finium, electis arbitris tranquille et legaliter sopiatur.'

²⁵² C.16 q.4 c.3: 'Neque decennia neque uicennii uel xxx annorum prescriptio, sed sola xl. annorum curricula religiosiis domibus opponantur, non solum ceteris rebus sed etiam in legatis et hereditatibus.'

way of prescription before forty years have passed, so by the authority of Gregory the Great monks can prescribe against other churches within this same space of time.²⁵³

Since Gratian had already considered q.5 in q.2, the next *quaestio* he took up after q.4 was q.6. This *quaestio* asks if an archpriest, that is, the head of a baptismal church,²⁵⁴ or bishop who enters into a chapel by his own authority and not by judicial sentence whether the church over which he presides has no further right to claim what he illegally usurped.²⁵⁵ But before looking at how Gratian answered this *quaestio*, it seems appropriate to first ask if there is any significance in the fact Gratian uses the word ‘chapel/capella’ in q.6 instead of ‘church/ecclesia?’ The answer is no. Although Gratian made a distinction between ‘churches’ and ‘chapels’ in q.2, he uses the two words interchangeably in q.6. This is seen in the fact that ‘chapel’ is used in the formulation of q.6 in the case statement of C.16, while ‘church’ is always used in the main body of C.16, suggesting that Gratian had at least these two types of church buildings in mind when he drew up q.6. Gratian began q.6 by including two canons which seem to suggest that chapels/churches can in fact lose their right to claim those things which their pastor had illegally usurped.²⁵⁶ The first of these, which ultimately derives from Pope Gregory the Great but which Gratian found in the *3L*,²⁵⁷ states that

²⁵³ C.16 q.4 d.p.c.3: ‘Sicut ergo religiosus domibus ex lege non nisi quadragenaria est obicienda prescriptio, ita et auctoritate Gregorii aduersus alias ecclesias prescribere possunt eodem spatio temporis.’

²⁵⁴ On archpriests serving as the head of baptismal churches in Italy, see Catherine E. Boyd, *Tithes and Parishes in Medieval Italy: The Historical Roots of a Modern Problem* (Ithaca: Cornell University Press, 1952), at page 59: ‘In the thirteenth canon of this council the baptismal church of the ninth century comes fully into view. As in the Lombard period it is the center of a group of lesser churches, here designated as *minores tituli*. At its head is an archpriest, who administers the penitential system and supervises the clergy of the lesser churches subject to the jurisdiction of his baptistery. The bishops are urged to share their administrative burdens with these rural archpriests and to allow them to exercise within their circumscriptions the same authority that the bishops have over their cathedrals.’

²⁵⁵ C.16 d.init.: ‘Sexto, si archipresbiter uel episcopus sua auctoritate, non iudiciaria sententia, capellam illam inrepperit, an cadat a causa, ut ecclesia, cui presidet, non ultra habeat ius repossendi quod suus pastor illicite usurpauit?’

²⁵⁶ C.16 q.6 d.a.c.1: ‘Quod autem ea que ecclesie debentur auctores eiusdem sua auctoritate iudiciis pretermisissis repetere non ualeant, Beatus Gregorius testatur...’

²⁵⁷ *3L* 2.22.42

ecclesiastical property is not to be defended by direct action but by judicial sentence.²⁵⁸

Canon 2, which ultimately derives from canon 21 of the Council of Mileva (416) but which Gratian found in the *Tripartita*,²⁵⁹ states that bishops lose their own case when they reclaim churches or parishes which they think belong to their see without due process.²⁶⁰ In the *dictum* which follows this canon Gratian states that another text of Pope Gregory the Great seems to contradict this, a reference to canon 3.²⁶¹ Here Gregory states that a delict of a person cannot be converted into a loss for the church.²⁶² This view is confirmed by the content of canon 4, which Gratian, following his formal source, the *3L*, attributed to a certain council of Mainz but which in fact derives from the penitential attributed to Theodore of Tarsus (620-690). Here we read that a bishop cannot take away the possessions of a monastery on account of the sin of an abbot.²⁶³ Concerning canon 3, Gratian states that a delict of a person cannot be converted into a loss for the church since the representative of a church can make the condition of a church better, but not worse.²⁶⁴ As for canon 4, Gratian asks if it is not permitted to take away the possessions of a

²⁵⁸ C.16 q.6 c.1: 'Consuetudo nova in hac ecclesia et ualde reprehensibilis erupit ut, cum rectores eius patrimonii urbana uel rustica predia iuri illius competere posse suspicantur, fiscali more titulos imprimant atque, quod competere pauperibus estimant, non iudicio, sed manibus defendant et cum predicatorum suos ueritas: 'nichil per contentionem' agere precipiat, etiam ipsum litigiose contentionis malum transcenditur et res quelibet, cum estimatur ecclesie posse competere, per uim tenentur. Proinde presenti decreto constituo ut, si quis ecclesiasticarum unquam titulos ponere siue in rustico siue in urbano predio sua sponte presumpserit, anathema sit...'

²⁵⁹

²⁶⁰ C.16 q.6 c.2: 'Placuit ut quicumque episcopi ecclesias uel plebes, quas ad cathedram suam existimant pertinere, non ita repetierint, ut causas suas episcopis iudicantibus agant, sed alio retinente irruerint siue nolentibus siue uolentibus plebibus, cause sue detrimentum patiantur. Et quicumque hoc iam fecerunt, si nondum inter episcopos est finita contentio, sed adhuc inde contendunt, ille inde discedat, quem constiterit pretermisissis iudiciis ecclesiasticis irruisse...'

²⁶¹ C.16 q.6 d.a.c.3: 'Econtra Gregorius Iohanni Defensori, eunti in Hispaniam, scribit dicens...'

²⁶² C.16 q.6 c.3: 'Si episcopum, quod absit, talem culpam commisisse constiterit, ut constet eum non irrationabiliter esse depositum, eadem eius depositio confirmetur, et omnes res sue ecclesie que ablatae fuerunt, restituantur, quia delictum persone in dampnum ecclesie non est conuertendum...'

²⁶³ C.16 q.6 c.4: 'Episcopo non licet possessionem monasterii tollere, quamuis abbas peccauerit, sed subiciat eum potestati abbatis alterius monasterii.'

²⁶⁴ C.16 q.6 d.p.c.4: 'Si ergo delictum persone in dampnum ecclesie conuerti non potest, quia procurator conditionem ecclesie potest facere meliorem, non deteriore...'

monastery on account of a sin of an abbot, how is a delict of a bishop to be converted into a loss for the church as a consequence of the bishop suffering the loss of his own case?²⁶⁵ But the loss of the case, Gratian says, is not to be understood in such a way that the church is deprived of its own right. Rather, the bishop will remain silent before the judge in the presence of the clergy and he will be fined for the wrong he has done if he has his own property.²⁶⁶

In *Quaestio 7*, Gratian asks if a chapel can be relinquished by a layman to an abbot and handed over to him for him to make arrangements for *ordinandam* with the consent of the bishop and clergy.²⁶⁷ Before examining how Gratian answered this question, a few preliminary remarks are in order. First, why did Gratian include this *Quaestio* in C.16? It seems out of place at the end of a long *Causa* about monasticism. Susan Wood recognised this oddity as well in her book *The Proprietary Church in the Medieval West* and suggested that *Quaestio 7* was “relevant to the case as being a possible origin for the monastery’s rights.”²⁶⁸ I think her suggestion is the most plausible one for why Gratian included *Quaestio 7* in C.16. Secondly, is there any significance in the fact that Gratian used the word ‘chapel/capella’ in the formulation of q.7 in the case statement? The answer is no. Like q.6, Gratian only used the word ‘chapel’ in the case statement. He never once used it in

²⁶⁵ C.16 q.6 d.p.c.4: ‘...Si peccato abbatis possessiones monasterii auferre non licet: quomodo delictum episcopi uertetur in dampnum ecclesie, ut inde detrimentum cause sue patiatur?...’

²⁶⁶ C.16 q.6 d.p.c.4: ‘...Sed detrimentum cause pati non sic est accipiendum, ut ecclesia suo iure priuetur, potius, quia clericis coram iudice stantibus episcopus tacebit, et pro iniuria illata mulctabitur, si propria habuerit.’

²⁶⁷ C.16 d.init.: ‘...Septimo queritur, si laici capellam illam tenebant, ut quibusdam moris est, et in manibus abbatis eam refutauerunt et ordinandam tradiderint, an consensu episcopi et clericorum abbas possit eam tenere?’ On this theme, see Peter Landau, “Das *Dominium* der Laien an Kirchen im Decretum Gratiani und in vorgratianischen Kanonensammlungen der Reformzeit,” *ZRG KA* 83 (1997): 209-221.

²⁶⁸ Susan Wood, *The Proprietary Church in the Medieval West* (Oxford: OUP, 2006), 888-889: “The first six questions all arise naturally from this case (and bear importantly on monastic proprietary churches and tithes). But question 7 asks: ‘If laymen had held that chapel (as is the practice with some) and renounced it into the abbot’s hands...can the abbot hold it with the consent of the bishop and clergy?’ (relevant to the case as being a possible origin for the monastery’s rights).”

answering q.7 in the body of C.16, instead employing almost exclusively the word ‘church/ecclesia.’²⁶⁹ Although Gratian stated at the beginning of d.a.c.1 that all the canons teach that neither an abbot nor anyone else can receive churches from the hand of a layman,²⁷⁰ which he supported with numerous canons, he nonetheless thought that chapels/churches could be received by abbots from the hand of a layman if they had received the consent of the bishop. He arrived at this conclusion because he believed that in general churches and ecclesiastical property belong under the control of the bishop,²⁷¹ a view he supported by including canon 17 of the Council of Orleans (511), which states that all basilicas belong under the control of the bishop in whose territory they are located.²⁷² However, Gratian also pointed out that this did not mean that laymen could possess churches and tithes if they had received them by the authority of the bishop.²⁷³ In fact, Gratian says that bishops who sell or grant churches or tithes to laymen make the house of prayer a house of commerce and a den of thieves.²⁷⁴ What Gratian meant then by saying that churches and ecclesiastical property belong in the power of the bishop is that churches and ecclesiastical property wrongly possessed by laymen can be received by abbots and others if the latter had obtained the consent of the bishop. To support this interpretation of the bishop’s power over churches and ecclesiastical property, Gratian did an unusual thing.

²⁶⁹ The one exception where he does not use the word ‘ecclesia’ in the body of q.7 of C.16 is in the rubric preceding canon 16. Here he refers to an ‘oratorium.’ He did so for the simple reason that this is the word which he found in the canon itself. Of course if Gratian did not write the rubrics, then we only have evidence of him using the word ‘ecclesia’ in the body of q.7 of C.16.

²⁷⁰ C.16 q.7 d.a.c.1: ‘Quod autem ecclesias de manu laicorum nec abbati nec alicui liceat accipere, omnium canonum testatur auctoritas...’

²⁷¹ C.16 q.7 d.a.c.1: ‘...Generaliter enim tam ecclesie quam res ecclesiarum in episcoporum potestate consistunt...’

²⁷² C.16 q.7 c.4: ‘Omnes basilice, que per diuersa loca constructe sunt uel cotidie construuntur, in episcopi potestate consistant, in cuius territorio posite sunt.’

²⁷³ C.16 q.7 d.a.c.1: ‘...Laici autem nec sua nec episcoporum auctoritate decimas uel ecclesias possidere possunt...’

²⁷⁴ C.16 q.7 d.a.c.1: ‘...Vnde episcopi, siue beneficio siue pretio ecclesias uel decimas laicis dederint, domum orationis domum negotiationis et speluncam latronum faciunt...’

Instead of turning to another canon in q.7 to support his view, he turned to canon 51 of q.1 of C.16. This canon, which Gratian attributed to St Jerome but whose correct attribution remains unknown, states, among other things, that bishops have the right to give tithes to monks which have been wrongly possessed.²⁷⁵ On the basis of this canon, Gratian concluded in the last *dictum* of q.7 that just as tithes wrongly possessed by laymen can be received by monks from the hand of laymen with the consent of the bishop and held perpetually by them so also can churches detained wrongly by laymen be received by monks with the consent of the bishop and looked after by them perpetually.²⁷⁶

Did laymen then have no rights over churches? Gratian thought they did, but only if they were founders of churches.²⁷⁷ If they had founded a church, then Gratian thought that laymen had the *ius providendi et consulendi et sacerdotem inueniendi*,²⁷⁸ that is “the rights of looking after the church, giving advice or being consulted, and finding or providing a priest.”²⁷⁹ What they did not have was the *ius uendendi uel donandi uel utendi tanquam propriis*,²⁸⁰ that is, “the right of selling or giving or using as their own.”²⁸¹ To support this distinction, Gratian included five canons, with the first three deriving from the *9L* while the

²⁷⁵ C.16 q.1 c.51: ‘Liberum est enim monachis et spiritualibus uiris Deum colentibus et timentibus decimas et oblationes cunctaque remedia ecclesie et de iure suo in dominium illorum et usum transferre nec tantum pauperibus paupertatem quam religionem attendere. Quod autem beatitudo tua quesuit, utrum usus decimarum et oblationum secularibus prouenire possit, nouerit uestra sanctitas omnino non licere, protestantibus hoc omnibus diuinis auctoritatibus paternorum canonum. Quamobrem, si aliquando fuerint ab his male detenta, que diuini iuris esse noscuntur, et in usum transierint monachorum et seruorum Dei, episcopo tamen loci illius prebente consensum, constabunt eis omnia perpetua firmitate et stabilitate subnixa...’

²⁷⁶ C.16 q.7 d.p.c.18: ‘Sicut ergo auctoritate Ieronimi decimas a laicis male possessas episcopo consentiente licet monachis de manu laicorum recipere, et eas perpetua stabilitate tenere, sic et ecclesias a laicis male detentas cum consensu episcoporum licet monachis ad ordinandum accipere et eis in perpetuum prouidere.’

²⁷⁷ C.16 q.7 d.a.c.14: ‘Si ergo ecclesiasticas facultates potestatem dispensandi non habent multo minus ipsas ecclesias quibuslibet ad regendum committere uel aliis auferre ualent. Hic etiam distinguendum est, quid iuris fundatores ecclesiarum in eis habeant, uel quid non?’

²⁷⁸ C.16 q.7 d.a.c.14: ‘...Habent ius prouidendi, et consulendi, et sacerdotem inueniendi...’

²⁷⁹ Wood, *The Proprietary Church*, 890.

²⁸⁰ C.16 q.7 d.a.c.14: ‘...sed non habent ius uendendi, uel donandi, uel utendi tamquam propriis.’

²⁸¹ Wood, *The Proprietary Church*, 890.

remaining two derive from the 3L.²⁸² What is particularly striking about these five canons is that all of them in one way or another provide support for the belief that founders of churches have the *ius providendi et consulendi et sacerdotem inueniendi*, while none of them support Gratian's belief that founders of churches did not have the *ius uendendi uel donandi uel utendi tanquam propriis*, thus leaving the second half of Gratian's distinction without any canonical support. That said, of these five canons, one does seem to undermine Gratian's distinction between the *ius providendi*, etc. and the *ius uendendi*, etc., at least at first glance. It is canon 16, which, following his formal source, the 9L, Gratian attributed to a certain synod of Rome (853). This canon states that the *dominium* of the builder of a church or oratory cannot be taken away against his will and that the builder is allowed to choose the priest with the consent of the bishop.²⁸³ According to Roman law, *dominium* "denotes full legal power over a corporeal thing, the right of the owner to use it, to take proceeds therefrom, and to dispose of it freely,"²⁸⁴ which would seem to include the *ius uendendi uel donandi uel utendi tanquam propriis*, rights which Gratian says founders of churches do not have. How then was the presence of *dominium* in canon 16 to be reconciled with Gratian's belief that founders of churches did not have the *ius uendendi uel donandi uel utendi tanquam propriis*? Gratian provided no answer, probably for the simple reason that he did not see any conflict between the *dominium* of the builder in canon 16 and his list of non-rights of the founders of churches. That he did not see any conflict between the two was probably the result of his working with a definition of *dominium* different from the Roman law definition given above. While he probably would have agreed

²⁸² C.16 q.7 c.14, c.15, c.16, c.17, c.18.

²⁸³ C.16 q.7 c.16: 'Monasterium uel oratorium canonicè constructum a dominio constructoris eo inuito non auferatur, liceatque illi presbitero, cui uoluerit pro sacro officio illius diocesis cum consensu episcopi, ne malus existat commendare.'

²⁸⁴ Adolf Berger, *Encyclopedic Dictionary of Roman Law* (Philadelphia, 1953; repr. 1991), 441.

that *dominium* conferred ‘full legal power’ over non-ecclesiastical property to the owner of such property, he would not have been able to say the same thing concerning church property. For Gratian, *dominium* of church property enjoyed by laymen was always limited, never full, with control over church property belonging exclusively to the bishop, a point which he has been at pains to make throughout q.7. In the end, then, it seems right to suggest, as Susan Wood has done, that if Gratian recognized any *dominium* for founders of churches it was “a minimal *dominium*,”²⁸⁵ even though Gratian himself never used the word *minimal* or *dominium* anywhere in q.7, still less together.

Causa 17

In *Causa 17* Gratian puts the case of a priest who after becoming ill said he wanted to become a monk, surrendering his church and benefice into the hand of the patron in the process. But after recovering his health, he denied he would become a monk and demanded his church and benefice back.²⁸⁶ The first question Gratian asks is whether the priest is to keep his vow or if he is allowed to depart from the intention of his heart.²⁸⁷ To answer this question, Gratian included two canons, both of which probably derive from an unknown patristic florilegium, since both are attributed to church fathers and since neither canon is found in any known pre-Gratian canon law collection. Canon 1, which is misattributed to St Augustine, states that vows made to God are by necessity to be carried out.²⁸⁸ Canon 2, which is attributed to St Jerome but whose correct attribution is unknown,

²⁸⁵ Wood, *The Proprietary Church*, 891.

²⁸⁶ C.17 d.init.: ‘Quidam presbiter infirmitate grauatus se fieri uelle monachum dixit; ecclesie et beneficio in manu aduocati renuntiauit. Postquam conualuit, mox se futurum monachum negauit, ecclesiam et beneficium reposcit...’ On a recent study dealing with certain aspects of this *Causa*, see Alain Boureau, *Le Désir Dicté: Histoire du voeu religieux dans l’Occident médiéval* (Paris: Les Belles Lettres, 2014), 48-51.

²⁸⁷ C.17 d.init: ‘...Hic primum queritur, utrum reus uoto teneatur, an liceat ei a proposito sui cordis discedere?’

²⁸⁸ C.17 q.1 c.1: ‘Sunt quedam que et non uouentes debemus; quedam etiam que, nisi uouerimus, non debemus, sed postquam ea Deo promittimus, necessario constringimur.’

states that it is damnable for those who make vows of virginity not only to marry but even to desire marriage.²⁸⁹ On the basis of these two *auctoritates*, Gratian states at the beginning of d.p.c.2 that since anyone who makes a vow is obligated to keep it and since it is damnable for those who make a vow of virginity not only to marry but even to desire marriage, it is clear that the priest must be forced to keep his vow, since he is not only worthy of damnation for not becoming a monk but also for not wanting to become a monk.²⁹⁰ Although it would seem from the preceding discussion that Gratian was of the opinion that the priest should be forced to keep his vow and become a monk, he actually held the opposite opinion. Toward the end of d.p.c.2, Gratian writes that it is one thing to conceive a profession in one's heart and confess it with one's lips, it is another thing to make a vow which one is subsequently obligated to keep.²⁹¹ Given that neither canon 1 nor canon 2 in *Quaestio* 1 makes such a distinction, what caused Gratian to come to such a conclusion?

The answer is found in *Quaestio* 2, which, as we saw in the last chapter, was most likely composed before *Quaestio* 1, explaining how it could have influenced the content of d.p.c.2 in q.1 despite coming after it. Here Gratian included two canons, both of which recount stories of individuals who had conceived in their hearts and announced with their lips that they wanted to become monks but who in fact never entered the monastic life. In canon 1, which Gratian found in the *Tripartita* B and which he abbreviated and edited considerably though without distorting the original meaning of the text, we read that a

²⁸⁹ C.17 q.1 c.2: 'Vouentibus non solum nubere, sed etiam uelle dampnabile est.'

²⁹⁰ C.17 q.1 d.p.c.2: 'Si ergo post uotum quisque necessario cogitur soluere quod uouit, si uouentibus non solum nubere sed etiam uelle dampnabile est, patet quod sacerdos iste ad executionem sui uoti cogendus est, et non solum non fieri sed etiam nolle monachum fieri sibi dampnabile est.'

²⁹¹ C.17 q.1 d.p.c.2: '...Aliud est propositum corde concipere, et etiam ore enuntiare; aliud est subsequenti obligatione se reum uoti facere.'

certain priest by the name of Cosaldus promised to become a monk after becoming ill but who in fact never handed himself over to a monastery or an abbot or provided any promise in writing, though he did surrender his benefice into the hand of the patron. But like the priest in the case narrative, Cosaldus recovered his health and shortly thereafter denied that he would become a monk. Instead of forcing Cosaldus to fulfil his promise to live the monastic life, the text tells us that Pope Alexander II ruled that his benefice was to be returned to him since he had never completed the one-year probationary period for novices required by the Rule of St Benedict, the precepts of the Church Fathers and Pope Gregory the Great.²⁹² From this story, Gratian concluded that since he simply announced with his mouth the profession of his heart and did not actually hand himself over to a monastery or an abbot or provide any promise in writing, he is not guilty of breaking a vow.²⁹³ In canon 2, which Gratian also found in the *Tripartita* B and which he also abbreviated and edited considerably for the sake of economy, we read that a certain count Bonifacius after expressing his desire to become a monk went off and got married. Because of this St Augustine tells us that he could no longer exhort Bonifacius to live a life of continence, since without the consent of his wife he was not permitted to live such a life.²⁹⁴ From this story, Gratian concluded that though Boniface conceived in his heart to become a monk and

²⁹² C.17 q.2 c.1: 'Cosaldus presbiter, quondam in infirmitate feruore passionis pressus, monachum se fieri promisit, non tamen monasterio aut abbati se tradidit nec promissionem scripsit, sed beneficium ecclesie in manu aduocati refutauit. At postquam conualuit, mox se fieri monachum negauit. Quapropter quia et Beati Benedicti regula, et precipue patris et predecessoris nostri sancti Gregorius Papa canonica institutio interdicat monachum ante unius anni probationem effici, iudicamus et auctoritate apostolica precipimus, ut prefatus presbiter beneficium et altaria recipiat, habeat, et quiete retineat.'

²⁹³ C.17 q.2 d.a.c.1: 'Quia ergo iste propositum sui cordis ore simpliciter enuntiauerit, non autem monasterio aut abbati se tradidit nec promissionem scripsit, nequaquam reus uoti habetur.'

²⁹⁴ C.17 q.2 c.2: 'Nos nouimus, nos testes sumus, quod omnes actus publicos, quibus occupatus eras, relinquere cupiebas et te in otium sanctum conferre atque in ea uita uiuere, in qua serui monachi uiuunt. Cum ergo te esse in hoc proposito gauderemus, nauigasti, uxorem duxisti. Si coniugem non haberes, dicerem tibi quod et Tubanis diximus, ut in castitatem continentem uiueres. Sed ut te ad istam uitam non exhorter coniux est impedimento, sine cuius consensu continenter tibi uiuere non licet, quia, et si tu eam post illa uerba Tubanensia ducere non debueras, illa tamen nichil eorum sciens innocenter tibi et simpliciter nupsit.'

announced with his lips that he wanted to live a life of holy leisure, he was not to be forced to take up what he had conceived in his heart and announced with his lips.²⁹⁵ The priest then in the case narrative who promised to become a monk in his heart and with his lips may have been guilty of sin in the sight of God but he was not to be considered a monk in the eyes of the world until he had handed himself over to a monastery and completed the probationary period set for novices.²⁹⁶

The final two *quaestiones* in C.17 consider topics which assume that the priest in the case narrative went ahead and handed himself over to a monastery and entered the monastic life. In *Quaestio 3*, Gratian asks if it happens that the priest hands himself and his property over to a monastery whether he is allowed to return to his previous life with the abbot's permission.²⁹⁷ Rather than following his usual practice of including canons which answer the question either positively or negatively, Gratian included only a *dictum* in q.3. As we saw in the last chapter, the reason for this was probably due to the fact that he was simply unable to find any canons which address this topic. But whatever the reason for the lack of canons in *Quaestio 3*, Gratian says that it is easily shown that a monk cannot return to where he came from with the permission of his abbot, since it is a crime for a monk to return to where he came from. However, Gratian also says that anyone who does not act to stop a manifest crime when he is able to, consents to it. Here the abbot not only does not act against the monk's crime, he actually fosters it by permitting it to exist. Gratian concluded then that the abbot is not allowed to give permission to anyone to leave, and

²⁹⁵ C.17 q.2 d.p.c.2: 'Ecce iste corde concepit se monachum fieri et ore pronuntiauit se uelle in otium sanctum conferre, non tamen coactus postea suscipere quod corde concepit et ore pronunciauit.'

²⁹⁶ In coming to this conclusion I have been influenced by R.H. Helmholz's remarks in his *The Spirit of Classical Canon Law* (Athens, Georgia, 1996), where he writes on page 232 that 'The priest involved in the case might have been guilty of sin in the sight of God. He had forsaken his expressed purpose to enter the better realm of the cloister. In the world, however, he would not be required to fulfill that vow.'

²⁹⁷ C.17 d.init.: '...Tertio, si contigisset eum et se et sua monasterio tradidisse, et an licentia abbatis liceret ei ad priora redire?'

that he [the monk] is not allowed to leave since once he has subjected himself to the abbot he can do nothing without his permission.²⁹⁸

In *Quaestio 4*, Gratian asks if abbots can return the property of monks who leave the monastery and the monastic life without their permission.²⁹⁹ In general, Gratian thought that movable and immovable property given to a church were not to be alienated by an abbot or by anyone else,³⁰⁰ which he supported with five canons, two of which refer to alienation of church property as sacrilege.³⁰¹ But were there any exceptions to this general rule? Gratian thought there were. In d.p.c.5, Gratian says that it should be noted that there are some who convert church property for their own use and the use of their relatives, which he says the sacred canons everywhere prohibit and condemn, while there are others who out of charity and a consideration for human weakness return property to them who have shown contempt for their sacred profession. Those who do the latter are like those saints who have done things both by the law of the secular court(s) and by the law of heaven, such as St John the Evangelist, who, according to Gratian, returned gold and jewels to two youths whom he had converted and who had given away all their property for the sake of Christ and distributed it to the poor. In returning the gold and jewels, St John, according to Gratian, was not returning offerings which had already been distributed to the poor, but only those things which had never been counted as property of the poor or of the church in the first place. Similarly, if an abbot or bishop has anything which has not yet

²⁹⁸ C.17 q.3 d.init.: 'Quod autem queritur, an post traditionem sit ei fas cum licentia abbatis ad priora redire facile monstratur non posse fieri. Ipsum enim redire criminis est. Qui autem manifesto facinori desinit obuiare cum potest consentit. Hic autem non solum non obuiat, sed etiam permittendo fautor existit. Non ergo licet abbati dare licentiam alicui retro abeundi nec itaque illi licet retrorsum abire, quia ex quo semel se abbati subiecit, absque eius permissione nichil agere potest.'

²⁹⁹ C.17 d.init.: '...Quarto, si sine licentia abbatis retro abierit, an sua sibi ab abbate reddenda sunt?'

³⁰⁰ C.17 q.4 d.a.c.1: '...Sed possessiones et res ecclesie traditas quolibet modo alienare nec abbati nec alicui licet.'

³⁰¹ C.17 q.4 c.1; c.2; c.3; c.4; c.5.

been counted as ecclesiastical property, then like the example of St John he can give that property to the monk who returns to secular life. Churches, however, are to keep the offerings, although even on this point Gratian says that there is an exception to this general rule,³⁰² namely, if an offering given to a church disinherits a son. To support this view, Gratian included an excerpt from a sermon of St Augustine which he found in the *Tripartita* B. Here Augustine says that he will not accept any donation to his church which disinherits a son and hopes that no one else will either. For Augustine this even included property which was given to a church by a father before his sons were born. The bishop, according to Augustine, had the power not to return to the man what he had given to the church, but this was only true according to positive law, not according to the law of heaven.³⁰³ From this example, Gratian concluded that sometimes offerings are returned by right and in a praiseworthy manner. However, Gratian goes on to say that this particular example does not show that property can be returned to a monk who returns to secular life. For it is one thing to persist in the profession of one's life, it is another thing to depart from the profession of one's order. Although St Augustine returned the offering to the layman, since the offering was made before he had sons, it did not follow that property should be

³⁰² C.17 q.4 d.p.c.5: 'Sed notandum est quod aliud est in suos uel propinquorum usus res ecclesie conuertere, quam perniciosam cupiditatem sacri canones ubique prohibent et dampnabilem ostendunt. Aliud quod ex dispensatione caritatis humane infirmitati consulitur, ut quondam illi sua reddantur, qui in sacro proposito manere contempnit. Quod non tam iure fori quam iure poli non nullos sanctorum fecisse legimus. Beatus enim Iohannes euangelista duobus iuuenibus, quos penituerat omnia sua pro Christo reliquisse et pauperibus erogasse, aurum et gemmas reddidit, ut cuncta, que uendiderant sibi redimerent. Sed obicitur: Beatus Iohannes non oblata reddidit, que pauperibus iam erogata fuerant, sed alia recompensauit, que in pauperum uel ecclesiarum facultatibus numquam computata fuerant. Similiter si abbas uel episcopus aliquid habuerit, que in ecclesiasticis facultatibus nondum sint annumerata, exemplo Beati Iohannes det illa recedenti, oblata uero ecclesie retineat. Sequatur ergo aliud exemplum, quo eadem, que oblata sunt, laudabiliter reddita monstrentur.'

³⁰³ C.17 q.4 c.6: 'Quicumque uult exheredato filio heredem facere ecclesiam, querat alterum, qui suscipiat, non Augustinum: immo, Deo propitio, neminem inueniet. Quam laudabile factum sancti Aurelii Cartaginensis episcopi? Quidam cum filios non haberet, nec speraret, res suas omnes, retento sibi usufructu, donauit ecclesie. Nati sunt illi filii, reddidit episcopus nec opinanti ea que ille donauerat. In potestate habebat episcopus non reddere, sed iure fori, non iure celi.'

returned to apostate monks. In fact, Gratian thought it would be better if such monks were deprived of such necessities so that they would be forced to return to the order from which they had left. In the end, Gratian writes that just as we are commanded to provide for the needs of our enemies and persecutors and just as we are admonished by the apostle to redeem the time so that we might be quicker to devote ourselves to prayer, so in the same way it is more laudable not to return property to him who has left the monastic life, lest the church suffer scandal, lest the apostate monk fall into a worse condition and lest monks and monasteries be destroyed.³⁰⁴

Causa 18

Causa 18 puts the case of an abbot who conferred many things on his monastery before being consecrated a bishop. After being consecrated a bishop, he acquired several possessions during his episcopate. When the brothers were seeking a successor to him, the ex-abbot wanted to take part in the election so that the abbot of the monastery would be ordained by him. The brothers refused.³⁰⁵ The first question Gratian asks is if the monastery can lay claim to that which has been acquired by the bishop or whether the episcopal church can claim for itself that which has been handed over to a monastery.³⁰⁶

Although this was an important topic in the Middle Ages, I have found only two pre-Gratian

³⁰⁴ C.17 q.4 d.p.c.6: 'Ecce, quod aliquando oblata iure et laudabiliter redduntur. Verum non hoc exemplo recedenti sua reddenda monstrantur. Aliud est enim in professione sue uite persistere, aliud a proposito sui ordinis discedere. Si sanctus Aurelius degenti in laicali habitu oblata reddidit, quia post oblationem filios accepit, non ideo in apostasiam euntibus sua reddenda sunt, quibus utilius necessaria subtraherentur, ut coacti redirent ad ordinem a quo recesserant. Sed sicut inimicis et persecutoribus iubemur necessaria subministrare, sicut ab apostolo monemur tempus redimere, ut expeditius orationi uacemus: sic, ne ecclesia scandalum patiatur, ne discedens in deteriora precipitetur, ne in perniciem monachorum aut incendium monasterii occasione suorum exardescat, laudabilius sua sibi non dico redduntur, sed auferri sinuntur, quam ab illo ista inferantur.'

³⁰⁵ C.18 d.init.: 'Quidam monachus consecratus in episcopum prius monasterio multa contulit, postea in episcopatu plurima acquisiuit. Cui dum fratres successorem quererent, episcopus loci semet electioni uolebat inserere, ut per ipsum abbas in monasterio ordinaretur; fratres renituntur.'

³⁰⁶ C.18 d.init.: 'Queritur, an monasterium possit petere que ab episcopo sunt acquisita, an episcopalia ecclesia possit sibi uendicare que monasterio fuerant contradita?'

canon law collections which contain any canons addressing it, with one of these collections being the *Tripartita B*, which is where Gratian found the one canon which comprises *Quaestio 1*: canon 36 of the Council of Altheim (916).³⁰⁷ This canon states that things which are given to the monastery by a monk before his being consecrated a bishop are to remain with the monastery, while those things which a monk has acquired after being consecrated a bishop are to be given to his own church.³⁰⁸ Given that Gratian did not include any *dicta* in this *quaestio*, it seems safe to assume that the content of canon 36 of the Council of Altheim reflects his own view on this topic.

The second question which Gratian asks is if a new abbot should be chosen and ordained by a bishop or if he should be instituted only by his own brothers.³⁰⁹ The first five canons deal directly with this question, with the first three deriving from the same part of Book 2 of the *3L*. The first canon, which the *3L* correctly attributed to a certain Council of Toledo, states that “with respect to monasteries, bishops can only claim for themselves that which the canons enjoin, that is, to admonish monks to live a holy life, to institute abbots and other offices and also to correct deeds against the rule.”³¹⁰ The remaining four canons, however, all teach in one way or another that abbots are to be chosen and instituted by the monks of the monastery, three of which derive from Pope Gregory the Great, while the

³⁰⁷ The only other pre-Gratian canon law collection which I have found that contains a canon which addresses this topic is the *Collectio Farfensis*. That canon just happens to be a version of canon 36 of the Council of Altheim (916), which is in Book III c.58.

³⁰⁸ C.18 q.1 c.1: ‘Statutum est et rationabiliter secundum sanctos patres a sinodo confirmatum est ut monachus, quem canonica electio a iugo regule monastice professionis absoluit et sacra ordinatio de monacho episcopum facit, uelut legitimus heres paternam sibi hereditatem postea iure uendicandi potestatem habeat. Sed quicquid acquisierat, uel habere uisus fuerat, monasterio relinquat et abbati sui, qui fuerat, secundum regulam Sancti Benedicti, arbitrio. Postquam enim episcopus ordinatur ad altare, ad quod sanctificatur et titulatur, secundum sacros canones quod acquirere poterit restituat.’

³⁰⁹ C.18 d.init.: ‘Secundo, an per episcopum abbas sit eligendus et ordinandus et an tantummodo a propriis fratribus sit instituendus?’

³¹⁰ C.18 q.2 c.1: ‘...monasteriis sacerdotes quod precipiunt canones, id est monachos ad conuersionem sanctam premonere, abbates aliaque officia instituere atque extra regulam acta corrigere.’

remaining canon derives from Pope Pelagius I.³¹¹ How then were these four papal texts to be reconciled with canon 51 from the Fourth Council of Toledo? According to Gratian, the papal texts describe the normal procedure for choosing and ordaining a new abbot, while canon 51 of the Council of Toledo describes how abbots should be ordained in exceptional cases, such as when prideful monks conspire against their abbot and seek to replace him with someone who is in agreement with their own customs, as was the case with those who conspired to kill St Benedict.³¹² It is in these types of cases, Gratian says, that abbots are to be ordained by bishops.³¹³

Although it is clear that Gratian was against evil and prideful monks expelling their own abbot and replacing him with another, what about good monks expelling an unworthy abbot? Was this permissible? If monks under normal circumstances were to choose and ordain their own abbot apart from outside interference, did it not follow that they should also have the right to depose an unworthy abbot from office? Gratian did not think so, and he turned to Pope Pelagius I in support. In a letter to a certain Opilionius, the pope writes that “we do not relinquish to monks any power or permission in future to either expel abbots by their own will or ordain others themselves, since no authority will remain in the

³¹¹ C.18 q.2 c.2: ‘Abbas in monasterio non per episcopum aut per aliquem extraneorum ordinetur neque ab episcopo missa ibi celebretur, ut nulli ecclesie subiciatur.’; C.18 q.2 c.3: ‘Abbatem cuilibet monasterio non alium, sed quem dignum moribus atque actibus monastice discipline communi consensu congregatio poposcerit, ordinari uolumus. Missas autem per episcopos publicas uel clericos in monasteriis omnino celebrari prohibemus.’; C.18 q.2 c.4: ‘Abbatem in monasterio illum uolumus ordinari, quem sibi de sua congregatione et monachorum electio et possessionis dominus et quod magis obseruandum est, ordo uite ac meritum poposcerit ordinari.’; C.18 q.2 c.5: ‘...Defuncto uero abbate cuiusque congregationis non extraneus eligatur, nisi de eadem congregatione, quem sibi propria uoluntate concors fratrum societas elegerit. Quod si aptam inter se personam inuenire nequierint, sollerter sibi de aliis monasteriis eligant ordinandum.’

³¹² C.18 q.2 d.p.c.5: ‘Ecce in Tolletano dicitur quod sacerdotes et abbates et alia officia instituere debeant. Beatus Gregorius et Pelagius prohibent, dicentes abbatem a fratribus sue congregationis eligendum et ordinandum. Quo modo ergo hec tanta diuersitas ad concordiam reuocabitur? Sed sciendum est quosdam monachos esse indomite ceruicis et effrenate superbie, quos dum abbates ad religionem cogere uoluerint, in eorum deiectionem conspirant et alium moribus suis conuenientem sibi proficere contendunt, quales erant illi, qui necem Beati Benedicti conspirasse leguntur.’

³¹³ C.18 q.2 d.p.c.5: ‘Pro huiusmodi constitutum est, ut abbates et alia officia per sacerdotes instituantur.’

abbot if he begins to be subjected to the power of monks.”³¹⁴ But if good monks are not allowed to expel an unworthy abbot, who then is permitted to remove such abbots from office? According to canon 7, which Gratian, following his formal source, the *Tripartita B*, misattributed to the Council of Tribur (895), an unworthy abbot “is to be deprived of his honour by the bishop in whose territory he is located and by the neighboring abbots and by other God-fearing men, even if the whole convent agreeing to his sins want him to be abbot.”³¹⁵ Although the removal of an unworthy abbot from office was to be carried out by the bishop, neighboring abbots and perhaps other God-fearing men, who of these three mentioned was responsible for distributing the movable and immovable property when the office of abbot was vacant? This was an important question, for it was one of the main responsibilities of the superior to manage the property of the monastery.³¹⁶ Who was to assume this duty when the abbot or the superior of the house was deposed? In the *dictum* immediately following canon 7, Gratian writes that “for such situations it has been established that movable and immovable property of monasteries is to be distributed by bishops,”³¹⁷ supporting his view with a canon attributed to Pope Gregory the Great but whose actual attribution is unknown.³¹⁸

³¹⁴ C.18 q.2 c.6: ‘Nullam potestatem de cetero, nullam licentiam monachis relinquimus pro arbitrio suo aut abbates expellere aut sibimet alios ordinare, quia nulla auctoritas remanebit abbati, si monachorum potestati ceperit subiacere.’

³¹⁵ C.18 q.2 c.7: ‘...ab episcopo in cuius territorio constitit, et a uicinis abbatibus et ceteris Deum timentibus a suo arceatur honore, etiam si omnis congregatio uicinis suis consentiens abbatem eum habere uoluerit.’

³¹⁶ On the abbot’s responsibilities with respect to the property of the abbey, see David Knowles, *The Religious Orders in England*, 3 vols. (Cambridge: Cambridge University Press, 1948-1959), 1: 270-271; C.H. Lawrence, *Medieval Monasticism: Forms of religious life in Western Europe in the Middle Ages* (New York: Longman, 1984), 106.

³¹⁷ C.18 q.2 d.a.c.8: ‘Pro huiusmodi ergo statutum est ut cause et utilitates monasteriorum per episcopos disponantur.’

³¹⁸ C.18 q.2 c.8: ‘Cognouimus quod monasteria seruorum Dei uel feminarum pro suo quisque libitu et diuersarum causarum executione perturbet. Quod omnino non grate suscipimus tuamque ex hoc experientiam commonemus, ut nequaquam hoc usurpare denuo accepta nostra auctoritate permittas, sed episcopo loci illius sub cuius moderamine degunt, cure sit causas utilitatesque disponere...’

The next two canons in *Quaestio 2* come from letters of Pope Gregory the Great, both of which Gratian found in Title 28 of Book 2 of the *3L*. The first of these, canon 9, prohibits anyone from turning monasteries into dwelling places for clerics or laymen,³¹⁹ which is apparently what some of the clerics of the church of Ravenna had done during the pontificate of Gregory the Great as recounted in letter one of Book 5 of Gregory's *Register*. With feigned piety, Gratian says, these clerics of the church of Ravenna wanted to be put in charge of monasteries but that they never put on the monastic habit or renounced their ecclesiastical duties.³²⁰ The second Gregorian canon, canon 10, states that no one in sacred orders is to have power over monasteries.³²¹ Although the inclusion of this particular canon seems to suggest in light of the canons which precede it that Gratian was of the opinion that bishops were only to intervene in monastic affairs when an unworthy abbot needed to be deposed from office, this in fact was not his position. In addition to intervening in monastic affairs in order to remove an unworthy abbot, Gratian also believed that bishops were allowed to visit monasteries under their care under normal circumstances. This is seen in his inclusion of canon 11, which is a short extract from letter seventeen of Book 8 of Pope Gregory the Great's *Register*, and which admonishes bishops to visit monasteries within

³¹⁹ C.18 q.2 c.9: 'Peruenit ad me quod in ecclesiis fraternitatis tue aliqua loca dudum monasteriis consecrata nunc habitacula clericorum aut etiam laicorum facta sunt. Dumque hii qui sunt in ecclesiis, fingunt se religiose uiuere, monasteriis preponi appetunt, et per eorum uitam monasteria destruuntur. Nemo enim potest ecclesiasticis obsequiis, etc. Et infra: Proinde fraternitas tua hoc, quolibet in loco factum est, emendare festinet, quia ego nullo modo patiar ut loca sacra pro clericorum ambitu destruantur.'

³²⁰ C.18 q.2 d.p.c.8: 'Tales erant quidam clerici Ravennatis ecclesie qui simulata religione monasteriis cupiebant prefici, non transeuntes ad monachicum habitum neque renuntiantes ecclesiastice militie.'

³²¹ C.18 q.2 c.10: '...Et quia, ut comperimus, in huius rei hactenus correctione cessatum est, hec audiens ad uos iterum prouidimus scripta dirigere. Hortamur ergo ut omni mora omnique excusatione submota ita monasteria ipsa ab huiusmodi studeatis grauamine releuare, quatenus nullam deinceps in eis clerici, uel, qui in sacro sunt ordine constituti, ob aliud habeant, nisi orandi tantummodo causa, accedendi licentiam, aut si forte ad peragenda sacra missarum fuerint inuitati misteria. Sed ne pro cuiuslibet monachi aut abbatis promotione etc. Et infra: non illic ulterius habeat potestatem aliquam, ne monasteria huius occasionis uelamine ea que prohibemus, sustinere onera compellantur...'

their jurisdiction.³²² But unlike canon 19 of the First Council of Orleans (511), which states that bishops are to visit monasteries under their care once a year and which made its way into twenty-five known canon law collections,³²³ canon 11 makes no mention of how frequently bishops should visit monasteries under their care. Although the topic of how often bishops should visit monasteries under their care was an important one, Gratian neither tampered with canon 11 as Burchard had done with canon 19 of the First Council of Orleans, where he changed the reading of ‘once a year’ found in his formal source to ‘often’ in canon 67 of Book 8 of his *Decretum*, nor did he address this issue in the *dictum* following canon 11. Instead, Gratian was concerned in d.p.c.11 with pointing out that if a bishop shows no regard for the care of souls on his visitations and desires only to use the property of a monastery for his own use, then monasteries, along with their property, are free from the power and rule of bishops.³²⁴ Did this mean that monasteries were not to be subjected to canon law, as some apparently were saying? It did not. ‘Offerings,’ Gratian says, made by way of gifts to the bishop on the day of the monastery’s dedication or on the feast days of saints to whom the church is dedicated were still required.³²⁵ It also meant that monasteries were not to be subjected to synodal exactions, since abbots are not to be forced to attend synods unless there exists a good reason for them to do so. To support this

³²² C.18 q.2 c.11: ‘Visitandi exortandique gratia ad monasterium quotiens placuerit ab antistite ciuitatis accedatur, sed sic caritatis officium illic impleat episcopus ut grauamen aliquod monasterium non incurrat.’

³²³ Collectio Bonavallensis Secunda 12.9; Benedictus Levita 6.139; Burchard’s *Decretum* 8.67; *3L* 2.29.64; *9L* (Arch. S. Pietro C.118) 5.5.55; Collectio Farfensis 2.37; Collectio Sancte Genoveve 2.5.57; Collection of canonry of St.-Hilaire-le-Grand 6.67; Collectio Hispana 1.29.15; Collectio Herovalliana 51.3; Ivo.D 7.85; Trip.A 2.29.15; Collectio X partium, Cologne HA 199 7.2.1; Collectio Lanfranci 2.29.15; Collectio Sancte Marie Novelle 138.3; Paris BN 4278.297; Regino of Prüm 2.App.04; Collectio VII librorum Turin BNU D.IV.33 4.238; Collectio XII partium (CDP 1) 3.102; Collectio XII partium (CDP 2) 3.93; Collectio Brugensis, London BL Cleopatra C.VIII 28a; Collectio II librorum/VII partium 6.350; Vetus Gallica 45.3; Vat.lat. 4977, part II 385; Collectio X partium 3.48.1

³²⁴ C.18 q.2 d.p.c.11: ‘Pro talibus, qui animarum curam non habentes, bona tantum monasteriorum in suos usus conuertere cupiebant, statutum est ut monasteria cum rebus suis penitus sint libera potestate et dominio episcoporum...’

³²⁵ C.18 q.2 d.p.c.11: ‘...Quod autem nullis canonicis iuribus dicuntur monasteria esse subiecta, non ita intellegendum est, quin ipsi episcopo aliquid nomine eulogie uel in die dedicationis uel in natali sanctorum, quorum nomine ipsum monasterium dedicatum est, debeat offerri.’

view, Gratian alluded to a certain council ‘of Tours,’ but without including any text from this particular council.³²⁶ Monasteries are also free, Gratian says, from duties of servitude, such as annual taxes and imposition of fines for sinning.³²⁷

Causa 19

In *Causa 19* Gratian drew up one of the shortest case narratives in the entire *Decretum*, putting the case of two clerics who wanted to become monks, with both asking for permission from their bishop to do so.³²⁸ The first *quaestio* asks if a bishop is allowed to let a cleric leave his own church and enter a monastery.³²⁹ To answer it, Gratian included just one canon, which ultimately derives from the Fourth Council of Toledo (633). It states that clerics who desire the monastic profession, since they desire the better life, are to be granted permission by their bishop to enter a monastery.³³⁰ Although Gratian omitted the last passage of this text as he found it in Anselm’s *collectio canonum*, he seems to have done so only for the sake of economy, not because it contradicted anything contained in the first part of the text.

But what if a bishop was unwilling to let a cleric enter the monastic life, could the cleric enter the monastic life against the bishop’s will?³³¹ This is the question which Gratian asks in *Quaestio 2*. To answer it, Gratian included two canons, the first of which answers the question negatively. It derives from Pope Leo I and states that no one is to receive a

³²⁶ C.18 q.2 d.p.c.12: ‘Canonica ergo iura, quibus monasteria subiecta non sunt, synodales exactiones intelliguntur. Non enim cogendus est abbas, sicut in Turonico concilio statuitur, ad synodum ire, nisi aliqua rationabilis causa existat...’

³²⁷ C.18 q.2 d.p.c.12: ‘...Sunt etiam quedam seruitutis officia, ut angarie operum, crebre receptiones, annue exactiones, mulctationes peccantium, a quibus omnibus monasteria libera sunt.’

³²⁸ C.19 d.init.: ‘Duo clerici ad monasterium transire uolunt; uterque licentiam ab episcopo suo petiit...’

³²⁹ C.19 d.init: ‘Modo queritur, si episcopus debeat permittere ut relicta propria ecclesia clericus monasterium ingrediatur?’

³³⁰ C.19 q.1 c.1: ‘Clerici qui monachorum propositum appetunt, quia meliorem uitam sequi cupiunt, liberos eis ab episcopo in monasteriis largiri oportet ingressus.’

³³¹ C.19 d.init.: ‘Item secundo queritur, si episcopus licentiam dare noluerit, an eo inuito monasterium possit adire?’

cleric of another against the will of his bishop.³³² Although Gratian omitted the majority of this canon as he found it in close proximity to canon 1 of *Quaestio 1* in Anselm's *collectio canonum*, he seems to have done so for the same reason that he dropped the last sentence of canon 1 of q.1. Although Gratian agrees with Pope Leo I in general, he nonetheless thought that if the cleric in question was one who wanted to transfer to the monastic life, then that cleric should be free to contradict the will of his bishop and enter a monastery.³³³ That Gratian would hold such a view is somewhat surprising, since up until this point in the *Causae monachorum* he has made it clear that clerics and monks are not to act without the approval of their bishop. But when we read the content of the next canon in *Quaestio 2*, it becomes clear why he thought clerics who wanted to transfer to the monastic life were permitted to do so even against the will of their bishop. This canon is attributed to Pope Urban II, though the majority of scholars have considered it a forgery.³³⁴ One scholar who thinks that the shorter version of canon 2 found in the first recension and Sg preserves "the original text of Urban's letter" is Kenneth Pennington.³³⁵ He is of this opinion because he believes that "the form of the letter conforms to the style of Urban's other known letters. The expanded version does not. The citations of texts of canon law in the first part is very uncharacteristic of Urban's chancellery. The citations to the New Testament in the second part to justify 'libertas' of private law are also not characteristic of Urban's other letters." Although I do not think scholars should rule out the possibility that *Duae sunt* preserves an

³³² C.19 q.2. c.1: 'Alienum clericum inuito episcopo ipsius nemo suscipiat.'

³³³ C.19 q.2 d.p.c.1: 'Sed subaudiendum est, nisi ad propositum melioris uite transire uolerit. Tunc enim liberum est illi, etiam episcopo contradicente, monasterium ingredi.'

³³⁴ For a stimulating and fairly recent article on this canon, along with references to some of the most important scholarly literature on it, see Robert Somerville, "Canon Law, Inspired Law, and Papal Authority," in *Studies Dedicated to David Weiss-Halivni*, ed. Ephraim Halivni (Jerusalem, 2004), 105-120.

³³⁵ Kenneth Pennington, "Gratian, *Causa 19*, and the Birth of Canonical Jurisprudence," in *La cultura-giuridico-canonica medioevale: Premesse per un dialogo ecumenico*, eds., Enrique De León and Nicolás Álvarez de las Asturias (Milan, 2003): 209-232, at 217.

authentic letter of Urban II, I am not convinced by Pennington's arguments that only the shorter version found in the first recension and Sg preserves the authentic form of it.

Pennington thinks that it is uncharacteristic of Urban's letters to cite texts from the New Testament. Although it is true that the majority of Urban's letters do not cite texts from the New Testament, there are enough letters that do to keep us from concluding with Pennington that the New Testament texts in *Duae sunt* were necessarily the result of the work of an anonymous 'canonist.'³³⁶ As for Pennington's statement that "the citation of texts of canon law in the first part is very uncharacteristic of Urban's chancellery," this is generally true of Urban's letters. The major problem however with Pennington's argument is that according to him these canon law texts in the first part (*que quidem propter transgressores est tradita...iure preceptis et scriptis detestatum est*) only became canon law texts after his anonymous 'canonist' drew them up.³³⁷ That is, they only achieved 'canon law' status once they were incorporated into the eleven pre-Gratian canon law collections which preserve it.³³⁸ Before then they were just an anonymous 'canonist's' comments on a papal letter. Finally, for Pennington the clinching argument in favour of his theory is that it is the most economical. Although he can imagine that Gratian might have "wished to eviscerate and domesticate Urban's text..., that he would have edited *Duae sunt* as he did, particularly that he would have edited the second half of the decretal as he did, is a conjecture that seems too complicated and, for me, improbable."³³⁹ But is it really too complicated to think that Gratian might have omitted some explanatory passages and

³³⁶ I have found that of the 290 or so letters of Pope Urban II in volume 151 of the *Patrologia Latina*, sixteen contain references to the New Testament: letters 1, 3, 6, 27, 28, 38, 53, 57, 58, 60, 79, 145, 187, 214, 224, 273.

³³⁷ Pennington, "Gratian, *Causa 19*," 217: "I would argue that UrGratian and Gratian I preserve the original text of Urban's letter and that an anonymous 'canonist' added the additional texts to it."

³³⁸ On these eleven pre-Gratian canon law collections, see Titus Lenherr, "Zur Überlieferung des Kapitels 'Duae sunt, inquit, leges' (Decretum Gratiani C.19 q.2 c.2)", *Archiv für katholisches Kirchenrecht* 168 (1999): 359-384, at 361-362.

³³⁹ Pennington, "Gratian, *Causa 19*," 221.

scriptural references? He had no problem abbreviating and editing other texts in the *Causae monachorum*³⁴⁰ and elsewhere in the *Decretum*,³⁴¹ why could he have not done the same for *Duae sunt*? It also seems a remarkable feat that all eleven pre-Gratian canon law collections which contain *Duae sunt* all preserve the anonymous ‘canonist’s’ version of this canon and not the original form which Pennington thinks is preserved in the first recension and Sg. One would have thought that at least one compiler would have come across the authentic text and included at least part of it in his collection, but this is not the case. Furthermore, it seems appropriate to ask how all these canon law collections came across this anonymous ‘canonist’s’ version of *Duae sunt* in the first place? It seems a tall order to believe that an anonymous ‘canonist’s’ expanded version of just one papal letter would have circulated so widely as to make it into eleven canon law collections while the original version of said letter only made its way into the first recension of Gratian’s *Decretum*. It is of course possible that this is in fact what happened, but I think this scenario is highly improbable, especially when the alternative to such a view is to see the first-recension version of this text as an abbreviation of the longer version found in all the pre-Gratian canon law collections which contain it.

Duae sunt states that there are two laws: public and private. Public law is that which is written and confirmed by the holy fathers, such as the law of the canons. Private law is that which is written on the heart by the inspiration of the Holy Spirit. If someone is led by the latter, then they can enter a monastery even against the will of their bishop, since

³⁴⁰ On Gratian abbreviating and editing other canons in the *Causae monachorum*, see Baker, “Gratian’s ‘Tract on Monks and the Outside World,’” 117-147.

³⁴¹ See Pennington, “Gratian, *Causa* 19,” 228-229: “On the basis of UrGratian and Gratian I we know that editing of individual chapters was a characteristic of Gratian’s methodology.”

private law is superior to public law.³⁴² But the author of this text makes an important qualification at the end, writing that “if anyone is led by this law, he will be free with our authority to even go against his own bishop.”³⁴³ In other words, the pope must first attest to the truthfulness of a claim of private authority supplied by the Holy Spirit before the person making such a claim can act against the will of his bishop. Perhaps somewhat surprisingly, the only comment which Gratian left us on this controversial canon is the last sentence in the *dictum* preceding this canon, where we read that clerics are free to enter a monastery even if to do so means contradicting the will of the bishop.³⁴⁴ The reason for this silence may simply be due to the fact that Gratian did not see this canon as posing any unusual problems which needed further comment.

The third and final question Gratian raised in C.19 is whether or not canons regular should be allowed to transfer to the monastic life.³⁴⁵ Canon 1, which is attributed to a council convened by Pope Gregory VII but whose actual attribution is unknown, prohibits canons regular from becoming monks.³⁴⁶ Canon 2, which is correctly attributed to Pope Urban II, also prohibits canons regular from becoming monks.³⁴⁷ Gratian thought that these

³⁴² C.19 q.2 c.2: ‘Due sunt, inquit, leges: una publica, altera priuata. Publica lex est, que a sanctis patribus scriptis est confirmata, ut est lex canonum. Lex uero priuata est que instinctu Sancti Spiritus in corde scribitur. Si quis horum qui priuata lege ducuntur Spiritu Sancto afflatus proprium quod sub episcopo retinet, dimittere et in monasterio se saluare uoluerit, quoniam priuata ducitur publica lege non tenetur. Dignior enim est priuata lex quam publica...’

³⁴³ C.19 q.2 c.2: ‘...Quisquis ergo hac lege ducitur, etiam episcopo suo contradicente, erit liber nostra auctoritate.’

³⁴⁴ C.19 q.2 d.p.c.1: ‘Sed subaudiendum est, nisi ad propositum melioris uite transire uoluerit. Tunc enim liberum est illi, etiam episcopo contradicente, monasterium ingredi.’

³⁴⁵ C.19 d.init.: ‘Tertio, si contigerit ipsos regulares canonicos fuisse, utrum concedendus esset eis monasterii ingressus.’

³⁴⁶ C.19 q.3 c.1: ‘Nullus abbas uel monachus canonicos regulares a proposito professionis canonice reuocare atque ad monasticum habitum trahendo suscipere audeat, ut monachi fiant, quamdiu ordinis sui ecclesiam inuenire quiuerint, in qua canonice uiuendo Deo seruire et animam suam saluare possint. Quod si temerario ausu id agere temptauerint, anathematis uinculo obligentur.’

³⁴⁷ C.19 q.3 c.2: ‘Mandamus et uniuersaliter interdicimus, ne quis canonicus regulariter professus, nisi, quod absit, publice lapsus fuerit, monachus efficiatur. Quod si decreto nostro contraire presumens agere temptauerit, ad ordinem canonicum precipimus ut redeat et deinceps memorialem cucullam deserat et ultimus in choro maneat.’

first two canons provided the general rule, but that if a canon regular had obtained permission from his superior to transfer to the monastic life, then he was permitted to do so.³⁴⁸ To support this view, he included a text attributed correctly to Pope Urban II which allows canons regular to become monks if they had received permission from their superior.³⁴⁹ Although this was a controversial topic in the late-eleventh and early twelfth centuries, Gratian provided no further comment on it: d.a.c.3 was apparently sufficient. Given that he saw canons 1 and 2 as laying down the general rule on this topic and given that he saw canon 3 as providing the exception to the rule, it is not hard to see why Gratian did not provide any further comments on the relationship between the two texts attributed to Pope Urban II.

Although Gratian had answered all the questions raised in the case statement of C.19 at this point, we nonetheless find four more canons in this *causa* after canon 3 of q.3. As we saw in the last chapter, the reason for this was that Gratian most likely found these particular canons in the same vicinity of Book 7 of Anselm's *collectio canonum* as canon 1 of *Quaestio* 1 and canon 1 of *Quaestio* 2 of C.19 and thought that they would be useful additions to this *quaestio* even though they do not directly address the main issue of this *quaestio*. Although Gratian also added 'extra' canons to q.2 of C.18, it is only in C.19 q.3 that we find him placing 'extra' canons into newly created questions not mentioned in the case statement. The first of these new questions asks if monasteries can be turned into secular buildings once they had been dedicated.³⁵⁰ To answer it, Gratian included two

³⁴⁸ C.19 q.3 d.a.c.3: 'Subaudiendum uero est, nisi cum patris sui licentiam religionis propositum induerit.'

³⁴⁹ C.19 q.3 c.3: 'Statuimus, ne professionis canonicè quispiam postquam Dei uice super caput sibi hominem imposuerit, alicuius leuitatis instinctu uel districtoris religionis obtentu ex eodem claustrò audeat sine patris totius congregationis permissione discedere. Discedentem uero nullus abbatum uel episcoporum et nullus monachorum sine communi litterarum cautione suscipiat.'

³⁵⁰ C.19 q.3 d.a.c.4: 'Queritur, si monasteria que semel dedicata sunt possint transire in clericorum uel secularium habitacula?'

canons, one of which is canon 24 of the Council of Chalcedon while the other derives from a certain seventh synod. Both canons prohibit such an act from happening.³⁵¹ The second question asks at what time someone who has converted to the monastic life should be tonsured.³⁵² To answer this question, Gratian included an excerpt from letter nine of Book 10 of Pope Gregory the Great's *Register*, where we read that no one is to be tonsured before completing two years in a monastery.³⁵³ The third and final question asks whether or not anyone can make a will after entering a monastery.³⁵⁴ Pope Gregory the Great again provided the answer, and his answer was no.³⁵⁵ Although the other newly created questions received no comment from Gratian, question three did. The reason for this seems to have been that some were arguing that it was permissible to make a will after entering a monastery, supporting their belief by referring to Paul, the first hermit, who made gifts in his will to Athanasius, bishop of Alexandria, and St Antony.³⁵⁶ Gratian responded to this claim by stating that those who enter a monastery hand over themselves and their property, while those who lead the solitary life hand nothing over to the

³⁵¹ Canon 24 of the Council of Chalcedon is found in C.19 q.3 c.4: 'Que sunt semel dedicata monasteria consilio episcoporum, maneant perpetuo monasteria, et res que ad ea pertinent, monasteriis reseruari oportet, nec ea posse ultra fieri secularia habitacula.' The canon from the certain seventh synod is found in C.19 q.3 c.5: 'Quoniam quibusdam uiris quedam uenerabiles domus subripiuntur, tam uidelicet episcopia quam monasteria et facta sunt communia diuersoria, si quidem uoluerint hii qui hec retinent reddere ea, ut secundum antiquitatem restaurentur, bene et optime. Alioquin, si de sacro catalogo fuerint, hos deponi precipimus, si uero laici uel monachi excommunicari, quos nimirum constat condempnatos esse a Patre et Filio et Spiritu Sancto et deputantur ubi uermis eorum non morietur et ignis non extinguetur, quia Deo aduersantur, qui dicit: 'Nolite facere domum patris mei domum negotiationis.'

³⁵² C.19 q.3 d.a.c.6: 'Queritur de his qui ad conuersionem ueniunt, quo tempore debeant tonsorari?'

³⁵³ C.19 q.3 c.6: 'Monasteriis omnibus fraternitas uestra districtius interdicat, ut eos quos ad conuersionem susceperint prius quam biennium in conuersione compleuerint, nullomodo audeant tonsorare.'

³⁵⁴ C.19 q.3 d.a.c.7: 'Queritur, si ingressis monasterium ultra relinquatur licentia testandi?'

³⁵⁵ C.19 q.3 c.7: 'Quia ingredientibus monasterium conuertendi gratia ulterius nulla sit testandi licentia, sed ut res eorum eiusdem monasterii sint, aperta legis diffinitione decretum est.'

³⁵⁶ C.16 q.3 d.p.c.7: 'Econtra Paulus primus heremita in testamento colobium suum Athanasio Alexandrino episcopo reliquit, tunicam uero beato Antonio...'

Church.³⁵⁷ As a result, once someone has given their property over to a monastery, they cannot make a will, but those who have never offered anything, are free to make a will.³⁵⁸

Causa 20

In *Causa 20* Gratian puts the case of two boys who are handed over to a monastery by their parents, with one putting on the cowl unwillingly, while the other put it on of his own free will. When they reached the age of puberty, the boy who put the cowl on unwillingly returned to the world, while the boy who put the cowl on of his own free will asked if he could go to a stricter monastery.³⁵⁹ The first question Gratian asks is if children who are given to a monastery are to be forced to keep their monastic profession.³⁶⁰ To answer it, Gratian included six canons, four of which derive from the *Tripartita A*, one of which derives from the *3L*, while the formal source of the final canon remains unidentified. Gratian begins by stating in d.a.c.1 that when child oblates reach adulthood they are free to decide if they want to remain or leave the monastic life.³⁶¹ This is followed by a short text which Gratian's source, the *Tripartita*, attributed to its Ninth synod. It states that the profession of virginity becomes firm when a young girl reaches the age of adulthood, which the author says is usually the appropriate and perfect time for young women to be married.³⁶² On the basis of d.a.c.1, John Van Engen has concluded that Gratian taught that "children who entered the religious life as oblates had to make a conscious choice as adults whether to stay or

³⁵⁷ C.19 q.3 d.p.c.7: '...Sed aliud est de his qui monasterium ingressi se et sua tradiderunt. Aliud de his qui solitariam uitam ducentes se nulli ecclesie tradiderunt...'

³⁵⁸ C.19 q.3 d.p.c.7: 'Illi semel tradita nulli tradere possunt, isti nulli oblata libere testari ualent.'

³⁵⁹ C.20 d.init.: 'Duo pueritie annos agentes a parentibus monasterio traditi sunt: unus inuitus, alter spontaneus cucullam induitur. Ad annos pubertatis uenientes, inuitus ad secularem militiam redit, spontaneus monasterium districtius petit...'

³⁶⁰ C.20 d.init.: '...Nunc primum queritur, si in pueritie annis traditi cogantur religionis propositum tenere?'

³⁶¹ C.20 q.1 d.a.c.1: 'Quod intra annos pueritie traditi, cum adulti fuerint liberum habeant arbitrium manendi uel discedendi...'

³⁶² C.20 q.1 c.1: 'Firma autem tunc erit professio uirginitatis, ex quo adulta iam etas esse ceperit et que solet apta nuptiis deputari ac perfecta.'

leave.”³⁶³ Although d.a.c.1 certainly teaches that child oblates have the power to leave the monastic life at the age of adulthood if they so desire, this *dictum* does not reflect Gratian’s own view. Instead, it merely contains his summary of the content of canon 1. That this is the case is confirmed by what Gratian says in d.p.c.1. Here he states that if the profession of virginity begins to be firm when a young girl reaches adulthood, then the profession of religion ought only to become firm when a young boy reaches the age of adulthood. But the profession which is discussed in canon 1, Gratian says, is that profession which is offered to God by a child of their own will and is not confirmed by parental consent. Thus, the profession which is offered to God by parents is inviolable.³⁶⁴ In other words, for Gratian, canon 1 is not talking about child oblates at all, but about children who enter the religious life without the consent of their parents. While Van Engen was well aware of the last sentence of d.p.c.1, he interpreted it to mean that Gratian “conceded the binding character of oblation in most people’s experience.”³⁶⁵ But nowhere does Gratian make this qualification. For him, the binding character of oblation was to be the experience of *every* child oblate, not just for *most*. Why? Because this was the teaching of the canonical tradition as found in the four *auctoritates* which he included immediately after d.p.c.1.³⁶⁶

Although it seems that this would have been a good place for Gratian to end *Quaestio* 1, since he had answered q.1 both positively and negatively, he nonetheless decided to include one more canon in it. This canon, which ultimately comes from Pope Leo I, states that young girls who are not forced by their parents but who freely choose the

³⁶³ John Van Engen, “Professing Religion: From Liturgy to Law,” *Viator* 29 (1998): 323-343, at 330.

³⁶⁴ C.20 q.1 d.p.c.1: ‘Si uirginitatis professio tunc incipit esse firma, cum etas ceperit esse adulta et religionis professio tunc demum debet esse firma, cum ad adultam etatem peruentum fuerit. Sed hic de illa professione agitur, que in annis pueritie proprio arbitrio Deo offertur, quam non confirmat parentum consensus. Ceterum, que a parentibus Deo offertur professio, inuolantam seruari oportet.’

³⁶⁵ Van Engen, “Professing Religion,” 332.

³⁶⁶ C.20 q.1 c.2; c.3; c.4; c.5; C.20 q.1 d.p.c.5: ‘Ex auctoritatibus colligitur quod paterna professio pueros tenet obligatos nec licebit eis a proposito discedere quod in puerilibus annis paterna deuotione susceperunt.’

profession of virginity commit a serious sin if afterwards they choose to marry.³⁶⁷ Although it seems clear that Leo I is not talking about girls who are offered to a monastery by their parents as child oblates but rather of girls who freely choose the monastic life apart from their parents' consent, Gratian nonetheless felt the need to explain why this canon is not referring to child oblates. He writes in d.p.c.6: "Since therefore at the beginning of this canon it says, 'girls who are not forced by the command of parents,' it is given to be understood that if they are forced to put on the habit of virginity, they can depart from it without sinning. But it is understood that the girls here are of marriageable age, which as will be shown in what follows, are free to decide after ten years of age and are not to be forced to follow their parents' command in the choosing of a profession."³⁶⁸ In his comments on this *dictum*, Van Engen remarks that "Just as a marriageable girl could not be forced permanently to obey their parents' command but had after twelve a choice to make, he observed, so for children placed in monasteries."³⁶⁹ While the first clause of his remark is certainly correct, the second is not. Nowhere in d.p.c.6 does Gratian extend the choice to leave the monastic life to "children placed in monasteries." For Gratian, canon 6 was about giving young girls the choice to leave the monastic life without sinning if they had been forced by their parents' will to enter it, but this choice only applied to those girls who had been forced to enter the monastic life at or after marriageable age, which, following his formal source, Gratian set at ten.

³⁶⁷ C.20 q.1 c.6: 'Puella, que non parentum coacte imperio sed spontaneo iudicio uirginitatis propositum atque habitum susceperunt, si postea nuptias elegerint, preuaricantur, etiam si nondum eis consecratio accessit, cuius utique non fraudarentur munere, si in proposito permanerent. Ambigi uero non potest crimen magnum admitti, ubi et propositum deseritur et consecratio uiolatur. Nam si humana facta non possunt inpune calcari, quid de his manebit qui corruerint federa diuini sacramenti?'

³⁶⁸ C.20 q.1 d.p.c.: 'Cum ergo in principio huius capituli dicatur, 'puella que non coacte imperio parentum,' datur intelligi quod si coacte uirginitatis habitum sumpserint sine preuaricatione ipsum deserere possunt. Sed puella hic nubilis intelligitur, cuius ut in subsequentibus monstrabitur, post decimum annum liberum est arbitrium, nec in electione propositi cogitur sequi parentum imperium.'

³⁶⁹ Van Engen, "Professing Religion," 331.

In *Quaestio 2*, Gratian asks if anyone accepts tonsure or religious clothing as a child against the will of their parents whether it is possible for their parents to take them back or not.³⁷⁰ To answer this question, Gratian included three canons, with the first two deriving from the *Tripartita*, while the formal source for the third canon remains unidentified. Canon 1, which ultimately derives from the Tenth Council of Toledo (656), states that before ten years of age parents can in fact take back their children who had entered the monastic life against their will.³⁷¹ Canon 2, which ultimately derives from the Council of Tribur (895), states that girls who freely take the sacred veil before the age of twelve can be taken back by their parents or guardian. But this must be done within a year and a day of the time when the child received tonsure and religious clothing. After this period of time, the parents or guardian no longer had the right to take her back.³⁷² Although canon 1 seems to be referring only to boys, Gratian seems to indicate in C.20 q.1 d.p.c.6 that he thought that canon 1 also had girls in mind when it states that before ten years of age parents can take back their children who had entered the monastic life against their will. The reason for thinking this is because in d.p.c.6 Gratian wrote the following: “But it is understood that the girls here are of marriageable age, which as will be shown in what follows, are free to decide after ten years of age and are not to be forced to follow their parents’ command in the choosing of a profession,” which must be a reference to canon 1 of q.2. Yet despite thinking that canon 1 included girls as well as boys, Gratian made no attempt in q.2 to reconcile his

³⁷⁰ C.20 d.init.: ‘Secundo, si preter uoluntatem parentum tonsuram uel religionis uestem quis in pueritia accipiat, an possit sibi detrahi, an non?’

³⁷¹ C.20 q.2 c.1: ‘...Parentibus sane filios suos religioni contradere non amplius quam usque ad decimum annum etatis eorum licentia poterit esse, postea uero, an cum uoluntate parentum, an si sue deuotionis sit solitarium uotum, erit filiis licitum religionis assumere cultum...’

³⁷² C.20 q.2 c.2: ‘Puella, si ante xii annos etatis sponte sua sacrum sibi uelamen assumpsit, possunt statim parentes eius uel tutores id factum irritum facere, si uolunt. At si annum et diem dissimulando consenserint, ulterius nec ipsi nec ipsa mutare poterunt. Si uero in fortiori etate adulescentula uel adolescens seruire Deo elegerit, non est parentibus potestas prohibendi.’

comments in d.p.c.6 with the teaching of canon 2. Instead, Gratian pointed out that the paternal profession concerning child oblates and the religious profession of children made against their parents' will are both binding acts, unless the parents disapprove not long after first seeing their child tonsured and in the monastic habit.³⁷³ Apparently, Gratian was not so much concerned with determining the actual age at which parents no longer had the right to take their daughters back who had entered the monastic life against their will, but rather with that period of time which followed their receiving tonsure and religious clothing, though even on this point he chose not to reiterate the 'year and one day' found in canon 2 but rather the more ambiguous time period of 'mox' mentioned in canon 1. The third and final canon in q.2 states that child oblates are to be offered by their parents in the presence of several witnesses,³⁷⁴ a view which Gratian himself held.³⁷⁵

In *Quaestio* 3, Gratian asks if those who wear the cowl against their own will should be forced to retain it or not.³⁷⁶ To answer this question, Gratian included four canons, three of which immediately derive from the *Tripartita* while the formal source for canon 3 remains unidentified. Apart from the fourth canon, which Gratian edited considerably but without changing the basic meaning of the text, the canons comprising q.3 were not edited or abbreviated by Gratian. Canon 1, which ultimately derives from a letter of Pope Leo IV (847-855), states that the monastic profession which is made voluntarily cannot be departed from without sinning.³⁷⁷ Canon 2, which derives from the Sixth Council of Toledo (638) but

³⁷³ C.20 q.2 d.p.c.2: 'Hac auctoritate et paterna professione docetur astringi quilibet in puerilibus annis et preter uoluntatem eorum proposito suscepto perhibetur teneri, nisi tonsuram uel religiosam uestem parentes mox uisam abdicauerint...'

³⁷⁴ C.20 q.2 c.3: 'Oportet infantes cum uoluntate parentum et consensu immo ab ipsis oblatos, sub testimonio plurimorum suscipi, ut omnis occasio maledicti gratia excludatur hominum pessimorum.'

³⁷⁵ C.20 q.2 d.p.c.2: '...Paruuli uero dum offeruntur non nisi sub multorum testimonio suscipiendi sunt.'

³⁷⁶ C.20 d.init.: 'Tertio, qui preter uoluntatem propriam cucullam induitur, an cogatur eam retinere, an non?'

³⁷⁷ C.20 q.3 c.1: 'Propositum monachi proprio arbitrio et uoluntate susceptum deserere non potest absque peccato. Quod enim quis uouet Deo debet et reddere. Vnde qui relicta singularitatis professione ad militiam

which Gratian misattributed to the Seventh Council of Toledo (646), states that those who have freely received the monastic profession should be forced to return to it.³⁷⁸ Canon 3, which is canon 7 of the Council of Chalcedon, states that those who enter the monastic life cannot return to the world, with Gratian apparently assuming that such persons had entered the monastic life freely since this detail is not included in the text.³⁷⁹ From these three canons, Gratian concluded that when it says that a monastic profession is received voluntarily and of one's own free will, it is given to be understood that if one does not receive the monastic profession voluntarily then he is not to be forced to observe it.³⁸⁰ To support this conclusion with more direct evidence, Gratian included a long letter from Pope Nicholas I (858-867). Here we read that a cleric by the name of Lambertus was forced to put on the cowl by his father at either age eight, nine or ten. After some time had passed, this same Lambertus was forced by a certain bishop Salomon, along with others, to put on the monastic habit without any oblation by his father or receiving a blessing from an abbot. To make matters worse, Lambertus was also deprived of his paternal and maternal inheritance by his own brothers on this occasion. While Lambertus's father, Atto, admitted that he had wanted Lambertus to become a monk, he said under oath that Lambertus had always resisted and never consented to becoming a monk. As for the occasion when Lambertus was forced to put on the monastic habit by bishop Salomon, Atto said that Lambertus had never promised to live according to a rule, that he himself had never placed Lambertus's

uel ad nuptias deuolutus est, publice penitentiae satisfactione purgandus est, quia, etsi innocens militia et honestum potest esse coniugium, electionem tamen meliorum deseruisse transgressio est.'

³⁷⁸ C.20 q.3 c.2: '...Quam ob rem quisquis uirorum uel mulierum habitum semel induerit spontaneae religiosum, aut si uir deditus ecclesiae uel femina fuerint delegata puellarum monasterio, in utroque sexu preuaricator inuitus reuerti cogatur, ut uir detondeatur et puella ad monasterium regrediatur...'

³⁷⁹ C.20 q.3 c.3: 'Eos qui semel in clero taxati fuerint siue in monasteriis deputati, decreuimus non ad militiam neque ad honores seculares uenire. Eos autem qui hoc ausi fuerint facere et non actu re penitere maluerint, ut ad hoc idem reuertantur quod ante obtentu Dei sibi proposuerunt, conuenit anathematizari.'

³⁸⁰ C.20 q.3 d.p.c.3: 'Cum dicitur propositum monachi proprio arbitrio et uoluntate susceptum, intelligitur quod si propria uoluntate susceptum non fuerit, obseruari non cogitur.'

hand in the altar cloth and that no priestly or abbatial blessing had ever been given, all things which custom required. Finally, Atto confesses that if he had known how difficult the monastic life was, he never would have forced Lambertus to put on the cowl. After hearing Atto's testimony, Pope Nicholas I decided that Lambertus should not be forced to become a monk under such violence, since no one really loves what he has not chosen or desired and since it is easy to despise what one does not love.³⁸¹

The question which naturally arises after reading q.3 is how did Gratian understand the relationship between it and q.1, since the former prohibits anyone from being forced to put on the cowl, while the latter does not. One possible solution might be to see q.3 as referring only to adults, since there is no mention of children in either the *dicta* or rubrics in q.3. Jessica Goldberg, however, says that we must reject this particular solution.³⁸² Why? Because the case narrative of C.20 "makes it clear that a child can be an unwilling monk"

³⁸¹ C.20 q.3 c.4: 'Presens clericus nomine Lambertus, una cum patre suo, nomine Atto, quondam uidelicet comite nunc autem clerico, ad limina apostolorum properans adiit presentiam nostram, asserens qualiter idem pater eius in laicali adhuc ordine in prediis propriis edificasset duo monasteria, uoluntatem gerens, ut post suum decessum presens filius eius Lambertus in locum ei succederet, quem, infra teneram etatem inter octauum et decimum annum constitutum, memoratus pater proprio arbitrio absque regulari institutione extra omnem eius uoluntatem cucullam induit. Igitur post quoddam ipsius temporis spatium, ut ipse dicit, Salomon episcopus cum quibusdam aliis absque patris oblatione uel abbatis percepta benedictione eundem Lambertum monasticum induere fecit habitum, ut ferunt, inuitum, sub hac occasione paterna seu materna hereditate a fratribus suis priuatum esse, atque contra omnem, ut dictum est, uoluntatem suam quasi regularem illum monachum permanere uoluit. Super qua re diligenti cura inuestigantes, etiam sub iurationem patrem ipsum, si uerum diceret, interrogauimus; sed isdem clericus Atto respondit se talem habuisse et habere uoluntatem ut filius suus uerus monachus fieret et in locum illius succederet. Sub testificatione autem iurando firmaret, quod, quando primitus ei cucullam induit, idem Lambertus semper restitit, et numquam se fieri monachum consensit; sed demum ab insequentibus monachico habitu uolenter est indutus, asserens, quod numquam regulam aliquando promisit, neque ego, pater eius, palla altaris indutum obtuli neque a quocumque sacerdote uel abbate, ut mos poscit, benedictione percepta regule umquam se monachum subiectum futurum promisit. Super his omnibus protestatus est prefatus clericus Atto, quia si eo tempore tam dure obseruantie monasticam intellexisset regulam, numquam eundem filium suum Lambertum coegisset portare cucullam. Quapropter consulte psalmographi uerba recolentes, quibus uoluntarie se Deo sacrificare pronuntiat et uoluntaria oris sui beneplacita fieri in conspectu Dei obsecrat, presentem ut dictum est, clericum nomine Lambertum minime debere existimauimus sub tali uolentia fieri monachum. Quod enim quis non eligit nec optat profecto non diligit. Quod autem non diligit facile contempnit...'

³⁸² Jessica Goldberg, "The Legal Persona of the Child in Gratian's *Decretum*," *BMCL* 24 (2000), 10-53, at 32: 'One might be tempted to imagine this refers only to adults, especially in that the first three canons Gratian quotes do not mention children.'

and “canon four of q.3 further testifies to the possibility of an unwillingly child, for this canon records the case of a boy between the ages of eight and ten whose father put the habit on him, ‘against his every wish’.”³⁸³ Goldberg’s solution then was to make a distinction between “the power of parents, and its relation to the age of children,” which she says is the focus of q.1, and “the will of the child,” which she says is the focus of q.3.³⁸⁴ While Goldberg’s solution has much to commend it, it does have one major weakness: it seems to assume that Gratian would have seen q.1 and c.4 of q.3 as both being about child oblation, with q.1 focusing on the power of parents and canon 4 of q.3 focusing on the will of the child. But as seen above, a binding act of child oblation never took place in canon 4 of q.3, at least according to Atto, Lambertus’s father. If it had, then it seems all but certain that Pope Nicholas I would have decided against Atto and Lambertus, forcing the latter to live the monastic life. How else are we to explain Atto’s insistence that he had never placed Lambertus’s hand in the altar cloth and that there had never been a priestly or abbatial blessing? For Gratian, then, there was no conflict between q.1 and q.3 for the simple reason that they were concerned with different topics, which explains why he felt no need to comment on their relationship. While the presence of canon 4 in q.3 does suggest that Gratian may have had in mind children who were not child oblates when he composed this *Quaestio*, the fact that none of the remaining canons, *dicta* or rubrics in q.3 mention children, does strongly suggest that Gratian primarily had adults in mind when he composed q.3.

In *Quaestio* 4, Gratian asks if monks are allowed to transfer from one monastery to a stricter one.³⁸⁵ To answer this question, Gratian only included two canons, both of which

³⁸³ Ibid., 32-33.

³⁸⁴ Ibid., 32.

³⁸⁵ C.20 d.init.: ‘Quarto, si ab uno monasterio in aliud districtius liceat transire alicui?’

derive from the *Tripartita* B and which Gratian did not abbreviate or edit. Canon 1, which ultimately derives from the Council of Tribur (895), allows women religious to transfer to a different monastery if they are seeking to live a more rigorous life and not fleeing discipline.³⁸⁶ Although this canon makes no mention of monks, Gratian concluded that what is said about nuns here can also be applied to monks and clerics.³⁸⁷ That Gratian included this canon and not one which explicitly mentions monks was simply due to the fact that such a canon was not available to him. Canon 2, which is attributed by Gratian to St Basil, states that vows of monks are not to be made without the permission of their abbot. If such a vow is made, then it must be broken.³⁸⁸ The vows which Gratian seems to have had in mind are those vows which, out of a desire to live more religiously, monks make which exceed the general custom of their brothers, vows of abstinence and other rigorous, ascetic practices. Gratian states that such vows need to have the approval of the abbot, lest the brothers of the monastery be scandalized.³⁸⁹ The other reason, Gratian says, why monks need to receive the approval of their abbot before making a vow is that he does not want them fleeing monastic discipline in order to take up vows of pilgrimage, lest on these occasions they return to the world.³⁹⁰

Conclusion

³⁸⁶ C.20 q.4 c.1: 'Virgines sacre si pro lucro anime sue propter districtiorem uitam ad aliud monasterium pergere disposuerint, ibidemque commanere decreuerint, sinodus concedit. Si uero fuga discipline alium locum quesierint, redire cogantur.'

³⁸⁷ C.20 q.4 d.p.c.1: 'Quod autem de uirginibus sacris hoc capitulo statuitur de monachis etiam consequenter intelligitur de quolibet etiam clerico.'

³⁸⁸ C.20 q.4 c.2: 'Monachum non licet uotum uouere sine consensu abbatis sui. Si autem uouerit, frangendum erit.'

³⁸⁹ C.20 q.4 d.p.c.2: 'Verum hoc intelligendum est monachis religiose uiuentibus, quibus uota spiritualis abstinentie uel alicuius districtiois, que generalem consuetudinem suorum fratrum excedant, sine abbatis consensu uouere non licet, ne super eo fratres scandalizentur...'

³⁹⁰ C.20 q.4 d.p.c.2: '...Causa etiam illorum statutum est hoc, qui regularem disciplinam subterfugientes peregrinationis uota sibi assumunt, quod nec monacho nec alicui clerico licet, ne ad secularem conuersationem hac occasione redeat.'

When taken as a whole, the substance of *Causae* 16 to 20 reveals Gratian to be 'pro-monastic' in outlook, that is, his views on individual topics favour monks more often than not. This 'pro-monastic' outlook is not just seen in the fact that Gratian believed that monks could perform pastoral care or that monks who were not also priests could withhold tithes from their own estates or that churches could be relinquished to abbots by laymen with the permission of the bishop. It is also seen in the way he arrived at his 'pro-monastic' conclusions. It was not as if the canonical tradition, for example, overwhelmingly supported monks doing pastoral care and thus left Gratian with little choice but to side with the weight of tradition. In fact, for this particular example, the opposite was the case. Gratian himself even admitted that up until about the fifth century monks were not clerics and thus did not engage in pastoral work. Yet this historical fact did not prevent him from coming to the conclusion that monks could perform pastoral care if certain criteria were met. While it is hard then not to come to the conclusion after reading *Causae* 16 to 20 that Gratian was 'pro-monastic' in outlook, such an outlook did not mean that he thought that monks and monasteries should always be free from episcopal control or that bishops had no positive role to play in the life of monks and monasteries. Whether in his role as distributing tithes to monks or giving abbots permission to hold churches wrongly possessed by laymen or allowing clerics to transfer to the monastic life or intervening in abbatial elections in special circumstances, the bishop played an important role in *Causae* 16 to 20, even if at times monks could contradict the will of the bishop if divinely inspired or be free from episcopal oversight if a bishop had abused his rights on visitation of a monastery. In the end, then, monks come out on top in the *Causae monachorum* but not without the protection and assistance of the bishop.

Conclusion

This thesis has attempted to provide the first systematic study of the composition and substance of the first recension of *Causae* 16 to 20 of Gratian's *Decretum*, what scholars generally call the *Causae monachorum*. Chapter one documented the process by which Gratian organized and constructed the *quaestiones* of these *Causae*. It argued that Gratian collected canons which were relevant to the themes he wanted to discuss, and composed a case, often inspired by the details of the canons themselves, which covered some questions, and incorporated other questions and canons as he went along. Although we cannot know for sure how well-planned each *Causa* was in its entirety before he wrote, we do know that he composed the bulk of the *Causae* around three canon law collections: the *3L*, the *Tripartita* and Anselm's *Collectio canonum*. Of these three, the *3L* provided Gratian with the most canons. It also provided him with the most answers to the questions that he wanted to answer in these *Causae*. All but one of the seven questions in C.16 were inspired by canons deriving from the *3L*. Not far behind the *3L* in terms of importance for the making of the *Causae monachorum* was the *Tripartita*. Here Gratian found canons that inspired the making of *quaestiones* in C.17, C.18 and C.20, with all four of the *quaestiones* of the latter *Causa* tracing their origins back to the *Tripartita*. Although not as influential as the other two major canon law collections, Anselm's collection did manage to give birth to C.19. In addition to serving as the starting point for at least one *Causa*, all three of these collections were used by Gratian to supplement the core canons of the different *quaestiones*. Gratian might not have planned his *Causae monachorum* perfectly, but it is clear that a good deal of thought went into their making.

Chapter two examined the substance of *Causae* 16 to 20. It argued that Gratian's views tend to favour the rights of monks and monasteries. This can be seen not only in many of the positions which he held, but also in how he came to hold the views that he did. Perhaps the best example of this is found in his discussion of monks and pastoral care. Here we find Gratian siding with those who were of the opinion that monks, so long as they had been ordained to the priesthood, could carry out the duties attached to the *cura animarum*. Although this was not the view of the majority of the canons which he had assembled in C.16 q.1, it was the view which he adopted. We see the same thing happening in his discussion of monks and tithes. Like the issue of monks performing pastoral care, there was little canonical support for arguing that monks who were not also priests could withhold tithes from their own estates. But he held this view despite this fact. Although Gratian's views in *Causae* 16 to 20 reveal him to be 'pro-monastic' in outlook, this does not mean that he believed monasteries were exempt from episcopal control. Far from it. Apart from Gratian's belief that monks were to be free from episcopal control if their bishop abused his rights while on visitation of their monastery, *Causae* 16 to 20 is generally of the opinion that the monastic order is to be subject to the authority of the bishop. The reason that this has not led me to conclude that Gratian was 'pro-episcopal' is that there was nothing exceptional in holding this view. That the monastic order was to be subject to the authority of the bishop was the overwhelming view of the canonical tradition which Gratian inherited. Gratian then never had to overlook the majority of the canons on a given topic in order to hold to a 'pro-episcopal' view. The same cannot be said for his 'pro-monastic' views, and it is chiefly for this reason that the monks in *Causae* 16 to 20 come out on top.

Appendix 1

A Critical Edition of the First Recension of *Causae* 16 to 20 of
Gratian's *Decretum*

ABBREVIATIONS

MODERN WORKS AND SERIES

ACO	<i>Acta conciliorum oecumenicorum</i> , ed. Schwartz
CiCi	<i>Corpus Iuris Civilis</i> , ed. Mommsen
CCSL	Corpus Christianorum, Series Latina
CSEL	Corpus scriptorum ecclesiasticorum latinorum
Finsterwalder	<i>Die canones Theodori Cantuariensis und ihre Überlieferungsformen</i>
Gasso-Batlle	<i>Pelagii I papae epistulae quae supersunt</i> , ed. Gasso-Batlle
GCS	Die griechischen christlichen Schriftsteller der ersten drei Jahrhunderte
JE, JK, JL	Philippus Jaffé, <i>Regesta pontificum Romanorum</i> , 2nd. edn. (This edition was prepared under the auspices of Wilhelm Wattenbach, with the editorial assistance of Samuel Löwenfeld, Ferdinand Kaltenbrunner, and Paul Ewald. The work, thus, is cited as JK for letters up to 590, JE from 590 to 882, and JL from 883 to 1198, according to the reviser who worked on the section. ³⁹¹)
Mansi	<i>Sacrorum conciliorum nova et amplissima collectio</i> , ed. J.D. Mansi
MGH	Monumenta Germaniae Historica
MHS	Monumenta Hispaniae Sacra, <i>serie canonica</i>
PL	<i>Patrologiae cursus completus, series Latina</i> , ed. Migne
Schon, dMGH	http://www.pseudoisidor.mgh.de/

MEDIEVAL CANONICAL COLLECTIONS

3L	The <i>Collectio in Three Books</i> , ed. Motta
9L	The <i>Collectio in Nine Books</i> , in Vat., Archivio di San Pietro C. 118.
10P	The <i>Collectio X partium</i> , Cologne, Historisches Archiv W.Kl. fol. 199
74T	<i>Diversorum patrum sententiae siue Collectio in LXXIV titulos digesta</i> , ed. Gilchrist
Ans.	<i>Anselmi episcopi Lucensis collectio canonum</i> , ed. Thaner
Ans.G	The <i>Collectio canonum</i> of Anselm of Lucca, Graz, UB II. 351
Burch.	Burchard's <i>Decretum</i> , ed. Migne
Caes.	The <i>Collectio Caesaraugustana</i> , second version, Paris, BN lat. 3876
Deusd.	<i>Die Kanonessammlung des Kardinals Deusdedit</i> , ed. Wolf von Glanwell
Farf.	<i>Collectio Canonum Regesto Farfensi inserta</i> , ed. Kolzer
Flor.Riccar	The <i>Florilegium</i> , Firenze, Riccardiana 3006, fols. 203r-205v.
Ivo D.	Ivo's <i>Decretum</i> , provisional edition, Brasington and Brett
Lanf.	The <i>Collectio Lanfranci</i> , Trinity College, Cambridge, B.16.44
Leip.	The <i>Collectio canonum</i> , Leipzig, UB 276
Pan.	The <i>Panormia</i> , provisional edition, Brasington and Brett.
Pisa	The <i>Florilegium</i> , Pisa, Seminario Santa Catarina 59
Polyc.	The <i>Polycarpus</i> , draft edition at the MGH, Horst Fuhrmann
Prag.	The <i>Collectio canonum Pragensis I</i> , Prague, Univ. Knihovna VIII. H. 7
Quad.	The <i>Quadripartitus</i> , Stuttgart, Württembergische Landesbibliothek HB VII 62
Trip.	The <i>Collectio Tripartita</i> , provisional edition, Brasington and Brett. (Followed Brett's numbering of the canons)
Turin	The <i>Collectio canonum</i> , Turin, BNU 903 (E.V.44), fol. 71v-86v

³⁹¹ This description is taken from Anders Winroth, *The Making of Gratian's Decretum* (Cambridge, 2000), xiii.

MANUSCRIPTS OF GRATIAN'S *DECRETUM*³⁹²

Aa	Admont, Stiftsbibliothek 43
Bi	Biberach, Spitalsarchiv B 3515
Br	Bremen, Universitätsbibliothek a. 142
Cd	Cambridge, Mass., Harvard Law Library 64
Fd	Florence, Biblioteca Nazionale Centrale, Conventi Soppressi A 1.402
Hk	Heiligenkreuz, Stiftsbibliothek 44
In	Innsbruck, Universitätsbibliothek 90
Ka	Cologne, Erzbischöfliche Diözesan- und Dombibliothek 127
Kb	Cologne, Erzbischöfliche Diözesan- und Dombibliothek 128
Mk	Munich, Bayerische Staatsbibliothek, clm 28161
Mz	Mainz, Stadtbibliothek II.204
Pk	Paris, BN, lat. 3890
Sa	Salzburg, Stiftsbibliothek St. Peter a.XII.9
Sb	Salzburg, Stiftsbibliothek St. Peter a.XI.9
Sg	St Gall, Stiftsbibliothek 673
Tr	Trier, Stadtbibliothek 906
Ty	Troyes, Bibl. municipale 60
Tz	Troyes, Bibl. municipale 103
Vd	Vatican, BAV, Vat.lat. 3529
Vp	Vatican, BAV, Pal.lat. 622

³⁹² For the manuscripts of Gratian's *Decretum*, I have adopted the sigla found in Rudolf Weigand's *Die Glossen zum "Dekret" Gratians: Studien zu den frühen Glossen und Glossenkompositionen*. *Studia Gratiana* 26-27 (Rome, 1991).

OTHER ABBREVIATIONS

ac	ante correctionem
add.	addidit
add.marg.	addidit in margine
C.	Causa
D.	Distinctio
d.a.c.	dictum ante canonem
d.init.	dictum initiale
d.p.c.	dictum post canonem
om.	omisit
pc	post correctionem
praem.	praemisit
q.	questio
sup. lin.	supra lineam
tr.	transposuit

INTRODUCTION

The first recension of Gratian's *Decretum* has survived in five manuscripts, but only three contain *Causae* 16 to 20: Admont, Stiftsbibliothek 43 (Aa), Florence, Biblioteca Nazionale Centrale, Conv. Soppr. A. 1.402 (Fd), and St. Gall, Stiftsbibliothek 673 (Sg).³⁹³ For a number of scholars, Sg represents a version of the *Decretum* predating the first recension. But after comparing these scholars arguments to the critiques put forward by a number of other Gratian scholars, as well as my own work on *Causae* 16 to 20, it seems more likely that Sg is an abbreviation of the first recension, with canons interpolated from a second-recension manuscript, which included canons from the second Lateran council of 1139.³⁹⁴ Despite its idiosyncracies, though, Sg on at least one occasion preserves a first-recension reading no

³⁹³ The other manuscripts containing the first recension are Barcelona, Arxiu de la Corona d'Aragó, Santa Maria de Ripoll 78 (Bc), Paris, Bibliothèque Nationale de France, nouvelles acquisitions latines 1761 (P), and the one leaf of Paris, Bibliothèque Nationale de France, latin 3884 I (Pfr).

³⁹⁴ The following scholars believe that Sg represents a version of the *Decretum* earlier than the first recension. Carlos Larrainzar, "El borrador de la 'Concordia' de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (=Sg)," *Ius Ecclesiae* 11 (1999): 593-666; Kenneth Pennington, "Gratian, Causa 19, and the Birth of Canonical Jurisprudence," in *"Panta rei": Studi dedicati a Manlio Bellomo*, ed. Orazio Condorelli, 5 vols. (Rome: Il Cigno, 2004), 4:339-355; Enrique de León, "La tradizione manoscritta più antica della C.30 q.1," in *Proceedings of the Eleventh International Congress of Medieval Canon Law* (MIC Series C 13, Città del Vaticano, 2006), 131-139; Luis Pablo Tarín, *Graciano de Bolonia y La Literatura Latina: La distinción treinta y siete del Decreto* (Madrid: Fundación Pastor de Estudios Clásicos, 2008); José Miguel Viejo-Ximénez, "La recepción del derecho romano en el derecho canónico," *Ius Ecclesiae* 14 (2002): 375-414;; Atria A. Larson, "The Evolution of Gratian's *Tractatus de penitentia*," *BMCL* 26 (2004-2005): 59-123. Melodie Harris Eichbauer, "St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian's *Decretum*," *BMCL* 27 (2007): 105-139. Brigitte Basdevant-Gaudemet, "Les désignations épiscopales d'après les versions successive du Décret de Gratien," *Studia Canonica* 37 (2003): 55-98. The following are scholars who do not believe Sg represents the earliest known version of the *Decretum*. 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," available online at <http://www.t-j-l.de/Sg-Entw.PDF>; Anders Winroth, "Recent Work on the Making of Gratian's *Decretum*," *BMCL* 26 (2004-2005): 11-22; idem, "Gratian's *Decretum* and the transformation of Sankt Gallen," available online at <http://pantheon.yale.edu>; John Noël Dillon, "Case Statements (themata) and the Composition of Gratian's Cases," *ZRG KA* 92 (2006): 306-339; 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): 141-180. "The presence of numerous second-recension canons in Sg, I will go on to argue, prove that Sg is not simply an abbreviation of the first recension, as Lenherr and Winroth have suggested, but rather an abbreviation of a first-recension manuscript interpolated with canons taken from a second-recension manuscript." (p.142) Jean Werckmeister, "Le manuscrit 673 De Saint Gall: un Décret de Gratien primitif?" *Revue de droit canonique* 60/1-2 (2010): 155-170. "On découvre dans le manuscrit de Saint-Gall le C.27.1.40, *Ut lex*, qui rassemble les canons 7 et 8 de Latran II, avec la même inscription que dans la version longue (*Item innocentius papa*), mais avec un autre sommaire." (p. 167) "Enfin, il reste un point qu'il faudrait étudier de plus près: il semble bien que le rédacteur de Sg ait utilisé non seulement la version longue, mais aussi la version courte." (p. 169)

longer present in any of the other first-recension manuscripts.³⁹⁵ For this reason, I have collated all of Sg. But since Sg often contains a significantly different version of a canon or dictum from Aa and Fd, I have only included its readings when important textual differences between Aa and Fd have arisen. In addition to collating Sg, I have also examined seventeen second-recension manuscripts for problematic words or passages in Aa and Fd, since there is evidence of second-recension manuscripts preserving first-recension readings no longer present in any of the surviving first-recension manuscripts.³⁹⁶ These particular second-recension manuscripts were chosen for two reasons. First, a number of scholars have already examined these manuscripts for other parts of the *Decretum*.³⁹⁷ Second, these manuscripts give a representative sample of the different provenances and different groups

³⁹⁵ Winroth, “Gratian’s *Decretum* and the transformation of Sankt Gallen,” 10-11. “I believe that Sg in at least one instance may have preserved a sentence which was included in the first recension, but which is now missing from every other *Decretum* manuscript. The sentence appears in C.15 q.3 d.p.c. 4, and I have bold-faced it below. ‘Quecumque enim (Nam quecumque Sg) persone humanis legibus copulari prohibentur et divinis, non omnium copula a sacris canonibus admittitur, quorum coniunctio (conventio Sg) legibus imperatorum indulgetur. **Filii namque duorum fratrum earum permissione iunguntur** (Filii – iunguntur om. Aa).’ Aa Sg. The entire passage here quoted was in the second-recension replaced by another formulation. In *The Making of Gratian’s Decretum*, I edited the first-recension formulation on the basis of Aa alone, since the original text of Fd at this point has been erased (and the other manuscripts do not include C.15). The upper margin above C.15 q.3 d.p.c. 4 (fo. 50r.) in Fd contains, however, a short text, the beginning of which has been cut away by the book-binder. The text appears to be a gloss, but it has remained unclear, until now, on which text it comments: //lege[?] permittitur coniunctio filiis duorum fratrum, canones vero vetant. Fd^{gloss} This gloss seems to comment on the sentence discovered in Sg, which probably was written in Fd and then erased (and there appears to be sufficient space for it.). The text of the first recension also makes better sense if one adds the sentence found only in Sg.”

³⁹⁶ Second-recension manuscripts examined: **Bi Br Cd Hk In Ka Kb Mk Mz Pk Sa Sb Tr Ty Tz Vd Vp**; see Anders Winroth’s ‘Critical Notes on the Text of Gratian’s *Decretum*’ (<https://sites.google.com/a/yale.edu/decretumgratiani/critical-notes-1>) for evidence from *causa 3* of second-recension manuscripts preserving first-recension readings not found in any of the surviving first-recension manuscripts. One example from *causae 16* to *20* of this phenomenon is found in C.16 q.3 c.7, where we find that the correct reading of ‘prescriptione’ is only preserved in second-recension manuscripts.

³⁹⁷ Enrique De León, *La ‘Cognatio Spiritualis’ según Graciano* (Milan: Giuffrè Editore, 1996); Tatsushi Genka, “Zur textlichen Grundlage der Imputationslehre Gratians,” *BMCL* 25 (2002-2003): 40-81; Titus Lenherr, *Die Exkommunikations- und Depositionsgewalt der Häretiker bei Gratian und den Dekretisten bis zur Glossa ordinaria des Johannes Teutonicus* (St. Ottilien: Eos Verlag, 1987); 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: Böhlau, 2004); John Wei, “Law and Religion in Gratian’s *Decretum*” (Ph.d diss., Yale University, 2008); Winroth, *The Making of Gratian’s Decretum*.

of the manuscript tradition of the *Decretum*.³⁹⁸ What follows then is a brief description of the contents of Aa and Fd and a discussion of some of the most important recent scholarship on these manuscripts. I will conclude with an examination of the textual relationship between Aa, Fd, and Sg, and a discussion of the edition itself and the editorial principles behind it.

Admont, Stiftsbibliothek 43 (Aa)

Aa has 342 folios and was written in the 1160's or 1170's in the Benedictine monastery of Admont in Austrian Styria.³⁹⁹ The first twelve folios, 1r-12v, complete the two anonymous introductions to the *Decretum* begun in Aa 23.⁴⁰⁰ The bulk of Aa, fols. 13r-198r, contains the second half of the second part of the *Decretum*, *Causae* 15 to 36. This is followed by the *Collectio Admontensis*, an excerpt from the *Collectio Tripartita*, the third part of the *Decretum*, the *De consecratione*, a large supplement of second-recension canons and *dicta* not found in *causae* 15 to 36, a table of Greek letters with their numerical values, and finally D. 73 from the first part of the *Decretum*, all of which are found on folios 198r-342r.

Gratian's 'Tract on Monks and the Outside World' is found on folios 19v-43v.

Although these folios contain relatively few obvious scribal errors, they do contain a number of alternative readings to those found in Fd as well as a number of unique additions in the

³⁹⁸ For a discussion of the provenances of most of these manuscripts and what groups they belong to in the manuscript tradition, see Gujer, *Concordia discordantium codicum manuscriptorum?*, 236-50, 254-72, 297-302, 319-27, 350-62.

³⁹⁹ The following description of Aa 43, save *causae* 16 to 20, is adapted from Anders Winroths, *The Making of Gratian's Decretum* (Cambridge, 2000), 25-26.

⁴⁰⁰ For modern scholarship on Aa 23, see: Fritz Eheim, "Die Handschriften des *Decretum Gratiani* in Österreich," *Studia Gratiana* 7 (1959): 129-130 and 132-133. Titus Lenherr, "Die Summarien zu den Texten des 2. Laterankonzils von 1139 in Gratians *Dekret*." *AKKR* 150 (1981): 528-551, at 531, note 10. Winfried Stelzer, *Gelehrtes Recht in Österreich von den Anfängen bis zum frühen 14. Jahrhundert*, Mittelungen des Instituts für Österreichische Geschichtsforschung, Ergänzungsband 26 (Vienna, 1982), 25-44. Weigand, *Glossen zum "Dekret"*, 662-663. Winroth, *The Making of Gratian's Decretum*, 23-24. Carlos Larrainzar, 'La edición crítica del Decreto de Graciano,' *BMCL* 27 (2007): 71-104, at 94-98. Luis Pablo Tarín, *Graciano de Bolonia y La Literatura Latina* (Madrid, 2008), 64.

main body of the manuscript, which were introduced either by the scribe of Aa or were already present in his exemplar, and are not found in Fd, Sg, or any of the second-recension manuscripts which I have examined.⁴⁰¹ Perhaps the most unsettling feature of *Causae* 16 to 20 in Aa is that it has sixteen more canons than Fd in the main body of the manuscript.⁴⁰² What are we to make of these additional canons? Do they represent an intermediate stage between the first and second recensions, or are they second-recension texts which have been mixed with the first recension, or something else altogether? Although scholars disagree over the particulars of Aa and its precise place in the manuscript tradition of the *Decretum*, they all seem to agree that these canons were later additions.⁴⁰³ There are of course many possible reasons for why Aa contains these extra canons in the body of the manuscript, but I think Anders Winroth has given the most plausible explanation. He has

⁴⁰¹ The following is an example of an obvious scribal error found in Aa 43. C.16 q.3 c.5. originally contained the reading 'qui perpetue **eternitatis** firmitate duravit,' which Aa^{pc} has corrected by placing '**etatis**' above the line. For examples of alternative readings in Aa, see C.16 q.3 c.9 and C.17 q.1 d.p.c. 2. Toward the end of C. 16 q.3 c.9, Aa has included 'graduū' instead of 'contractuum,' which is what we find in Fd and 3L 2.31.22. In C.17 q.1 d.p.c.2 Aa has included 'incipere' instead of 'concipere,' which is what we find in Fd. The following are two examples of additions in the main body of the manuscript which are found only in Aa 43. The main hand of Aa 43 has added an extra sentence at the end of C.16 q.1 d.p.c. 45: 'ad proprium usum, non quin habeant potestatem dispensandi quibus uoluerint.' For C.16 q.1 c.48, the main scribe of Aa 43 has added the words in bold type: 'uel argentum aut aliam speciem **ut frumentum uel uinum**;'

⁴⁰² It should be noted that there are additional canons interpolated throughout Aa 23 and 43, not just in Gratian's 'Tract on Monks and the Outside World.' According to my edition of the first recension, the first of these additions is found after C.16 q.1 c.8, where we find one canon attributed to Pascal II and the other to Calixtus II. C. 16 q. 1 c.33 is followed by a canon from Pascal II. A canon attributed to Gregory the Great is found after C. 16 q. 6 c. 2. Five additional canons are found after C. 16 q. 7 c.1, with the first three attributed to Gregory VII, Ambrose, and to a council at Rouen, while the final two come from councils held in Carthage. We find two canons after C.16 q. 7 c.4: one attributed to Gregory the Great, the other to the Council of Tribur. After C. 16 q. 7 c.5, there is a canon from Gregory VII. The final two additional canons in *causa* 16 are found after C. 16 q. 7 c.17: the first is attributed to a council in Toledo, the second to a council in Mainz. The remaining additions are found after C. 17 q. 4 c.3, with both being attributed to the Council of Tribur. In addition to these sixteen canons, there is one *dictum post canonem* in Aa 43 that is longer than what is found in Fd: C. 16 q. 3 d.p.c. 7.

⁴⁰³ Carlos Larrainzar, 'La edición crítica del Decreto de Graciano,' *BMCL* 27 (2007): 98. "En suma, el texto de Aa es copia de un testimonio de la *Concordia* breve, anterior a Bc Fd, pero contaminada con otro (u otros) códices de las redacciones posteriores, sobre todo del extenso *Decretum* divulgado. En consecuencia, el uso de Aa en una *edición crítica* deberá hacerse siempre con suma cautela.' Tarín, *Graciano de Bolonia*, 87. "El texto contenido en Aa parece ser, por todos estos motivos, una copia de un testimonio de la versión breve, contaminado con otro u otros de la versión extensa." Winroth, *The Making of Gratian's Decretum*, 131. "In the case of Aa, it is clear that the manuscript used by the original scribe already contained added second-recension texts."

suggested that the scribe of Aa had before him an exemplar of the first recension with second-recension texts written in the margins, and instead of copying these marginal texts into the margins of his own manuscript, the scribe of Aa did what most medieval scribes would have done: he inserted them where he thought they belonged in the main body of the manuscript, giving us essentially a first recension edition with second-recension texts inserted intermittently. The result is an 'updated' version of the *Decretum*.⁴⁰⁴ But whatever the story behind the making of Aa, the point should be clear that the additional canons in the body of the manuscript do not belong in an edition of the first recension.

Florence, Biblioteca Nazionale Centrale, Conventi Soppressi A 1.402

Fd contains 181 folios and was written in the last quarter of the twelfth century in Apulia.⁴⁰⁵

The manuscript begins defectively on folio 1r with D. 28 *d.p.c.* 13, which is followed by the rest of parts 1 and 2 of the first recension of the *Decretum*, ending on folio 104r. From folio 104r to 164r, there is a supplement of canons and *dicta* which were added in the second recension and are missing in folios 1r-104r. An incomplete version of the third part of the *Decretum*, the *De consecratione*, is on folios 164r-167, followed by canons 1 and 2 of the Council of Reims. Further texts of the *De consecratione* are on folios 168r-175v, which are followed by *Compilatio quinta* 1.1.1-1.1.5. The manuscript ends with fragments of liturgical books and three fragments concerning the Camaldolese order. The first-recension texts of Fd were written by three different hands. The first hand wrote folios 1r-12v, a second folios 12v-43r, and a third folios 44r-104r. *Causae* 16 to 20 are found on folios 50vb-58ra.

Although the main hand of Fd did not insert unique additions into the body of the

⁴⁰⁴ Winroth, *The Making of Gratian's Decretum*, 131-132.

⁴⁰⁵ The following description of Fd, save *Causae* 16 to 20, is adapted from Winroth, *The Making of Gratian's Decretum*, 28-32.

manuscript of *Causae* 16 to 20 as Aa 43 had, it did make a host of errors in copying its exemplar, which were often corrected but not always.⁴⁰⁶ In addition to the main hand and main correcting hand of Fd, there are a number of other hands in Fd which have added texts to the margins of the manuscript. Although the main correcting hand in Fd may have used the same exemplar as the main hand of Fd, there is also the possibility that the main correcting hand used a different copy altogether.

The nature and place of Fd in the manuscript tradition of the *Decretum* has been much debated over the last fifteen years. The main figures in this debate have been Anders Winroth and Carlos Larrainzar. Larrainzar's initial purpose for researching and writing on Fd was merely to provide more details of Fd for an edition of Winroth's then recently discovered first recension of Gratian's *Decretum*, but the more he worked on Fd *in situ*, the more he became convinced that what he had before him was something extraordinary, something he himself had a hard time believing at first, namely, that Fd is the original manuscript of the vulgate version of the *Decretum*, at least the version disseminated after 1150.⁴⁰⁷ Although Larrainzar wrote a long and rather complicated article to support his extraordinary thesis, he essentially tried to prove two things: that the vast majority of Fd

⁴⁰⁶ The following are two examples of scribal errors in Fd which were later corrected by Fd^{pc}. In C.16 q.1 d.p.c. 16, Fd originally wrote 'Ecce in hoc **apostolo** et uitium est expressum,' which was changed to 'capitulo' by the correcting hand. In C.16 q.1 c.17, Fd originally had 'publica **lingua**,' which was changed to 'publica **litigia**' by the correcting hand. An example of an error left uncorrected is found in C.16 q.1 c.49. At the end of this canon we read: 'statim aperientur super eum cataracte celi et effundetur pluua spiritualis, et mandabit **manibus** suis ut pluant super eum imbrem et habundantia rerum omnium perfruetur.' 'Manibus' should be 'nubibus,' which is what we find in Aa and Mk, but the exemplar of the scribe of Fd^{pc} either did not contain a correction to this error or the scribe forgot to include it in Fd.

⁴⁰⁷ Carlos Larrainzar, "El Decreto de Graciano del Códice Fd (=Firenze, Biblioteca Nazionale Centrale, *Conventi Soppressi* A.I.402) in *Memoriam Rudolf Weigand*," *Ius Ecclesiae* 10 (1998): 421-489. "Inicialmente estas líneas non tenían otro objeto que ampliar al detalle los conocimientos sobre Fd para estar en condiciones de iniciar una edición crítica de la 'primera recensión' de la *Concordia*; sin embargo, el examen directo del manuscrito Fd en la *Biblioteca Nazionale Centrale* de Florencia cambió enteramente la perspectiva al llegar a una conclusión tan sorprendente como increíble a primera vista, a saber: el código Fd non sólo contiene una primera y reducida *Concordia* de Graciano sino que es el *código original* donde el autor de la obra ha construido la *ulterior redacción* de su *Concordia* más amplia, luego conocida como Decreto de Graciano." (p. 424-425)

was written in the 1140's, and that of the first-recension manuscripts only the corrections found in Fd can explain the changes found in the second recension, and that these changes were made by the author of the second recension himself. Before describing how he arrived at these conclusions, an outline of Larrainzar's thoughts on the different hands and the making of Fd are in order.

Larrainzar identified six perhaps seven different *manos* in Fd: A B C D E F G (F is the *mano* he is uncertain about), which are not to be identified with the *amanuenses* of the manuscript.⁴⁰⁸ *Mano* A is found on folios 1r-104ra, which he calls the *Concordia* or *primera redacción*;⁴⁰⁹ *mano* B is found on folios 104rb-167vb, which he calls *Adiciones boloñesas*;⁴¹⁰ *mano* C is found throughout the manuscript and is responsible for inserting the *distinctiones* and *causae* division markers;⁴¹¹ *mano* D is found on folios 168r-175v;⁴¹² *mano* E is found on folios 39v-40r;⁴¹³ *mano* F is distinct from but closely related to Gw and is found throughout

⁴⁰⁸ Ibid., 430: "Y, en realidad, A son dos amanuenses al menos, probablemente tres."

⁴⁰⁹ Ibid., 426: "La mano A copia una reducida *Concordia* de Graciano – esto es, una 'primera' (?) redacción más breve que la divulgada – que, aun poseyendo el *tractatus de poenitentia*, carece enteramente de la *tertia pars* tradicional (fols. 1r-104ra."

⁴¹⁰ Ibid., 426-427: "A partir de quinto folio de cuadernillo catorce la mano B copia una 'colección' de textos complementarios que enriquecen esa 'primera' *Concordia* (fols. 104rb-167vb), agrupados según los distintos apartados de la conocida introducción *In prima parte agitur* del Decreto; esta 'colección de adiciones' o de *complementos* – aproximadamente unos 1.300 textos, de los que son *dicta* algo menos de 200 -- se cierra con un tratado *de consecratione* (fols. 164rb-167vb), bastante más breve que el texto divulgado como *tertia pars* del Decreto graciano."

⁴¹¹ Ibid., 431: "La mano C usa una letra uncial carolina, que en su peculiar tipología parece algo más tardía que la escritura de B, pero se puede datar también en la segunda mitad del siglo XII; escribe con tinta marrón suave, muy parecida a la usada generalmente por A. Pero acaso es C la mano de un copista? No está claro, pues este único 'amanuense' es quien – en la *Concordia* de A y en las *Adiciones boloñesas* de B – superpone la división de *distinctiones* de la *prima pars* del Decreto y señala las *questiones* en sus *Causae*, aparte de añadir algunos fragmentos aislados en algunos concretos folios del código, como luego se verá."

⁴¹² Ibid., 431: "La mano D escribe con tinta marrón muy oscura y, aunque se podría confundir con una escritura gótica boloñesa tardía, casi con toda seguridad es una escritura toscana; en todo caso la caligrafía es claramente de mediados del siglo XIII, o tal vez sea de su segunda mitad, pero es indudable que el cuadernillo veintitrés (fols. 168r-175v) se ha compuesto aproximadamente un siglo después que el manuscrito del siglo XII copiado por A B C (fols. 1r-167v)."

⁴¹³ Ibid., 432: "La mano E aparece aisladamente en los fols. 39v-40r y copia seguidos diversos fragmentos de Derecho romano, como un único texto, aprovechando los huecos del fol.39va tras C.9, cotinuando en su margen izquierdo y en los bajos, y desde ahí termina en el hueco del fol. 40rb tras el final de C.10."

the manuscript;⁴¹⁴ and *mano* G is responsible for turning the first recension into the second recension and is believed to have worked in five distinct moments, which he refers to as $G\alpha$ τ^1 τ^2 τ^3 $G\omega$.⁴¹⁵ The making of Fd began with *mano* A, who worked from 1139 to 1145, which was followed by $G\alpha$ and τ^1 .⁴¹⁶ Both $G\alpha$ and τ^1 modified texts and added interlinear glosses and canons to the margins of Fd. Larrainzar believes that $G\alpha$ was active at the same time as *mano* A, with τ^1 not far behind $G\alpha$.⁴¹⁷ *Mano* B, the *Adiciones boloñesas*, followed next, being copied and inserted before 1148.⁴¹⁸ Then back to the work of *mano* G, but this time in its τ^2 and τ^3 moments, which took place between 1148 and 1152.⁴¹⁹ $G\tau^2$ added some 200 new texts to *manos* A and B, while τ^3 is viewed as the moment which united all the elements of *manos* A and B, resulting in the second recension.⁴²⁰ $G\omega$ and *mano* F are thought to have worked between 1155 and 1160.⁴²¹ Finally, *manos* E and D were active in the thirteenth century, the former at the beginning of the century, the latter in the middle of it.⁴²²

⁴¹⁴ Ibid., 432: “Y, como anticipaba, aún es posible que en $G\omega$ se pueda considerar separadamente otra mano distinta (una mano F quizá?), sobre todo pensando en algunas concretas glosas del texto.”

⁴¹⁵ Ibid., 432: “Y, finalmente, la mano G es una misma escritura del siglo XII, con variedad de caligrafías, de alguien – no un amanuense, como se verá – que realiza tareas diversas sobre los textos copiados por A B, pero trabajando en distintos momentos temporales; la secuencia cronológica de éstos se puede reconstruir por la caligrafía de los trazos, la variedad de tintas utilizadas (negra intensa, marrón suave y también marrón más oscuro), y por la posición topográfica de los respectivos textos en el códice: así pues, usando letras del alfabeto griego, cabe distinguir un momento α inicial, otro momento ω final, y otros varios momentos intermedios τ que secuenciaré con guarismos árabigos (τ^1 , τ^2 , τ^3).”

⁴¹⁶ Ibid., 434: “Esta copia no puede ser anterior al año 1139, por las referencias indirectas al Concilio Lateranense II, que aparecen en D.63 d.p.c. 34 (fol.12va) y C.1 q.7 d.p.c.4 (fol.26ra); su término *ad quem* probablemente no llega al año 1145 valorando la formación del conjunto del códice y la sucesión de tareas de las distintas manos sobre su contenido.”

⁴¹⁷ Ibid., 434-437.

⁴¹⁸ Ibid., 437-438.

⁴¹⁹ Ibid., 445: “Y, aún más, se podría afirmar perfectamente que las acciones $G\tau^2$ $G\tau^3$ hayan sucedido entre 1148 y 1152.”

⁴²⁰ Ibid., 438-39.

⁴²¹ Ibid., 442-443: “En otro último momento (ω) la caligrafía de G presenta trazos menos redondos, más nerviosos y estilizados, pero también con tinta marrón; a este momento ω pertenecen los textos relativos al *Iohannes cardinalis et legatus* editados por Holtzmann, que se deben fechar – a mi entender -- durante el segundo lustro de los años cincuenta, si se identifican correctamente los personajes del cardenal *Iohannes*, del obispo *Amandus Vigiliensis* y del *Ber(trandus)* arzobispo de Trani. De esta final podrían ser también algunas concretas adiciones marginales de G que de momento (?) he incluido genéricamente en los tiempos τ^2 y τ^3 . Y, como anticipaba, algunas concretas glosas más tardías se podrían considerar tal vez obra de una nueva mano F, distinta de G.”

⁴²² Ibid., 443-444.

Larrainzar essentially relied on two types of evidence to support his description of the making of Fd described above and his belief that *manos* A,B,C, and Gα, τ¹ τ² τ³ were working primarily in the 1140's. The first was palaeographical. He compared the script of *mano* A of Fd with the scripts of a number of manuscripts believed to have been written in the middle of the twelfth century, concluding that without a doubt *mano* A was written in the middle of the twelfth century.⁴²³ The second was the placement of two canons from the Council of Reims of 1148 in Fd. He argues that the folios preceding folio 167vb, which is where the two canons from the Council of Reims of 1148 are found, must have been written and included in Fd before the convening of this council.⁴²⁴

As for the claim that the corrections in Fd are unique, corresponding exactly to the second recension and are therefore the source of its changes, Larrainzar primarily relied on what he considered to be ten indisputable proofs. One such proof is found in C.6 q.1 c.17. In Fd this canon ends with the phrase “hii omnes, inquam, nec ad sac ordines nec ad sacros ordines prouehi nec ad accusationem seu ad testimonium ullatenus iuse possunt recipi.” Larrainzar's Gα corrects the errors of his *mano* A by adding 'ros' above 'sac' to make 'sacros,' puts a line through the dittographical mistake of 'nec ad sacros ordines,' and places 'uel gradus' above the first occurrence of 'ordines.' Larrainzar's G τ³ or ω then indicated at a later moment that “nec ad accusationem seu ad testimonium ullatenus iuse possunt recipi” should be cancelled out and replaced with “nec isti nec liberti neque suspecti neque rectam fidem uel dignam conversationem non habentes summos sacerdotes possunt accusare,” which was added in the margin by G τ³ or ω. Larrainzar points out that the first-recension

⁴²³ Ibid., 429, n.15.

⁴²⁴ Ibid., 437-438: “Como se vió, esta ‘colección’ de *Adiciones boloñesas* es necesariamente anterior al año 1148, tal como sugiere la datación de los cánones que cierran la última hoja conservada del cuadernillo veintidós (fol.167vb).”.

reading is found in the *Panormia* 4.66 and the *Polycarpus* 5.1.20, while the changes introduced by G τ³ or ω correspond exactly to the *Tripartita* A 1.21.1. Larrainzar then compares what he has found in Fd with Aa, Bc, and P, noting that Aa, Bc, and P have the same reading as Fd for the first recension, save ‘gradus’ for ‘ordines,’ which for Larrainzar is an important proof that Gω was responsible for introducing this change. More importantly, neither Bc or P have the second-recension correction found in the margins of Fd, and though Aa has this change, it is found in the *Exceptiones quorundam capitulorum in corpore libri omissorum*, which is found on folios 200r to 296v of Aa 23. In short, only Fd can explain all the different readings and how the first-recension version of this canon was transformed into the second recension.⁴²⁵

Soon after Larrainzar published his thesis in *Ius Ecclesiae*, Anders Winroth offered a lengthy critique in the pages of *Revue de droit canonique* as well as in a couple of other

⁴²⁵ Larrainzar, “La primera redacción de C.6 q.1 c.17 terminaba con la frase *hii omnes, inquam, nec ad sacros ordines debent prouehi nec ad accusationem seu ad testimonium ullatenus possunt iuste recipi*, después que la mano Gα corrigiese el error del copista A; éste había escrito ‘nec ad sac ordines nec ad sacros ordines,’ pero sobre *sac* Gα escribe *ros* entre líneas y corrigiendo sobre *ordines* glosa *uel gradus* de conformidad con su fuente, y luego tacha ‘nec ad sacros ordines.’ Con posterioridad, en el momento τ³ o ω, la mano G cancela la frase final *nec ad accusationem seu ad testimonium ullatenus possunt iuste recipi* subrayando su texto, porque añade una nueva y segunda redacción (entre líneas y continuando en el margen) de ese final de c.17 que dice: *nec isti nec liberti neque suspecti neque rectam fidem uel dignam conuersationem non habentes summos sacerdotes possunt accusare*. De las notas de los *Correctores Romani* se podría deducir que la primera redacción se ha tomado de la *Panormia* de Ivo (=IP 4.66, PL 161.1196-97), pero podría ser también del *Polycarpus* (=PC 5.1.20), mientras que la posterior redacción se ajusta al texto de la *Tripartita* (=TrA 1.21.1) y, por tanto, es indudable que esta corrección está mostrando el paso de una primera a una segunda redacción de la obra; en este caso, pues, acierta la *editio romana* al suprimir el período *nec ad accusationem – iuste recipi*, al igual que Friedberg yerra al ofrecer una *recensio mixta* de ambas redacciones.’ Por su parte, el códice aa 23 conserva en efecto la primera redacción de Fd, pero con la más primitiva lectura *gradus* en lugar de *ordines*, más conforme con la fuente formal, y además coincidiendo talmente con la lectura de P, e incluso con la lectura de Bc; después --- cuando se componen sus *exceptiones* finales, quizá --- se incorporan las novedades y modificaciones que aportaban las redacciones de Fd, esto es: se sigue la lectura *ordines* (copiada entre líneas) tachando la palabra *gradus*, se cancela el período *nec ad accusationem – iuste recipi* subrayando su texto, y finalmente se escribe en el margen el período *nec isti --- possunt accusare* a modo de adición, indicando además el exacto lugar de su inserción en c.17. Ciertamente, los tempranos manuscritos de ‘segunda recensión’ asumen la segunda redacción de Fd sin reservas, pero nos queda un ligero rastro de la ‘movilidad’ de ese final del c.17 en la inestable lectura de *gradus* y *ordines*; según los códices, estos términos se eligen alternativamente o incluso se acumulan en algún caso, pero la generalidad de los manuscritos perfieren la lectura *gradus* de las fuentes antiguas. En suma, pues, parece claro que Fd contiene en sí todos los elementos para explicar las diversas lecturas de C.6 q.1 c.17 y el porqué de las variantes que se descubren en su posterior tradición manuscrita,’ 453-454.

publications.⁴²⁶ Although initially open to the possibility that Fd played a central role in the making of the second recension, Winroth ultimately found Larrainzar's arguments unconvincing and as a result rejected his thesis entirely, although with some regret, since it would have made the task of editing the second recension a much easier one for a future editor.⁴²⁷ The first red flag for Winroth was Larrainzar's methodology for dating Fd. As mentioned above, Larrainzar believed that *manos* A Γα Γτ¹ B should be dated before 1148, since they precede the two canons from the Council of Reims of 1148 found on folio 167vb. The problem with this argument, according to Winroth, is that it assumes these conciliar canons were added to Fd in the same year they were promulgated or shortly thereafter, an assumption he believed Larrainzar failed to support with evidence. What these canons do reveal, according to Winroth, is that the scribe responsible for folios 104r-167v must have worked after 1148.⁴²⁸ Just as unconvincing for Winroth were Larrainzar's palaeographical arguments, which rested on a comparison of *mano* A with three medieval manuscripts: two of which are in Milan, while the other is in Washington D.C. Larrainzar argued that the script of these three manuscripts were very similar to *mano* A. Winroth, however, found that the scripts differ in numerous and significant ways. For instance, Fd has a straight 'd,' while the manuscripts from Milan have an uncial 'd.' Also, the lower bow of 'g' in Fd is not

⁴²⁶ Anders Winroth, "Le manuscrit Florentin du Decret de Gratien: une critique des travaux de Carlos Larrainzar sur Gratien, I," *Revue de Droit Canonique* 51/2 (2001): 211-231. Ibid., *The Making of Gratian's Decretum*. Ibid., "Recent Work."

⁴²⁷ Winroth, "Le manuscrit Florentin," 212-213.

⁴²⁸ Ibid., 214-215: "C. Larrainzar en conclut que les mains qui ont rédigé le manuscrit avant la main C ont travaillé *avant* 1148. Cet argument serait convaincant si l'on pouvait prouver que ces canons de Reims ont été non seulement composés et promulgués en 1148, mais aussi copiés dans ce manuscrit spécifique, durant cette même année. Or, Larrainzar n'entend même pas de le prouver. Il n'y a, évidemment, aucune raison de croire que les canons ont été copiés dans Fd précisément en 1148. De tels textes continuent de susciter de l'intérêt et d'être copiés dans de nombreux manuscrits bien après leur promulgation. Ainsi, on ne peut en conclure que ceux qui ont travaillé sur le manuscrit avant la main C (c'est-à-dire les main A, pour le texte principal sur les fols 1-104r, et B, pour le texte du supplément sur les fols. 104r-167v) ont travaillé avant 1148. Cet argument n'est pas valable."

comparable to what is found in the Washington D.C. manuscript.⁴²⁹ Finally, and perhaps most importantly for Winroth, Giulia Bologna, the editor of the book containing the three manuscripts, dates the Washington manuscript to the last quarter of the twelfth century and the Milanese manuscripts to the tenth century and the first half of the twelfth century respectively.⁴³⁰

The second part of Winroth's critique concerns the corrections of Fd. Do these corrections correspond to the second recension? Not always. Winroth takes C. 3 q. 9 c. 15 as his example. The first-recension version of this canon omits a passage which appears in all of Gratian's major sources and the second recension. Winroth believes this omission in Fd was probably the result of a scribal error. The canon makes better sense with the missing passage, but it is not included in Fd by any correcting hand: not in the margins, not in between the lines, not in the supplement. Yet, it is found in Bc and Aa. In Bc it is found in between the lines, with an indication as to where it should be added in the main text, while in Aa it is found in the margin. Winroth asked how are we to explain this phenomenon if Fd is in fact the *borrador* of the second recension, and how are we to explain the source of this correction if the original exemplar does not contain it? For Winroth, the answer is clear: Fd does not contain the original draft of the second recension.⁴³¹

⁴²⁹ Ibid., 216: "La main A dans Fd, par exemple, utilise le plus souvent un 'd' droit, alors que dans l'un des manuscrits de Milan en trouve toujours un 'd' oncial. La boucle inférieure fermée du 'g' de Fd n'est pas comparable à la boucle plus ouverte de Washington."

⁴³⁰ Ibid., 217: "Giulia Bologna, qui a publié les reproductions utilisées par C. Larriazar, date le manuscrit de Washington du dernier quart du XII siècle, l'un des manuscrits milanais de la première moitié du XII siècle et l'autre du X siècle (*sic!*)."

⁴³¹ Ibid., 218-220: "On ne comprend pas bien pourquoi ces mots sont absents de la première recension. On les trouve dans toutes les sources habituelles de Gratien, du moins dans les manuscrits et éditions que j'ai examiné. Cette absence s'apparente à une erreur (probablement due à un saut du même au même sur 'dicant'), tant il est difficile de donner un sens au reste de la phrase telle qu'elle existe ici. Ce Canon est l'un des multiples canons qui, dans Fd corrigé, ne 'correspondent pas parfaitement' à la seconde recension, car les mots manquants n'ont été ajoutés nulle part. Ils n'apparaissent ni entre les lignes, ni dans les marges, ni dans le supplément à la fin du volume où ce type de correction est généralement consigné dans Fd. Par ailleurs, deux des trois autres exemplaires qui nous sont parvenus de la première recension contiennent des corrections qui rendent le texte plus ou moins identique à la seconde recension. Dans P il n'y a, dans

But what about Larrainzar's ten proofs suggesting that only Fd^{PC} corresponds to the second recension? Do these hold up under analysis? Winroth does not think so. He took C. 6 q. 1 c. 17 as his example. Winroth agrees that Larrainzar is correct to point out that turning 'sac' into 'sacros,' cancelling out the dittographical error of 'nec ad sacros ordines,' and placing 'gradus' above 'ordines' are changes that reflect Gα's attempt to correct the readings of the first scribe, but where he thinks Larrainzar is mistaken is in suggesting that these corrections were made by Gα.⁴³² Winroth was particularly skeptical about this claim because it was based primarily on a version of the *Panormia* found in the *Patrologia Latina*, a version that at times diverges greatly from what is found in the surviving medieval manuscripts of the *Panormia*. For example, PL contains 'gradus,' but Winroth points out that at least three manuscripts of the *Panormia* have 'ordines,' with one of these having added 'uel gradus' above the line. In two other manuscripts of the *Panormia* only 'gradus' is found. Consequently, it is impossible to affirm that Gratian's copy of the *Panormia* had 'gradus,' and therefore that the original reading of 'ordines' was in fact an error of the first scribe.⁴³³ Considering that nine other *Decretum* manuscripts contain 'ordines,' Winroth

l'ensemble du manuscrit, aucune correction. Dans Bc, un correcteur a ajouté, entre les lignes, les mots '*nec proferant de aliis causis vel negociis testimonium*' et a indiqué la position exacte où il fallait les insérer. Dans Aa, un correcteur a ajouté dans la marge les mots manquants '*nec de aliis causis vel negotiis testimonium ferant.*' En d'autres termes, le texte manquant (présent dans la plupart des manuscrits contenant la seconde recension), n'a pas été ajouté dans Fd, mais a bel et bien été placé dans Aa et Bc. Cela contredit le fondement même de la thèse de C. Larrainzar. Si Fd, comme le croit Larrainzar, était l'exemplaire sur lequel Gratien a travaillé, pourquoi ce dernier n'aurait-il pas corrigé ce qui est si clairement une erreur? Et pourquoi cette correction apparaît-elle dans deux autres copies du texte de la première recension? Quelle est la source de cette correction si l'exemplaire original du travail de Gratien ne la contient pas? La réponse à toutes ces questions est que, comme je vais le démontrer à présent, Fd n'est pas l'original de la seconde recension de Gratien.'

⁴³² Ibid., 220: "Ce texte a ensuite été modifié à deux reprises dans Fd. Tout d'abord, le 'sac' e été corrigé en 'sacros' par l'ajout des lettres 'os' au-dessus de la ligne. Au dessus du mot 'ordines', apparaît que le même scribe (à qui C. Larrainzar donne le nom de Gα) ajouté 'vel gradus'. On a supprimé la répétition qui suit en rayant les mots '*nec ad sacros ordines*'. C. Larrainzar interprète ces changements comme une rectification des erreurs du premier scribe, et je suis d'accord avec cette interprétation."

⁴³³ Ibid., 221: "C. Larrainzar cite l'édition de la *Panormie* d'Yves de Chartres dans la *Patrologie latine* de J.P. Migne, où le texte contient 'gradus.' Cependant, l'édition de la *Patrologie latine* offre une version assez contestable du texte de la *Panormie*. Au moins trois manuscrits de la *Panormie* contiennent la leçon 'ordines', dont un qui offre une leçon alternative: 'vel gradus' au-dessus de la ligne. Au moins deux manuscrits de la

thinks that the more probable explanation is that Larrainzar's *mano* Gα had a copy of the *Decretum* with the reading 'gradus' before him and included it above the line in Fd as an alternative reading.⁴³⁴ But what about the evidence for Fd being the source of the addition "nec isti nec liberti neque suspecti neque rectam fidem vel dignam conversationem non habentes summos sacerdotes possunt accusare" found in the second recension? Does it hold up? Winroth agrees with Larrainzar that the second-recension text found in the margin of Fd was certainly taken from the *Tripartita* A 1.21.1, and that Friedberg's edition is wrong at this point.⁴³⁵ He also agrees that Bc and P do not contain this second-recension addition. But where he disagrees with Larrainzar is in the belief that Aa must have copied this second-recension addition from Fd. How does Larrainzar know that it was not the other way around: Fd copying this second-recension addition from Aa?⁴³⁶ For Winroth, Larrainzar has no answer for this. Winroth believes then that Larrainzar's choice to make Fd the manuscript from which the first recension was turned into second recension was an arbitrary one, especially since Aa also contains all the different elements to explain the divergent readings of C.6 q.1 c.17, as well as the fact that Aa and Bc contain the second-recension text added to C.3 q.9 c.15 but Fd does not.⁴³⁷

Panormie comprennent la leçon 'gradus.' Par conséquent, il est impossible d'affirmer que la source de Gratien ait pu contenir la leçon 'gradus' plutôt que 'ordines' et que la leçon originelle 'ordines' dans Fd soit le fait d'une erreur du scribe."

⁴³⁴ Ibid., 222: "Il n'est donc pas surprenant que l'une des mains correctrices de Fd ait pu ajouter 'vel gradus'. N'importe quel scribe travaillant sur le manuscrit aurait pu penser à cette correction en comparant le texte de Fd avec celui d'un autre manuscrit."

⁴³⁵ Ibid., 222: "On peut remarquer qu'à cet endroit, le texte de Friedberg est dénaturé."

⁴³⁶ Ibid., 224: "Mais comment Carlos Larrainzar sait-il que ce n'est pas l'inverse qui s'est produit, c'est-à-dire que ce n'est pas le correcteur de Fd qui a tout simplement copié les corrections faites par Gratien dans Aa? C. Larrainzar n'a pas fourni la moindre preuve qui attesterait que les corrections de Aa nécessairement dépendent des modifications de Fd."

⁴³⁷ Ibid., 224: "En réalité, Aa aussi 'contient en soi tous les éléments pour expliquer les diverses lectures de C.6 q.1 c.17' dans sa tradition manuscrit postérieure. En faisant de Fd l'original de la second recension, C. Larrainzar fait un choix arbitraire."

The final part of Winroth's paper examines the five distinct moments of *mano G*: $G\alpha$, τ_1 , τ_2 , τ_3 , $G\omega$, which Larrainzar believes was the hand responsible for creating the second recension over the span of a decade. Considering how important this claim is to Larrainzar's overall thesis concerning *Fd*, Winroth was surprised that Larrainzar did not give a detailed palaeographical analysis showing how the different moments of *mano G* are the product of one person, relying instead on the general conclusion that *mano G* is 'une même écriture du XII^e siècle, avec une variété de calligraphies.'⁴³⁸ A comparison of $G\alpha$ and $G\omega$, according to Winroth, will quickly dissuade anyone of Larrainzar's belief that *mano G* was written by the same hand. These two moments of *mano G* are just too different palaeographically.⁴³⁹ Winroth concludes with the topic of abbreviations in medieval manuscripts. Winroth points out that autograph manuscripts usually contain very few abbreviations, while subsequent copies usually contain hundreds of them. *Mano G* contains a plethora of abbreviations, more so than even *mano A*, suggesting to Winroth that here is more evidence that *mano G* is not the work of the author of the *Decretum*.⁴⁴⁰

Although Larrainzar has never answered Winroth's objections with a full-length response, he has devoted some space in subsequent publications to defending his thesis.⁴⁴¹ First and foremost, Larrainzar claims that Winroth has fundamentally misunderstood his use

⁴³⁸ Ibid., 229: "

⁴³⁹ Ibid., 228: "Il appelle la plus ancienne $G\alpha$ et la plus tardive $G\omega$. Ces deux variantes sont si radicalement différentes qu'il me semble extrêmement difficile de croire qu'il puisse s'agir de l'écriture d'une seule et même personne."

⁴⁴⁰ Ibid., 230: "La main G de Carlos Larrainzar, quelle que soit la variante considérée, utilise une pléthore d'abréviations, bien plus fréquemment, par exemple, que la main A."

⁴⁴¹ Carlos Larrainzar, "La firma Boloñesa del Decreto de Graciano," *Initium: Revista Catalana d'història del dret* 9 (2004): 495-515. Ibid., "La formación del Decreto de Graciano por etapas," *ZRG KA* 87 (2001): 67-83; Ibid., "La edición crítica del Decreto de Graciano." For the possible reasons why Larrainzar has not given a full-length response to Winroth's critique, see ibid., "La edición crítica," 71, n.1: "Aparte de alterar el sentido correcto de muchas de mis afirmaciones, retorciendo su exacto sentido por no integrar todos los datos considerados en la investigación, ese estudio es en realidad una descalificación global de mi trabajo mediante juicios genéricos, usando incluso argumentaciones *ad hominem*, que no entran en el análisis de los datos importantes con el rigor adecuado." Ibid., "Y, por otra parte, su 'crítica' a mi datación del códice *Fd* es la caricatura de unas ideas simplonas y estúpidas, que para nada reflejan lo expuesto en mi estudio..." 84, n.19.

of the word ‘original’ with regard to Fd, denying that he ever linked the author of the *Decretum* to a concrete person in history, as if Fd was an original autograph, save the anonymous hand of G, which he maintained was not the hand of a copyist but in fact reflected the will of the author of the work at a particular moment in the evolution of the *Decretum*, and that these changes were the primary source for the entire manuscript tradition of the post-1150 vulgate edition of the *Decretum*. It was in this sense that Larrainzar believed Fd was the original manuscript of the *Decretum*.⁴⁴² Larrainzar also thought Winroth merely asserted rather than proved his conclusions. He took Winroth’s critique of his ten proofs of the uniqueness of Fd as an example. After giving his arguments for why he believed C. 6 q. 1 c. 17 did not support Larrainzar’s thesis, Winroth claimed that the remaining nine proofs were based on the same reasoning used for C. 6 q. 1 c. 17, and therefore were just as unconvincing. Such an assertion, according to Larrainzar, was merely an excuse for not giving the other nine proofs a full and detailed examination which he believed they deserved.⁴⁴³

Considering that the primary correcting hand in *Causae* 16 to 20, which I and others refer to as Fd^{PC}, uses the same color ink and script as Larrainzar’s *mano* Gα, Larrainzar’s

⁴⁴² Carlos Larrainzar, ‘La firma Boloñesa,’ 503-04: ‘En mi studio sobre el código Fd, en ningún lugar he planteado el problema de la atribución de la autoría del *Decretum* a ningún concreto personaje de la historia, como si Fd fuese su original autógrafo, salvo a la «anónima» mano del código por mí denominada G, que no es la mano de un copista; mi afirmación central es que las modificaciones hechas por «esta mano» sobre el texto están mostrando la voluntad del autor de la obra en ese momento de evolución de la redacción, y que esos cambios hechos sobre su textualidad son la fuente primera de toda la tradición manuscrita del *Decretum vulgatum* o divulgado: es decir: Fd es el código «original» del que pende la tradición del Decreto difundido después de 1150. Por eso he escrito que Fd es «el código original que, conteniendo una primera redacción de la *Concordia*, fue utilizado por su autor para elaborar la segunda redacción de su obra».’

⁴⁴³ Larrainzar, ‘La edición crítica,’ 84-85, n.19: “Por su parte, Winroth (vid. arriba nota 1) se detiene sólo en discutir mis consideraciones sobre C.6 q.1 c.17 en Fd para concluir: ‘La preuve qu’il avance, fondée sur C.6 q.1 c.17, ne prouve certainement pas la véracité de ce qu’il ne fait qu’imaginer. Les neuf autres ‘preuves’ qu’il propose reposent sur le même type d’arguments et son ainsi tout aussi peu convaincantes’ (p.224). Por qué hemos de aceptar (o sea, creer en su palabra) una afirmación tan genérica?...En fin, pienso que mis análisis sobre Fd merecen mayor atención, y también mayor rigor de estudio, que el demostrado por Anders Winroth en su peculiar ‘crítica.’”

thesis, if correct, has very important implications for editing any part of the first recension of the *Decretum*. What then are we to make of it? Has Larrainzar made a revolutionary discovery on the making of the *Decretum* or is Winroth's critique justified? As mentioned above, Larrainzar is persuaded that Winroth has misunderstood his use of the word 'original' with regard to Fd, claiming that Winroth has equated all his twelfth-century *manos* in Fd with the 'original autógrafo' of the second recension, and therefore has fundamentally misunderstood his entire thesis, but I do not think this is the case. Winroth never uses the words 'original autograph' to describe Larrainzar's *manos* A,B,C,D,E,F. He only uses the word 'original.'⁴⁴⁴ When Winroth alludes to Fd as being an 'original autograph,' it is only in connection with the activity of *mano* G, following Larrainzar's own terminology and views at this point, at least in one publication after his original paper on Fd.⁴⁴⁵ Where Winroth seems to have misunderstood Larrainzar's thesis is in identifying *mano* G with an historical person, namely, Gratian, which Larrainzar never does, preferring instead to leave *mano* G anonymous.⁴⁴⁶ But even here, the misunderstanding again lies with Larrainzar, not Winroth.

⁴⁴⁴ Winroth, "Le manuscrit Florentin," 212: "...il serait le manuscrit original de la second recension du Décret de Gratien..." Ibid., 213: "Pour prouver que Fd est le manuscrit original de la second recension, Carlos Larrainzar utilise une argumentation triple." Larrainzar, "El Decreto de Graciano del Códice Fd," 425: "El códice Fd non sólo contiene una primera y reducida *Concordia* de Graciano sino que es *códice original* donde el autor de la obra ha construido la *ulterior redacción* de su *Concordia* más amplia, luego conocida como Decreto de Graciano."

⁴⁴⁵ Winroth, "Le manuscrit Florentin," 217: "Fd est un manuscrit déroutant qui abonde en corrections et en additions de mains différentes. C. Larrainzar a consacré beaucoup de temps et d'efforts à l'examen de ces mains qui ont complété et corrigé Fd. Les résultats de ces recherches constituent le coeur de son argumentation. C. Larrainzar affirme que la parfaite correspondance entre les corrections et la seconde recension du Décret prouve que seul l'auteur peut les avoir faites ou avoir présidé à leur réalisation. La thèse de C. Larrainzar n'est pas impossible en soi. Des brouillons et *autographes originaux* émanant de nombreux auteurs médiévaux tels que Jean Scot Érigène, Richer de Reims, Albert le Grand et Thomas d'Aquin, nous sont parvenus." (italics mine.) Larrainzar never writes 'original autógrafo' in his original article on Fd in "El Decreto de Graciano del Códice Fd" *Ius Ecclesiae* 10 (1998), but only uses this language in "La firma Boloñesa del Decreto de Graciano" *Initium* 9 (2004), where he writes 'En mi estudio sobre el códice Fd, en ningún lugar he planteado el problema de la atribución de la autoría del *Decretum* a ningún concreto personaje de la historia, como si Fd fuese su **original autógrafo**, salvo a la «anónima» mano del códice por mí denominada G, que no es la mano de un copista;' p. 503-504. (bold face type mine).

⁴⁴⁶ Winroth, "Le manuscrit Florentin," 212: "Les nombreuses corrections présentes dans ce manuscrit auraient été apportées soit par **Gratien** lui-même, soit par de scribes travaillant sous sa direction, selon C. Larrainzar." (bold face type mine) For Larrainzar's decision to leave *mano* G anonymous, see footnote 52.

To be sure, Winroth does refer to Gratian as being the author of the work of *mano G*, but he does this only for convenience sake, writing that ‘C. Larrainzar n’affirme jamais explicitement que l’auteur qui a fait ces corrections se nommait Gratien. Je vais, néanmoins, utiliser ce nom pour l’auteur, afin de simplifier l’argument.’⁴⁴⁷

It seems clear then that Winroth has correctly understood Larrainzar’s long and complicated thesis, but are his criticisms of it justified? With respect to Larrainzar’s dating the majority of Fd to the 1140’s, Winroth was right to point out that it does not necessarily follow that the two canons from the Council of Reims of 1148 found on folio 167vb must have been included in Fd in 1148 or shortly thereafter. They of course may have been, but Larrainzar has provided no evidence that this in fact was the case.⁴⁴⁸ What about Larrainzar’s palaeographical arguments? Larrainzar believed that the script of *mano A*, which contains the first recension in Fd, could be dated to the 1140’s on the basis of a comparison with three other medieval manuscripts, but none of the scripts of these three manuscripts have been dated to the middle of the twelfth century. Instead, one has been dated to the tenth century, while the other two have been dated to the first half and last quarter of the twelfth century. These dates of course could be wrong, but Larrainzar gives no evidence for why he thinks these manuscripts should be dated to the middle of the twelfth century rather than to the dates assigned to them by Giulia Bologna. Perhaps the strongest criticisms put forward by Winroth were those dealing with the corrections of *mano G* and the belief that these corrections were made by the author of the *Decretum* himself. It seems a tall order to reconcile Larrainzar’s thesis with the evidence concerning C.

⁴⁴⁷ Winroth, “Le manuscrit Florentin,” 212, n. 3.

⁴⁴⁸ Winroth, “Recent Work,” 8: “Larrainzar has confused the date of the council of Rheims with the date when hand C copied decisions of that council into the manuscript. Those dates may be far removed from each other. This is easy to recognize if one considers that hand G on folio 5 of the Florence manuscript added a canon from the council of Braga. This does not make hand G into a seventh-century hand.”

3 q.9 c.15, where a second-recension addition is found in Aa and Bc but not Fd. How are we to explain this if Fd was the source for all the changes found in the second recension? And as helpful as Fd's marginal addition to C.6 q.1 c.17 is for reconstructing the second-recension version of this canon, correcting the mixed-recension reading of Friedberg's edition, it does not necessarily follow that Fd must have been the original source of this change, since Aa also contains all the changes found in Fd. Finally, what are we to make of the activity of *mano* G? Does it reflect the will of the author of the *Decretum*? I do not think so. Although G α and G τ^1 share some similar letter forms, G α and G ω are too different palaeographically to believe they were written by the same person who used different color inks and calligraphy over the span of ten years.⁴⁴⁹ In addition to the differences in palaeography between the different moments of G, Larrainzar's belief that G ω was still actively working between 1155 and 1160 is too late for believing its activity reflects the will of the author of the *Decretum*. The second recension was published no later than 1150, judging from an Italian court case that cites it in that year.⁴⁵⁰

The Textual Tradition

When all the different elements of each first-recension manuscript are considered and compared with each other (second-recension interpolations, unique readings), it seems that the only thing Aa, Fd, and Sg have in common is that they are versions of Gratian's *Decretum*. However, if the first-recension elements of each manuscript are isolated and compared with each other, then it becomes possible to detect a close textual relationship between Aa, Fd, and Sg with respect to the first recension.

⁴⁴⁹ To compare G α and G τ^1 , see folio 23rb. To compare G α and G ω , see folio 10va for the former and folio 56va for the later.

⁴⁵⁰ Paolo Nardi, "Fonti canoniche in una sentenza senese del 1150," in Peter Linehan, ed., *Life, Law and Letters: Historical Studies in Honour of Antonio García y García* (Studia Gratiana 29: Rome, 1998): 661-670.

The first evidence that Aa, Fd, and Sg are closely related is found in C.16 q.1 c.17 (line 130), where they all contain the reading ‘conditio,’ while all of the second-recension manuscripts contain ‘cognitio.’ The second is found in the opening sentence of the case statement of *causa* 18 (line 1056), where Aa, Fd, and Sg contain ‘monachus,’ while all of the second-recension manuscripts contain ‘abbas.’ The final one is in the inscription to C.16 q.7 c.13 (line 904), where Aa, Fd, Sg and one second-recension manuscript, Ty, contain ‘Leonis papa,’ while the rest of the second-recension manuscripts have omitted this reference altogether. Although Fd contains numerous errors not found in Aa, they nonetheless share two important errors. The first common error is found in C.16 q.1 d.p.c. 48 (line 450), where Fd and Aa contain the erroneous reading of ‘primitiua’ instead of ‘primitias,’ which is what we find in Aa^{pc} and the second-recension manuscripts. The second common error is found in the rubric to C.20 q.3 c.2 (line 1374-5), where Aa and Fd contain the reading ‘venire’ instead of ‘redire,’ which is what Fd^{pc} and all the second-recension manuscripts contain. The shifting agreements of Sg with Aa and Fd suggests that these manuscripts are independent witnesses to a shared archetype. Fd and Sg share ten unique variants, two of which are found in no other *Decretum* manuscript, including second-recension manuscripts.⁴⁵¹ The first is in C.16 q.7 c.2 (line 802), where Fd and Sg contain the reading ‘vestri,’ while Aa, the second-recension manuscripts, and the probable source, *3L* 2.8.71, contain the reading ‘nostri.’ The second one is found toward the end of C.16 q.7 c.11 (line 899), where Fd and Sg have omitted ‘reus,’ while Aa, the second-recension manuscripts, and the probable source, the *Tripertita* 2.49.5 contain it. Although Aa and Sg share fourteen unique variants not found in Fd, all of these variants are found in second-recension

⁴⁵¹ Ten variants unique to Fd and Sg. C.16 q.1 c.11: ‘vetere’; C.16 q.1 c.14: ‘legitur’; C.16 q.1 d.p.c.31: ‘quod’; C.16 q.1 c.33: ‘non’ *om.*; C.16 q.7 c.1: ‘septimus’; C.16 q.7 c.2: ‘vestri’; C.16 q.7 c.11: ‘reus’ *om.*; C.17 q.1 d.p.c.2: ‘computandus’; C.17 q.3 init.: ‘priora’; C.18 q.2 c.6: ‘vel’

manuscripts except one.⁴⁵² This exception is found in C.18 q.2 c.5 (line 1095), where the rubric ‘De libertate monachorum’ is missing in Aa and Sg. Finally, Aa and Fd^{pc} are closely related, sharing a few unique variants. For example, in C.16 q.1 c.1 (line 21), Aa and Fd^{pc} have both added ‘vivere singulariter’ after ‘per omnia singulariter,’ with Fd^{pc} doing so above the line. The exact relationship, however, between Aa and Fd^{pc} is difficult to determine, since Aa and Fd^{pc} often do not contain the same reading for important variants. For instance, in C.16 q.1 c.2 (line 29), Aa contains the correct reading of ‘ministerio,’ while Fd contains ‘monasterio,’ which presumably was also the reading of Fd^{pc}^s exemplar, since ‘monasterio’ was left unchanged. Another example of this phenomenon is found in C.16 q.1 c.49 (line 476), where Aa contains the correct reading of ‘nubibus,’ while Fd and presumably Fd^{pc}^s exemplar contain the reading ‘manibus.’ It seems then that the most plausible explanation for the occasional agreement between Aa and Fd^{pc} is that they are independent witnesses of a shared archetype. Finally, Fd^{pc} and Aa^{pc} are closely related, sharing one important variant, which is found in C.16 q.3 d.a.c. 14 (line 698), where Aa^{pc} and Fd^{pc} have both added in the exact same location above the line the word ‘prescriptio.’ The copyist of Aa^{pc} also seems to have kept an eye on a second-recension manuscript, sometimes including its readings above the line in Aa. An example of this is found in the first part of the case statement of *causa* 18 (line 1056), where Aa^{pc} has added ‘abbas’ above the line, conforming with the reading of second-recension manuscripts.

Description of the Edition

⁴⁵² Fourteen variants unique to Aa and Sg. C.16 q.1 c.8: ‘sit claustro suo claustro’; C.16 q.1 d.p.c. 10: ‘exequias’; C.16 q.1 c.48: ‘Ephesiorum’; C.16 q.1 c.51: ‘xenodochiis’; C.16 q.3 d.p.c. 7: ‘possideri’; C.16 q.3 c.10: ‘legitur’; C.18 q.2 c.5: ‘De libertate monachorum’ *om.*; C.18 q.2 d.p.c.5: ‘concilio’; C.19 q.3 c.3: ‘recedere’; C.19 q.3 c.4: ‘semel sunt’; C.20 q.1 c.2: ‘relaxentur’; C.20 q.2 c.1: ‘minore’; C.20 q.2 c.2: ‘parentibus potestas’

The first recension of Gratian's tract on monasticism has 141 canons. The great majority of these are found in *causa* 16, with the remaining canons distributed relatively evenly among the rest of the *causae*.⁴⁵³ Each *causa* contains a brief description of a legal case, questions relating to it, inscriptions, rubrics, canons, and Gratian's *dicta*, which are located before and after the canons. In the following edition, case statements are preceded by a capital C, inscriptions are in italics, rubrics are in capital letters, and canons and *dicta* are in regular type. Following the layout of Fd, I have placed a capital Q. and the appropriate number after the description of the legal case and the questions relating to it. These organizational features are nearly identical in Aa and Fd, although there are examples of divergences between the two. The rubric for C. 16 q. 1 c. 40 (line 356), for example, is not the same in both manuscripts. The scribe responsible for the rubrics in Fd transcribed the wrong rubric for canon 40. Instead of writing "ubi multitudo fidelium excrescit episcopi sunt ordinandi," which is essentially an excerpt of the first sentence of canon 40 and is found in Aa, Fd has "communione priuetur qui decimas vel oblationes extra episcopi conscientiam retinere voluerit," which is the rubric for canon 41, at least in its Fd^{PC} form.⁴⁵⁴ Although the division markers of the *Decretum* in Aa and Fd are virtually the same, there are occasions where they do differ. For example, Fd has no division marker for the beginning of C. 16 q. 2 d.a.c. 1 (line 514), while Aa does. When Aa and Fd are missing a division marker and I think one is needed, I supply one. Aa and Fd, for example, do not indicate that the sentence "unde datur intelligi quod in populari frequentia nichil esse possunt" after C. 16 q. 1 c. 5 (line 45) is a *dictum post canonem*, but I think it is, so I have placed the initials d.p.c. before it in the

⁴⁵³ C. 16: 94 canons; C. 17: 9 canons; C. 18: 13 canons; C. 19: 10 canons; C. 20: 15 canons.

⁴⁵⁴ The rubric to C. 16 q. 1 c. 40 in Fd originally read 'communione priuetur qui decimas uel oblationes dispensare uoluerit,' and was only later changed to 'communione priuetur qui decimas vel oblationes extra episcopi conscientiam retinere voluerit' by Fd^{PC}.

edition. I have also sometimes changed what Emil Friedberg considered a *dictum post canonem* into a *dictum ante canonem*.⁴⁵⁵ I did so because I thought the content of the *dictum* fit better with the following canon rather than the prior one. For spelling, I have followed Fd, unless I thought it would be more helpful for the reader to include the standardized spelling of the word in question. For example, in C. 16 q. 1 c. 51 (line 499) Fd has ‘zenodochiis,’ which I have changed to ‘xenodochiis,’ following Aa and Sg at this point. Another example is in C. 16 q. 1 c. 48 (line 438), where Fd has ‘Effesiorum,’ which I have changed to ‘Ephesiorum,’ again following Aa and Sg. I have also standardized the capitalization and punctuation. The footnotes include variants from the different manuscripts, references to the material sources, references to earlier canon law collections and references to biblical citations.⁴⁵⁶ Earlier canon law collections which I have identified as serving as Gratian’s formal source appear in bold type.

Editorial Principles

Since Fd^{ac} does not contain second-recension interpolations in the body of the manuscript, I have made it the base manuscript for the following edition. That said, I have departed from its readings when there are good reasons to do so. For example, in C.16 q.1 c.49 (line 460) the scribe of Fd (or its exemplar) has misread the abbreviation for ‘ubertatem’ as ‘uobis tantum.’ Fd also at times confuses the morphology of verb conjugations. In C.16 q.1 c.49 (line 465), for example, Fd contains ‘ostendet,’ while Aa contains ‘ostendit,’ which is the correct form for the third conjugation. Another example of this kind of error is found in C.16 q.7 c.3 (line 837), where Fd mistakenly contains the reading ‘vendent,’ while Aa

⁴⁵⁵ Compare C. 16 q. 1 d.a.c. 51. My thanks to Paul Brand for suggesting that I reconsider this aspect of the *dicta*.

⁴⁵⁶ The material source refers to the original source of the canon (e.g. St Augustine), while the formal source refers to the immediate source (e.g. *collectio canonum* of Anselm of Lucca).

contains the reading 'vendunt,' which is the correct form for a third conjugation verb in the third person plural. I have also departed from Fd when the grammar/sense requires me to do so. For example, in C.16 q.1 d.p.c.30 (line 248) Fd and a few second-recension manuscripts contains the reading 'monachus,' while Aa and the majority of second-recension manuscripts contain 'monachos,' which makes better sense in the context of the sentence. Although I have adopted many of the corrections of Fd^{pc} I have not always done so, since there are no obvious reasons to believe that Fd^{pc}'s exemplar was the same as the main hand of Fd. There are also occasions where a comparison with the formal source(s) suggests that the reading found in Aa Sg represents the reading found in the ultimate archetype of the first recension. For example, in C.16 q.1 c.37 (line 331) Fd contains the reading 'temporum', while Aa Sg Friedberg's edition and the probable formal source, Anselm's *collectio canonum* 6.96(A), contain 'temporis.' A comparison with the formal source has also revealed on certain occasions that Fd, Aa or even Fd Aa Sg does not represent the reading of the ultimate archetype of the first recension. For example, in C.16 q.1 c.32 (lines 293-94) Fd Aa and Sg all contain the seemingly untranslatable 'tempus' in the clause "et ipse ad tempus emendationem ecclesiastica coherceatur censura," while the formal source of this canon, 3L App.17.3, does not.

1 **EDITION OF CAUSAE 16 TO 20**

2 **C. 16**

3 **d. init.** Quidam abbas habebat parrochitanam ecclesiam; instituit ibi monachum,⁴⁵⁷ ut officium populo
4 celebraret. Possedit eam per xl.⁴⁵⁸ annos sine aliqua interpellatione. Tandem querela aduersus
5 abbatem mouetur a clericis baptismalis ecclesie,⁴⁵⁹ in cuius diocesi parrochitana illa⁴⁶⁰ ecclesia
6 consistebat. Hic primum queritur, utrum liceat monachis officia populis⁴⁶¹ celebrare, penitentiam dare
7 et baptizare? Secundo, si contigerit eos capellam habere episcopali beneficio, an ab eis sint instituende,
8 an ab episcopis? Tertio, an iura ecclesiarum⁴⁶² prescriptione tollantur? Quarto, si ecclesia aduersus
9 ecclesiam prescribat,⁴⁶³ an etiam monasterium aduersus ecclesiam prescribere possit? Quinto, si
10 capellam in suo territorio edificatam iure territorii sibi uendicare ualeat? Sexto, si archipresbiter uel
11 episcopus sua auctoritate, non iudiciaria sententia,⁴⁶⁴ capellam illam⁴⁶⁵ inreperit, an cadat⁴⁶⁶ a causa,⁴⁶⁷
12 ut ecclesia, cui presidet, non ultra habeat ius repscendi quod suus pastor illicite usurpauit? Septimo
13 queritur, si laici capellam illam⁴⁶⁸ tenebant, ut quibusdam moris est et⁴⁶⁹ in manibus abbatis eam
14 refutauerunt⁴⁷⁰ et ordinandam tradiderint, an consensu episcopi et clericorum abbas possit eam
15 tenere?

16 **Q.1**

17 **d.a.c.1** Quod monachi⁴⁷¹ officia populis celebrare non possint, multis auctoritatibus probatur, quarum
18 prima est illa sancte⁴⁷² Nicene Sinodi, qua dicitur

⁴⁵⁷ monachum Fd^{pc}

⁴⁵⁸ xl. Fd; lx Aa Mk In

⁴⁵⁹ ecclesie *sup. lin.* Aa^{pc}

⁴⁶⁰ illa *sup. lin.* Fd¹; Mk

⁴⁶¹ populis *sup. lin.* Fd^{pc}

⁴⁶² ecclesiarum] ecclesie Fd

⁴⁶³ prescribat] an etiam monasterium aduersus ecclesiam prescribat *add.* Fd, which is crossed out by Fd^{pc}

⁴⁶⁴ iudiciariam sententiam Fd^{ac}

⁴⁶⁵ illam] suam Aa

⁴⁶⁶ an cadat *sup. lin.* Fd^{pc}

⁴⁶⁷ a causa] a sua Aa^{ac}; a causa Aa^{pc}

⁴⁶⁸ illam *sup. lin.* Fd^{pc}; *om.* Aa

⁴⁶⁹ moris est et] Aa Sg; mortis et Fd; moris et Fd^{pc}; moris est Fr

⁴⁷⁰ refutauerunt Fd^{pc}

⁴⁷¹ monachis Fd^{ac}

⁴⁷² sancte *sup. lin.* Fd^{pc}

19 **1**⁴⁷³ MONACHORUM CONUERSATIO AB OMNIBUS DEBET ESSE DISCRETA.

20 Placuit omnibus residentibus in sancta Nicena sinodo, ut monachorum conuersatio et uita secundum⁴⁷⁴

21 ethimologiam nominis ab omnibus discrepet. Monachus enim grece, latine singularis, unde monachum

22 per omnia singulariter⁴⁷⁵ agere oportet. Quamobrem firmiter et insolubiliter omnes precipimus, ut

23 aliquis monachus penitentiam nemini⁴⁷⁶ tribuat,⁴⁷⁷ nisi inuicem, ut iustum est. Mortuum non sepeliat,

24 nisi monachum in monasterio secum commorantem, uel si fortuitu quemquam aduenientium fratrum

25 ibi mori contigerit.

26 **2**⁴⁷⁸ *Item Gregorius Iohanni Ravennati episcopo.*⁴⁷⁹

27 MONASTERII DISTRICTIONEM ET ECCLESIASTICUM MINISTERIUM QUI LIBET TENERE SIMUL NON

28 POSSINT.

29 Nemo potest ecclesiasticis obsequiis deseruire et in monachica⁴⁸⁰ regula ordinate persistere, ut ipse

30 distriktionem monasterii teneat, qui cotidie in ministerio⁴⁸¹ ecclesiastico cogitur permanere.

31 **3**⁴⁸² *Item Innocentius .*

32 MONACHI, QUI AD CLERICATUM PROMOUENTUR, A PRIORI PROPOSITO DISCEDERE NON DEBENT.

33 De monachis, qui diu morantes in monasteriis si postea ad clericatus ordines⁴⁸³ peruenerint,⁴⁸⁴

34 statuimus non debere eos a priori proposito discedere.

⁴⁷³ *Capitulum incertum*; Ans.5.66(C); Polyc. 4.35.24; Leipzig 276 5.1; **3L App. 25.2**

⁴⁷⁴ secundum] iuxta Fd^{ac}

⁴⁷⁵ singulariter] uiuere et singulariter *add.* Aa *sup. lin.* Fd^{pc}; This addition is also found in *3L*; *om.* Fd^{ac} Mk Sa Sb Hk Mz In Kb Br Pk Tr Vd Vp Cd Bi Ka Tz Ty; Vnde monachum singulariter agere omnia oportet Sg

⁴⁷⁶ nemini] minime Fd^{ac}

⁴⁷⁷ tribuant Aa

⁴⁷⁸ Gregorius M., *Reg.* 5.1 (CCSL 140.266; JE 1317); Ans. 5.55; Ans. (Aucta) 5.67; Trip. 1.55.101; Polyc. 3.15.12; **3L 2.28.3**; 9L 5.4.4

⁴⁷⁹ archi *sup. lin.* Fd^{pc}; archiepiscopo Aa Mk Sa Sb Hk Mz In Kb Tr Vd Vp Cd Bi Ka Sg Tz Ty

⁴⁸⁰ monachina Fd^{ac}

⁴⁸¹ monasterio Fd Mz In^{ac} Br Vp^{ac} Ka^{ac}; ministerio Aa Mk Sa Sb Hk In^{pc} Kb Pk Tr Vd Vp^{pc} Cd Bi Ka^{pc} Sg Tz Ty

⁴⁸² Innocent I, ep. 2.10-11.13 (PL 20.477A; JK 286); Polyc. 4.35.30; **3L 2.29.10**; 9L 5.5.10

⁴⁸³ ordinem Aa Sa Sb In Vd Sg Tz; ordines Fd Mk Hk Mz Kb Br Pk Tr Vp Cd Bi Ka Ty

⁴⁸⁴ perueniter Fd^{ac}

35 **d.p.c. 3** Si ergo, sicut Innocentius diffinit, a suo⁴⁸⁵ proposito eis⁴⁸⁶ discedere non licet, et sicut Gregorius
 36 testatur in monastica⁴⁸⁷ regula deuote⁴⁸⁸ persistere et ecclesiasticis obsequiis simul deseruire non
 37 possunt, patet quod parrochitanis ecclesiis monachi prefici non⁴⁸⁹ possunt.

38 **4⁴⁹⁰** *Item Ieronimus ad Riparium et Desiderium.*

39 MONACHUS NON HABET OFFICIUM DOCENTIS SED PLANGENTIS.

40 Monachus non doctoris sed plangentis habet officium, qui uel se uel mundum lugeat et Domini pavidus
 41 prestoletur aduentum.

42 **5⁴⁹¹** *Idem ad Paulinum.*

43 IN POPULARI FREQUENTIA MONACHI ESSE NON POSSUNT.

44 Si cupis esse quod⁴⁹² diceris, monachus, id est solus, quid facis in urbibus, que utique non sunt
 45 solorum⁴⁹³ habitacula, sed multorum.

46 **d.p.c. 5** Vnde datur intelligi quod in populari frequentia⁴⁹⁴ nichil esse possunt.⁴⁹⁵

47 **6⁴⁹⁶** *Idem ad Eliodorum episcopum.*

48 MONACHUS PASCITUR, CLERICI PASCUNT.

49 Alia causa est monachi, alia clerici. Clerici oues pascunt: ego pascor; illi de altari uiuunt: michi uero
 50 securis quasi ad radicem infructuose arboris ponitur⁴⁹⁷, si munus ad altare non defero. Michi ante
 51 presbiterum sedere non licet. Illi, si peccauero, licet me tradere sathane in⁴⁹⁸ interitum carnis, ut
 52 spiritus sit saluus in die Domini.

⁴⁸⁵ suo *sup. lin.* Fd^{pc}

⁴⁸⁶ ei Fd^{ac}

⁴⁸⁷ monachica Aa

⁴⁸⁸ devoto Fd^{ac}

⁴⁸⁹ non *om.* Fd^{ac}

⁴⁹⁰ Hieronymus, *Contra Vigilantium*, 15 (PL 23.367D); **Trip. 3.11.2**; Pan. 3.176; Polyc. 4.35.13; 3L 2.29.12; 9L 5.5.12

⁴⁹¹ Hieronymus, *ep.* 58.5 (CSEL 54.533); **Trip. 3.11.1**; Pan. 3.175

⁴⁹² quod *sup. lin.* Fd^{pc}

⁴⁹³ solitorum Fd^{ac}

⁴⁹⁴ frequentia] *add.* monachi esse non possunt Aa

⁴⁹⁵ nichil esse possunt *om.* Aa

⁴⁹⁶ Hieronymus, *ep.* 14.8 (CSEL 54.55); Ans.7.116(A)

⁴⁹⁷ michi – ponitur] cf. Luk. 3.9

⁴⁹⁸ in *sup. lin.* Fd^{pc}

- 53 **7**⁴⁹⁹ *Idem ad Rusticum.*
- 54 NON LICET ALIQUID MONACHIS⁵⁰⁰ AGERE SINE PRESBITERORUM CONSILIO.
- 55 Ecclesia habet senatum cetum presbiterorum, sine quorum consilio nichil monachis agere licet.
- 56 Roboam filius Salomonis ideo perdidit regnum, quia audire noluit⁵⁰¹ presbiteros suos.⁵⁰² Senatum
- 57 quoque Romani habebant quorum consilio cuncta agebant et nos⁵⁰³ habemus senatum nostrum
- 58 cetum⁵⁰⁴ presbiterorum.
- 59 **8**⁵⁰⁵ *Item Eugenius Papa.*
- 60 SECUNDUM ETHIMOLOGIAM NOMINIS, SOLITARIAM VITAM MONACHUS DUCAT.
- 61 Placuit communi nostro concilio, ut nullus monachorum pro lucro terreno de⁵⁰⁶ monasterio exire
- 62 nefandissimo ausu presumant, neque penitentiam dare neque filium de baptismo accipere neque
- 63 baptizare neque infirmum uisitare neque mortuum sepelire neque ad ecclesiam secularem transire
- 64 neque qualibuscumque⁵⁰⁷ negotiis sese implicare.⁵⁰⁸ Sit contentus suo claustro,⁵⁰⁹ quia sicut piscis sine
- 65 aqua caret uita, ita sine monasterio monachus. Sedeat itaque solitarius, et taceat, quia mundo mortuus
- 66 est, Deo autem uiuit. Agnoscat nomen suum, monos enim grece, latine⁵¹⁰ unus, achos enim grece,
- 67 latine⁵¹¹ tristis. Vnde dicitur monachus, id est unus tristis. Sedeat igitur tristis⁵¹² et officio suo uacet.
- 68 **9**⁵¹³ *Item Alexander Secundus.*⁵¹⁴
- 69 MONACHI⁵¹⁵ INTRA CLAUSTRUM MORANTES CLERICORUM OFFICIA EXTERIUS NON ADMINISTRENT.

⁴⁹⁹ *Capitulum incertum*

⁵⁰⁰ monachum Fd^{ac}

⁵⁰¹ noluit audire *tr.* Aa

⁵⁰² 1 Kings 12

⁵⁰³ et nos *sup. lin.* Fd^{pc}

⁵⁰⁴ cetum] cet'm Fd; ceterum Fd^{pc}

⁵⁰⁵ *Capitulum incertum*; Ans. 5.68 (A); Ans. 6.213.2(Bb); Polyc. 1.35.1(ver.2); Leipzig 276 5.2

⁵⁰⁶ de *sup. lin.* Fd^{pc}

⁵⁰⁷ qualibetcumque Fd^{ac}

⁵⁰⁸ implicari Fd^{ac}

⁵⁰⁹ sit claustro suo contentus Aa Sg Fr

⁵¹⁰ latine] uel Fd^{ac}

⁵¹¹ latine] uel Fd^{ac}

⁵¹² sedeat — tristis] *add. marg.* Fd^{pc}

⁵¹³ Alexander II *ep.* 120 (PL 146.1406B; JL 4552); Trip.3.11.11

⁵¹⁴ secundum Fd^{ac}

⁵¹⁵ monachos Fd^{ac}

70 luxta tenorem Calcedonensis⁵¹⁶ optimi concilii monachis quamuis religiosis ad normam Sancti⁵¹⁷
71 Benedicti intra claustrum morari precipimus. Vicos , castella, ciuitates peragrare prohibemus, a
72 populorum predicatione omnino cessare censuimus, nisi forte quis de sue anime salute sollicitus, ut
73 eorum habitum assumat eos intra claustrum consulere uoluerit.

74 **10⁵¹⁸** *Item ex Concilio Calcedonensi .*

75 MONACHI, QUI SUNT IN CIUITATIBUS, EPISCOPO DEBENT ESSE SUBIECTI.

76 Qui uere et pure solitariam eligunt uitam digni sunt conuenienti honore. Eos uero qui per singulas
77 ciuitates seu possessiones in monasteriis sunt placet nobis episcopo esse subiectos et quieti operam
78 dare atque obseruare ieiunia et orationes in locis in quibus semel se Deo deuouerint permanentes,⁵¹⁹ et
79 neque communicare ecclesiasticas⁵²⁰ neque seculares aliquas attractare actiones⁵²¹ relinquentes
80 propria monasteria, nisi forte iubeantur propter urgentes necessitates ab ipsius ciuitatis episcopo.
81 Conuenit uero ciuitatis episcopo curam et sollicitudinem necessariam monasteriis exhibere.

82 **d.p.c .10** His ita respondetur: Auctoritas illa Nicene⁵²² synodi prohibet monachos de monasteriis exire
83 et per capellas sepulturas celebrare mortuorum, confluere uidelicet more clericorum ad cuiuslibet⁵²³
84 exsequias celebrandas.⁵²⁴ Ceterum, si apud monasterium aliquis semetipsum tumulari uoluerit, non est
85 prohibendus.

86 **11⁵²⁵** *Vnde Gregorius scribit Iohanni Episcopo de Vrbe Vetere:*⁵²⁶

87 MISSE CELEBRARI, MORTUI SEPELIRI IN MONASTERIO NON PROHIBEANTUR.

88 Agapitus, abbas monasterii sancti Georgii, insinuauit nobis plurima se a uestra sanctitate grauamina
89 sustinere quod in eodem monasterio missas prohibeas celebrari, mortuos etiam interdicas sepeliri. A

⁵¹⁶ Calcedonensis tenorem *tr.* Aa

⁵¹⁷ sancti] beati Aa

⁵¹⁸ *Conc. Chalcedonense* a. 451, c. 4 vers. Hisp. (MHS *Ser. can.* 3.251-52); Reg. Farf. 1.36; 3L 2.29.1; 9L 5.5.1

⁵¹⁹ permanente Fd^{ac}

⁵²⁰ ecclesiastica Fd^{ac}; ecclesiasticis Aa

⁵²¹ accusationes Fd^{ac}

⁵²² illaene Fd^{ac}

⁵²³ cuiuslibet] *add.* mortui Aa

⁵²⁴ celebrantes Fd; celebrandas Aa Mk Sa Sb Hk *sup.lin.*1 Mz In Kb Br Pk Tr Vd Vp Cd Bi Ka Sg Tz Ty

⁵²⁵ Gregorius M., *Reg.* 1.12 (CCSL 140.13; JE 1079); Polyc. 4.35.10; 3L 2.29.29; 9L 5.4.17

⁵²⁶ veteri Aa Sa Hk Mz In Kb Br Pk Tr Vd Vp Cd Ka^{pc} Tz Ty; vetere Fd Mk Sb Bi Ka^{ac} Sg

90 qua inhumanitate uos hortamur suspendi, et sepeliri mortuos ibidem missas celebrari, nulla ulterius
91 habita contradictione permittas.

92 **12**⁵²⁷ *Idem Carolitano Episcopo Venerio,*

93 NON SUNT CASSANDE PIE UOLUNTATES DEFUNCTORUM.

94 Ammonere te uolumus, ne pie defunctorum uoluntates tua, quod absit, remissione cassentur.

95 **13**⁵²⁸ *Item Gelasius.*

96 TESTATORIS ARBITRIUM SERUARI OPORTET.

97 Consideratio ecclesiastice utilitatis hoc postulat ex iusta dispensatione testatoris⁵²⁹ seruandum
98 arbitrium.

99 **14**⁵³⁰ *Item ex Concilio Triburiensi.*

100 Ubi cumque facultas rerum et oportunitas temporum suppetit, etc., sicut in eodem capitulo supra⁵³¹
101 legitur⁵³² in causa eorum, 'qui de diocesi ad diocesim transierunt.'⁵³³

102 **d.p.c. 14** Ecce his auctoritatibus patet quod si quis apud monasterium sepulturam sibi eligere uoluerit,
103 libere a monachis potest⁵³⁴ sepeliri. Vnde liquido colligitur, prohibitionem illam Nicene synodi propter
104 improbitatem circumuagantium factam esse.

105 **15**⁵³⁵ *Vnde in Concilio Calcedonensi dicitur:*

106 MONACHI, QUI SINE LICENTIA EPISCOPI VAGANTUR, AD PROPRIA LOCA REDIRE COGANTUR.

107 Quidam monachi nichil habentes sibi iniunctum a proprio episcopo, interdum uero etiam illi, qui ab eo
108 fuerant excommunicati, ueniunt ad ciuitatem Constantinopolitanam, et in ea perturbationes
109 tranquillitati ecclesiastice inferunt, et diuersorum domos⁵³⁶ corrumpunt. Statuit igitur hec sancta

⁵²⁷ Gregorius M., *Reg.* 4.9 (CCSL 140.226; JE 1281)

⁵²⁸ Gelasius I (PL 59.154B; JK 731); **Trip. 1.46.45**

⁵²⁹ testatori Fd^{ac}

⁵³⁰ *Conc. Triburiense* a. 895, c. 15 vers. Vulg. (MGH *Conc.* 5.352); Polyc. 8.5.8; 3L App.34.8; 9L 7.9.18

⁵³¹ super Fd^{ac}

⁵³² leguntur Fd^{ac}

⁵³³ cf. C.13 q.2 c.6 (Aa Fd)

⁵³⁴ poterint Aa

⁵³⁵ *Conc. Chalcedonense*, a. 451, c.23 vers. Hisp. (MHS *Ser. can.* 3.260-61)

⁵³⁶ sinodos *add. sup. lin.* Fd^{pc}

110 synodus, hos primum commoneri, ut exeant de regia ciuitate; demum eos inuitos deici ac per
 111 defensorem compelli, ut ad loca sua perueniant.

112 **16⁵³⁷** *Item Leo Papa.*

113 NULLUS MONACHUS⁵³⁸ PRETER DOMINI SACERDOTES AUDEAT PREDICARE.

114 Adiciemus⁵³⁹ etiam illud quod nobis propter improbitatem quorundam monachorum religionis uestre
 115 uerbo⁵⁴⁰ mandastis⁵⁴¹ per uicarios nostros,⁵⁴² hoc specialiter statuentes, ut preter Domini sacerdotes
 116 nullus audeat predicare, siue monachus siue laicus ille sit, qui cuiuslibet scientie nomine gloriatur.

117 **d.p.c.16** Ecce in hoc capitulo⁵⁴³ et uitium est expressum, et generali constitutione uacuum.⁵⁴⁴ Quod
 118 uero penitentiam dare prohibentur, inde est, quia nulli sacerdotum licet parrochianum⁵⁴⁵ alterius ligare
 119 uel soluere. Monachi autem, et si in dedicatione sui presbiteratus, sicut et ceteri sacerdotes,
 120 predicandi, baptizandi,⁵⁴⁶ penitentiam dandi, peccata remittendi, beneficiis ecclesiasticis perfruendi rite
 121 potestatem accipiant, ut amplius et perfectius agant ea, que sacerdotalis officii esse sanctorum patrum
 122 constitutionibus⁵⁴⁷ comprobantur: tamen executionem sue potestatis non habent, nisi a populo fuerint
 123 electi et ab episcopo cum⁵⁴⁸ consensu abbatis ordinati.

124 **d.a.c.17** Ecclesiasticas uero atque seculares actiones attractare⁵⁴⁹ prohibentur, ut non sumant sibi
 125 patrocina causarum, nisi ab episcopo conmoniti fuerint nec secularibus causis occupentur, ut resideant
 126 cognitores dirimendarum litium.

127 **17⁵⁵⁰** *Vnde Pelagius scribit Antonine Patricie et Decie:*

⁵³⁷ Leo I, *ep.* 120.6 (PL 54.1054B; JK 496); Ans.7 App.34(Bb); 3L 2.29.39; 9L 5.5.37

⁵³⁸ monachus] uel laicus *add* Fd²; *om.* Aa Mk Sa Sb Hk Mz In Br Pk Tr Vd Vp Cd Bi Ka Tz Ty; Sg omits entire rubric.

⁵³⁹ Adiciemus Aa

⁵⁴⁰ uerbo *sup. lin.* Fd¹

⁵⁴¹ mandatis Fd^{ac}

⁵⁴² per uicarios nostros *sup. lin.* Fd

⁵⁴³ capitulo] apostolo Fd^{ac}

⁵⁴⁴ euacuatum Aa

⁵⁴⁵ parrochitanum Fd^{pc}

⁵⁴⁶ baptizandi *sup. lin.* Fd^{pc}

⁵⁴⁷ constutionibus Fd^{ac}

⁵⁴⁸ cum *sup. lin.* Fd^{pc}

⁵⁴⁹ attracdere Fd^{ac}

⁵⁵⁰ Pelagius I (PL 72.745B; JK 986); **Trip. 1.54.6**

128 MONACHUS DEFENSOR FIERI NON DEBET.⁵⁵¹

129 De presentium portitore quod defensor factus non est, nulla uobis animi molestia sit, quia satis ualde
 130 amarissimum habeo de isto proposito ad illud officium homines deduci, in quos nullomodo que a
 131 monachis Deo promissa sunt ualeant adimpleri. Omnimoda enim est illius habitus et istius officii
 132 diuersitas. Illic enim quies, oratio, labor manuum: at hic causarum conditio,⁵⁵² conuentiones, actus,
 133 publica litigia,⁵⁵³ et quecumque uel ecclesiastica instituta uel supplicantium necessitas poscit. Faciat
 134 autem Deus, ut⁵⁵⁴ tales sint, qui uel a uobis in isto habitu nutriuntur uel in monasteriis crescunt, ut
 135 prouecta etate et probata uita non ad litigiorum officia, set ad sacerdotium ualeant promoueri.

136 **d.p.c.17** Gelasius tamen, sicut in tractatu de promotionibus clericorum, inuenitur in capitulo illo:

137 ‘Monachus nouicius etc.,’⁵⁵⁵ permittit illos ex dispensatione defensores fieri. Quod uero sacerdotalium
 138 officiorum potestatem habeant, testatur Ambrosius, dicens:

139 **18⁵⁵⁶** CLERICORUM OFFICIA CELEBRARE MONACHI PRESBITERI NON⁵⁵⁷ PROHIBEANTUR.

140 Doctos ac probos monachos, presbiterii honore dedicatos, predicare, baptizare, penitentiam dare,
 141 debita miseris laxare, decimarum, primitiarum, oblationum uiuorum et mortuorum portione iusta
 142 perfrui debere, moderata⁵⁵⁸ dispensatione commendamus, ut iuxta apostolicam de altario, cui seruiunt,
 143 uiuentes, per obsequium dominice plebis panem et uinum immaculata benedictione transformant in
 144 corpus et sanguinem Domini nostri Iesu Christi.

145 **19⁵⁵⁹** *Item Innocentius Papa.*

146 BENEFICIIS ECCLESIASTICIS MONACHUS PRESBITER LIBERE PERFRUATUR.

⁵⁵¹ monachus — debet] *om.* Fd

⁵⁵² cognitio Fd^{pc}

⁵⁵³ lingua Fd^{ac}

⁵⁵⁴ ut *sup. lin.* Fd^{pc}

⁵⁵⁵ cf. D. 77 c. 9

⁵⁵⁶ *Capitulum incertum*; cf. florilegium of Flor. Ricc. 3006 14

⁵⁵⁷ non] audiantur *add.* Fd^{ac}

⁵⁵⁸moderata] in ecclesiastica Fd^{ac}

⁵⁵⁹ *Capitulum incertum*; florilegium of Flor. Ricc. 3006 18

147 Si monachus ad clericatum promouetur, beneficia ei pleniter et annone et decime donentur, absque
 148 ulla minoratione⁵⁶⁰ et dilatione, ut in quanto melius possit iuxta possibilitatem quando necessitas
 149 extiterit, ad opera ecclesiastica et ipsam ecclesiam restaurandam adiutorium faciat.

150 **20**⁵⁶¹ *Item Gregorius.*

151 DE EODEM.

152 Moderamine apostolice auctoritatis decernimus, ut monachi, si presbiterii honore dedicati⁵⁶² sunt, cum
 153 ligandi soluendique potestate⁵⁶³ decimarum, primitiarum, oblationum, donationum, que fiunt pro uiuis
 154 et defunctis, iuxta portionem canonum⁵⁶⁴ ad suam proximorumque utilitatem merito perfectioris⁵⁶⁵
 155 iustitie non minus quam ceteri sacerdotes laudabiliter sibi uendicent.

156 **21**⁵⁶⁶ *Idem.*

157 CLERICORUM OFFICIA MONACHI PRESBITERI LIBERE ADMINISTRENT.

158 Ex auctoritate huius decreti, quod apostolico moderamine et pietatis officio a nobis est constitutum,
 159 sacerdotibus monachis apostolorum figuram tenentibus liceat predicare, baptizare, communionem
 160 dare, pro peccatoribus orare, penitentiam imponere atque peccata⁵⁶⁷ soluere.

161 **22**⁵⁶⁸ *Item ex decreto Bonifatii Papa.*

162 MONACHI PRESBITERII HONORE DECORATI POTESTATEM HABENT LIGANDI ET SOLUENDI.

163 Sunt nonnulli nullo dogmate fulti, audacissime quidem, zelo magis amaritudinis quam dilectionis
 164 inflammati, asserentes monachos, quia⁵⁶⁹ mundo mortui sunt et Deo uiuunt, sacerdotalis officii potentia
 165 indignos, neque penitentiam, neque Christianitatem largiri, neque absolueri posse per sacerdotalis

⁵⁶⁰ in moratione Fd

⁵⁶¹ Gregorius M. (JE +1950)

⁵⁶² dediti Fd^{ac}

⁵⁶³ potestatem Fd^{ac}

⁵⁶⁴ canonum] ne *sup.lin.* Fd^{pc}; iusto portionem canone Aa; portione iusto canone Mk Sa; portionem iusto canone Sb Hk Mz In Kb Br Pk Tr Vd Vp Cd Bi Ka Ty; iuxta portionem canonicam Sg; iusto canone Tz

⁵⁶⁵ perfectioris] perfectionis Fd^{ac} Sg

⁵⁶⁶ Gregorius M. (JE +1951); for the transmission of this text, see John Gilchrist, "The Influence of the Monastic Forgeries attributed to Pope Gregory I (JE +1951) and Boniface IV (JE +1996)," in *Fälschungen im Mittelalter*, 2.263-87.

⁵⁶⁷ peccata *sup. lin.* Fd^{pc}

⁵⁶⁸ Bonifatius IV (JE +1996); on the transmission of this text, see footnote 566; Ans. 5.65 (A'); Ans. 4.61a (Aucta of Mantua); Trip. 3.11.8; Polyc. 4.35.26

⁵⁶⁹ quod Fd

166 officii diuinitus sibi iniunctam potestatem. Sed omnino labuntur.⁵⁷⁰ Neque enim Beatus Benedictus,
 167 monachorum preceptor almificus, huiuscemodi rei aliquo modo fuit interdictor, sed eos secularium
 168 negotiorum edixit⁵⁷¹ expertes fore tantum modo. Quod⁵⁷² quidem apostolicis documentis et omnium
 169 sanctorum Patrum institutis non solum monachis, sed etiam canonicis magnopere imperatur. ‘ Nemo
 170 enim militans Deo implicat se negotiis secularibus.⁵⁷³ Tantorum igitur Patrum instituti⁵⁷⁴ exemplis,
 171 quibus periculosissimum⁵⁷⁵ est refragari, credimus a sacerdotibus monachis ligandi soluendique
 172 officium Deo cooperante⁵⁷⁶ digne administrari, si eos digne contigerit hoc ministerio⁵⁷⁷ sublimari.
 173 Decertantes igitur monachice professionis prebiteros sacerdotalis potentie arcere officio, omnimodo⁵⁷⁸
 174 precipimus, ut ab huiuscemodi ausibus reprimantur in posterum, quia quanto⁵⁷⁹ quisquis est celsior
 175 tanto et illis erit potentior.
 176 **d.p.c.22** His omnibus⁵⁸⁰ auctoritatibus perspicue monstratur monachos posse penitentiam dare,
 177 baptizare, et cetera sacerdotalia officia licite administrare. Quod uero populi electione et⁵⁸¹
 178 episcoporum institutione et abbatis consensu potestatem suam⁵⁸² exequi ualeant, Ieronimi, Gelasii, et
 179 Gregorii auctoritate probatur.
 180 **23**⁵⁸³ *Ait enim Ieronimus ad Rusticum monachum:*

⁵⁷⁰ labuntur] Nam si ex hac causa ueteres emuli uera predicarent apostolice sedis compar Beatus Gregorius monachico cultu pollens ad summum nullatenus apicem conscenderet. Cui quidem honore fungendi ligandi soluendique officio potestas summa conceditur. Augustinus quoque eiusdem sanctissimi Gregorii discipulus Anglorum predicator egregius ac Pannoniensis Martinus alique, quam plurimi uiri sanctissimi preciosorum monachorum habitu fulgentes nequaquam anulo pontificali subarrarentur. *add. marg.* Fd^{pc}; this addition is found in the body of Aa; labuntur] falluntur Aa; this addition is omitted in Mk Sa Sb Hk Mz In Kb Br Pk Tr Vd Vp Cd Bi Ka Sg Tz Ty

⁵⁷¹ dixit Aa

⁵⁷² Quod] Quoniam Fd^{pc}

⁵⁷³ 2 Tim. 2:4

⁵⁷⁴ instituti] instituta Fd; et *add.* Fd^{pc}

⁵⁷⁵ periculoso Fd^{ac}

⁵⁷⁶ operante Fd^{ac} Mk Sa Sb Hk Mz In Kb Br Pk Tr Vd Vp Cd Bi Ka Tz Ty; cooperante Fd^{pc} Aa Sg

⁵⁷⁷ ad hoc ministerium Aa

⁵⁷⁸ omnino Aa

⁵⁷⁹ quanto *sup. lin.* Aa^{pc}

⁵⁸⁰ omnibus *add. marg.* Fd^{pc}

⁵⁸¹ et *sup. lin.* Fd^{pc}

⁵⁸² suam *sup. lin.* Fd^{pc}

⁵⁸³ Hieronymus, *ep.* 125.17 (CSEL 56.136-137); Flor. Ricc. 3006 11-12/18

181 DIGNE IN MONASTERIO UIUENS AD CLERICATUM⁵⁸⁴ POPULI ELECTIONE⁵⁸⁵ POTERIT PROMOUERI.

182 Sic uiue in monasterio⁵⁸⁶ ut clericus esse merearis. Multo tempore disce que⁵⁸⁷ postmodum doceas⁵⁸⁸

183 et inter bonos sectare semper⁵⁸⁹ meliores. Quod si populus uel episcopus te in clericum elegerit, age

184 ea, que clerici sunt.

185 **24**⁵⁹⁰ *Item Gelasius Papa.*

186 IN LOCO, QUO ABBAS IUDICAUERIT, MONACHUS ELIGATUR, ET AB EPISCOPO SACERDOS ORDINETUR.⁵⁹¹

187 Si quis monachus fuerit qui uenerabilis uite merito sacerdotio dignus preuideatur, et abbas sub cuius

188 imperio Christo regi militat illum fieri presbiterum petierit, ab ipso debet eligi, et in loco quo

189 iudicauerit⁵⁹² ordinari, omnia que ad sacerdotii officium pertinent uel populi uel episcopi electione,

190 prouide ac iuste acturus.

191 **25**⁵⁹³ *Item Pelagius Papa Bono*⁵⁹⁴ *Episcopo Sauinati.*

192 GELASIUS QUENDAM RUFINUM MONACHUM IUBET SACERDOTE FIERI ET IN QUADAM BASILICA

193 ORDINARI.

194 In parrochia tua basilica Sancti Laurentii, que in possessione filii et consiliarii nostri uiri magnifici

195 Theodori fundata est,⁵⁹⁵ officium presbiteri deesse cognouimus. Et quia prefatus filius noster nobis

196 retulit inuenisse se Rufinum quendam monachum olim sibi uita et moribus conprobatum, et hunc

197 postulat ibi presbiterum consecrari. Quod subito fieri nos prorogata⁵⁹⁶ obseruantia non acquieuius.

198 Ideoque dilectio tua his acceptis sabbato ueniente faciat eum⁵⁹⁷ diaconum et, si Deus uoluerit et

⁵⁸⁴ clericatus Aa

⁵⁸⁵ prelationem Aa

⁵⁸⁶ monasteriis Aa

⁵⁸⁷ quod Aa

⁵⁸⁸ doceas *sup. lin.* Fd^{pc}

⁵⁸⁹ semper sectare Aa

⁵⁹⁰ Gelasius I (JK +697); Flor. Ricc. 3006 9/15

⁵⁹¹ ordinetur] ligat Fd^{ac}

⁵⁹² iudicant Fd^{ac}

⁵⁹³ Pelagius I, ep. 36.1-3 (Gasso-Batlle 102-105; JK 995); Ans. 7.96(A); Polyc. 2.31.21; 3L 2.14.41

⁵⁹⁴ bono *sup. lin.* Fd^{pc}

⁵⁹⁵ est] *add.* et Fd

⁵⁹⁶ prerogata Aa

⁵⁹⁷ eum *sup. lin.* Fd^{pc}

199 uixerimus, mediana ebdomada⁵⁹⁸ presbiterum faciemus, quatenus superueniente Pascali festiuitate
200 sacra misteria in memorata basilica a persona competenti ualeant adimpleri.

201 **26⁵⁹⁹** *Item Gregorius in Registro.*

202 QUI DE CLERICO MONACHUS EFFICITUR PROPRIO EPISCOPO ORDINANTE POTERIT ELIGI ET
203 CONSECRARI.

204 Si quos a clericatu in⁶⁰⁰ monachicam conuersionem uenire contigerit, si talis uide monachus fuerit, ut
205 episcopus, cui ante militauerat, eum dignum sacerdotio preuideat, in loco quo iudicauerit eligi poterit et
206 ordinari.

207 **27⁶⁰¹** *Item ex Concilio Agathensi.*

208 SINE TESTIMONIO ABBATIS AD CLERICATUS OFFICIUM MONACHI NON ELIGANTUR.

209 Monachi uagantes ad officium clericatus, nisi eis testimonium abbas suus dederit, nec in parrochiis nec
210 in ciuitatibus ordinentur.

211 **28⁶⁰²** *Item ex Concilio Ilerdensi.*⁶⁰³

212 CUM ABBATIS UOLUNTATE ORDINENTUR, QUOS PRO UTILITATE ECCLESIE EPISCOPUS ORDINARE
213 UOLUERIT.

214 Cum pro utilitate ecclesie aliquos monachorum in clericatus officio episcopus probauerit promouendos,
215 cum abbatis uoluntate debent ordinari. Ea uero que in iure monasterii de facultatibus offeruntur, in
216 nulla diocesiana lege ab episcopis contingantur.

217 **d.p.c.28** His omnibus auctoritatibus monstratur quod⁶⁰⁴ monachi qui a populo sunt electi et ab

218 episcopo⁶⁰⁵ cum consensu sui abbatis sunt ordinati, legitime potestatem suam exsequi ualent. Illud

⁵⁹⁸ ebdam Aa

⁵⁹⁹ Gregorius M., *Reg.* 1.40 (CCSL 140.46; JE 1110); Polyc. 4.35.28; **3L 2.29.8**; 9L 5.5.8

⁶⁰⁰ in *sup. lin.* Fd^{pc}

⁶⁰¹ *Conc. Agathense* a. 506, c. 27 (CCSL 148.205); **Trip 2.28.25**

⁶⁰² *Conc. Hilerda* a. 546, c. 3 (MHS *Ser. can.* 4.300-1); cf. **Trip. 2.34.3**

⁶⁰³ Ilerdensi Fd^{ac}

⁶⁰⁴ quod] per *add.* Fd^{ac}

⁶⁰⁵ episcopis Aa

219 uero Gregorii:⁶⁰⁶ 'Nemo potest obsequiis ecclesiasticis deseruire, etc.'⁶⁰⁷ de illis intelligendum est,⁶⁰⁸
 220 qui, in numero cardinalium uel episcoporum ordinati, monasterii sui dispensationibus⁶⁰⁹ sibi⁶¹⁰
 221 reseruare contendunt.
 222 **29⁶¹¹** *Vnde idem Gregorius scribit Mariano⁶¹²Ravennati:*
 223 PRO ABBATIS UEL MONACHI PROMOTIONE⁶¹³ MONASTERIA NULLOMODO GRAVENTUR.
 224 Ne pro cuiuslibet monachi aut abbatis promotione onus aliquod⁶¹⁴ fortasse monasteria sustineant,
 225 studendum nobis est ut si quispiam monachorum ex quocumque monasterio ad clericatus officium uel
 226 sacrum ordinem accesserit, non ibi aliquam ulterius⁶¹⁵ habeat⁶¹⁶ potestatem.
 227 **30⁶¹⁷** *Idem Maximiano Siracusano Episcopo.⁶¹⁸*
 228 QUI ECCLESIIIS QUOQUO MODO MILITANT MONASTERIORUM ABBATES ESSE NON POSSUNT.
 229 Presbiteros,⁶¹⁹ diaconos, ceterosque cuiuslibet ordinis qui ecclesiis quoquomodo militant, abbates per
 230 monasteria esse non permittas, set⁶²⁰ aut omissa⁶²¹ clericatus militia monachicis promoueantur
 231 ordinibus aut, si in abbatis loco permanere decreuerint, clericatus nullatenus permittantur habere
 232 militiam. Satis enim incongruum est, si cum unum ex his pro sui magnitudine diligenter quis non possit
 233 explere, ad utrumque uideatur idoneus.

⁶⁰⁶ Gregorius Aa

⁶⁰⁷ cf. C.16 q. 1 c. 2

⁶⁰⁸ est intelligendum *tr.* Aa

⁶⁰⁹ dispensationem Aa Mk Sa Sb Hk Mz In Kb Br Pk Tr Vd Vp Cd Bi Ka Sg Tz Ty

⁶¹⁰ sibi *om.* Aa

⁶¹¹ Gregorius M., *Reg.* 7.40 (CCSL 140.504; JE 1486); Ans. 5.56; Polyc. 3.15.13; **3L 2.28.4**; 9L 5.4.5; Flor. Ricc. 3006, 2.

⁶¹² Mariano Fd^{ac} Aa Mk Sa Hk Mz In Br Pk Tr Vd Bi Tz; Martiano Sb; Marciano Kb Cd; Mariniano Fd^{pc} Vp Ka ; Martino Ty; Martiniano Sg

⁶¹³ electione Fd; promotione Aa Mk Sa Sb Hk Mz In Kb Br Pk Tr Vd Vp Cd Bi Ka Tz Ty; Sg omits this rubric entirely

⁶¹⁴ aliquis Fd^{ac}

⁶¹⁵ ulterius aliquam *tr.* Aa

⁶¹⁶ habeant Aa

⁶¹⁷ Gregorius M., *Reg.* 4.11 (CCSL 140.229; JE 1882); Ans. 7.163(A); Polyc. 3.15.14; **3L 2.28.5**

⁶¹⁸ episcopo *sup. lin.* Fd^{pc}

⁶¹⁹ Presbiteros] et *add.* Aa

⁶²⁰ si Aa

⁶²¹ admissa Aa

234 **d.p.c.30** Hac superiori⁶²² auctoritate non prohibentur abbates sacerdotes fieri, cum Beatus Benedictus
 235 iubeat abbatem fratribus egredientibus et regredientibus benedictionem dare, quod non nisi
 236 sacerdotum est. Lectionem quoque euangelii similiter abbati ad legendum tribuit quam subsequenti
 237 oratione legere⁶²³ similiter sacerdotalis officii est. Sed tales sacerdotes uel diaconos fieri prohibet qui in
 238 ecclesiastica militia cogantur iugiter permanere. Item illud Ieronimi ad Riparium et Desiderium:
 239 ‘monachus non doctoris, sed plangentis habet officium,’⁶²⁴ et ad Eliodorum: ‘alia causa est⁶²⁵ monachi,
 240 alia clerici,’⁶²⁶ et ad Rusticum: ‘sine consilio presbiterorum monachis nichil agere licet.’⁶²⁷ Non ita
 241 generaliter intelligendum est,⁶²⁸ ut nulli monachorum liceat docendi officium assumere, ne Beatum
 242 Gregorium aut Augustinum Anglorum episcopum beatum quoque Martinum in numeros etiam, quos de
 243 monachica⁶²⁹ conuersatione ad summum sacerdotii gradum scriptura testatur esse promotos, cogamur
 244 negare eos officium docendi habuisse, aut in die consecrationis sue asseramus eos a priori⁶³⁰ proposito
 245 discessisse, quod, ut Innocentius testatur,⁶³¹ nulli facere licet. Voluit ergo Ieronimus distinguere inter
 246 personam monachi et clerici, ostendens quid cuique ex proprio officio conueniat. Aliud enim conuenit
 247 cuique ex⁶³² eo, quod monachus est: aliud ex eo, quod clericus. Ex eo, quod monachus est,⁶³³ sua et
 248 aliorum peccata deflendi habet officium: ex eo, quod clericus, docendi et pascendi populum.
 249 Monachos⁶³⁴ autem usque ad tempus Eusebii, Zosimi et Siricii,⁶³⁵ monachos simpliciter et non clericos

⁶²² superiori *sup. lin.* Fd¹ *om.* Aa; superiori] hac *praem.* Fd^{pc} Aa; hac *om.* Mk Sa Sb Hk Mz In Kb Br Pk Tr Vd Vp Cd Bi Kb Tz Ty; Hac superiori auctoritate cogantur --- cogantur iugiter permanere] *om.* Sg

⁶²³ similiter — legere] *add. marg.* Fd^{pc}

⁶²⁴ cf. C.16 q. 1 c. 4

⁶²⁵ est causa *tr.* Aa

⁶²⁶ cf. C.16 q. 1 c. 6

⁶²⁷ cf. C.16 q. 1 c. 7

⁶²⁸ est *sup. lin.* Fd^{pc}

⁶²⁹ moniaca Fd^{ac}

⁶³⁰ priori Aa Bi Br Cd Hk In Ka Kb Mk Mz Pk Sa Sb Sg Tr Ty Tz Vd Vp; priore Fd

⁶³¹ cf. C.16 q.1 c.3

⁶³² ex *add.* Fd^{pc}

⁶³³ aliud — est] *add. marg.* Fd^{pc}

⁶³⁴ Monachos Aa Bi Cd Fr In Kb Mz Sa Tr Vd Vp; monachus Fd Mk Sb Hk Pk; *om.* Sg

⁶³⁵ Soricii Fd^{ac}

250 fuisse, ecclesiastica testatur historia. Idem etiam⁶³⁶ Ieronimus refert monachos Scithi⁶³⁷ conuenisse in
 251 unum, ut sacerdotem sibi⁶³⁸ inuenirent qui eis missarum⁶³⁹ sollempnia celebraret.⁶⁴⁰
 252 **31**⁶⁴¹ *Item Leo Augustus.*
 253 OMNES CLERICI UEL MONACHI TUTELE IMMUNITATEM HABERE DEBENT.
 254 Generaliter sancimus omnes uiros reuerentissimos episcopos, nec non presbiteros seu diaconos et
 255 subdiaconos,⁶⁴² precipue monachos, licet non sint clerici, immunitatem ipso iure omnis habere tutele
 256 siue legitime siue testamentarie⁶⁴³ siue datiue et non solum tutele esse eos expertes,⁶⁴⁴ sed etiam cure,
 257 non solum pupillorum et adultorum, sed furiosi, et muti,⁶⁴⁵ et surdi, et aliarum personarum, quibus
 258 tutores uel curatores a ueteribus legibus dantur. Eos tamen clericos et monachos huiusmodi habere
 259 beneficium sancimus, qui ad sacro sanctas ecclesias uel monasteria permanent,⁶⁴⁶ non deuagantes,
 260 neque circa diuina misteria desides, cum propter hoc ipsum beneficium eis indulgemus, ut aliis omnibus
 261 derelictis, Dei omnipotentis inhereant ministeriis. Et hoc non solum in ueteri Roma uel in hac regia
 262 ciuitate, sed in omni terra, ubicumque Christianorum colitur nomen, obtinere sancimus.
 263 **d.p.c.31** Ostendit⁶⁴⁷ ergo Ieronimus quod simpliciter monachis nichil liceat agere sine consilio
 264 presbiterorum nec officium docendi sibi assumere liceat sine auctoritate clericorum, nisi forte diuina
 265 gratia intus conmoniti, sicut Beatus Gregorius refert in dialogo de Beato⁶⁴⁸ Benedicto, qui homines
 266 montis Cassini⁶⁴⁹ ad fidem adduxit, et aram Apollinis, que ibi erat erecta,⁶⁵⁰ subuertit;⁶⁵¹ et de quodam

⁶³⁶ etiam *sup.lin.* Fd^{pc}

⁶³⁷ Sithi Fd^{ac}; Sciti Aa

⁶³⁸ sibi *sup. lin.* Fd^{pc}

⁶³⁹ aniuersaria Fd^{ac}

⁶⁴⁰ celebrarent Fd

⁶⁴¹ *Cod. Iustin.*, 1.3.51 (CICi 2.34-35); Polyc. 4.32.78; **3L 2.27.12**; 9L 5.3.11

⁶⁴² et subdiacones *sup. lin.* Fd^{pc}

⁶⁴³ siue testamentarie siue legitime *tr.* Aa

⁶⁴⁴ expetes Fd^{ac}

⁶⁴⁵ muntidi Fd^{ac}

⁶⁴⁶ permaneant Fd^{pc} Aa

⁶⁴⁷ ostendit] Hoc idem datur intelligi ex uerbis beati Siluestri, qui obedientiam minorum erga maiores assignans ait: 'abbas hostiario, monachus abbati sit subditus,' supra in tractatu ordinandorum. *praem.* Aa; *add. marg.* Fd^{pc}; the cross-reference is to D. 93 c.5 (Friedberg)

⁶⁴⁸ Beato *sup. lin.* Fd^{pc}

⁶⁴⁹ Cassiani Fd^{ac}

⁶⁵⁰ erecta *sup. lin.* Aa^{pc}; erecta erat *tr.* Aa^{pc}; erecta] *add. erat sup. lin.* Fd^{pc}

⁶⁵¹ destruxit Aa^{ac}

267 Equitio, cui angelus in somnis apparuit et eum ad predicandum misit, qui, cum⁶⁵² de uitio lingue
 268 conquereretur, angelus flebotomo linguam eius tetigit et totum illud uitium curauit. Quod⁶⁵³ uero
 269 Ieronimus se ipsum talibus connumerat, tale est, quale illud apostoli ad Philipenses: 'quicumque
 270 imperfecti sumus, hoc sentiamus,'⁶⁵⁴ se ipsum imperfectis connumerans. Ecce, sufficienter monstratum
 271 est quod monachis presbiterii honore decoratis, a populo electi, ab episcopo institutis, eadem liceant,
 272 que et aliis sacerdotibus. Probatur hoc etiam ex similitudine consecrationis. Non enim in
 273 consecratione⁶⁵⁵ eorum aliud dicitur et aliud in consecratione aliorum. Utrique⁶⁵⁶ enim in commune a
 274 Domino benedictionem infundi episcopus obnixè deprecatur. Et dum consecrat, cunctis sacerdotibus
 275 singillatim dicit:⁶⁵⁷ 'consecrantur et sanctificantur, Domine,⁶⁵⁸ manus iste, ut quicquid consecrauerint
 276 consecratum sit, et quecumque benedixerint benedicta sint.' Ecce communis est benedictio. Vnde
 277 igitur diuortium?⁶⁵⁹

278 **d.a.c.32** Sicut ergo⁶⁶⁰ in benedictione utrique communem nanciscuntur potestatem, ita in⁶⁶¹ institutione
 279 communiter assecuntur potestatis executionem.⁶⁶² De his uero qui intra monasterii castra⁶⁶³
 280 consistunt, quibus populus ad regendum non committitur, queritur utrum decimas debeant dare uel
 281 recipere?⁶⁶⁴ In quibus hec discretio seruanda est, ut de agris et uineis, que ad proprium stipendium
 282 coluntur, decimas sibi retineant. Si enim decime a populo filiis Leui reddabantur pro ministerio, quo
 283 Domino⁶⁶⁵ deseruiebant⁶⁶⁶ in tabernaculo, offerendo sacrificia et holocausta pro populo, patet quod

⁶⁵² dum Aa

⁶⁵³ quo Fd^{ac}

⁶⁵⁴ cf. Phil 3. 15

⁶⁵⁵ consecratione] *add. marg.* eorum aliud dicitur et aliud in consecratione Fd^{pc}

⁶⁵⁶ Utrisque Fd Aa

⁶⁵⁷ dicit singillatim *tr.* Aa

⁶⁵⁸ Domine *sup. lin.* Fd^{pc}

⁶⁵⁹ diuortium] est *sup. lin.* Fd^{pc}

⁶⁶⁰ ergo *sup. lin.* Fd^{pc}

⁶⁶¹ in *sup. lin.* Fd^{pc}

⁶⁶² executionem] ceterum absque episcoporum licentia non solum monachis, sed etiam omnibus generaliter clericis potestatis executio interdicitur, unde Clemens. *add. marg.* Fd^{pc}

⁶⁶³ claustra Aa

⁶⁶⁴ recipere] accipere Aa; Although this question does not appear in the case statement of C.16, it is in effect another *Quaestio*.

⁶⁶⁵ Domino *sup. lin.* Fd^{pc}

⁶⁶⁶ quod non deseruiebant Fd^{ac}

284 monachi de propriis prediis non magis quam alii sacerdotes decimas soluere coguntur. Sed dicitur
 285 predia monachorum siue pretio sint empta siue pro salute animarum oblata, antequam in ius eorum
 286 uenirent, baptismalibus ecclesiis siue quibuslibet aliis primitias et decimas persoluebant, ille autem
 287 ecclesie suo iure priuari non possunt.

288 **32**⁶⁶⁷ *Vnde in Magotiensi Concilio statutum inuenitur:*

289 QUI RES SUAS ALICUI DELEGAUERIT, DECIMATIONUM PROUENTUM PRIORI ECCLESIE AUFERRE NON
 290 POTERIT.

291 Si quis laicus uel clericus seu utriusque sexus persona⁶⁶⁸ proprietatis sue⁶⁶⁹ loca uel res alicubi dare
 292 delegauerit decimationum prouentum priori ecclesie legitime assignatum inde abstrahere nullam
 293 habeat potestatem. Quod si facere temptauerit, talis traditio⁶⁷⁰ irrita prorsus ducatur,⁶⁷¹ et ipse ad⁶⁷²
 294 emendationem⁶⁷³ ecclesiastica coerceatur censura.

295 **33**⁶⁷⁴ *Item ex Concilio Cabillonensi.*

296 ANTIQUIORES ECCLESIE NEC DECIMIS NEC ULLA POSSESSIONE PRIUENTUR.

297 Ecclesie antiquitus constitute nec decimis nec ulla possessione priuentur, ita ut nouis oratoriis
 298 tribuantur.

299 **34**⁶⁷⁵ *Item ex Concilio Guarmatiensi.*⁶⁷⁶

300 ANTIQUIORES⁶⁷⁷ ECCLESIE PROPTER NOUAS SUAM IUSTITIAM NON PERDANT.

301 Quicumque uoluerit in sua proprietate ecclesiam edificare et consensum et⁶⁷⁸ uoluntatem episcopi
 302 habuerit, in cuius parrochia est, licitum sit. Verumtamen prouidendum est episcopo, ut alie ecclesie

⁶⁶⁷ *Synodus Confluentina* a. 922, c. 8 (MGH *Const.* 1.630); **3L App.17.3**; 9L 3.4.12

⁶⁶⁸ persona Aa Bi Br Cd Hk In Ka Kb Mk Mz Pk Sa Sb Sg Tr Ty Tz Vd Vp; persone Fd

⁶⁶⁹ siue Fd^{ac}

⁶⁷⁰ tradi Fd^{ac}

⁶⁷¹ dicatur Fd^{ac}

⁶⁷² ad] tempus *add.* Fd Aa Sg; 'tempus' is omitted in 3L App.17.3, MGH *Const.* 1.630 and Friedberg's edition.

⁶⁷³ emendationis Fd

⁶⁷⁴ *Conc. Moguntinum* a. 813, c. 41 (MGH *Conc.* 2/1.271); **3L App. 16.3**; 9L 3.4.15

⁶⁷⁵ *Capitularia ecclesiastica ad Salz data* i.a. 803-804, c. 3 (MGH *Cap.* 1.119); Polyc. 3.2.4; **3L App. 16.4**; 9L 3.4.16

⁶⁷⁶ Wormatiensi Aa

⁶⁷⁷ Antiquiores] *praem.* quicumque uoluerit Fd.; *om.* Fd¹

⁶⁷⁸ et] *propriam add.* Fd; 'propriam' is omitted in Aa Sg Friedberg and the formal source.

303 antiquiores propter nouas suam iustitiam aut decimam non perdant, sed semper ad antiquiores
304 ecclesias persoluantur.

305 **d.a.c.35** Decimas autem baptismalibus ecclesiis persoluendas.

306 **35**⁶⁷⁹ *Leo Quartus affirmat dicens:*

307 BAPTISMALIBUS ECCLESIIS DECIME DARI DEBENT.

308 De decimis iusto ordine non tantum nobis, sed etiam maioribus uisum est plebibus tantum, ubi
309 sacrosancta baptismata dantur, debere dari.

310 **d.p.c.35** Si ergo nulli licet⁶⁸⁰ decimationum prouentum a priori ecclesia, cui assignatus fuerat;
311 abstrahere; si ius antiquioris ecclesie nouis tribuendum non est; si decime tantummodo baptismalibus
312 ecclesiis dande sunt: patet quod monachi ex propriis prediis decimas dare coguntur. Sed auctoritas illa
313 Magotiensis concilii de uenditore uel donatore loquitur, diffiniens quod ille qui uendit aut donat non
314 potest prouentum decimationum illi ecclesie detrahere⁶⁸¹ cui prius fuerat legitime assignatus. Monachi
315 autem decimas et primitias non auctoritate uendentis aut donantis,⁶⁸² sed auctoritate eiusdem concilii
316 et Pascalii Papa detinent, a quibus diffinitum est, ut monachi de propriis prediis decimas non soluant.

317 **36**⁶⁸³ *Sic enim in Magotiensi Concilio statutum est:*

318 DE PROPRIIS PREDIIS ABBATES ET EPISCOPI DECIMAS NON PERSOLUANT.

319 Questi sunt preterea quidam fratres, quod essent aliqui episcopi et abbates, qui decimas non sinerent
320 dari ad ecclesiam ubi illorum coloni missam audiunt. Proinde decreuit sacer iste conuentus, ut episcopi
321 et abbates de agris et uineis que ad suum et fratrum stipendium habent ad ecclesias suas deferri
322 faciant, familie uero ibi dent decimas suas ubi eorum infantes baptizantur et ubi per totum anni
323 circulum missas audiunt.

⁶⁷⁹ Leo IV, *ep. 'episcopis Britanniae'* (16.12) (MGH *Epp.* 5.595.15-16; JL 2599); Trip. 1.60.7; Polyc. 3.11.10; **3L 2.8.70**; 9L 3.4.8

⁶⁸⁰ licet *sup. lin.* Fd^{pc}

⁶⁸¹ subtrahere Aa

⁶⁸² dantis Fd^{ac}

⁶⁸³ *Conc. Cabillonense* a. 813, c. 19 (MGH *Conc.* 2/1.277); Pan.2.59; **3L App. 17.2**; 9L 3.4.11

324 **d.p.c.36** Quod autem dicitur ut antiquiores ecclesie propter nouas nec decimis nec ulla possessione
 325 priuentur, non ita intelligendum est ut nullomodo credatur licere episcopo aliquam partem
 326 possessionum uel decimationum unius ecclesie alteri pro tempore tribuere. Sicut enim papa duos
 327 episcopatus in unum potest redigere,⁶⁸⁴ ita et unus⁶⁸⁵ consentiente proprio episcopo in duos potest
 328 diuidi.⁶⁸⁶

329 **37⁶⁸⁷** *Vnde Gregorius Papa scribit Benenato Episcopo, capitulo XXV:*

330 DUOS EPISCOPATUS IN UNUM REDIGERE⁶⁸⁸ POTEST.

331 Et temporis⁶⁸⁹ qualitas et uicinitas locorum nos⁶⁹⁰ inuitat, ut Cumanam et Musinatium⁶⁹¹ unire
 332 debeamus ecclesias, quoniam nec longe a se itineris interuallo seiuncte sunt, nec peccatis facientibus
 333 tanta multitudo populi est, ut sicut olim fuit duos habere debeant sacerdotes. Quia igitur Cumani castrum
 334 sacerdos⁶⁹² cursum uite huius expleuit, utrasque nos ecclesias presentis auctoritatis pagina unisse
 335 tibi que commississe cognoscas, utrarumque etiam ecclesiarum scito te esse proprium pontificem. Et
 336 ideo quecumque uel de earum patrimonio uel cleri⁶⁹³ ordinatione⁶⁹⁴ promotioneue iuxta⁶⁹⁵ canonum
 337 statuta uisa fuerint⁶⁹⁶ ordinare atque disponere, habebis ut proprius reuera sacerdos liberam ex nostre
 338 auctoritatis consensu atque permissione licentiam. Vbi uero commodius ac utilius esse perspexeris,
 339 habitato, ita sane, ut alteram ecclesiam cui corporaliter presens non⁶⁹⁷ es,⁶⁹⁸ sollicita prouidentique cura
 340 disponas, quatinus illic diuina misteria sollempniter Domino prestante peragantur.

⁶⁸⁴ dirigere Fd^{ac}

⁶⁸⁵ unus] episcopatus *add.* Aa

⁶⁸⁶ vel etiam metropolitano inuito quelibet ecclesia ab eius iurisdictione apostolica eximi auctoritate *add.*
margin. Fd³ Aa^{pc}

⁶⁸⁷ Gregorius M., *Reg.* 2.37 (CCSL 140.121-122; JE 1197); **Ans. 6.96 (A)**; Polyc. 3.30.6

⁶⁸⁸ redigi Aa

⁶⁸⁹ temporum Fd

⁶⁹⁰ nos locorum *tr.* Aa

⁶⁹¹ Musitanum Fd^{ac}

⁶⁹² sacerdotes Fd^{ac}

⁶⁹³ clerici Fd^{ac}

⁶⁹⁴ ordinationeue Fd^{ac}

⁶⁹⁵ iuxta Fd^{ac}

⁶⁹⁶ fuerint uisa *tr.* Aa

⁶⁹⁷ non *om.* Fd Sb Hk^{ac} Kb Vp^{ac} Ka^{ac} Sg Ty^{ac}; non Aa Mk Sa Hk^{pc} Mz In Pk Tr Vd Vp^{pc} Cd Bi Ka^{pc} Tz Ty^{pc}; *absens*
 Polyc. 3.30.6

⁶⁹⁸ es *sup. lin.* Fd^{pc}

341 **38**⁶⁹⁹ *Item ex Concilio Cartaginensi II.*

342 NON HABEANT EPISCOPUM DIOCESES, QUE NUMQUAM HABUERUNT.

343 Felix episcopus Selensilitanus dixit: etiam si hoc placet sanctitati uestre insinuo, ut dioceses que

344 numquam episcopos habuerunt,⁷⁰⁰ non habeant, uel illa diocesis que aliquando habuit, habeat

345 proprium. Secundum autem hanc prosecutionem sanctitatis uestre est estimare⁷⁰¹ quid fieri debeat.

346 Ab uniuersis dictum est: placet, placet.

347 **39**⁷⁰² *Ex Africano Concilio III.*

348 NISI CUM UOLUNTATE EPISCOPI DIOCESES, QUE AB EIS RETINENTUR, NON ACCIPIAT PROPRIOS

349 EPISCOPOS.

350 Multis conciliis hoc statutum est a cetu sacerdotali ut plebes que in⁷⁰³ diocesis ab episcopis

351 retinentur, que episcopos numquam habuerunt, non nisi cum uoluntate eius episcopi a quo tenentur,

352 proprios accipiunt rectores, id est episcopos.

353 **d.p.c.39** Si autem necdum in diocesi alicuius episcopi loca illa assignata fuerint, ex uigore apostolice

354 sedis proprium accipiant⁷⁰⁴ episcopum.

355 **40**⁷⁰⁵ *Vnde Gregorius iunior scribit Bonifatio:*

356 VBI MULTITUDO FIDELIUM EXCRESCIT EPISCOPI SUNT ORDINANDI.⁷⁰⁶

357 Precipimus, ut iuxta canonum statuta ubi multitudo excreuit fidelium, ex uigore apostolice sedis debeas

358 ordinare episcopos, pia tamen contemplatione, ut non uilescat dignitas episcopatus.

359 **d.p.c.40** Sicut duos episcopatus supradicto⁷⁰⁷ modo in unum possunt redigi et unus in duobus ualet

360 diuidi, sic episcopus etiam de baptismalibus et parrochitanis ecclesiis facere potest cum consensu

⁶⁹⁹ *Conc. Carthaginense II* a. 390, c. 5 (CCSL 149.14.66-77); **3L 2.31.13**; 9L 5.7.17

⁷⁰⁰ habuerint Fd^{ac}

⁷⁰¹ existimare Aa

⁷⁰² *Conc. Carthaginense III* a. 397, c. 42 rec. Hisp. (CCSL 149.337.284-288); **3L 2.31.14**; 9L 5.7.18

⁷⁰³ in] sui *add.* Aa

⁷⁰⁴ accipiunt Fd^{ac}

⁷⁰⁵ Bonifatius et Lullus, *ep.* 28 (MGH *Epp.* Sel. 1 50.3); **3L 2.2.17**; 9L 2.2.16

⁷⁰⁶ Vbi — ordinandi] Communionem priuetur qui decimas vel oblationes extra episcopi conscientiam retinere uoluerit Fd

⁷⁰⁷ suprascripto Aa

361 suorum clericorum. Quod cum factum fuerit illa pars populi⁷⁰⁸ que nouis ecclesiis supponitur, a iure
 362 prioris ecclesie absoluatur. Hoc nisi fieri posset multitudo ecclesiarum ad paucitatem redigeretur. Ius
 363 ergo ecclesiarum ita interpretandum est, ut nisi episcopo disponente aliis ecclesiis fuit⁷⁰⁹ assignatum, in
 364 nullo priorum reddituum diminutionem patiantur.⁷¹⁰

365 **41**⁷¹¹ *Vnde Anastasius Papa:*

366 COMMUNIONE PRIVETUR QUI DECIMAS VEL OBLATIONES EXTRA EPISCOPI CONSCIENTIAM TENERE
 367 VOLUERIT.⁷¹²

368 Statuimus ut si quis oblationes ecclesie uel decimas, quas populus dare debet, contenderit uel extra
 369 baptismalem ecclesiam dare uoluerit preter conscientiam episcopi, uel eius⁷¹³ cui huiusmodi officia
 370 conmissa sunt, nec cum eorum uoluerit agere consilio, bannum nostrum conponat et communione
 371 priuetur.

372 **d.p.c.41** Cum addit: 'extra conscientiam episcopi,⁷¹⁴ intelligendum reliquit, quod episcopo consentiente
 373 aliis ecclesiis dari possunt.

374 **42**⁷¹⁵ *Item.*

375 IUXTA⁷¹⁶ DISPOSITIONEM EPISCOPI DECIME DISTRIBUANTUR.

376 In sacris canonibus prefixum est ut decime iuxta episcopi dispositionem⁷¹⁷ distribuantur. Quidam
 377 autem laici, qui uel in propriis uel in beneficiis suas⁷¹⁸ habent basilicas, contempta episcopi dispositione,
 378 non ad ecclesias, ubi baptismum et predicationem et manus impositionem et alia Christi sacramenta
 379 percipiunt, decimas suas dant, sed uel propriis basilicis uel aliis ecclesiis pro suo libitu⁷¹⁹ tribuunt, quod

⁷⁰⁸ populi *om.* Fd

⁷⁰⁹ fuerit Aa

⁷¹⁰ patiantur Aa

⁷¹¹ cf. Benedictus Levita, *Capitularia*, 3.7 (MGH LL 2/2.105; JK +279); **3L 2.8.64**; 9L 3.4.2

⁷¹² Communione — uoluerit] Communione priuetur qui decimas uel oblationes dispensare uoluerit Fd^{ac}

⁷¹³ eius] diaconi *add.* Aa

⁷¹⁴ C. 16 q. 1 c. 41

⁷¹⁵ *Conc. Ticinense* ca. 845-850, c. 11 (MGH *Conc.* 3.213-14); **3L 2.8.65**; 9L 3.4.3

⁷¹⁶ Iuxta dispensationem Fd^{ac}

⁷¹⁷ dispensationem Fd^{ac}

⁷¹⁸ suis Aa

⁷¹⁹ libitu suo *tr.* Aa

380 omnimodis⁷²⁰ diuine legi et sacris canonibus constat esse contrarium. Vnde uestram potestatem ut eos
 381 corrigatis expetimus.⁷²¹

382 **d.p.c.42** Cum autem reprehenduntur, quia contempta episcopi dispositione hoc faciunt, intelligitur
 383 quod, si episcopo disponente hoc fecerint, in reprehensibiles inueniantur.

384 **43**⁷²² *Item Simachus Episcopus Ecclesie catholice urbis Rome*⁷²³ dixit:

385 ANATHEMA SIT QUI PRETER EPISCOPI CONSCIENTIAM DECIMAS UEL OBLATIONES DISPENSARE
 386 UOLUERIT.

387 In canonibus, in Gangrensi ecclesia apostolica auctoritate conditis, de fructuum oblationibus, que
 388 ministris ecclesie debentur, et de his que in usus pauperum conferuntur, scriptum habetur: 'Si quis
 389 oblationes ecclesie accipere uel dare uoluerit preter episcopi conscientiam, uel eius, cui huiusmodi
 390 sunt officia conmissa, nec cum eius uoluerit agere concilio, anathema sit.'⁷²⁴ Et iterum in eodem
 391 concilio Gangrensi: 'Si quis oblata Deo dederit uel acceperit preter episcopum, uel eius consensum qui
 392 ab eo constitutus est ad dispensandam misericordiam pauperibus, et⁷²⁵ qui dat, et qui accipit, anathema
 393 sit.'⁷²⁶ Valde ergo iniquum et ingens sacrilegium est, quecumque uel pro⁷²⁷ remedio peccatorum uel pro
 394 salute aut requie animarum suarum unusquisque uenerabili ecclesie contulerit aut certe reliquerit, ab
 395 his, a quibus maxime seruari conuenit, id est Christianis et Deum timentibus hominibus, et super omnia
 396 a principibus et primis regionum in aliud transferri uel conuerti. Et infra: Generaliter uero quicumque
 397 res ecclesie⁷²⁸ confiscare aut competere uel peruadere⁷²⁹ periculosa sua infestatione presumpserit,
 398 similiter et hi qui res ecclesie iussu uel largitione principum uel quorumdam potentum⁷³⁰ aut quadam

⁷²⁰ omnibusmodis Fd^{ac}

⁷²¹ expeto Aa

⁷²² cf. *Conc. Romanum VI sub Symmachus* a. 504 (Mansi 8.312); **Ans. 5.40 (A)**

⁷²³ Rome *sup. lin.* Fd^{pc}

⁷²⁴ cf. *Conc. Gangrense* ca. 340, c. 7 (Schon, dMGH)

⁷²⁵ et *sup. lin.* Fd^{pc}

⁷²⁶ cf. *Conc. Gangrense* ca. 340, c. 8 (Schon, dMGH)

⁷²⁷ pro *sup. lin.* Fd^{pc}

⁷²⁸ res ecclesie *sup. lin.* Fd^{pc}

⁷²⁹ persuadere Fd^{ac}

⁷³⁰ potentium Fd

399 inuasione aut tyrannica potestate retinuerint,⁷³¹ et filiis uel heredibus suis, ut a quibusdam iam factum
 400 audiuius,⁷³² quasi hereditarias reliquerint,⁷³³ nisi cito res Dei, ammoniti a pontifice agnita ueritate
 401 reddiderint, perpetuo anathemate feriantur. Iniquum enim esse⁷³⁴ censemus, ut potius custodes
 402 cartarum quam defensores rerum creditarum, ut preceptum est, iudicemur. Et infra: Ferro enim
 403 abscidenda sunt uulnera, que fomenta⁷³⁵ non sentiunt. Similiter et illi extorres debent fieri ab ecclesia,
 404 qui sacerdotali admonitione⁷³⁶ non corriguntur, dicente Domino⁷³⁷: 'Auferte malum ex uobis.'⁷³⁸
 405 Uniuersa sinodus surgens acclamauit. Ut ita fiant rogamus. Dictum est octies. Exaudi Christe,
 406 Simacho⁷³⁹ papa uita. Dictum est duodecies.

407 **d.p.c.43** Cum ergo preter conscientiam episcopi uel eius, cui huiuscemodi officia conmissa sunt,
 408 quilibet prohibetur oblationes ecclesie distribuere, liquido apparet quod cum episcopi consensu⁷⁴⁰
 409 quibuslibet ecclesiis possint⁷⁴¹ distribui. Huic interpretationi uidetur contraire auctoritas illa Tolletani
 410 Concilii.

411 **44⁷⁴²** NICHIL DE IURE SUE⁷⁴³ DIOCESIS⁷⁴⁴ PRESUMANT AUFERRE.

412 Constitutum est a presenti concilio episcopos dioceses suas ita regere, ut nichil ex earum iure
 413 presumant auferre.

414 **45⁷⁴⁵** *Item Simachus Papa.*

415 POSSESSIONES ECCLESIE DERELICTAS NULLI SIT ALIENANDI LICENTIA.

⁷³¹ retinuerint Aa Mk Sa Sb Hk Mz In Kb Pk Tr Vd Vp Cd Bi Ka Tz^{pc} Ty; retinuerit Fd; recipiunt Fd^{pc}; retinuerunt Tz^{ac}; om. Sg

⁷³² uidimus Fd^{ac}

⁷³³ reliquerit Aa

⁷³⁴ esse om. Aa

⁷³⁵ fomitem Aa

⁷³⁶ ammonitione Aa

⁷³⁷ dicente Domino om. Aa

⁷³⁸ 1 Cor. 5:13

⁷³⁹ Simacho sup. lin. Fd^{pc}

⁷⁴⁰ consensu] con- sup. lin. Fd^{pc}

⁷⁴¹ possunt Fd^{ac}

⁷⁴² Conc. Toletanum IV a. 633, c. 33 (MHS Ser. Can. 5.220-221); **3L App. 14.1**; 9L 3.3 add01

⁷⁴³ sue sup. lin. Fd^{pc}; om. Aa

⁷⁴⁴ diocesi Fd^{ac} Aa

⁷⁴⁵ Symmachus, ep. 6.1 (PL 62.54D; JK 764); **Ans. 5.43 (A)**; Polyc. 3.12.11; 3L 2.27.37; 9L 3.3.35

416 Possessiones, quas unusquisque ecclesie proprio dedit aut reliquit arbitrio, alienare quibuslibet titulis
 417 atque distractionibus, uel sub quocumque argumento non patimur, nisi forte aut clericis bonorum⁷⁴⁶
 418 meritis aut monasteriis religionis intuitu aut certe peregrinis, si necessitas largiri suaserit; sic tamen
 419 ut⁷⁴⁷ hec ipsa non perpetuo, sed temporaliter perfruantur.

420 **d.p.c.45** Sed illud Tolletani concilii ita intelligendum est, ut episcopi preter quartam uel tertiam, que
 421 secundum locorum diuersitates eis debetur, nichil contingant.⁷⁴⁸

422 **46**⁷⁴⁹ *Vnde in Concilio Leonis Papae statutum est:*

423 A CLERICIS ET PIIS LOCIS ULTRA STATUTA PARTUM EPISCOPUS ALIQUID EXIGAT.

424 Nulli episcoporum liceat a subiecto sacerdote uel alio quolibet clerico et piis locis dationes ultra statuta
 425 patrum exigere aut superposita in angariis inferre. Sed cum sit optimus perspector, ita perspiciat, ut
 426 uniuerse sibi oues commisse a se maxime alantur⁷⁵⁰ atque in necessitatibus adiuuentur, non illicitis
 427 exactionibus opprimantur, quia Dominus pascere⁷⁵¹ et docere nos docuit et⁷⁵² omnibus ministrare non
 428 terrenis lucris et auariciis delectari.

429 **47**⁷⁵³ *Item Gregorius Leoni⁷⁵⁴ Episcopo Catheniensi.*⁷⁵⁵

430 DE REDITIBUS ECCLESIE QUARTA PARS EST CLERICIS DISTRIBUENDA.

431 Ad hoc locorum gradus rationis ordo distinxit et iudicia esse constituit, ut nec populo prepositi in⁷⁵⁶
 432 opprimendos se frustra ualeant occupare subiectos,⁷⁵⁷ nec subiectis iterum contra suos prepositos
 433 effrenata sit resultandi licentia. Volumus ergo ut quicquid ecclesie tue⁷⁵⁸ ex reddito uel quolibet alio

⁷⁴⁶ beatorum Fd^{ac}

⁷⁴⁷ ut *sup. lin.* Fd^{pc}

⁷⁴⁸ contingant] ad proprium usum, non quin habeant potestatem dispensandi quibus uoluerint *add.* Aa; *om.* Fd Mk Sa Sb Hk Mz In Kb Pk Tr Vd Vp Cd Bi Ka Sg Tz Ty

⁷⁴⁹ sub Leone IV a. 853, c. 26 (MGH Concilia 3.325); **Ans. 6.159 (A)**; Polyc. 4.22.2

⁷⁵⁰ alantur] alacriter Fd^{ac}; alantur Fd^{pc} Aa Fr

⁷⁵¹ pasce est et Fd^{ac}

⁷⁵² et] in *add.* Fd^{pc}

⁷⁵³ Gregorius M., *Reg.* 8.7 (CCSL 140A. 524; JE 1494); **Ans.5.67(B)**; **Ans.5.81(C)**; Polyc. 3.11.2

⁷⁵⁴ Leoni] Gregorius *praem.* Fd^{pc}

⁷⁵⁵ Catinensi Aa

⁷⁵⁶ in *om.* Aa

⁷⁵⁷ se — subiectos] frustra subiectos se ualeant occupare Aa

⁷⁵⁸ tue *sup. lin.* Fd^{pc}

434 titulo fortassis accesserit, quartam exinde portionem sine⁷⁵⁹ diminutione aliqua debeas segregare atque
 435 eam secundum Domini timorem presbiteris, diaconibus ac clero, ut tibi uisum fuerit discrete diuidere.
 436 **48**⁷⁶⁰ *Item ex VII* ⁷⁶¹ Sinodo.
 437 EPISCOPI TURPIS LUCRI GRATIA NICHIL A MONACHIS⁷⁶² UEL CLERICIS SUIS EXIGERE DEBENT.
 438 Predicator ecclesie Paulus diuinus apostolus ac si canonem ponens Ephesiorum⁷⁶³ presbiteris, immo
 439 uero et omni sacrate multitudini ac plenitudini, ita fiducialiter perhibuit: ‘Argentum et aurum aut
 440 uestem nullius concupiui. Omnia ostendi uobis, quoniam⁷⁶⁴ sic laborantes oportet suscipere infirmos,
 441 beatius existimans dare quam accipere.’⁷⁶⁵ Propter quod et nos docti ab eo diffinimus, nullatenus
 442 episcopum turpis lucri gratia excogitare ad excusandas excusationes in peccatis expetere⁷⁶⁶ aurum uel
 443 argentum aut aliam speciem⁷⁶⁷ a presbiteris uel clericis uel monachis qui sub ipso sunt. Ait enim
 444 Apostolus: ‘non debent filii thesaurizare parentibus, sed parentes filiis.’⁷⁶⁸ Et apostolus Petrus: ‘Pascite,
 445 qui in uobis est, gregem Dei, non coacte sed spontanee⁷⁶⁹ secundum Deum, non turpis lucri
 446 gratia⁷⁷⁰ neque ut dominantes in clero, sed forma facti gregis. Et cum apparuerit princeps pastorum
 447 percipietis inmarcessibilem glorie coronam.’⁷⁷¹
 448 **d.p.c.48** Illud autem quod in fine capituli Simachi ponitur: ‘hec ipsa non perpetuo, sed temporaliter
 449 perfruantur,’⁷⁷² ad personales tantum possessiones, clericorum uidelicet et pauperum, non ad
 450 monasteriales referendum est. Quam uero sit graue apud Deum decimas et oblationes ac primitias⁷⁷³
 451 sacerdotibus non soluere, auctoritate Ieronimus et Augustini apparet.

⁷⁵⁹ sine *sup. lin.* Fd^{pc}

⁷⁶⁰ *Capitulum incertum; Ans. 6.160 (A); Polyc. 4.22.3*

⁷⁶¹ vi. Aa

⁷⁶² clericis uel monachis *tr.* Aa

⁷⁶³ Ephesiorum Fd

⁷⁶⁴ quo Aa

⁷⁶⁵ Acts 20: 33,35

⁷⁶⁶ expetere *sup. lin.* Fd^{pc}

⁷⁶⁷ speciem] ut frumentum uel uinum *add.* Aa; *om.* Fd Mk Sa Sb Hk Mz In Kb Pk Tr Vd Vp Cd Bi Kb Sg Tz Ty

⁷⁶⁸ 2 Cor. 12:14

⁷⁶⁹ spontanee] sponte est Fd^{ac}

⁷⁷⁰ gratia *sup. lin.* Fd^{pc}; causa Fd^{ac}

⁷⁷¹ 1 Pet. 5.2-4

⁷⁷² C. 16 q. 1 c. 45

⁷⁷³ primitiua Fd Aa^{ac}; primitias Aa^{pc}

452 **49**⁷⁷⁴ *Ait namque Ieronimus super Malachiam:*
453 REUS APUD DEUM HABETUR⁷⁷⁵ QUI SACERDOTIBUS DECIMAS NON SOLUERIT.⁷⁷⁶
454 ‘Reuertimini ad me, et reuertar ad uos, dicit Dominus exercituum; et dixistis, in quo reuertemur? Si
455 affligeret⁷⁷⁷ homo Deum, quia uos configitis⁷⁷⁸ me, et dixistis, in quo configimus⁷⁷⁹ te? in decimis et in⁷⁸⁰
456 primitiis. Et in penuria uos maledicti estis, et me uos configitis⁷⁸¹ tota gens.’⁷⁸² Nunc sequamur ordinem
457 prophete: ‘Quia michi non reddidistis decimas et primitias, idcirco infame et penuria maledicti estis et
458 me uos supplantastis,⁷⁸³ siue fraudastis. Ecce annus expletus est et nichil in meos thesauros, sed in
459 uestra horrea conportastis et pro decimis et primitiis, que parua erant, ut a⁷⁸⁴ uobis darentur,
460 ubertatem⁷⁸⁵ possessionum uestrarum et omnem fruguum habundantiam perdidistis. Vt autem sciatis,
461 me hoc irascente perfectum, quia fraudastis me parte mea, hortor uos atque commoneo, ut inferatis
462 decimas in horrea, hoc est in⁷⁸⁶ thesauros templi, et habeant sacerdotes atque leuite, qui michi
463 ministrant, cibos, et probate me, si non tantas pluuias effudero, ut cataracte celi aperte⁷⁸⁷ esse
464 credantur, et effundam uobis benedictionem usque ad habundantiam.’ Verbum effusionis nomen⁷⁸⁸
465 largitatis ostendit.⁷⁸⁹ Sed fieri potest ut agros irrigantibus pluuiis sit quidem fertilitas, uerum aut
466 locusta⁷⁹⁰ ueniet aut brucus aut erugo aut eruca⁷⁹¹ et labores hominum uastabunt. Propterea iungit et
467 dicit: ‘et increpabo pro uobis deuorantes, locustas⁷⁹² uidelicet et reliqua que diximus, et non

⁷⁷⁴ Hieronymus, *In Malachiam*, 3.7, 8-12 excerpta (CCSL 76 A.932.204-209. 935.293-296, 935.298-315, 936.332-348); **3L 2.8.62**

⁷⁷⁵ habeatur Fd^{ac}

⁷⁷⁶ soluunt Fd

⁷⁷⁷ affliget Aa

⁷⁷⁸ confugitis Fd

⁷⁷⁹ confugimus Fd

⁷⁸⁰ in *sup. lin.* Fd^{pc}

⁷⁸¹ confugitis Fd

⁷⁸² gens tota *tr.* Aa; Mal. 3.7-9

⁷⁸³ supplantati estis Fd^{ac}

⁷⁸⁴ a] ei Fd^{ac}

⁷⁸⁵ ubertatem] uobis tantum Fd

⁷⁸⁶ in *sup. lin.* Fd^{pc}

⁷⁸⁷ aperta Fd^{ac}

⁷⁸⁸ non uere Fd^{ac}

⁷⁸⁹ ostendet Fd

⁷⁹⁰ locusta] loc ista Fd^{ac}

⁷⁹¹ aut eruca *sup. lin.* Fd^{pc}

⁷⁹² locustas] locum Fd^{ac}

468 corrumpent⁷⁹³ fructum terre uestre.⁷⁹⁴ Si quando fames et penuria et rerum omnium egestas opprimit
 469 mundum, sciamus hoc ex Dei ira descendere, qui se in pauperibus, si non accipiant elemosinam,⁷⁹⁵
 470 fraudari loquitur, et sua possessio. Possumus decimas et primitias interpretari. Si⁷⁹⁶ quis doctus et
 471 eruditus legem Domini potest erudire, non debet sue assignare prudentie et ingenio⁷⁹⁷ quod possidet,
 472 sed gratias agat primum Deo qui⁷⁹⁸ cuncta largitur, deinde sacerdotibus eius ac ministris, a quibus
 473 doctus est. Si enim non egerit gratias,⁷⁹⁹ sed scientiam uendicauerit⁸⁰⁰ in penuria maledicetur.⁸⁰¹ Quod
 474 si intelligens largitorem Deum et his agens gratias per quos a Deo eruditus est, humiliauerit se, et in
 475 horreum Dei intulerit cibos, hoc est scripture alimenta in ecclesia populis ministrauerit, statim
 476 aperientur super eum cataracte celi et effundetur pluuiia spiritualis, et mandabit nubibus⁸⁰² suis ut
 477 pluant super eum imbrem et habundantia rerum omnium perfruetur.’
 478 **50**⁸⁰³ *Item Augustinus.*
 479 DECIME SACERDOTIBUS SUNT REDDENDE.
 480 Decime tributa sunt egentium animarum. Quod si decimam dederis, non solum habundantiam
 481 fructuum recipies, sed etiam sanitatem corporis consequeris. Non igitur Dominus Deus premium
 482 postulat, sed honorem. Deus enim noster qui dignatus est totum donare decimam a nobis dignatus est
 483 recipere, non sibi sed nobis sine dubio profuturam. Sed⁸⁰⁴ tardius dare peccatum est, quanto magis
 484 peius est peccatum⁸⁰⁵ non dedisse? De militia, de negotio et de artificio redde decimas. Cum enim
 485 decimas dando et terrena et celestia possis premia⁸⁰⁶ promereri per auaritiam duplicem benedictionem

⁷⁹³ corrumpet Fd; ‘et’ of ‘corrumpet’ was added by Fd^{pc}

⁷⁹⁴ Mal. 3.11

⁷⁹⁵ elemosina Fd^{ac}; elemosinas Fd^{pc}

⁷⁹⁶ si *sup. lin.* Fd^{pc}

⁷⁹⁷ ingenio] que *add.* Aa Mk

⁷⁹⁸ quod Fd^{ac}

⁷⁹⁹ gratias] generis Fd^{ac}; si enim gratias non egerit *tr.* Aa

⁸⁰⁰ uendica] uerit *sup. lin.* Fd^{pc}

⁸⁰¹ maledicentur Fd^{ac}

⁸⁰² manibus Fd

⁸⁰³ Immo Defensor Locogiacensis, *Liber Scintillarum*, 29.7-17 (CCSL 117.117-18); Ans. 5.31(A); Polyc. 3.11.3; **3L**

2.8.63

⁸⁰⁴ Sed Fd Ans. 5.31 Polyc. 3.11.3 3L 2.8.63; Sed si Aa Ans.B Fr; Si Sg

⁸⁰⁵ peccatum *sup. lin.* Fd^{pc}

⁸⁰⁶ possis premia Aa Sg 3L 2.8.63; premia possis Fd

486 fraudas? Hec est enim Domini iustissima⁸⁰⁷ consuetudo, ut si tu illi decimam non dederis, tu ad
487 decimam reuoceris. Dabis impio militi quod non uis dare sacerdoti. Benefacere Deus semper paratus
488 est, sed hominum malitia prohibetur. Decime etenim ex debito requiruntur et qui eas dare noluerint⁸⁰⁸
489 res alienas inuadunt. Et quanti pauperes in locis suis, ubi ipse habitat illo decimas non dante fame
490 mortui fuerint, tantorum homicidiorum reus ante eterni iudicis⁸⁰⁹ tribunal apparebit, quia rem a
491 Domino pauperibus delegatam suis usibus reseruauit. Quia ergo sibi aut premium comparare aut
492 peccatorum desiderat indulgentiam promereri, reddat decimam; et⁸¹⁰ de nouem partibus studeat
493 elemosinam dare pauperibus.

494 **d.a.c.51** Quod autem decime episcoporum consensu monachis⁸¹¹ licite tribuantur Beatus Ieronimus
495 Damaso Papa scribit, dicens:

496 **51⁸¹²** LIBERUM EST CLERICIS DECIMAS MONACHIS CONCEDERE.

⁸⁰⁷ Domini iustissima Aa Sg 3L 2.8.63; iustissima Domini Fd

⁸⁰⁸ voluerint Fd^{ac}

⁸⁰⁹ iudicis *om.* Fd

⁸¹⁰ et] etiam Aa

⁸¹¹ monachorum Fd^{ac}

⁸¹² *Capitulum incertum*; Ans.4.65a (Aucta of Mantua)

497 Quoniam quicquid habent clerici pauperum est, et domus illorum omnibus debent esse communes,
 498 susceptioni peregrinorum et hospitem⁸¹³ inuigilare debent, maxime curandum est illis,⁸¹⁴ ut de decimis
 499 et oblationibus cenobiis⁸¹⁵ et xenodochiis⁸¹⁶ qualem uoluerint et potuerint sustentationem inpendant.
 500 Liberum est enim monachis et spiritualibus uiris Deum colentibus et timentibus decimas et oblationes⁸¹⁷
 501 cunctaque remedia⁸¹⁸ ecclesie et de iure suo in dominium illorum et usum transferre nec tantum
 502 pauperibus paupertatem⁸¹⁹ quam religionem attendere. Quod autem beatitudo tua⁸²⁰ quesiiuit, utrum
 503 usus decimarum et oblationum secularibus prouenire possit, nouerit uestra sanctitas⁸²¹ omnino non
 504 licere, protestantibus hoc omnibus diuinis auctoritatibus paternorum canonum. Quamobrem, si
 505 aliquando fuerint ab his male detenta, que diuini iuris esse noscuntur, et in usum transierint
 506 monachorum et seruorum Dei, episcopo tamen⁸²² loci illius prebente consensum, constabunt eis omnia
 507 perpetua firmitate et stabilitate subnixa. Clericos autem illos conuenit ecclesie stipendiis sustentare,⁸²³
 508 quibus parentum et propinquorum nulli⁸²⁴ suffragantur.⁸²⁵ Qui autem bonis parentum et opibus
 509 sustentari possunt, si quod pauperum est accipiunt, sacrilegium profecto incurrunt et committunt et per
 510 abusionem talium iudicium sibi manducant⁸²⁶ et bibunt.

511 **d.p.c.51** De prediis autem que a colonis eorum coluntur, sic diffinitum est in Magotiensi concilio:
 512 'Questi sunt preterea etc.'⁸²⁷

⁸¹³ hospitio Fd^{ac}

⁸¹⁴ illud Fd^{ac}

⁸¹⁵ cenobiis *sup. lin.* Fd^{pc}

⁸¹⁶ xenodochiis] zenodochiis Fd; que *add.* Fd^{ac}

⁸¹⁷ oblationibus Fd^{ac}

⁸¹⁸ vel predia *sup. lin.* Aa^{pc}

⁸¹⁹ paupertatem pauperum Aa

⁸²⁰ uestra Fd^{pc} Aa In Vd Cd Tz; tua Fd^{ac} Mk Sa Sb Hk Mz Kb Pk Tr Vp Bi Ka Sg Ty

⁸²¹ sanctitas uestra *tr.* Aa

⁸²² tamen *sup. lin.* Fd^{pc}

⁸²³ sustentari Aa

⁸²⁴ nullis Fd^{ac}

⁸²⁵ frangantur Fd^{ac}

⁸²⁶ mandant Fd^{ac}

⁸²⁷ C. 16 q. 1 c. 36

513 **C.16 q. 2**514 **d.a.c.1** De capellis uero que ab eis possidentur quod per eorum institutionem a sacerdotibus sint515 gubernande, Iohannes Papa probat scribens,⁸²⁸ Ysaac Siracusano Episcopo:516 **1⁸²⁹** PRESBITERI IN MONASTERIORUM ECCLESIIIS PER ABBATES INSTITUANTUR.

517 Visis litteris caritatis vestre, quibus satis perpenditur, quanto studio huic sancte sedi reuerentiam

518 exhibetis, non modice gauisi sumus. Nunc itaque super ea que consuluistis, ut karissimo fratri benigne

519 discretum consilium damus. Delegauit enim nobis pia mansuetudo uestra, utrum ecclesie pro quiete

520 monachorum a sanctis catholicisque episcopis eis tradite per sacerdotes ab eis ordinatos et inuestitos

521 debeant institui. Addidit quoque fraternitas tua, litem et seditionem inter clericos monachosque ex hac

522 causa non modicam esse ortam; quod instigatione uersuti hostis nemo fieri ambigat. Habet enim mille

523 nocendi modos, nec ignoramus astutiam eius. Conatur namque a principio ruine sue unitatem ecclesie

524 rescindere, caritatem uulnerare, sanctorum operum dulcedinem inuidie felle inficere.⁸³⁰ Dolet enim525 satis et erubescit caritatem, quam in celo nequiuit⁸³¹ habere homines constantes ex lutea materia in526 terra tenere. Vnde oportet,⁸³² quantum fragilitati nostre conceditur, ut omnes aditus⁸³³ nocendi eius527 uersutie muniamur⁸³⁴ ne mors ingrediatur portas nostras. Consilio itaque multorum fratrum diligenter528 exquisito decreuimus, ut amodo⁸³⁵ ecclesie monachis tradite per suos sacerdotes instituantur. Diuine529 enim leges habent et seculares, ut cuius est possessio eius fiat institutio et si in⁸³⁶ dando quod maius est530 facilis fuit⁸³⁷ caritas, sit facilior⁸³⁸ in concedendo quod minus est sancta largitas. Maius enim fuit

531 possessionem dare quam sit inuestituram concedere. Quomodo possessionis iura cognoscentur et

532 suarum rerum sibi tributa reddentur, nisi quod suum est per alterum datur, et cum uoluerit, aufertur?

⁸²⁸ probat scribens] scri** dicens Fd^{ac}⁸²⁹ Iohannes IV *ep.* 4 (PL 80.608A; JE +2043); 9L 3.5.25; Leipzig 276 5.6⁸³⁰ et omnibus modis humanum genus euertere et perturbare] *add. marg.* Fd^{pc} Aa Bi Cd Hk In Kb Mc Me Mz Pk Sa Sb Tr Vd Vp⁸³¹ nequit Fd⁸³² oportet Fd⁸³³ habitus Fd⁸³⁴ muniamus Aa⁸³⁵ tantummodo Fd^{ac}⁸³⁶ In *sup. lin.* Fd^{pc}⁸³⁷ fuerit Aa⁸³⁸ faciliorem Fd^{ac}

533 Humani moris est illum uereri, cuius iudicio et uoluntate nunc erigitur, nunc deprimitur. Vnde fit, ut in
 534 partem episcopi ad seruiendum sacerdos procliuior⁸³⁹ fiat, et sic episcopus quod sancte et religiose
 535 dederat quadam simulata auctoritate ad se trahat. Sic itaque priuatur mercede, quam consecutus
 536 fuerat, tum quia ficta caritate aufert quod dederat, tum quia prauorum sacerdotum discordias et
 537 scissuras et amantium uerbis nimis factus credulus, quod prius fucate⁸⁴⁰ moliebatur lucrari postea⁸⁴¹
 538 detecta fraude conatur quadam usurpatione ex toto auferre. Quorum aduertentes calliditates et hostis
 539 uersuti suasiones, deinceps⁸⁴² omnino licentiam damus suarum ecclesiarum inuestitores fieri, ita⁸⁴³
 540 tamen⁸⁴⁴ ut iudicio synodi, si contra sacerdotium⁸⁴⁵ agere presumpserint, mulctenter, et felici mucrone
 541 episcopi sacerdotum piacula resecentur.

542 **d.p.c.1** Hac auctoritate monachis conceditur⁸⁴⁶ inuestitura suarum ecclesiarum. Sed uidetur contraire
 543 Urbanus Papa secundus, dicens:

544 **2⁸⁴⁷ ABBATES IN PARROCHIALIBUS ECCLESIIS ABSQUE EPISCOPI CONSILIO PRESBITEROS NON**
 545 **ORDINENT.**

546 Sane quia monachorum quidam episcopis ius suum auferre contendunt, statuimus ne in parrochialibus
 547 ecclesiis, quas tenent, absque episcoporum consilio presbiteros collocent, sed episcopi parrochie curam
 548 cum abbatum consensu sacerdoti committant, ut eiusmodi sacerdotes de populi quidem cura episcopis
 549 rationem reddant, abbati uero pro rebus temporalibus ad monasterium pertinentibus debitam
 550 subiectionem exhibeant, et sic sua cuique iura seruentur. Idem: In parrochialibus⁸⁴⁸ ecclesiis presbiteri

⁸³⁹ proclinior Fd

⁸⁴⁰ fuscate Fd^{ac}

⁸⁴¹ post Fd^{ac}

⁸⁴² deinde Aa; deinceps Mk

⁸⁴³ ita *sup. lin.* Fd^{pc}

⁸⁴⁴ tantum Fd^{ac}

⁸⁴⁵ sacerdotium Aa Fr 9L 3.5.25; sacerdotum Fd

⁸⁴⁶ conceditur monachis *tr.* Aa

⁸⁴⁷ *Conc. Claromontensia* a. 1095, c.4 (Somerville, *Decreta Claromontensia*, 123); Ans.8.47 (A'); 9L 3.5.27

⁸⁴⁸ et *add.* Fd

551 per episcopos constituentur, qui eis respondeant de animarum cura, et his que ad episcopum
 552 pertinent.⁸⁴⁹

553 **d.p.c.2** Ecce Urbanus Papa prohibet inuestituras parrochialium ecclesiarum per monachos fieri, quas
 554 Iohannes papa eis concessit. Sed illud Iohannis papa intelligendum est de illis capellis que cum omni
 555 iure suo ab episcopis monachis conceduntur. Istud autem Urbani intelligitur⁸⁵⁰ de illis quas abbates in
 556 propriis prediis edificant in uillis et castellis suis. Tales, et si ius⁸⁵¹ territorii habeant, tamen⁸⁵²
 557 potestatem gubernandi populum et spiritualia ministrandi non habent. Quod etiam de episcopo
 558 intelligendum est.

559 **3**⁸⁵³ *Vnde Nicholas Papa ait:*

560 EPISCOPUS, QUI IN ALTERIUS DIOCESI ECCLESIAM EDIFICAT, EIUS CONSECRATIONEM SIBI UENDICARE
 561 NON AUDEAT

562 Si quis episcoporum in aliene ciuitatis territorio pro quacumque suorum oportunitate ecclesiam
 563 edificare disponit, non presumat dedicationem, que illius est in cuius territorio ecclesia assurgit.⁸⁵⁴

564 Edificatori uero episcopo⁸⁵⁵ hec gratia reseruetur,⁸⁵⁶ ut⁸⁵⁷ quos⁸⁵⁸ desiderat clericos in re sua ordinari,
 565 ipsos ordinet⁸⁵⁹ is, cuius territorium est.

566 **4**⁸⁶⁰ *Item ex Tolletano Concilio IIII.*⁸⁶¹

567 BASILICE NOUITER CONDITE AD EPISCOPUM PERTINENT, CUIUS CONUENTUS ESSE CONSTITERIT.

568

⁸⁴⁹ 'Idem: In parrochialibus – pertinent' is a variant of c.18 of the First Lateran Council (1123); on this variant, see Louis I. Hamilton and Martin Brett, "New Evidence for the Canons of the First Lateran Council," *BMCL* 30 (2013): 1-20, at 17, n.32.

⁸⁵⁰ intelligendum est Aa

⁸⁵¹ si ius] suu Fd^{ac}

⁸⁵² tamen om. Aa

⁸⁵³ *Conc. Arausicanum* a. 441, c.9(10) (CCSL 148.80-81.45); Ans.5.9(C); 3L App.20.1; 9L 3.2.1

⁸⁵⁴ assurgit Aa Sg 3L 9L; surgit Fd

⁸⁵⁵ episcopo om. Fd^{pc}

⁸⁵⁶ reseruentur Fd

⁸⁵⁷ ut sup. lin. Fd^{pc}

⁸⁵⁸ quos] an praem. Fd^{ac}

⁸⁵⁹ ordinet] ordines Fd^{ac}

⁸⁶⁰ *Conc. Toletanum IV* a. 633, c.35 (MHS Ser. can. 5.222); Trip. 2.37.12; Pan. 2.68; Polyc. 3.12.19; **3L 2.31.3**; 9L 5.7.3

⁸⁶¹ iiii] vii Fd^{ac}

569 Possessio territorii conuentum non adimit ideoque noue basilice, que condite fuerint, ad eum
570 proculdubio pertinebunt episcopum, cuius conuentus esse constiterit.

571 **d.p.c 4** Quod de iure ordinandi, non possidendi intelligendum est. His auctoritatibus facile perpendi
572 potest quod siue abbates siue episcopi in suis castellis uel uillis ecclesias edificauerint, non omnino ideo
573 episcopo, in cuius diocesi fuerint conuentus adimitur et ideo sacerdotes, iuxta illud Urbani et Nicholai,
574 in eis non nisi per episcopos cum consensu edificantium, ordinari possunt.

575 **C.16 q.3**

576 **d.a.c.1** Quod autem prescriptione temporis omnia iura tollantur, probatur auctoritate Calcedonensis
577 concilii, et Gelasii Papa et Tolletani Concilio. Prima hec est:

578 **1⁸⁶²** RUSTICANE PARROCHIE APUD EPISCOPOS, QUI EAS XXX ANNIS SINE VIOLENTIA PERMANEANT
579 IMMOBILES.

580 Per singulas ecclesias rusticanas parrochias permanere immobiles apud eos qui eas tenent episcopos
581 decreuimus et maxime si eas sine uiolentia per⁸⁶³ xxx annos gubernauerit. Si uero intra xxx annos facta
582 fuerit de eis dubitatio, liceat eis, qui se dixerint lesos, pro ea mouere apud synodum prouincie
583 certamen.

584 **2⁸⁶⁴** *Item Gelasius.*

585 DIOCESES⁸⁶⁵ TRIGINTA ANNIS AB EPISCOPI POSSESSE⁸⁶⁶ IMMOBILES PERMANEANT.

586 Illud etiam annecti placuit ut si, quod absit,⁸⁶⁷ facultates ecclesie nec non dioceses ab aliquibus
587 possidentur episcopis,⁸⁶⁸ iure sibi uendicent quod tricenallex conclusit, quia et filiorum nostrorum
588 principum ita emanauit auctoritas.

⁸⁶² *Conc. Chalcedonense* a. 451, c. 17 vers. Hisp. (MHS Ser. Can. 3.258); Trip. 2.10.17; Pan. 2.64; **3L 2.31.1**; 9L 5.7.1

⁸⁶³ uolentiam per *sup. lin.* Fd¹

⁸⁶⁴ Gelasius I, *ep.* 17.2 (PL 59.57B; JK 637) Trip. 1.46.11; Pan. 2.65; **3L 2.31.2**; 9L 5.7.2

⁸⁶⁵ Dioceses *sup. lin.* Fd^{pc}

⁸⁶⁶ posse Fd^{ac}

⁸⁶⁷ quod absit] *om.* Aa

⁸⁶⁸ episcopis] episcopi Fd; personis uel *praem* Aa

589 **3**⁸⁶⁹ *Item Tolletano Concilio IIII.*

590 TERRITORII POSSESSIO CONVENTUM NON⁸⁷⁰ ADIMIT.

591 Sicut diocesim alienam tricenalis possessio tollit, ita territorii conuentum non adimit.

592 **4**⁸⁷¹ *Item ex eodem.*

593 TRICENNALIS POSSESSIO INTRA UNAM PROVINCIAM SERVARI⁸⁷² DEBET.

594 Quicumque episcopus alterius episcopi diocesim per xxx. annos sine aliqua interpellatione possederit,

595 quamuis secundum legis ius eius non uideatur esse diocesis, admittenda tamen non est contra eum

596 actio repossendi, sed hoc intra unam prouinciam, extra uero nullo modo ne, dum diocesis defenditur,

597 prouinciarum termini confundantur.

598 **d.p.c.4** Ecce his auctoritatibus probatur quod possessionis et gubernationis iura prescriptione tolluntur.

599 Sed idem Gelasius contra testatur, scribens Maximo et Eusebio Episcopis:

600 **5**⁸⁷³ STATUS PARROCHIARUM NEC PRESUMPTIONE, NEC TEMPORIS PRESCRIPTIONE MUTARI POTEST.

601 Licet regulis contineatur antiquis, parrochias unicuique ecclesie pristina dispositione deputatas nulla

602 posse ratione conuelli, ne per consuetudinem pessimam, exempli mali temeritate crescente, uniuersalis

603 confusio nasceretur: tamen etiam decretis nostris ante non multum temporis destinatis omnia iussimus,

604 que taliter fuerant inuasa, restitui. Sed quia temeritas peruadentium legem sibi posse putat generari,

605 si⁸⁷⁴ sceleri suo pertinaciam retentionis adiungat ea que inter fratrem et coepiscopum nostrum

606 Constantium, Camiscane ecclesie sacerdotem et directos ab Anconitano pontifice decreuimus per uos

607 impleri cupimus, tunc formam in ceteris cognitionibus, que sit sequenda, prescripsimus. Nulla igitur

608 presumptione statum parrochiarum, qui perpetue etatis⁸⁷⁵ firmitate⁸⁷⁶ durauit,⁸⁷⁷ patimur immutari.

⁸⁶⁹ *Conc. Toletanum IV.* a. 633, c. 35 (MHS *Ser. can.* 5.222); Trip. 2.37.12; Pan. 2.68; Polyc. 3.12.19; **3L 2.31.3**; 9L 5.7.3

⁸⁷⁰ non] nullo modo *sup. lin.* Fd^{pc}

⁸⁷¹ *Conc. Toletanum IV* a. 633, c. 34 (MHS *Ser. can.* 5.221-222); Trip. 2.37.11; Pan. 2.67; Polyc. 3.12.18; **3L 2.31.4**; 9L 5.7.4

⁸⁷² seruari] non *add.* Aa

⁸⁷³ Gelasius I, *fragmentum* 17 (PL 59.140A; JK 713); **Trip. 1.46.25**

⁸⁷⁴ si] sed Fd Sg; Aa Fr Trip. 1.46.25

⁸⁷⁵ etatis] eternitatis Aa; etatis *sup. lin.* Aa^{pc}

⁸⁷⁶ firmitates Aa^{pc}

⁸⁷⁷ duratum Fd^{ac}

609 Quia nec negligentia pontificum nec temporalis obiectio, que per incuriam forte generatur, neque
 610 ignauia faciente consensus nec subripiante supplicatione preceptio diuellere potest semel diocesim
 611 constitutam, exqua semper ad regenerationem⁸⁷⁸ atque consignationem plebs deuota conuenit.
 612 Territorium etiam non facere diocesim quod⁸⁷⁹ olim noscitur ordinatum.

613 **d.p.c.5** Hoc multipliciter distinguitur. Sunt quedam dioceses que certis limitibus distincte sunt; hec
 614 nullomodo prescribi possunt. Alie uero que non sunt certis limitibus distincte et de quibus certa
 615 diffinitio non olim processit, prescriptione tolluntur.

616 **6⁸⁸⁰** *Vnde Innocentius Papa ait:*

617 LIMITIS POSSESSIO PRESCRIBI NON⁸⁸¹ POTEST.

618 Inter memoratos fratres nostros, Fulgentium Astigitanum et Honorium Cordubensem⁸⁸² episcopos,
 619 discussio agitata est propter parrochiam basilice cuiusdam, quam horum alter Cellatensem alter
 620 Reginensem asseruit. Et quia inter utrasque partes hactenus limitis actio uentilata est, cuiusdam
 621 quamuis uetusta retentio nullum iuris preiudicium afferret ideoque, ne in dubium ultra inter eos
 622 deuocaretur sententia,⁸⁸³ prolatis canonibus synodalia decreta perlecta sunt. Quorum auctoritas
 623 premonet, ita oportere⁸⁸⁴ inhiberi cupiditatem, ut ne quis terminos alienos usurpet; ob hoc placuit inter
 624 alternas partes inspectores uiros mittendos, ita ut diocesis possidentis,⁸⁸⁵ si tamen basilicam ueris signis
 625 limes prouisus monstrauerit ecclesie, cuius est ius retentionis, sit eternum dominium. Quod si limes
 626 legitimus eandem basilicam non concludit et tam longi temporis probatur obiecta prescriptio, appellatio
 627 presentis episcopi non ualebit, quia illi tricenalibus obiectio silentium imponit. Hoc etiam et secularium
 628 principum edicta precipiunt et presulum Romanorum decreuit auctoritas. Si uero intra metas tricenalibus

⁸⁷⁸ regnationem Fd

⁸⁷⁹ quod *om.* Fd^{ac}; quod Aa Fd^{pc} Ans. 5.15 (A) 3L 2.31.7

⁸⁸⁰ *Conc. Hispalense II* a. 619, c. 2 (Schon, dMGH); Trip. 3.3.6; **3L 2.31.10**; 9L 5.7.11

⁸⁸¹ nullo modo *sup. lin.* Fd^{pc}

⁸⁸² Cordubenses Fd^{ac}

⁸⁸³ sententia] nostra *add.* Aa

⁸⁸⁴ oportere *om.* Aa

⁸⁸⁵ possidentes Fd^{pc}

629 temporis extra alienos terminos basilice iniusta retentio reperitur, repetentis⁸⁸⁶ episcopi iuri sine mora
 630 restituetur.

631 **7⁸⁸⁷** *Item Gelasius Papa Iusto Episcopo.*

632 SPATIA QUE DIFFINITA FUERINT TEMPORE PRESCRIBI NON POSSUNT.

633 Dilectio tua studeat, quesita omnium fideliter rerum ueritate, ut si de spatiis, de quibus memoratur
 634 orta contentio, diffinitio dudum certa processit intemerata seruetur. Alioquin, si nichil umquam
 635 constiterit terminatum, tunc de⁸⁸⁸ prescriptione⁸⁸⁹ temporum, si qua pars confidit prebeat
 636 sacramentum, ut tamen que⁸⁹⁰ hactenus possedissee probabitur, iusiurandum sinatur⁸⁹¹ offerre.

637 **d.p.c.7** Potest et aliter distingui. Que quisque sua auctoritate usurpat, quia nullo titulo possidere
 638 incipit, prescribere non potest, et in hoc casu intelligenda est illa auctoritas Gelasii: ‘Temporalis
 639 obiectio, que per incuriam forte generatur, non potest diuellere diocesim semel constitutam.’⁸⁹²

640 Intelligendum est, si nullo titulo, sed sola usurpatione eam possidere cepit. Si uero iudicis auctoritate et
 641 priuilegiorum longa consuetudine possidere⁸⁹³ coepit, tunc temporalis obiectio actori silentium imponit.

642 **8⁸⁹⁴** *Vnde Gelasius Papa ait:*

643 PRIVILEGIA PER XXX ANNOS POSSESSA IMMOBILIA SERVARI DEBENT.⁸⁹⁵

644 Placuit huic sancte et magne synodo, ut res uel priuilegia, que Dei⁸⁹⁶ ecclesiis ex longa consuetudine
 645 pertinent, et siue a diue recordationis imperatoribus siue ab aliis Dei cultoribus in scriptis donata, et ab
 646 eis per annos xxx possessa sunt, nequaquam a potestate presulum eorum quecumque persone
 647 secularis⁸⁹⁷ per potestatem subtrahat,⁸⁹⁸ aut per argumenta quelibet auferat;⁸⁹⁹ sed sint omnia in

⁸⁸⁶ repentis Fd^{ac}

⁸⁸⁷ Gelasius I (PL 59.144B; JK 659); **Trip. 1.46.29**; Pan. 2.69; 9L 5.7.25

⁸⁸⁸ de sup. lin. Fd^{pc}

⁸⁸⁹ predescriptione Fd; de scriptione Aa Mz Pk; prescriptione Kb Hk In Mc Me Mk Sa Sb Vp Tr Vd Bi Sg

⁸⁹⁰ ut — que] ita tamen ut que Aa; ut tamen que Mk

⁸⁹¹ signatur Fd^{ac}

⁸⁹² C. 16 q. 3 c. 5

⁸⁹³ possideri Aa Mk; possidere Sa

⁸⁹⁴ Gelasius I (JK +698); Ans. 4.30(A); **Trip. 1.46.23**; Polyc. 3.12.5

⁸⁹⁵ debent om. Fd; debent Aa Mk

⁸⁹⁶ de Fd

⁸⁹⁷ seculares Aa

⁸⁹⁸ subtrahant Aa

⁸⁹⁹ auferant Aa

648 potestate ac iussu presulis ecclesie, quecumque intra xxx annos spatia ab ecclesiis possessa fuisse
 649 noscuntur. Quisquis ergo secularium contra presentem diffinitionem egerit, tamquam sacrilegus
 650 iudicetur, et donec se correxerit et ecclesie propria priuilegia seu res restituerit, anathema sit.

651 **d.a.c.9** Item si de rebus ecclesie controuersia mota est⁹⁰⁰ et diffinitio subsequuta etsi iniusta sit, tamen
 652 quia non sua sed diffinientis auctoritate possidere cepit tricenalis prescriptio petitori silentium imponit,
 653 ita tamen, ut prescriptionis supputatio⁹⁰¹ non a tempore diffinitionis, sed a decessu diffinientis
 654 exordium sumat.

655 **9⁹⁰²** *Vnde in Tolletano Concilio statutum est:*

656 VITA IRRITE⁹⁰³ DISPONENTIS NON POTERIT PERTINERE AD⁹⁰⁴ TRICENNium TEMPORIS.

657 Si sacerdotes uel⁹⁰⁵ ministri, dum gubernacula ecclesiarum administrare uidentur,⁹⁰⁶ contra patrum
 658 sanctissimas sanctiones de rebus ecclesie diffinisse aliqua dinoscuntur, non ex⁹⁰⁷ die quo talia
 659 scribendo⁹⁰⁸ decreuerunt, sed ex quo talia moriendo definita⁹⁰⁹ reliquerunt, supputationis ordo
 660 substabit.⁹¹⁰ Nusquam etenim poterit ad tricennium temporis pertinere uita irrita⁹¹¹ iudicantis, quia
 661 status contractuum⁹¹² non sumpsit initia ab origine equitatis.

662 **d.a.c.10** Item ea que in beneficiis possidentur siue que metu hostilitatis interueniente diutius possessa
 663 fuerint, prescribi non possunt.

664 **10⁹¹³** *Vnde in Agathensi Concilio legitur:*⁹¹⁴

665 QUE IN BENEFICIIS POSSIDENTUR PRESCRIBI NON POSSUNT.

⁹⁰⁰ fuerit Aa

⁹⁰¹ prescriptionis supputatio tr. Aa

⁹⁰² *Conc. Toletanum IX* a. 655, c. 8 (MHS *Ser. can.* 5.500); **3L 2.31.22**; 9L 5.7.22

⁹⁰³ irritem Aa

⁹⁰⁴ pertinere ad *sup. lin.* Fd^{pc}; per Fd^{ac}

⁹⁰⁵ et Aa

⁹⁰⁶ uidentur administrare tr. Aa

⁹⁰⁷ ex] a Aa

⁹⁰⁸ scribendo Aa Sg Fr 3L 2.31.22; describendo Fd

⁹⁰⁹ diffinita Fd

⁹¹⁰ stabit Aa

⁹¹¹ irrita *om.* Aa

⁹¹² graduum Aa

⁹¹³ *Conc. Agathense* a. 506, c. 59 (CCSL 148.226); Trip 2.28.58; **3L 2.31.20**

⁹¹⁴ diffinitum est Aa

666 Clerici quilibet⁹¹⁵ quantacumque diuturnitate temporis⁹¹⁶ de ecclesie remuneratione aliqua possident,
 667 in ius proprium prescriptione temporis non uocentur⁹¹⁷ dummodo pateat ecclesie rem fuisse, ne
 668 uideantur etiam episcopi amministrationis prolixae aut precatorias, cum ordinati sunt, facere non
 669 debuissent aut diu retentas facultates in ius sue proprietatis posse transcribere.

670 **11⁹¹⁸** *Item de Concilio Aurelianensi .*

671 QUE HUMANITATIS INTUITU ALIQUIBUS PRESTANTUR PRESCRIBI NON POSSUNT.

672 Si episcopus humanitatis intuitu mancipiola, uineolas uel terrulas clericis aut monachis uel quibuslibet
 673 prestiterit excolendas uel tempore tenendas,⁹¹⁹ etiam si longa transisse⁹²⁰ annorum spatia
 674 comprobentur, nullum ecclesia preiudicium patiat nec secularis legis prescriptio, que ecclesiam
 675 aliquam impediatur, opponatur.

676 **12⁹²¹** *Item de Concilio Spalensi, cui interfuit⁹²² Ysidorus.*

677 TEMPORIS PRESCRIPTIO NON OBICITUR⁹²³ UBI HOSTILITATIS METUS INTERUENERIT.⁹²⁴

678 Prima actione Theodulfi Malachitane ecclesie antistitis ad nos oblata precatio est, asserentis antiquam
 679 eiusdem urbis parrochiam militaris quondam hostilitatis discrimine fuisse decisam, et ex parte aliqua ab
 680 ecclesiis Astigitane, Elibertane⁹²⁵ atque Egabensis⁹²⁶ urbium esse retentam. Pro qua re placuit, ut omnis
 681 parrochia, quam antiqua dictione⁹²⁷ ante⁹²⁸ militarem hostilitatem retinuisse ecclesiam suam quisquis
 682 comprobaret, eius priuilegio restitueretur. Sicut enim per legem mundialem his, quos barbarica
 683 seueritas captiua necessitate transuexit, post liminium⁹²⁹ reuertentibus redditur antiqua possessio, non

⁹¹⁵ clerici quilibet *add. marg.* Fd^{pc}

⁹¹⁶ temporis *sup. lin.* Fd^{pc}

⁹¹⁷ non uocentur prescriptione temporis *tr.* Aa

⁹¹⁸ *Conc. Aurelianensi* a. 511, c. 19 (MHS *Ser. can.* 4.164); Ans.5.87(C); **Trip. 2.29.18**

⁹¹⁹ colendas Aa

⁹²⁰ transissent Fd^{ac}

⁹²¹ *Conc. Hispalense II.* a. 619, c. 1 (Schon, dMGH); **Trip. 2.49.1**

⁹²² interfuisset Fd^{ac}

⁹²³ Tempus prescriptionum obicitur Fd; Temporis prescriptio non obicitur Aa Hk In Mz Mc Me Mk Sa Sb Tz Pk
 Tr Vd Vp Bi Ka Kb Cg

⁹²⁴ interuenerit Fd Hk Mz Me Pk Tx Ka Cg; interuenit Mc In Mk Sa Sb Tz Vd Vp Bi Kb; inuenitur Aa

⁹²⁵ et libertane Fd

⁹²⁶ Agabensis Fd^{ac}

⁹²⁷ dictione Fd

⁹²⁸ an Fd

⁹²⁹ liminum Fd^{ac}

684 aliter et ecclesia receptura est parrochiam, quam ante tenuit cum⁹³⁰ rebus suis siue ab aliis ecclesiis
 685 possideatur siue in cuiuslibet possessionem transfusa sit. Non enim erit obicienda prescriptio temporis,
 686 ubi necessitas intererit hostilitatis.

687 **d.a.c.13** Tolluntur etiam⁹³¹ prescriptioe ille⁹³² dioceses, quas⁹³³ propriis episcopis neglegentibus, alii⁹³⁴
 688 ab heresi ad fidei integritatem reuocauerunt.

689 **13**⁹³⁵ *Vnde in VIII*⁹³⁶ *Concilio Africano legitur:*

690 SI QUI EPISCOPI DIOCESES SUAS DEO LUCRARI NEGLIGUNT, POST TRICENNIO EIS⁹³⁷ CONSTABUNT
 691 EPISCOPI, QUORUM STUDIO FIDEI SUNT RECONCILIATE.

692 Placuit ut quicumque negligunt loca ad suam cathedram⁹³⁸ pertinentia in catholica unitate lucrari,
 693 conueniantur a diligentibus uicinis episcopis, ut id agere non morentur. Quod si intra sex menses a die
 694 conuentionis non effecerint, qui potuerint⁹³⁹ eas⁹⁴⁰ lucrari ad ipsum pertineant. Ita sane ut si ille, ad
 695 quem pertinuisse uidebantur probare potuerit magis illius negligentiam electam ab hereticis, ut impune
 696 ibi sint, et suam⁹⁴¹ diligentiam fuisse preuentam, ut eo modo⁹⁴² eius cura sollicitior⁹⁴³ uitaretur. Cum
 697 hoc iudicent episcopi qui nouerint,⁹⁴⁴ sue cathedre loca restituant.

698 **d.a.c.14** Potest etiam aliter intelligi prescriptio illa longi temporis, qua Gelasius negat statum
 699 parrochiarum posse mutari. Longum enim tempus, sicut ex legibus habetur, decennium uel uicennium
 700 intelligitur. Huius ergo longi temporis prescriptio⁹⁴⁵ auctoritate Gelasii et secularium legum ecclesiis

⁹³⁰ cum *om.* Fd

⁹³¹ enim Fd^{ac}

⁹³² Ille *add. marg.* Fd^{pc}

⁹³³ qua Fd^{ac}

⁹³⁴ aliis Fd

⁹³⁵ *Conc. Carthaginense vii. excerpta*, c. 121 (CCSL 149.225-226); **3L 2.31.15**; 9L 5.7.19

⁹³⁶ viiii. Aa

⁹³⁷ eius Fd^{ac}

⁹³⁸ kathedram suam *tr.* Aa

⁹³⁹ potuerit Aa

⁹⁴⁰ ea Aa

⁹⁴¹ sua Fd^{ac}; si iam Aa

⁹⁴² eo modo] emodo Fd

⁹⁴³ ut — sollicitior] ut eius sollicitior eo modo Aa

⁹⁴⁴ iudicent — nouerint] *eras.* Aa; iudices episcopi cognouerint *add.* Aa^{pc} Mk Sb Mz Pk Tr Vp Bi Ka Ty; iudices episcopi nouerit Sa; iudices episcopi nouerint Vd Cd Tz; entire canon is omitted by Sg

⁹⁴⁵ prescriptio *sup. lin.* Fd² Aa^{pc}

701 obici non potest. Sed sola prescriptio xxx annorum et deinceps, a qua tamen⁹⁴⁶ prescriptione priuilegia
702 Romane ecclesie⁹⁴⁷ sunt exclusa, que non nisi centum annorum spatio⁹⁴⁸ prescribi possunt.

703 **14⁹⁴⁹** *Vnde Iohannes Octauus⁹⁵⁰ scribit Regi Lodoico:*

704 PRIUILEGIA ROMANE ECCLESIE NON NISI CENTUM ANNORUM PRESCRIPTIONE TOLLUNTUR.

705 Nemo de annorum numero resultandi sumat fomentum,⁹⁵¹ quia sancta Romana,⁹⁵² cui Deo auctore
706 seruimus ecclesia⁹⁵³ priuilegia, que in firma⁹⁵⁴ Petri stabilitatis petra suscepit nullis⁹⁵⁵ temporibus
707 angustantur,⁹⁵⁶ nullis⁹⁵⁷ regnorum partitionibus preiudicantur.⁹⁵⁸ Sed uenerande Romane leges
708 diuinitus per ora principum promulgate rerum eius prescriptionem non nisi per⁹⁵⁹ centum annos
709 admittunt.

710 **C.16 q.4**

711 **d.a.c.1** Ostensum est quando ecclesia aduersus ecclesiam prescribere⁹⁶⁰ possit. Nunc uidendum est, si
712 monasterium aduersus ecclesiam prescribere ualeat?

713 **1⁹⁶¹** *Quod Urbanus Secundus prohibuit, dicens:*

714 TRICENNIO TEMPORIS ALIQUID MONACHI PRESCRIBERE NON VALENT.

715 Possessiones ecclesiarum et episcoporum tricenales abbates uel monachos habere omnimodis
716 prohibemus.

717 **d.a.c.2** Sed si tollitur eis tricenal possessio, a beato Gregorio conceditur eis quadragenalis prescriptio.

⁹⁴⁶ tantum Fd^{ac}

⁹⁴⁷ ecclesie om. Fd

⁹⁴⁸ spatia Fd^{ac}

⁹⁴⁹ Iohannes VIII ep. 15 (MGH *Epp.* 7.281; JE 2970); Ans. 4.46; **Trip. 1.63.4**

⁹⁵⁰ VIII Aa

⁹⁵¹ fundamentum Fd^{ac}

⁹⁵² Romana] ecclesia add. Aa

⁹⁵³ ecclesia om. Aa

⁹⁵⁴ forma Fd^{pc}

⁹⁵⁵ nullus Fd^{ac}

⁹⁵⁶ angustatur Fd^{ac}

⁹⁵⁷ nullus Fd^{ac}

⁹⁵⁸ preiudicatur Fd^{ac}

⁹⁵⁹ per sup. lin. Fd^{pc}

⁹⁶⁰ pre sup. lin. Fd

⁹⁶¹ *Conc. Lateranense* a. 1123, c.19 (COD 194, c.19 (1973 edition)); Ans. 4.60 (A'); 13L 4.38

718 **2**⁹⁶² *Ait enim Petro Subdiacono:*

719 XL. ANNORUM PRESCRIPTIO RELIGIOSIS DOMIBUS CONCEDITUR.

720 Volumus accedente te ad Panormitanam ciuitatem questionem ipsam tali ratione discutere, dominio rei

721 apud possessorem, sicut hactenus possessum est, uidelicet permanente ut si, monasterium prefatum

722 sancti Theodori fines, de quibus causatio mota est inconcussos xl. annis⁹⁶³ repereris possedisse,⁹⁶⁴

723 nullam deinceps, etiam si quid sancte Romane ecclesie competere potuit, patiaris sustinere

724 calumpniam, sed quietem eorum inconcussam omnibus modis⁹⁶⁵ procurate.⁹⁶⁶ Sin uero auctores

725 ecclesie non eos possedisse xl. annis inconcusso iure monstrauerint, sed aliquam intra tempora hec

726 motam fuisse aliquando questionem eorumdem⁹⁶⁷ finium,⁹⁶⁸ electis arbitris tranquille et legaliter

727 sopiatur.⁹⁶⁹

728 **3**⁹⁷⁰ *Item ex Nouellis Iustiniani.*

729 DE EODEM.

730 Neque decennii neque uicennii uel xxx annorum prescriptio, sed sola xl. annorum⁹⁷¹ curricula⁹⁷²

731 religiosis domibus opponantur, non solum in⁹⁷³ ceteris rebus sed etiam in⁹⁷⁴ legatis et hereditatibus.

732 **d.p.c.3** Sicut ergo religiosis domibus ex lege non nisi quadragenaria est obicienda prescriptio, ita et

733 auctoritate Gregorii aduersus alias ecclesias prescribere possunt eodem spatio temporis.

⁹⁶² Gregorius M., *Reg.* 1.9 (CCSL 140.11; JE 1076); Pan. 2.66; **3L 2.31.5**; 9L 5.7.5

⁹⁶³ annos Fd^{ac}

⁹⁶⁴ possedisse repereris *tr.* Aa

⁹⁶⁵ inconcussam omnibus modis] inconcussam omnimodis Aa

⁹⁶⁶ procurare Fd^{ac} Aa

⁹⁶⁷ eorum Fd^{ac}

⁹⁶⁸ diffiniunt Fd

⁹⁶⁹ sopiat Fd^{ac}

⁹⁷⁰ *Iul. epitome*, 119.511.6 (Haenel 166); Polyc. 3.12.34; **3L 2.31.17**; 9L 5.7.6

⁹⁷¹ prescriptio sed sola xl. annorum *add. marg.* Fd^{pc}

⁹⁷² cula *sup. lin.* Fd¹

⁹⁷³ in] *om.* Fd; in] Aa Sg Fr 3L 2.31.17

⁹⁷⁴ in *sup. lin.* Fd^{pc}

734 **C.16 q.6 (q.5)**⁹⁷⁵

735 **d.a.c.1** Quod autem ea que ecclesie debentur auctores⁹⁷⁶ eiusdem sua auctoritate iudiciis pretermis-

736 repetere non ualeant, Beatus Gregorius testatur, dicens:

737 **1**⁹⁷⁷ IUDICIO, NON MANIBUS, RES ECCLESIE DEFENDANTUR

738 Consuetudo noua in hac ecclesia et ualde reprehensibilis erupit ut, cum rectores eius patrimonii urbana

739 uel rustica predia iuri illius competere posse suspicantur, fiscali more⁹⁷⁸ titulos imprimant atque,

740 quod⁹⁷⁹ competere pauperibus estimant, non iudicio, sed manibus defendant et cum predicatorum suos

741 ueritas: 'nichil per contentionem'⁹⁸⁰ agere⁹⁸¹ precipiat, etiam ipsum litigiose contentionis malum

742 transcenditur et res quelibet, cum estimatur ecclesie posse competere, per uim tenetur.⁹⁸² Proinde

743 presenti decreto constituo⁹⁸³ ut, si quis ecclesiasticorum⁹⁸⁴ unquam titulos ponere siue in rustico siue in

744 urbano predio sua sponte presumpserit, anathema sit. Et responderunt omnes: anathema sit.⁹⁸⁵ Is

745 autem, qui ecclesie preest, si hoc uel ipse fieri precipit uel sine sua preceptione factum digna punire

746 animadiuersione neglexerit, anathema sit. Et responderunt omnes: anathema sit.⁹⁸⁶

⁹⁷⁵ Q. 6 Fd Mk Hk Vp Cd Ty; Q. 5 and Q. 6 in left margin, with each written by different hands in Sa Kb (right margin) Ka (written by same hand); Q. 5 Aa In Pk Sb Sg Vd; *om.* Mz; Even though d.a.c. 1, 'Quod autem ea que ecclesie,' and canon 1, 'Consuetudo noua in hac ecclesia,' do not address the issue raised by *quaestio 5* presented in the case statement to *causa 16*, because it follows *quaestio 4* and immediately precedes *quaestio 6*, some scribes apparently felt compelled to insert a 'Q.V' in the margin to make sense of the numbering (e.g. Aa and Sg), while others seemingly thought it was better to place 'Q.6' in the margin and omit a reference to *quaestio 5* altogether (e.g. Fd), presumably because the topic of that *quaestio* is not considered in this dictum or canon.

⁹⁷⁶ auctores] *om.* Aa

⁹⁷⁷ *Conc. Romanum* a. 595, c. 3, *Reg.* 5.57a (MGH *Epp.* 1.364; JE +1366); Polyc. 4.9.4; **3L 2.22.42**; 9L 4.9.42

⁹⁷⁸ morte Fd^{ac}; mote Fd^{pc}; more Aa Mk

⁹⁷⁹ quod *sup. lin.* Fd^{pc}

⁹⁸⁰ Phil. 2.3

⁹⁸¹ magi Fd^{ac}; agi Fd^{pc}

⁹⁸² tenetur Aa Sg Fr 3L 2.22.42; tenentur Fd

⁹⁸³ constituto Fd^{ac}

⁹⁸⁴ ecclesiasticorum Bi Cd Hk (*add. virorum sup.lin.*) In Ka Kb Mk Mz Pk Sa Sg Tr Ty Vd Vp Fr 3L 2.22.42 Polyc. 4.9.4; ecclesiasticarum Fd Sb; ecclesiasticarum personarum Aa

⁹⁸⁵ Et responderunt omnes: anathema sit. *add.marg.* Fd^{pc}

⁹⁸⁶ Et responderunt omnes: anathema sit. *add.marg.* Fd^{pc}

747 **d.a.c.2**⁹⁸⁷ Quod autem quisquis sua auctoritate que sibi deberi⁹⁸⁸ putat usurpat, nec per iudicem
748 repossit, cadit⁹⁸⁹ a causa, ex auctoritate Mileuitani⁹⁹⁰ Concilii habetur, in quo ita statutum legitur:
749 **2**⁹⁹¹ CAUSE SUE DETRIMENTUM PATIATUR EPISCOPUS, QUI ECCLESIAS SUAS⁹⁹² AB ALIO RETENTAS⁹⁹³
750 PROPRIA AUCTORITATE QUERIT ADIRE.
751 Placuit ut quicumque episcopi ecclesias uel plebes,⁹⁹⁴ quas ad suam cathedram⁹⁹⁵ existimant pertinere,
752 non ita repetierint, ut causas suas episcopis iudicantibus agant, sed alio retinente irruerint siue
753 nolentibus siue uolentibus plebibus, cause sue⁹⁹⁶ detrimentum patiantur. Et quicumque hoc iam
754 fecerunt, si nondum inter episcopos est finita contentio, sed adhuc inde contendunt, ille inde
755 discedat,⁹⁹⁷ quem constiterit pretermisissis iudicibus ecclesiasticis irruisse. Nec sibi quisque blandiatur, si
756 a primate, ut retineat, litteras⁹⁹⁸ impetrauerit sed siue habeat litteras siue non habeat, conueniat eum
757 qui tenet, et eius litteras accipiat, ut⁹⁹⁹ eum appareat pacifice tenuisse ecclesiam ad se pertinentem.
758 Si¹⁰⁰⁰ autem ille aliquam questionem retulerit, per episcopos iudices causa finiatur siue¹⁰⁰¹ quos eis
759 primas dederit siue quos ipsi uicinos cum consultu primatis delegerint.¹⁰⁰²
760 **d.a.c.3** Econtra Gregorius¹⁰⁰³ Iohanni Defensori, eunti in Ispaniam, scribit dicens:
761 **3**¹⁰⁰⁴ DELICTUM PERSONE IN DAMPNUM ECCLESIE CONUERTI NON POTEST.

⁹⁸⁷ Aa has placed 'Q. VI' next to this dictum in the left margin of the manuscript.

⁹⁸⁸ deberi putat] debis putata Fd^{ac}

⁹⁸⁹ cadat Aa

⁹⁹⁰ Leuinati Fd^{ac}

⁹⁹¹ *Conc. Milevitanum* a. 416, c. 21 (CCSL 149:367); **Trip. 2.22.9**; Polyc. 3.12.32

⁹⁹² ecclesiam suam Aa

⁹⁹³ retentam Aa

⁹⁹⁴ plebs Fd^{ac}

⁹⁹⁵ ad suam cathedram Aa Sg Trip. 2.22.9; ad cathedram suam *tr.* Fd; suam *add.marg.* Fd^{pc}

⁹⁹⁶ sue *sup. lin.* Fd^{pc}

⁹⁹⁷ discedant Fd^{ac}

⁹⁹⁸ litteras] ipse *add.* Aa

⁹⁹⁹ ut] ita *praem.* Aa

¹⁰⁰⁰ si] siue Fd^{ac}

¹⁰⁰¹ siue] per eos *add.* Aa

¹⁰⁰² elegerint Aa

¹⁰⁰³ Gregorius *add.* Fd^{pc}

¹⁰⁰⁴ Gregorius M. *Reg.* 13.46 (CCSL 140A.1055)

762 Si episcopum, quod absit, talem culpam commisisse constiterit, ut constet eum non irrationabiliter esse
763 depositum, eadem¹⁰⁰⁵ eius depositio confirmetur, et¹⁰⁰⁶ omnes res sue ecclesie que ablate fuerunt,
764 restituantur, quia delictum persone in dampnum ecclesie non est conuertendum. Si autem dicitur, quia
765 Conmitiolus defunctus est, ab herede eius que ab illo iniuste ablata sunt sine excusatione reddantur.
766 **4**¹⁰⁰⁷ *Item in Magotiensi Concilio.*

767 POSSESSIONES MONASTERII PRO PECCATO ABBATIS EPISCOPUS TOLLERE NON DEBET.

768 Episcopo non licet possessionem monasterii tollere, quamuis abbas peccauerit, sed subiciat eum
769 potestati abbatis alterius monasterii.

770 **d.p.c.4** Si ergo delictum persone in dampnum ecclesie conuerti non potest, quia procurator
771 conditionem ecclesie potest facere meliorem, non deteriore. Si peccato abbatis possessiones
772 monasterii auferre non licet: quomodo delictum episcopi uertetur¹⁰⁰⁸ in dampnum ecclesie, ut inde
773 detrimentum cause sue patiatur? Sed detrimentum cause pati¹⁰⁰⁹ non sic est accipiendum, ut ecclesia
774 suo iure priuetur, potius, quia clericis coram iudice stantibus episcopus tacebit, et pro iniuria illata
775 mulctabitur,¹⁰¹⁰ si propria¹⁰¹¹ habuerit.

776 **C.16 q.7**

777 **d.a.c.1** Quod autem ecclesias de manu laicorum nec abbati nec alicui liceat accipere, omnium canonum
778 testatur auctoritas. Generaliter enim tam ecclesie quam res ecclesiarum in episcoporum¹⁰¹² potestate
779 consistunt. Laici autem nec sua nec episcoporum auctoritate decimas uel ecclesias possidere possunt.
780 Vnde episcopi, siue beneficio siue pretio ecclesias uel decimas laicis dederint, domum orationis domum
781 negotiationis et speluncam latronum faciunt. Vnde post euersionem cathedre a cetu fidelium segregati
782 eterno uerbere a Domino flagellabuntur.

¹⁰⁰⁵ eandem Fd^{ac}

¹⁰⁰⁶ et] ut *praem.* Fd^{ac}

¹⁰⁰⁷ cf. *Can. Theodori Cantuar.*, 2.6.5 (Finsterwalder 320; PL 99.930C); **3L 2.29.58**; 9L 5.5.50

¹⁰⁰⁸ uerteretur Fd^{ac}

¹⁰⁰⁹ cause sue patiatur Fd^{ac}

¹⁰¹⁰ multabitur Aa

¹⁰¹¹ propriam Fd^{ac}

¹⁰¹² episcoporum] potestate consistunt. Laici autem nec sua nec episcoporum *add.* Fd^{pc}

783 **1**¹⁰¹³ *Vnde Gregorius Septimus*¹⁰¹⁴ *ait:*¹⁰¹⁵
784 DECIME A LAICIS NON POSSIDEANTUR. Decimas, quas in usum pietatis concessas esse canonica¹⁰¹⁶
785 auctoritas¹⁰¹⁷ demonstrat, a laicis possideri apostolica auctoritate prohibemus. Siue enim ab episcopis
786 siue regibus uel quibuslibet personis acceperint, nisi ecclesie reddiderint, sciant se¹⁰¹⁸ sacrilegii
787 crimen¹⁰¹⁹ committere et eterne dampnationis periculum incurrere. Oportet autem congruentius
788 nos¹⁰²⁰ decimas et primitias, quas iure sacerdotum esse sancimus, ab omni populo accipere, quas fideles
789 Domino precipiente offerunt, iuxta illud uaticinium Malachie prophete: 'Inferte omnem decimationem
790 in horreum meum, ut sit cibus in domo mea.'¹⁰²¹ Has uero decimas sub manu episcopi fore¹⁰²²
791 censemus, ut ille qui cunctis preest omnibus iuste distribuatur, nec quicquam persone honorabilius
792 exhibeat, unde alii scrupuloso corde moueantur, sed sint omnia communia, quia inhonestum uidetur,
793 ut¹⁰²³ alii sacerdotes habeant, alii detrimentum patiantur. Sed sicut una est fides catholica, ita necesse
794 est ut ille qui prouisor est loci, quamuis multe sint ecclesie tamen omnibus fideliter distribuatur.¹⁰²⁴
795 Peruenit¹⁰²⁵ ad nos fama sinistra, quod quidam episcoporum non sacerdotibus proprie diocesis decimas
796 atque Christianorum oblationes conferant, sed potius laicalibus personis, militum uidelicet, siue
797 seruitorum uel quod grauius est consanguineis. Vnde, si quis amodo¹⁰²⁶ episcopus inuentus fuerit huius
798 precepti diuini¹⁰²⁷ transgressor, inter maximos hereticos et antichristos non minimus¹⁰²⁸ habeatur, et,

¹⁰¹³ *Conc. Romanum* a. 1078, c. 7 (MGH *Epp.* Sel. 2/2.404.16-405.2: 'Decimas...incurrere'; JL ante 5085); **3L 2.8.67-69**; 9L 3.4.5-7; *Capitulum incertum*: 'Oportet autem congruentius...incendii ignibus deputentur.'

¹⁰¹⁴ VII Aa

¹⁰¹⁵ *ait sup. lin.* Fd^{pc}

¹⁰¹⁶ siue Fd^{ac}; canonica *sup. lin.* Fd^{pc}

¹⁰¹⁷ auctoritate Fd^{ac}

¹⁰¹⁸ *se sup.lin.* Fd^{pc}

¹⁰¹⁹ crimine Fd^{ac}

¹⁰²⁰ nos congruentius *tr.* Aa

¹⁰²¹ Mal. 3.10

¹⁰²² forte Fd^{ac}

¹⁰²³ *ut sup. lin.* Fd^{pc}

¹⁰²⁴ distribuit Fd^{ac}

¹⁰²⁵ Peruenit] De eodem *praem.* Aa

¹⁰²⁶ amodo *sup. lin.* Fd^{pc}

¹⁰²⁷ diuini precepti *tr.* Aa

¹⁰²⁸ minimus Aa Bi Cd Hk In Ka Kb Mk Pk Sa Sb Tr Tz Vd Vp 3L 2.8.69; minus Fd Mz Sg

799 sicut Nicena synodus de symoniacis censuit, et qui dat episcopus et qui recipiunt¹⁰²⁹ ab eo laici, siue
 800 pretio siue beneficio, eterni incendii ignibus deputentur.

801 **2**¹⁰³⁰ *Item Augustinus.*

802 QUIA DECIME NON REDDUNTUR, INDICTIO¹⁰³¹ FISCO ACCESSIT.

803 Maiores nostri¹⁰³² ideo copiis omnibus habundabant,¹⁰³³ quia Deo¹⁰³⁴ decimas dabant¹⁰³⁵ et Cesari
 804 censum reddebant. Modo autem quia discessit deuotio Dei,¹⁰³⁶ accessit indictio fisci. Nolumus partiri
 805 cum Deo decimas, modo autem tollitur totum. Hoc tollit fiscus, quod non accipit Christus.

806 **3**¹⁰³⁷ *Item Origenes.*

807 COLUMBAS UENDIT QUI ECCLESIAM INDISCIPLINATIS CONMITTIT.

808 Et hec¹⁰³⁸ diximus secundum simplicem intellectum. Iuxta moralem autem talia dicemus et primum
 809 quidem de¹⁰³⁹ templo de quo per Prophetam dixit Dominus,¹⁰⁴⁰ 'Domus mea domus orationis
 810 uocabitur.'¹⁰⁴¹ Ergo¹⁰⁴² secundum corporalem circumcisionem¹⁰⁴³ carnis et secundum corporales¹⁰⁴⁴
 811 legis festiuitates et sacrificia, consequentur¹⁰⁴⁵ et templum Dei estimabitur quod in lapidibus insensatis
 812 erat constructum. Primum quidem a Salomone, deinde reparatum¹⁰⁴⁶ ab Esdra, postea uero post
 813 Christi aduentum a Romanis destructum, et illa domus esse¹⁰⁴⁷ orationis; qua destructa necesse est ut
 814 Iudei, quasi iam non habentes domum orationis, iam non habebant priuilegium speculationis Dei nec

¹⁰²⁹ recipi Fd^{ac}

¹⁰³⁰ Ps.-Augustinus, *sermo* 86.3 (PL 39.1912); **3L 2.8.71**; 9L 3.4.9

¹⁰³¹ indictio Fd^{ac}; iudictio Fd^{pc}; indictio Aa Mk

¹⁰³² nostri Aa Bi Cd Hk In Ka Kb Mk Mz Pk Sa Sb Tr Ty Tz Vd Vp; vestri Fd Sg

¹⁰³³ abundabant Aa

¹⁰³⁴ Deo *sup. lin.* Fd^{pc}; decimas Deo *tr.* Aa

¹⁰³⁵ dabant] Deo *add.* Fd^{ac}, then crossed out by a different hand.

¹⁰³⁶ adeo Aa

¹⁰³⁷ Origen, *In Mathaeum*, 16.20-21, 22 (GCS 40.544-47, 549-50); **3L 2.8.72**

¹⁰³⁸ hoc Aa

¹⁰³⁹ de *sup. lin.* Fd^{pc}

¹⁰⁴⁰ Deus Aa

¹⁰⁴¹ Mt. 21.13

¹⁰⁴² ego Fd; ergo] quia secundum moralem intellectum intelligere debemus *add.* Aa

¹⁰⁴³ cocisionem Fd^{ac}

¹⁰⁴⁴ corporalis Fd

¹⁰⁴⁵ et - consequentur] secundum sacrificia corporalia consequitur ita Aa; consequentur] consequar Fd^{pc}

¹⁰⁴⁶ reperta Fd^{ac}

¹⁰⁴⁷ esse *sup. lin.* Fd^{pc}

815 possint secundum legem¹⁰⁴⁸ Deo seruire. Hoc ergo facto, omnia Christus eiecit in ministerio
816 spiritualium actuum suorum, et quod tunc¹⁰⁴⁹ fecit uisibiliter egit, eiciens uendentes et ementes de
817 templo et mensas numulariorum euertens¹⁰⁵⁰ et¹⁰⁵¹ cathedras uendentium columbas ad correctionem
818 populi, ut non pro mundanis festiuitates¹⁰⁵² in nomine Dei celebrent nec emptionibus et uenditionibus
819 uacent in loco non competenti, in quo¹⁰⁵³ non debent¹⁰⁵⁴ emere et uendere, sed orationibus tantum
820 uacare atque congregare¹⁰⁵⁵ quasi in domo orationis. Nunc autem arbitror templum Dei ex lapidibus
821 uiuis constructum ecclesiam Christi. Sunt autem¹⁰⁵⁶ multi in ea, non sicut condecet spiritualiter
822 uiuentes, sed secundum carnem militantes, qui et domum orationis de lapidibus uiuis constructam
823 faciunt speluncam esse latronum, actibus suis non ecclesiam Dei dignis,¹⁰⁵⁷ sed speluncam latronum.¹⁰⁵⁸
824 Qui enim considerat in multis ecclesiis talium Christianorum peccata,¹⁰⁵⁹ qui arbitrantur questum esse
825 pietatem et cum deberent de euangelio uiuere, secundum quod uiuere decet seruos Dei, hoc¹⁰⁶⁰ non
826 faciunt, sed diuitias et multas possessiones acquirunt, nonne dices, speluncam latronum factam esse
827 sub illis ecclesiam? Ut recte dicat Christus ad eos propter dissipationem ecclesie sue: 'Que utilitas in
828 sanguine meo, dum descendo in corruptionem?'¹⁰⁶¹ Item ipse per Osee tali modo: 'Ve mihi, quia factus
829 sum sicut qui colligit stipulam in messe, et sicut racemum in uindemia, cum non sint¹⁰⁶² botri ad
830 manducandum primogenita. Ve anime mee, quia periit timoratus a terra, et qui corrigat in hominibus
831 non est.'¹⁰⁶³ Et cum intellexeris Iesum dicentem talia, et lugentem peccata nostra, aspice simul et illud

¹⁰⁴⁸ leges Fd^{ac}

¹⁰⁴⁹ tunc quod *tr.* Aa

¹⁰⁵⁰ subuertens Aa

¹⁰⁵¹ et *om.* Fd Mk

¹⁰⁵² festiuitas Fd^{ac}

¹⁰⁵³ qua Fd^{ac}

¹⁰⁵⁴ deberent Aa

¹⁰⁵⁵ congregari Aa^{pc}

¹⁰⁵⁶ ante Fd

¹⁰⁵⁷ dignis] operibus *add.* Aa

¹⁰⁵⁸ actibus — latronum] *sup. lin.* Fd^{pc} (homoiotel.)

¹⁰⁵⁹ peccatorum Aa^{ac}

¹⁰⁶⁰ hoc *sup. lin.* Fd^{pc}

¹⁰⁶¹ Ps. 29:10

¹⁰⁶² sit Fd^{ac}

¹⁰⁶³ *Versus incertus*

832 quod in euangelio scribitur: ‘Cum uidisset Ierusalem, fleuit super eam,¹⁰⁶⁴ et dixit, ‘quia si cognouisses
833 et tu.¹⁰⁶⁵ Et si¹⁰⁶⁶ rationabiliter fleuit super Ierusalem,¹⁰⁶⁷ rationabilius fleuit super ecclesiam edificatam
834 quidem, ut esset domus orationis, factam autem propter turpia lucra, speluncam latronum. Et arbitror
835 conuenire uerbum de uenditoribus columbarum eis, qui tradunt ecclesias auaris et tyrannicis et
836 indisciplinatis et irreligiosis¹⁰⁶⁸ episcopis aut presbiteris. Propter quod et cathedras tantummodo
837 appellauit euangelista uersas esse ab Iesu. Et utinam audirent hec¹⁰⁶⁹ cum dicentis admonitione
838 scripture qui gloriantur de cathedris Moysi, in quibus sedent et uendunt¹⁰⁷⁰ omnes cathedras¹⁰⁷¹
839 columbarum et tradunt eas talibus¹⁰⁷² prepositis, ad quos recte dicitur a Domino per Ieremiam
840 prophetam: ‘Principes populi mei me non cognouerunt. Filii enim sunt insipientes et non intelligentes;
841 sapientes sunt¹⁰⁷³ ad malefaciendum, bene autem facere nesciunt.’¹⁰⁷⁴
842 **d.p.c.3** Cum ergo ecclesie et oblationes earum non consistant, nisi in potestate episcoporum, patet
843 profecto quod non sunt ab alio recipiende quam de manu eorum.
844 **4**¹⁰⁷⁵ *Vnde in Aurelianensi Concilio statutum est:*
845 OMNES BASILICE AD EUM PERTINENT EPISCOPUM, IN CUIUS TERRITORIO POSITE SUNT.
846 Omnes basilice, que per diuersa loca constructe sunt uel cotidie construuntur, in episcopi potestate
847 consistant, in cuius territorio posite sunt.
848 **5**¹⁰⁷⁶ *Item Gregorius Septimus¹⁰⁷⁷ in generali Synodo residens dixit:*
849 DE MANU LAICI EPISCOPATUS UEL ABBATIA SUSCIPI NON DEBET.

¹⁰⁶⁴ illam Aa

¹⁰⁶⁵ quia— tu] *sup. lin.* Fd¹; Cum — tu] Lk. 19.41-42

¹⁰⁶⁶ sic Fd^{ac}

¹⁰⁶⁷ eam Fd

¹⁰⁶⁸ religiosis Fd^{ac}

¹⁰⁶⁹ hoc Aa

¹⁰⁷⁰ uendent Fd

¹⁰⁷¹ ecclesias Fd¹ and this main hand has placed dots underneath ‘ecclesias’; cathedras *add. marg.* Fd¹; cathedras Aa Bi Cd Hk In Ka Kb Mk Mz Pk Sa Sb Tr Tz Vd Vp; entire canon is omitted by Sg

¹⁰⁷² talibus] personis *add.* Fd; sacerdotibus *add.* Sa In Vd Tz

¹⁰⁷³ et — sunt] *add. marg.* Fd^{pc}

¹⁰⁷⁴ Jer. 4.22

¹⁰⁷⁵ *Conc. Aurelianense I* a. 511, c. 17 (MHS *Ser. can.* 4.163); Ans.5.10(C); Trip. 2.29.13; Polyc. 3.12.24

¹⁰⁷⁶ Gregorius VII, *Reg.* 7.14 (MGH *Epp. sel.* II,2; JL 5154); Ans. 6.62-63; on this canon see also John Gilchrist, “The Reception of Pope Gregory VII into the Canon law (1073-1141) 1,” ZRG KA 59 (1973), 35-82, at 68.

¹⁰⁷⁷ vii. Aa

850 Si quis deinceps episcopatum uel abbatiam de manu alicuius laice persone susceperit, nullatenus inter
 851 episcopos uel abbates habeatur nec ulla ei ut episcopo seu abbati audientia concedatur. Insuper
 852 gratiam Beati Petri, et introitum ecclesie interdiciamus, quousque locum, quem sub crimine tam
 853 inobedientie quam ambitionis ex qua scelus idolatrie cepit, respiscendo non deserit. Similiter etiam de
 854 inferioribus ecclesiasticis dignitatibus constituimus. Item si quis imperatorum, regum, ducum,
 855 marchionum, comitum, uel quilibet secularium potestatum aut personarum inuestituram episcopatum
 856 uel alicuius ecclesiastice dignitatis dare presumpserit, eiusdem sententie uinculo se obstrictum esse
 857 sciat.

858 **6**¹⁰⁷⁸ *Item ex Canone Apostolorum.*

859 DE EODEM.

860 Si quis episcopus secularibus potestatibus usus ecclesiam per ipsos obtineat, deponatur et
 861 segregatur,¹⁰⁷⁹ omnesque qui illi¹⁰⁸⁰ communicant.

862 **7**¹⁰⁸¹ *Item ex Cronica Anastasii.*¹⁰⁸²

863 DE EODEM.

864 Sane¹⁰⁸³ Thesalonicenses episcopi ob metum imperatoris Anastasii Timotheo Constantinopolitano
 865 episcopo consenserunt, qui concilium Calcedonense anathematizauerat. xl. uero episcopi Illirici¹⁰⁸⁴ et
 866 Grecie conuenientes in unum, per professionem in scriptis factam, ut a proprio metropolitano
 867 discesserunt ab eo et Romam mittentes Romano episcopo communicare in scriptis professi sunt. Et
 868 paulo post, cum Dioscorus¹⁰⁸⁵ lunior manus impositionem accepisset, recesserunt multitudines
 869 populorum, dicentes quia secundum quod canones sanctorum continent apostolorum non est¹⁰⁸⁶ factus
 870 episcopus et ideo non recipietur. Principes enim inthronizant eum.

¹⁰⁷⁸ *Canones apostolorum*, c. 31 (PL 67.144D); Ans. 5.71(A Aucta); cf. Polyc. 2.4.1; 3L 2.9.9; 9L 3.5.21

¹⁰⁷⁹ segregatur Fd^{ac}

¹⁰⁸⁰ illic Fd^{pc}

¹⁰⁸¹ cf. Deusd. 4.136(270)

¹⁰⁸² Anastasii *add.* Fd^{pc}

¹⁰⁸³ sana Fd^{ac}

¹⁰⁸⁴ Illirici *sup. lin.* Fd^{pc}

¹⁰⁸⁵ Dioscolus Aa

¹⁰⁸⁶ est *sup. lin.* Fd^{pc}

871 **8**¹⁰⁸⁷ *Item Pascalis Papa.*

872 EXCOMMUNICETUR¹⁰⁸⁸ QUI PER LAICOS ECCLESIAS OBTINET.

873 Si quis abbas uel clericus¹⁰⁸⁹ uel monachus per laicos ecclesias obtinuerit, secundum sanctorum¹⁰⁹⁰

874 Apostolorum canones et Antioceni capitulum concilii excommunicationi¹⁰⁹¹ subiaceat.

875 **9**¹⁰⁹² *Item Alexander II.*

876 NULLUS CLERICUS PER LAICOS ECCLESIAM OBTINEAT.

877 Per laicos nullo modo quilibet clericus aut presbiter obtineat ecclesiam nec gratis nec pretio. Nullus

878 habitum monachi suscipiat, spem aut promissionem habens, ut abbas fiat. Nullus presbiter duas

879 ecclesias habeat.

880 **10**¹⁰⁹³ *Item in Concilio Calcedonensi.*

881 SINGULI EPISCOPI SUOS¹⁰⁹⁴ HABEANT ECONOMOS.

882 Quoniam in quibusdam ecclesiis, ut rumore conperimus, preter economos episcopi facultates ecclesie

883 tractant, placuit omnem ecclesiam habentem episcopum habere economum de clero proprio, qui

884 dispenset res ecclesiasticas secundum sententiam episcopi proprii,¹⁰⁹⁵ ita ut ecclesie dispensatio preter

885 testimonium non sit, et ex hoc dispergantur ecclesiastice¹⁰⁹⁶ facultates et sacerdotio maledictionis

886 derogatio procuretur. Quod si hoc minime fecerit, diuinis constitutionibus subiacebit.

887 **11**¹⁰⁹⁷ *Item ex Concilio Spalensi, cui interfuit Ysidorus.*¹⁰⁹⁸

888 LAICI NON SUNT CONSTITUENDI ECONOMI SED EX PROPRIO CLERO ELEGENDI.

¹⁰⁸⁷ *Conc. Guardastallum* a. 1106, c.6, Paschal II (Blumenthal, *Early Councils of Paschal II*, 70); **Ans. 6.94.6 (A')**; ms Florence, BML Ashburnham 53

¹⁰⁸⁸ excommunicetur] et perpetuo anathemati subiciatur *add.* Fd^{pc}

¹⁰⁸⁹ abbas uel clericus] clericus abbas Aa

¹⁰⁹⁰ sanctorum secundum *tr.* Fd; secundum sanctorum Aa Sg Blumenthal

¹⁰⁹¹ excommunicationis Fd

¹⁰⁹² *Conc. Romanum* a. 1059, cc. 6-8, Nicholas II (MGH *Conc.* 8.403); **Trip. 1.66.4-5**; Polyc. 2.4.2

¹⁰⁹³ *Conc. Chalcedonense* a. 451, c. 26 vers. Dion. (Schwartz, ed., *Conc.*2(ii).60)

¹⁰⁹⁴ filios Fd

¹⁰⁹⁵ proprii episcopi *tr.* Aa

¹⁰⁹⁶ ecclesie Aa

¹⁰⁹⁷ *Conc. Spalense II* a. 619, c. 9 (Schon, dMGH); **Trip. 2.49.5**

¹⁰⁹⁸ cui — Ysidorus] *add. marg.* Fd^{pc}

889 Nona actione didicimus, quosdam ex¹⁰⁹⁹ nostro¹¹⁰⁰ collegio contra mores ecclesiasticos laicos habere in
890 rebus diuinis¹¹⁰¹ constitutos echonomos. Proinde pariter tractantes eligimus, ut unusquisque nostrum
891 secundum Calcedonensium patrum decreta¹¹⁰² ex proprio clero economum sibi constituat. Indecorum
892 est enim laicum uicarium esse¹¹⁰³ episcopi, et uiros ecclesiasticos iudicare. In uno enim eodemque
893 officio non debet dispar¹¹⁰⁴ esse professione. Quod etiam in lege diuina prohibetur, dicente Moyse,
894 ‘Non arabis in boue simul et asino,¹¹⁰⁵ id est: homines diuerse professionis in uno officio simul¹¹⁰⁶ non
895 sociabis. Vnde oportet nos et¹¹⁰⁷ diuinis libris et sanctorum patrum obedire preceptis constituentes, ut
896 qui in administrationibus¹¹⁰⁸ pontificibus sociantur nec professione discrepent nec habitu.¹¹⁰⁹ Nam
897 coherere et coniungi non possunt quibus et studia et uota sunt diuersa. Si quis autem episcopus
898 posthec ecclesiasticam rem aut laicalem procurationem administrandam elegerit aut si testimonio
899 economi gubernandam non crediderit, uere ut contemptor canonum et fraudator ecclesiasticarum
900 rerum non solum a Christo de rebus pauperum iudicabitur reus¹¹¹⁰ sed etiam¹¹¹¹ concilio manebit
901 obnoxius.¹¹¹²

902 **12¹¹¹³** *Item in Sinodo Simachi Papa Laurentius Mediolanensis episcopus dixit:*
903 LAICUS IN ECCLESIA ALIQUID STATUENDI FACULTATEM NON HABET.¹¹¹⁴
904 Non placuit laicum statuendi¹¹¹⁵ in ecclesia habere aliquam potestatem, cui subsequendi manet
905 necessitas, non auctoritas imperandi.

¹⁰⁹⁹ Nona — ex] *add.* Fd^{pc}

¹¹⁰⁰ nostro] concilio *add.* Fd^{ac}, then crossed out by Fd^{pc}

¹¹⁰¹ diuinis Fd^{ac}

¹¹⁰² decreta Fd Kb Mz Sg Ty Trip. 2.49.5; edicta Aa Mk Sa Sb Hk In Pk Tr Vd Vp Cd Bi Tz; concilium Ka

¹¹⁰³ esse *om.* Aa

¹¹⁰⁴ impar Aa

¹¹⁰⁵ simul et asino] et asino simul Aa; Deut. 22.10

¹¹⁰⁶ simul officio *tr.* Aa; simul *add. sup. lin.* Fd¹

¹¹⁰⁷ et *om.* Aa

¹¹⁰⁸ administratione Fd; administratoribus Aa^{ac}; administrationibus Aa^{pc} Mk Sa Sb Hk Mz In Kb Pk Tr Vd Vp Cd Bi Ka Tz Ty; Trip. 2.49.5 Ivo.D 5.195

¹¹⁰⁹ habitus Fd^{ac}

¹¹¹⁰ reus Aa Mk Sa Sb Hk Mz In Kb Pk Tr Vd Vp Cd Bi Ka Tz Ty Trip. 2.49.5; *om.* Fd Sg

¹¹¹¹ etiam] in *add.* Fd^{pc}

¹¹¹² innoxius Fd; obnoxius *sup. lin.* Fd¹

¹¹¹³ C. Romanum a. 502, c. 3 (Mansi 8.265); Ans. 5.9(A); Trip. 1.48.13; Polyc. 6.1.6

¹¹¹⁴ Laicus — habet] Non habet laicus in ecclesia aliquid statuendi facultatem Aa

¹¹¹⁵ statuendum Fd^{ac}

906 **13**¹¹¹⁶ *Item in concilio eodem*¹¹¹⁷ *Eulalius*¹¹¹⁸ *Episcopus Siracusane ecclesie,*¹¹¹⁹ *dixit:*
907 ECCLESIASTICAS DIGNITATES LAICI DISPONERE NON DEBENT.
908 Laicis quamuis religiosi nulla de ecclesiasticis dignitatibus aliquid disponendi legitur attributa facultas.
909 **d.a.c.14** Si ergo ecclesiasticas facultates potestatem dispensandi non habent multo minus ipsas
910 ecclesias quibuslibet ad regendum committere uel aliis auferre ualent.¹¹²⁰ Hic¹¹²¹ etiam¹¹²²
911 distinguendum est, quid iuris fundatores ecclesiarum in eis habeant, uel quid non? Habent ius
912 prouidendi, et consulendi, et sacerdotem inueniendi; sed non habent ius uendendi, uel donandi, uel
913 utendi tanquam propriis.
914 **14**¹¹²³ *Vnde in canonibus inuenitur.*
915 HEREDES EIUS, QUI ECCLESIAM CONSTRUXIT,¹¹²⁴ QUAM PRO EA SOLLICITUDINEM¹¹²⁵ GERERE
916 DEBEANT.¹¹²⁶
917 Filiis uel nepotibus ac¹¹²⁷ honestioribus propinquis eius qui construxit uel ditauit ecclesiam, licitum sit
918 hanc habere sollertiam ut, si sacerdotem aliquid ex collatis rebus defraudare preuiderint, aut honesta
919 conuentione conpescant aut episcopo uel iudici corrigenda denuncient. Ipsis tamen heredibus in
920 eisdem rebus non liceat quasi proprii iuris potestatem preferre.
921 **15**¹¹²⁸ *Item ex Concilio Tolletano IIII.*
922 FUNDATORES ECCLESIE ORDINANDOS IN EA EPISCOPO OFFERANT.

¹¹¹⁶ C. Romanum a. 502, c.2 (Mansi 8.265); Ans. 5.10(A); Trip. 1.48.14; 3.29.10; cf. Polyc. 6.1.5; 3L App.33.17

¹¹¹⁷ *eodem sup. lin. Fd*¹; *eodem*] Leonis pape *add. Fd*¹ Aa; Leonis pape has dots placed underneath it *Fd*¹; Leonis pape *eodem Ty* (dots under 'eodem' by *Ty*^{PC}) Leonis pape *om. Mk Sa Sb Hk Mz In Kb Pk Tr Vd Vp Vd Bi Ka Tz*; *Item in concilio Leonis pape Sg*

¹¹¹⁸ *Eulaic Fd*^{ac}

¹¹¹⁹ *ecclesie Siracusane tr. Aa*

¹¹²⁰ *valeant Fd*^{ac}

¹¹²¹ *hinc Fd*

¹¹²² *autem Aa*

¹¹²³ *Conc. Toletanum IX* a. 655, c. 1 (MHS *Ser. can.* 5.492-93); 3L App. 42.1 (=9L 3.3.41) has a fuller text of which this canon is an excerpt; 9L 3.2.5

¹¹²⁴ *construxerit Aa*

¹¹²⁵ *sollicitudine Aa*

¹¹²⁶ *debeans Fd*

¹¹²⁷ *vel Aa*

¹¹²⁸ *Conc. Toletanum IX* a. 655, c. 2 (MHS *Ser. can.* 5.494-95); 3L App.20.3; 9L 3.2.3; Prag. c. 20

923 Decernimus ut quamdiu fundatores ecclesiarum in hac uita superstites fuerint, pro eisdem locis¹¹²⁹
 924 curam habeant sollicitam atque rectores idoneos in eisdem basilicis idem ipsi offerant episcopo
 925 ordinandos. Quod si spretis eisdem fundatoribus rectores ibidem presumpserit episcopus ordinare et
 926 ordinationem suam irritam nouerit et ad uerecundiam sui alios in eorum loco, quos ipsi fundatores
 927 condignos elegerint,¹¹³⁰ ordinari.

928 **16**¹¹³¹ *Item ex Romana Synodo.*

929 A DOMINIO¹¹³² CONSTRUCTORIS ORATORIUM NON EST AUFERENDUM.

930 Monasterium uel oratorium canonice constructum a dominio constructoris eo inuito non auferatur,
 931 liceatque illi presbitero, cui uoluerit pro sacro officio illius diocesis cum consensu episcopi, ne malus
 932 existat commendare.

933 **17**¹¹³³ *Item Gregorius Papa.*

934 DE EODEM.

935 Rationis ordo non patitur ut monasterium contra uoluntatem fundatorum ab eorum dispositione ad
 936 arbitrium suum¹¹³⁴ quis debeat uendicare.

937 **d.p.c.17** Vt ergo ex his auctoritatibus colligitur de manu laicorum ecclesie non sunt recipiende, nisi cum
 938 consensu episcoporum, iuxta illud Magotiensis Concilii.

939 **18**¹¹³⁵ NON LICEAT LAICIS PRESBITEROS DE ECCLESIA EICERE.

940 Laici presbiteros de ecclesia non eiciant neque in eis constituent sine consensu suorum episcoporum.

941 **d.p.c.18** Sicut ergo auctoritate Ieronimi¹¹³⁶ decimas a laicis male possessas episcopo consentiente licet
 942 monachis de manu laicorum recipere, et eas perpetua stabilitate tenere, sic et ecclesias a laicis male

943

¹¹²⁹ locis *sup. lin.* Fd¹

¹¹³⁰ erint *sup. lin.* Fd^{pc}

¹¹³¹ sub Leone IV a. 853, c. 21 (MGH *Conc.* 3.323; JE ante 2562); Ans. 5.73 (B); Ans. 5.206 (Aucta of Mantua); Ans. 5.95 (C); 3L 2.29.49; 9L 3.2.7

¹¹³² Dominus Fd^{ac}

¹¹³³ Gregorius M., *Reg.* 8.30 (CCSL 140A.553; JE 1519); Ans. 4.8 (A); Ans. 5.20c (Aucta of Mantua); Polyc. 3.15.9; **3L 2.28.8**; 9L 5.4.9

¹¹³⁴ proprium Aa

¹¹³⁵ *Conc. Moguntinum* a. 813, c. 29 (MGH *Conc.* 2(i).268); Pan. 2.47; 3L App. 33.21

¹¹³⁶ C.16 q.1 c.51

944 detentas cum consensu episcoporum licet monachis ad ordinandum accipere et eis in perpetuum
945 prouidere

946 **C.17**

947 **d.init.**

948 Quidam presbiter infirmitate grauatus se fieri uelle monachum dixit; ecclesie et¹¹³⁷ beneficio in manu
949 aduocati renuntiauit. Postquam conualuit, mox se futurum monachum negauit, ecclesiam et
950 beneficium reposcit. Hic primum queritur, utrum reus uoto¹¹³⁸ teneatur, an liceat ei a proposito sui
951 cordis discedere? Secundo, an¹¹³⁹ si¹¹⁴⁰ ecclesia¹¹⁴¹ et beneficium ei¹¹⁴² reddenda sint¹¹⁴³ que prius
952 libera uoluntate refutauit? Tertio, si contigisset eum et se et sua¹¹⁴⁴ monasterio tradidisse, et an licentia
953 abbatis liceret ei ad priora redire? Quarto, si sine licentia abbatis retro abierit, an sua sibi ab abbate
954 reddenda sunt?

955 **q.1**

956 **d.a.c.1** Quod a uoto discedere non liceat, multis auctoritatibus probatur. Ait enim Propheta:¹¹⁴⁵

957 'Vouete et reddite Domino Deo uestro.'¹¹⁴⁶

958 **1**¹¹⁴⁷ *Item Augustinus.*

959 QUE DEO VOVENTUR NECESSARIO REDDUNTUR. ¹¹⁴⁸

960 Sunt quedam que et non uouentes debemus; quedam etiam que, nisi¹¹⁴⁹ uouerimus, non debemus, sed
961 postquam ea¹¹⁵⁰ Deo promittimus, necessario constringimur.

¹¹³⁷ et om. Aa

¹¹³⁸ voto sup. lin. Aa

¹¹³⁹ an sup. lin. Fd¹

¹¹⁴⁰ si] liceat Fd^{ac}

¹¹⁴¹ ecclesia sup. lin. Fd^{pc}

¹¹⁴² ei sup. lin. Fd^{pc}

¹¹⁴³ sint sup. lin. Fd^{pc}

¹¹⁴⁴ et sua sup. lin. Fd^{pc}

¹¹⁴⁵ propheta sup. lin. Fd^{pc}

¹¹⁴⁶ Ps. 75.12

¹¹⁴⁷ Cassiodorus, *Expositio psalorum* 75.12 (CCSL 98.696.213-19)

¹¹⁴⁸ reddantur Fd^{ac}

¹¹⁴⁹ nisi] non add. Fd^{ac}

¹¹⁵⁰ eam Fd^{ac}

962 **2**¹¹⁵¹ *Item Ieronimus.*

963 DE EODEM.¹¹⁵²

964 Vouentibus non solum nubere, sed etiam uelle dampnabile est.

965 **d.p.c.2** Si ergo post uotum quisque¹¹⁵³ necessario cogitur soluere quod uouit, si uouentibus non solum

966 nubere, sed etiam uelle dampnabile est,¹¹⁵⁴ patet quod sacerdos iste ad executionem¹¹⁵⁵ sui uoti

967 cogendus est, et non solum non fieri sed etiam nolle monachum¹¹⁵⁶ fieri sibi dampnabile est. Quod

968 autem inter uouentes iste computandus¹¹⁵⁷ sit, patet ex uerbis Augustini dicentis: 'Dixi confitebor,

969 etc.'¹¹⁵⁸ 'Magna pietas ut ad solam¹¹⁵⁹ promissionem peccata dimittat.'¹¹⁶⁰ Nondum enim pronuntiat

970 ore et tamen Deus iam audit in corde; uotum enim pro opere reputatur.¹¹⁶¹ Sicut ergo¹¹⁶² propheta

971 inter uouentes reputatur, quia dixit: ego confitebor; sic et iste inter eosdem computandus¹¹⁶³ est, quia

972 dixit:¹¹⁶⁴ fiam monachus. His ita respondetur. Aliud est propositum corde concipere,¹¹⁶⁵ et etiam ore

973 enuntiare; aliud est subsequenti obligatione se reum uoti facere.

974 **q.2**

975 **d.a.c.1** Quia ergo iste propositum sui cordis ore simpliciter enuntiauerit, non autem monasterio aut

976 abbati se tradidit nec promissionem scripsit, nequaquam reus uoti habetur.

977 **1**¹¹⁶⁶ *Vnde Alexander II:*

978 NON COGITUR ALIQUIS IN MONASTERIO MANERE, NISI PROFESSIONEM FECERIT IN MANU ABBATIS.

¹¹⁵¹ *Capitulum incertum*

¹¹⁵² De eodem *om.* Fd

¹¹⁵³ que *sup. lin.* Fd^{pc}

¹¹⁵⁴ sed etiam uelle dampnabile est *add. marg.* Fd^{pc}

¹¹⁵⁵ excusationem Fd^{ac}

¹¹⁵⁶ monachum] non *add.* Fd

¹¹⁵⁷ deputandus Aa Fd^{pc}; computandus Sg

¹¹⁵⁸ etc] *om.* Aa; confitebor] et tu remisisti *add.* Aa; Ps. 31.5

¹¹⁵⁹ sola Fd^{ac}

¹¹⁶⁰ Cassiodorus, *In Psalterium*, Ps. 31.5 (CCSL 97.31); cf. De pen. d 1, c.5 and d.p.c. 87

¹¹⁶¹ votum — reputatur] *add. marg.* Aa

¹¹⁶² enim Aa

¹¹⁶³ eos deputandus Aa Fd^{pc}; eosdem reputandus Sg

¹¹⁶⁴ dixit] ego confitebor *add.* Fd^{ac}; it is crossed out by Fd^{pc} (homoioutel.)

¹¹⁶⁵ Incipere Aa

¹¹⁶⁶ Alexander II *ep.* 140 (PL 146.1414A; JL 4625); **Trip. 3.10.52**

979 Cosaldus presbiter, quondam in infirmitate feruore passionis pressus, monachum se fieri promisit,¹¹⁶⁷
 980 non tamen monasterio aut abbati¹¹⁶⁸ se tradidit nec promissionem scripsit, sed beneficium ecclesie in
 981 manu aduocati refutauit. At postquam¹¹⁶⁹ conualuit, mox se fieri monachum negauit. Quapropter quia
 982 et Beati Benedicti regula, et precipue patris et predecessoris nostri sancti¹¹⁷⁰ Gregorius Papa canonica
 983 institutio interdicit monachum¹¹⁷¹ ante¹¹⁷² unius anni probationem¹¹⁷³ effici, iudicamus et auctoritate
 984 apostolica precipimus, ut prefatus presbiter beneficium et altaria recipiat, habeat, et quiete retineat.
 985 **2¹¹⁷⁴** *Item Augustinus ad Bonifatium Comitem.*
 986 VXOR POST PROPOSITUM CONTINENTIE DUCTA DIMITTI NON DEBET.
 987 Nos nouimus, nos testes sumus, quod omnes actus publicos, quibus occupatus eras, relinquere
 988 cupiebas et te in otium sanctum conferre atque in ea uita uiuere, in qua serui Dei monachi uiuunt. Cum
 989 ergo te esse in hoc proposito gauderemus, nauigasti, uxorem duxisti. Si coniugem non haberes,
 990 dicerem tibi quod et Tubanis diximus,¹¹⁷⁵ ut in castitatem continentem¹¹⁷⁶ uiueres.¹¹⁷⁷ Sed ut te ad istam
 991 uitam non exhorter¹¹⁷⁸ coniux est impedimento, sine cuius consensu continenter¹¹⁷⁹ tibi uiuere non
 992 licet, quia, et¹¹⁸⁰ si tu eam post illa uerba Tubanensia ducere non debueras, illa tamen nichil eorum¹¹⁸¹
 993 sciens innocenter tibi et simpliciter nupsit.
 994 **d.p.c.2** Ecce iste corde concepit se monachum fieri et ore pronuntiauit se uelle in otium sanctum¹¹⁸²
 995 conferre, non tamen coactus postea suscipere quod corde concepit et ore pronunciauit.¹¹⁸³

¹¹⁶⁷ feruore — promisit] passionis feruore pressus, monachum fieri se promisit Aa

¹¹⁶⁸ abbatis Fd^{ac}

¹¹⁶⁹ postquam] eo *add.* Fd^{ac}

¹¹⁷⁰ sancti *sup.lin.* Fd^{pc}

¹¹⁷¹ monachum] non *add.* Aa

¹¹⁷² autem Fd

¹¹⁷³ probatione Fd^{pc}; approbationem Aa

¹¹⁷⁴ Augustinus *ep.* 220 (CSEL 57.433); **Trip. 3.11.7**

¹¹⁷⁵ et Fd^{ac}

¹¹⁷⁶ castitate continenter Aa

¹¹⁷⁷ uiueres *sup. lin.* Fd^{pc}

¹¹⁷⁸ exeter Fd^{ac}

¹¹⁷⁹ continent Fd^{ac}

¹¹⁸⁰ et *sup. lin.* Fd^{pc}

¹¹⁸¹ eorum *sup. lin.* Fd^{pc}

¹¹⁸² sacratum Aa

¹¹⁸³ se² — pronunciauit] *add. marg.* Fd^{pc}

996 **q.3**

997 **d.init.** Quod autem queritur, an post traditionem sit ei fas cum licentia abbatis ad priora¹¹⁸⁴ redire facile

998 monstratur non posse fieri. Ipsum enim redire crimosum est. Qui autem manifesto facinori desinit

999 obuiare cum potest consentit. Hic autem non solum non obuiat, sed etiam¹¹⁸⁵ permittendo fautor

1000 existit. Non ergo licet abbati dare licentiam alicui retro abeundi nec itaque illi licet retrorsum abire,

1001 quia ex quo semel se abbati subiecit, absque eius permissione nichil agere potest.

1002 **q.4**

1003 **d.a.c.1** Si autem sine licentia abbatis de monasterio discesserit queritur, utrum sua sint ei reddenda,

1004 an non? Sed possessiones et res ecclesie traditas quolibet modo alienare nec abbati nec alicui licet.

1005 **1**¹¹⁸⁶ *Vnde Simachus Papa: 'Possessiones quas unusquisque, etc.'*¹¹⁸⁷ *Et item:*¹¹⁸⁸

1006 HONORE PRIUETUR QUI IURE ECCLESIE ALIQUID ALIENARE PRESUMIT.

1007 Quicumque episcoporum, presbiterorum, diaconorum oblitus Dei, et decreti huius immemor in

1008 constitutum committens, predium ecclesie magnum uel exiguum uel quicquam de iure ecclesie alienare

1009 temptauerit, et donator, et alienator et uenditor honoris sui ammissione mulctetur.

1010 **2**¹¹⁸⁹ *Item Gregorius Sauino Subdiacono.*

1011 QUI SACRIS LOCIS DERELICTA RETINERE CONTENDIT SACRILEGIUM¹¹⁹⁰ COMMITTIT.

1012 Sacrilegium et contra legem est, si quis quod uenerabilibus locis relinquatur prae uoluntatis studiis

1013 temptauerit conpendiis retinere.

1014 **3**¹¹⁹¹ *Item Lucius Episcopus omnibus Episcopis.*

1015 SACRILEGI¹¹⁹² IUDICANTUR QUI ECCLESIE FACULTATES¹¹⁹³ ALIENANT.

¹¹⁸⁴ propria Fd^{pc} Aa Sa Sb Hk In Kb Tr Vd Vp Cd Bi Ka Tz Ty; priora Fd^{ac} Mk Mz Pk Sg

¹¹⁸⁵ etiam om. Aa

¹¹⁸⁶ *Conc. Romanum* a. 502, c. 6 (JK I p.98 a. 502); Ans.4.29(A); Polyc. 6.14.15; **3L 2.8.25**; 9L 3.3.8

¹¹⁸⁷ cf. C.16 q.1 c.45

¹¹⁸⁸ idem Fd^{ac}

¹¹⁸⁹ Gregorius M., *Reg.* 9.90 (CCSL 140A.644; JE 1614); Ans. 5.35(A); Polyc. 3.12.13; **3L 2.8.28**; 9L 3.3.11

¹¹⁹⁰ plane *sup. lin.* Fd^{pc}

¹¹⁹¹ Ps.-Lucius, *ep.* 1.7 (JK +123); Ans.12.4(A); **3L 2.8.29**; 9L 3.3.12

¹¹⁹² atque rapto res *sup. lin.* Fd^{pc}

¹¹⁹³ facultatem Aa

1016 Omnes ecclesie raptores et¹¹⁹⁴ suarum facultatum alienatores a liminibus eiusdem matris ecclesie
 1017 anathematizamus apostolica auctoritate pellimus, dampnamus atque sacrilegos esse iudicamus.
 1018 **4**¹¹⁹⁵ *Item ex Concilio Cartaginensi capitulo, XXXI.*¹¹⁹⁶
 1019 PRIMATI INSINUETUR NECESSITAS, QUE RES ECCLESIE DISTRAHERE COMPELLIT.¹¹⁹⁷
 1020 Nullus res ecclesie distrahat. Quod si reditus non habet¹¹⁹⁸ et aliqua necessitas nimia cogit, hanc
 1021 insinuandam esse primati ipsius prouincie censemus, ut cum statuto numero episcoporum utrum
 1022 faciendum sit arbitretur. Et si tanta urget necessitas ecclesie, ut non possit ante primatem consulere,
 1023 saltem uicinos conuocet episcopos, curans ad concilium omnem¹¹⁹⁹ referre ecclesie necessitatem.
 1024 Quod si non fecerit, reus¹²⁰⁰ Deo¹²⁰¹ et sancto concilio uenditor honore amisso teneatur.
 1025 **5**¹²⁰² *Item*¹²⁰³ *ex Concilio Agathensi.*
 1026 SINE LICENTIA EPISCOPI QUICQUID ABBAS VENDIDERIT, IN IRRITUM DEDUCATUR.
 1027 In uenditionibus, quas abbates facere presumunt, hec forma seruetur, ut quicquid sine licentia episcopi
 1028 uenditum fuerit ad potestatem episcopi reuocetur. Mancipia uero monachis donata ab abbate
 1029 manumitti¹²⁰⁴ non licet. Iniustum enim putamus ut monachis cotidianum rurale opus facientibus, serui
 1030 eorum libertatis ocio potiantur.
 1031 **d.p.c.5** Sed notandum est quod aliud est in suos uel propinquorum usus res ecclesie conuertere, quam
 1032 perniciosam cupiditatem sacri canones ubique prohibent et dampnabilem¹²⁰⁵ ostendunt. Aliud quod ex
 1033 dispensatione caritatis humane infirmitati consulitur, ut quondam illi sua reddantur, qui in sacro
 1034 proposito manere contempnit. Quod non tam iure fori quam iure poli non nullos sanctorum¹²⁰⁶ fecisse

¹¹⁹⁴ atque Aa

¹¹⁹⁵ *Conc. Carthaginense V, c. 4* rec. Dion. (CCSL 149.142-143); **Ans. 5.41 (A)**

¹¹⁹⁶ xxi Fd^{ac}

¹¹⁹⁷ contendit Aa

¹¹⁹⁸ habeat Fd^{ac}

¹¹⁹⁹ concilium] omnem *add.* Fd^{pc}

¹²⁰⁰ res Fd^{ac}

¹²⁰¹ Domino Aa

¹²⁰² *Conc. Agathense* a. 506, c. 56 (CCSL 148.226); **Trip. 2.28.55**

¹²⁰³ *Item sup.lin.* Fd^{pc}

¹²⁰⁴ manumittere Aa

¹²⁰⁵ dampnabile Aa

¹²⁰⁶ sanctorum *sup. lin.* Fd^{pc}

1035 legimus. Beatus enim Iohannes euangelista duobus iuuenibus, quos penituerat omnia sua pro Christo
 1036 reliquisse et pauperibus erogasse, aurum et gemmas reddidit, ut cuncta, que uendiderant¹²⁰⁷ sibi
 1037 redimerent. Sed obicitur: Beatus Iohannes non oblata reddidit, que pauperibus iam erogata fuerant,
 1038 sed alia recompensauit,¹²⁰⁸ que in pauperum uel ecclesiarum facultatibus numquam computata fuerant.
 1039 Similiter si abbas uel episcopus aliquid habuerit, que in ecclesiasticis facultatibus nondum sint
 1040 annumerata, exemplo Beati Iohannes det illa recedenti, oblata uero ecclesie retineat. Sequatur ergo
 1041 aliud exemplum, quo eadem, que oblata sunt, laudabiliter¹²⁰⁹ reddita monstrentur.
 1042 **6**¹²¹⁰ *Augustinus in sermone de uita clericorum:*
 1043 NON DEBET ECCLESIA SUSCIPERE QUE FILIO EXHEREDATO SIBI OFFERUNTUR.
 1044 Quicumque uult exheredato¹²¹¹ filio heredem facere ecclesiam, querat alterum, qui suscipiat, non
 1045 Augustinum: immo, Deo propitio, neminem inueniet. Quam laudabile factum sancti Aurelii
 1046 Cartaginensis episcopi? Quidam cum filios non haberet, nec speraret, res suas omnes, retento sibi
 1047 usufructu,¹²¹² donauit ecclesie. Nati sunt illi filii, reddidit episcopus nec opinanti ea que ille donauerat.
 1048 In potestate habebat episcopus non reddere, sed iure fori, non iure celi.
 1049 **d.p.c.6** Ecce, quod aliquando oblata iure et laudabiliter redduntur. Verum non hoc exemplo recedenti
 1050 sua¹²¹³ reddenda monstrantur.¹²¹⁴ Aliud est enim in professione sue uite persistere, aliud a proposito
 1051 sui ordinis discedere. Si sanctus Aurelius degenti in laicali habitu oblata reddidit, quia post oblationem
 1052 filios accepit, non ideo in apostasiam euntibus sua reddenda sunt, quibus utilius necessaria
 1053 subtraherentur, ut coacti redirent ad ordinem a quo recesserant. Sed sicut inimicis et persecutoribus
 1054 iubemur necessaria subministrare, sicut ab apostolo monemur tempus redimere,¹²¹⁵ ut expeditius

¹²⁰⁷ vendiderat Fd

¹²⁰⁸ re *add.* Fd^{pc}

¹²⁰⁹ laudabiliter] aliud ab aliis Fd^{ac}

¹²¹⁰ Augustinus *sermo* 355 (PL 39.1572); **Trip. 3.3.19**

¹²¹¹ hereditate Fd^{ac}

¹²¹² usu fructuum Aa

¹²¹³ sed Fd

¹²¹⁴ monstratur Fd^{ac}

¹²¹⁵ Eph. 5.16

1055 rationi uacemus: sic, ne ecclesia scandalum patiat, ne discedens in deteriora precipitetur, ne in¹²¹⁶
 1056 perniciem monachorum aut incendium monasterii occasione suorum exardescat, laudabilius sua sibi
 1057 non dico redduntur, sed auferri sinuntur, quam ab illo ista inferantur.

1058 **C. 18**

1059 **d.init.** Quidam monachus¹²¹⁷ consecratus in episcopum prius monasterio multa contulit,¹²¹⁸ postea in
 1060 episcopatu plurima acquisiuit. Cui dum fratres successorem quererent, episcopus loci semet electioni
 1061 uolebat inserere, ut per ipsum abbas in monasterio ordinaretur; fratres renituntur.¹²¹⁹ Queritur, an
 1062 monasterium possit petere que ab episcopo sunt acquisita, an episcopalis ecclesia possit sibi uendicare
 1063 que monasterio fuerant¹²²⁰ contradita? Secundo, an per episcopum abbas sit eligendus et ordinandus
 1064 et¹²²¹ an tantummodo a propriis fratribus sit instituendus?

1065 **q.1**

1066 **1**¹²²² *Prima questio terminatur in Concilio habito apud Alteum, in quo sic*¹²²³ *statutum legitur:*

1067 QUI DE MONACHO EPISCOPUS ORDINATUR QUOD ANTE CONSECRATIONEM HABUERIT¹²²⁴
 1068 MONASTERIO,¹²²⁵ QUOD UERO POST CONSECRATIONEM ACQUISIUIT PROPRIE ECCLESIE DERELINQUIT.
 1069 Statutum est et rationabiliter secundum sanctos patres a sinodo confirmatum est ut monachus, quem
 1070 canonica electio a iugo regule monastice professionis absoluit et sacra ordinatio de monacho
 1071 episcopum facit, uelut legitimus heres paternam sibi hereditatem postea iure uendicandi potestatem
 1072 habeat. Sed quicquid acquisierat,¹²²⁶ uel habere uisus fuerat, monasterio relinquat et abbatis¹²²⁷ sui, qui

¹²¹⁶ in *sup. lin.* Fd^{pc}

¹²¹⁷ abbas Aa^{pc} Bi Mz Sb Mk; monachus Aa Fd Sg

¹²¹⁸ intulit Fd^{ac}

¹²¹⁹ fratres renituntur *sup. lin.* Fd^{pc}

¹²²⁰ fuerint Aa

¹²²¹ et *om.* Aa

¹²²² *Conc. Altheimense* a. 916, c. 36 (MGH Conc.6.pars 1.38); **Trip. 3.9.14**

¹²²³ sic *sup. lin.* Fd^{pc}

¹²²⁴ habuit Aa

¹²²⁵ monasterio] in *praem.* Aa

¹²²⁶ acquisierant Fd^{ac}

¹²²⁷ abbatis Aa Sg Fr Trip. 3.9.14; abbati Fd

- 1073 fuerat, secundum regulam Sancti Benedicti, arbitrio. Postquam enim episcopus ordinatur ad¹²²⁸ altare,
 1074 ad quod sanctificatur et titulatur, secundum sacros canones quod acquirere poterit restituat.
- 1075 **q.2**
- 1076 **d.a.c.1** *Secundam uero questionem terminat auctoritas Tolletani Concilii dicens:*
- 1077 **1**¹²²⁹ ABBATES ET ALIA OFFICIA PER EPISCOPOS DEBENT INSTITUI .¹²³⁰
- 1078 Hoc tantum sibi uendicent in monasteriis¹²³¹ sacerdotes quod precipiunt¹²³² canones, id est monachos
 1079 ad conuersionem¹²³³ sanctam premonere,¹²³⁴ abbates aliaque officia instituere¹²³⁵ atque extra
 1080 regulam acta corrigere. Quod si aliquid in monachis canonibus interdictum presumpserit aut usurpare
 1081 quippiam¹²³⁶ de monasterii rebus temptauerit, non deerit ab eis sententia excommunicationis.
- 1082 **d.p.c.1** Econtra Gregorius scribit Castorio Ariminensi Episcopo:
- 1083 **2**¹²³⁷ CONGREGATIO MONASTERII, NON EPISCOPUS¹²³⁸ ABBATEM INSTITUAT.
- 1084 Abbas in monasterio non per episcopum aut per aliquem exterorum¹²³⁹ ordinetur neque ab episcopo
 1085 missa ibi celebretur,¹²⁴⁰ ut nulli ecclesie subiciatur.¹²⁴¹
- 1086 **3**¹²⁴² *Idem Castorio Episcopo.*
- 1087 DE EODEM.
- 1088 Abbatem cuilibet monasterio non alium, sed quem dignum moribus atque actibus monastice discipline
 1089 communi consensu congregatio poposcerit, ordinari uolumus. Missas autem per episcopos publicas¹²⁴³

¹²²⁸ et Fd^{ac}

¹²²⁹ *Conc. Toletanum IV* a. 633, c. 51 (MHS *Ser. can.* 5.230-31); **3L 2.29.61**; 9L 5.4.18

¹²³⁰ institui] et ordinari *add.* Fd^{pc}

¹²³¹ in monasteriis uendicent *tr.* Aa

¹²³² precipiunt] qui *add.* Fd

¹²³³ conuersionem Fd^{ac}

¹²³⁴ promouere Aa

¹²³⁵ instruere Fd

¹²³⁶ quicquam Aa

¹²³⁷ *Capitulum incertum*; **3L 2.29.59**; 9L 5.5.51

¹²³⁸ episcopus] aut aliquis exterorum *sup.lin.* Fd^{pc} Pk; *om.* Aa Mk Sa Sb Hk Mz In Kb Tr Vd Vp Cd Bi Ka Tz Ty;
 entire rubric omitted by Sg

¹²³⁹ exterorum Fd 3L 9L; exteriorum Aa Sg; extraneorum Fr

¹²⁴⁰ neque ab episcopo missa ibi celebretur *sup. lin.* Fd^{pc} with 3L

¹²⁴¹ subiciat Fd

¹²⁴² Gregorius M., *Reg.* 5.49 (CCSL 140.343; JE 1362); *Ans.* 7.164(A); *Polyc.* 3.15.11, 4.34.2; **3L 2.28.2**; 9L 5.4.3

¹²⁴³ publicas per episcopos *tr.* Aa

- 1090 uel clericos in monasteriis omnino celebrari¹²⁴⁴ prohibemus. **4**¹²⁴⁵ *Item Pelagius Papa Melleo*
- 1091 *Subdiacono.*
- 1092 DE EODEM.¹²⁴⁶ ILLE DEBET ABBAS INSTITUI, QUEM SUA CONGREGATIO ET POSSESSIONIS DOMINUS
- 1093 ORDINARI POPOSCERIT.
- 1094 Abbatem in monasterio illum uolumus ordinari, quem sibi de sua congregatione et monachorum
- 1095 electio et possessionis dominus et quod magis obseruandum est, ordo¹²⁴⁷ uite ac meritum poposcerit
- 1096 ordinari.
- 1097 **5**¹²⁴⁸ *Item Gregorius omnibus Episcopis.*
- 1098 DE LIBERTATE MONACHORUM.¹²⁴⁹
- 1099 Quam sit necessarium monasteriorum quieti prospicere, etc. Et infra: Interdicimus igitur in nomine
- 1100 Domini nostri, et ex auctoritate Beati Petri apostolorum principis, cuius uice huic¹²⁵⁰ Romane ecclesie
- 1101 presidemus, ut nullus episcoporum aut secularium ultra presumat¹²⁵¹ de redditibus uel cartis
- 1102 monasteriorum uel de cellis uel uillis, que ad ea pertinent, quocumque modo seu qualibet occasione
- 1103 minuere uel dolos uel immissiones¹²⁵² aliquas facere. Et infra: Defuncto uero abbate cuiuscumque¹²⁵³
- 1104 congregationis non extraneus eligatur, nisi de eadem congregatione, quem sibi propria uoluntate
- 1105 concors fratrum societas elegerit. Quod si aptam inter se personam inuenire nequierint, sollerter sibi
- 1106 de aliis monasteriis eligant ordinandum. Et infra: Pariter autem est custodiendum,¹²⁵⁴ ut inuito abbate
- 1107 ad ordinandum¹²⁵⁵ alia monasteria aut ad¹²⁵⁶ ordines sacros uel clericatus officium tolli exinde monachi

¹²⁴⁴ celebrari *sup. lin.* Fd^{pc}

¹²⁴⁵ Pelagius I *ep.* 15 (JK 987); **Ans. 7.167 (A)**; Trip. 1.54.7

¹²⁴⁶ De eodem *om.* Aa

¹²⁴⁷ opido Fd^{ac}

¹²⁴⁸ Ps.-Gregorius M., *Constitutio concilii Romani* a. 595 or 601 (cf. PL 77.1340-42; JE +1366); **Ans. 5.54 (A)**; Polyc. 3.15.10; **3L 2.28.1**; 9L 5.4.1

¹²⁴⁹ De — monachorum] *om.* Aa Sg

¹²⁵⁰ huic *sup. lin.* Fd^{pc}

¹²⁵¹ presumant Fd^{ac}

¹²⁵² minas Fd^{pc}

¹²⁵³ cuiuscumque Fd^{pc}; cuique Fd^{ac}; eiusque Aa; Sg cuiusque; **Ans. 3L** cuiusquam

¹²⁵⁴ custodiendum est *tr.* Aa

¹²⁵⁵ ut inuito abbate ad ordinandum *add.marg.* Fd^{pc}

¹²⁵⁶ ad *om.* Fd

1108 non debeant. Et infra: Nullus monachum sine testimonio et concessione abbatis in ecclesia aliqua
 1109 teneat uel ad aliquem honorem promoueat.

1110 **d.p.c.5** Ecce in Tolletano dicitur quod sacerdotes et abbates et alia officia instituere debeant. Beatus
 1111 Gregorius et Pelagius prohibent, dicentes abbatem a fratribus sue congregationis eligendum et
 1112 ordinandum. Quo modo ergo hec tanta diuersitas ad concordiam reuocabitur? Sed sciendum est
 1113 quosdam monachos esse indomite ceruicis et effrenate superbie, quos dum abbates ad religionem
 1114 cogere uoluerint,¹²⁵⁷ in eorum deiectionem conspirant et alium moribus suis conuenientem sibi
 1115 proficere contendunt, quales erant illi, qui necem Beati Benedicti conspirasse leguntur. Pro
 1116 huiusmodi constitutum est, ut abbates et alia officia per sacerdotes instituantur.

1117 **6**¹²⁵⁸ *Vnde Pelagius Papa scribit Opilioni Defensori dicens:*
 1118 NON LICET MONACHIS ABBATES PRO SUO ARBITRIO EXPELLERE AUT ALIOS SIBIMET¹²⁵⁹ ORDINARE.
 1119 Nullam potestatem de cetero, nullam licentiam monachis relinquimus pro arbitrio suo aut abbates
 1120 expellere aut sibimet alios ordinare, quia nulla auctoritas remanebit abbati, si monachorum potestati
 1121 ceperit subiacere, ut de cetero fideliter et studiose uniuersa, que uel¹²⁶⁰ ad diuini cultus reuerentiam uel
 1122 ad utilitates¹²⁶¹ eiusdem monasterii pertinent abbatis¹²⁶² sollicitudo ad quem potestas tota conuenire
 1123 conuenit, debeat adimplere.

1124 **d.p.c.6** Item sunt alii qui pro executione diuersarum causarum quoslibet admittunt, qui districtiorem
 1125 eorum¹²⁶³ soluant et quietem religionis perturbent.

1126 **7**¹²⁶⁴ *De quibus in Concilio Triburiensi legitur:*
 1127 ABBAS, QUI CAUTUS IN REGIMINE NON FUERIT, A PROPRIO EPISCOPO ET A VICINIS ABBATIBUS A SUO
 1128 ARCEATUR HONORE.

¹²⁵⁷ volunt Aa

¹²⁵⁸ Pelagius I ep. 29 (PL 72.748D; JK 1001); **Ans. 7.166 (A)**; Trip. 1.54.17; cf. 3L 2.29.25; 9L 5.5.25

¹²⁵⁹ sibimet sup. lin. Fd^{pc}

¹²⁶⁰ vel om. Aa; vel Fd Sg

¹²⁶¹ utilitate Fd^{ac}

¹²⁶² abbati Fd

¹²⁶³ eorum add. marg. Fd^{pc}

¹²⁶⁴ Capitulum incertum; **Trip. 3.13.4**

- 1129 Si quis abbas cautus in regimine, humilis, castus,¹²⁶⁵ misericors, discretus sobriusque non fuerit,¹²⁶⁶
 1130 ac¹²⁶⁷ diuina precepta uerbis et exemplis non ostenderit, ab episcopo in¹²⁶⁸ cuius territorio consistit, et a
 1131 uicinis abbatibus et ceteris Deum timentibus a suo arceatur honore, etiam si omnis congregatio uicinis¹²⁶⁹
 1132 suis consentiens abbatem eum habere uoluerit.
- 1133 **d.a.c.8** Pro huiusmodi¹²⁷⁰ ergo statutum est ut cause et utilitates monasteriorum per episcopos
 1134 disponantur.¹²⁷¹
- 1135 **8**¹²⁷² *Vnde Gregorius scribit Vitali Defensori Sardinie.*
- 1136 UTILITATES MONASTERII A PROPRIO EPISCOPO DEBENT DISPONI.
- 1137 Cognouimus quod monasteria seruorum Dei uel feminarum pro suo quisque libitu et diuersarum
 1138 causarum executione perturbet. Quod omnino non grate suscipimus tuamque ex hoc experientiam
 1139 commonemus, ut nequaquam hoc usurpare denuo accepta nostra auctoritate permittas, sed episcopo
 1140 loci illius sub cuius moderamine degunt, cure sit causas utilitatesque disponere. Valde enim est
 1141 indecens, ut omisso eo alius quilibet se illorum causis admisceat, sed ille eorum uitas competenti
 1142 regularique debet moderamine¹²⁷³ disponere qui pro commissis¹²⁷⁴ eorum animabus compellitur
 1143 rationem reddere.
- 1144 **d.p.c.8** Item sunt alii quos episcopi pregrauantes salutem ipsarum animarum negligunt, quibuslibet
 1145 occasionibus bona monasteriorum distrahere cupiunt. Tales erant quidam clerici Rauennatis ecclesie
 1146 qui simulata religione monasteriis cupiebant prefici, non transeuntes ad monachicum¹²⁷⁵ habitum
 1147 neque renuntiantes ecclesiastice militie.

¹²⁶⁵ abbas — castus] abbas in regimine humilis, cautus, castus Aa

¹²⁶⁶ fuerit] et *add.* Fd^{ac}

¹²⁶⁷ ad Fd^{ac}

¹²⁶⁸ in *om.* Aa

¹²⁶⁹ uicinis Fd^{ac}

¹²⁷⁰ huiusmodi Fd^{ac}

¹²⁷¹ disponitur Fd^{ac}

¹²⁷² Gregorius M., *Reg.* 9.204 (CCSL 140.762-63; JE 1730); **Ans. 7.174 (A)**; Polyc. 3.2.8

¹²⁷³ moderamine debet *tr.* Aa

¹²⁷⁴ con *sup. lin.* Fd^{pc}

¹²⁷⁵ monachorum Fd^{ac}

1148 **9**¹²⁷⁶ *De quibus Gregorius scribit Iohanni Rauennati episcopo.*¹²⁷⁷
 1149 MONASTERIA CLERICORUM VEL LAICORUM HABITACULA FIERI NON DEBENT.
 1150 Peruenit ad me quod in ecclesiis fraternitatis tue aliqua loca dudum monasteriis consecrata nunc
 1151 habitacula clericorum aut etiam laicorum facta sunt.¹²⁷⁸ Dumque hii qui sunt¹²⁷⁹ in ecclesiis,¹²⁸⁰ fingunt
 1152 se religiose uiuere, monasteriis preponi appetunt, et per eorum uitam monasteria destruuntur.¹²⁸¹
 1153 Nemo enim potest ecclesiasticis obsequiis, etc.¹²⁸² Et infra: Proinde fraternitas tua hoc, quolibet in loco
 1154 factum est, emendare festinet,¹²⁸³ quia ego nullo modo patiar ut loca sacra pro clericorum ambitu
 1155 destruantur.
 1156 **10**¹²⁸⁴ *Idem Mariano*¹²⁸⁵ *Episcopo Rauenne* .
 1157 QUI IN SACRO SUNT ORDINE CONSTITUTI IN MONASTERIIS NULLAM¹²⁸⁶ HABEANT¹²⁸⁷ POTESTATEM.
 1158 Dudum ad nos multorum relatione peruenerat monasteria in Rauennatum partibus constituta omnino
 1159 clericorum uestorum dominio pregruari, ita ut occasione regiminis ea quod dici graue est, uelut¹²⁸⁸ in
 1160 proprietate possideant. Quibus non modicum condolentes predecessori uestro litteras misimus, ut hoc
 1161 emendare debuisset. Sed quoniam uite est termino citius¹²⁸⁹ occupatus, ne hoc onus monasteriis
 1162 remaneret,¹²⁹⁰ fraternitati uestre eadem nos scripsisse recolimus. Et quia, ut comperimus, in huius rei
 1163 hactenus correctione cessatum est, hec audiens ad uos iterum prouidimus scripta dirigere. Hortamur
 1164 ergo ut omni mora omnique excusatione submota ita monasteria ipsa¹²⁹¹ ab huiusmodi studeatis

¹²⁷⁶ Gregorius M., *Reg.* 5.1 (CCSL 140.266; JE 1317); Ans. 5.55(A); Trip. 1.55.101; Polyc. 3.15.12; **3L 2.28.3**; 9L 5.4.4

¹²⁷⁷ *Archi sup. lin.* Fd^{pc}; episcopo Fd^{ac} Mk Pk Bi Ka Sg; archiepiscopo Aa Sa Sb Hk Mz In Kb Tr Vd Vp Cd Tz Ty

¹²⁷⁸ sint Aa

¹²⁷⁹ hi qui sunt *sup. lin.* Aa^{pc}

¹²⁸⁰ ecclesiis] his *add.* Fd^{ac}

¹²⁸¹ destruantur Fd^{ac}

¹²⁸² cf. C.16 q.1 c.2

¹²⁸³ festinat Fd^{ac}

¹²⁸⁴ Gregorius M., *Reg.* 7.40 (CCSL 140.504; JE 1486); Ans. 5.56(A); Polyc. 3.15.13; **3L 2.28.4**; 9L 5.4.5

¹²⁸⁵ Martiniano Fd^{ac}

¹²⁸⁶ nullam] omnino *sup. lin.* Fd^{pc}; nullam Aa Mz Bi Sb Mk

¹²⁸⁷ habent Aa

¹²⁸⁸ ueluti Aa

¹²⁸⁹ titius Fd^{ac}

¹²⁹⁰ remaneat Fd^{pc}

¹²⁹¹ ipsa] ab *praem.* Aa

1165 grauamine¹²⁹² releuare, quatenus nullam deinceps in eis clerici, uel, qui in sacro sunt ordine¹²⁹³
 1166 constituti, ob aliud habeant, nisi orandi tantummodo causa, accedendi licentiam, aut si forte ad
 1167 peragenda sacra missarum fuerint inuitati misteria. Sed ne pro cuiuslibet monachi aut abbatis
 1168 promotione etc.¹²⁹⁴ Et infra: Non illic ulterius habeat potestatem aliquam, ne monasteria huius
 1169 occasionis uelamine ea que prohibemus, sustinere onera compellantur. Hec itaque omnia uigilanti cura
 1170 emendare iam secundo commonita sanctitas uestra non differat; ne, si post hec neglegentes uos esse
 1171 quod non credimus, censerimus,¹²⁹⁵ aliter monasteriorum quieti prospicere compellamur. Nam notum
 1172 uobis sit, quia tante necessitati seruorum Dei congregationem subiacere non patiemur.

1173 **11**¹²⁹⁶ *Idem.*

1174 GRATIA VISITANDI ET EXORTANDI MONASTERIUM EPISCOPUS ADIRE POTEST.

1175 Visitandi exortandique gratia ad monasterium quotiens placuerit ab antistite ciuitatis accedatur,¹²⁹⁷
 1176 sed sic caritatis officium illic impleat episcopus ut grauamen aliquod monasterium non incurrat.

1177 **d.p.c.11** Pro talibus, qui animarum curam non habentes, bona tantum monasteriorum in suos usus¹²⁹⁸
 1178 conuertere cupiebant, statutum est ut monasteria cum rebus suis penitus sint libera¹²⁹⁹ potestate et
 1179 dominio episcoporum. Quod autem nullis canonicis iuribus dicuntur monasteria esse subiecta, non ita
 1180 intelligendum est, quin ipsi episcopo aliquid nomine eulogie uel in die dedicationis uel in natali
 1181 sanctorum, quorum nomine ipsum monasterium dedicatum est, debeat offerri.¹³⁰⁰

1182 **12**¹³⁰¹ *Vnde Pelagius Papa ait:*¹³⁰²

¹²⁹² grauamine studeatis *tr.* Aa

¹²⁹³ ordine sunt *tr.* Aa

¹²⁹⁴ cf. C.16 q.1 c.29

¹²⁹⁵ senserimus Aa

¹²⁹⁶ Gregorius M., *Reg.* 8.17 (CCSL 140A.537; JE 1504); **Trip. 1.55.38**

¹²⁹⁷ accedant Fd

¹²⁹⁸ versus Fd^{ac}

¹²⁹⁹ libera] a *add.* Aa

¹³⁰⁰ aufferri Fd^{ac}

¹³⁰¹ Pelagius I, *ep.* 44.4-8 (Gasso-Batlle 121,122.15-124; JK 960); *Ans.* 7.148(A); *Polyc.* 4.28.1; 3L 2.29.28; 9L 5.5.28

¹³⁰² Vnde — ait] *add. marg.* Fd^{pc}

1183 NON DEBET EPISCOPUS ALIQUID A¹³⁰³ MONASTERIO EXIGERE PRETER CONDITIONES QUAS
 1184 DEDICATIONIS TEMPORE CONSTITUERIT.
 1185 Eleutherius frater et coepiscopus noster queritur quod mater eius in casa, que Castellum dicitur,
 1186 oratorium construxisset¹³⁰⁴ ac dedicauit et in eodem loco monachos constituerit, ex quibus unus est
 1187 presbiter. Hoc autem tempore dedicationis inter episcopum Cardelim,¹³⁰⁵ cuius ipsa diocesis est, et
 1188 matrem asserit conuenisse ut quicquid dedicationis uel natalis martirum die, quorum in eodem
 1189 monasteriorum reliquie sunt, per fidelium oblationes intrauerit, medietatem quidem ipsum
 1190 monasterium habeat, medietas autem episcopo offeratur. Contra quam conuentionem Marium¹³⁰⁶
 1191 presbiterum,¹³⁰⁷ siue sciente siue nesciente episcopo, monachis ipsis uel presbitero, qui ex eis¹³⁰⁸ est
 1192 uim dicitur intulisse et frequentes¹³⁰⁹ molestias generare,¹³¹⁰ ita ut memoratum presbiterum prope
 1193 ceciderit et missas eum facere nullomodo permittat, dicens, ut quasi pensionis nomine aliquid statuere
 1194 debeat. Hec igitur omnia diligenter te examinare iubemus¹³¹¹ et, si apud te euidenti ratione constiterit,
 1195 quia tempore quo dedicatum est ipsum monasterium condiciones superius posite conuenerint, seruari
 1196 eas ex nostra auctoritate precipimus, nec aliquid amplius exinde ab aliquo exigatur. Sin uero nil¹³¹² tale
 1197 constiterit, mediante te quid¹³¹³ ipsi episcopo nomine eulogie offerri debeat¹³¹⁴ inter ipsos monachos, et
 1198 presbiterum uolumus diffiniri, saluo tamen eo, ut presbiter Gaudentius, qui etiam monachus est, missas
 1199 in monasterio suo sicut consueuit facere a nullo ulterius debeat prohiberi.
 1200 **d.p.c.12** Canonica ergo iura, quibus monasteria subiecta non¹³¹⁵ sunt, synodales exactiones
 1201 intelliguntur. Non enim cogendus est abbas, sicut in Turonico¹³¹⁶ concilio statuitur, ad synodum ire, nisi

1202

¹³⁰³ a *sup. lin.* Fd^{pc}¹³⁰⁴ construxisse Fd¹³⁰⁵ cardelium Aa¹³⁰⁶ Marinum Fd^{ac}; Marus Aa¹³⁰⁷ presbiter Aa¹³⁰⁸ ipsis Aa¹³⁰⁹ frequenter Aa¹³¹⁰ generare] intulisse Aa¹³¹¹ debemus Fd^{ac}¹³¹² nil *add. marg.* Fd^{pc}¹³¹³ quicquid Aa¹³¹⁴ debeant Fd^{ac}¹³¹⁵ non *sup. lin.* Fd^{pc}¹³¹⁶ Turinico Fd^{ac}

1203 aliqua rationabilis causa existat. Sunt etiam quedam¹³¹⁷ seruitutis officia, ut angarie operum, crebre
1204 receptiones, annue exactiones, mulctationes peccantium, a quibus omnibus monasteria libera¹³¹⁸ sunt.

1205 **C. 19**

1206 **d.init.** Duo clerici ad monasterium transire uolunt; uterque licentiam ab episcopo suo petiit. Modo
1207 queritur, si episcopus debeat permittere ut relicta propria ecclesia clericus monasterium ingrediatur?

1208 Item secundo queritur, si episcopus licentiam dare noluerit, an eo inuito monasterium possit adire?

1209 Tertio, si contigerit ipsos regulares canonicos fuisse, utrum concedendus¹³¹⁹ esset eis monasterii
1210 ingressus.

1211 **q.1**

1212 **d.a.c.1** Quod episcopus clericis licentiam adeundi monasterium¹³²⁰ dare debeat, in Tolletano Concilio
1213 precipitur, in quo ita statutum legitur:

1214 **1¹³²¹** NON DEBET NEGARI INGRESSUS, CLERICIS QUI MONACHORUM PROPOSITUM¹³²² APPETUNT.

1215 Clerici qui monachorum propositum appetunt, quia meliorem uitam sequi cupiunt, liberos eis ab
1216 episcopo in monasteriis largiri oportet ingressus.

1217 **q.2**

1218 **d.a.c. 1** Inuito uero episcopo clericum eius a nullo esse suscipiendum, Leo Episcopus testatur, scribens
1219 Rustico Narbonensi Episcopo:

1220 **1¹³²³** INVITO EPISCOPO EIUS CLERICUM NEMO SUSCIPIAT.

1221 Alienum clericum inuito episcopo ipsius nemo suscipiat.

¹³¹⁷ quedam *sup. lin.* Fd^{pc}

¹³¹⁸ libertata Fd^{ac}

¹³¹⁹ concedendum Fd

¹³²⁰ monasteriis Fd; monasteria Aa; monasterium Mk

¹³²¹ *Conc. Toletanum IV* a. 633, c.50 (MHS *Ser. can.* 5.230); **Ans. 7.169 (A)**; Trip. 2.37.17; Polyc. 3.15.25; 3L 2.29.4; 9L 5.5.4

¹³²² propositum] de uote *sup. lin.* Fd^{pc}; propositum Aa Sb Mz Bi Mk

¹³²³ Leo I., *ep.* 14.9 (PL 54.674B; JK 411); **Ans. 7.152 (A)**; Trip. 1.43.26; Polyc. 4.32.31; 3L 2.5.14; 9L 2.5.14

- 1222 **d.p.c.1** Sed subaudiendum est, nisi ad¹³²⁴ propositum melioris uite¹³²⁵ transire uoluerit. Tunc enim
 1223 liberum est illi, etiam episcopo contradicente,¹³²⁶ monasterium ingredi.
- 1224 **2**¹³²⁷ *Vnde Urbanus Papa in capitulo*¹³²⁸ *sancti Rufi:*
- 1225 QUI MONACHORUM PROPOSITUM APPETIT,¹³²⁹ ETIAM¹³³⁰ INUITO EPISCOPO EST RECIPIENDUS.¹³³¹
- 1226 Due sunt, inquit, leges: una publica, altera priuata. Publica lex est, que a sanctis patribus scriptis est
 1227 confirmata, ut est lex canonum. Lex uero priuata est que instinctu Sancti Spiritus in corde scribitur. Si
 1228 quis horum qui priuata lege ducuntur¹³³² Spiritu Sancto afflatus proprium quod sub episcopo retinet,
 1229 dimittere et in monasterio se saluare uoluerit, quoniam¹³³³ priuata ducitur publica lege non tenetur.
 1230 Dignior enim est¹³³⁴ priuata lex quam publica. Quisquis ergo hac lege ducitur, etiam episcopo suo
 1231 contradicente, erit liber nostra auctoritate.
- 1232 **q.3**
- 1233 **d.a.c.1** Canonicos autem regulares ad monasterium transire, multis auctoritatibus prohibetur.
- 1234 **1**¹³³⁵ *Vnde in Concilio Educensi congregato sub VII Gregorio, legitur:*¹³³⁶
- 1235 REGULARES CANONICI MONACHI FIERI NON¹³³⁷ DEBENT.
- 1236 Nullus abbas uel monachus canonicos regulares a proposito professionis canonice reuocare atque ad
 1237 monasticum¹³³⁸ habitum trahendo suscipere audeat, ut monachi fiant, quamdiu ordinis sui ecclesiam

¹³²⁴ ad sup. lin. Fd^{pc}

¹³²⁵ vite sup. lin. Aa^{pc}

¹³²⁶ contradicentem Fd^{ac}

¹³²⁷ Urban II (PL 151.535B; JL 5760); Ans. 7.App.06(Bb); Polyc. 4.32.82; 3L 2.5.36; 9L 2.5.35; Pisa c. 39

¹³²⁸ in capitulo] abbati Aa

¹³²⁹ appetunt Fd^{ac} Aa

¹³³⁰ etiam sup. lin. Fd^{pc}

¹³³¹ sunt recipiendi Aa

¹³³² ducitur Aa

¹³³³ quo Aa

¹³³⁴ est enim tr. Aa

¹³³⁵ *Capitulum incertum*; 9L 2.5.Add.01

¹³³⁶ legitur om. Fd

¹³³⁷ nullo modo sup. lin. Fd^{pc}

¹³³⁸ monasterium Fd^{ac}

- 1238 inuenire quiuerint,¹³³⁹ in qua canonice uiuendo¹³⁴⁰ Deo seruire et animam suam saluare possint. Quod
 1239 si temerario ausu id agere temptauerint, anathematis uinculo obligentur.
- 1240 **2**¹³⁴¹ *Item Urbanus Papa Secundus.*
- 1241 DE EODEM.
- 1242 Mandamus et¹³⁴² uniuersaliter interdicimus, ne quis canonicus regulariter professus, nisi, quod absit,
 1243 publice lapsus fuerit, monachus efficiatur. Quod si decreto nostro¹³⁴³ contraire presumens agere
 1244 temptauerit, ad ordinem canonicum¹³⁴⁴ precipimus ut redeat et deinceps memorialem cucullam deserat
 1245 et ultimus in choro maneat.
- 1246 **d.a.c.3** Subaudiendum uero est, nisi cum patris sui licentiam religionis propositum induerit. Vnde
 1247 Urbanus II scribit abbati sancti Rufi:
- 1248 **3**¹³⁴⁵ PATRIS SUI CONCESSIONE REGULARES CANONICI MONACHI FIERI POSSUNT.
- 1249 Statuimus, ne professionis canonice quispiam postquam¹³⁴⁶ Dei uice¹³⁴⁷ super caput sibi hominem
 1250 imposuerit, alicuius leuitatis instinctu uel districtioris religionis obtentu ex eodem claustro audeat sine
 1251 patris¹³⁴⁸ totius congregationis permissione discedere.¹³⁴⁹ Discedentem uero nullus abbatum uel
 1252 episcoporum et nullus monachorum sine communi litterarum cautione suscipiat.
- 1253 **d.a.c.4**¹³⁵⁰ Queritur, si monasteria que semel dedicata sunt possint transire in clericorum uel secularium
 1254 habitacula?
- 1255 **4**¹³⁵¹ *Quod in Calcedonensi Concilio omnimodo*¹³⁵² *prohibetur caput XXVIII.*¹³⁵³

¹³³⁹ quirint Fd^{ac}

¹³⁴⁰ uiuendi Fd^{ac}

¹³⁴¹ Urban II (JL 5763); Polyc. 4.32.85; 3L 2.5.37; 9L 2.5.36

¹³⁴² et] mandantes *add.* Aa Polyc 3L 9L

¹³⁴³ quisque *sup. lin.* Aa^{pc}

¹³⁴⁴ canonum Fd^{ac}

¹³⁴⁵ Urban II (JL 5763); Ans. 7.App.20(Bb); **Trip. 3.10.43**; 9L 2.5add02

¹³⁴⁶ postquam *om.* Aa

¹³⁴⁷ vicem Fd^{ac}

¹³⁴⁸ patris *sup. lin.* Fd^{pc}

¹³⁴⁹ discedere] recedere Aa Mk Sa Sb Hk Mz In Kb Pk Tr Vd Vp Cd Bi Ka Sg Tz Ty; discedere Fd **Trip.3.10.43**

¹³⁵⁰ Although this reads like another *quaestio*, Fd and Aa both contain the marker indicating that it is a *dictum ante canonem*.

¹³⁵¹ *Conc Chalcedonense* a. 451, c. 24 vers. Dion. (Schwartz, ed., *Conc.2(ii).60*); **Ans. 5.51 (A)**

¹³⁵² omnimodis Aa

¹³⁵³ xxviii. Fd^{ac}

- 1256 MONASTERIA QUE SEMEL DEDICATA SUNT SEMPER MONASTERIA PERSEUERENT.
- 1257 Que sunt semel¹³⁵⁴ dedicata monasteria consilio episcoporum, maneat perpetuo monasteria, et res
- 1258 que ad ea pertinent, monasteriis reseruari oportet, nec ea posse¹³⁵⁵ ultra fieri secularia habitacula.
- 1259 **5**¹³⁵⁶ *Item in Sinodo VII, caput XIII.*¹³⁵⁷
- 1260 QUI LOCA SACRA COMMUNIA DIUERSORIA FECERIT, CLERICUS DEPONATUR, LAICUS
- 1261 EXCOMMUNICETUR.
- 1262 Quoniam quibusdam uiris quedam uenerabiles domus subripiuntur, tam uidelicet episcopia¹³⁵⁸ quam
- 1263 monasteria et facta sunt communia diuersoria, si quidem uoluerint hii qui hec retinent reddere ea, ut
- 1264 secundum antiquitatem restaurentur, bene et optime. Alioquin, si¹³⁵⁹ de sacro catalogo fuerint, hos
- 1265 deponi precipimus, si uero laici uel monachi excommunicari, quos nimirum constat condempnatos esse
- 1266 a Patre et Filio et Spiritu Sancto et deputantur ubi uermis eorum non morietur et ignis non extinguetur,
- 1267 quia Deo aduersantur, qui dicit: 'Nolite facere domum patris mei domum negotiationis.'¹³⁶⁰
- 1268 **d.a.c.6** Queritur de his qui ad conuersionem ueniunt, quo tempore debeant tonsorari?
- 1269 **6**¹³⁶¹ *De his ita scribit Gregorius Papa Fortunate Episcopo Neapolitano.*
- 1270 ANTE QUAM BIENNIUM IN CONVERSIONE CONPLEUERIT, ALIQUIS TONSORARI NON DEBET.
- 1271 Monasteriis omnibus fraternitas uestra districtius interdicat, ut eos quos ad conuersionem susceperint,
- 1272 prius quam biennium in conuersione compleuerint, nullomodo audeant tonsorare.
- 1273 **d.a.c.7** Queritur, si ingressis monasterium ultra relinquatur licentia testandi?
- 1274 **7**¹³⁶² *Hoc Gregorius prohibet, ita scribens Ianuario Episcopo Caralitano:*
- 1275 POST MONASTERII INGRESSUM NULLI RELINQUITUR TESTANDI LICENTIA.

¹³⁵⁴ semel sunt *tr.* Aa

¹³⁵⁵ ea posse] postea Aa; posse ea Sg Fr

¹³⁵⁶ *Capitulum incertum; Ans. 7.162 (A)*

¹³⁵⁷ xiiii. Fd^{ac}

¹³⁵⁸ episcopi Fd^{ac}

¹³⁵⁹ si *sup. lin.* Fd^{pc}

¹³⁶⁰ Jn. 2.16

¹³⁶¹ Gregorius M., *Reg.* 10.9 (CCSL 140A.835; JE 1776); **Ans. 7.171 (A)**; Polyc. 4.35.40

¹³⁶² Gregorius M., *Reg.* 9.198 (CCSL 140A.755; JE 1724); **Ans. 7.172 (A)**; Polyc. 4.35.41; 3L 2.29.22; 9L 5.5.22

1276 Quia ingredientibus monasterium conuertendi gratia ulterius nulla sit testandi licentia, sed ut res eorum
1277 eiusdem monasterii sint, aperta legis diffinitione decretum est.

1278 **d.p.c.7** Econtra Paulus primus heremita in testamento colobium suum Athanasio Alexandrino episcopo
1279 reliquit, tunicam uero beato Antonio. Sed aliud est de his qui monasterium ingressi se¹³⁶³ et sua
1280 tradiderunt. Aliud de his qui solitariam uitam ducentes se nulli ecclesie tradiderunt. Illi semel tradita
1281 nulli tradere possunt, isti nulli oblata libere testari ualent.

1282 **C. 20**

1283 **d.init.** Duo pueritie annos agentes a parentibus monasterio traditi sunt: unus inuitus, alter spontaneus
1284 cucullam induitur.¹³⁶⁴ Ad annos pubertatis uenientes, inuitus ad secularem militiam redit, spontaneus
1285 monasterium districtius petit. Nunc primum queritur, si in pueritie annis traditi cogantur religionis
1286 propositum tenere? Secundo, si¹³⁶⁵ preter uoluntatem parentum tonsuram uel religionis uestem quis in
1287 pueritia accipiat, an possit sibi detrahi,¹³⁶⁶ an non? Tertio, qui preter uoluntatem propriam cucullam¹³⁶⁷
1288 induitur, an cogatur eam retinere, an non? Quarto, si ab uno monasterio in aliud districtius liceat
1289 transire alicui?¹³⁶⁸

1290 **q.1**

1291 **d.a.c.1** Quod intra annos pueritie traditi, cum adulti fuerint liberum habeant¹³⁶⁹ arbitrium manendi uel
1292 discedendi, probatur auctoritate VIII Synodi, in qua sic statutum est:

1293 **1¹³⁷⁰ VIRGINITATIS PROFESSIO QUO TEMPORE FIRMA ESSE INCIPIAT.**

1294 Firma autem tunc erit professio uirginitatis, ex quo adulta iam etas esse¹³⁷¹ ceperit et que solet apta
1295 nuptiis deputari ac perfecta.

¹³⁶³ se sup. lin. Fd^{pc}

¹³⁶⁴ induit Aa Mk Hk Mz^{ac} Pk^{pc} Bi Ka Sg; induitur Fd Sa Sb Mz^{pc} In Kb Pk^{ac} Tr Vp Cd Tz^{ac}; induuntur Vd Tz^{pc};
indux Ty

¹³⁶⁵ si sup. lin. Fd^{pc}

¹³⁶⁶ distrahi Fd^{ac}

¹³⁶⁷ cuculla Aa

¹³⁶⁸ alicui transire tr. Aa

¹³⁶⁹ habeant sup. lin. Fd^{pc}

¹³⁷⁰ Basil, Reg. c.7 has Firma – perfecta; Trip.2.14.17 pt

¹³⁷¹ esse sup. lin. Fd^{pc}

- 1296 **d.p.c.1** Si uirginitatis professio tunc¹³⁷² incipit esse firma, cum etas ceperit esse¹³⁷³ adulta et religionis
 1297 professio tunc demum¹³⁷⁴ debet esse firma, cum ad¹³⁷⁵ adultam etatem peruentum fuerit. Sed hic de
 1298 illa professione agitur, que in annis pueritie proprio arbitrio Deo offertur, quam non confirmat
 1299 parentum consensus. Ceterum, que a parentibus Deo offertur professio, inuiolatam¹³⁷⁶ seruari oportet.
 1300 **2**¹³⁷⁷ *Vnde Gregorius scribit ad Augustinum Anglorum Episcopum:*
 1301 NON LICET DE MONASTERIO EGREDI QUEM PATER UEL MATER INFRA ANNOS INFANTIE IBI FECERIT
 1302 ORDINARI.
 1303 Addidistis adhuc quod si pater uel mater filium filiamue intra septam monasterii in infantie annis sub
 1304 regulari tradiderunt disciplina, utrum¹³⁷⁸ liceat eis postquam ad pubertatis inoleuerint annos egredi et
 1305 matrimonio¹³⁷⁹ copulari. Hoc omnino deuitamus, quia nefas est ut oblati a parentibus Deo filiis
 1306 uoluntatis frena laxentur.¹³⁸⁰
 1307 **3**¹³⁸¹ *Item ex Tolletano Concilio IIII.*
 1308 AUT PROPRIA PROFESSIO AUT PATERNA DEVOTIO MONACHUM FACIT.
 1309 Monachum aut paterna deuotio aut propria professio facit. Quicquid horum fuerit, alligatum tenebit.
 1310 Proinde his ad mundum reuertendi intercludimus aditum et omnes ad seculum interdicimus regressus.
 1311 **4**¹³⁸² *Item Ysidorus.*
 1312 IN MONASTERIO PERPETUO MANEAT QUI A PARENTIBUS IBI TRADITUS FUERIT.
 1313 Quicumque a parentibus propriis in monasterio fuerit delegatus, nouerit se ibi perpetuo mansurum.
 1314 Nam Anna Samuel puerum suum natum et ablactatum Deo pietate obtulit, qui et in ministerio¹³⁸³
 1315 templi, quo a matre fuerat deputatus permansit, et ubi constitutus est deseruiuit.

¹³⁷² tunc] demum debet *sup. lin.* Fd^{pc}

¹³⁷³ esse ceperit *tr.* Aa

¹³⁷⁴ demum *om.* Fd

¹³⁷⁵ ad *om.* Fd

¹³⁷⁶ inuiolata Fd

¹³⁷⁷ Gregory II *ep.* 14.7 (PL 89.525C; JE 2174); **Trip. 1.55.9**

¹³⁷⁸ utrum] ne *add.* Aa

¹³⁷⁹ matrimonium Fd^{ac}

¹³⁸⁰ laxentur Fd Trip; relaxentur Aa Sg Fr

¹³⁸¹ *Conc. Toletanum IV* a. 633, c.49 (MHS *Ser. can.* 5.229-30); Trip. 2.37.16; 3L 2.29.5; 9L 5.5.5

¹³⁸² *Capitulum incertum*; **Trip. 2.50.1**

¹³⁸³ misterio Fd^{ac}

- 1316 **5**¹³⁸⁴ *Item ex Concilio Triburiensi.*
- 1317 QUI A PROGENITORIBUS MONASTERIO TRADITUS EST, AB¹³⁸⁵ EO EGREDI NULLO MODO¹³⁸⁶ VALET.
- 1318 Quem progenitores ad monasterium tradiderunt et in ecclesia cepit canere et legere nec uxorem
- 1319 ducere nec monasterium deserere poterit, sed si discesserit, reducatur. Si tonsuram dimiserit, rursum
- 1320 tondeatur. Uxorem si usurpauerit, dimittere compellatur.
- 1321 **d.p.c.5** Ex his auctoritatibus colligitur quod paterna professio pueros tenet obligatos nec licebit eis a
- 1322 proposito discedere quod in puerilibus annis paterna deuotione¹³⁸⁷ susceperunt. Sed obicitur illud
- 1323 Leonis Papa:
- 1324 **6**¹³⁸⁸ NON LICET PUELLIS NUPTIAS ELIGERE, QUE SPONTANEA VOLUNTATE VIRGINITATIS¹³⁸⁹
- 1325 SUSCEPERUNT¹³⁹⁰ PROPOSITUM.
- 1326 Puelle, que non parentum coacte imperio sed spontaneo iudicio uirginitatis propositum atque habitum
- 1327 susceperunt, si postea nuptias elegerint, preuaricantur, etiam si nondum¹³⁹¹ eis consecratio¹³⁹²
- 1328 accessit,¹³⁹³ cuius utique¹³⁹⁴ non fraudarentur¹³⁹⁵ munere, si in proposito permanerent.¹³⁹⁶ Ambigi uero
- 1329 non potest crimen magnum admitti, ubi et propositum deseritur et consecratio uiolatur. Nam si
- 1330 humana facta non possunt inpune calcari, quid de his¹³⁹⁷ manebit qui corruperint federa diuini
- 1331 sacramenti?
- 1332 **d.p.c.6** Cum ergo in principio huius capituli dicatur, 'puelle que non coacte imperio parentum,¹³⁹⁸ datur
- 1333 intelligi quod si coacte uirginitatis habitum sumpserint sine preuaricatione ipsum deserere possunt. Sed

¹³⁸⁴ *Conc. Triburiense* a. 895, c. 19b vers. Cat. (MGH *Conc.* 5.375); **3L 2.29.38**; 9L 5.5.36

¹³⁸⁵ ab] de Aa

¹³⁸⁶ nullo modo] non Aa

¹³⁸⁷ paterna deuotione in puerilibus annis *tr.* Aa

¹³⁸⁸ Leo I, *ep.* 167.14-15 (PL 54.1208A; JK 544); Ans.11.87(A); **Trip. 1.43.18**; Polyc. 4.36.7-8; 3L 2.30.12-13; 9L 5.6.11

¹³⁸⁹ uirginitati Fd^{pc}

¹³⁹⁰ susceperint Fd^{ac}

¹³⁹¹ synondum Fd^{ac}

¹³⁹² congregatio Fd^{ac}

¹³⁹³ accesserit Aa

¹³⁹⁴ itaque Fd^{ac}

¹³⁹⁵ fraudentur Fd^{ac}

¹³⁹⁶ permanet Fd^{ac}

¹³⁹⁷ vel eis *sup. lin.* Fd^{pc}; eis Aa

¹³⁹⁸ parentum imperio *tr.* Aa; C. 20 q. 1 c. 6

1334 puella¹³⁹⁹ hic nobilis¹⁴⁰⁰ intelligitur, cuius ut in subsequentibus¹⁴⁰¹ monstrabitur, post decimum annum
 1335 liberum est arbitrium,¹⁴⁰² nec in electione¹⁴⁰³ propositi cogitur sequi parentum imperium.

1336 **q.2**

1337 **d.a.c.1** De his uero qui preter uoluntatem parentum tonsuram uel religiosam uestem susceperint, sic
 1338 diffinitur in X¹⁴⁰⁴ Concilio Tolletano:

1339 **1¹⁴⁰⁵ TONSURA VEL VESTIS RELIGIOSA IN MINORI ETATE SUSCEPTA A PARENTIBUS IRRITA FIERI NON**
 1340 **POTEST.**

1341 Si in qualibet¹⁴⁰⁶ minori¹⁴⁰⁷ etate uel religionis tonsuram uel religioni debitam uestem, in utroque sexu
 1342 filiis aut unus aut ambo parentes dederint forte,¹⁴⁰⁸ aut nolentibus aut nescientibus se¹⁴⁰⁹ susceptam
 1343 non mox uisam in filiis abdicauerint,¹⁴¹⁰ sed uel coram se uel coram episcopo palamque in conuentu
 1344 eosdem filios talia habere permiserint,¹⁴¹¹ ad secularem reuerti¹⁴¹² habitum ipsis filiis quandoque¹⁴¹³
 1345 penitus non licebit,¹⁴¹⁴ sed conuicti quod tonsuram aut religiosam uestem aliquando habuerint, mox ad
 1346 religionis cultum habitumque reuocentur et sub strenua districtione huiusmodi obseruantie inseruire
 1347

¹³⁹⁹ puelle Fd^{ac}

¹⁴⁰⁰ nobilis Fd^{ac}

¹⁴⁰¹ sequentibus Aa

¹⁴⁰² arbitrium est *tr.* Aa

¹⁴⁰³ lectione Fd

¹⁴⁰⁴ X *add. sup. lin.* Fd^{pc}

¹⁴⁰⁵ *Conc. Toletanum X* a. 656, c.6 (MHS *Ser. can.* 5.530-31); Ans.7.5(A Aucta); Ans. 11.176(C); Pan. 3.186; **Trip. 2.42.3**; Polyc. 4.35.35; 3L 2.29.6; 9L 5.5.6

¹⁴⁰⁶ quelibet Fd^{ac}

¹⁴⁰⁷ minori Aa Sg

¹⁴⁰⁸ sorte Fd

¹⁴⁰⁹ se *sup. lin.* Aa^{pc}

¹⁴¹⁰ abdicauerit Fd^{ac}

¹⁴¹¹ premiserint Fd^{ac}

¹⁴¹² reuerti *om.* Aa

¹⁴¹³ quando Fd^{ac}

¹⁴¹⁴ quandoque — licebit] quandoque reuerti non licebit Aa

1348 cogantur. Parentibus sane filios suos religioni contradere¹⁴¹⁵ non amplius quam usque ad decimum
 1349 annum etatis eorum licentia poterit esse, postea uero, an cum uoluntate parentum, an si sue deuotionis
 1350 sit solitarium uotum, erit filiis licitum religionis assumere cultum. Quisquis autem uel¹⁴¹⁶ abolitione
 1351 tonsure uel secularis uestis assumptione detectus¹⁴¹⁷ fuerit attigisse transgressionem, etiam
 1352 excommunicationis censuram accipiat et religioni semper inhereat.

1353 **2**¹⁴¹⁸ *Idem ex Concilio Triburiensi.*

1354 VSQUE AD ANNOS XII PATERNE VOLUNTATIS PUELLA SUBIACEAT¹⁴¹⁹ ARBITRIO.

1355 Puella, si ante xii annos etatis sponte sua sacrum sibi uelamen assumpsit,¹⁴²⁰ possunt statim¹⁴²¹

1356 parentes eius uel tutores id factum irritum facere, si uolunt. At si annum et diem dissimulando

1357 consenserint, ulterius nec ipsi nec ipsa mutare poterunt. Si uero in fortiori etate adulescentula uel

1358 adolescens¹⁴²² seruire Deo¹⁴²³ elegerit, non est parentibus potestas¹⁴²⁴ prohibendi.

1359 **d.p.c.2** Hac auctoritate et paterna professione docetur astringi quilibet in puerilibus annis et preter

1360 uoluntatem eorum proposito suscepto perhibetur¹⁴²⁵ teneri, nisi tonsuram uel religiosam uestem

1361 parentes mox uisam abdicauerint. Paruuli uero dum offeruntur non nisi sub¹⁴²⁶ multorum testimonio

1362 suscipiendi sunt.

1363 **3**¹⁴²⁷ *Vnde in nona Synodo legitur:*

1364 INFANTES OBLATI A PARENTIBUS SUB PLURIMORUM TESTIMONIO SUSCIPIANTUR.

¹⁴¹⁵ contradere religioni *tr.* Aa

¹⁴¹⁶ uel *sup. lin.* Fd^{pc}

¹⁴¹⁷ detentus Aa

¹⁴¹⁸ *Conc. Triburiense* a. 895, c.20 vers. Cat. (MGH *Conc.* 5.375-376); **Trip. 3.13.5**; 3L 2.30.43; 9L 5.6.42

¹⁴¹⁹ subiacet Aa

¹⁴²⁰ assumpserit Aa

¹⁴²¹ statim *sup. lin.* Fd^{pc}

¹⁴²² adulescens] monasterium *add.* Aa

¹⁴²³ seruire Deo *om.* Aa

¹⁴²⁴ potestas parentibus *tr.* Aa

¹⁴²⁵ prohibentur Aa

¹⁴²⁶ subito Fd^{ac}

¹⁴²⁷ *Capitulum incertum*; Trip. 2.14.17; 10P 7.5.1

1365 Oportet infantes cum uoluntate parentum et consensu¹⁴²⁸ immo ab ipsis parentibus¹⁴²⁹ oblatos, sub
 1366 testimonio plurimorum suscipi, ut¹⁴³⁰ omnis occasio maledicti gratia excludatur hominum pessimorum.

1367 **q.3**

1368 **d.a.c.1** Quod autem qui inuitus propositum religionis susceperit non sit cogendus ad inuiti propositi
 1369 obseruationem, testatur Leo Papa dicens:

1370 **1**¹⁴³¹ NON POTEST DESERI PROPOSITUM MONACHI VOLUNTARIE SUSCEPTUM.

1371 Propositum¹⁴³² monachi proprio arbitrio et uoluntate susceptum deseri non potest absque peccato.

1372 Quod enim quis uouet Deo debet et reddere.¹⁴³³ Vnde qui relicta singularitatis professione ad militiam

1373 uel ad nuptias deuolutus est, publice penitentiae satisfactione purgandus est, quia, etsi innocens militia

1374 et honestum potest esse coniugium, electionem tamen¹⁴³⁴ meliorum deseruisse transgressio est.

1375 **2**¹⁴³⁵ *Item ex Concilio Tolletano VII.*¹⁴³⁶

1376 QUI RELIGIOSUM HABITUM SPONTANEE SUSCEPTUM DESERERE VOLUERIT¹⁴³⁷ AD IPSUM REDIRE¹⁴³⁸

1377 COGATUR.

1378 Procliuis autem cursus ad uoluptates¹⁴³⁹ et imitatrix natura uitiorum. Quam ob rem quisquis uirorum

1379 uel mulierum habitum semel induerit spontanee religiosum, aut si uir deditus ecclesie uel femina fuerit

1380 delegata puellarum monasterio, in utroque sexu preuaricator inuitus reuerti cogatur, ut uir detondeatur

¹⁴²⁸ uoluntate et consensu parentum *tr.* Aa

¹⁴²⁹ parentibus *add.marg.* Fd

¹⁴³⁰ et Fd^{ac}

¹⁴³¹ Leo I *ep.* 167 (PL 54.1207B); Ans.11.147(A Aucta); Ans. 7.197 (B); 7.187 (C); **Trip. 1.43.17**; Pan. 3.182; Polyc. 4.35.2

¹⁴³² propositum] mihi *add.* Fd^{ac}

¹⁴³³ Deut. 23.21; Ps. 49.14

¹⁴³⁴ tamen *sup.lin.* Fd^{pc}

¹⁴³⁵ *Conc. Toletanum VI* a. 638, c. 6 (MHS *Ser. can.* 5.310-11); **Trip. 2.38.2**

¹⁴³⁶ || Fd^{ac}

¹⁴³⁷ uoluerint *sup. lin.* Fd^{pc}

¹⁴³⁸ redire Fd^{pc} Mk Sa Sb Hk Mz In Kb Pk Tr Vd Vp Cd Bi Ka Tz Ty; venire Aa Fd^{ac}; Sg omits this rubric and canon entirely

¹⁴³⁹ uoluptatem Aa

- 1381 et puella ad monasterium regrediatur. Si autem quolibet patrocínio desertores permanere uoluerint,
 1382 sacerdotali sententia a Christianorum cetu habeantur¹⁴⁴⁰ extorres, ut nec locus ei¹⁴⁴¹ ullus sit
 1383 communionis. Vidue quoque, sicut iam dudum uniuersalis statuit sinodus, professionum uel habitus sui
 1384 desertrices superiori sententia condempnentur.
- 1385 **3**¹⁴⁴² *Item ex Concilio Calcedonensi.*
- 1386 SEMEL IN CLERO TAXATI, VEL MONASTERIIS DEPUTATI, AD MILITIAM NON REDEANT.
- 1387 Eos qui semel in clero taxati fuerint siue in monasteriis deputati, decreuimus non ad militiam neque ad
 1388 honores seculares uenire. Eos autem qui hoc ausi fuerint facere et non actu re penitere maluerint,¹⁴⁴³
 1389 ut ad hoc idem reuertantur quod ante obtentu Dei sibi proposuerunt, conuenit anathematizari.
- 1390 **d.p.c.3** Cum dicitur propositum monachi proprio arbitrio et uoluntate susceptum, intelligitur quod si
 1391 propria uoluntate susceptum¹⁴⁴⁴ non fuerit, obseruari non cogitur.
- 1392 **4**¹⁴⁴⁵ *Vnde Nicholaus Papa scribit¹⁴⁴⁶ omnibus Episcopis in Regno Lodoici:*¹⁴⁴⁷
- 1393 MONASTERIALIBUS DISCIPLINIS NULLUS¹⁴⁴⁸ SUBICIATUR INVITUS.
- 1394 Presens clericus nomine Lambertus, una cum patre suo, nomine¹⁴⁴⁹ Atto, quondam uidelicet comite¹⁴⁵⁰
 1395 nunc autem clerico, ad limina apostolorum properans adiit presentiam nostram, asserens qualiter idem
 1396 pater eius¹⁴⁵¹ in laicali adhuc ordine in prediis propriis edificasset duo monasteria, uoluntatem gerens,
 1397 ut post suum decessum presens filius eius¹⁴⁵² Lambertus in locum ei¹⁴⁵³ succederet, quem, infra
 1398 teneram etatem inter octauum et decimum annum constitutum, memoratus pater proprio arbitrio

¹⁴⁴⁰ habentur Fd^{ac}

¹⁴⁴¹ eis Aa

¹⁴⁴² *Conc. Chalcedonense* a. 451, c. 7 vers. Hisp. (MHS *Ser. can.* 3.252-53); Trip. 2.10.7; 3L 2.29.2; 9L 5.5.2

¹⁴⁴³ non eius rei peniteri noluerint Aa; noluerint] maluerint Aa^{pc}; non actutum penitere maluerint Sg

¹⁴⁴⁴ intelligitur — susceptum] *add. marg.* Fd^{pc}

¹⁴⁴⁵ Nicholaus I *ep.* 131 (MGH *Epp.* 6.652-654; JE 2835); Trip. **1.62.28**

¹⁴⁴⁶ scribit *om.* Aa

¹⁴⁴⁷ Ludewici Aa

¹⁴⁴⁸ nullus] umquam *add.* Fd^{pc}

¹⁴⁴⁹ nomine *sup. lin.* Fd^{pc}

¹⁴⁵⁰ committere Fd^{ac}

¹⁴⁵¹ pater eius idem *tr.* Aa

¹⁴⁵² eius *om.* Aa

¹⁴⁵³ eis Fd^{ac}; eius Aa

1399 absque regulari institutione extra¹⁴⁵⁴ omnem eius¹⁴⁵⁵ uoluntatem cucullam induit. Igitur post quoddam
 1400 ipsius¹⁴⁵⁶ temporis spatium, ut ipse dicit, Salomon episcopus cum quibusdam aliis absque patris
 1401 oblatione uel abbatis percepta benedictione eundem Lambertum monasticum¹⁴⁵⁷ induere¹⁴⁵⁸ fecit¹⁴⁵⁹
 1402 habitum,¹⁴⁶⁰ ut ferunt, inuitum, et sub hac occasione paterna seu materna hereditate a fratribus suis
 1403 priuatum esse, atque contra omnem, ut dictum est, uoluntatem suam¹⁴⁶¹ quasi¹⁴⁶² regularem illum
 1404 monachum permanere uolunt. Super qua re diligenti cura inuestigantes, etiam¹⁴⁶³ sub iurationem
 1405 patrem ipsum,¹⁴⁶⁴ si uerum diceret, interrogauimus; sed isdem clericus Atto respondit se talem habuisse
 1406 et habere uoluntatem¹⁴⁶⁵ ut filius suus uerus monachus fieret et in locum illius¹⁴⁶⁶ succederet. Sub
 1407 testificatione autem iurando firmaret,¹⁴⁶⁷ quod, quando primitus ei cucullam induit, idem Lambertus
 1408 semper restitit,¹⁴⁶⁸ et numquam se fieri monachum consensit; sed demum ab insequentibus monachico
 1409 habitu uiolenter est indutus, asserens, quod¹⁴⁶⁹ numquam regulam aliquando¹⁴⁷⁰ promisit, neque ego,
 1410 pater eius, palla¹⁴⁷¹ altaris indutum obtuli¹⁴⁷² neque a quocumque sacerdote uel abbate, ut mos¹⁴⁷³
 1411 poscit, benedictione percepta regule umquam se monachum subiectum futurum promisit. Super his
 1412 omnibus protestatus est prefatus clericus Atto, quia si eo tempore tam dure obseruantie

¹⁴⁵⁴ extra] illius *add.* Aa

¹⁴⁵⁵ eius *om.* Aa

¹⁴⁵⁶ ipsius *sup. lin.* Fd^{pc}

¹⁴⁵⁷ monastico Aa

¹⁴⁵⁸ indui Aa

¹⁴⁵⁹ facit Fd^{ac}

¹⁴⁶⁰ habitu Aa

¹⁴⁶¹ suam *om.* Aa

¹⁴⁶² quasi] in *add.* Fd^{ac}

¹⁴⁶³ atque Aa

¹⁴⁶⁴ iuratione ipsius patrem Aa

¹⁴⁶⁵ et habere uoluntatem] uoluntatem et habere Aa

¹⁴⁶⁶ ei Aa

¹⁴⁶⁷ firmare Aa

¹⁴⁶⁸ institit Fd^{ac}

¹⁴⁶⁹ quia Fd^{ac}

¹⁴⁷⁰ aliquam Aa

¹⁴⁷¹ pallia Fd^{pc}

¹⁴⁷² obtulij illum *add.* Aa

¹⁴⁷³ mox Fd^{ac}

1413 monasticam¹⁴⁷⁴ intellexisset regulam,¹⁴⁷⁵ numquam eundem filium suum¹⁴⁷⁶ Lambertum coegisset
 1414 portare cucullam. Quapropter consulte psalmographi uerba¹⁴⁷⁷ recolentes, quibus uoluntarie se Deo
 1415 sacrificare pronuntiat et uoluntaria oris sui beneplacita fieri in conspectu Dei obsecrat, presentem ut
 1416 dictum est, clericum nomine Lambertum minime debere existimauimus sub tali uolentia fieri
 1417 monachum.¹⁴⁷⁸ Quod enim quis non eligit nec optat profecto non diligit. Quod autem non diligit facile
 1418 contempnit. Nullum ergo bonum nisi uoluntarium. Idcirco et Dominus non ferendam in uia uirgam, per
 1419 quam uolentia ulli inferatur, precepit. Quapropter consultius agitur, si piis suasionibus contemptum
 1420 mundi et amorem Dei predicando, quam uolentiam inferendo ad celestem amorem illum¹⁴⁷⁹ accenditis.
 1421 Vnde omnium uestrum caritati hanc nostri apostolatus mandare decreuimus epistolam, monentes
 1422 atque precipientes, quatinus, si ita uerum est, ut isti dicunt,¹⁴⁸⁰ nullus episcopus uel abbas seu
 1423 monachorum reliquorum¹⁴⁸¹ conuentus, monasticis illum regulis inuitum subiacere compellat neque
 1424 ullo modo fratres eius per hanc occasionem licentiam habeant paterna seu materna illum hereditate
 1425 priuare. Sed usque dum diuina inspiratione compunctus propria uoluntate regule se subdat, liceat eum
 1426 a mundanis et laicalibus remotum uagationibus uel negotiis inter religiosos et ecclesiasticos uiros in
 1427 canonica degere uita. Non enim putamus, quod absit, religiosos canonicos a sanctorum monachorum
 1428 consortio seiunctos, quia unusquisque secundum apostolum propriam mercedem accipiet secundum
 1429 suum laborem.

1430 **q.4**

1431 **d.a.c.1** Quod uero ab uno monasterio in aliud districtius transire monachis sit liberum, ex Concilio

1432 Triburiensi habetur, in quo sic statutum est:

¹⁴⁷⁴ monachicam Aa

¹⁴⁷⁵ regulam intellexisset *tr.* Aa

¹⁴⁷⁶ suum *om.* Aa

¹⁴⁷⁷ uerba *sup. lin.* Fd^{pc}

¹⁴⁷⁸ monachum fieri *tr.* Aa

¹⁴⁷⁹ illius Fd; illum Aa Mk Sa Sb Hk Mz In Kb Pk Tr Vd Vp Cd Bi Ka Tz Ty **Trip. 1.62.28**

¹⁴⁸⁰ dicunt] ut *add.* Fd^{ac}

¹⁴⁸¹ reliquorum monachorum *tr.* Aa

- 1433 **1**¹⁴⁸² NON SUNT PROHIBENDE VIRGINES SACRE, QUE CAUSA RELIGIONIS AD ALIUD MONASTERIUM
 1434 ADIRE¹⁴⁸³ DESIDERANT.
- 1435 Virgines sacre si pro lucro anime sue propter districtiorem uitam ad aliud monasterium pergere
 1436 disposuerint, ibidemque¹⁴⁸⁴ commanere decreuerint, sinodus concedit. Si uero fuga discipline alium
 1437 locum quesierint, redire cogantur.
- 1438 **d.p.c.1** Quod autem de uirginibus sacris hoc capitulo¹⁴⁸⁵ statuitur de monachis etiam consequenter
 1439 intelligitur de quolibet etiam clerico.
- 1440 **2**¹⁴⁸⁶ *Sed obicitur illud Basili:*¹⁴⁸⁷
- 1441 VOTA MONACHI SINE CONSENSU ABBATIS IRRITA SUNT.
- 1442 Monachum non licet uotum uouere sine consensu abbatis sui. Si autem uouerit, frangendum erit.
- 1443 **d.p.c.2** Verum hoc intelligendum est de monachis religiose uiuentibus, quibus uota spiritualis
 1444 abstinentie uel alicuius districtionis, que generalem consuetudinem suorum fratrum excedant, sine
 1445 abbatis consensu uouere non licet, ne super eo fratres scandalizentur. Causa etiam illorum statutum
 1446 est hoc,¹⁴⁸⁸ qui regularem¹⁴⁸⁹ disciplinam subterfugientes peregrinationis uota sibi assumunt, quod nec
 1447 monacho nec alicui clerico licet, ne¹⁴⁹⁰ ad secularem conuersationem hac occasione redeat.¹⁴⁹¹

¹⁴⁸² *Conc. Triburiense* a. 895, c.15 vers. Diess. (MGH *Conc.* 5.382); **Trip. 3.12.3**

¹⁴⁸³ ire Aa

¹⁴⁸⁴ idemque Fd^{ac}

¹⁴⁸⁵ apostolico Fd^{ac}

¹⁴⁸⁶ Poen. Theodori (U) II. 6.9; **Trip. 3.11.9**

¹⁴⁸⁷ Sed dicit contra Basilius Aa

¹⁴⁸⁸ hoc *om.* Aa

¹⁴⁸⁹ regulariter Fd^{ac}

¹⁴⁹⁰ nec Fd^{ac} Aa^{ac}

¹⁴⁹¹ ne hac occasione ad secularem conuersationem redeat Aa

Appendix 2: Formal Sources of the First Recension of *Causae* 16 to 20

Bold type indicates that a formal source has been identified for a given canon

Italicised type indicates the possible formal source for a given canon

Gratian	Anselm	Tripartita	Panormia	Polycarpus	3L	9L	Other
C.16							
q.1							
c.1	5.66 (C)			4.35.24	App. 25.2		
c.2	5.55 (A)	1.55.10		3.15.12	2.28.3	5.4.4	
c.3				4.35.30	2.29.10	5.5.10	
c.4	5.64 (C)	3.11.2	3.176	4.35.13	2.29.12	5.5.12	
c.5		3.11.1	3.175				
c.6	7.116 (A)						Turin BNU E.V.44 (903) 35
c.7							Turin BNU E.V.44 (903) 34
c.8	5.68 (A'); 5.66 (C); 6.213.2 (Bb)			1.35.1 (ver.2)			Leipzig 276 5.2
c.9		3.11.11					10P Paris BN lat. 10743 54.3.4
c.10		2.10.4	3.174		2.29.1	5.5.1	
c.11	5.66 (A'); 4.68a (Aucta of Mantua); 5.75 (B)			4.35.10	2.29.29	5.4.17	Coll. S. Maria Novella 139.10
c.12							G.Great Reg.
c.13		1.46.45					
<i>c.14</i>				8.5.8	App. 34.8	<i>7.9.18</i>	
c.15							Council of Chalcedon
c.16	App.34 (Bb)				2.29.39	5.5.37	
c.17		1.54.6					
c.18							cf. Flor. Ricc. 3006 14

Gratian	Anselm	Tripartita	Panormia	Polycarpus	3L	9L	Other
c.19							Flor. Ricc. 3006 18
c.20							
c.21							unknown
c.22	5.65 (A'); 4.61a (Aucta of Mantua)	3.11.8		4.35.26			Cf. Leipizg 276 5.4
c.23							Flor. Ricc. 3006, 11- 12/18
c.24							Flor. Ricc. 3006, 9/15
c.25	7.96 (A)			2.31.21	2.14.41		
c.26				4.35.28	2.29.8	5.5.8	
c.27		2.28.25					
c.28		2.34.3					
c.29	5.56			3.15.13	2.28.4	5.4.5	Flor. Ricc. 3006, 2
c.30	7.163 (A)			3.15.14	2.28.5	5.4.6	
c.31				4.32.78	2.27.12	5.3.11	
c.32					App.17 .3	3.4.12	
c.33					App.16 .3	3.4.15	
c.34				3.2.4	App.16 .4	3.4.16	
c.35		1.60.7		3.11.10	2.8.70	3.4.8	
c.36			2.59		App.17 .2	3.4.11	
c.37	6.96 (A)			3.30.6			
c.38					2.31.13	5.7.17	
c.39					2.31.14	5.7.18	
c.40					2.2.17	2.2.16	
c.41					2.8.64	3.4.2	
c.42					2.8.65	3.4.3	
c.43	5.40 (A)						
c.44					App.14 .1	3.3.add 01	
c.45	5.43 (A)			3.12.11	2.27.37	3.3.35	
c.46	6.159 (A)			4.22.2			
c.47	5.67 (B)			3.11.2			Turin BNU 903 (E.V. 44) 121
c.48	6.160 (A)			4.22.3			

Gratian	Anselm	Tripartita	Panormia	Polycarpus	3L	9L	Other
c.49					2.8.62		
c.50	5.31 (A)			3.11.3	2.8.63		
c.51	4.65a (Aucta of Mantua)						
C.16 q.2							
c.1						3.5.25	Leipzig 276 5.6
c.2	8.47 (A')					3.5.27	
c.3	5.9 (C)				App.20. 1	3.2.1	
c.4		2.37.12	2.68	3.12.19	2.31.3	5.7.3	
C.16 q.3							
c.1		2.10.17	2.64		2.31.1	5.7.1	
c.2		1.46.11	2.65		2.31.2	5.7.2	
c.3		2.37.12	2.68	3.12.19	2.31.3	5.7.3	
c.4		2.37.11	2.67	3.12.18	2.31.4	5.7.4	
c.5	5.15 (A)	1.46.25		3.12.6	2.31.7	5.7.11	
c.6		3.3.6			2.31.10	5.7.14	
c.7		1.46.29	2.69			5.7.25	
c.8	4.30 (A)	1.46.23		3.12.5			
c.9					2.31.22	5.7.22	
c.10		2.28.58			2.31.20		
c.11	5.87 (C)	2.29.18					
c.12		2.49.1					
c.13					2.31.15	5.7.19	
c.14	4.46	1.63.4					
C.16 q.4							
c.1	4.60 (A')						Lateran I, 1123 c.19; 13L 4.38
c.2			2.66		2.31.5	5.7.5	
c.3				3.12.34	2.31.17	5.7.6	
C.16 q.6 (q.5)							
c.1				4.9.4	2.22.42	4.9.42	
c.2		2.22.9		3.12.32			Coll. Lanfranci 2.19.21
c.3							unknown
c.4					2.29.58	5.5.50	

Gratian	Anselm	Tripartita	Panormia	Polycarpus	3L	9L	Other
C.16 q.7							
c.1					2.8.67-69	3.4.5-7	
c.2					2.8.71	3.4.9	
c.3					2.8.72		
c.4	5.10 (C)	2.29.13		3.12.24			
c.5	6.62-63 (A)					2.1.45	
c.6	5.71 (A Aucta)			cf. 2.4.1	2.9.9	3.5.21	
c.7							Deusdedit 4.136a
c.8	6.194.6 (A')						
c.9		1.66.4-5		2.4.2			7L Vienna 2186
c.10							
c.11		2.49.5					
c.12	5.9 (A)	1.48.13		6.1.6			
c.13	5.10 (A)	1.48.14		cf. 6.1.5	App.33.17		
<i>c.14</i>					App.42.1 (fuller text)	3.2.5; 3.3.41 (fuller text)	
<i>c.15</i>					App.20.3	3.2.3	
<i>c.16</i>	5.73 (B); 5.206 (Aucta of Mantua); 5.95(C)				2.29.49	3.2.7	
c.17	4.8 (A); 5.20c (Aucta of Mantua)			3.15.9	2.28.8	5.4.9	
c.18			2.47		App.33.21		
C.17 q.1							
c.1							unknown
c.2							unknown
C.17 q.2							

Gratian	Anselm	Tripartita	Panormia	Polycarpus	3L	9L	Other
c.1		3.10.52					
c.2		3.11.7					
C.17 q.3							
Init.							unknown
C.17 q.4							
c.1	4.29 (A)			6.14.15	2.8.25	3.3.8	
c.2	5.35 (A)			3.12.13	2.8.28	3.3.11	
c.3	12.4 (A)				2.8.29	3.3.12	
c.4	5.41 (A)						
c.5		2.28.55					
c.6		3.3.19					
C.18 q.1							
c.1		3.9.14					
C.18 q.2							
c.1					2.29.61	5.4.18	
c.2					2.29.59	5.5.51	
c.3	7.164 (A)			3.15.11	2.28.2	5.4.3	
c.4	7.167 (A)	1.54.7					
c.5	5.54 (A)			3.15.10	2.28.1	5.4.1	
c.6	7.166 (A)	1.54.17			2.29.25	5.5.25	
c.7		3.13.4					
c.8	7.174 (A)			3.2.8			
c.9	5.55 (A)	1.55.101		3.15.12	2.28.3	5.4.4	
c.10	5.56 (A)			3.15.13	2.28.4	5.4.5	
c.11		1.55.38					
c.12	7.148 (A)			4.28.1	2.29.28	5.5.28	
C.19 q.1							
c.1	7.169 (A)	2.37.17		3.15.25	2.29.4	5.5.4	
C.19 q.2							
c.1	7.152 (A)	1.43.26		4.32.31	2.5.14	2.5.14	
c.2	App.06 (Bb)			4.32.82	2.5.36	2.5.35	
C.19 q.3							
c.1						2.5add 01/2.5. 35	
c.2				4.32.85	2.5.37	2.5.36	

Gratian	Anselm	Tripartita	Panormia	Polycarpus	3L	9L	Other
c.3	App.20 (Bb)	3.10.43				2.5add 02	
c.4	5.51 (A)						
c.5	7.162 (A)						
c.6	7.171 (A)			4.35.40			
c.7	7.172 (A)			4.35.41	2.29.22	5.5.22	
C.20 q.1							
c.1		2.14.17 pt					10P Cologne HA 199 7.11.6
c.2		1.55.9					
c.3		2.37.16			2.29.5	5.5.5	
c.4		2.50.1					
c.5					2.29.38	5.5.36	
c.6	11.87 (A Aucta)	1.43.18		4.36.7-8	2.30.12 -13	5.6.11	
C.20 q.2							
c.1	7.5 (A Aucta); 11.176 (C)	2.42.3		4.35.35	2.29.6	5.5.6	
c.2		3.13.5			2.30.43	5.6.42	
c.3		2.14.17					
C.20 q.3							
c.1	11.147 (A Aucta); 7.197 (B); 7.187 (C)	1.43.17		4.35.2			
c.2		2.38.2					
c.3		2.10.7			2.29.2	5.5.2	
c.4		1.62.28					
C.20 q.4							
c.1		3.12.3					
c.2		3.11.2					

Bibliography

Primary Sources

Manuscript Sources

Admont, Stiftsbibliothek 43 (first recension of Gratian's *Decretum*)

Biberach, Spitalsarchiv B 3515 (second recension of Gratian's *Decretum*)

Bremen, Universitätsbibliothek a. 142 (second recension of Gratian's *Decretum*)

Cambridge, Mass., Harvard Law Library 64 (second recension of Gratian's *Decretum*)

Cologne, Erzbischöfliche Diözesan- und Dombibliothek

127 (second recension of Gratian's *Decretum*)

128 (second recension of Gratian's *Decretum*)

Florence, Biblioteca Nazionale Centrale, Conventi Soppressi A 1.402 (first recension of Gratian's *Decretum*)

Florence, Biblioteca Riccardiana 3006 (florilegium on monastic rights)

Graz, Universitätsbibliothek 351 (recension A' of Anselm's *Collectio canonum*)

Heiligenkreuz, Stiftsbibliothek 44 (second recension of Gratian's *Decretum*)

Innsbruck, Universitätsbibliothek 90 (second recension of Gratian's *Decretum*)

Leipzig, Universitätsbibliothek 276 (canonical dossier on monastic rights)

Munich, Bayerische Staatsbibliothek, Clm 28161 (second recension of Gratian's *Decretum*)

Mainz, Stadtbibliothek II.204 (second recension of Gratian's *Decretum*)

Paris, Bibliothèque Nationale

lat. 3890 (second recension of Gratian's *Decretum*)

lat. 12448 (the *Lex Romana canonice compta*)

Salzburg, Stiftsbibliothek St. Peter a.XII.9 (second recension of Gratian's *Decretum*)

Salzburg, Stiftsbibliothek St. Peter a.XI.9 (second recension of Gratian's *Decretum*)

St Gall, Stiftsbibliothek 673 (abbreviation of the first recension of Gratian's *Decretum*)

Trier, Stadtbibliothek 906 (second recension of Gratian's *Decretum*)

Troyes, Bibliothèque municipale

60 (second recension of Gratian's *Decretum*)

103 (second recension of Gratian's *Decretum*)

Vatican, BAV

Archivio di San Pietro C.118 (the collection in Nine Books)

Pal.lat. 622 (second recension of Gratian's *Decretum*)

Vat.lat. 3529 (second recension of Gratian's *Decretum*)

Printed Primary Sources

Anselm of Lucca. *Anselmi episcopi Lucensis collectio canonum una cum collectione minore*,

Edited by Friedrich Thaner. Innsbruck: Librariae Academiae Wagnerianae, 1906-1915. Repr., Aalen: Scientia Verlag, 1960.

Bonizo of Sutri. *Liber de vita christiana*. Edited by Ernst Perels. Texte zur Geschichte des römischen und kanonischen Rechts im Mittelalter, 1. Berlin: Weidmannsche Buchhandlung, 1930.

Burchard of Worms, *Decretum*. PL 140, 537-1058

Collectio canonum Regesto Farfensi inserta. Edited by Theo Kölzer. MIC, Series B, Corpus Collectionum 5. Vatican City: BAV, 1982.

Collectio canonum trium librorum. 2 vols. Edited by Joseph Motta. MIC, Series B, Corpus Collectionum 8. Vatican City: BAV, 2005-2008.

Die Kanonessammlung des Kardinals Deusdedit. Edited by Victor Wolf von Glanvell. Paderborn: Ferdinand and Schöningh, 1905.

Diversorum patrum sententiae sive Collectio in LXXIV titulos digesta. Edited John T. Gilchrist. MIC, Series B, Corpus Collectionum 1. Vatican City: BAV, 1973.

Gratian. *Decretum magistri Gratiani*. Edited by Emil Friedberg. Vol. 1 of *Corpus iuris canonici*. Leipzig: B. Tauchnitz, 1879. Repr., Graz: Akademische Druck- u. Verlagsanstalt, 1959.

Gregory the Great. *Registrum epistularum*. Edited by Dag Norberg. CCSL 140. Turnhout: Brepols, 1982.

Gregory of St. Grisogono. *Polycarpus*. <http://www.mgh.de/polycarp/polycarp.pdf>.

Iuliani epitome latina Novellarum Iustiniani. Edited Gustav Friedrich Haenel. Leipzig, 1873.

Ivo of Chartres. *Collectio tripartita*. <https://ivo-of-chartres.github.io/tripartita.html>

_____. *Panormia*. <http://ivo-of-chartres.github.io/panormia.html>

Libelli de lite imperatorum et pontificum: saeculis XI. et XII. conscripti. 3 vols. Edited by Ernst Dümmler, Ernst Sackur, Friedrich Thaner, Lothar von Heinemann. Hannover: MGH, 1891-1897.

Liber canonum diversorum sanctorum patrum sive Collectio in CLXXXIII titulos digesta. Edited by Giuseppe Motta. MIC, Series B, Corpus Collectionum 7. Vatican City: BAV, 1988.

Prefaces to Canon Law Books in Latin Christianity: Selected Translations, 500-1245. Trans. by Robert Somerville and Bruce C. Brasington. New Haven: Yale University Press, 1998.

Regino of Prüm. *Regionis abbatis Prumiensis libri duo de synodalibus causis et disciplinis ecclesiasticis*. Edited by F.G.A Wasserschleben. Leipzig, 1840. Repr., Graz: Akademische Druck- u. Verlagsanstalt, 1964.

Rupert of Deutz. *Altercatio monachi et clerici quod liceat monacho praedicare*. PL 170, 537-

The Chronicle of Robert of Torigni. Edited Richard Howlett. In *Chronicles of the Reigns of Stephen, Henry II and Richard I*, vol. 4. *Rerum britannicarum medii aevi scriptores*, Rolls series 82. London, 1889.

The Histories of a Medieval German City, Worms c.1000-1300. Trans. David S. Bachrach. Farnham: Ashgate, 2014.

Three Treatises from Bec on the Nature of the Monastic Life. Edited by Giles Constable and translated by Bernard S. Smith. Toronto: University of Toronto Press, 2008.

Secondary Works

Alzati, Cesare. *Cristianità ed Europa: Miscellanea di studi in onore di Luigi Prosdocimi*. Vol. 2. Rome: Herder, 2000.

Backus, Irene, ed. *The Reception of the Church Fathers in the West: From the Carolingians to the Maurists*. 2 vols. New York: Brill, 1997.

Baker, Travis R. "Gratian's 'Tract on Monks and the Outside World' and Its Sources." In *Proceedings of the Fourteenth International Congress of Medieval Canon Law*, 117-147.

Basdevant-Gaudemet, Brigitte. "Les désignations épiscopales d'après les versions successive du Décret de Gratien." *Studia Canonica* 37 (2003): 55-98.

_____. "La composition des distinctions 62 et 63 du Décret de Gratien sur les élections épiscopales." In *"Panta rei"*, 213-238.

Bauer, Andreas and K.H. Welker, eds. *Europa und seine Regionen. 2000 Jahre Rechtsgeschichte*. Cologne: Böhlau, 2007.

Bauer, Clemens, L. Boehm and M. Müller, eds. *Speculum historiale: Festschrift für Johannes Spörl*. Munich: Karl Alber, 1966.

- Behle, Thorsten. *Der Magister Walfred von Bologna: Ein Beitrag zu den Anfängen der Bologneser Rechtschule*. Ius Vivens: Rechtsgeschichtliche Abhandlungen 21. Berlin: LIT, 2008.
- Bellomo, Manlio. *The Common Legal Past of Europe, 1000-1800*. Translated by Lydia G. Cochrane. Studies in Medieval and Early Modern Canon Law 4. Washington, D.C.: The Catholic University of America Press, 1995.
- Bellomo, Manlio and O. Condorelli, eds. *Proceedings of the Eleventh International Congress of Medieval Canon Law*. MIC, Subsidia 12. Vatican City: BAV, 2006.
- Berger, Adolf. *Encyclopedic Dictionary of Roman Law*. Philadelphia: The American Philosophical Society, 1952.
- Berman, Harold J. *Law and Revolution: The Formation of the Western Legal Tradition*. Cambridge: Harvard University Press, 1983.
- Blumenthal, Uta-Renate. *The Early Councils of Pope Paschal II, 1100-1110*. Toronto: Pontifical Institute of Medieval Studies, 1978.
- Boureau, Alain. *Le Désir Dicté : Histoire du vœu religieux dans l'Occident médiéval*. Paris : Les Belles Lettres, 2014.
- Boyd, Catherine E. *Tithes and Parishes in Medieval Italy : The Historical Roots of a Modern Problem*. Ithaca: Cornell University Press, 1952.
- Brasington, Bruce C. and K.G. Cushing, eds. *Bishops, Texts and the Use of Canon Law around 1100 : Essays in Honour of Martin Brett*. Church, Faith and Culture in the Medieval West. Farnham : Ashgate, 2008.
- Brett, Martin and K.G. Cushing, eds. *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*. Church, Faith and Culture in the Medieval West series. Farnham: Ashgate, 2009.

- Brundage, James A. *Medieval Canon Law*. New York: Longman, 1995.
- Caby, Cécile. "Les moines et la dîme (XIe-XIIIe siècle): construction, enjeux et évolutions d'un débat polymorphe." In *La Dîme, L'Église et la Société Féodale*, 369-409.
- Chodorow, Stanley. *Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian's Decretum*. Berkeley: University of California Press, 1972.
- Condorelli, Orazio, ed. "Panta rei": *Studi dedicati a Manlio Bellomo*. 5 vols. Rome: Il Cigno, 2004.
- Constable, Giles. *Monastic Tithes: from their origins to the twelfth century*. Cambridge: Cambridge University Press, 1964.
- _____. "The Treatise 'Hortatur nos' and Accompanying Canonical Texts on the Performance of Pastoral Work by Monks." In *Speculum historiale*, 567-577.
- Cortese, Ennio. *Il diritto nella storia medievale*. 2 vols. Rome: Il Cigno Galileo Galilei, 1995.
- Cushing, Kathleen G. and R.F. Gyug, eds. *Ritual, Text and Law: Studies in Medieval Canon Law and Liturgy Presented to Roger E. Reynolds*. Church, Faith and Culture in the Medieval West series. Farnham: Ashgate, 2004.
- Dannenbergh, Lars-Arne. *Das Recht der Religiosen in der Kanonistik des 12. und 13. Jahrhunderts*. Vita Regularis: Ordnungen und Deutungen religiösen Lebens im Mittelalter 39. Münster: LIT, 2008.
- Dillon, John N. "Case Statements (themata) and the Composition of Gratian's Cases." *ZRG KA* 92 (2006): 306-339.
- Doran, John and D.J. Smith, eds. *Pope Innocent II (1130-1143): The World vs The City*. Church, Faith and Culture in the Medieval West. London: Routledge, 2016.

- Duggan, Anne J. "*Iura sua unicuique tribuat: Innocent II and the advance of the learned laws.*" In *Pope Innocent II (1130-1143): The World vs The City*, 272-310.
- Eichbauer, Melodie H. "St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian's *Decretum.*" *BMCL* 27 (2007): 105-139.
- Eheim, Fritz. "Die Handschriften des *Decretum Gratiani* in Österreich." *Studia Gratiana* 7 (1959): 125-173.
- Elman, Yaakov, E.B. Halivini and Z.A. Steinfeld, eds. *Neti 'ot LeDavid. Jubilee Volume for David Weiss Halivini.* Jerusalem: Orhot Press, 2004.
- Erdö, Peter and S.A. Szuromi, eds. *Proceedings of the Thirteenth International Congress of Medieval Canon Law.* MIC, Series C, Subsidia 14. Vatican City: BAV, 2010.
- Fälschungen im Mittelalter.* 6 vols. Hannover: Hahnsche Buchhandlung, 1988-1990.
- Felten, Franz J. and N. Jaspert, eds. *Vita Religiosa im Mittelalter: Festschrift für Kaspar Elm zum 70. Geburtstag.* Berliner Historische Studien 31. Berlin: Duncker und Humblot, 1999.
- Figueras, Caesarius M. *De impedimentis admissionis in religionem usque ad Decretum Gratiani.* Scripta et Documenta 9. In Abbatia Montiserrati, 1957.
- Foreville, Raymonde and Jean LeClercq. "Un débat sur le sacerdoce des moines au XII^e siècle." *Analecta monastica* IV (1957): 8-118.
- Fowler-Magerl, Linda. *Clavis Canonum: Selected Canon Law Collections Before 1140; Access with data processing.* MGH Hilfsmittel 21. Hanover: Hahnsche Buchhandlung, 2005.
- Fournier, Paul, and Gabriel Le Bras. *L'histoire des collections canoniques en Occident: depuis les fausses décrétales jusqu'au Décret de Gratien.* 2 vols. Paris: Sirey, 1931-1932. Repr., Aalen: Scientia Verlag, 1972.

- Genka, Tatsushi. "Zur textlichen Grundlage der Imputationslehre Gratians." *BMCL* 25 (2002-2003): 40-81.
- Ghellinck, Joseph de. *Le mouvement théologique du XIIe siècle*. 2nd edition. Museum Lessianum, Section Historique 10. Bruges: Éditions "De Tempel," 1948.
- Gilchrist, John. "The Reception of Pope Gregory VII into the Canon law (1073-1141)1," *ZRG KA* 59 (1973): 35-82.
- _____. "The Influence of the Monastic Forgeries attributed to Pope Gregory I (JE +1951), and Boniface IV (JE +1996)." In *Fälschungen im Mittelalter*, 2.263-87.
- Goering, Joseph, S. Dusil and A. Thier, eds. *Proceedings of the Fourteenth International Congress of Medieval Canon Law*. MIC, Subsidia 15. Vatican City: BAV, 2016.
- Goldberg, Jessica. "The Legal Persona of the Child in Gratian's *Decretum*." *BMCL* 24 (2000): 10-53.
- Gujer, Regula. *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: Böhlau, 2004.
- Hamilton, Louis I. and M. Brett. "New Evidence for the Canons of the First Lateran Council," *BMCL* 30 (2013): 1-20.
- Hartmann, Wilfried and G. Schmitz. *Fortschritt durch Fälschungen? Ursprung, Gestalt und Wirkungen der Pseudoisidorischen Fälschungen*. MGH Studien und Texte 31. Hannover, MGH, 2002.
- Hartmann, Wilfried and K. Pennington. *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*. History of Medieval Canon Law. Washington D.C.: The Catholic University of America, 2008.

Helmholz, R.H. *The Spirit of Classical Canon Law*. Athens: The University of Georgia Press, 1996.

Knowles, David. *The religious orders in England*. 3 vols. Cambridge: Cambridge University Press, 1948-59.

Kéry, Lotte. *Canonical Collections of the Early Middle Ages (ca. 400-1140): A Bibliographical Guide to the Manuscripts and Literature*. History of Medieval Canon Law 1. Washington, D.C.: The Catholic University of America Press, 1999.

Kuttner, Stephan. *Studies in the History of Medieval Canon Law*. Variorum Collected Studies CC325. Aldershot: Variorum, 1990.

_____. "Research on Gratian: Acta and Agenda." In *Proceedings of the Seventh International Congress of Medieval Canon Law*, 1-26.

_____. "De Gratiani opere noviter edendo." *Apollinaris* 21 (1948): 118-128.

_____. "The Scientific Investigation of Medieval Canon Law: The Need and the Opportunity," *Speculum* 24: 4 (1949): 493-501.

La pastorale della Chiesa in Occidente dall'età ottoniana al concilio lateranese IV. Atti della quindicesima Settimana internazionale di studio Mendola, 27-31 agosto 2001. Milan: Vita e Pensiero, 2004.

Landau, Peter. "Das 'Dominium' der Laien an Kirchen im Decretum Gratiani und in vorgratianischen Kanonensammlungen der Reformzeit." *ZRG KA* 83 (1997): 209-221.

_____. "Seelsorge in den Kanonensammlungen von der Zeit der gregorianischen Reform bis zu Gratian: *In memoriam John Gilchrist*." In *La Pastorale della Chiesa in Occidente dell'età ottoniana al concilio lateranese IV*, 93-123.

Larrainzar, Carlos. "El borrador de la 'Concordia' de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (=Sg)." *Ius Ecclesiae* 11 (1999): 593-666.

- _____. "El Decreto de Graciano del código Fd (= Firenze, Biblioteca Nazionale Centrale, Conventi Soppressi A.1.402): In memoriam Rudolf Weigand." *Ius ecclesiae* 10 (1998): 421-89.
- _____. "La formación del Decreto de Graciano por etapas." *ZRG KA* 87 (2001): 67-83.
- _____. "La firma Boloñesa del Decreto de Graciano." *Initium : Revista Catalana d'història del dret* 9 (2004): 495-515.
- _____. "La edición crítica del Decreto de Graciano." *BMCL* 27 (2007): 71-104.
- Larson, Atria A. "The Evolution of Gratian's *Tractatus de penitentia*." *BMCL* 26 (2004-2005): 59-123.
- _____. *Master of Penance: Gratian and the Development of Penitential Thought and Law in the Twelfth Century*. Washington D.C.: The Catholic University of America Press, 2014.
- Lawrence, C.H. *Medieval Monasticism: Forms of religious life in Western Europe in the Middle Ages*. New York: Longman, 1984.
- Lauwers, Michel. *La Dîme, L'Église et la Société Féodale*. Turnhout: Brepols, 2012.
- Lenherr, Titus. "Die Summarien zu den Texten des 2. Laterankonzils von 1139 in Gratians *Dekret*." *AKKR* 150 (1981): 528-551.
- _____. *Die Exkommunikations- und Depositionsgewalt der Häretiker bei Gratian und den Dekretisten bis zur Glossa ordinaria des Johannes Teutonicus*. Münchener theologische Studien III, Kanonistische Abteilung 42. St. Ottilien: Eos Verlag, 1987.
- _____. "Zur Überlieferung des Kapitels 'Duae sunt, inquit, leges' (Decretum Gratiani C.19 q.2 c.2)." *AKKR* 168:2 (1999): 359-84.

_____. "Die Freiheit zur *vita communis* der Jerusalemer Urgemeinde. Ein anderer Blick auf *Due sunt, inquit, leges* (Dekret Gratians C.19 q.2 c.2)." In *Communio in Ecclesia mysterio*, 305-333.

_____. "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." Available online at <http://www.t-j-l.de/Sg-Entw.PDF>.

_____. "Zur Redaktionsgeschichte von C.23 q.5 in der '1. Rezension' von Gratians Dekret: 'The Making of a Quaestio'," *BMCL* 26 (2004-2006): 31-58.

León, Enrique de. *La 'cognatio spiritualis' según Graciano*. Pontificia Università della Santa Croce, Monografie Giuridiche, 11. Milan: Giuffrè, 1996.

_____. "La biografia di Graziano." In León, *La cultura giuridico-canonica medioevale*, 89-107.

_____. "Observaciones sobre la futura edición crítica del Decreto de Graciano." In "*Panta rei*," 2: 89-98.

Leon, Enrique de, and Nicolás Álvarez de las Asturias, eds. *La cultura giuridico-canonica medioevale: Premesse per un dialogo ecumenico*. Milan: Giuffrè, 2003.

Linehan, Peter, ed. *Proceedings of the Seventh International Congress of Medieval Canon Law*. MIC, Series C, Subsidia 8. Vatican City: BAV, 1988.

_____. *Life, Law and Letters: Historical Studies in Honour of Antonio García y García*. Studia Gratiana 29. Rome, 1998.

Müller, Wolfgang P. and Mary E. Sommar, eds. *Medieval Church Law and the Origins of the Western Legal Tradition*. Washington, D.C.: The Catholic University of America Press, 2006.

- Muzzarelli, Vincentius F. *De Professione Religiosa a primordiis ad saec. XII*. Rome: Apud Piam Societatem Sancti Pauli, 1938.
- Nardi, Paolo. "Fonti canoniche in una sentenza senese del 1150." In *Life, Law and Letters: Historical Studies in Honour of Antonio García y García*, 661-670.
- Neti 'ot LeDavid. Jubilee Volume for David Weiss Halivini*. Jerusalem, 2004.
- Noonan, John T. "Gratian Slept Here: The Changing Identity of the Father of the Systematic Study of Canon Law." *Traditio* 35 (1979): 145-72.
- Paxton, Frederick S. "A canonical dossier on monastic rights in Leipzig Universitätsbibliothek MS 276." *BMCL* 15 (1985): 1-17.
- _____. "Gratian's Thirteenth Case and the composition of the *Decretum*." in *Proceedings of the Eleventh International Congress of Medieval Canon Law*, 119-131.
- Pennington, Kenneth. "Gratian, Causa 19, and the Birth of Canonical Jurisprudence." In León, *La cultura giuridico-canonica medioevale*, 211-32.
- _____. "The Biography of Gratian, The Father of Canon Law." *Villanova Law Review* 59 (2014): 679-706.
- Picasso, Giorgio. *Sacri canones et monastica regula: Disciplina canonica e vita monastica nella società medievale*. Bibliotheca Erudita Studi e Documenti di Storia e Filologia 27. Milan: Vita e Pensiero, 2006.
- Picasso, Giorgio. "Ancora un florilegio patristico sulle prerogative dei monaci (Firenze, Riccardiana 3006, ff. 203r.205v)." In *Nobiltà e chiese nel medioevo e altri saggi. Scritti in onore di Gerd G. Tellenbach*, 223-232. Repr. Picasso, *Sacri canones et monastica regula*, chap. XIII.

- _____. "Quam sit necessarium monasteriorum quieti prospicere' (Reg.8.17): sulla fortuna di un canone gregoriano." In *Cristianità ed Europa*, 95-105. Repr. Picasso, *Sacri canones et monastica*, chap. XII.
- Puza, Richard and A. Weiß. *Iustitia in caritate: Festgabe für Ernst Rößler zum 25 jährigen Dienstjubiläum as Offizial der Diözese Rottenburg-Stuttgart*. New York: Peter Lang, 1997.
- Reali, Francesco. *Graziano da Chiusi e la sua opera: Alle origini del diritto comune europeo*. Pubblicazioni del Centro studi magister Gratianus 1. Chiusi: Edizioni Lui, 2009.
- Roumy, Franck and S. Boiron. "Chronique d'histoire du droit canonique." *L'année canonique* 42 (2000): 249-282.
- Sharpe, Richard. "Anselm as Author: Publishing in the Late Eleventh Century." *Journal of Medieval Latin* 19 (2009): 1-87.
- Sinopoli, Mario, "Influenza di Graziano nell'evoluzione del diritto monastico." In *Studia Gratiana* 3 (1955): 323-348.
- Sommar, Mary E. "Gratian's Causa VII and the Multiple Recension Theories." *BMCL* 24 (2000-2001): 78-96.
- Somerville, Robert. *The Councils of Urban II. Vol. I: Decreta Claromontensia*. *Annuaire de l'histoire des conciles*. Supplement I. Amsterdam: Adolf M. Hakkert, 1972.
- _____. "Canon Law, Inspired Law, and Papal Authority." In *Neti 'ot LeDavid*, 119-134.
- Stelzer, Winfried. *Gelehrtes Recht in Österreich von den Anfängen bis zum frühen 14. Jahrhundert*. *Mittlungen des Instituts für Österreichische Geschichtsforschung*, Ergänzungsband 26. Vienna: Böhlau, 1982.
- Tarín, Luis Pablo. *Graciano de Bolonia y la Literatura Latina: La distinción treinta y siete del Decreto*. Madrid: Fundación Pastor de Estudios Clásicos, 2008.

- Van Engen, John. "Professing Religion: From Liturgy to Law." *Viator* 29 (1998): 323-343.
- Viard, Paul. *Histoire de la Dime Ecclesiastique: Principalement en France jusqu'au Décret de Gratien*. Dijon: Jobard, 1909.
- Viejo-Ximénez, José Miguel. "La redacción original de c.29 del Decreto de Graciano." *Ius Ecclesiae* 10 (1998): 149-185.
- _____. "La recepción del derecho romano en el derecho canonico." *Ius Ecclesiae* 14 (2002): 375-414.
- _____. "La composición del Decreto de Graciano." *Ius Canonicum* 45 (2005): 431-485.
- _____. "Accusatio in scriptis semper fieri debet. A propósito del método de trabajo de y sobre Graciano." *REDC* 64 (2007): 309-338.
- _____. "'Costuras' y 'descosidos' en la versión divulgada del Decreto de Graciano.'" In *Proceedings of the Thirteenth International Congress of Medieval Canon Law*, 337-356.
- Vilain, Noël. "Prescription et Bonne Foi: Du Décret de Gratien (1140) a Jean d'André (1348)." *Traditio* 14 (1958): 121-189.
- Villalba, Sotero. "Los elementos éticos de la prescripción romana y su aceptación en el fuero eclesiástico hasta el Decreto de Graciano." *REDC* 3: 7 (1948): 35-59.
- Wei, John. "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.
- _____. "Penitential Theology in Gratian's Decretum: Critique and Criticism of the Treatise Baptizato homine." *ZRG KA* 95 (2009): 78-100.
- _____. *Gratian the Theologian*. Washington D.C.: The Catholic University of America Press, 2016.

Weigand, Rudolf. *Die Glossen zum "Dekret" Gratians: Studien zu den frühen Glossen und Glossenkompositionen*. Studia Gratiana 26-27. Rome, 1991.

Werckmeister, Jean. "Wer war eigentlich Gratian?" In *Iustitia in caritate*, 183-192.

Wickham, Chris. *Courts and Conflict in Twelfth-Century Tuscany*. Oxford: Oxford University of Press, 2004.

Winroth, Anders. *The Making of Gratian's Decretum*. Cambridge Studies in Medieval Life and Thought, 4th series, 49. Cambridge: Cambridge University Press, 2000.

_____. "The Two Recensions of Gratian's *Decretum*." *ZRG KA* 83 (1997): 22-31.

_____. "Le manuscrit florentin du Décret de Gratien: une critique des travaux de Carlos Larrainzar sur Gratien." *RDC* 51 (2001): 211-231.

_____. "Gratian's *Decretum* and the Transformation of Sankt Gallen." On the web at <http://patheon.yale.edu/~haw6/Critique2.htm>.

_____. "Recent Work on the Making of Gratian's *Decretum*." *BMCL* 26 (2004-2005): 1-27.

_____. "Where Gratian Slept: The Life and Death of the Father of Canon Law." *ZRG KA* 99 (2013): 105-128.

Wood, Susan. *The Proprietary Church in the Medieval West*. Oxford: Oxford University Press, 2006.

Unpublished theses

Eichbauer, Melodie H. *From Gratian's Concordia discordantium canonum to Gratian's Decretum: The Evolution from Teaching Text to Comprehensive Code of Canon Law*. Ph.d Dissertation. The Catholic University of America Press, 2010.

- García Arias, Justiniano. *C.1 q.7 del Decreto de Graciano: el origen de la doctrina canónica sobre la dispensa*. Ph.d Dissertation. Pontificia Universidad de la Santa Cruz, 1999.
- Joubert, Thibault. *La formation du lien entre l'évêque et son Eglise dans les versions successives du 'Décret' de Gratien*. Ph.D Dissertation. Université de Paris-Sud, 2010.
- Larson, Atria A. *Gratian's Tractatus de Penitentia: A Textual Study and Intellectual History*. Ph.d Dissertation. The Catholic University of America, 2010.
- Parma, Marcelo. *El favor fidei en el Decretum Gratiani*. Ph.d Dissertation. Pontificia Universidad de la Santa Cruz, 2007.
- Tarín, Luis Pablo. *Graciano de Bolonia y la literatura latina. La distinción treinta y siete del decreto*. Ph.d Dissertation. Universidad Complutense de Madrid, 2004.
- Wei John. *Law and Religion in Gratian's Decretum*. Ph.d Dissertation. Yale University, 2008.