

Creating and Sharing Legal Knowledge in the Twelfth Century

Sankt Gallen, Stiftsbibliothek, 673 and Its Context

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Contents

Preface	VII
List of Figures	VIII
Abbreviations	X
Contributors	XI

PART 1

Introducing the Debate

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

PART 2

The Origin of Sankt Gallen, Stiftsbibliothek, 673

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

PART 3

Creating Legal Knowledge

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

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

PART 4

Sharing Legal Knowledge

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

PART 5

Sg in Its Context

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

PART 6

Summarizing Observations

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

Bibliography 253

Index of Manuscripts 256

Index of Persons 260

Index of Works, Councils and Decretals 262

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

Anders Winroth

1 Introduction

The middle of the twelfth century was a golden time for abbreviations and transformations of Gratian's *Decretum*.¹ Such texts survive in dozens of manuscripts. It is not difficult to imagine why that should be. In its second recension, the complete *Decretum* was a very large book that required a great investment of time and money to produce. Twelfth-century manuscripts of Gratian's work typically weigh in at more than 300 parchment leaves in large folio. Hundreds of calves had to sacrifice their skins just to produce the parchment for such a volume, and a trained scribe would work for many months to inscribe laboriously the more than half a million words of the *Decretum* onto parchment. In the one case for which we have exact information, we know that it took the scribe Adalbert at the Bavarian monastery of Schäftlarn two years to copy out Gratian's text. His case might, however, not be typical.² Only the wealthiest ecclesiastical institutions with good scriptoria could afford the investment required to produce a complete *Decretum*.

The compiler of the twelfth-century abbreviation known by its incipit as the *Quoniam egestas* acknowledged how expensive the *Decretum* was. In his preface he wrote. "Since poverty, which often used to oppress many, more than usual was weighing down our shoulders in such a way, that I could by no effort have that book of decrees which Gratian from many canons redacted into a single volume, I have collected in these quires some general and most necessary

1 I thank the participants in the St. Gall workshop for their comments and inspiration. I also thank John Burden for reading a draft of this article and for sharing his work in progress.

2 Munich, Bayerische Staatsbibliothek, Clm 17161 (siglum *Mm*), fol. 182ra: "Sciunt hoc omnes tam posterī quam presentes hunc librum per biennium ab Adalberto indigno presbitero scriptum in honorem gloriosi preciosi et post apostolos secundo loco positi sunt [*add. supra lin.*] martiris Dionisii, defensoris ac patroni nostri, et in laude sancte matrone uirginis Iuliane ea conditione, ut amborum intercessione muniatur in huius uite conuersatione ac finite temporis, quod ei residuum est, conclusione aliquantula fruatur celestis regni portione."

canons.”³ He produced a shortened version of Gratian’s work with what he thought was the most useful passages, so that others similarly oppressed by poverty would be able to afford it.

Gratian’s work was expensive, but it was also very attractive; it was the right book at the right time. As bureaucratic government and new approaches to judicial processes were developing by bounds and leaps all across Europe, people needed the kind of sophisticated law that Gratian provided. This explains the large number of manuscripts of the various versions of the *Decretum* which has come down to us from the twelfth century.⁴

In this article, I want to argue that the several abbreviations found in some of those manuscripts provide us with a privileged, if indirect view of the state of the text of the *Decretum* at the time they were compiled in the twelfth century, particularly around its middle. The image they paint is not a pretty one. Gratian’s text was then in a state of flux, confusion, and fluidity. We get an immediate impression of the confusion when we look into first-recension manuscripts such as the well-known ones from Barcelona (*Bc*), Admont (*Aa*), and especially Florence (*Fd*).⁵ But at some point after the middle of the century, the confusion abated at least somewhat, and the text of the *Decretum* became more standardized and less fluid.

I want to focus, in particular, on two abbreviations from the middle of the twelfth century beyond that found in St. Gallen, Stiftsbibliothek, 673 (*Sg*) which has been the subject of so much scholarly debate in the last two decades. One is the *Quoniam egestas* and the other is an abbreviation from Trier that has been little studied, if at all. These early abbreviations bear witness to the state of Gratian’s text during the confusion after the second recension first began to circulate, which is the reason why my attention has been attracted to them while working on new editions of the *Decretum*.⁶

3 “Quoniam egestas, que plures sepe consuevit oprimere nostris humeris plus solito supersebat et ita uidelicet quod librum illum decretorum quam Gracianus ex multis canonibus in uno redigit uolumine nullo conamine poteram habere, prefati uoluminis decreta quedam generalia maximeque necessaria in istis quaternionibus collegi.” Transcribed from Prague, Knihovna Metropolitni Kapituli, J. 74, fol. 10r. St. Gallen, Stiftsbibliothek, 711, 18, has no significant variants. The Prague text was already transcribed in Johann Friedrich von Schulte, “Über drei in Prager Handschriften enthaltene Canonen-Sammlungen,” in *Österreichische Akademie der Wissenschaften, Philosophisch-Historische Klasse: Sitzungsberichte* 57 (1868), 222–223.

4 Giovanna Murano, “Graziano e il Decretum nel secolo XII,” *Rivista internazionale di diritto comune* 26 (2015), 61–139.

5 Barcelona, Arxiu de la Corona d’Aragó, Ripoll 78 (*Bc*); Admont, Stiftsbibliothek, 23 and 43 (*Aa*); and Florence, Biblioteca Nazionale Centrale, Conv. Soppr., A. 1. 402 (*Fd*).

6 Gratian.org.

2 Abbreviations for Teaching and Reference

I have previously argued that abbreviations came out of minor educational contexts, law schools away from the great centers of Bologna and Paris. The smaller schools taught a shortened curriculum on the basis of abbreviations, rather than the complete works which took considerable time to work through.⁷ Others have pointed out that at least the *Quoniam egestas* was obviously used in a teaching context, since its manuscripts contain glosses that follow the standard format of cross references in Bologna, although they do not refer to the complete lawbooks as taught there.⁸ The references to Roman law are not to the usual Corpus, but to the so-called *Exceptiones Petri*, which is a brief abbreviation of Justinian's Roman law books, however also containing some snippets of canon law. The Prague manuscript of *Quoniam egestas* in fact contains also the *Exceptiones Petri*. The idea is close at hand that a minor law school somewhere was teaching canon law on the basis of *Quoniam egestas* and Roman law on the basis of *Exceptiones Petri*. Rudolf Weigand and André Gouron have suggested on good evidence that this school was situated in southern France. Gouron, additionally, thinks he can identify the author of *Quoniam egestas* as Eleazar of Avignon, but his evidence is flimsy.⁹

There are glosses also in other abbreviations, such as in some manuscripts of the abbreviation of Omnebene, which is preserved in nine manuscripts and which was produced in Bologna itself, perhaps in 1156.¹⁰ Similarly, the abbreviation *Exceptiones ecclesiasticarum regularum*, preserved in at least nine manuscripts, is glossed, and other scholars have concluded it was used in teaching.¹¹ Titus Lenherr has pointed out that the reformulation of the dicta

7 Anders Winroth, "The Teaching of Law in the Twelfth Century," in *Law and Learning in the Middle Ages*, ed. Helle Vogt, Mia Münster-Swendsen (Copenhagen, 2006), 41–62; Anders Winroth, "Law Schools in the Twelfth Century," in *Mélanges en l'Honneur d'Anne Lefebvre-Teillard*, ed. Bernard d'Aleroche, Florence Demoulin-Auzary, Olivier Descamps, Franck Roumy (Paris, 2009), 1057–1064.

8 Rudolf Weigand, "Die Dekretabbreviatio 'Quoniam egestas' und ihre Glossen," in *Fides et ius: Festschrift für Georg May zum 65. Geburtstag*, ed. Winfried Aymans (Regensburg, 1991), 249–265; André Gouron, "Die Entstehung der französischen Rechtsschule: Summa Iustiniani est in hoc opere und Tübinger Rechtsbuch," *ZRG.RA* 93 (1976), 138–160.

9 Weigand, "Quoniam egestas (n. 8)"; André Gouron, "Le manuscrit de Prague, Metr. Knih. J. 74: à la recherche du plus ancien décrétiste à l'Ouest des Alpes," *ZRG.KA* 83 (1997), 223–248.

10 Kenneth J. Pennington, "Bio-Bibliographical Guide to Medieval and Early Modern Jurists," <http://amesfoundation.law.harvard.edu/BioBibCanonists/>.

11 Stephan Kuttner, *Repertorium der Kanonistik (1140–1234)*, vol. 1. *Prodromus corporis glossarum*, Studi e testi (Vatican City, 1937), 260–261; Rudolf Weigand, "Die Dekretabbreviatio 'Exceptiones ecclesiasticarum regularum' und ihre Glossen," in *Christianità ed Europa*:

in the St. Gallen codex suggests that its text was used in teaching.¹² Alfred Beyer has characterized the Bamberg abbreviation as a “Lehrbuch,” thus also suggesting an educational context.¹³ All in all, these circumstances suggest that the teaching of canon law on the basis of *Decretum* abbreviations was quite lively around and after the middle of the twelfth century.

Seven manuscripts of the *Quoniam egestas* survive.¹⁴ The abbreviation has been dated to 1150, because that is the date of the form letter at C.2 q.6 d.p.c.31.¹⁵ One should, however, be careful not to take such dates as necessarily the date of compilation; no one any longer understands the date of the same form letter in the unabbreviated *Decretum*, 30 April 1105, as the date when Gratian worked on that passage.¹⁶ Gundula Grebner has, in fact, shown that it is must here be a symbolic date that is tied to episcopal succession in Bologna.¹⁷ In any case, 1150 is in fact not an unattractive date to assign to *Quoniam egestas*. It was surely not produced very much later.

For some other abbreviations, the impression one gets when reading is that they were compiled to be useful compendia for ecclesiastical administration, books that bishops, abbots, and their administrative assistants would find easier to deal with than the full *Decretum* in their daily work. Alfred Beyer suggested that the Pommersfelden abbreviation was used as such a reference

Miscellanea di studi in onore di Luigi Prosdocimi, ed. Cesare Alzati (Milan, 1992), 1:511–529; Bruce C. Brasington, “The Abbreuiatio ‘Exceptiones evangelicarum’: A Distinctive Regional Reception of Gratian’s Decretum,” *Codices manuscripti* 17 (1994), 95–99; Pennington, “Bio-Bibliographical Guide (n. 9),” 2004. I thank Professor Brasington for kindly sending me a scan of his article.

- 12 Titus Lenherr, “Ist die Handschrift 673 der St. Galler Stiftsbibliothek (Sg) der Entwurf zu Gratians Dekret? Versuch einer Antwort aus Beobachtungen an D. 31 und D. 32,” www.mgh-bibliothek.de/dokumente/a/a117039.pdf. See also Lenherr, “Language Features (in this volume)” and Eichbauer, “The Uniqueness of Prima Causa (in this volume).”
- 13 Alfred Beyer, *Lokale Abbreuiationen des Decretum Gratiani: Analyse und Vergleich der Dekretabbreuiationen “Omnes leges aut divine” (Bamberg), “Humanum genus duobus regitur” (Pommersfelden) und “De his qui intra claustra monasterii consistunt” (Lichtenthal, Baden-Baden)*, Bamberger theologische Studien 6 (Frankfurt am Main, 1998), 215.
- 14 Pennington, “Bio-Bibliographical Guide (n. 9),” 2594.
- 15 Gouron, “Manuscrit de Prague (n. 8),” 230.
- 16 As was suggested by Adam Vetulani, “Nouvelles vues sur le Décret de Gratien,” in *La Pologne au X^e Congrès international des sciences historiques à Rome, 1955* (Warsaw, 1955), 83–105 (repr. in Adam Vetulani, *Sur Gratien et les Décrétales*, ed. Waclaw Uruszczak, *Variorum Collected studies* 308 (Aldershot, 1990), no. v) and by Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-twelfth Century: The Ecclesiology of Gratian’s Decretum* (Berkeley, 1972), 256–259.
- 17 Gundula Grebner, “‘omnis ratio vel contempcio bona fidei, que vite homines aguntur’. Notarielle Kultur und Wechsel der Generationen in der Entstehung von Kommune und ‘studium’ in Bologna (1050–1150)” (PhD thesis, Universität Frankfurt am Main, 1999).

book.¹⁸ Reading an abbreviation preserved in Trier (about which more below), I get the impression that this might also have been useful in an administrative context, say as a handbook of canon law for a smaller monastery or cathedral that simply could not afford the full *Decretum*. Or who preferred their law more pre-digested than what Gratian supplied.

When distinguishing between works used in teaching and works used as administrative handbooks, I think we should be careful not to draw too strong a line between these two uses. A good textbook is also a good handbook! The presence of glosses, however, as well as the fact that abbreviations such as *Quoniam egestas* and that by Omnibene are preserved in multiple copies all across Europe, do point to educational situations.

3 The Trier Abbreviation (*Tp*)

The unique manuscript of the Trier abbreviation comes from the rich library of the monastery of St. Matthias in Trier.¹⁹ It is a large octavo of about 20 by 30 centimeters. The volume is written in a neat and regular late Carolingian bookhand or Praegothica, with initials and rubrics in red, while each *causa* begins with a larger, blue initial. A late medieval ownership notice appears on the inside of the cover: *Codex monasterii sancti Mathie apostoli*. Just below, the contents are suggested in the same hand, which also claims that Gratian was a Benedictine monk. I have given this manuscript the siglum *Tp*.²⁰

As we understand already from *Tp* containing only 91 leaves, this is a shorter abbreviation than the one found in *Sg* with its 124 leaves. Like *Sg*, it contains only *causae*, excluding the *de consecratione*. Unlike *Sg*, *Tp* contains all the *causae* of the normal *Decretum*, but nothing from the first part.²¹ *De penitentia*

18 Beyer, *Lokale Abbreviationen* (n. 12), 366.

19 Bibliothek des bischöflichen Priesterseminars Trier 91. The library of St. Matthias has been virtually reconstructed with digital photos of all its manuscripts as the *Virtuelles Scriptorium St. Matthias*, <http://stmatthias.uni-trier.de/>.

20 Jacob Marx, *Handschriftverzeichnis der Seminar-Bibliothek zu Trier*, Trierisches Archiv: Ergänzungsheft 13 (Trier, 1912), 72, catalogued the manuscript as a complete text of the *Decretum*, thus misleading Kuttner, *Repertorium* (n. 10), 105. The error was pointed out by Alfons Maria Stickler, "Decretistica Germanica adaucta," *Traditio* 12 (1956), 593–605, at 595 and 604. See also Petrus Becker, *Die Benediktinerabtei St. Eucharius – St. Matthias von Trier*, *Germania Sacra* n.s. 34 (Berlin, 1996), 125, no. 85.

21 *Sg* famously frames its excerpts from Gratian's Part 1 as a *causa* that has not been found anywhere else in the tradition of Gratian's *Decretum*. In this, it is similar to the text of Munich, Bayerische Staatsbibliothek, Clm 17161 (*Mm*), which also contains an otherwise unknown *causa*, see José Miguel Viejo-Ximenez, "The Introduction to the Tractatus

is present very much abbreviated. The order of chapters is sometimes transposed, and the compiler added some explicatory and summarizing *dicta* of his own composition. Most of the content appears already in Gratian's first recension, and when Gratian 2 changed the text of Gratian 1, *Tp* sometimes has the text of Gratian 1, sometimes that of Gratian 2, much as in *Sg*.²² A few second-recension chapters are present, again analogously to *Sg*. My sample edition of *causa 2* in the Trier abbreviation is available on the internet.²³ In many respects *Tp* is parallel and analogous to the text found in *Sg* manuscripts, and it will be well to include the Trier text in any discussion of exactly what *Sg* is. It would be hard to argue, as has been done, that *Sg* is a version of Gratian's *Decretum* earlier than the one found in the first recension, unless one also argues that *Tp* predates that recension, something that would be logically impossible.²⁴ The arguments that have been used to argue that the text of *Sg* preceded the first recension (shorter than the first recension, only *causae*, mostly first-recension texts, transpositions, unique texts) also apply to *Tp*. I certainly do not want to argue that the text of *Tp* preceded that of the first recension, that it contained

coniugii and the Case relating to the prosecution of clerics in the *Discordantium canonum Concordia* of Schäftlarn," in *Sacri canones editandi: Studies on Medieval Canon Law in Memory of Jiří Kejíř*, ed. Pavel Krafl (Břno, 2017), 64–80. Like *Sg*, *Tp* excludes the so-called *Tractatus de legibus* (D.1–20), providing further evidence that abbreviators might indeed leave out that passage, irrespective of modern expectations, cf. Pennington, "Teaching Canon Law in the early Twelfth Century (in this volume)."

- 22 For the two recensions of Gratian's *Decretum* and the concepts of Gratian 1 and 2, see Anders Winroth, *The Making of Gratian's Decretum*, Cambridge studies in medieval life and thought, 4th ser., 49 (Cambridge, 2000).
- 23 Anders Winroth, *Abbrevisatio Treverensis decreti Gratiani in codice 91 seminarii episcopalis Treverensis reperta: Causam secundam diplomatice edidit* (New Haven, 2018), available at gratian.org. Prints of the edition have been deposited in the Institute of Medieval Canon Law, New Haven, and in the Monumenta Germaniae Historica, Munich.
- 24 The claim that *Sg* represents a very early stage of the textual development of the *Decretum* was first made by Carlos Larrainzar, "El borrador de la Concordia de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (=Sg)," *Ius ecclesiae* 11 (1999), 593–666. It is supported (with some modification by Kenneth Pennington, "Gratian, Causa 19, and the Birth of Canonical Jurisprudence," in *La cultura giuridico-canonica medioevale: Premesse per un dialogo ecumenico*, ed. Enrique De León, Nicholas Álvarez de las Asturias (Milan, 2003), 209–232 expanded and reprinted in "Panta rei": *Studi dedicati a Manlio Bellomo*, ed. Orazio Condorelli, 5 vols. (Rome, 2004), 4:339–355; Melodie H. Eichbauer, "St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian's Decretum," *BMCL* 27 (2007), 105–139. This argument has been repeatedly refuted from several different points of view, see e.g., Anders Winroth, "Recent work on the Making of Gratian's *Decretum*," *BMCL* 26 (2004–2006), 1–29; Lenherr, "Ist die Handschrift 673 der St. Galler Stiftsbibliothek (Sg) der Entwurf zu Gratians Dekret? (n. 11)"; John Wei, "A Reconsideration of St. Gall, Stiftsbibliothek 673 (Sg) in Light of the Sources of Distinctions 5–7 of De Poenitentia," *BMCL* 27 (2007), 141–180; Jean Werckmeister, "Le manuscrit 673 de Saint-Gall: Un Décret de Gratien primitif?," *RDC* 60 (2010), 155–170; and Lenherr, "Language Features (in this volume)."

some kind of “first draft” of the *Decretum*. My discussion aims to highlight the methodological problems inherent in the various arguments presented by those attempting to argue that *Sg* represents an early stage in the development of Gratian’s text. The conclusion must be that the methodology is unsound, as should be obvious already from the criteria used. Neither *Tp* nor *Sg* contains a version of the *Decretum* logically prior to that found in the first recension (defined as the original text in *Bc*, *Fd*, and *P*).

In what follows, I will attempt to explain why *Tp* looks the way it does, with mostly first-recension chapters and readings, but some chapters and readings added from the second recension. That explanation applies *mutatis mutandis* also to *Sg*. The conclusion is that both abbreviations bear witness to the state of the text of the *Decretum* at the time when they were put together.

4 Comparing Abbreviations

We may begin with some comparative numbers. I have made a closer study of *causa 2* in a few abbreviations. Table 10.1 gives the number of chapters and dicta in each version of Gratian’s text of C.2. This is a very rough count of chapters and dicta, not comparable to Alfred Beyer’s more precise percentages that are based on line counts and also includes the abbreviations in their entirety.²⁵ The table is still useful, I believe, for a first orientation. The percentages represent what proportion of these categories of *Decretum* texts are reproduced in the various abbreviations of C.2.

	Chapters	1st rec.	2nd rec. only	Dicta	1st rec.	2 rec. only	Propria
<i>Decretum</i>	169	112	57	68	60	10	
<i>Sg</i>	99 (59%)	98 (88%)	1 (1.8%)	67 (99%)	59 (98%)	2 (20%)	6
<i>Tp</i>	67 (40%)	60 (53%)	7 (12%)	57 (84%)	46 (77%)	6 (60%)	5
<i>Quoniam eg.</i>	46 (27%)	31 (28%)	15 (26%)	30 (44%)	24 (40%)	6 (60%)	–
<i>Bamb.</i>	31 (18%)	26 (23%)	5 (8.7%)	18 (26%)	17 (28%)	1 (10%)	–

Sources: Emil Friedberg, ed., *Decretum magistri Gratiani* (Leipzig, 1879); *Sg*; *Tp*; St. Gallen, Stiftsbibliothek 711 and Prague, Knihovna metropolitni Kapituli J.74 (*Quoniam egestas*); Beyer, *Abbreviationen*, 30–168

²⁵ Beyer, *Lokale Abbreviationen* (n. 12).

Obviously, the abbreviations make selections of differing size (the first column provides an immediate sense of this). More interestingly, however, is a comparison between the percentages in the second and third columns, which register how large a proportion of first-recension texts and of second-recension additions, respectively, made it into the abbreviations. The abbreviation *Quoniam egestas* includes 28 percent of chapters from the first recension and 26 percent of chapters that were only added in the second recension. It would be hard to argue that the abbreviator had a bias one way or another between the recensions: he excerpted about the same proportion from both groups of texts. The conclusion must be that he was working with a copy of the second recension. In contrast, *Sg* drew primarily on the first recension (including 88 percent of such chapters) and very little on texts that only appear in the second recension (a single chapter, corresponding to 1.8 percent). The approach of the *Sg* abbreviator is, however, not unique. Both the Trier and the Bamberg abbreviations were biased against second-recension texts. *Tp* include only 12 percent of second-recension additions, while including 53 percent of first-recension chapters. The corresponding figures for Bamberg are 8.7 and 23 percent, respectively. The Bamberg manuscript abbreviates so radically that it is probably wisest to leave it aside in the discussion, but it is notable how *Tp* is similar to *Sg* in including mainly first-recension texts, with a sprinkling of second-recension additions.

At least on the evidence of C.2, it seems clear that *Quoniam egestas* derives from a straight-forward copy of the *Decretum* containing the second recension. With *Sg* and *Tp*, we cannot say so; they, and particularly *Sg*, mostly excerpt the first-recension contents. This must mean something, and I shall get back to what it probably means.

But I want also to share another table. I have followed Alfred Beyer's lead and studied what weight the abbreviations give to certain important sections in the *Decretum*. Again, I have only studied certain sections of the *Decretum*, while Beyer studied the entire text.

What is perhaps most striking is that *Sg* and *Tp* both (like the Pommersfelden abbreviation) are very interested in legal procedure, the rules for which are found in *causae* 2–6. Legal procedure was being redefined in the twelfth century, so it makes sense that people interested in law would have been interested in procedure. *Sg* and *Tp* also excerpt richly from the sections devoted to monastic law (C.16–20), as does the *Quoniam egestas*.²⁶ This is perhaps not surprising for the cases of *Sg* and *Tp*, which both come from monastic libraries,

26 The findings of Larson, "Nota (in this volume)," present further support for *Sg*'s interest in these areas of law. See, especially, her Table 1 (163).

	1st rec.	2nd rec.	Bamberg	Pommersfelden	Lichtenthal	<i>Sg</i>	<i>Tp</i>	Quoni. eg.
D.21–80	14.7%	15.0%	20.4%	18.9%	6.91%	13.9%	0	5.87
C.2–6	8.96%	8.99%	9.94%	15.0%	9.60%	16.0%	14.8%	9.53%
C.16–20	6.86%	6.91%	10.0%	7.70%	19.2%	11.8%	10.4%	9.96%

Sources: The same as for table 1. Beyer, *Abbreviationen*, 193, 348, 439 contains the figures found in the second, third, fourth, and fifth column. In *Sg*, *Tp*, and the manuscripts of *Quoniam egestas*, I have counted columns

although we should note that *Sg* may have been written at the cathedral of Modena.²⁷ Notable is also how *Tp* and *Quoniam egestas* are little or not at all concerned with the law of ordination in D.21–80; is such uninterest perhaps also a monastic trait?

One could speculate more about what these numbers means, and one obviously should expand the comparisons to the rest of the *Decretum* and to more abbreviations. This is as much as I have been able to do, given that most of this work has to be done in the manuscripts and not in printed editions.

5 The Texts of the Abbreviations in the Context of the Transmission of the *Decretum*

Sg and *Tp* are akin in reproducing mainly first-recension texts but with a sprinkling of second-recension texts thrown in. How would an abbreviation like that come about? A concrete example that might help us answer that question is C.24 q.2 c.2. This is one of those canons that are particularly interesting in the textual history of the *Decretum*, since its compilers used two different formal sources for the two recensions. First, Gratian 1 copied the text from the *Panormia* 5.119. This was a shorter text with the incipit *Mortuos suscitasse* and an inscription that identified the writer as Pope Gregory and the addressee as a

²⁷ Marina Bernasconi Reusser, “Considerazioni sulla datazione e attribuzione del Decretum Gratiani Cod. Sang. 673: Un manoscritto di origine italiana in terra nordalpina,” in *Schaukasten Stiftsbibliothek St. Gallen: Abschiedsgabe für Stiftsbibliothekar Ernst Tremp*, ed. Franziska Schnoor, Karl Schmuki, Silvio Frigg (St. Gallen, 2013), 142–147. On the origin of *Sg* and its paleographical features, see also Lenz, “The Codicology (in this volume).”

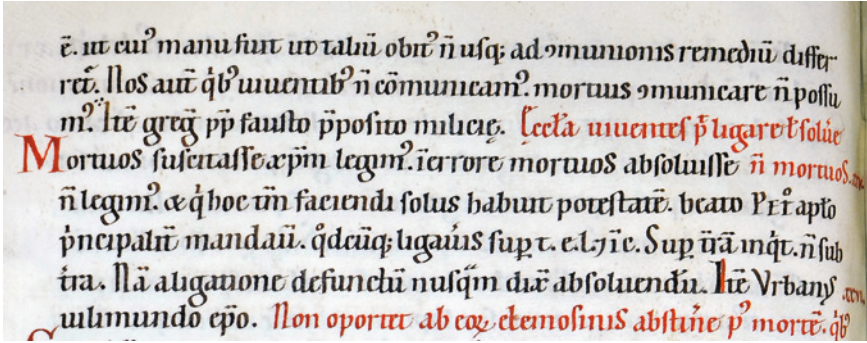


FIGURE 10.1 Admont, Stiftsbibliothek, 43 (Aa), fol. 92v. C.24 q.2 c.2

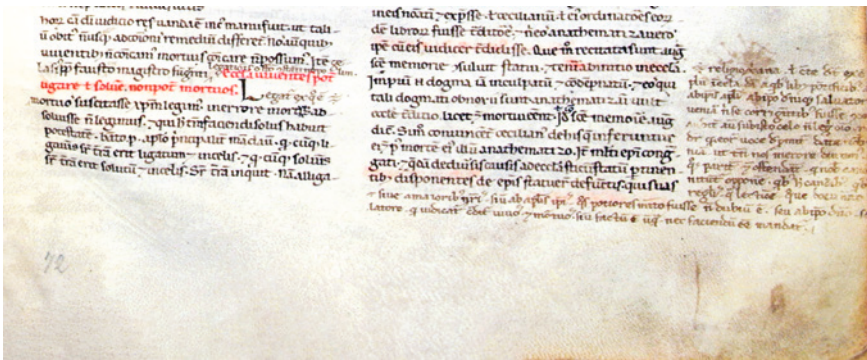


FIGURE 10.2 Florence, Biblioteca Nazionale Centrale, Conv. Soppr., A.1.402 (Fd), fol. 72ra: C.24 q.2 c.2

magister militum called Faustus: *Gregorius papa Fausto magistro militum*.²⁸ The shorter text corresponding to what Gratian 1 found in the *Panormia* appears written by the main hand in the Florence (Fd) and Admont (Aa) manuscripts.

The Trier abbreviation, *Tp*, contains the same shorter text beginning with *Mortuos* as the first recension and the *Panormia*. This suggests that the exemplar from which the abbreviator worked was a copy of the first recension. However, the Trier text carries the second-recension inscription, which ascribes the text (correctly) to Pope Gelasius (not Gregory) and gives the addressee his proper title of magister (not *militum*) and papal legate in Constantinople: *Item Gelasius papa Fausto magistro fungenti legationis officio Constantinopolim*.²⁹

28 Martin Brett and Bruce C. Brasington, *Panormia*, <https://ivo-of-chartres.github.io/panormia.html>.
 29 *Tp* fol. 62va.

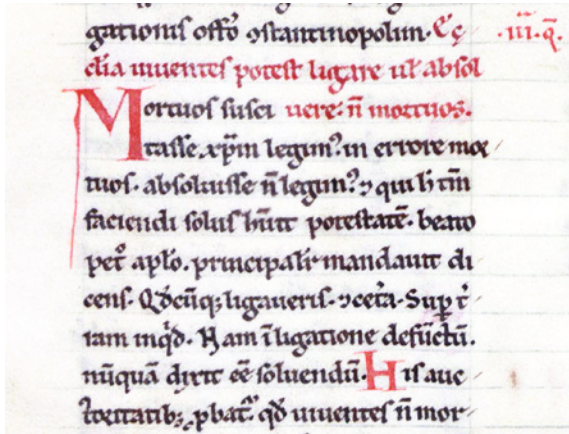


FIGURE 10.3
Trier, Bibliothek
des Bischöflichen
Priesterseminars 91 (*Tp*),
fol. 62v: C.2a q.2 c.2

Even though the length of the excerpt in *Tp* reflects the first recension, the inscription is that associated with the second recension. The compiler of that recension (Gratian 2) had found the text in his copy of the *Collectio Tripartita* 1.46.2, which contains a canon longer than that found in the *Panormia*. The *Tripartita* and the second recension of Gratian's *Decretum* ascribe the chapter to Gelasius with a longer inscription. Gratian 2 used the *Tripartita* to expand the text of this chapter as it existed in the first recension (which version Gratian 1 had found in the *Panormia*), and to correct the inscription. The corrector of *Fd* had access to the second recension, so he also corrected the inscription as well as the incipit over erasures, and he expanded the canon in the margin, tying the expansion to the correct place in the text with a tie mark.

Tp is far from the only Gratian manuscript that reflects the first-recension version of this particular chapter without actually being a manuscript of the first recension. A manuscript in the Stadtbibliothek of Mainz (*Mz*), for example, divides the chapter into two, the second one of which corresponds to the shorter version in the first recension (beginning *Mortuos*).³⁰ This is one feature that makes it into an example of what should be called “mixed-recension texts,” which contain texts extending to the full length of the second recension but openly flaunting their provenance from a first-recension manuscript that has been expanded.³¹ In *Mz*, the second half-chapter lacks its own inscription and

30 Mainz, Stadtbibliothek, II 204 (*Mz*), fol. 184ra.

31 I have earlier labelled such manuscripts “first-recension manuscripts in disguise,” but I am persuaded that “mixed recension” is a better label. John Burden coined the new term and Ken Pennington helped persuade me. I thank them both, and especially that Burden allowed me to read his then unpublished article in manuscript: John Burden, “Mixed

rubric, and the first half-chapter is inscribed as in the second recension, attributing the text to Pope Gelasius and giving Faustus his proper, non-military title.

I suggest that the text in *Mz* was the result of its copyist using a model that was a first-recension manuscript with second-recension additions and corrections. It may have looked like *Fd* in having corrected the inscription from Gregorius to Gelasius, and by a tie mark suggesting that a marginal text should be included here. And it may have looked like *Aa* in having copied out the initial M in *Mortuos* in larger red script. Similarly, *Tp* may have been copied from a model looking like *Aa* in clearly beginning a new chapter with the word *Mortuos* – as in the first recension – and like Florence in having corrected the inscription to *Gelasius*.

Alas, *Sg* entirely excludes *causa* 24, so we cannot know how its abbreviator would have dealt with the canon I have discussed. There is a parallel case, however, in C.2 q.1 c.7, where Gratian 1 excerpted a shortish canon from either the *Panormia* 4.82 or the *Collectio Tripartita* 1.57(55).79, beginning *Quod quidam frater de falsis*.³² Gratian 2 found the same text in Anselm of Lucca's collection 3.90, within a very much longer canon beginning *Imprimis*, so he expanded it to make it one of the longest chapters in the *Decretum*.³³ The beginning of the sentence that introduces that part of the text in the first recension is differently formulated in the longer text found in the second recension (at §3 in the editions): *Quia igitur Stephanus episcopus in odio suo quedam ficta et de falsis*.³⁴

The four manuscripts of the first recension all have the shorter text beginning *Quod quidam frater*, as does *Sg*.³⁵ As in the previous case, some manuscripts of the second recension also contain tell-tale signs that they derive from manuscripts of the first recension. This is quite clear, e.g., in the manuscript from Biberach (*Bi*).³⁶ In this manuscript, C.2 q.1 c.7 begins as in the second recension with *Imprimis* on fol. 99ra, goes on through the end of §2 and then continues with only the first words of §3: *Quia igitur Stephanus episcopus, etc.* The text then breaks off and a tie mark in the form of a cross refers the reader to the

Recensions in the Early Manuscripts of Gratian's Decretum," in *Deutsches Archiv für Erforschung des Mittelalters* 76 (2020), 533–584.

32 Brett and Brasington, *Panormia* (n. 26); Martin Brett, *Tripartita*, <https://ivo-of-chartres.github.io/tripartita.html>. When referring to the *Tripartita*, I use the numbering employed in *Clavis canonum* with Brett's numbering within parenthesis, if different. Cf. <http://www.mgh.de/ext/clavis>.

33 *Anselmi episcopi Lucensis Collectio canonum*, ed. Friedrich Thaner (Innsbruck, 1906–1915), 168–172.

34 Anders Winroth, "Critical Notes on the Text of Gratian's Decretum, 7: A First Attempt at a Workable Plan for Editing the Second Recension," <https://sites.google.com/a/yale.edu/decretumgratiani/critical-notes-7>.

35 *Aa* fol. 122v, *Bc* fol. 121va, *Fd* fol. 27ra, *P* fol. 106rb, *Sg* 45b. *Tp* leaves out c.7 entirely.

36 Biberach an der Riss, Stadtarchiv, Spitalsarchiv, B 3515.

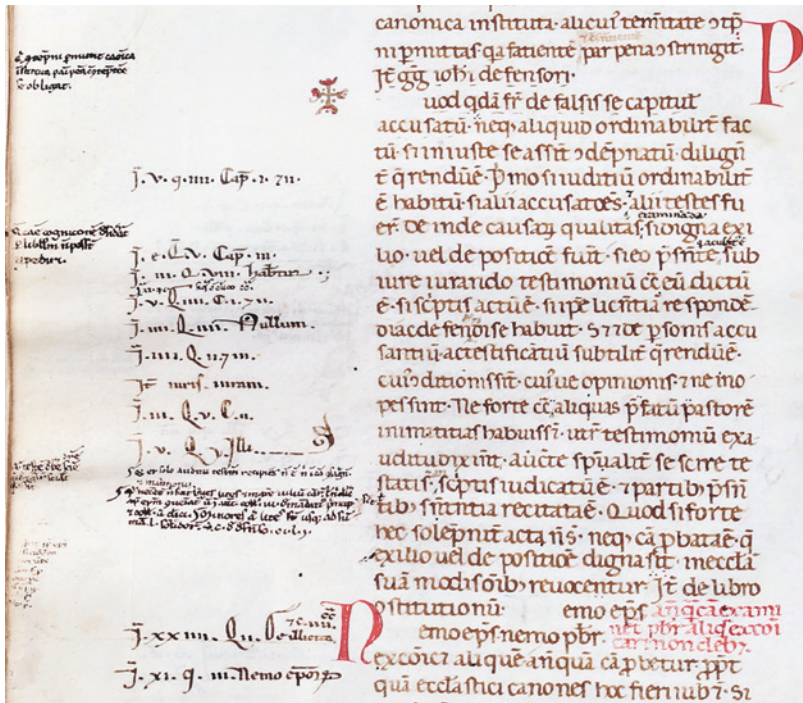


FIGURE 10.4 Biberach, Stadtarchiv, Spitalsarchiv B 3515 (Bi), fol. 99v: C.2 q.1 c.7

verso side of the leaf, where the first-recension version of the canon appears complete including the inscription (*Item Gregorius Iohanni defensori. <Q>uod quidam frater de falsis ...*). Those words were cancelled in the second recension. At the end of this first-recension text, another tie mark refers back to the previous page, where the end of the canon is found, as in the second recension. *Bi* gives the strong impression to have been copied from an exemplar that at first only contained the first recension but then had been expanded, in the margins and/or on added sheets, to include second-recension texts. In other words, its model would have looked something like *Bc* or *Fd*.

Another early manuscript, the Cologne manuscript that Friedberg used as his primary text (*Ka*), also contains hints of a mixed recension.³⁷ The longer text of C.2 q.1 c.7 appears as in the second recension. §3 begins (as usual in the second recension) with the words *Quia igitur Stephanus*, at first without any indication that there is a break in the text here. When the copyist reached the end of the fragment as in the first recension (*... modis omnibus revocetur*), however, he made a break, introducing the rest of the canon with its own colored

37 Cologne, Erzbischöfliche Diözesan- und Dombibliothek, 127 (*Ka*), fol. 99vb.

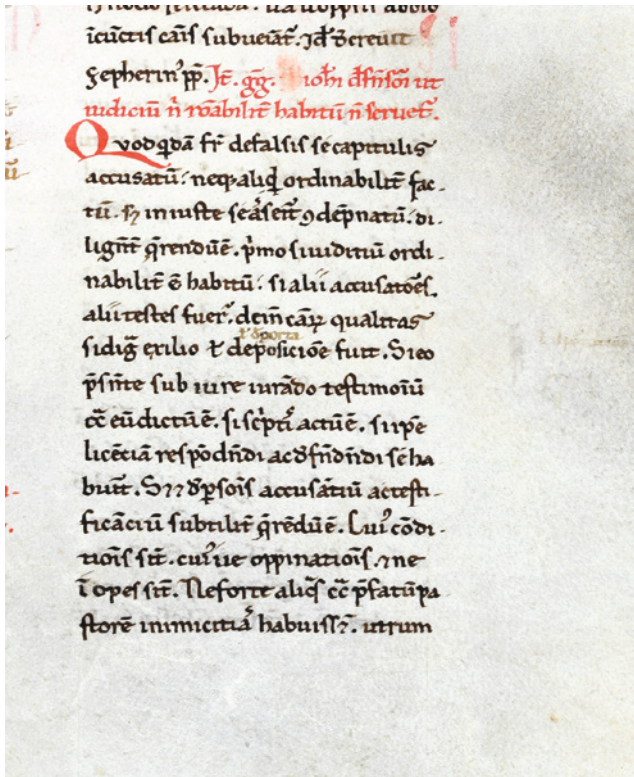


FIGURE 10.5 Sg 45b: C.2 q.1 c.7

initial, inscription and rubric, as if it were a new chapter. In addition, a corrector has signaled in the margin that the word *Item* should have been added before the beginning of the first-recension fragment of the canon, before *Quia igitur Stephanus*. That *Item* turns up in many second-recension manuscripts, for example in most manuscripts of the Σ -recension. When the first-recension fragment ends and the final part of the canon found only in the second recension begins, the scribe of *Ka* gives this section its own initial, inscription and rubric: *Item. De his qui condempnant innocentes*.

Similarly, the other early Cologne manuscript, *Kb*, also divides what follows after the first-recension fragment from the rest of the second-recension canon with a new initial and the same rubric.³⁸

Why do *Bi*, *Ka*, *Kb*, and *Mz* look the way they look? The answer must quite obviously be that the exemplar from which they (or their exemplars) were

38 Cologne, Erzbischöfliche Diözesan- und Dombibliothek, 128 (*Kb*), fol. 94vb.

copied looked something like *Fd* or *Bc*: a first-recension text with second-recension additions and also tie marks and other instructions for how to string together the second-recension text. We should not be surprised if a copyist working with such models sometimes would lose focus and overlook or misinterpret the tie marks, ending up copying the “wrong” text, in the wrong place. Or he would mark the beginning of a chapter at the wrong place. A glance at how *Bc* presents the text of C.2 q.1 c.7 emphasizes the difficulties faced by any copyist who was using this manuscript as an exemplar for producing a second-recension text of Gratian’s *Decretum*. The text column of fol. 121va contains the first-recension fragment (beginning *Quod quidam frater*). At the end of its rubric appears a tie mark in red looking like an “S” with two dots, suggesting that a text found in the margins of the preceding page (fol. 121r) should be inserted after the rubric. That text ends with *Quod igitur Stephanus episcopus in odio suo quedam ficta et de falsis*, but nowhere is there a suggestion that the words *Quod quidam frater* of the first recension should be replaced by these words.

Against this background, it is easy to explain why the St. Gallen (*Sg*) and the Trier (*Tp*) abbreviations mainly reproduce first-recension texts with a few second-recension texts thrown in. Their models were manuscripts looking rather much like the Florence manuscript (*Fd*): A first-recension text with some additions in the margins. The abbreviator worked on the assumption that what he saw on the page in his exemplar, including the marginal additions, represented the complete text. He either overlooked leaves added later in the volume, did not think they brought much of value to Gratian’s discussion, or his exemplar simply did not contain such a supplement.

We know that the model of the Admont manuscript (*Aa*) looked like that, which lead to the scribe copying what he found in the margins of his exemplar into the main text block of his copy. He then copied the additional leaves found at the end of his exemplar at the end of his own text. What I suggest is that the exemplars that *Sg* and *Tp* used for their abbreviated texts similarly contained some second-recension texts in the margins, and those are the second-recension texts that are found in these abbreviations.

6 Towards a More Standardized Text

In conclusion, I would like to draw out some lines about what this means for how we should imagine the early transmission of Gratian’s text. At the middle of the twelfth century, the text of Gratian’s *Decretum* was a mess. The keywords are fluidity, flux, and uncertainty. The additions of the second recension, or at

least most of them, had been made by 1150, but we should not from that fact jump to the conclusion that many or even any well-organized copies of the usual second-recension text of Gratian existed by that point.³⁹ What existed was mostly messy manuscripts looking like Florence (*Fd*), or Barcelona (*Bc*), or Admont (*Aa*), in addition to many copies of such manuscripts where various copyists and editors had attempted to produce a smooth, coherent text of the complete *Decretum*. We have seen that Mainz (*Mz*), Biberach (*Bi*), and the two Cologne (*Ka* and *Kb*) manuscripts are more or less successful attempts to create such texts on the basis of confused exemplars. I suggest that the abbreviations found in St. Gallen 673 (*Sg*) and Trier 91 (*Tp*) similarly are attempts to distill the most important contents of such a text. Many more manuscripts fit this description.

This situation, with many slightly different texts circulating obviously quickly became unsustainable. For teachers of canon law to be effective teachers, they needed a standardized text; this is one of the reasons why they seem to have begun each lecture by reading out the text that they intended to comment on it, so their students might correct their copies.⁴⁰ This practice is, obviously, an important source of “contamination” in the textual transmission. At the same time, editors (some of whom surely were law teachers) worked out corrected texts, in which they also smoothed out some of the rougher syntax. They worked at a time when the second recension had been around for a couple of decades in a very confused state. The changes they introduced into the text obviously confused matters further, but tended in the long run to unify and standardize the text. The commercial book sellers of the university towns ought to have contributed to such standardization, especially as they came under increasing control from the universities.⁴¹ Their activities should have led to a large number of copies having been copied from a few exemplars, but if those exemplars were different in, say, Bologna and Paris, then the “standard text” would have differed between these two law schools, at least initially.

39 Notably, some *paleae* had not yet been added to the *Decretum*, see Jürgen Buchner, *Die Paleae im Dekret Gratians: Untersuchung ihrer Echtheit*, Pontificum Athenaeum Antonianum, Theses ad Lauream in Iure Canonico 127 (Rome, 2000).

40 “Tertio legam literam corrigendi causa.” Gero Dolezalek has, as part of his *Manuscripta juridica* website, transcribed the famous lecture announcement sometimes (but surely wrongly) attributed to the teacher of Roman law Odofredus de Denariis, from Paris, Bibliothèque nationale, lat. 4489, fol. 102ra, at <http://manuscripts.rg.mpg.de/item/19401/>. See also fol. 107va. This notice concerns Roman law and a later century, but I do not expect that teaching methods would have been radically different in twelfth-century lectures on canon law.

41 Richard H. Rouse, Mary A. Rouse, *Manuscripts and Their Makers: Commercial Book Producers in Medieval Paris, 1200–1500* (Turnhout, 2000).

I want to give an example of the kind of minor textual interventions that they made, in addition to attempting to order the chapters in their “correct” order. In C.2 q.1 c.7, Gratian 1 had copied from his source a long and complex sentence that begins: “If a brother [i.e., a bishop] complains that he has been unjustly condemned, then it should be carefully inquired....” Then follows the six separate things that should be carefully inquired, each one introduced by the conjunction *si*. This makes for a particularly thorny sentence, that even Friedberg for all his skills had problems punctuating. Here is my edition of the first-recension version of the sentence:⁴²

Quod quidam frater de falsis se capitulis accusatum neque aliquid ordinabiliter factum, set iniuste se asserit condempnatum, diligenter querendum est primo, si iudicium ordinabiliter est habitum, si alii accusatores, alii testes fuerunt, deinde^a causarum qualitas^b si digna exilio vel depositione fuit^c, si eo presente^d sub iureiurando testimonium contra eum dictum est, si scriptis actum est, si ipse licentiam respondendi ac defendendi se habuit^e.

^a examinanda *add. Br:* examinanda est *add. Py* ^b examinanda *add. Aa^{Pc} Ad Ba Bi^{Pc} Bm Er Gc Ka^{Pc} Kb Mc Mm^{Pc} Mz^{Pc} Pk Sb Σ:* est examinanda *add. Fd^{Pc} Ab Bb Bn Bp Gg Gr Ks Ma Tx Rom.* ^c fuerit *Fd^{Pc} Bi Bn Br Gc Gr Sb Σ Fr.* ^d qui accusatus est *add. Ad Bb Bm Bn Bp Er Gc Gg Ks Ma Mc Mm Tx Rom.:* qui accusatur *add. Ba Br Pk, om. Aa Ab Bc Fd Ka Kb P Σ Fr.* ^e habuerit *Aa^{ac} Sg Bn Br Gc Mv Σ Fr.*

The scholars revising the second recension of Gratian’s text in the twelfth century to produce a better text added a word and a phrase to help readers make sense of this somewhat messy sentence, which, however, is what Gratian 1 found in his source, whether that was the *Panormia* 4.82 or the *Tripartita* 1.57(55).79. They also changed the mode of two of the verbs (*habuit* and *fuit*), which they must have thought should have been in the subjunctive.⁴³ The third *si*-clause, which puts three words before the conjunction *si* is particularly thorny, and here the editors added the gerundive *examinanda* to make clear what should be done to the *qualitas causarum*: the nature of the cases should be examined. Originally, the clause asked, however, whether the quality of the cases was

42 Anders Winroth, *Decretum Gratiani: Prima recensio*, gratian.org. Sigla are expanded at gratian.org/home/sigla. For Σ, I have collated *Cd Ck Di In Md Sa Sf*.

43 Martin Brett signals in his provisional edition of the *Tripartita* that he has seen three manuscripts of that collection that make the same change of *habuit* into *habuerit*. In their provisional edition of the *Panormia* (n. 26), Brett and Bruce C. Brasington read *habuerit* without any indication that any manuscript they have seen reads *habuit*.

worthy of exile or deposition, which makes good sense without any addition, although *qualitas* is vague and the plural of *causarum* perhaps unexpected. The two different placements of the gerundive give it away as an addition, especially since *Aa^{ac} Bc Fd^{ac} P Sg Bi^{ac} Mm^{ac} Mv Mz^{ac}* as well as all the potential sources do not include it. The Roman edition of 1582 adds *est examinanda* after *qualitas* and, thus, puts a period before *deinde* (despite those words missing from at least the modern editions of Gregory I's *Register*). In his 1879 edition, Emil Friedberg removed *est examinanda* but kept the period from 1582, producing a sentence whose main clause unhelpfully lacks a verb.

In the fourth *si*-clause (*si eo presente sub iureiurando testimonium contra eum dictum est*), readers must have felt that it was unclear who it was that should be present when testimony against him was to be given under oath. Our twelfth-century editors added that it was he, "who has been (is) accused" (*qui accusatus est* or *qui accusatur*), in other words, the defendant should hear the sworn testimony given against him. Again, the addition is missing from the potential sources and also from many manuscripts.

These four or five words, *est examinanda* and *qui accusatus est*, were added in the process that produced a standardized text. They belonged to the vulgate university text that was standard in the later Middle Ages and thus appear in the early printed editions, including the Roman edition of 1582. The words do not appear anywhere in the canonical transmission before Gratian nor in Gregory's *Register*. They do not appear in the early manuscripts, nor in the early abbreviations. Since most of these words were not included in the two Cologne manuscripts, *Ka* and *Kb*, Friedberg chose to exclude them from his edition, although *examinanda* actually appears (without *est*) in both Cologne manuscripts (although above the line in *Ka*).⁴⁴ In other words, Friedberg's text in this and many other instances is not the vulgate university text, but the text of the textually confused early period. The words will not appear in my edition of the first recension, but they (or at least *examinanda*) should appear in an edition of the second recension, which in my mind should strive to reproduce the readings of one of the standardized law school versions.

Whether two slightly different versions of the *Decretum* were used in Bologna and in Paris will remain unknown until more collations have been made in relevant manuscripts. My working hypothesis is that the text differed between the two main law schools and that the difference may be traceable in the manuscript groupings that have been identified. A group of manuscripts associated with France (and thus, assumedly, with Paris) seems to contain a separate recension of the text, as noticed by Emil Friedberg, Titus Lenherr,

44 Cf. Friedberg's note 69, which claims that *Ka* and *Mm* lack both words.

and Regula Gujer. This is the so-called Σ (sigma)–recension, and I assume it to reflect the text of the *Decretum* as it was available in Paris.⁴⁵ Another grouping of manuscripts have been identified as the Π (pi)–group, and this group may be associated with Bologna, since its manuscripts contains a Bolognese gloss apparatus and also every *palea* that Huguccio commented on in his *summa*, which reflects his teaching in Bologna.⁴⁶ My initial collations in some Π –manuscripts seem to support the idea that they contain a standardized recension of the *Decretum*, but much more needs to be done.

Some version of these latter recensions won out in the end and was printed in 1471, which means that it served as the basis for the work of the sixteenth-century *correctores* and the 1582 Roman edition. Then Friedberg came along and attempted to restore the twelfth-century text by relying, in the first place, on the two Cologne manuscripts *Ka* and *Kb*, which both contain mixed-recension texts. Thus he gave us a snapshot of the mid-twelfth-century confusion, and not actually the second recension or what has been called the vulgate version of the *Decretum*. Friedberg was also under the influence of the Roman edition of 1582, which strove to reconstruct each chapter in Gratian as it had been composed by the authorities he quoted. Neither edition is very good at reconstructing the medieval vulgate text or the second recension. The schematic stemma I present is to be considered a working hypothesis (see Figure 10.6).

I believe this messy confusion has a lot to do with the lack of a robust and centralized infrastructure for book production in Bologna and other law school sites around the middle of the twelfth century. At that time, only the great monasteries possessed scriptoria with the level of expertise and professionalism required to produce such a complex and large work as the *Decretum*, which explains why many of the early manuscripts are monastic productions, as Giovanna Murano has observed.⁴⁷ This means that they were produced away from the center, i.e., the law schools. Decentralized production made for a non-standardized and not fixed text.

When the professional book trade with its writing shops and in due time *pecia* appeared in Bologna and Paris, the situation changed. Book production came under watchful eyes. The text became standardized simply by being centralized, but it is quite clear from the transmission that care was taken that

45 John C. Wei, “Gratian’s *Decretum* in France and Halberstadt,” in *Rechtshandschriften des deutschen Mittelalters: Produktionsorte und Importwege*, ed. Patrizia Carmassi, Gisela Drossbach (Wiesbaden, 2015), 363–383.

46 Rudolf Weigand, “Paleae und andere Zusätze in Dekrethandschriften mit dem Glossenapparat *Ordinatus Magister*,” *AKKR* 159 (1990), 448–463; John C. Wei, “ Π -group (P-group),” <https://sites.google.com/site/repertoriumiuriscanonic/home/gratian/p-group>.

47 Murano, “Graziano e il *Decretum* nel secolo XII (n.4).”

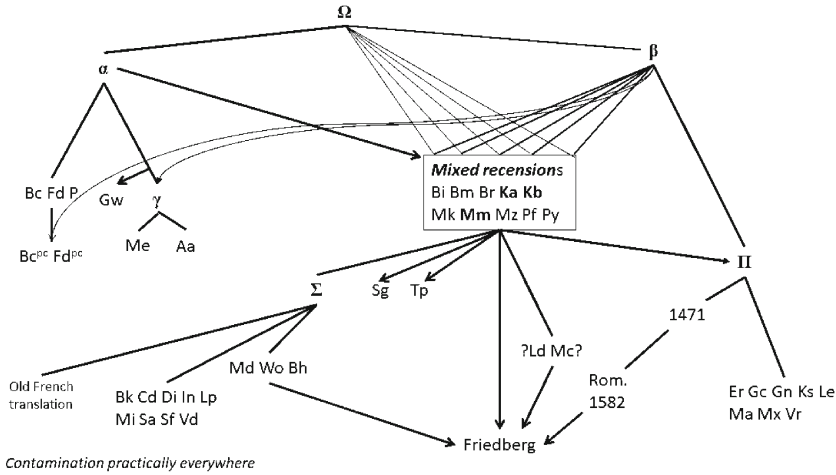


FIGURE 10.6 Tentative schematic stemma of the *Decretum Gratiani*. For the sigla that do not appear in this article, see gratian.org/home/sigla. Ω = Gratian 1's manuscript; β = Gratian 2's manuscript. For the two recensions II and Σ, see the text. Groupings of manuscripts are highly tentative.

this standardized text was a good and intelligible text, with various levels of success. Scholars knew that the various unstandardized texts suffered from all kinds of textual problems, so they set about editing the text of the *Decretum*, to remove those problems. They not only determined which canons belonged and in what order, but they also made numerous editorial interventions to solve textual problems. They produced two different texts, the one for Bologna containing more *paleae* than the one used in Paris.

Against this background, how are we to understand the text appearing in *Sg*? Its text may be unique in the sense that no other known manuscript contains exactly or approximately the same text. But no particular feature found in *Sg* is without counterpart in other contemporary manuscripts. In this article, I have explained most of its unusual features with reference to the confused state of the text of Gratian's *Decretum* at the middle of the twelfth century. The exemplar used by its author was a mixed-recension manuscript in which the second recension was poorly integrated with the first (perhaps similar to the 104 first leaves in *Fd*, which contain only some second-recension texts, mostly added in the margins). Many other manuscripts bear telltale signs of being copied from similarly poorly and confusingly executed exemplars that mixed the two recensions; I have given a few examples above.

Like several other abbreviations, *Sg* is a text that sprung out of teaching, but other such texts had more success, as evinced by the several manuscripts

that preserve, e.g., the *Quoniam egestas* and Omnibene's abbreviation. Like many other abbreviations (including *Tp*), *Sg* modified the order and content of Gratian's chapters and *dicta*, and also added passages of its author's own composition. *Sg* stands out as unusual in some respects, notably in its radical and extensive reformulations of Gratian's *dicta*, but in this, the text simply does more than other contemporary texts. Against the background of other Gratian manuscripts from the mid-twelfth century, abbreviations as well as complete texts, *Sg* does not stand out in such a way that we must posit a unique position for it in the stemma for the *Decretum*. *Sg* was certainly not Gratian's first draft.

Who produced the text of *Sg*, and where was he and his school active? I cautiously accept Marina Bernasconi Reusser's attribution of the manuscript to the cathedral in Modena. That the manuscript originated in Italy is also suggested by the several Roman law texts that have been added to its margins at an early date.⁴⁸ If the teacher who abbreviated Gratian's work, thus, taught in Italy, he may have been a contemporary competitor to Omnibene, who also abbreviated the *Decretum* and who also added many *dicta* of his own composition. A closer comparison between the two abbreviations may turn out to be informative.

48 Pennington, "Teaching Canon Law in the Early Twelfth Century (in this volume)."