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ROLE OF TRADITION AND THE *AUCTOR* IN A 12TH CENTURY LEGAL TEXT

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BETWEEN ANCIENTS AND MODERNS

fonte: Antonello da Messina. St. Jerome in his study. National Gallery, London.

ARTICLE
integrates the Dossier
Authorship and Authority:
between Ancients and Moderns

THE CONSTRUCTION OF AUCTORITAS IN GRATIAN'S *DECRETUM*: THE ROLE OF TRADITION AND THE AUCTOR IN A 12TH CENTURY LEGAL TEXT ¹

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Abstract

This paper discusses the construction of authority in the 12th century using a specific case, that of Gratian's *Decretum*, a legal manual compiled around 1140 in Western Europe. Through a methodology of intertextual analysis, this article combines theoretical work from major authors and primary sources to advance an explanation on how authority can be understood during the central Middle Ages in legal texts and how it comes from an articulation between tradition and originality. Furthermore, we highlight how the intersections between innovation and tradition in the *Decretum* make it possible for us to consider Gratian as an *auctor*. From this analysis, we extrapolate a broader conclusion about how legal texts in the 12th and 13th centuries used and then recreated a notion of authority that came to include the idea of the author who, in his turn, became an authority himself.

Keywords

authority – medieval canon law – Gratian – authorship – legal texts

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ENTRE ANTIGOS E MODERNOS

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A CONSTRUÇÃO DA *AUCTORITAS* NO *DECRETUM* DE GRACIANO: O PAPEL DA TRADIÇÃO E DO *AUCTOR* EM UM TEXTO JURÍDICO DO SÉCULO XII

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Resumo

O presente artigo discute a construção da autoridade no século XII utilizando um caso específico, o do *Decretum* de Graciano, um manual jurídico compilado por volta de 1140 no ocidente europeu. A partir de uma metodologia de análise intertextual, o artigo combina trabalho teórico de importantes autores e fontes primárias para avançar uma explicação sobre como a autoridade pode ser entendida na Idade Média central nos textos jurídicos e como essa autoridade vem da articulação entre inovação e originalidade. Além disso, destacamos que as interseções entre inovação e tradição no *Decretum* permitem que consideremos Graciano como um *auctor*. A partir dessa análise, extrapolamos uma conclusão mais ampla sobre como textos jurídicos dos séculos XII e XIII usaram e recriaram uma noção de autoridade que passou a incluir a ideia de autor que, por sua vez, tornava-se ele próprio uma autoridade.

Palavras chave

autoridade – direito canônico medieval – Graciano – autoria – textos jurídicos

Introduction⁵

Authority is – and has always been – a multifaceted concept. The Merriam-Webster Dictionary, for example, gives us a series of present-day definitions: “power to influence or command thought, opinion, or behavior; persons in command; convincing force”, among others (MERRIAM-WEBSTER, Authority). Historical and literary study over the last half-century, influenced by other disciplines such as law, political theory, and above all anthropology has produced a much broader understanding of what constitutes authority. One way we can generally define authority is to say that it “(...) is what gives the justification for action and can be of either worldly or otherworldly origin” (BOLTON; MEEK, 2007, p. 1-2). Authority can, therefore, include royal authority, conceived to be divinely sanctioned, or the generally accepted authority of other traditional lords, based on hereditary right. At the same time, it can come through the claims of collective bodies that were believed to have a representative character. Institutional organizations, such as the Church, can also claim their authority deriving from the Holy Scriptures and succession to the apostles. Individuals and groups can also have their authority deriving from the holiness or worthiness of their lives or their perceived direct relationship to God. Authority can also be derived from legal codes that are believed to reflect eternal principles of law and “from charters and other documents guaranteeing specific rights and privileges and issued by those enjoying generally recognized political authority or proprietary rights” (BOLTON; MEEK, 2007, p.3). Authority is also closely associated with “authorship,” particularly in literature, theological texts, philosophy, the visual arts, and scientific texts. The further back we look, the less information we get about individual authors or artists, but the issue was, nonetheless, of critical importance, especially with regard to the biblical text.⁴

The struggle for authority ran throughout the entire Middle Ages as there was also a very real struggle for authority within the world of philosophers, theologians, medical doctors, artists, and writers, all competing for the greatest influence at their institutions, in public, and at court. One interesting example is the conflict between Peter Abelard (d. 1142) and many of his contemporaries at the various Parisian and other French schools. “In

⁵ This text has greatly benefitted from the discussions and observations offered by Dr. Rogerio Tostes, to whom I am deeply grateful.

⁴ On medieval authorship, refer to (MINNIS, 2010).

short, the exploration of authority at any given time immediately takes us to the core of that culture and illustrates most glaringly where the critical power positions rested, what the central points of disagreement were, who controlled the resources, and who could make his or her voice heard the best" (BOLTON; MEEK, 2007, p. 4).

Authority, therefore, concerns all human interaction and, moreover, touches on man's general need and quest for a divine force, the ultimate limit – and source – of all human existence. Those people who can gain the closest proximity to that source of power have traditionally enjoyed the highest respect or authority. Ultimately, investigating what authority might have meant in the Middle Ages will reveal a critical aspect of the commonly shared cultural framework of that society and culture. We are dealing with a rich and diverse discourse of authority, that is, with competing forces that worked hard to impose their claims on authority and hence to dominate their society. This competition led to the emergence of new authorities and new notions of authorship at the same time.

My goal in this article is to discuss some aspects of the construction of authority in the 12th century using a specific case, that of Gratian's *Decretum*, a legal manual compiled around 1140 in Western Europe. I start with a brief conceptual analysis of the notion of *auctoritas* highlighting the multiplicity of interpretations for the medieval period. Then, I analyze Gratian's work to extrapolate a broader conclusion about how legal texts in the 12th and 13th centuries used and then recreated a notion of authority through an articulation between tradition and elements of originality. This articulation leads to a possible interpretation of Gratian as an *auctor*, making him himself an authority in the process. Through a methodology of semantic and intertextual analysis, this article combines theoretical work from major authors and primary sources to advance an explanation on how authority, tradition, and authorship can be articulated during the central Middle Ages in legal texts.

Medieval *auctoritas*

The word *auctoritas* carried a series of different meanings throughout the period we traditionally call the Middle Ages. *Auctoritates* were, initially, the most frequently cited authors, but the term could also be used to refer not to the people, but to the texts or parts of texts that conferred authority. *Auctoritas* had a close relationship to the truth and to the examples that were to be followed. From this perspective, fictitious narratives tended to be granted less weight of authority, for example, because they were composed of "non-truths".

The Holy Scripture, on the other hand, held the utmost place of authority since it contained nothing but truthful words that emanated directly from God.

Even if we were to look at the so-called intellectual “giants” of the medieval period like Thomas Aquinas (1225–1274) or Albert, the Great (d. 1280) we would not come to a definite understanding about what constituted authority in the Middle Ages because there was no agreement as to where the highest level of authority lied, except for God, naturally. What we do find when we analyze the various authors is a complex discourse, full of competition among authors and texts. For this reason, many scholars have defined this as a period of a “culture of authorities”. Instead of representing a single, monolithic, and finished notion, medieval *auctoritas* is, according to Jan Ziolkowski,

(...) a vast edifice that was constructed year by year, century by century, by the co-operation and interaction of texts and readers. Like many Romanesque and Gothic cathedrals, its basic structure remained fairly constant for long stretches of time, but its fine points were redesigned to meet new demands from new users. All was work in progress. Consequently the apt phrase “culture of authority” becomes even apter when made a plural. (ZIOLKOWSKI, 2009, p. 423)

The etymological and semantic origin of the Latin word *auctoritas*, as used in medieval texts, comes from Roman legal language. It was used originally to signify the increase – from *augere* – that was necessary in order to validate an act emanating from a person or group that could not, on their own, give full effect to the act they were executing. At the same time, *auctoritas* also represented the value placed on a legal act, a law, or a legal decision. In Roman Law, furthermore, it was used to describe the emperor's authority that was expressed in the binomial *auctoritas-potestas*. Throughout the centuries, the Roman notion will become the medieval legal formulation that separated *auctoritas* from *potestas*.⁵

In the 12th century, Gratian's *Decretum* – a compilation dated from around 1140 and considered the first major Canon Law manual – incorporated Pope Gelasius (492–496) words sent to Emperor Anastasius (emperor from 491–518) which said: “Two powers govern the world: the pontiff's *auctoritas sacra* and the royal *potestas*.” (*Decretum*, Distinctio 96, capitulum 10 in GRATIAN, 1959).⁶

⁵ For a more detailed discussion on the binomial authority/power, see, for example: (BOLTON & MEEK, 2007).

⁶ “Duo sunt quippe, inperator auguste, quibus principaliter hic mundus regitur: auctoritas sacra Pontificum, et regalis potestas.” I have used both Friedberg's and Winroth's editions. When the

This maxim was reused and commented on by countless jurists throughout the 12th and 13th centuries. Authority, thus, became something that was also related to personal prestige and that granted the person the right to command. The person's attributes, function, religious consecration, or belonging to an illustrious lineage contributed to the imposing of authority.

Medieval jurists also qualified texts from the Holy Scriptures, the Church Fathers, or other great jurists who "made authority" as *auctoritates*. These texts were, therefore, mandatory as sources of study and legitimation of Law as a form of rational science. We can start to see here an intersection between the notion of *auctor* and that of authority, as the persons behind the texts, with their qualities and functions, played a role in defining which texts should or should not be considered as authoritative. What is at stake here is the inscription of the individual in the social world and the cultural in the political world: the relationship between events and memory, words and truth, and, above all in the Middle Ages, of man's place before God.

In the specific case of Canon Law in the 12th and 13th centuries, scholars have often signaled a tension between originality and tradition, particularly regarding the roles of authorities in the process of compiling and organizing Law. It is precisely this aspect of *auctoritas* – the tension – that interests us here to attempt to understand how the concept could be interpreted and used in medieval legal texts from this period, which was known for the development of scientific Law.⁷ We must highlight the fact that, despite a move towards greater juridical definitions, we are still dealing with extremely rich and varied discourses of authority, with many forces competing to impose their notions and, through those notions, exert effective domination over society.

Until the middle of the 20th century, many scholars advocated that authority was more important than originality, at least until around the 14th century. The shallow interpretation of the maxim "dwarves on the shoulders of giants" corroborated the view that medieval men and women saw themselves as very dependent on their ancestors and incapable of creating

choice was made for Friedberg's edition it is because it concerns text that was not originally in the first recension (that of Winroth's edition), but was included in the vulgate version.

⁷ The use of the term "scientific" here reflects the position of most of the scholarship on medieval Canon Law that sees the development of the rationalized study, the advent of the universities, and the progressive professionalization of lawyers and jurists as a new characteristic of legal culture from the 12th century on. See, for example (BRUNDAGE, 2008; HARTMANN, 2008; MÜLLER & SOMMAR, 2006).

something new that would bear the same kind of authority.⁸ However, as we will see with the case of Gratian's *Decretum*, authority and originality are not excluding ideas. In the intense intertextuality⁹ of the medieval period, the terms *auctor* and *auctoritas* were related in an almost circular manner: the author was the creator of a text (a book, a compilation, a decree, etc.) that deserved to be read and commented on and *auctoritas* was the text that deserved to be read and had been written by an author. It was this relationship established between authority, tradition, and authorship that makes it possible for us to consider Gratian as an author.

Gratian and authority

Gratian's *Concordia discordantium canonum*, more commonly known as *Decretum*, is among the first attempts to organize Canon Law so it could be properly studied. We know very little about Gratian himself, except that he was possibly a teacher in Bologna. For some time, historians believed he could have been a monk due to a mention in the *Summa parisiensis* (an anonymous commentary on the *Decretum*), but this was dismissed by John T. Noonan in the late 1970s. According to Noonan, the only certainties we can have regarding Gratian are:

(...) we have reason to believe that Gratian composed and commented upon a substantial portion of the *Concordia*. In such composition and commentary he revealed himself to be a teacher with theological knowledge and interests and a lawyer's point of view. He worked in Bologna in the 1130s and 1140s. Beyond these conclusions, we

⁸ It is important to highlight that this interpretation of the expression does not take into account its full potential meaning. As expressed by John of Salisbury, the perception is that medieval men could actually go beyond their ancestors, without having to let go of any of their teachings: "We are like dwarfs on the shoulders of giants, so that we can see more than they, and things at a greater distance, not by virtue of any sharpness of sight on our part, or any physical distinction, but because we are carried high and raised up by their giant size." JOHN OF SALISBURY. *The Metalogicon* (1159) bk. 3, ch. 4, apud (MERTON, 1965, p. 41).

⁹ The concept of intertextuality comes from the perception that texts are constituted by systems, codes, and traditions of other forms of art and culture that are crucial to the understanding of the work. Texts are thus seen as having no independent meaning, they are always intertextual. In order to interpret the text and to discover its meaning or meanings, it is necessary to find these relationships. Reading becomes an act of moving between texts. Meaning exists between one text and all the other texts to which it refers, creating a network of textual references. This intertextuality is essential to understand the connections between medieval authors and their works. For more on the theories and concept of intertextuality, see (ALLEN, 2000).

have unverified hearsay, palpable legend, and the silent figure in the shadows of S. Marco. (NOONAN, 1979, p. 172)

The *Decretum* was composed over a period, with more than one known recension, but its vulgate version was most likely concluded around 1150, receiving later additions and commentaries.¹⁰ It had not been officially commissioned by any ecclesiastical authorities, be they pope or bishop, but it quickly became the standard manual for the study of Canon Law. It was later incorporated as the first part of the *Corpus Iuris Canonici*. Although official papal recognition did not come until 1578 with Pope Gregory XIII, the papal See acknowledged its existence since its earliest circulations.

The manuscript tradition confirms the idea of a text in constant transformation that probably circulated in different forms being adapted and completed even as it was already being used in the study of Canon Law. In this widespread tradition, six manuscripts are attributed to the pre-vulgate phase: Admont Stiftsbibliothek 23 and 43; Barcelona Arxiu de la Corona d'Aragó, Ripoll 78; Florença Biblioteca Nazionale Centrale, Conventi Sopressi A1402; Paris BNF nouv. acq. lat. 1761; Paris BNF lat. 3884; Saint Gall Stiftsbibliothek 673, all dated between 1130–1140. There are at least eleven manuscripts that represent a later version, but are still dated to the 12th century, and Kenneth Pennington indicates the existence of at least sixty-three others from the late 12th and 13th centuries with glossed versions of the *Decretum*. This significantly larger number of later manuscripts is an indication of the work's great reach.¹¹

The *Decretum* is divided into three parts. The first part is composed of *distinctiones*, commentaries and definitions of legal precepts; the second part is composed of *causae*, which are hypothetical cases that discuss specific aspects of law; the third part (probably a later addition) contains *distinctiones* regulating the cult and the sacraments. Gratian uses, throughout his work, various sources and authorities to discuss matters related to the organization of the Church, the life of the clergy, administration of religious life, but also of the laity and their place in Christendom.

¹⁰ For further bibliography regarding the debates and discoveries around the production of the *Decretum*, see: (NOONAN, 1979, p.140–66; WINROTH, 2004; LANDAU, 2008, p. 22–54).

¹¹ For a complete list based on the work of Titus Lenherr, Rudolf Weigand, Anthony Melnikas and Hubert Mordek, see (PENNINGTON, 2019).

Being characterized, first, as a compilation of prior decisions and regulations, such as church councils, papal letters, patristic writings, and others, we could start by asking whether Gratian's work had any elements of originality and innovation, which would normally characterize a notion of authorship.¹² Did his authority come from this or, on the contrary, was the text's authority only ensured by the compilation and organization of the *auctoritates*? From this second perspective he would have become a form of *auctoritas* only due to the reproduction of authorities that were exterior to the author himself.

Let us start by assuming that the *Decretum* represented more than mere reproduction and was, indeed, innovative in comparison to the legal works produced during the 11th and early 12th centuries. We must then establish whether this innovation was due to the content, the form, or the methodology. According to Jean Gaudemet, Gratian's text innovates in all three areas.

In terms of the content, Gaudemet draws our attention to the presence of a notion of law. The *Decretum* is the first known work to include a thorough discussion on what was law, what was its objective and its authority right at the start of the work. He compared it to the most complete and recent compilation until that moment – Yves of Chartres's *Decretum* – which “had only confused notions spread out in a mass of texts without much organization” (GAUDEMET, 1980, p. 27). Gratian's first twenty distinctions represented a systematized discussion of law that came to be known as “Treatise on Laws”. As an example, in these first twenty distinctions, Gratian attempts to differentiate the many types of *ius* and separate them from the notion of *lex*: “*Ius* is the general term, *lex* is a kind of *ius*. *Ius* receives this name because it is just (*iustum*). *Ius* is constituted by laws (*legibus*) and customs (*moribus*).” (*Decretum*, Distinctio 1, capitulum 2 in GRATIAN, 2020)¹³ Gratian makes it clear that “(...) *ius* is what governs all circumstances of human life and that it has a duplicity (divine and human) that ensures its authority.” (SILVA, 2020, p. 11).¹⁴

This discussion concerning the character of law and its sources also represents a difference in relation to the form of the text. Gratian was the first author to organize his work in this format, beginning with an extensive and

¹² It is important to note that the act of compiling is, in itself, also a creative act, as the author exercises a process of selection, elimination, adaptation that goes beyond the simple idea of putting together existing material.

¹³ “*Ius* generale nomen est. *Lex* autem *iuris* est species. *Ius* autem dictum quia *iustum* est. Omne autem *ius* *legibus* et *moribus* constat.”

¹⁴ “(...) *ius* é o que rege todas as circunstâncias da vida humana e que ele possui uma duplicidade (divina e humana) que assegura sua autoridade.” The translation into English is our own.

thorough definition of law. This format was later copied by other jurists and became the standard for legal work, as can be seen well into the 13th century with Hostiensis's *Summa Aurea* whose *Proemium* also begins with a discussion on the nature of law and its functions.¹⁵ Another important contribution in terms of form was the use of the *causae*, or cases, in the second part of the *Decretum*. The *causae* were real or hypothetical cases used to present a legal problem, followed by specific questions and chapters related to the case in question. This format is not found in earlier works and was something that made Gratian's work particularly interesting as a study manual.¹⁶

Methodologically, the *Decretum* attempts to resolve conflicts and contradictions between the various authorities – as the full title already indicates, the *Agreement of the disagreeing canons*. The way it does this is by introducing *dicta*, which were the author's own opinions as to how to make the correct decision. For example, when discussing whether a lawful marriage exists between free persons and those in servile condition, Gratian uses a determination from Pope Julius stating that it is lawful. He admits, however, that other unspecified authorities have prohibited these unions. In order to settle the issue, Gratian offers an interpretation of Julius's letter saying that it meant that the condition should be known to both parties for it to be a lawful union. He then adds his own decision: "The woman did not know this man's condition. Therefore, these authorities do not compel her to stay with him, so she is free to leave or stay with him" (*Decretum*, Causa 29, quaestio 2, dictum post capitulum 3 in GRATIAN, 2020).¹⁷ This is an interesting example of how the author introduces his interpretation in order to eliminate possible contradictions, but without undermining the original *auctoritas*.

Most legal works that preceded Gratian made an effort to eliminate the contradictions, not expose or solve them. As James Brundage puts it, one of the great methodological assets in the *Decretum* is having used a rational dialectical argument to reconcile the differences between authorities instead

¹⁵ The *Summa Aurea* was compiled around 1253 by Henry of Suse, known as Hostiensis, and was considered one of the most complete juridical pieces of its period. Its influence on medieval and early modern juridical thought was significant and Dante places Hostiensis in Paradise as one of the only lawyers present.

¹⁶ On the use of the *causae* as study material, I have benefited from the pre-reading of (MIRAMON, forthcoming).

¹⁷ "Huius autem condicio mulieri incognita erat; non ergo premissis auctoritatibus cogitur manere cum eo, sed liberum illi esse ostenditur uel manere, uel discedere." English translation (NOONAN & THOMPSON, 1993).

of simply making a collection of legislative acts or a compendium of general norms (BRUNDAGE, 1995, p. 48). Stephan Kuttner points to the same direction by stating that Gratian opened the way for a rational, practical, and academically acceptable integration between *auctoritas* and *ratio* (reason) (KUTTNER, 1990, p. 72). He observes a contrast between these dialectical rationalizations from the 12th century and the linear traditionalism from the 11th century. Katherine Christensen attributes Gratian's ingenuity to the way he selected, organized, and analyzed the sources available (CHRISTENSEN, 1993, p. XIII).

Although still within the logic of development of legal works, the *Decretum* represented an important transformation in their constitution. In terms of content, form, and methodology, we can see a clear innovation concerning legal texts produced during the 11th and early 12th centuries. As Pennington summarizes it:

Gratian introduced jurisprudence into canonical thought. His first innovation was to insert his voice into his collection to mingle with those of the Fathers of Nicaea, St. Augustine, and the popes of the first millennium. He did this with *dicta* in which he discussed the texts of his collection. Alger of Liège's tract might have provided Gratian with a model for presenting texts and commentary together. Gratian, however, systematically pointed to conflicts within the texts and proposed solutions. His use of the dialectical "distinction" was an emerging methodology in the early twelfth-century schools. His *dicta* and *causae* made the *Decretum* ideal for teaching and it became the basic text of canon law used in the law schools of Europe for the next five centuries. (PENNINGTON, 2017, p. 82)

Based on these arguments, we can say that the *Decretum* may have inaugurated a new stage in the constitution of legal treaties in the Middle Ages.¹⁸ It became the model later authors – decretists and decretalists – would use to compose their own works.¹⁹ However, in spite of all these innovations, Gratian still held on to a very clear tradition and placed himself in the line of authorities that preceded him. It is precisely Gratian's use of authorities that places him at the crossing of creativity and tradition.

¹⁸ More recent scholarship has been debating whether this thesis of a turning point in the writing of legal works in the mid-12th century is actually a mere historical model constructed to form a master narrative that fits certain contemporary expectations concerning the evolution of legal texts. They still agree, though, that Gratian's work had higher significance in the following centuries than any other previous collection. For these discussions, see (ROLKER, 2019).

¹⁹ Decretists were the authors who commented on the *Decretum*. Decretalists were the commentators of papal decretals, papal letters that instituted new law.

The use of ancient texts and authors as authorities had been, since the beginnings of Christianity, the preferred way to construct theological works. Gratian uses the same process in his *Decretum* and he does this by establishing a hierarchy of authorities. He classifies three levels of *auctoritas*: first, an unquestionable text (particularly those of spiritual character, such as the Holy Scriptures); second, texts that depend on the dignity or significance of a certain author (as the case of the Holy Fathers); third, texts whose authority comes from an office or institution (for instance, with canons from a council or synod). This hierarchy of authorities is not exclusive to Gratian nor to legal texts and can be found in theological treatises, sacramental pieces, sermons, and other forms of religious writing and is one of the indications of the proximity between legal and religious thinking.²⁰

Gratian was, therefore, part of a long tradition that adapted, interpreted, and organized legal and religious thinking from sources handed down from generation to generation, a tradition he shared with his contemporaries and with other disciplines. We can find long excerpts taken directly from some of these authorities. For example, the twenty distinctions that compose the Treatise on Law, although innovative in their placement and organization, were, in fact, practically a reproduction of Isidore of Seville's *De Legibus*. This could lead us to classify Gratian's work as a mere copy or reproduction of the ideas of other authors, an idea we can easily dismiss once we remember the presence of the *dicta*, where Gratian expressed his personal ideas regarding the specific themes.

He may have reproduced Isidore's thinking, but at other moments, he questions his positions. For example, when Gratian discusses the degrees of consanguinity that forbid a marriage, he demonstrates that Isidore, while not in direct conflict with other authorities, is not clear as to the number of degrees stating only that "One must respect the consanguinity of one's own blood relatives, so one must refrain from relatives of one's wife, because of the law of marriage". (*Decretum*, Causa 35, quaestio 2, capitulum 14 in GRATIAN, 2020).²¹ Gratian explains the obviousness of this statement due to the law of marriage and later invokes other authorities (Augustine, Gregory, the Great, and a couple of church councils) to determine the seven degrees of consanguinity. We can see the hierarchy of authorities at play here and, at

²⁰ About the approximations between law and theology see (SILVA, forthcoming).

²¹ "Sane consanguinitas, que in proprio uiro conseruanda est, hec nimirum in uxoris parentela de lege nuptiarum custodienda est". English translation (NOONAN & THOMPSON, 1993).

the same time, we can visualize Gratian's manipulation of these authorities in his own personal way. Nevertheless, we can say that this reproduction of the authorities is an element of continuity between the *Decretum* and traditions that come from Late Antiquity.

To inscribe oneself into tradition was one of the most effective ways of conferring authority. Gratian's use of the Bible is a testament to his belonging to the Christian tradition since the Holy Scriptures were the ultimate form of authority. But the *Decretum* also gained authority by connecting itself to the tradition of Roman Law in light of the rediscovery of Justinian's works in the 12th century. Although most scholars admit the presence of Roman Law concepts in Gratian,²² the jurist does not openly or directly quote Roman authors or works. Most of the Roman Law texts present in the *Decretum* are later additions made by different commentators (GAUDEMET, 1980, p. 25). Overall, the presence of these elements and their reinforcement in canonical tradition help to confer authority due to not only the antiquity and longevity of the references – an essential point, it is true – but also because they demonstrate the canonist's knowledge and erudition, fomenting his authority through his intellectual abilities.

Gratian as authority: the glimpse of an author

Much more than a mere reproduction of authorities, then, Gratian's *Decretum* presents elements of the author's creative originality while at the same time inscribing itself in a long series of canonical collections. It, at once, borrows from these series and represents the closure of a cycle and the beginning of a new tradition through the transformation of the content, form, and methodology. The *Decretum* compiles authorities to organize and define various aspects of Canon Law, but it also becomes an authority in itself through time, raising Gratian to the category of an author who is, himself, worthy of being cited as an *auctoritas*.

Few decades after the *Decretum*'s first composition, it had become the main manual for the study of Canon Law in the uprising universities, such as Bologna, Paris, Tours, Reims, Oxford, and others. If the "school manual"

²² For example in his discussion about the differences between natural law and divine law where he uses Isidore of Seville's definition of *ius naturale*, which was taken from Justinian's Code.

was not a novel format, its use for the study of law was.²³ We count over six hundred medieval manuscripts of the *Decretum*, an impressive number for the period. It was one of the first medieval works to be printed in 1471 in Strasbourg. The sheer avalanche of commentaries, glosses, abbreviations, and *summae* that followed helped to shape the way canon law was written and studied. All of the great jurists of the 12th and early 13th centuries produced work on the *Decretum*, such as Paucapalea, Rufinus, Huguccio, and others. Gratian, the author, was now an authority.

At the same time, Gratian was part of a larger intellectual movement in his own time. When we look closely at the text, we can understand its appeal because of his use of the dialectical form. Dialectics was one of the superior disciplines taught in the *trivium* (grammar, rhetoric, and dialectics). During the 12th century – called by some a period of intellectual renaissance²⁴ – the application of the *trivium*, and particularly of dialectics to theological texts brought about a new method of analysis, which Gratian then used in his legal writing.

Peter Abelard is considered one of the first names to use dialectical argumentation in his works and teachings. In *Sic et Non*, Abelard put conflicting passages from the Church Fathers side by side to discuss various theological matters – in a similar way to what Gratian did. He then invited his readers to use the tools of logic to reach their own conclusions through reasoning. He did not offer a solution to the problems and left the issues open – unlike Gratian, as we demonstrated above. The method caused much polemic, as was to be expected, and Peter Abelard was accused of causing scandal. Charges of heresy were also brought against him, as the logical and rational approach to the Holy Scriptures was considered a betrayal of God's mystery. Although Abelard was persecuted, he also had a great number of followers and, in a way, helped to spread this new methodology that would be used by many, not only in theology. Peter Lombard, for example, adopted the dialectical method in his work.²⁵

Gratian uses the same principle as Abelard: he presents a series of texts that have contradictions on different levels and subjects. Using the logical reasoning established by the classification of authorities, Gratian's intention

²³ The canonical collections that had been compiled until that moment were not intended as study tools. They aimed only at establishing the need for laws and which of these should be followed.

²⁴ The term was coined by Charles Homer Haskins and, although contested in some ways, is still commonly used to describe the period of intellectual effervescence that characterized the 12th and 13th centuries (HASKINS, 1990).

²⁵ On Peter Abelard's influence in theology and canon law (DEANSLEY, 1994).

is to solve the apparent contradictions. At times, he does this by demonstrating which is the highest authority, but at times he attempts to prove that there is no contradiction at all. Authorities are classified due to their influence and reach. Therefore, general councils are superior to regional ones; popes are above bishops; an opinion concerning a specific or limited issue, no matter how prominent the source, could not receive the status of a general rule and should be applied only to specific circumstances. Above all other authorities were the Holy Scriptures, unquestionable and used to solve conflicts when nothing else seemed to be able to do it.

But Gratian's method, although resembling that of Peter Abelard, was not exactly the same. As mentioned above, Abelard did not offer a solution for the contradictions he explicated. Gratian, on the other hand, was intent on solving them by presenting his own opinion and explaining each situation. He did this through his *dicta*, where the Holy Scriptures are most used, exactly because they were the ultimate source of authority. His manipulation of the dialectical method is possibly connected to the fact that he was dealing with a different type of text from Abelard. While *Sic et Non* and Abelard's other writings were dedicated to theological matters that were open to discussion and had been a theme for debate for centuries, Gratian's ambition was to create a means to teach a normative work. He was attempting to unify the different legal practices and solve practical and concrete problems of everyday life – like the matter of marriages with slaves we mentioned above. Therefore, he could not leave matters unanswered. So we can say that one of Gratian's greatest innovations was to adapt the dialectical method to the study of canonical laws, a method that came to be dominant both in canon and civil law later.

Another element of this dialectical and rhetorical use in the *Decretum* can be seen in the *causae*. By presenting the hypothetical cases to his readers and formulating them as a series of questions divided into chapters, Gratian interconnected many topics to come up with legal determinations. From these questions, he indicated the correct conduct for each case, how to follow it and what to do in case of non-compliance. Once again, if there were conflicting authorities, he would step up as an author and, through his *dicta*, attempt to solve the contradictions.

We can conclude that Gratian's *Decretum* was part of a tradition dedicated to discussing the church canons in an attempt to establish a common code that all of the Christian community should follow based on the use of *auctoritates*. At the same time, the *Decretum* brought about significant changes in terms of the structures of these legal texts making way for the use of scholastics and the formation of a canonical doctrine. In some ways, it inau-

gured a new way of writing about laws, even if we cannot yet talk about a modern conception of author. It is possible that the *Decretum* was not the work of a single author. Jean Gaudemet, in attempting to explain the presence of so many repetitions in the text (the *doublets*), offers some possibilities of interpretation: the same text can be repeated when used with different objects; the repetition can occur as a conclusion after a series of canons, but most frequently it seems to be the result of some kind of negligence. Due to the large number of repeated texts with no apparent reason, Gaudemet concludes that the most plausible explanation is that the *Decretum* was not written by a single author, but by a group of scholars where each member would receive an assignment to gather the different authorities (GAUDEMET, 1980b). Even if they were under the supervision of one man – Gratian, supposedly – the control of the work would be a challenge and the repetitions inevitable.

This possible collective authorship, however, does not invalidate thinking about the notion of *auctor* when we analyze the *Decretum*. Gratian and his work were referenced by his successors as a worthy authority when aiming for a definition on legal matters. The *Decretum* was the model on which the decretists developed their work and it remained this way until at least the beginning of the 13th century.²⁶

Concluding remarks

I hope to have demonstrated that Gratian's work is an interesting example of how *auctoritas* was constructed in medieval legal texts in the Middle Ages. The use he made of the authorities guaranteed that his text was based on reliable sources and it played an essential role in creating the voice of a new authority, whether it was Gratian, the *auctor*, or the text of the *Decretum* itself. There is a dialectical use of the external voices – the Bible, the Church Fathers, the popes, the church councils – that contribute to establishing the author's voice as a source of maximum authority in the field of canon law. The individual based itself on solid structures to organize knowledge and, at the same time, the references to the authorities establish the author's own *auctoritas*.

²⁶ From the middle of the 13th century on, Gratian did not cease to be a referenced *auctor* and *auctoritas*, but his commentators were often cited more frequently. Thomas Aquinas, for example, in his *Summa Theologica* often references the *Decretum* through the work of Huguccio, one of the main decretists of the end of the 12th century.

In the process during which Gratian uses authority, we can recognize, then, that the *Decretum* becomes imbued with a sense of authorship, even if we are distant from an individual authorial notion. There is still much to be explored in terms of a theory of authorship for the particular case of the *Concordia discordantium canonum* – and this was not the scope of this paper – but we can start to advance the idea that there is an intercession between *auctoritas* and *auctor* that deserves to be further studied.

It is also worth mentioning that the intertwining of authority, tradition, and originality is not exclusive of Gratian's, but rather is a characteristic of medieval intellectual development that constantly shifts between tradition and innovation. Therefore, if we are to consider Gratian as an author, we must admit that it is equally possible to consider the texts and writers with whom he establishes dialogues as potentially authorial works themselves. This means admitting that the construction of authorities comes not just from their use and re-use, but also from the potential novelties that are instituted by the so-called authors, such as Gratian (or the groups of writers behind the *Decretum's* composition).

In conclusion, the contradictions that Gratian himself presents show us the cacophony of voices from the Middle Ages. We are not standing before a mere multiplicity of opinions, but before a diversified and even contradictory competition for authority. In the 12th and 13th centuries, in the field of canon law, new voices were emerging and disputing authority. Gratian is an example of these new voices and the abundance of legal writing in the centuries ahead is proof of their impact. New relationships between the notion of *auctor* and *auctoritas* were being created, culminating in the individualization of the author later in early modernity. For the time being, what we see is the circularity of these forces and the continuous intersection between them, represented in a legal work that had a definitive role in the development of legal canonical authority.

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