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Gratian's *Tractatus de penitentia*:
A Textual Study and Intellectual History

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In the twentieth century, scholarship on Gratian's *Decretum* made major advances, but several uncertainties remained. One of the chief puzzles involved the fact that Gratian included a lengthy theological treatise on penance in the midst of one of his legal cases around which he organized half of his work. Another puzzle was the person of Gratian himself, including his educational background. Scholars focused in large measure on the legal content and innovations in the *Decretum* and on the identity of Gratian as an innovative canonist. This dissertation revises this imbalanced characterization of Gratian and his work and also attempts to throw light on the educational formation of Gratian himself, both of which are accomplished through a thorough examination of the *Tractatus de penitentia* (*secunda pars* C.33 q.3), especially Gratian's own words and arguments. Moreover, the dissertation examines the reception of *De penitentia* in the second half of the twelfth century, traced through a comparison of texts and the determination of borrowings of terminology, concepts, and arguments. This examination contributes to the understanding of the nature of Gratian's work and that of his successors. To be precise, the investigation of *De penitentia*'s reception allows for a consideration not only of what elements in Gratian's treatise were most influential but also of the relationship between theology and canon law in the schools of the twelfth century.

The dissertation concludes that Gratian was skilled and thoughtful in theological matters and in-tune with the theological developments in the schools of northern France. Significant overlap between *De penitentia* and teachings of the school of Laon show that Gratian's theological formation was influenced by that school. The understanding of the treatise's theological complexity and its integration into the *Decretum* contributes to an assessment of the *Decretum* as a reform-minded work aimed at the formation of a qualified priesthood. *De penitentia*'s reception reveals that Gratian was accepted as a theological master and that the work's influence spanned several disciplines and genres. Above all, the varied reception points to a lack of concrete divisions between canon law and theology in the period.

This dissertation by Atria A. Larson fulfills the dissertation requirement for the doctoral degree in Medieval and Byzantine Studies approved by Kenneth Pennington, Ph.D., as Director, and by Wolfgang P. Müller, Ph.D., and Thomas Tentler, Ph.D. as Readers.

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Kenneth Pennington, Ph.D., Director

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Wolfgang P. Müller, Ph.D., Reader

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Thomas Tentler, Ph.D., Reader

for Jeff

our history is just beginning

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LIST OF ABBREVIATIONS

BMCL	*Bulletin of Medieval Canon Law, New Series*
CCSL	*Corpus Christianorum, Series latina*
CCCM	*Corpus Christianorum, Continuatio mediaevalis*
CSEL	*Corpus scriptorum ecclesiasticorum latinorum*
JL	Jaffé, *Regesta pontificum romanorum* ed. secundam curaverunt S. Loewenfeld (an. 882-1198)
MGH	Monumenta Germaniae historica
	• SS — Scriptores
	• SS rer. Germ. — Scriptores rerum Germanicarum in usum scholarum separatim editi
MIC	Monumenta iuris canonici
	• Series A — Series A: Corpus Glossatorum
	• Series B — Series B: Corpus Collectionum
	• Series C — Series C: Subsidia
PL	Migne, *Patrologia latina*
WH	Walter Holtzmann numbers assigned to twelfth-century papal decretals; searchable at http://www.lrz.de/~SKIMCL/holtzmann_formular_english.htm
ZRG Kan. Abt.	*Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*, Kanonistische Abteilung

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Finally, I cannot forego acknowledging the unconditional support and love of my family, especially my parents and husband. My mother and father have always stressed hard work, doing one's best, and developing the gifts and talents that God has given one. I hope I have applied their lessons well in the pages that follow. My father, a fellow academic, has

served as a constant example of thorough and honest scholarship to me. His analytical perceptions will always surpass mine, but I aim to imitate them as best I can. Due to my work, my husband, Jeff, has endured several years of rising debt and lack of significant supplemental income. Most significantly, he faced eleven months with his wife an ocean away. He has been willing to make such sacrifices in support of my research and my goals to do the best work I can. I love him and thank him from the depths of my heart.

INTRODUCTION

The pursuit of clarity often only muddles the waters. New discoveries often serve to complicate what had appeared to be a relatively simple picture. A wealth of new research does not always lead to consensus. These realities of the intellectual and academic world are exemplified currently in the field of the history of penance, so much so that the editor of the most recent volume devoted to penance from the early church to the early modern world has not attempted to present a unified collection of essays defined by historical and interpretive consensus; instead she has acknowledged the conflicts and varying interpretations represented in the contributions.[1] The goal of the editor and contributors was naturally not to wallow in such dialectical difficulties but to continue to advance and encourage research in the hopes that, after enough digging and expositing, some clarity and consensus can eventually be reached. In some ways, the study that follows jumps into the same mud pit.

The history of penance is wide and varied, encompassing theology proper, canon law, liturgy, penitential texts, and then of course the practice of penance, the experience of penance in the lives of people from the bishops and priests administering it to the clerics, monks, and laypeople of all ranks of society performing it. This study contributes to the understanding of the development of penitential thought in the twelfth century by examining the content and reception of "the most influential discussion of penance throughout the rest of the Middle Ages,"[2] the *Tractatus de penitentia* composed by Gratian. Gratian is known chiefly as a master of canon law who instigated the systematical study of ecclesiastical norms

[1] Abigail Firey, "Introduction," in *A New History of Penance*, ed. idem, Brill's Companions to the Christian Tradition 14 (Leiden: Brill, 2008), 2.
[2] Joseph Goering, "The Scholastic Turn (1100-1500): Penitential Theology and Law in the Schools," in *A New History Penance*, 221.

through the composition of his *Concordia discordantium canonum* (*The Harmony of Discordant Canons*), which later became known as the *Decretum*, of which the *Tractatus de penitentia* forms a part. In other words, Gratian was the (unintentional) founder of ecclesiastical jurisprudence while at the same time being the author of a lengthy treatise on penance. In both roles, Gratian exercised an immense influence on medieval thought and institutional development. Joseph Goering argues that the most important development in the history of penitential thought in the high to the late Middle Ages (1100-1500) "was the creation throughout Europe of schools and universities where students were introduced to a common tradition through a common curriculum of study and where they developed common methods of thinking about and of teaching about penance."[3] That curriculum and those common methods arose from two textbooks, Gratian's *Decretum* and the *Sentences* of Peter Lombard, which both included major sections on penance, and, as will be seen in chapter nine, the latter of which was greatly dependent on the former. Goering observes, "A new history of penitential thought from the 12th to the 15th centuries can usefully begin with a reconsideration of these two works."[4] This study tackles that project head-on. It constitutes a reconsideration and indeed the first comprehensive consideration of Gratian's *De penitentia*, sensitive to its inclusion within Gratian's *Decretum* as a whole, and the role that it played in the development of penitential thought in the second half of the twelfth century, including the thought of Peter Lombard. The study hopes in part, then, to provide a basis on which the

[3] Ibid., 219.
[4] Ibid., 221.

further development of penitential thought in the later Middle Ages can appropriately be re-examined.

While this study in no way claims to illuminate penitential practice in the twelfth century, a brief overview of penitential practice in very broad terms (hoping not to get entangled in all the scholarly disagreements about the details) is necessary to provide a setting for Gratian's theological work on the subject.[5] In the early church, penance developed in a public and ritual setting. The bishop alone could administer it. A Christian did not go to the bishop and confess every sin that he committed; rather penance was reserved for grievous offences. The penitent was admitted into the order of penitents on Ash Wednesday, performed the required length (possibly years) of penance, and was reconciled to the church

[5] The literature on the history of medieval penance is enormous. I list here the major works with the caveat that much of the older material has been brought into question by more recent research. In addition, much of the earlier material was dominated by confessional motivations, either defending the practice of penance and emphasizing its ancient roots and continuity or attacking the practice of penance and asserting its novelty in the medieval church. Extensive and helpful reviews of the historiography may be found in Rob Meens, "The Historiography of Early Medieval Penance," in *The New History of Penance*, 73-95, and R. Emmet McLaughlin, "Truth, Tradition and History: The Historiography of High/Late Medieval and Early Modern Penance," in *The New History of Penance*, 19-71. Older general accounts may be found in Henry Charles Lea, *A History of Auricular Confession and Indulgences in the Latin Church*, 2 vols. (Philadephia, 1896), Bernhard Poschmann, *Die abendländische Kirchenbusse im frühen Mittelalter* (Breslau: Müller & Seiffert, 1930), and idem, *Penance and the Anointing of the Sick*, trans. F. Courtney (New York: Herder and Herder, 1964), Cyrille Vogel, *Le pécheur et la pénitence au moyen âge* (Paris: Editions du Cerf, 1969), which contains primary source selections and Vogel's French translations of them, and idem, *En rémission des péchés: recherches sur les systèmes pénitentiels dan l'Eglise latine*, ed. Alexandre Faivre (Aldershot: Variorum, 1994), and Martin Ohst, *Pflichtbeichte: Untersuchungen zum Busswesen im Hohen und späten Mittelalter*, Beiträge zur historischen Theologie 89 (Tübingen: J.C.B. Mohr, 1995). Ohst's work essentially sets out to understand the historical background to and then the historical novelty of *Omnis utriusque*, c.21 of the Fourth Lateran Council (1215). The work which has invigorated the study of the practice of penance in the tenth and eleventh centuries, previously a lacuna in the scholarship, is Sarah Hamilton, *The Practice of Penance, 900-1050* (Woodbridge, Eng. and Rochester, NY: Boydell, 2001). Hamilton's introduction also contains an extensive review of the literature pertaining to early medieval penance. Her work has recently inspired a special volume of *Early Medieval Europe* 14:1 (2006) edited by Rob Meens. Other recent collections of essays on the medieval period as a whole are Peter Biller and A. J. Minnis, eds, *Handling Sin: Confession in the Middle Ages*, York Studies in Medieval Theology 2 (Woodbridge, Eng.: York Medieval Press, 1998), and Abigail Firey, ed., *The New History of Penance*. On penance in the later Middle Ages leading up to the Reformation, the standard work remains Thomas Tentler, *Sin and Confession on the Eve of the Reformation* (Princeton: Princeton University Press, 1977).

at the end of that period on Easter Sunday. Penance in this form was permitted only once. After having committed so grave a sin and undergoing such extensive and severe penance, the penitent was expected not to engage in secular business, military service, or frivolities. Such goals were best fulfilled if the penitent entered a monastery for the rest of his or her life. Priests were excluded from this penance; if they committed a grievous sin, they were simply to be deposed. In the early Middle Ages, another form of penance emerged in the monastic culture of Ireland and Anglo-Saxon England and was transferred to the continent through the missionary work of monks from those lands. This penance, involving confession between fellow monks of breaches of discipline or other light sins and also of confession of more serious offences to priests followed by the carrying out of prescribed periods of penance, could be performed many times in a lifetime. This practice became extended to the laity, at least in theory, in the form of confession to their own priest and the private imposition of satisfaction for the sins committed. Priests could also undergo this penance and hope for redemption and a continuation of their duties as priests afterwards. Thus, in the Carolingian period, councils distinguished between secret and public penance, the former intended for secret sins and latter for publicly scandalous ones.[6] While in practice the

[6] Questioning the reality of this so-called "Carolingian dichotomy" is a large focus of Hamilton's work in *The Practice of Penance, 900-1050*. In a recent essay, Karen Wagner sensibly upholds the distinction (she sees it expressed in liturgical *ordines* from the ninth century at the latest) but notes the practical difficulty of keeping such a distinction absolute: "[The differences between public and private] should not be overdrawn; the actual confession of one's sins was rarely public, and, given the communal nature of early medieval society, no penitential satisfaction could remain entirely private" ("*Cum aliquis uenerit ad sacerdotem*: Penitential Experience in the Central Middle Ages," in *The New History of Penance*, 204). Cf. Mayke de Jong, "What was 'Public' about Public Penance? *Paenitentia publica* and Justice in the Carolingian World," in *La Giustizia nell'alto medioevo II (secoli IX-XI)*, Settimane di studio del centro Italiano di studi sull'alto medioevo 44 (Spoleto: Presso la sede del Centro, 1997), 863-902. The general dichotomy of private and public in the legal sphere, including penance, during the Carolingian period is a focus of Abigail Firey, *A Contrite Heart:*

distinction between private and public, secret and "solemn" (the term Gratian used), may not have always been so clear-cut, such a distinction reflected the dual historical tradition of penance leading into the central Middle Ages, the former emerging from the Irish monastic tradition brought to the continent and the latter continuing the tradition of the ancient church. This dual tradition still existed in the twelfth century and beyond, as the research of Mary Mansfield showed,[7] and certainly the dual tradition finds expression in the texts handed down. Thus, for a man like Gratian who collected Christian texts, recognized incongruities, and attempted to reconcile these incongruities, the various early Christian and early medieval texts related to penance provided an abundance of discord. Some texts spoke of penance performed only once; other texts and the practice surrounding Gratian suggested that penance could be performed multiple times for various sins. Some texts excluded priests from the practice of penance; other texts and the practice in Gratian's day suggested that priests who sinned could perform penance and even retain their office.

Scholars debate the extent to which penance constituted a common or significant part of the life of lay Christians in the period, but it certainly constituted a concern of the ecclesiastical hierarchy and must have trickled down to some extent to the people.[8] That

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Prosecution and Redemption in the Carolingian Empire, Studies in Medieval and Reformation Traditions 145 (Leiden/Boston: Brill, 2009).

[7] Mary C. Mansfield, *The Humiliation of Sinners: Public Penance in Thirteenth-Century France* (Ithaca, NY: Cornell University Press, 1995). Mansfield's work also shows how difficult it is to clearly and absolutely distinguish public and private penance, but the real value of her research was to prove that public penance persisted in the High Middle Ages, whereas previous scholarship (cf. e.g. Poschmann, *Die abendländische Kirchenbuße*, 92) had treated public penance as a reality of the early Church which fell out of practice or was forced out of existence by the new practice in the course of the early Middle Ages. Cf. Meens, "Historiography," 89-90.

[8] Meens, "Historiography," 90-94. People who have argued that penance was not important for the general Christian population prior to the twelfth century include Alexander Murray, "Confession before 1215,"

concern of the hierarchy exhibited itself in the Carolingian period in the statutes of many councils and other tracts and rules which mandated confession and penance, including the oft-cited *Regula canonicorum* of Chrodogang of Metz.[9] Correspondingly, this concern exhibited itself in the production of penitentials, books which listed various sins and their prescribed penances, known as tariff penances.[10] Many of these books came to include questionnaires, a listing of questions that the priest could follow in interrogating a penitent in confession in order to determine what the sins committed were. The function and significance of these books are currently a matter of debate and intense research.[11] Traditionally they have been understood to have been used in pastoral care by parish priests hearing confessions of the laity. But recently scholars have pointed out that many are contained in large, cumbersome codices that contain a mass of canonical material. This suggests that they were used by bishops in a judicial setting, not by parish priests in a

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Transactions of the Royal Historical Society, 6th ser. 3 (1993): 51-81. A recent article highlighting the practice of confession among the Carolingian military suggests that the laity considered penance to be important: David S. Bachrach, "Confession in the Regnum Francorum (742-900): The Sources Revisited," *Journal of Ecclesiastical History* 54 (2003): 3-22. Bachrach presents a sensible understanding of ecclesiastical statutes, maintaining that while they are prescriptive, scholars should not be overly skeptical in thinking that they have no descriptive value. He writes, "In the case of ninth-century bishops, … it is evident that they, with the backing of the Carolingian secular government under whose auspices the episcopate operated, considered regular confession by lay people to be of great importance. To discount as mere wishful thinking the efforts of these sophisticated and highly motivated clerics and their secular supporters seems unjustifiable" (5-6).

[9] Ohst, *Pflichtbeichte*, 17-19; Abigail Firey, "Blushing Before the Judge and Physician: Moral Arbitration in the Carolingian Empire," in *The New History of Penance*, 176-77; Carine van Rhijn and Marjolijn Saan, "Correcting Sinners, Correcting Texts: A Context for the *Paenitentiale pseudo-Theodori*," *Early Medieval Europe* 14:1 (2006): 35-36; Poschmann, *Die abendländische Kirchenbuße*, 75, 85, 87. The earliest example Poschmann found of an early medieval council (pre-Carolingian) mandating or at least encouraging private confession was the Synod of Chalon (ca.639-654) (*Die abendländische Kirchenbuße*, 75).

[10] Poschmann, *Die abendländische Kirchenbuße*, 76-91.

[11] Rob Meens is heading up a project based in Utrecht for the study of the penitentials of the tenth and eleventh centuries which is meant to further the work begun by Raymund Kottje who initiated detailed research into the penitentials of the early medieval period. Cf. Meens, "Introduction. Penitential Questions: Sin, Satisfaction, and Reconciliation in the Tenth and Eleventh Centuries," *Early Medieval Europe* 14:1 (2006): 3-6.

pastoral one.[12] Recent research confirms the existence of the penitentials in large manuscripts with decidedly legal and judicial contents, but it also confirms the existence of them in smaller manuscripts which could have been in a local priest's library.[13] Many times, the penitentials proper are contained in manuscripts that also contain liturgical *ordines*, giving the penitentials a liturgical aura and suggesting that they were used in a pastoral setting, giving priests instructions in how to administer penance alongside of instructions in how to administer communion and baptism and other rites involved in Christian worship.[14] In addition, the existence of penitentials in large codices suited for a cathedral or monastic library as a reference work does not speak against any and all connection to pastoral care. Lengthy and detailed penitentials were quite possibly used in the education of ordained clerics.[15] Having been educated in how to administer penance, they were better suited to do it in practice, whether or not they were always able to have a penitential at hand. In addition, in

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[12] This thesis was put forward in Franz Kerff, "Mittelalterliche Quellen und mittelalterliche Wirklichkeit. Zu den Konsequenszen einer jüngst erschienenen Edition für unser Bild kirchlicher Reformbemühungen," *Rheinische Vierteljahrsblätter* 51 (1987): 275-86, and idem, "Libri paenitentiales und kirchliche Strafgerichtsbarkeit bis zum Decretum Gratiani. Ein Diskussionsvorschlag," ZRG Kan. Abt. 75 (1989): 23-57.
[13] Rob Meens, "The Frequency and Nature of Early Medieval Penance," in *Handling Sin*, 35-61; Meens, "Historiography," 91; A.H. Gaastra, "Penance and the Law: The Penitential Canons of the *Collection in Nine Books*," *Early Medieval Europe* 14:1 (2006): 86-87; Ludger Körntgen, "Kanonisches Recht und Busspraxis: Zu Kontext und Funktion des *Paenitentiale Excarpsus Cummeani*," in *Medieval Church Law and the Origins of the Western Legal Tradition: A Tribute to Kenneth Pennington*, ed. Wolfgang P. Müller and Mary E. Sommar (Washington, DC: The Catholic University of America Press, 2006), 18-19. The pastoral intent of the penitentials may also be seen in the language used in them, as is argued in Raymund Kottje, "Buße oder Strafe? Zur *Iustitia* in den 'Libri Paenitentiales'," in *La giustizia nell'alto medioevo (secoli V-VIII)*, Settimane di Studio del centro italiano di studi sull'alto medioevo 42 (Spoleto: Presso la sede del Centro, 1995), 443-74. For an examination of the canon law manuscripts in central and southern Italy which contain penitentials, cf. Roger E. Reynolds, "Penitentials in South and Central Italian Canon Law Manuscripts of the Tenth and Eleventh Centuries," *Early Medieval Europe* 14:1 (2006): 65-84.
[14] Gaastra, "Penance and the Law," 86, 101-102; Ludger Körntgen, "Canon Law and Practice of Penance: Burchard of Worms's Penitential," *Early Medieval Europe* 14:1 (2006), 108. The standard but out-of-date work on liturgical rites related to penance is Josef Jungmann, *Die Lateinischen Bussriten in ihrer geschichtlichen Entwicklung*, Forschungen zur Geschichte des innerkirchlichen Lebens 3-4 (Innsbruck: Rauch, 1932).
[15] Gaastra, "Penance and the Law," 90, 98-100, 102.

the new system of penance, monks and clerics in monasteries and cathedral chapters also required pastoral care and the administration of penance, and a large reference work in such settings could be used by bishops and other priests as they served their brethren in hearing confessions and imposing penances.[16] In short, pastoral care in one form or another remained an important focus of penitentials throughout the early Middle Ages.

While these penitentials often made their way into codices that contained canonical material pertaining to any and all aspects of church life and order, they also were conscientiously incorporated into canonical collections. Three of the major predecessors to Gratian's *Decretum* included large sections on penance, Regino of Prüm's visitation handbook for bishops (ca. 906), Burchard of Worms's *Decretum* (before 1023), and Recension A of Anselm of Lucca's *Collectio canonum* (1081-86).[17] Thus in these works conciliar canons and penitential regulations stand side-by-side.[18] The most famous and influential of these was Burchard of Worm's Book 19, the *Corrector*, which was later

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[16] Körntgen, "Kanonisches Recht und Busspraxis," 31-32.

[17] Editions are Regino of Prüm, *Regionis libri duo de synodalibus causis et disciplinis ecclesiasticis*, ed. H. Wasserschleben (Leipzig, 1840); this edition is reprinted with a German translation in Wilfried Hartmann, *Das Sendhandbuch des Regino von Prüm*, Ausgewählte Quellen zur deutschen Geschichte des Mittelalters 42 (Darmstadt, 2004); Burchard of Worms, *Decretum*, PL140:537-1058 and *Burchard von Worms: Decretorum libri XX*, ed. Gerard Fransen and T. Kölzer (Cologne, 1548; repr. Aalen, 1992); Anselm of Lucca, *Collectio canonum una cum collectione minore*, ed. Friedrich Thaner (Innsbruck 1906-1915; repr. Aalen, 1965). Thaner's edition is in need of replacement. A decent manuscript of the so-called Recension A', which was widespread, is Firenze, Biblioteca Medicea Laurenziana, San Marco 499. Book 11 of Anselm's work is devoted to penance, and in that manuscript the chapter titles are on fols. 146ra-147va and the book on fols. 147va-161ra. Recension B of Anselm's collection removed much of the penitential material (Kathleen G. Cushing, "'Cruel to Be Kind': The Context of Anselm of Lucca's *Collectio Canonum*, Book 11, *De penitentia*," in *Proceedings of the Eleventh International Congress of Medieval Canon Law: Catania, 30 July-6 August 2000*, ed. Manlio Bellomo and Orazio Condorelli, MIC Ser. C vol. 12 [Vatican City: Biblioteca Apostolica Vaticana, 2006], 529). For all of these works and relevant editions, manuscripts, and bibliography, cf. Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400-1140): A Bibliographical Guide to the Manuscripts and Literature*, History of Medieval Canon Law 1 (Washington DC: The Catholic University of America Press, 1999).

[18] Körntgen, "Canon Law and Practice of Penance," 106; idem. "Fortschreibung frühmittelalterlicher Bußpraxis. Burchards 'Liber corrector' und seine Quellen," in *Bischof Burchard von Worms, 1000-1025*, ed. Wilfried Hartmann (Mainz: Gesellschaft für Mittelrheinische Kirchengeschichte, 2000), 219.

frequently excerpted and copied separately. That work was based in large measure off of Regino's, and both contained a questionnaire to aid the priest's investigation of the sin as well as a list of tariff penances to aid the priest's imposition of satisfaction.[19] Research into Burchard's work also reveals that Burchard drew much of the material in Book 19 from the rest of his *Decretum* as well as from Regino.[20] Taken as a whole, Burchard's massive work would have been useful as a reference work but also in the education and training of priests. It was too large and thus expensive to be owned by parish priests, and, based on manuscript evidence, its lengthy penitential was not originally intended by Burchard to be copied and used separately by parish priests. Besides, the questionnaire is so lengthy (190 questions supposedly to be asked of every penitent), that it could not be practically put into effect in a pastoral setting.[21] Nevertheless, the work as a whole could have been used in the training of priests, initially those under Burchard in his diocese. The priests could have learned rules governing the life of the church along with rules governing penance and how they should best administer it. Burchard's work thus seems to have been a canonical collection with an educational bent and ultimately pastoral intent. That pastoral intent was expressed most clearly through the existence of Book 19, a penitential to train priests in the *cura animarum*.

Cardinal Atto of San Marco's *Breviarium*, compiled around 1075, expressed antipathy to Burchard's work but shared his pedagogical and pastoral concern. In his prologue, he revealed his aim to assist ignorant priests in carrying out their duties, especially

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[19] Körntgen, "Canon Law and Practice of Penance," 108-109.
[20] Ibid., 110-12. Körntgen draws partly on the research of Paul Fournier in "Études critiques sur le Décret de Burchard de Worms," in *Mélanges de droit canonique*, ed. T. Kölzer (Aalen, 1983), 247-391.
[21] Körntgen, "Canon Law and Practice of Penance," 113-15.

for assigning appropriate penances.[22] And thus, even as some reform collections of the later eleventh and early twelfth century spent less time on penance than the famous collection of Burchard, as Atto's work as well as Recension A of Anselm of Lucca's collection show, a tradition of a penitential section and a pastoral concern for developing good confessor-priests persisted throughout the eleventh and early twelfth centuries, including in Italy.

Thus, by Gratian's time in Bologna in the 1130s, precedents existed for devoting a section of a canonical collection to penance. Yet what Gratian did was also without precedent. Gratian included various canons pertaining to penitential situations as well as canons stipulating prescribed lengths of penance for certain offences. These are spread throughout the *Decretum*, sometimes concentrated in particular sections (some of these will be examined in chapter six). The dispersed canons were gathered together many decades later and sometimes appeared as a make-shift penitential, as it were, at the end of a late medieval manuscript or early print edition of Gratian's *Decretum*.[23] *De penitentia*, however, is of an entirely different character from these canons and of an entirely different character from anything that had appeared in previous canonical collections. It is a theological treatise. It does not tell priests what questions to ask; it does not list sins and correspondent penances. Instead, it treats several questions related to the theological basis of the practice of penance. As such, it constitutes the first and only theological exposition of penance in a medieval

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[22] Cushing, "Cruel to Be Kind," 533-34. An English translation of Atto's prologue may be found in Robert Somerville and Bruce C. Brasington, eds., *Prefaces to Canon Law Collections in Latin Christianity* (New Haven: Yale University Press, 1998), 188-89. The Latin edition of the entire work is Atto, *Breviarium*, ed. A. Mai, in *Scriptorum veterum nova collectio e vaticanis codicibus edita*, 10 vols. (Rome, 1825-38), vol. 6, part 2, 60-100.

[23] Pierre J. Payer, "The Humanism of the Penitentials and the Continuity of the Penitential Tradition." *Mediaeval Studies* 46 (1984): 351-53, and idem, "The Origins and Development of the Later *Canones penitentiales*," *Mediaeval Studies* 61 (1999): 81-105.

canonical collection and is additionally the most extensive theological exposition of penance among any work of the first half of the twelfth century, the period of the initial developments of systematic theology.[24]

While scholars sometimes treat *De penitentia* as an addendum or non-integral part of the *Decretum*, Gratian did not simply tack this theological treatise onto his *Decretum*; it is embedded within it. The *Decretum* as a whole has three parts, the *prima pars* consisting of 101 distinctions which treat the nature of law and then ecclesiastical orders, the *secunda pars* consisting of thirty-six *causae*, or cases, which set forward a situation and several canonical questions pertaining to the situation followed by a treatment of each of the questions, and the *tertia pars*, which consists of a treatise, *De consecratione*, which treats the sacraments other than penance.[25] Gratian inserted *De penitentia* in the *secunda pars* in the thirty-third *causa*, a *causa* among many (CC.27-36) that deal with marriage. It constitutes the third *questio* of that *causa* (C.33 q.3). The *causa* reads:

> Hindered by witchcraft, a certain man could not render the conjugal debt to his wife. Meanwhile another man seduced her privately; she separated from her husband and married her seducer publicly. *The first husband confesses with his heart to God alone the evil deed that he had committed*; the ability to know his wife is returned to him. He demands his wife back, and, after he received her back, so that he might be free for prayer in a less impeded way and might approach the flesh of the Lamb purely, he promised that he would

[24] The importance of the birth of systematic theology in this period should not be underestimated. A recent purveyor of the entire century and its renaissance stated, "Theology's emergence as an academic discipline may count as the key transition of the whole period. It seems to be the strand which unifies the disparate evolutions into a whole, feeding on and evolving in the context of intellectual and institutional changes, and making its own contribution to them" (R.N. Swanson, *The Twelfth-Century Renaissance* [Manchester: Manchester University Press, 1999], 115-16).

[25] For an introduction to the *Decretum*, its contents, and its format, cf. Peter Landau, "Gratian and the *Decretum Gratiani*," in *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, ed. Wilfried Hartmann and Kenneth Pennington, History of Medieval Canon Law 6 (Washington DC: The Catholic University of America Press, 2008), 22-54.

> remain continent. His wife, however, did not give her consent. It is asked whether a wife is to be separated from her husband on account of the impossibility of sexual union. Second, whether after a separation she can marry a man with whom she previously fornicated. *Third, if a wicked deed can be erased by confession of the heart alone*. Fourth, if someone can render the conjugal debt in a time designated for prayer. Fifth, whether a man can take a vow of continence without the consent of his wife, or if he can force the permission for him to take this vow out of her with threats or fear-tactics.[26]

Gratian includes the treatise on penance in order to deal with the question of whether any person, such as the impotent husband who regains sexual capabilities after admitting his sins to God, can be remitted of their sins by confessing to God alone and not to a priest.

Because *De penitentia* is part of the *Decretum*, the recent developments on the work as a whole bring much to bear on the treatise in particular. Many twentieth-century scholars of canon law doubted whether *De penitentia* was authentic – whether it had been penned by Gratian and originally been part of the *Decretum*. And even if some of the treatise was original to the *Decretum*, it seemed that much of it could not be, including sections of pure theological content with no bearing on matters of canon law or sections that cited Roman law while the majority of the treatise did not.[27] In the 1990s Anders Winroth demonstrated that

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[26] *Decretum* C.33 d.init.: "Quidam uir maleficiis inpeditus uxori suae debitum reddere non poterat. Alius interim clanculo eam corrupit; a uiro suo separata corruptori suo publice nubit; *crimen, quod admiserat, corde tantum Deo confitetur*; redditur huic facultas cognoscendi eam: repetit uxorem suam; qua recepta, ut expedicius uacaret orationi, et ad carnes agni purus accederet, continentiam se seruaturum promisit; uxor uero consensum non adhibuit. Queritur, an propter inpossibilitatem coeundi, a uiro suo aliqua sit separanda? Secundo, an post separationem ei nubere ualeat, cum quo prius fornicata est? *Tertio, si sola confessione cordis crimen possit deleri?* Quarto, si tempore orationis quis ualeat reddere coniugii debitum? Quinto, an uir sine consensu uxoris continenciam uouere possit, uel si minis uel terroribus licentiam uouendi ab ea extorquere ualeat?" Emphasis mine.

[27] Peter Landau, "Gratian," *Theologische Realenzyklopädie* (1985), 14.124-130; Stephan Kuttner, "Gratien," *Dictionnaire d'histoire et de géographie ecclésiastiques* (1986), 21.1235-1239; Karol Wojtyła (future Pope John Paul II), "Le traité de 'penitentia' de Gratien dans l'abrégé de Gdańsk Mar. F. 275," *Studia Gratiana* 7 (1959): 355-390; Jacqueline Rambaud-Buhot, "L'étude des manuscrits du *Décret* de Gratien conserves en France," *Studia Gratiana* 1 (1950):119-45; idem, "Le legs de l'ancien droit: Gratien," in *L'âge classique 1140-1378*, ed. Gabriel Le Bras, Charles Lefebvre, and Jacqueline Rambaud, Histoire du droit et des institutions de

four manuscripts that had been thought to be abbreviations of the *Decretum* were in fact an earlier recension. Scholars had long known that Gratian's work developed in stages; Winroth showed that an earlier stage had survived in extant manuscripts.[28] Significantly, this earlier stage of the *Decretum*, which Winroth and several others now call the first recension, contains *De penitentia* (but does not contain the entire *tertia pars*, *De consecratione*).[29] Additionally, it contains the majority of the treatise, including the sections that had been suspected of being too theological to flow from the pen of the canonist Gratian. In short, Winroth's discovery proved that *De penitentia* was composed by Gratian, inasmuch as Gratian was the author of the version of the *Decretum* he had located in his four manuscripts – that is to say, if Gratian was the author of the version of the *Decretum* preserved in these four manuscripts, and there is no reason to doubt this, then he was also the author of *De penitentia*. Moreover, the discovery proved that *De penitentia* constituted an original part of the *Decretum*.

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l'Eglise en Occident 7 (Paris: Sirey, 1965), 47-129. On the opinions expressed in these articles, cf. my "The Evolution of Gratian's *Tractatus de penitentia*," BMCL 26 (2004-2006): 59-62.

[28] Winroth presented his findings at the Tenth International Congress of Medieval Canon Law in Syracuse, New York. Such findings were the result of his research for his dissertation, which was turned into a book, *The Making of Gratian's* Decretum (Cambridge, 2000). The manuscripts/manuscript fragments that Winroth asserted represent an earlier version of the *Decretum* are (1) Admont, Stiftsbibliothek 23 and 43 (Aa), (2) Barcelona, Arxiu de la Corona d'Aragó, Santa Maria de Ripoll 78 (Bc), (3) Firenze, Biblioteca Nazionale Centrale, Conv. Soppr. A. 1.402 (Fd), (4) Paris, Bibliothèque Nationale, nouv. acq. lat. 1761 (P), and (5) Paris, Bibliothèque Nationale, lat. 3884 I, fol. 1 (Pfr). Winroth gives descriptions of the contents of these manuscripts in his *The Making of Gratian's* Decretum, 23-32.

[29] For reasons that will become clearer in chapter five below, I remain uncomfortable speaking of a definite first and second recension. While such terminology does not necessarily require it, Winroth's usage of it connotes two deliberate and intentional compositions rather than a living and growing text in several stages. The language also hides the realities of that growth as witnessed in the appendices and marginal additions in Fd, Bc, and Aa. At this point, I prefer to speak in terms of various stages or versions of the *Decretum*. Admittedly, Winroth's terminology is easier to use, and I am not opposed to it on its own terms, but I find the assumptions and theories behind Winroth's usage of it historically inaccurate based on the manuscript tradition. Although I may not agree with all of the work presented by Carlos Larrainzar, my preferred terminology tends to mimic his "La edición crítica del Decreto de Graciano," BMCL 27 (2007): 71-105.

Or did it? After Winroth identified the earlier recension in four manuscripts in Florence (Fd), Admont (Aa), Barcelona (Bc), and Paris (P) and another fragment in Paris (Pfr) came to light, Carlos Larrainzar submitted that a *Decretum* manuscript in Saint Gall (Sg) contained an even earlier version of the *Decretum*.[30] Winroth continues to deny this, and the scholarly community remains divided.[31] If Sg is a mere abbreviation of the first recension with interpolations from the second recension, as Winroth and his student John Wei maintain, then Sg may not even be a very important manuscript.[32] If, on the other hand, Sg does preserve an earlier stage of the development of Gratian's work, it is an invaluable manuscript. I have argued that the section in Sg that overlaps with *De penitentia* suggests that Sg does preserve an earlier version of the *Decretum* and is not an abbreviation. John Wei has countered that Sg's *De penitentia* shows evidence of a mixed formal source tradition that stems from the second recension.[33] If text in Sg comes from the second recension, then it cannot be an earlier recension. My counter (to be explained more fully below in chapter five) is that Wei's argument still does not settle whether Sg contains testimony to an earlier version of Gratian's *Decretum* or not. In my opinion, he and others may have proven that some texts in Sg are interpolations from the final stage of the *Decretum*, but they have not proven that the majority of Sg is an abbreviation of the so-called first recension. Sg is a

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[30] Carlos Larrainzar, "El borrador de la 'Concordia' de Graciano: Sankt Gallen, Stiftsbibliothek MS 673 (= Sg)," *Ius ecclesiae: Rivista internazionale di diritto canonico* 11 (1999): 593-666.
[31] Anders Winroth, "Recent Work on the Making of Gratian's Decretum," BMCL 26 (2004-2006): 1-30. Winroth collects a helpful bibliography at the end of this article.
[32] John Wei, "A Reconsideration of Saint Gall, Stiftsbibliothek 673 (Sg) in Light of the Sources of Distinctions 5-7 in the *De penitentia*," BMCL 27 (2007): 141-80.
[33] "Formal source" refers to the work from which Gratian took an *auctoritas*, such as Ivo of Chartres' *Panormia*. This term is distinguished from the "material source," which refers to the original work of which a particular *auctoritas* is a part, such as Augustine's *De ciuitate Dei*.

unique manuscript, and research by Melodie Harris Eichbauer on the pattern (or total lack thereof) of rubrics in Sg speaks against it being an abbreviation.[34] I approach the following study with an undogmatic position on the matter, but I maintain that the evidence favors a view that Sg contains text that is a testimony to Gratian's early teaching activity prior to the composition of the stage represented in Fd, Aa, Bc, and P, even while it also contains some later interpolations from a body of textual material from which the vulgate version eventually printed by Friedberg would be formed. I maintain, then, based on the contents of the equivalent of C.33 q.3 in Sg (spanning barely three columns),[35] that Gratian originally composed this *questio* just like any other, with a few *auctoritates* for and against the question posed, namely whether sin can be erased through internal confession to God alone. In other words, *De penitentia* was not part of Gratian's original work.[36] As Gratian expanded his early teaching into a larger-scale canonical collection, he also composed a theological treatise on penance inspired by the third question in the *causa* about the impotent husband.

Regardless of the exact nature of Sg, what remains clear is that the manuscript preserving the earliest version of *De penitentia* is Fd. While some internal evidence may suggest that one or two sections even in this version were not part of Gratian's first drafting of the treatise, on the whole one can say that Fd presents the original *De penitentia*. The only other manuscript of Winroth's four that is complete enough to contain *De penitentia* is Aa.

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[34] Melodie Harris Eichbauer, "St. Gall Stiftsbibliothek 673 and the Early Redactions of Gratian's *Decretum*," BMCL 27 (2007): 105-139.

[35] Given the absence of certain *causae* in Sg and the inclusion of a *causa prima*, made up of bits of material from the entire *prima pars* (DD.1-101) of other versions of the *Decretum*, the numbering in Sg differs from the standard. Technically the section equivalent to *De penitentia* is C.30 q.3 in Sg, but, for the sake of simplicity, scholars seem to have agreed to refer to material in Sg based on the standard numbering as present in Friedberg's edition. This material may be found on fols. 183[a] mid-184[b] top.

[36] Larson, "The Evolution of Gratian's *Tractatus de penitentia*," 113.

Both Fd and Aa contain supplements or appendices containing later additions to the *Decretum*.[37] Aa's main body, the folios on which the earlier version is preserved, contains some later additions and does so in *De penitentia* as well. For this reason, it is the main body of Fd alone which preserves most purely the original *De penitentia*.[38] On the whole, the exposition of *De penitentia* below in chapters 1-5 focuses on the material originally in *De penitentia* as testified to in Fd. This material can be confirmed to be authored by Gratian. Later additions do not provide strong evidence in support of Gratian being their author/compiler or of some other person(s) being so. On the whole, they consist only of additional canons. They never change Gratian's argument or conflict with a position for which he is arguing, and rarely do they add significantly to what was originally said. For these reasons, I note the placement and general topic of later additions, but I do not spend much time explaining their content. As a result, the following study does not contribute to another current debate that Winroth's discovery ignited and in which he continues to participate, namely whether a different person is responsible for the later additions to the *Decretum* and thus whether we should speak of a Gratian 1 and a Gratian 2 to coordinate with a first recension and a second recension.[39]

The early manuscripts of the *Decretum*, including Fd and Aa but also other mid-twelfth century manuscripts that preserve a later version of the work, are not just important

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[37] The make-up of these two manuscripts are quite complex. Cf. Winroth's complete descriptions in *The Making of Gratian's* Decretum, 23-32.

[38] Fd fols. 88^{r}-99^{v}. Throughout this work, then, if I refer to "the original treatise" or "the contents of the original treatise," I am referring to the version of the treatise preserved on these folios of Fd.

[39] Anders Winroth, "Marital Consent in Gratian's *Decretum*," in *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, ed. Martin Brett and Kathleen G. Cushing (Farnham, Eng. and Burlington, CT: Ashgate, 2009), 111-21.

for determining which particular texts belonged to the original *De penitentia* and which were later additions. Their formatting or visual presentation of *De penitentia* is an important witness to how Gratian originally conceived of *De penitentia*.[40] Together with the contents of the treatise itself, these early manuscripts reveal that Gratian self-consciously composed a treatise in a distinct genre from the rest of the *Decretum*. *De penitentia* is and was originally intended to be a theological treatise in distinction from other parts of the *Decretum*, a canonical collection organized according to topics often introduced by questions, whether within the context of *causae* (in the *secunda pars*) or not (in the *prima pars*).[41] The canons in these sections are clearly identified and summarized with an inscription and rubric. In the manuscripts, the rubrics appear in red ink, in accord with the etymological origin of the term. The canons or *auctoritates* are often followed by Gratian's own commentary, known as his *dicta*, in which he either presents an opinion or reconciles opposing views that he has laid out previously through various *auctoritates* and *dicta*.[42] These *auctoritates* may stem from any

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[40] This paragraph summarizes much of what I put forward in "The Evolution of Gratian's *Tractatus de penitentia*," 84-93, 111-14. Some mid-twelfth century manuscripts of the complete *Decretum* include Köln, Dombibliothek 127, Bremen, Universitätsbibliothek 142, München, Bayerische Staatsbibliothek, lat. 28161, Biberach an der Riss, Spitalarchiv B.3515, and Salzburg, Stiftsbibliothek a.XI.9.

[41] When I use the term "treatise" to describe *De penitentia*, I mean it in the modern sense of the term, indicating a separable (and usually separate) work that deals with or treats a particular topic. As Wolfgang P. Müller, "Toward the First Iconographical Treatise of the West: Huguccio and Sicard of Cremona," in *Mélanges en l'honneur d'Anne Lefebvre-Teillard*, ed. Bernard d'Alteroche et al. (Paris: Éditions Panthéon-Assas, 2009), 778-79 has recently noted, the Latin term *tractatus* has a less specific meaning, which could refer to a separate work but could refer to any part or section of a work with thematic unity. My only point of clarification in relation to Müller's comments is that, while Gratian and others could refer to any thematically unified section of the *Decretum* as a *tractatus*, *De penitentia* is unique, a part of Gratian's work that he self-consciously composed in a distinct genre and form. The other *tractatus* (e.g. on ordination or on marriage) are not distinguishable in form or sources, only identifiable based on similar subject matter.

[42] On the notion of *auctoritas* in Gratian, cf. Stephan Kuttner, "On 'Auctoritas' in the Writing of Medieval Canonists: the Vocabulary of Gratian," in *La notion d'autorité au Moyen Age: Islam, Byzance, Occident* (Paris, 1982), 69-80; repr. in idem, *Studies in the History of Medieval Canon Law*, Collected Studies Series 325 (Hampshire: Variorum, 1990), 69-80 (VII).

number of sources, including the Bible, patristic writings, conciliar canons, papal letters, Roman law, or local law.[43] The *auctoritates* can be quoted at length, and Gratian's *dicta* can also be quite extensive. *De penitentia* is different in content, sources, and form in early manuscripts. It still contains a mixture of *auctoritates* and Gratian's own words, both of which can be very lengthy, but the *auctoritates* are not separated out with rubrics. *De penitentia* thus reads and appears in the early manuscripts like early scholastic sentence collections or the theological writings of people like Hugh of St Victor or Peter Abelard, although the particular writing styles are different. Originally (as witnessed in Fd), all Gratian's *auctoritates* in *De penitentia* came from Scripture or patristic writings, including some letters of popes with a theological, not legal, focus.[44] Any canons with rubrics and any *auctoritates* from church councils or Roman law are later additions to the treatise, as is clear from Fd, which contains no rubricated canon and, correspondingly, no conciliar decree or Roman statute.

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[43] Rambaud, "Le legs de l'ancien droit: Gratien," 58-65.

[44] On the biblical citations in *De penitentia*, cf. Charles Munier, "A propos des citations scripturaires du *De penitentia*," *Revue de droit canonique* 25 (1975): 74-83. Munier's article exhibits a rather strange methodology, attempting to categorize biblical citations according to the way they are grammatically introduced. He attempts to compare the biblical citation introductions according to his categories in *De penitentia* DD.2-4, thought by Rambaud to be inauthentic, to the rest of *De penitentia* and the *Decretum*, to see if these three distinctions are authentic. His tedious research yields no conclusive result. On the usage of biblical citations in canonical collections in general, cf. Jean Gaudemet, "La Bible dans les collections canoniques," in *Le moyen âge et la Bible*, ed. Pierre Riché and Guy Lobrichon, Bible de tous les temps 4 (Paris, 1984), 327-69. At the end of his article (pp. 368-69), Gaudemet includes a very helpful chart, counting the number of citations in various collections from each book of the Bible. For the *Decretum*, Gaudemet separates out *De penitentia* and *De consecratione*. What is noticeable is that, while Gratian used a great quantity of scriptural passages in all of the *Decretum*, given the size of *De penitentia*, he used Scripture with even greater frequency within that treatise. For example, there are 64 citations from the Psalms and 29 from Ezekiel in the first two parts of the *Decretum* excluding *De penitentia*, and 41 and 10 from those same books in *De penitentia* alone. In total, the first two parts of the *Decretum* excluding *De penitentia* has 399 Old Testament citations and 507 New, while *De penitentia* alone has 153 Old and 174 New. In sum, proportionally, Gratian used Scripture more often in *De penitentia* than in the rest of the *Decretum*.

What are also later additions to the treatise, then, are the canon and *dictum* divisions and numbering present in the modern printed edition of *De penitentia* in Emil Friedberg's 1879 edition of the *Decretum* (in the first volume of the two-volume edition of the entire *Corpus iuris canonici*). Friedberg was merely following early print editions in this regard, which were in turn following later medieval manuscripts. Friedberg himself admitted in his introduction that early manuscripts did not divide *De penitentia* into separate canons and *dicta* but rather had presented the text as a continuous treatise.[45] He was stuck in the flow of centuries in which *De penitentia* had come to be copied, printed, and known according to particular divisions, and he thus reproduced those divisions. (I find myself in the same situation. In the study that follows, as I explain the content of and opinions in *De penitentia*, I try to avoid referring to texts simply by their canon or *dictum* reference in Friedberg, but the notes will always refer the reader to those divisions so that the text can easily be found in the printed edition.) What seems to have happened in the manuscript tradition was that scribes became unsatisfied with the lack of continuity or uniformity of form among the different sections of the *Decretum*. Early scribes did not mind copying a theological treatise in all one color ink with scarcely so much as a paraph dividing the text alongside of a canonical collection with clear divisions of texts and red rubrics. But after Gratian's *Decretum* achieved such importance in the academic study of canon law and in the administration of the church, copies of it could become quite elaborate and colorful on the scale even of illuminated Bibles. In such manuscripts, the visual appeal of the text was an important part of their

[45] Friedberg, "Prolegomena," to *Decretum Magistri Gratiani*, 12: "All the manuscripts show a treatise composed uninterruptedly with no distinction made [and] for the most part with rubrics missing. By this it happens that almost the whole thing seems to be *Gratiani dicta*."

production and *raison d'être*. In such a setting, a lengthy treatise in black ink without rubrics and enlarged, decorated initials would stand out like a sore thumb. It seems likely, then, that the production of these types of elaborate manuscripts served as the context in which scribes divided the treatise into canons and *dicta* that could be introduced with colorful, decorated initials in order to make *De penitentia* stand in greater visual and aesthetic unity with the rest of the *Decretum*.[46] Eventually, as with the rest of the *Decretum* in incunabula, these canons were not just separated (and identified by their incipits) but actually numbered (and identified by these numbers as is still the case today).

While these canon and *dicta* divisions stemmed from more than a century after the composition of *De penitentia*, the distinction divisions emerged much earlier and were standard by the fourth quarter of the twelfth century. It is possible that they were added as early as the 1140s by Paucapalea, who is attributed with dividing the *prima pars* and *tertia pars* (*De consecratione*) into distinctions.[47] Whether Paucaplea is responsible or not, someone divided the treatise into seven distinctions, the first of which is the longest, and the last three of which are much shorter. That Gratian himself did not label these distinctions is apparent from the earliest manuscripts. The beginnings of the distinctions do not start on another line and often do not have even a paraph marking them out. If a marginal note

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[46] A good example of this is Paris, Bibliothèque Nationale, lat. 3893. This is also the earliest manuscript which Rambaud found with intertext (i.e. not in margins) distinction divisions; it dates from 1314 ("Le legs de l'ancien droit: Gratien," 83). According to my research, the canon and *dicta* divisions in this manuscript match almost perfectly what would be reproduced by Friedberg. The canon divisions, then, would seem to have first emerged in the early fourteenth century.

[47] Stanley Chodorow, *Christian Political Theory and Church Politics in the Mid-twelfth Century: The Ecclesiology of Gratian's Decretum* (Berkeley/Los Angeles/London: University of California Press, 1972), 15 (hereafter *Ecclesiology*); Kenneth Pennington and Wolfgang P. Müller, "The Decretists: The Italian School," in *The History of Medieval Canon Law in the Classical Period, 1140-1234*, 129.

identifies the start of a new distinction in a mid-twelfth century manuscript, it is usually a later addition. Nevertheless, as will be emphasized in the chapters below, the distinction divisions fit the contents of the treatise extremely well. It seems likely that Gratian conceived of his treatise as divided into various *questiones*, since the one cross-reference to *De penitentia* in the *Decretum* refers to "the first question" of it.[48] Whether the soon-implemented distinctions corresponded precisely to Gratian's conception of the questions of the work and the number of them is uncertain, but they are most likely not far off. Each new topic introduced, usually formulated by Gratian in a question, starts a new distinction. The divisions must have occurred in the first couple decades after *De penitentia*'s composition, since some early decretists treated *De penitentia* in its seven distinctions, such as Rufinus in his *Summa* (ca. 1160).[49] Due to the need for some organizational framework, how well the distinction divisions suit Gratian's content, and how early they were introduced into the manuscript and scholarly tradition, I have organized my treatment of the treatise in accordance with them and remain comfortable discussing sections of the treatise in terms of their location in a particular distinction.

If Paucapalea did introduce the distinction divisions into *De penitentia* in the 1140s, how soon after the composition of *De penitentia* did that occur? In short, when did Gratian compose *De penitentia*? An exact answer, as with so many medieval works, is impossible.

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[48] The cross-reference is in C.11 q.3 d.p.c.24: "item illud Prosperi: 'Facilius sibi Deum placabunt etc.,' require infra causa [XXXIII] 'Maleficiis inpeditus,' quest. 1 de penitentia." The reference is to *De penitentia* D.1 c.32. This cross-reference was long a puzzle to scholars like Rambaud who doubted the authenticity of the treatise. Müller, "Huguccio and Sicard of Cremona," 779 notes that Huguccio thought Gratian may have intended *De penitentia* to be divided into *questiones*, not *distinctiones*. From Huguccio's comments reproduced by Müller in n.32, one can also see that, regardless of Gratian's intentions (of which Huguccio could not be sure), Huguccio recognized the suitability of the *distinctio* divisions since each division treated basically one main question.
[49] Cf. below, chapter 8.

Fortunately, the presence of *De penitentia* in Fd and Aa means that one can date the treatise in rough terms by dating the version of the *Decretum* present in those manuscripts, but not even this is an easy task. In this version, in *prima pars* D.63 d.p.c.34, Gratian referred to a general synod held in Rome by Pope Innocent II. At a later stage, a canon from the Second Lateran Council (1139) was added following this reference. According to Winroth, this means that Gratian was referring to Lateran II and that therefore his "first recension" could not have been completed until 1139 or 1140.[50] That was the traditional date decided on in the scholarship of the twentieth century for the *Decretum*, that is, the final version of the *Decretum* with the exception of the paleae, canons added bit by bit by various persons in the years after the work's composition. The date of ca.1140 for this final version seemed appropriate given that the canons from Lateran II present in the *Decretum* were shown to have been hastily added, often at the end of *questiones* or *distinctiones*. The haste is also indicated by the lack of uniformity in rubrics for these canons, suggesting that the *Decretum* was already being copied and distributed before the rubrics were standardized.[51] Winroth's dating throws a wrench in the traditional dating of the final version of *Decretum*; one would then have to push that date back to at least 1145, making the hasty additions of canons from Lateran II inexplicable or at least puzzling and making usage of the final version of the *Decretum* in rural Italian courts and the production of glosses and abbreviations on it in the

[50] Winroth, *Making of Gratian's Decretum* 137: "There can be no doubt that Gratian I's reference concerns canon 28 of the council celebrated in 1139." Cf. also Rudolf Weigand, "Chancen und Probleme einer baldigen Kritischen Edition der ersten Redaktion des Dekrets Gratians," BMCL 22 (1998): 66-67.
[51] Gérard Fransen, "La date du *Décret* de Gratien," *Revue d'histoire ecclésiastique* 51 (1956): 521-31; Titus Lenherr, "Die Summarien zu den Texten des 2. Laterankonzils von 1139 in Gratians Dekret," *Archiv für katholisches Kirchenrecht* 150 (1981): 528-51.

late 1140s and early 1150s incredible if not miraculous.[52] In my opinion, there is no good reason for overturning the settled date of ca. 1140 for the final version of the *Decretum*. As I have argued elsewhere, the dating of the version present in Fd should not be determined by Lateran II.[53] A reference to a general synod held by Innocent II in Rome does not necessarily refer to Lateran II. A canon from said council was added later but was not reproduced by Gratian originally. Scholarship has shown that the term "general synod" or "general council" need not refer to what is today recognized as an ecumenical council. For Gratian and his contemporaries, the term referred to a council presided over by the pope and did not take into consideration the location of the council or the number of bishops and other ecclesiastical figures in attendance.[54] In addition, scholarship has also shown that popes of the period, and Innocent II in particular, frequently repeated canons from one council to another.[55] Many of the canons at Lateran II appeared at Innocent's earlier known councils (Clermont [1130], Liège [1131], Rheims [1131], Piacenza [1132], and Pisa [1135]). In addition, many conciliar decrees from the period survive in only one manuscript, and it is easy to imagine in such a situation that many canons have not survived at all.[56] In short, Gratian's original reference to a decision made at a general synod in Rome under Innocent II need not refer to the Second

[52] The first glosses appear ca. 1150. Paucapalea wrote the first *Summa* on the *Decretum* as early as 1148, and the first known abbreviation of the work ('Quoniam egestas') appeared in Southern France around 1150 as well. A court record of Siena from 1150 exhibits usage of Gratian's final recension. Cf. Landau, "Gratian and the *Decretum Gratiani*," 46; Paolo Nardi, "Fonti canoniche in una sentenza senese del 1150," in *Life, Law and Letters: Historical Studies in Honour of Antonio García y García*, ed. Peter Linehan, *Studia Gratiani* 29 (1998): 661-70.
[53] I reproduce here the basics of my argument set forward in "Early Stages of Gratian's *Decretum* and the Second Lateran Council: A Reconsideration," BMCL 27 (2007): 21-56.
[54] Ibid., 27-36.
[55] Ibid., 37-39.
[56] Georg Gresser in fact identifies many councils for which no canons survive in his *Die Synoden und Konzilien in der Zeit des Reformpapsttums in Deutschland und Italien von Leo IX. bis Calixt II., 1049-1123* (Paderborn, Munich, Vienna, and Zurich: Ferdinand Schöningh 2006).

Lateran Council; and it is very possible that the Second Lateran Council, as it did in so many other cases, repeated the canon from an earlier synod held in Rome, the very canon to which Gratian alluded.

When one examines the historical record for a possible time when Innocent could have held another synod in Rome, the evidence points to June 1133 surrounding the imperial coronation of Lothar III.[57] An entire entourage of ecclesiastical and lay dignitaries accompanied Lothar on his expedition to Rome as well as the usual army. Such force was in any event needed since Rome was held by the anti-pope Anacletus II and his supporters. From the lists of the types of ecclesiastical figures in Rome with Innocent to the extensive output from the papal chancery in the timeframe of the end of May to June 8, ample evidence exists that the pope was not just concerned to crown Lothar III but also used this opportunity to meet with bishops, abbots, other clerics, and lay leaders from Germany and to attend to the church's business. In short, he held a council. If such a council did not leave behind canons in extant manuscripts, that should not be surprising, given the poor survival of canons to begin with combined with the chaotic circumstances under which the council was held. Thus, while no proof can be given that Gratian in D.63 d.p.c.34 was originally referring to a council in Rome in early June 1133, it is possible. This possibility would set a much more reasonable *terminus post quem* for the completion of the earlier version of the *Decretum*, including *De penitentia*, present in Fd and allow the traditional dating of the final version of the *Decretum* to remain in place at ca.1140. In sum, in light of the solid traditional dating of the final version of the *Decretum* to just after Lateran II, in light of the necessary allowance of several

[57] Larson, "Early Stages of Gratian's *Decretum* and the Second Lateran Council," 40-46.

years for the expansion of the *Decretum* into its final version, and in light of the plausibility that Gratian was not alluding to Lateran II in his original D.63 d.p.c.34 but possibly a council held in 1133, the early 1130s emerge as the most logical period for the composition of *De penitentia* and the completion of the *Decretum* as it stands in Fd.

Organization of this Study

The following study is divided into two main parts. The first part, consisting of seven chapters, treats Gratian's work on penance; the second part, consisting of four chapters, treats the reception of Gratian's work on penance in the second half of the twelfth century. Chapters 1-4 deal with *Distinctiones* 1-4 of *De penitentia* respectively. Chapter five treats *Distinctiones* 5-7, and this chapter provides an opportunity to reevaluate some of the manuscript issues arising from Sg, Fd, and Aa. Chapter six treats major sections about penance in the rest of the *Decretum*. I refer to these sections as the "extra-*De penitentia* penitential texts" of the *Decretum*. If some scholars remain skeptical about Gratian's authorship of *De penitentia*, they will find in this chapter stylistic and doctrinal reasons for affirming it. These first six chapters consist primarily of textual analysis. As the treatise has never been studied in depth before and only the teaching in the first distinction has received much discussion in the literature, it is necessary to lay out Gratian's arguments and positions. Moreover, investigating Gratian's treatment of penitential issues outside of *De penitentia* in chapter six provides an opportunity to witness the consistency of Gratian's thought and the practical application of his theological thinking about penance in canonical cases. In the process of this exposition, particularly in the first four chapters, Gratian's work is compared

to other work of the early twelfth century, and the theological influences upon Gratian come to light. Above all, Anselm of Laon and his school shine through in *De penitentia* and reveal that Gratian should be identified as a member of that school. Chapter seven examines the connection between Gratian and the school in more depth, considering also the possibility that Gratian studied directly under Anselm. It then moves from understanding Gratian as a student (direct or indirect) of Anselm to understanding Gratian as a teacher. From the understanding of Gratian's work on penance, of his theological background and abilities, of the relationship of *De penitentia* to the rest of the *Decretum*, and of Gratian's identity as a *magister* and the *Decretum*'s identity as a textbook, I re-examine the question of the purpose of the *Decretum*, inclusive of *De penitentia*.

The final four chapters treat several people and works in the decades after the composition of *De penitentia* and examine their reception of, attitude towards, and usage of Gratian's work on penance. Chapter eight discusses the early reception from the 1140s to roughly 1170, primarily in the classroom (i.e. the figures discussed were *magistri* and the works discussed were textbooks or reflections of teaching). Figures working in and works composed both in Bologna and north of the Alps are examined. Chapter nine is devoted entirely to Peter Lombard's usage of Gratian's *De penitentia* in Book IV of his *Sentences*. A corresponding appendix lists all the texts from Gratian used by Peter Lombard in his treatment of penance, including Gratian's own arguments, not just *auctoritates*. Chapter ten considers the influence of *De penitentia* outside of the classroom, in penitential and apologetical works in England and in the papal curia of Pope Alexander III, in the 1160s and

1170s. Chapter eleven discusses the reception of *De penitentia* in the work of Peter the Chanter, Alan of Lille, and Huguccio, three major figures at the close of the twelfth century. In these four chapters, the intent is not to lay out the positions on penance of the thinkers discussed and thereby to trace a development of penitential doctrine through the second half of the twelfth century after Gratian. Other scholarly works exist that map out the individual positions of various authors on specific points of doctrine related to penance.[58] In some cases, individual authors (such as Huguccio) merit an additional study all their own that I cannot accomplish here. What interests me is the utilization of *De penitentia* by these people and thus the influence of Gratian's work on them. By determining the extent to which these later authors relied on Gratian, the significance of Gratian's *De penitentia* in the development of twelfth-century thought on penance comes to light, and one can identify which sections of *De penitentia* had the weightiest impact in that development.

The works addressed in the final chapter were all written around 1190 or a few years later. This endpoint of the study and the three figures involved were chosen for a variety of reasons. First, Peter the Chanter and those around him have been recognized as a distinct

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[58] Paul Anciaux, *La théologie du sacrement de pénitence au XIIe siècle* (Louvain and Gembloux: Nauwelaerts and Duculot, 1949); P. Polycarp Schmoll, *Die Busslehre der Frühscholastik: Eine dogmengeschichtliche Untersuchung* (Munich: J.J. Lentnerschen, 1909); Artur Michael Landgraf, *Dogmengeschichte der Frühscholastik* (Regensburg, Friedrich Pustet, 1952-1956). Ludwig Hödl, *Die Geschichte der scholastischen Literatur und der Theologie der Schlüssgewalt*, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters, Texte und Untersuchungen 38.4 (Münster: Aschendorff, 1960); Wendelin Knoch, *Die Einsetzung der Sakramente durch Christus: Eine Untersuchung zur Sakramententheologie der Frühscholastik von Anselm von Laon bis zu Wilhelm von Auxerre*, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters: Texte und Untersuchungen 24 (Münster: Aschendorff, 1983); Damien van den Eynde, *Les Définitions des sacrements pendant la première période de la théologie scolastique (1050-1240)* (Rome/Louvain, 1950); Marcia Colish, *Peter Lombard*, 2 vols. (Leiden: Brill, 1994); Stephan Kuttner, *Kanonistische Schuldlehre: Von Gratian bis auf die Dekretalen Gregors IX.: Systematisch auf Grund der handschriftlichen Quellen dargestellt*, Studi e Testi 64 (Vatican City, 1935); John W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and his Circle*, 2 vols. (Princeton: Princeton University Press, 1970).

group in the development of theology in Paris in between the composition of Peter Lombard's *Sentences* and the institutionalization of the University of Paris in the thirteenth century, and, given his stature, I have chosen him as a representative example of this group. Second, Alan of Lille was contemporary with this group but moved to Montpellier, another center of learning but a unique one since it was on the frontlines of the battle against heresy, and so Alan's work stemmed from an interesting context and a unique one for examining the reception of Gratian's *De penitentia*. Third, both Peter the Chanter's work and Alan of Lille's are recognized respectively as important precursors for and early examples of *pastoralia*, a genre in which penance plays a huge role and one that picked up speed prior to the Fourth Lateran Council in 1215 and exploded afterwards. The study of Gratian's influence on them provides a doorway for seeing Gratian's influence on the manuals for confessors in the later Middle Ages. Fourth, Huguccio was the greatest canonist of the twelfth century, the first one to write a complete commentary on *De penitentia*, and the last great master to teach in Bologna prior to the appearance of the *Compilatio prima* in 1191, which permanently shifted the dominance in the study of canon law from Gratian's *Decretum* to papal decretals. Fifth, all three of these masters taught prior to the official establishment of universities and the organization of those universities into distinct faculties of canon law and theology. They were still members of the twelfth-century schools, not the thirteenth-century universities. For these reasons, the end of the twelfth century and these three figures in particular seemed a fitting conclusion to the study, even though it is acknowledged (and hoped) that additional research on the continuing legacy of *De penitentia* in later centuries could be done.

Finally, the figures in the final four chapters span the disciplines as recognized today. Some are identified as theologians (e.g. Peter Lombard and Peter the Chanter), some as Roman lawyers (e.g. Master Vacarius), some as canonists (e.g. Rolandus and Huguccio). The study of the reception of a theological treatise embedded in a canonical collection by this wide range of thinkers provides an opportunity to reevaluate the nature of canon law and theology in this period and the relationship between them.

Based on the timeframe and focus of this work, then, it belongs to the intellectual and institutional history of the twelfth century, reaching from the school of Laon and the beginnings of systematic theology at the beginning of the century to the teaching of Gratian in Bologna and the birth of canonical jurisprudence in the 1130s to the intellectual centers of Europe and rapid development in theology and canon law in the final decades. It attempts to place Gratian and his treatise on penance in their rightful place in this history and thereby to illuminate more fully several aspects of that history. Most simply, this study aims to contribute to the understanding of who Gratian was, what he intended to do in his work, and what his significance was in the developments of the intellectual culture and institutions of the Middle Ages and in particular in the history of penance. If nothing else, it shows that he was a man of broader and deeper ability and import than even previously thought.

CHAPTER 1

CONTRITION OR CONFESSION: WHAT REMITS SINS?

DISTINCTIO 1 OF *DE PENITENTIA*

Of all the sections of *De penitentia*, the first distinction has attracted the most attention and debate. At first glance, the question (or the two versions of the question) posed seems innocuous enough. A perusal of the scholarly literature on the subject, however, bears witness to the fact that the question has evoked strong disagreement and varying interpretations. In addition to the specific issue at hand in this distinction, Gratian's conclusion has elicited debate. Of the seven distinctions and the four which present extended arguments for and against a particular issue (DD.1-4), D.1 stands out as the only one in which Gratian could not decide which side of the issue to support (or so he said). He famously left the decision to his readers.

The Question

In his statement of the thirty-third *causa*, Gratian states the third question as follows: "[It is asked] in the third place if a sin can be erased by confession of the heart alone."[1] In his opening words at the beginning of the *Tractatus de penitentia*, Gratian phrased the question in this way: "It is asked whether each and every person can make satisfaction to God by contrition of the heart alone and secret satisfaction without oral confession."[2] Because this distinction has caused such a large measure of dispute, the precise wording of this question must be understood.

[1] *Decretum* C.33 d.init.: "Queritur … tertio, si sola confessione cordis crimen possit deleri."
[2] *De pen.* D.1 d.a.c.1: "Queritur utrum sola cordis contritione, et secreta satisfactione, absque oris confessione quisque possit Deo satisfacere."

In these two formulations Gratian used the same word for sin (*crimen*), a word which involves ambiguity but at the very least denotes a serious or grave sin – roughly speaking, in terms of medieval and Catholic theology, mortal sin. Gratian was not concerned (and, indeed, nowhere in the treatise was particularly concerned) with venial sins. He wondered about the sins which lead to a person's damnation in God's court and which require reconciliation with God in order to avoid such damnation.[3] In the two formulations of his question, Gratian paired this same word for sin with different words to express the end goal in mind as well as the means to achieve this end goal. In the statement of the *causa*, the end goal is the erasing or deleting of the *crimen*. At the beginning of the treatise, the end goal consists of satisfying God. In yet another formulation, in this case the initial statement of those who answer the question in the affirmative, the end goal appears as "meriting mercy for the sin."[4] Finally, in the initial statement of those who answer the question in the negative, Gratian defined the end goal as "being cleansed from sin."[5] Gratian was speaking of one and same phenomenon:

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[3] Gratian did in fact discuss the term *crimen* elsewhere in the *Decretum* (D.25 d.p.c.3), but, while he offered many options for clarifying the substance of the concept, he did not come to a clear answer on the question. In my opinion, Gratian did not use the term in *De penitentia* with great specificity, but he at least did not have in mind light, daily sins. Throughout the treatise, he used other terms interchangeably, such as *peccatum* or *delictum*. His choice of *crimen* here at the outset of the treatise, though, set a certain tone: the sins concerned are not trivial.

Stephan Kuttner provided a discussion of Gratian's treatment of the term *crimen* and also that of the decretists after him. Despite Gratian and the decretists not being entirely clear, Kuttner explained that D.25 d.p.c.3 in the *Decretum* and the commentary on it mixed with the Abelardian notion of *peccata criminalia* (which make a person guilty in an earthly law-court logically distinguishable from God's) became the basis on which the discussion of *crimen* as a crime distinguishable from sin emerged. Earlier in the Middle Ages, the concepts of sin and crime were intermingled and indistinguishable. Cf. Kuttner, *Kanonistische Schuldlehre: Von Gratian bis auf die Dekretalen Gregors IX.: Systematisch auf Grund der handschriftlichen Quellen dargestellt*, Studi e Testi 64 (Vatican City, 1935), 4-22.

[4] *De pen*. D.1 d.a.c.1: "Sunt enim qui dicunt, quemlibet *criminis ueniam* sine confessione ecclesiae et sacerdotali iudicio posse *promereri*" (emphasis mine).

[5] *De pen.* D.1 d.p.c.37 §1: "Alii e contra testantur, dicentes sine confessione oris et satisfactione operis neminem *a peccato* posse *mundari*."

making satisfaction to God means having one's sin erased from one's account, receiving mercy for that sin, and being cleansed from that sin. In short, the goal in mind for the sinner is remission of sins and therefore the removal of the necessity of eternal punishment because God's justice will have been fully satisfied.

Just as Gratian used different expressions to describe the remission of sins, so also he varied his expression of the means of achieving this goal. Between the two formulations of the initial question (i.e. in the statement of the *causa* and at the beginning of the treatise), Gratian mentioned all three standard elements of penance: contrition, confession, and satisfaction, but, for all three, he pointed to the heart or to secrecy (*sola confessio cordis*, *sola cordis contritio*, and *secreta satisfactio*). In other words, Gratian was asking whether interior penance alone (penance that involves contrition, confession, and satisfaction that God alone witnesses) yields the remission of sins, or whether external penance (contrition followed by confession to a priest and satisfaction according to the priest's judgment) is needed for the remission of sins. The focus of both formulations of the question and of the formulation of the two opposing viewpoints in the distinction rested in the remission of sins, not whether or not external confession is necessary in the context of the church's structure and practice.

This attention to the minute details of Gratian's formulation of his question has become necessary because some scholars have believed that Gratian was questioning the necessity of confession itself and because their views have recently been resurrected. Other treatments of this distinction have suffered from a confusion, sometimes seeming to acknowledge Gratian's chief concern with the remission of sins and sometimes acting as if

Gratian wondered whether external confession to a priest is necessary at all.[6] Nowhere did Gratian ask if confession to a priest is necessary, and everywhere Gratian assumed that confession to a priest normally occurs (and should).[7] The question that Gratian asked, and that every other author of the twelfth century asked, and that every twelfth-century commentator on Gratian understood him to be asking, as Debil demonstrated in an article published in 1914, centered on the moment of remission within the process of penance, not on the necessity of oral confession.[8] No orthodox thinker of the period questioned whether a sinner needs to confess to a priest. The question was whether that confession and the acts of satisfaction that follow constitute the means whereby sins are forgiven or whether sins are forgiven before (and thus hypothetically without) such confession. The question of whether confession is necessary for the remission of sins is very different from the question of whether confession is necessary, and Gratian always connected the question to the forgiveness of or cleansing from sins. The fact that Gratian used *sine* and *absque* in order to ask whether sins can be forgiven by contrition alone *without* oral confession and an act of

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[6] Charles Henry Lea (in his *History of Confession and Indulgences*, 3 vols. [Philadelphia, 1898]) argued that Gratian was asking whether confession is necessary. John Wei has resurrected this view in his dissertation: "Law and Religion in Gratian's *Decretum*" (Ph.D. diss., Yale University, 2008). Some of the treatments of D.1 which suffer from a confusion of the two issues include Paul Anciaux's (in his *La théologie du sacrement de pénitence au XIIe siècle* [Louvain and Gembloux: Nauwelaerts and Duculot, 1949]) as well as Jean Gaudemet's in his "Le débat sur la confession dans la Distinction I du 'de penitentia' (Decret de Gratien, C.33, q.3)." ZRG Kan. Abt. 71:115 (1985): 53-75. My own discussion in "The Evolution of Gratian's *Tractatus de penitentia*" likewise lacked clarity on this point.

[7] Even in his very brief treatment of Gratian's penitential teaching, Schmoll, *Busslehre der Frühscholastik*, 40 got this right when he noted that the remitting power of contrition as exposited in the first part of *De pen.* D.1 did not exclude confession for Gratian.

[8] "La première distinction du 'de paenitentia' de Gratien." *Revue d'histoire ecclésiastique* 15 (1914): 251-73, 442-55. Debil provided a good overview of the historiography of this discussion at the beginning of his article. The first person to defend with force that Gratian was not doubting the necessity of confession but only questioning which aspect of penance brings about remission of sins was Dom Charles Chardon in his *Histoire des sacraments* (Paris, 1745), 4.45-46.

satisfaction does not intimate that Gratian doubted whether confession is a requirement for Christians.[9] As Debil astutely observed, and as other writers of period clarified in their own formulations of the question, *sine confessione* is equivalent to *ante confessionem*.[10] The stronger phrasing of the question using either *sine* or *absque* merely heightened the potency of the issue. If the person answered the question in the affirmative, he was saying that every penitent is saved by contrition before confession and thus, hypothetically, a penitent can do without confession and still be saved, if he or she has no opportunity to confess and do satisfaction. If the person answered the question in the negative, he was saying that no penitent is saved before confession, except those who have no opportunity to confess (i.e. before they die) – then, and only then, does their contrition suffice. For proponents of the first position, contrition as a rule saves. For proponents of the second position, contrition saves only in exceptional circumstances.

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[9] Plenty of writers in the twelfth century, some commenting on Gratian and some not, formulated the question or discussed the issue using *sine* or *absque* and then proceeded to explain why oral confession is still necessary. For example, in his *Summa* Huguccio spiritedly defended contrition as constituting the remittive aspect of penance and yet he then proceeded to explain why confession to a priest remains necessary (cf. below, chapter 10). Peter Lombard also answered the soteriological question in favor of contrition but then proceeded to present the more ecclesiological *questio* and solution as to why confession to a priest remains necessary and obligatory (*Sent.* 4.17.1-4; cf. below, chapter 9). The fact that Gratian did not explicitly ask that next question (why confession is still necessary) or deal with that issue in some other way does not mean that he was questioning confession's necessity here in D.1.

[10] Ibid., 256. Peter Lombard used both formulations (*sine/absque* and *ante*), and he used them interchangeably. In the initial statement of the question in his *Quattuor libri sententiarum* 4.17.1, he writes, "Primo enim quaeritur utrum *absque* satisfactione et oris confessione, per solam cordis contritionem peccatum alicui dimittatur." Then, in stating the position of those who answer the question in the affirmative, he said, "Alii vero dicunt, *ante* oris confessionem et satisfactionem, in cordis contritione peccatum dimitti a Deo." As for Gratian, the clearest place where he created an equivalence between the two is in D.1 d.p.c.36: "Cum ergo *ante confessionem*, ut probatum est, sumus resuscitati per gratiam, et filii lucis facti, euidentissime apparet, quod sola contritione cordis *sine confessione* oris, peccatum remittitur."

The Arguments Pro and Con

Initial Arguments for the First Position

In his dialectical format, arguing both sides of a question with *auctoritates* and *rationes*, or rational arguments, Gratian opened up D.1 by arguing from the perspective of those who answer his question in the affirmative. These people believe that sins are remitted by God on account of the contrition of the penitent temporally before and logically separated from any oral confession. As Gratian said of their view, "There are those who say that anyone can merit mercy for an evil deed without confession to the church and to the judgment of a priest."[11] Gratian laid out several texts along with clever arguments that show support for this thesis; in the original version of *De penitentia* as preserved in Fd, Gratian's presentation offered a tightly-knit and refined argument.[12]

The proponents of this first position had some well-known and oft-cited *auctoritates* at their disposal.[13] The first five canons provided a bulwark on which this position could

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[11] D.1 d.a.c.1: "Sunt enim qui dicunt, quemlibet criminis ueniam sine confessione ecclesiae et sacerdotali iudicio posse promereri." Starting from this discussion in Gratian, one dissertation has traced the notion of confession to God alone back to Cassian and into the early medieval period: William Edward Lori, "*Confessio soli Dei*: Antecedents and Development of the Notion" (Ph.D. diss., The Catholic University of America, 1982).

[12] This section runs from D.1 c.1 through most of D.1 d.p.c.37. The original treatise does not include a significant chunk of *auctoritates* in the middle of that section (cc.6-30 "…*facto deprehenderetur*"). Over half of C.33 q.3 in Sg consists of material that is now identified as *De penitentia* D.1. The sections included are: d.a.c.1 (slightly different), c.1 (*Lacrimas [Petri] – non lego*), c.2, c.3, c.4, c.5, c.37 (*Fit <itaque> confessio – ut iustificeris*), c.38, c.39, c.40, c.42, and c.44 (*Agite penitenciam – mea confiteri [etc.]*). What is in brackets is included in Sg but differs from Friedberg. What is between pointed brackets is present in Friedberg but not in Sg.

[13] Throughout this chapter, I will refer to "proponents of the first position" and "proponents of the second position." No easy way exists to refer to these groups and their view. Marcia Colish (in *Peter Lombard*) refers to "contritionists" and "confessionists," but such terminology evokes a later debate in medieval theology and also can confuse the matter discussed above concerning what is the heart of the question. To contrast "contritionist" with "confessionist" intimates that the "contritionists" may not believe in confession, which is not true in the mid-twelfth century. I have therefore chosen the quite wooden terminology based upon the order in which Gratian presents their views in the first distinction of *De penitentia*.

stand, and most writers of the period recognized several of these texts as supporting the view in question, namely that sins are remitted through internal contrition, even if they did not take this position themselves.[14] The first two canons in fact come from Ambrose's *Commentary on Luke*, although Gratian initially attributed the first canon (only the second half appears in the original treatise) to Pope Leo while his attribution of the second canon to John Chrysostom remained through all stages of the *Decretum*. Many others attributed these texts to Bishop Maximus.[15] In terms of their content, their importance lies in their focus on tears, not speech. After his denial of Christ, Peter wept, but Scripture does not speak of any confession or act of satisfaction. Tears washed away Peter's sin, not any vocal confession, which was too shameful to undergo.[16] The next two passages come from the Psalms. David cried out, "A sacrifice to God, a crushed spirit, a contrite and humble heart, God, you will not despise," and, "I have said, 'I will confess against myself my injustice to the Lord', and you have remitted the wickedness of my sin."[17] These two verses indicate a direct relationship

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[14] Among many, two authors who take the opposite viewpoint but acknowledge that they must then satisfactorily deal with some of the same texts Gratian produces here are the compiler of the sentence collection *Principium et causa omnium* (also known as, because edited as, the *Sententie Anselmi*) and Hugh of St Victor. Cf. The *Sententie Anselmi*, in *Anselms von Laon Systematische Sentenzen*, ed. Franz Bliemetzrieder, Beiträge zur Geschichte der Philosophie des Mittelalters: Texte und Untersuchungen 18:2-3 (Münster: Aschendorff, 1919), 124 and Hugh of St Victor, *De sacramentis christianae fidei* 2.14.1 (in PL 176).

[15] Two works prior to 1140 which attribute the texts to Maximus are *Principium et causa omnium* and Bishop Odo of Lucca's *Summa sententiarum* (incorrectly attributed to Hugh of St Victor by Migne). Cf. The *Sententie Anselmi*, 124, and the *Summa sententiarum* 6.10 (PL 176:147A). Peter Lombard acknowledges the attributions to both Maximus and Ambrose (*Sent.* 4.17.2).

[16] D.1 c.1: "…iuxta illud Ambrosii (Sg, Fd, Aa=Leonis pape) super Lucam, 'Petrus doluit et fleuit, quia errauit, ut homo. Non inuenio quid dixerit; scio quod fleuerit (Petrus – fleuerit] *om*. Sg, Fd, Aa). Lacrimas eius lego, satisfactionem non lego.'" D.1 c.2: "Item Iohannes Chrisostomus. 'Lacrimae lauant delictum, quod uoce pudor est confiteri.'"

[17] D.1 c.3 (Ps. 50:19 [51:17]): "Sacrficium Deo spiritus contribulatus; cor contritum et humiliatum, Deus, non despicies." D.1 c.4 (Ps. 31:5 [32:5]): "Dixi, confitebor aduersum me iniusticiam mean Domino et tu remisisti inpietatem peccati mei." For references to the Psalms, I indicate the standard Vulgate reference number first. For the convenience of English readers looking in an English Protestant Bible, in brackets I provide, whenever possible, the corresponding reference in such Bibles.

between the sinner and God which make no mention of oral confession, and certainly not oral confession to a priest. They speak to the efficacy of a contrite heart and internal confession to God alone for the remission of sins and the satisfaction of God's justice or appeasement of his wrath.

The next text proved to be very important for Gratian's presentation of this first position and for inspiring the most cogent set of additions to the original treatise in later stages of the *Decretum*. The text originated with both Cassiodorus and Augustine and appeared in a somewhat different arrangement in the *Glossa ordinaria* to Psalm 31:5.[18] It reads, "Great is the kindness of God that he has forgiven sins according to his promise alone. I do not yet speak forth from my mouth, and yet God already hears in my heart, for to speak a certain thing forth is, as it were, to say that very thing. For the intention (*uotum*) is understood to be the work (*opus*)."[19] In the original treatise, this final sentence leads into Gratian's statement (erroneously included as part of c.30 in Friedberg) that, "as the authority testifies, the will (*uoluntas*) is rewarded, not the work (*opus*). But the will consists of contrition of the heart, but the work of confession of the mouth."[20] In other words, D.1 c.5 makes clear that the external act is a mere extension of an inner disposition, and the inner

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[18] Cf. the notes by the *correctores* of the *Editio Romana* in Friedberg 1160. See Wei, "Law and Religion," 151-52 for the text as it appears in the *Glossa ordinaria* and his argument that Gratian drew on and rearranged the *Glossa* passage. Although, as will be seen, there can be no doubt that Gratian used the *Glossa ordinaria* on several books of the Bible, I cannot be absolutely sure he used it here. Given the many differences between D.1 c.5 and the *Glossa ordinaria* on Ps. 31:5, one cannot prove that Gratian did use and edit the latter text in the formation of the former. Nevertheless such a view is highly plausible.

[19] D.1 c.5: "Magna pietas Dei, ut ad solam promissionem peccata dimiserit. Nondum pronunciat ore, et tamen Deus iam audit in corde, quia ipsum dicere quasi quoddam pronunciare est. Votum enim pro opere reputatur." A slightly abbreviated form of this text appears in C.17 q.1 d.p.c.4.

[20] D.1 c.30 §1: "Voluntas remuneratur, non opus. Voluntas autem in cordis contritione est, opus uero in oris confessione."

disposition counts and is taken to be the same as the external act. God thus rewards the will, the intention, which corresponds to contrition, not the work, the external act, which corresponds to oral confession. Gratian then gives an emphatic summary to this first position: "It is most clearly established that sins are forgiven by contrition of the heart, not by oral confession."[21]

In later stages of *De penitentia*, between D.1 c.5 and these statements by Gratian, twenty-five additional canons appear that are worthy of note for two reasons. First, they contain the only Roman law texts in all of *De penitentia* at any stage in its composition.[22] Second, of all the additions to *De penitentia*, at least in the first four distinctions, they contribute most effectively to Gratian's argument. Many of the later additions add virtually nothing to the strength of argumentation and in fact break up its flow, in many instances simply latching onto one particular element in a previous canon and making additional statements about that one element, regardless of how integral to the argument the new canons may be. These canons, however, argue strongly for the idea that intention or the will counts for the act or work. Several of the Roman law texts spell out instances in which a person is deemed culpable of a crime even if he does not commit it.[23] The concept was one which remained controversial and unsettled in Roman law and coexisted along with contradictory statements, such as the short one that Gratian (or some other later compiler) included and that

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[21] D.1 d.p.c.30: "Luce clarius constat cordis contritione, non oris confessione peccata dimitti."
[22] In cc.1-21.
[23] For example, part of D.1 c.12 (Dig. 47.10.11) reads, "Not only is he who commits the wrong, that is he who made the attack, held guilty of wrongs, but also he is included who acted out of evil intent or who made preparations so that someone would be given a blow across the cheek with a fist (Non solum is iniuriarum tenetur, qui fecit iniuriam, hoc est qui percussit, uerum ille quoque continetur, qui dolo fecit, uel qui curauit ut cui mala pugno percuteretur)."

says "no one may suffer penalty for a thought."[24] The non-Roman law texts, mostly patristic citations (cc. 22-30), stand outside the context of criminal culpability but make a similar point, stressing the guilt involved in intending or preparing to commit a sin.[25] Although Gaudemet did not know that these texts were later additions, he explained well how they fit into the argument. As he noted, the concept which ties all the canons together is that of *uoluntas*. In the first five canons, *uoluntas* heals, repairs, atones; in cc.6-30, *uoluntas* condemns. In the former, the will effects pardon; in the latter, punishment. In both cases, the intention of the actor constitutes the deciding factor in the act.[26] These later additions, then, while they do interrupt Gratian's argument to a certain extent, introducing texts which have nothing to do with penance and contrition, do strengthen the emphasis by the proponents of the first position on the disposition of the heart constituting the determinative factor in God's eyes for remitting sins.

The next part of the argument that Gratian laid out for the proponents of the first position incorporates the elements of confession of the heart and secret satisfaction which Gratian had introduced in the two formulations of the initial question; this part, through both the *auctoritates* and the rational arguments, makes perfectly clear that Gratian did not intend

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[24] *De pen.* D.1 c.14: "Cogitationis penam nemo patiatur." The text comes from Dig. 48.19.18. On the concept of the culpability of evil intent and the attempt to commit a crime in Roman law (and the lack of clarity and agreement on these issues), cf. the entries "Dolus" (p.440) and "Conatus" (p.401) in Adolf Berger, *Encyclopedic Dictionary of Roman Law*, Transactions of the American Philosophical Society, 43.2 (Philadelphia: American Philosophical Society, 1953).

[25] For example, D.1 c.25 consists of a text from Jerome's commentary on Isaiah, which reads, "All iniquity and oppression and injustice is the judgment of blood: and, although you do not kill with the sword, you nevertheless kill with your will (Omnis iniquitas, et oppressio, et iniusticia, iudicium sanguinis est: et, licet gladio non occidas, uoluntate tamen interficis)."

[26] Gaudemet, "Le débat sur la confession" 62-63.

to discredit oral confession and indeed assumed its occurrence in the course of penance.[27] Two passages from Prosper of Aquitaine's *De uita contemplatiua* speak to the efficacy of silent confession before God and self-inflicted satisfaction. These texts are further interpreted in the extended arguments back and forth between proponents of both positions in d.p.c.87. Then Gratian quoted one the most common biblical passages used in the discussion of penance, very often in the context of death-bed repentance.[28] Here the text, Ezekiel 33:12, serves to make the point that personal grief, not oral confession, allows the sinner to live.[29]

The next quotation (Joel 2:13) leads Gratian not only to emphasize again that sins are remitted in contrition of the heart but also to reveal his inclination to join confession and satisfaction into an exterior aspect of penance and to give the first hint in the treatise of his training in grammar and dialectic. Gratian wrote,

> Hence the prophet Joel says [Joel 2:13], "Tear your hearts, and not your clothes," showing that sins are forgiven by contrition of the heart, which is understood in the tearing of it, not in oral confession, which is part of external

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[27] Wei acknowledged that much of the following section assumes the normal practice of confession following contrition, and yet he argued that this first position is about the non-necessity of confession, not which element of penance remits sins. He argued that Gratian here modified his presentation of this position; in the first several canons, he was arguing that confession is not necessary at all, but now he attempted only to make the weaker argument that confession is not necessary for the remission of sins. The problem with Wei's reading is that Gratian gave no indication that he was moderating the first position; he presented the position as a consistent whole focused on the issue of remission. See Wei, "Law and Religion," 282-83.

[28] Peter Abelard used the text (Ezekiel 33:12) as Gratian did, in support of the notion that contrition on its own brings about the remission of sins. Cf. his *Scito teipsum* in its critical edition, *Peter Abelard's* Ethics, ed. with introduction, English translation, and notes by D. E. Luscombe (Oxford: Clarendon Press, 1971), 88.9-12: "In hoc statim gemitu Deo reconciliamur et precedentis peccati ueniam assequimur, iuxta illud Prophetae, 'Quacumque hora peccator ingenuerit, saluus erit', hoc est, salute animae suae dignus efficietur." Hugh of St Victor used it in the context of deathbed repentance (*De sacramentis* 2.14.5; PL 176:560A).

[29] D.1 d.p.c.32: "This same point is proven by that prophetic authority [Ez. 33:12], 'In whatever hour the sinner turns and laments, etc.' For it is not said 'confesses with his mouth,' but only 'turns and laments, he will live with life and not die' (Hoc idem probatur auctoritate illa prophetica, 'In quacumque hora peccator fuerit conuersus, et ingenuerit.' Non enim dicitur: ore confessus fuerit, sed tantum: 'Conuersus fuerit, et ingenuerit, uita uiuet, et non morietur')."

> satisfaction, which he called the tearing of clothes, understanding the whole from the part.[30]

Gratian could very easily have said here (if his question was whether confession is necessary at all) that oral confession is not necessary. Instead he said that this passage proves that sins are forgiven in contrition, not in oral confession, or in external satisfaction. He understood the command to tear one's heart as applying to contrition and the tearing of clothes to external satisfaction, of which oral confession is a part. Gratian certainly recognized the classic three-fold division of penance into contrition, confession, and satisfaction, but he never focused on this division in any of his own words in *De penitentia*. If anything, he preferred to think of a two-fold aspect of penance, the interior and the exterior. Oral confession and an act of satisfaction fit in the latter category, and, when Gratian came to argue for the second position, he and the *auctoritates* he chose sometimes seemed to conflate the two, which has led some scholars, including Gaudemet, to deprecate Gratian's supposed disorganization and confusion of concepts.[31] Gratian was not confused, however. He conceived of oral confession and an act of satisfaction as one side of the penitential coin and internal contrition as the other, and his question in this distinction was really whether internal

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[30] D.1 c.33-d.p.c.33: "Hinc Iohel Propheta ait: 'Scindite corda uestra, et non uestimenta uestra,' ostendens contritione (Friedberg = contritionem) cordis, que in eiusdem scissione intelligitur, non in confessione oris, que pars est exterioris satisfactionis, quam scissuram uestium nominauit, a parte totum intelligens, peccata dimitti."

[31] Gaudemet approached Gratian's text with a focus on the three parts of penance as distinct entities and assumed Gratian shared his perspective. He never acknowledged that Gratian possessed a different conception that recognized but did not emphasize the distinctions among contrition, confession, and satisfaction. Not seeing the connection in Gratian's mind between oral confession and satisfaction as external elements of penance which go together, Gaudemet later complained about the lack of organization in the treatise. He pointed out that Gratian quoted many texts, such as those related to *agere penitentiam* ("doing penance," or satisfaction), which he thought were totally unrelated to Gratian's question. Besides not understanding the joining of confession and satisfaction in Gratian's treatment, Gaudemet's judgment also stemmed of course from his being unaware that many of the texts he found out-of-place were in fact later additions. Cf. Gaudemet, "Le débat sur la confession," 53-54, 72.

contrition on the one hand or external confession/satisfaction on the other brings about remittance of sins – he never sub-divided the question into whether remission of sins occurs after confession but before satisfaction; the two go together. He was capable of logically separating the two, but he also was attracted to the view of Pseudo-Augustine in *De vera et falsa penitentia* that oral confession itself constitutes part of the penalty required for sin and thus is part of *satisfactio*, a view which others of the time, including Peter Abelard, shared.[32]

Gratian ended his comments on this verse by informing his readers and students that Joel was "understanding the whole from the part." That phrase seems strange and tangential, but it reveals that Gratian's grammatical and dialectical training was alive and well in his thought processes and his exposition of *auctoritates*. The tearing of clothes may refer to external satisfaction, but, in Gratian's mind, Joel here was thinking of oral confession more particularly under the umbrella of the broader whole of external satisfaction, even as modern Americans may refer to a presidential administration when in fact what they have in mind is a particular department or even person within that administration. Such references are perfectly allowable according to the rules Gratian would have learned early on in his education.[33] If a wheel moves, a person can say that the cart of which the wheel is a part moves.

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[32] For Pseudo-Augustine (*De uera et falsa penitentia*, c.10 [text from Karen Wagner, "*De vera et falsa penitentia*: An Edition and Study" (Ph.D. diss., University of Toronto, 1995), 247-48]), it is specifically the shame of confession that comprises part of the satisfaction: "Erubescentia enim ipsa partem habet remissionis…. Multum enim satisfactionis optulit, qui erubescentie dominans nichil eorum que commisit nuntio Dei denegauit." This text appears in *De pen.* D.1 c.88. Peter Abelard affirmed three reasons for confession, the second of which is because the humiliation involved in confession constitutes part of the satisfaction owed for the sin. Cf. his *Scito teipsum*, ed. Luscombe, 98.10-24.

[33] For more on this, see below, chapter 2.

In the next section, Gratian offerred his most intricate reasoning so far and some of the most unique in his whole treatise as compared to his contemporaries, but his arguments did not emerge in a vacuum. They had a very specific origin: sentences by Anselm of Laon and his school. Gratian's genius consisted of transforming arguments and lines of thought by Anselm into reasons for believing that God forgives sins based on contrition, not oral confession and/or satisfaction. He put old concepts to new and more developed uses, beginning with comments on the two gospel accounts that always came to bear on discussions of penance and, in particular, the priest's role in it: Jesus' healing of the ten lepers and Jesus' raising of Lazarus from the dead.[34]

The former narrative appeared to be a strong argument in favor of contrition as the remittive element in penance, and this story proved to be decisive for many, including Huguccio, while the latter narrative was often viewed as being more in favor of the view that sins are remitted only when the sinner submits to the priest's judgment. Luke 17:11-14 recounts the first story in which ten lepers, who by Jewish law would have been required to live outside of town, approached Jesus as he entered a village. They asked for mercy, and Jesus told them to show themselves to the priests. On their way to the priests, before they reached them, the ten lepers were healed. In another passage that recounts Jesus' healing of a single leper (in Matthew 8:1-4), Jesus touched the leper, the leper was cleansed, and then

[34] The dominance of these two narratives in the medieval tradition and discussion of penance is traceable to texts by Jerome on the healing of the lepers (Jerome, *In Matthaeum* 3.16) and Gregory the Great on the raising of Lazarus (Gregory, *In Evangelium Lucae II, Hom. 26*, 5-6). Cf. Anciaux, *La Théologie du sacrement de pénitence au XIIe siècle*, 38-39, 168-74, and also Stephan Kuttner, "Zur Frage der theologischen Vorlagen Gratians," ZRG Kan. Abt. 23 (1934): 261. Repr. in idem, *Gratian and the Schools of Law, 1140-1234*, Collected studies series 113 (Aldershot: Variorum, 1980), (III).

Jesus ordered him to show himself to a priest and present an offering. Jesus' instructions were in accord with Jewish law as laid down in Leviticus 13-14; the priests were the judges of cleanliness and only they could declare a leper cleansed. The process of declaring a leper cleansed and welcoming him back into the community involved various sacrifices, burnt offerings as well as grain, as prescribed in Leviticus 14. The healing of the leper(s) was so common in discussions about penance, that many writers referred to it in passing, but the adherents to this first position would interpret it in the same way: leprosy symbolizes sin; Jesus healed the lepers prior to their arriving at the priest; therefore sin is remitted by God and Christ before the penitent appears before the priest for confession. Many writers emphasized the real yet limited role of the priest, and thus they, as can be seen in Rolandus, Peter Lombard, and Huguccio, stated quite clearly that priests merely show that sins that have already been forgiven are forgiven.[35] They publicly declare what God has already done.

Gratian's focus, however, was quite narrow as he buried himself in this argument that contrition alone is what brings about remission. Thus, he did not make as clear a statement on the priest's role as modern scholars might like. What he did provide was a more detailed and drawn-out analogy between the lepers and the penitents, all the while never distancing

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[35] Rolandus stated that a sin is remitted in oral confession and a work of satisfaction in the sense that it is shown to be remitted (*remissum monstratur*). Cf. Rolandus of Bologna, *Die Sentenzen Rolands*, ed. Ambrosius Gietl (Amsterdam: Editions Rodopi, 1969; repr. of Freiburg: Herder, 1891), 248. Peter Lombard (*Sent.* 4.18.6) concluded that priests remit and retain, or loose and bind, sins in the sense that they judicially declare and show them to have been forgiven or retained by God: "Hi [sacerdotes] ergo peccata dimittunt vel retinent, dum dimissa a Deo vel retenta iudicant et ostendunt." When commenting on the term *medici* in Gratian's quoting of Psalm 87:11 (88:10) in d.p.c.34 (shortly after the recounting of the healing of the ten lepers), Huguccio noted that priests do not cleanse from sins, even though the exercise of their office works towards that end: "Medici, id est apostoli et alii sacerdotes qui sunt medici animarum sed eas a peccatis non mundant, sed ad earum mundationem suum offitium exercent, sicut et in ueteri testamento sacerdos leprosum non mundabat" (Admont, Stiftsbibliothek 7, fol. 476va).

himself from the assumption that all of his contemporaries made: the leper/penitent will eventually go to a priest to confess and be assigned satisfaction. In fact, Gratian in several cases used *ante(quam)* in this discussion to separate remission of sins and contrition temporally from confession, and in this language he revealed his affirmation that confession will and should occur. Expounding the Matthew account of the healing of the one leper, Gratian wrote,

> So that the Lord might show that the sinner is cleansed not by sacerdotal judgment but by the greatness of God's grace, he cleansed the leper by his touch and afterwards ordered him to offer a sacrifice to the priest according to the law. For the leper is touched when the mind of the sinner is illuminated with respect to divine kindness and feels remorse. For this reason, after his three-fold denial, Peter, with the Lord gazing back at him, poured forth bitter tears with which he diluted the guilt of his denial. The leper presents himself to the priest when the penitent confesses his sin to a priest. [The leper] offers a sacrifice according to the law when [the penitent] carries out with deeds the satisfaction imposed on him by the judgment of the church. But [the leper] is cleansed before he reaches the priests when remission of a sin is granted through contrition of the heart before oral confession.[36]

Using a fairly standard allegorical reading of the gospel narrative, Gratian made a strong case for the first position, explaining in detail how the story of the lepers correlates with the practice of penance.

Gratian's interpretation of the raising of Lazarus, however, involved far more originality, for this story often appeared in support of the second position, that sins are remitted only once someone confesses to a priest. Lazarus and his two sisters, Mary and

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[36] D.1 d.p.c.34: "Ut Dominus ostenderet, quod non sacerdotali iudicio, sed largitate diuinae gratiae peccator emundatur, leprosum tangendo mundauit, et postea ut sacerdoti sacrificium ex lege offerret precepit. Leprosus enim tangitur, cum respectu diuinae pietatis mens peccatoris illustrata conpungitur. Unde post trinam negationem Petrus, Domino eum respiciente, profudit amaras lacrimas, quibus culpam suae negationis diluit. Leprosus semetipsum sacerdoti representat, dum peccatum suum sacerdoti penitens confitetur. Sacrificium offert ex lege, dum satisfactionem ecclesiae iudicio sibi inpositam factis exequitur. Sed ante, quam ad sacerdotes perueniat, emundatur, dum per contritionem cordis ante confessionem oris peccati uenia indulgetur."

Martha, constituted three of Jesus' closest friends and loyal followers outside of the twelve apostles. When Lazarus died, as recounted in John 11, his sisters were distraught and asked for Jesus' help. Jesus wept over his friend's death. Jesus entered Lazarus' tomb, called him forth, and Lazarus walked out of the tomb alive, but he was still bound hand and foot with burial wrappings and cloths. Jesus commanded that he be unbound. Although John does not specifically say so, the standard reading of this text was that those Jesus had commanded to unbind the resurrected man were his disciples, whose successors are the church's priests. Many writers, including Pseudo-Augustine and Hugh of St Victor, took this to mean that confession is necessary for the remission of sins, for a sinner is loosed from his sins only through the workings of the priest.[37] Gratian, on the other hand, turned this gospel narrative into a mini-treatise on death and life and on the Lord being the giver of life and being Life itself. His basic argument rested on the self-evident idea that a dead men cannot speak or confess anything and on the analogy of physically dead humans with sinners, who are spiritually dead in their souls. Gratian moved on from this conceptual foundation to argue that no sinner becomes alive again except through God, who is the life of the soul, and no one can be alive unless he has been absolved of all sin, of all that condemns him to eternal punishment and death; therefore, if someone confesses, he must have already become alive which means his sins must already have been forgiven.[38] Gratian's argument is eminently

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[37] Pseudo-Augustine, *De uera et falsa penitentia*, c.10 (ed. Wagner, 248). Hugh of St Victor, *De sacramentis christianae fidei*, 2.14.8 (trans. Ferrari, 417-18; PL 176:565).

[38] The flavor of the argument here in D.1 d.p.c.34 is captured by this segment: "If, therefore, no one confesses except he who has been made alive, but no son of eternal hell and no one worthy of perpetual damnation lives, it is clear that, before each person confesses his sin, through the grace of internal compunction he is absolved from the guilt of his transgression by which eternal punishments were owed to him. (Si ergo nullus confitetur, nisi suscitatus, nemo autem uiuit eternae gehennae filius, et perpetua dampnatione dignus, patet, quod ante,

Augustinian. The identification of God as the *uita animae* pervaded Augustine's writings, but one passage in the *Enarrationes in Psalmos* is particularly relevant here, because in it Augustine commented extensively on the raising of Lazarus and argued that the soul is only alive when God is present to it; if the Lord's presence departs from it, it dies: "There are two lives, one of the body, the other of the soul. Just as the soul is the life of the body, so is God the life of the soul. In the same way that the body dies if the soul departs, so the soul dies if God departs."[39] Gratian knew this passage well; he wrote, "For since God is the life of the soul, but the soul is the life of the body, just as the body cannot live with the soul being absent, so also the soul cannot live unless with God being present."[40] Gratian argued this view cleverly, but the general line of thought, namely the movement from considering Lazarus' resurrection to identifying God as the one who raises sinners to spiritual life, was not entirely unique to him.

A student of Anselm of Laon developed an argument for the opposite view, that confession is necessary for the remission of sins, which followed similar lines. Whereas Gratian spoke of *resuscitatio*, this writer spoke primarily of *uiuificatio* (but did use the verb *suscitare*). The point was the same for both: God raises sinners to life as Christ raised

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quam quisque confiteatur peccatum, a reatu suae preuaricationis, quo eterna sibi debebantur supplicia, per gratiam internae conpunctionis absoluitur)."

[39] *Enarrationes in Psalmos* 70, Sermo 2 (CCSL 39: 962.58-60): "Duae uitae sunt, una corporis, altera animae: sicut uita corporis anima, sic uita animae Deus; quomodo si anima deserat, moritur corpus, sic anima moritur, si deserat Deus."

[40] D.1 d.p.c.35: "Cum enim Deus sit uita animae, anima uero uita corporis, sicut corpus uiuere non potest anima absente, ita non nisi Deo presente anima uiuere ualet." Directly before this sentence, Gratian quoted Augustine. The quotation is very similar to the marginal gloss attributed to Augustine in the *Glossa ordinaria* on Ps. 70:17. Gratian wrote (D.1 c.35), "Resuscitatus corpore uiuit absente suscitatore. Non autem sic resuscitatus in anima." The Gloss reads, "Quid mirabilius quam mortuos suscitare. Suscitatus corpore uiuit, etiam absente suscitatore; non sic suscitata anima sine Deo, qui est eius uita." Gratian may have taken his quotation from the *Glossa ordinaria* (Wei thinks so), but his words exhibit an additional knowledge of Augustine, particularly the passage in the *Enarrationes*, separate from it.

Lazarus to life. This writer argued, in contradistinction from Gratian, that, while God vivifies, priests loose, and the one is useless without the other, and therefore both are necessary for complete penance and fruitful remission, unless the penitent has no time to confess to a priest and dies first. In the course of his argument, this writer, like Gratian, quoted Psalm 87:11, although they quoted different parts of it with some overlap emphasizing the inability of physicians (priests) to raise people from the dead.[41] The pattern, though, is similar: the question of man's salvation in relationship to penance leads to a discussion of the raising of Lazarus which in turn leads to a focus on the vivifying powers of God which includes a quotation from Psalm 87:11. Another member of the school of Laon argued very similarly in a sentence recorded by Weisweiler. This writer affirmed that Christ alone is the one who vivifies, as in the case with Lazarus, but his vicar (a priest) looses. The vicar should loose only once Christ has vivified, which he determines in the course of confession. And while true penance (contrition through the vivifying power of Christ) earns

[41] *Sententia* 363, in Odon Lottin, *Psychologie et morale aux XIIe et XIIIe siècles*, vol. 5, *Problèmes d'histoire littéraire: L'école d'Anselme de Laon et de Guillaume de Champeaux* (Gembloux: J. Duculot, 1959), 273 identifies this sentence as belonging to the school of Anselm of Laon and William Champeaux. No evidence exists that it belongs to Anselm himself, although other sections in this somewhat lengthy sentence quote nearly verbatim a sentence confirmed to have been by Anselm (cf. Lottin, 53). The passage with the most parallels with Gratian reads thus: "…Lazarum Christus suscitauit, non ministri, eumque nonnisi discipuli soluerunt, et illi quid ualeret uiuificatio si semper iaceret ligatus in sepulcro, uel quid prodest solutio nisi precesserit uiuificatio? Sic dum iustus peccator amare compungitur et merens punit quod deliquit, a Deo uiuificatur: in quacumque enim hora peccator ingemuerit, remittitur illi peccatum, sed nisi sacerdoti confiteatur, nihil prodest: uiuificatus est, sed ligatus non potest abire. Similiter si sacerdotem adeat corde non contrito, non uiuificatur; solius enim Dei est, illud unum nil prodest. Utrumque simul perfectum est, alterum sine altero omnino inutile est, nisi forte in articulo mortis deprehensus non habeat spatium confitendi et tantum amare penitens omnium commissorum, imprimis de hoc quod confessus non fuit, dum licuit. Unde in psalmo: *numquid mortuis facies mirabilia et medici suscitabunt?* (Ps. 87:11). Consulat quisque conscientiam suam, si ueniens ad sacerdotem meruit a Deo uiuificari. Meruit utique si uere penituit; penitentia autem est uelle deflere commissa et penitenda non committere."

mercy as soon as it is present, the penalty of penance remains.[42] With the exception of the omission of Psalm 87:11, the same pattern is in place.

On the other hand, Lazarus came up frequently in discussions of penance and remission of sins, and so perhaps the pattern was broadly in use in the period and not unique to the school of Laon. Authors such as Hugh of St Victor and, after him, Odo of Lucca in the *Summa sententiarum* made the point that God alone vivifies but that, as the Anselmian author stressed, loosing by a priest is also necessary for full and complete remission.[43] What is unique, however, to Gratian and the first student of Anselm is the incorporation of Psalm 87:11 into their discussion. The inclusion of it in the anonymous Anselmian *sententia* suggests that the verse was quoted by Anselm when he lectured on issues related to penance. Confirmation that this was the case is found in the interlinear gloss on this verse in the *Glossa ordinaria* likely composed by Anselm himself or someone in his circle. The interlinear gloss on the first part of the verse ("Numquid mortuis facies mirabilia, aut medici suscitabunt?"), which Anselm's student cited and the second half of which Gratian cited, reads, "For he says that [they/the miracles] are not done to those people for whom, even if they were done, they would be useless, because men cannot be raised to life by doctors so

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[42] *Sententia* 493 (Heinrich Weisweiler, *Das Schrifttum der Schule Anselms von Laon und Wilhelms von Champeaux in deutschen Bibliotheken* [Beiträge zur Geschichte der Philosophie und der Theologie des Mittelalters 33, 1-2; Münster, Aschendorff, 1936], 105-106): "Sciendum tamen est, quod Christus tantum vivificator est; vicarius suus solutor; et ideo vicarius non debet eum solvere, donec perpendat Christum vivificasse. Perpendet vero ex confessione, que et ideo statuta est. Quam cito enim Christus vivificat mortuum, quod est per penitentiam, ut Lazarum, debet prodire de monumento. Prodiit autem cum vicario confitetur, cuius est ut solvat eum institis. Sed licet vera penitentia, quam cito est, veniam habeat, tamen pena penitentie superest, sicut post baptismum pena peccati." This position leans in the direction Abelard took and fleshed out; cf. below towards the end of this chapter.

[43] Hugh of St Victor, *De sacramentis christianae fidei* 2.14.8; *Summa sententiarum* 6.11.

that they may *confess to the Lord*."[44] On the second half of the verse ("[numquid] et [mortui] confitebuntur tibi?"), which Gratian included in his quotation, the interlinear gloss reads, "For *confession* from a dead heart passes away as if it did not exist."[45] Gratian's usage of the verse, which in and of itself makes no mention of confession or priests, in commenting on how sinners, as spiritually dead, cannot confess unless they have first been vivified by God, thus stemmed from Anselm's teaching. They both understood this verse as applying to priests (universally understood as being the *medici* of the soul), who are incapable of raising the spiritually dead to life so that they may confess. They both made the point that a spiritually dead person cannot make a fruitful or effective confession. That Gratian merely came across these glosses on Psalm 87 and decided to incorporate the verse with its Anselmian interpretation into *De penitentia* is unlikely. On this point the other shared features between Gratian and Anselm's student's *sententia* become important. The gloss does not mention Lazarus and does not stress the vivifying powers of God. One cannot posit, then, that Gratian read this gloss in isolation and then happened to include its idea in a discussion of Lazarus' resurrection and the distinctive power of God to make the spiritually dead spiritually alive, just like Anselm's student. In other words, Gratian did not just read and draw on an interlinear gloss; he was familiar with the context within which Psalm 87:11 was discussed in the school of Anselm of Laon and in his school alone. Gratian adapted this general line of thought about Lazarus' resurrection which was prevalent in the school of Laon and reshaped it in order to suit more purely and consistently the first position as he presented it in D.1.

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[44] ed. Rusch, 2.567[a]: "Non enim eis dicit fieri quibus, etsi fiant non prosunt, quia a medicis non suscitabuntur homines ut confiteantur domino."
[45] Ibid.: "A mortuo enim corde perit confessio quasi non esset."

That he did so is a testament to his ingenuity and skills in producing appropriate arguments for any position.

As Gratian continued his argument in favor of the first position, he moved from the theme of life versus death to other dichotomies, including light versus darkness, sons of God versus sons of the devil, the temple of the Holy Spirit versus the temple of Satan. He began with the idea of God as being the life of the soul and thus inhabiting it. Whatever God is, the soul of which he is the Life must participate in it, and whatever is antithetical to what God is cannot coexist with him in a person's soul. As the temple of the Holy Spirit, the soul inhabited by God is illuminated and thus can no longer be the temple of the devil or have the shadow of sin or darkness indwelling it. Gratian drew on 2 Corinthians 6:14-16 as well as John 3:20 to stress the mutual exclusivity of these two cosmic groups: God, light, and righteousness on the one side and the devil, darkness, and sin on the other. Gratian then pointed to actions, quoting other biblical texts emphasizing that the works one does define whose son one is and texts stressing the chasm between Christ and the devil along with their members (*membra*). What was the point of all this argumentation? Gratian created a deep web of ontological and biblical reasoning in order to ground the argument that remission of sins must occur prior to confession. No one confesses unless he is already spiritually alive, the son of God, a member of Christ, a temple of the Holy Spirit, a son of light, one who lives and loves, undeserving of hell – in short, someone made good (*bonus factus*), but no one can be these things if he is tainted by sin. Therefore, God must have already removed the taint of

sin from a person before he or she confesses.[46] Remission, then, comes through contrition with God enlivening and illuminating the soul. All of this occurs prior to and, in that sense, without confession.

Gratian stealthily, perhaps subconsciously, quoted and paraphrased Augustine in this argument. At times, he let his readers know that he was quoting Augustine. At other times, however, Augustine crept in without any announcement on Gratian's part. When Gratian added love (*dilectio*) into his heavenly amalgamation in contradistinction from all things evil and devilish, he wrote, "Love, however, is not in an evil person. It is the proper fount of good people in which no one foreign (i.e. to God/belonging to the devil) takes part."[47] That second sentence came from Augustine's *Enarrationes*, and a version of it made its way into several early-to-mid twelfth-century treatments of love, particularly in the context of the question of whether love once had can be lost (*utrum caritas semel habita amitti possit*), which is the

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[46] D.1 d.p.c.36: "Since therefore, as has been proven, we have been resuscitated through grace and have been made sons of light before confession, it is most evidently apparent that sin is remitted by contrition of the heart alone without oral confession. (Cum ergo ante confessionem, ut probatum est, sumus resuscitati per gratiam, et filii lucis facti, euidentissime apparet, quod sola contritione cordis sine confessione oris, peccatum remittitur.)" Note the equivalence in Gratian's mind between *ante confessionem* and *sine confessione* in this discussion. D.1 c.37-d.p.c.37: "Likewise [1 John 3:14]: 'All who do not love remain in death.' Therefore, if he lives, he also loves; if he loves, love is in him; but love is not in an evil person. It is the proper fount of good people in which no one foreign [to God] takes part. Therefore, he has been made good through grace before the confession of sin; he is thus not evil, for someone is not able to be good and evil at the same time. But if he is not evil, he is proven not to be a member of the devil and consequently is undeserving of hell, which is owed only to the devil and his members, just as eternal beatitude is prepared only for the members of Christ. Therefore, sin is not remitted in confession, because it is proven to have already been remitted. (Item. 'Omnis, qui non diligit, manet in morte.' Si ergo uiuit, et diligit; si diligit, dilectio in eo est; dilectio autem in malo non est. Est enim fons bonorum proprius, in quo non conmunicat alienus. Ergo bonus factus est iste per gratiam ante confessionem peccati: non itaque malus est; bonus enim et malus aliquis simul esse non potest. Quod si malus non est, membrum diaboli non esse probatur: nec ergo dignus est gehenna, que diabolo et eius membris solummodo debetur, sicut eterna beatitudo solummodo membris Christi paratur. Non ergo in confessione peccatum remittitur, quod iam remissum esse probatur.")

[47] D.1 d.p.c.37: "Dilectio autem in malo non est. Est enim fons bonorum proprius, in quo non conmunicat alienus."

focus of *De penitentia* D.2.[48] Both Peter Abelard and Peter Lombard used the text in this context. Abelard quoted a fuller and more accurate version in his *Sic et Non*, a truncated version of which appeared in the third book of Peter Lombard's *Sentences*.[49] Another work in which it made an appearance was the *Quaestiones super epistolas Pauli*, an anonymous work of the school of Robert of Melun.[50] The tract on charity *Ut autem hoc euidenter* contained still another version.[51] While Gratian was thus drawing on a fairly well-known text among

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[48] Augustine, *Enarrationes in Psalmos* 103, Sermo 1 (CCSL 40:1482.69-78): "In omnibus scripturis supereminentissimam uiam, supereminentissimum locum caritas obtinet; non ad eam adspirant nisi boni, hanc nobiscum non communicant mali: possunt communicare baptismum, possunt communicare cetera sacramenta, possunt communicare orationem, possunt communicare istos parietes, et istam coniunctionem; caritatem nobiscum non communicant. Ipse est enim fons proprius bonorum, proprius sanctorum, de quo dicitur: *Nemo alienus communicet tibi.* Qui sunt alieni? Omnes qui audiunt, *Non novi uos." Augustine was making the point that evil (not saved) people can share baptism, the other sacraments, and prayer, among other things, with good (saved) people, but caritas belongs solely to the good, the saints. Evil people do not share it. Augustine's entire sermon is filled with the language of light, illumination, membra of Christ, etc. which Gratian's discussion echoes. The specific phrase "nemo alienus communicet tibi" comes from Proverbs 5:17.*

[49] Peter Abelard, *Sic et Non* 138 (ed. Boyer and McKeon, 476.182-477.186; PL 178:1578A): "In omnibus Scripturis super eminentissimum locum caritas obtinet. Hanc nobiscum non communicant mali. Ipse est enim fons proprius bonorum, proprius sanctorum, de quo dicitur, Nemo alienus communicet tibi. Qui sunt alieni? Omnes qui audiunt, non novi vos." Peter Lombard, *Sent.* 3.31: "Item: Caritas est fons proprius et singularis bonorum, cui non communicat alienus. Alieni sunt omnes qui audituri sunt: *Non novi vos."*

[50] *In epistolam I ad Corinthios*, q.117 (PL 175:535C): "*Caritas est fons proprius bonorum*, etc. Quaeritur, an caritas possit haberi ab iis qui sunt damnandi. Nonne ipsi sunt alieni, qui non communicant fonte proprio bonorum. Solutio. Ideo caritas dicitur fons proprius bonorum, quia nemo potest simul caritatem habere, et malus esse." Based on this Augustinian text, the author argued that those to be damned cannot have love. Gratian would in fact make an argument for the opposite view in D.2, that the reprobate can possess *caritas*, but, if they do at some point, they do not persevere in it until death. This work is wrongly attributed by Migne to Hugh of St Victor and is entitled there *Quaestiones et decisiones in epistolas D. Pauli*. Landgraf assigns it to Robert of Melun's school but also points out its reliance on Peter Lombard's *Collectanea* and *Sentences*. Cf. Artur Michael Landgraf, "Familienbildung bei Paulinerkommentaren des 12. Jahrhunderts," *Biblica* 12 (1932), 170, and idem, *Introduction à l'histoire de la littérature théologique de la scolastique naissante*, rev. A.-M. Landry, trans. L.-B. Geiger (Montreal and Paris: J. Vrin, 1973), 91.

[51] n.104 (ed. Wei; I thank John Wei for sharing his unpublished edition of this text): "Augustinus. "Fons ille est caritas. Cetere uirtutes possunt esse communes bonis et malis, sed caritas est propria et singularis uirtus bonorum, et nullus alienus eam participat." This treatise shares an immense amount of material with *De penitentia* D.2, while another treatise, *Baptizato homine*, also edited by Wei and which frequently appears in the same manuscripts as *Ut autem hoc euidenter*, shares a good portion of material with *De penitentia* D.3. Both treatises are usually included in a sentence collection of the school of Laon known as *Deus itaque summe*. Wei believes that Gratian drew on these treatises or that Gratian and these treatises share a common source (or both). Because of the shared canons, often in a similar order with very few variants, and particularly because of identical text between these treatises and some of Gratian's *dicta*, some literary relationship between them and

theologians of his time, he alone brought the text to bear on an extended argument about the role of contrition versus confession in the remission of sins.

Finally, as Gratian brought his exposition of the first position to a close, he created an analogy with Abraham's circumcision and again revealed simultaneously originality of thought combined with a connection to Anselm of Laon and his school. After stating that sin is not remitted in confession because it is proven to have already been remitted,[52] Gratian rounded out this entire first section of D.1 by saying, "Confession is thus made as a demonstration of penance, not as a searching after mercy; just as circumcision was given to Abraham as a sign of righteousness, not as the cause for justification, so also confession is offered to the priest as a sign of mercy already received, not as the cause for remission yet to be received."[53] Romans 4:1-12 provide the background for this analogy. There Paul recounted the declaration of Abraham's righteousness in Genesis 15 based on Abraham's faith (vv.3-5), and Paul emphasized the fact that this counting Abraham as righteous occurred *before* he was circumcised (v.10), which circumcision he then called a "sign" (v.11). Besides exemplifing Gratian's affinity for the grammatically parallel construction of *sicut…ut/sic* and explaining how proponents of the first position view confession (as a demonstration or sign

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De penitentia is clear. Because research on these treatises is in its early stages, because I have been unconvinced by Wei's arguments about the priority of these treatises over and against *De penitentia*, and because I have found many counter-arguments against Wei's hypothesis in my own study of the texts and some of their manuscripts, I leave the question open for now and approach these treatises as topically-focused sentence collections with some extended connection to the school of Laon. Cf. Wei, "Penitential Theology in Gratian's Decretum: Critique and Criticism of the Treatise Baptizato homine," ZRG Kan. Abt. 126 (2009): 78-100. Cf. below, chapter 8, in which I open up the possibility that these treatises are instead dependent on Gratian.

[52] D.1 d.p.c.37: "Non ergo in confessione peccatum remittitur, quod iam remissum esse probatur."

[53] Ibid.: "Fit itaque (ergo Sg) confessio ad ostensionem (in signum Sg) penitenciae, non ad inpetrationem ueniae, sicut circumcisio data est Abrahae in signum iusticiae, non in causam iustificationis, sic (*om.* Sg) confessio sacerdoti offertur in signum ueniae acceptae, non in causam remissionis accipiendae." For an explanation of how the passage fits into the flow of the text in Sg and could provide evidence that Sg includes an earlier version of C.33 q.3 than Fd and Aa, see my "Evolution," 98-104.

of remission received through contrition), this short passage unequivocably demonstrates the influence of the school of Anselm of Laon on Gratian.

The discussion of Abraham's circumcision and how it relates to New Testament institutions (usually baptism, though, not penance) was a favorite among Anselm and his students. Unlike Gratian, Anselm created a contrast between circumcision and New Testament-era sacraments. In one particular sentence, Anselm discussed sacraments in general and made the standard distinction between *sacramentum* and the *res sacramenti*. Although the explanations of these terms could be as numerous as the authors writing about them (particularly when trying to identify the exact *sacramentum* and *res sacramenti* for each individual sacrament),[54] Anselm adhered to the basic view that the *sacramentum* is a sign which in and of itself is not efficacious. The real substance or power of the sacrament, that which brings about an effect in the recipient of the sacrament, is designated by the term *res sacramenti*.[55] Anselm postulated that sacraments in the Old Testament such as the Red Sea, manna, and circumcision were figurative only and thus lacked the *res sacramenti*, whereas New Testament sacraments are accompanied by the *res sacramenti* so that, for instance,

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[54] Anciaux, *La théologie du sacrement de pénitence*, 145.

[55] Anselm, teaching as he did in the late eleventh and early twelfth century, lived in a time, as even Gratian did, when the term *sacramentum* and the number and identification of the sacraments had not yet been standardized. Theological developments on that front constitute one of, if not the, greatest achievement of the theologians of the century. Cf. Damien van den Eynde, *Les Définitions des sacrements pendant la première période de la théologie scolastique (1050-1240)* (Rome/Louvain, 1950); Artur Michael Landgraf, *Dogmengeschichte der Frühscholastik*, vol. 3:1-2, *Die Lehre von den Sakramenten* (Regensburg: Friedrich Pustet, 1952); Wendelin Knoch, *Die Einsetzung der Sakramente durch Christus: Eine Untersuchung zur Sakramententheologie der Frühscholastik von Anselm von Laon bis zu Wilhelm von Auxerre*, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters: Texte und Untersuchungen 24 (Münster: Aschendorff, 1983).

someone is cleansed from their sin when they are baptized (not just doused with water).[56] As proof of his thesis on Old Testament sacraments, Anselm referred to Abraham's circumcision, saying, "Circumcision did not bring about remission of sins, and remission had been able to be had without it, as is clear in Abraham, who was righteous before circumcision."[57] Gratian picked up on this exact point and turned it around to formulate an exact parallel to, not contrast with, a New Testament *sacramentum*, by saying that confession as a sign of sin already having been remitted through contrition is like Abraham's circumcision being a sign of righteousness already received through faith.

Another of the sentences that is attributed to the school of Anselm of Laon included language about Abraham's circumcision that echoes Gratian's own words. In this sentence, a student of Anselm discussed three modes or ways in which the law functioned for Old Testament Israelites, all based on Paul's discussions in Romans 2, Romans 4, and Galatians

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[56] *Sententia* 51 (ed. Lottin, 48): "Ibi [in ueteri testamento] tantum fuerunt sacramenta figuralia sine re, scilicet, mare rubrum, manna, circumcisio, et talia. In nouo, baptisma, communio altaris, confirmatio, et alia, et ista comitatur res sacramenti ut qui baptizatur ilico mundetur a peccato, quod ibi non erat." This sentence is confirmed to be Anselm's. It appears in the *Liber pancrisis*, an early-twelfth-century floriliegium of sentences by patristic authors as well as contemporary masters, namely Ivo of Chartres, William of Champeaux, Anselm of Laon, and Anselm's brother Ralph, contained in London, British Museum, Harley 3098 and Troyes, Bibliothèque municipale 425, both dated to after 1113. The text is rare and immensely valuable due to the fact that it attributes each sentence to a master in contrast to the common practice of making no attributions to contemporary masters at all. Among the sentences attributed to contemporary masters, the greatest number is attributed to Anselm (sixty-four in all). Cf. Lottin, 10-13.

[57] Ibid.: "Circumcisio enim non faciebat remissionem peccatorum et sine ea poterat haberi, ut in Abraham patet, qui fuit iustus ante circumcisionem." The gloss on Romans 4:3, presumably by Anselm, speaks of Abraham's faith as a "sufficient cause of righteousness for Abraham and for others." Like in his sentence printed by Lottin, Anselm held back from applying Abraham's situation to everyone generally and for Christians in his day. With language reminiscent of that used in the discussion of penance, Anselm noted that faith is not sufficient for righteousness and salvation if a person has time for works: "Credere sufficiens causa fuit ei iusticie et est aliis, sed tamen qui habet tempus operandi ei non dabitur merces secundum gratiam tantum, sed secundum debitum operationis sue. Sed ei qui non habet tempus operandi, si credit, sola fides sufficit ad iusticiam et ita ad salutem secundum gratiam propositam omnibus, vel secundum quod Deus legem ante posuit" (ed. Rusch, 4.281[b]). The exact same argument was made by the proponents of the second position with regards to penance: contrition is sufficient only if one does not have time to confess and do satisfaction; if have has time for these, then contrition does not suffice.

3.[58] For some, the law served as a sign of justification already received (*in signum iustificationis iam accepte*), as it did for Abraham, who was righteous before he was circumcised. So also for David, the law was a sign of righteousness (*signum iustitie*). And, the author noted, although David knew that God does not take delight in sacrifices, he still offered them so that he might show himself to be righteous (*ut ostenderet se iustum*).[59] The terminology is Gratian's exactly when he referred to circumcision as a sign of Abraham's righteousness, not a cause of his justification (*in signum iustitie, non in causam iustificationis*), and when he calls confession a demonstration (*ostensio*) of repentance and a sign of mercy received (*signum uenie accepte*). Anselm's student did not relate this point to penance; Gratian was unique in that.

The closest someone came to relating Abraham's faith and circumcision to penance was in the commentary on Romans by Anselm's most famous student and self-proclaimed rival, Peter Abelard. Abelard foresaw a question about the superfluity of Abraham's circumcision if he was justified before it. Abelard responded that Abraham received this external sign (*signum exterius*) not for justification (*ad iustificationem*) but for sanctification and a demonstration of righteousness (*ad sanctificationem et ostensionem iustitiae*).[60] Debil

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[58] Lottin attributes this and other sentences to the school of Anselm of Laon and William of Champeaux on the basis of their presence in manuscripts in a series of sentences which include ones which are known to be by the masters.

[59] *Sententia* 338 (ed. Lottin, 261): "Lex tribus modis suo tempore habebatur. Aliis enim erat *in signum iustificationis iam accepte* per fidem, ut Abrahe qui, antequam circumcideretur, iustus fuit; Dauid quoque eam *in signum iustitie* habuit qui dixit: 'Quoniam si uoluisses sacrificium, dedissem utique, holocaustis non delectaberis; sacrificium Deo spiritus contribulatus'; licet enim intelligeret Deum illis non delectari, sed in iustificatione fidei, tamen sacrificauit ut *ostenderet se iustum*."

[60] *In Romanos* 4 (PL 178.842C): "Forte quereret aliquis quare superflue circumcisionem acceperit Abraham, cum ante iustificatus fuerit, nihilque in ea iustificationis acceperit? et ideo hanc questionem preueniens, ait non

pointed out that, a few lines earlier, a consideration of the faith of Abraham motivated by love led Abelard to reflect briefly on the remission of sins through groaning or contrition motivated by the love of God.[61] Peter Abelard, then, did not make as explicit a connection as Gratian did between Abraham's circumcision and external penance, but his statements could yield such a conclusion.

Other early sentence collections associated with the school of Laon used the same terminology when discussing Abraham's circumcision and sacraments in general. The collection *Principium et causa omnium*, also commonly known as the *Sententie Anselmi*, contained a section on Abraham's circumcision and more generally on sacraments that mimics Gratian's language of *signum*, *causa*, *ostensio*, and the distinction between the *res sacramenti* already having been received and yet to be received.[62] This author had a different focus and doctrinal point in this passage (and one which Gratian would not adopt), but what Gratian and he shared was a common framework and terminology for thinking about

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ad iustificationem aliquam eum hoc signum exterius suscepisse, sed ad sanctificationem et ostensionem iustitiae, quam iam habebat in mente dum adhuc in preputio esset."

[61] Ibid. (PL 178.840C): "Ex amore Dei remittuntur quidem peccata per penitentiae gemitum de quo dicitur: quacumque hora." Cf. Debil, "La première distinction," 449.

[62] *Sententie Anselmi*, ed. Franz Pl. Bliemetzrieder, in *Anselms von Laon systematische Sentenzen* (Beiträge zur Geschichte der Philosophie und der Theologie des Mittelalters 17, 2-3; Münster: Aschendorff, 1919), 47-153. On Abraham's circumcision, the author wrote, "Abraham, cum iustus esset, non ideo circumcisionem accepit, ut iustificaretur per eam, sed ut iustificatus *ostenderetur*, ceteri autem non tantum *in signum*, sed etiam ad remedium [circumcisionem acceperunt], sine quo tamen deus iustificare potuit. Non enim potentiam suam numeris rerum alligauit" (89). On sacraments more generally, the author distinguished between the external and the internal effect of the *res sacramenti*, which he defined as "the justification of man." His presentation is unique and convoluted, but his basic point at the end of passage quoted is that the visible sacrament is the cause of the remission of sins but the sign of the theological virtues of faith, hope, and love, both elements of which apparently make up for him man's justification. In infants, the sign is of theological virtues yet to be received, but in adults, the sign is of theological virtues already received through faith, just as Abraham's circumcision was: "Res sacramenti iustificatio est hominis, tam exterioris, que in simplici predictorum remissione, quam interioris, que in triplici constat uirtutum susceptione, scilicet, fidei, spei, caritatis, et illius quidem sacramentum uisibile est causa, istius uero signum, suscipiende quidem in paruulis, iam uero suscepte in adultis, sicut circumcisio Abrahe signaculum iustitie erat iam ex fide suscepte" (114).

sacramental matters, and Abraham's circumcision held a major spot in that framework. Another Anselmian sentence writer, the author of the *Sententie Atrebatenses*, conceived of three historical eras, the first of natural law, the second of written law, and the third of grace. For the good people in the era of written law, the law was given as a sign and figure of the new law (*in signum et figuram nove legis*), not for justification.[63] "For," the author wrote, "we do not read of Abraham that he was circumcised and 'it was credited to him as righteousness' but that 'he believed.'"[64] These early sentence collections were by no means complete in terms of a comprehensive or systematic treatment of all theological topics (they were important but literarily far-removed precursors of the *summae* soon to make their appearance), and yet Abraham's circumcision consistently appeared in them in terminology and a framework of thought that Gratian shared but that the post-Anselmian Parisian schools did not. Abraham's faith and circumcision and Paul's treatment of it in Romans 4 evidently held an important place in Anselm's thought and teaching, especially on the sacraments and the relationship of the Old Testament era to the New.

Initial Arguments for the Second Position

Having completed his opening set of arguments for the first position, that sins are remitted in contrition prior to confession, Gratian began from the end of d.p.c.37 to lay out *auctoritates*, biblical *exempla*, and *rationes* in support of the second position. This position held that sins are remitted in confession and satisfaction (although a contrite heart is still

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[63] "Les 'sententiae Atrebatenses,'" ed. Odon Lottin, *Recherches de théologie ancienne et médiévale* 10 (1938): 225.5-15.
[64] Ibid., 225.18-20: "Non enim legitur de Abraham quod circumcisus est et *reputatum est illi ad iustitiam*, sed quod credidit."

necessary), and thus that no one can be cleansed from sin without oral confession and an act of satisfaction, if he has the time for making such satisfaction.[65] This final phrase (*si tempus satisfaciendi habuerit*) does not indicate a softness and leniency on Gratian's part as someone who was sensitive to the demands of the new urban, commercial society in which someone might not have been able to fit confession to a priest into his or her busy schedule.[66] No, the phrase in one form or another appeared with astounding frequency in all literature on penance (and also other sacraments) of the time. The phrase became a second-nature qualification for twelfth-century writers. What lay heavy upon their mind was nothing other than death. They had in mind those persons who lie dying or have a terrible accident and do not have time to confess to a priest and/or complete the required satisfaction. Another common way to describe people in this situation was to refer to them as *in articulo necessitatis* (literally, "in the moment of necessity").[67] These phrases expressed an urgency and a very real pastoral concern in a period in which death was all too common and all too

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[65] D.1 d.p.c.37 §1: "Alii e contra testantur, dicentes sine confessione oris et satisfactione operis neminem a peccato posse mundari, si tempus satisfaciendi habuerit."

[66] Colish suggested this as Peter Lombard's meaning when he used the phrase: "If the penitent has time, he should also confess to a priest, although the sin has already been remitted. Peter presents this issue as if penitents are people with such busy schedules that, for perfectly legitimate reasons, they may be unable to go to confession" (*Peter Lombard* 2.603). She did not realize how common the phrase was and what it always signified: a state of emergency as someone lay at death's door. Philipp W. Rosemann, *Peter Lombard* (Oxford: Oxford University Press, 2004), 165 correctly criticized Colish's interpretation, but his explanation of the phrase was similarly erred when he said, "It is more likely that [Peter Lombard] has in mind believers who live in outlying areas, hamlets in the middle of nowhere with no, or only difficult, access to a priest."

[67] The connection can be seen very clearly in a sentence from the school of Laon (*Sententia* 363; ed. Lottin, 273): "Utrumque [contritio et confessio] simul perfectum est, alterum sine altero omnino inutile est, nisi forte *in articulo mortis* deprehensus *non habeat spatium confitendi*." In a sentence on baptism, Anselm spoke of the possibility of adults without faith being baptized right before death (in which case the sacrament does not save) or of adults with faith not being baptized because the *articulus necessitatis* makes it impossible, meaning that they die first. Then, in talking about those who did not have faith at baptism but then gain faith, Anselm made the point that good works must follow if they have time (*tempus habuerit*). Anselm did not mean that the baptized should do good works if they could find time for them in their busy schedules; no, in the context, it is clear that "having time" is equivalent to "not being in the moment of necessity," i.e. not being about to die. Cf. *Sententia* 57 (ed. Lottin), 53.

difficult to stave off. Thus, as mentioned above, the proponents of this position viewed contrition as necessary but not sufficient for the remission of sins, but they allowed for this exceptional circumstance, in which case contrition would be deemed sufficient at least to ward off eternal damnation, even if not all punishment.

In sum, then, contrition is not sufficient for remission, but contrition is sufficient for remission in emergency cases, in times of urgent necessity. This relaxing or changing of the rules under extreme circumstances found expression in another and more famous form as canonical jurisprudence developed. This form was that proceeding from the maxim *necessitas non habet legem*. As Kuttner explained, no developed theory of *necessitas* emerged in the twelfth century, but canonists appealed to several general maxims or principles. In cases of extreme emergency, when a person finds himself in a desparate situation and must make a willful choice of whether to do something that would normally be identified as a sin, the act either is not sinful or at least carries less guilt than in normal circumstances. In considering such a phenomenon, many canonists cited the maxim that necessity has no law that had appeared twice in the *Decretum* (C.1 c.1 d.p.c.39 and *De consecratione* D.1 c.11).[68] The one concrete case that the canonists investigated was that of the starving poor: may a poor person who is hungry to the point of being on the brink of

[68] Kuttner, *Kanonistische Schuldlehre*, 292-93. For a recent treatment of this principle in the canonical tradition and also a consideration of the maxim's application in the two places in the *Decretum* (both sacramental and not dealing at all with *pauperes*), cf. Franck Roumy, "L'origine et la diffusion de l'adage canonique *Necessitas non habet legem* (VIIIe-XIIIe s.)," in *Medieval Church Law and the Origins of the Western Legal Tradition: A Tribute to Kenneth Pennington*, ed. Wolfgang P. Müller and Mary E. Sommar (Washington, DC: The Catholic University of America Press, 2006), 301-319.

death by starvation take food that belongs to another?[69] To my knowledge, no canonist ever related this discussion to penance and the remission of sins, but the theories that developed around the *necessitas* principle at least show that the second position in D.1 did not stand on an assumption foreign to the period. Many thinkers accepted that the rules governing normal circumstances do not always apply to extreme circumstances.

The concern with times of urgent necessity standing behind the *si tempus habuerit* clause in the second position relates even more closely to an issue brought up later in *De penitentia* D.6 in a citation from Pseudo-Augustine. The author considered the situation in which a person has no access to a priest but evidently finds himself in a time of *necessitas*, expecting to die, and wants to confess. The person thus has the time to confess (though not perform satisfaction), but he does not have the time to search out and confess to a priest. In this case, Pseudo-Augustine supports the death-bed penitent confessing to a layperson.[70] Neither Pseudo-Augustine nor Gratian in quoting him explicity referenced the idea of *necessitas* in this context, but both were sensitive to situations outside of the control of human actors, situations that placed a human in the state of necessity. That same sensitivity underlay the frequent usage of clauses like *si tempus habuerit* by the proponents of the second position and many twelfth-century authors.

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[69] For an in-depth treatment of this topic from both theological and canonical sources, cf. Gilles Couvreur, *Les pauvres ont-ils des droits? Recherches sur le vol en cas d'extrême nécessité depuis la Concordia de Gratien (1140) jusqu'à Guillaume d'Auxerre (†1231),* Analecta Gregoriana 111 (Rome: Università Gregoriana, 1961).
[70] Cf. below, chapter 5 for a discussion of this notion of lay confession and the *auctoritas* as a whole (D.6 c.1). There is a closely related topic of *necessitas*, that of a priest reconciling a person excommunicated by a bishop without that bishop's permission in moments of necessity (i.e. a the end of that person's life), in C.26 q.6. Cf. below, chapter 6 for a discussion.

To start off his argument for the second position, Gratian produced a rather lengthy series of *auctoritates* without much commentary. This section in the original treatise (from the end of d.p.c.37 to d.p.c.87) entailed far fewer *auctoritates* with a closer relationship to each other than appears in the Friedberg edition. Later stages of the treatise added canons 41, 45-48, 51a, 53, part of 56, 57-60, 69-77, and 81 §3-86. Wei has made a compelling case that the thirteen canons after d.p.c.60 in the original treatise (cc. 61-68, 78-81 §2, and 87) comprise a section that Gratian inserted at some point after his first drafting of the treatise, a stage of his composition that is not preserved in any manuscript. These canons do not tie in well with the flow of Gratian's argument as preserved in Fd and Aa, no *dictum* refers to them (even the very lengthy d.p.c.87 which immediately follows them and which makes reference to several previous canons), and they all appear to come from one chapter in the same formal source, the *Collectio in tribus libris* (3L).[71] These many additions to D.1 created a stumbling block for scholars prior to Winroth's discovery as they interrupted Gratian's original argument, for they make Gratian appear far more disorganized and unfocused than he was.[72] The following analysis will highlight Gratian's original argument, focusing in particular on d.p.c.60, but will mention the basic content of clusters of canons added in later stages.

Gratian did not make his readers and students guess how most of the *auctoritates* he quoted fit into the second position. The opening of d.p.c.60 explains this, revealing also what

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[71] Wei, "Law and Religion," 285-86. For his hypothesis that all the 3L 3.19 is Gratian's formal source (the work from which he copied the canons) for these canons, see ibid., 163-177.

[72] See, for example, Gaudemet's treatment, "Le débat sur la confession" 65-68, and 72-73. He characterized the distinction as having "weakness of argumentation and a lack of rigor" (*la faiblesse de l'argumentation et le manque de rigueur*); according to him, few of the canons actually address the initial question posed, while most deal with related aspects such as culpable intention (in cc.6-30) and "doing penance" (i.e. acts of satisfaction, in cc.63-87). Note that most of the tangential sections to which Gaudemet referred were later additions.

aspects of the authorities, some of which he had quoted at length, struck Gratian as most important and relevant. Looking back on these texts, he summarized the argument of the proponents of the second position thus:

> From these things it is thus clear that sin is not remitted without oral confession and a work of satisfaction. For if it is necessary that we recite our iniquities so that we may afterwards be justified [d.p.c.37]; if no one can be justified from a sin unless he has previously confessed the sin [c.38]; if confession opens up paradise [and] obtains mercy [c.39]; if that confession is alone useful that occurs with penance (in which it is noted that confession is one thing, penance another, whether an interior or exterior entity is understood [by 'penance']) [c.39 middle]; if he who promises mercy to the person doing penance secretly before God and not before the church frustrates the gospel and the keys given to the church, [and if] he also promises what God denies to the transgressor [c.44]; if no one can obtain mercy unless he pays the penalty, however small, even if it is less than he owes [c.42]; if the power of binding and loosing has been bestowed by God on priests alone [cc.49 and 51]; if no one receives mercy unless he strives to procure it by the supplications of the church [c.49]—it is therefore concluded that no one may do away with the guilt of sin before oral confession and a work of satisfaction.[73]

Some of the authorities speak of confession explicitly as part of complete penance or as necessary for justification and the reception of mercy; others focus on the power and authority given to the church, specifically the power to bind and loose that has been given to priests. Nowhere did Gratian suggest that the proponents of the second position denigrated

[73] D.1 d.p.c.60: "Ex his itaque apparet, quod sine confessione oris et satisfactione operis peccatum non remittitur. Nam si necesse est, ut iniquitates nostras (= Fd; *ant.* necesse Friedberg) dicamus, ut postea iustificemur; si nemo potest iustificari a peccato, nisi antea fuerit confessus peccatum; si confessio paradysum aperit, ueniam acquirit; si illa solum confessio utilis est, que fit cum penitencia (in quo notatur aliud esse confessio, aliud penitencia, siue interior siue exterior accipiatur); si ille, qui promittit ueniam occulte apud Deum non apud ecclesiam penitenciam agenti, frustrat euangelium et claues datas ecclesiae, promittit etiam quod Deus negat delinquenti; si nemo potest consequi ueniam, nisi quantulamcumque, etsi minorem quam debeat, peccati soluerit penam; si solis sacerdotibus ligandi soluendique potestas a Deo tradita est; si nullus ueniam accipit, nisi ecclesiae supplicationibus ipsam inpetrare contendat: concluditur ergo, quod nullus ante confessionem oris et satisfactionem operis peccati abolet culpam." Note again how Gratian uses *sine confessione* (first sentence) and *ante confessionem* (last sentence) interchangeably. The argument is about the moment of remission and what is required for remission, not whether confession is necessary.

contrition; in fact later canons emphasize the necessity of a humble and contrite heart. The point of this position, as Gratian understood it, lay in recognizing the power and role of the church and the entire, three-fold process of penance as Gratian knew it in his day. These *auctoritates* suggest that sinners need the church and priests not just to show that sins have already been remitted but in order to receive that remission. Sinners are not loosed from their sins until a priest looses them; sinners cannot receive mercy unless priests as their intercessors pray for them, and the priests cannot pray for them, it is assumed, unless they know in what ways and how greatly the sinner is a sinner.

When Gratian summarized this first grouping of *auctoritates*, he revealed two important aspects of his thought on penance. First, as mentioned previously, Gratian consistently grouped confession and satisfaction together and made a distinction between internal penance (contrition) and external penance (satisfaction tied to confession). His conceived of the primary division within penance as internal versus external. External *penitentia* is equivalent to *satisfactio operis*, and that satisfaction is inextricably bound to *confessio*. If Gratian quoted an *auctoritas* that seemed to refer only to satisfaction and not at all to confession, such as c.42,[74] he was not being disorganized or confusing two different issues. The distinction between confession and satisfaction was soteriologically insignificant for Gratian, as it was for his contemporaries.

Second, in the context of penance, *ecclesia* was equivalent to *sacerdotes* for Gratian, and the second position, the view that sins are forgiven only when the penitent undertakes

[74] (Augustine): "Nullus debitae grauioris penae accipit ueniam, nisi qualemcumque, etsi longe minorem quam debeat, soluerit penam. Ita enim inpertitur a Deo largitas misericordiae, ut non relinquatur iusticia disciplinae."

confession and satisfaction, defended and preserved the ecclesiastical structure and its authority as ordained by God. From the beginning of the distinction, the church and priests are conspicuously absent from the first position and present in the second. In his opening words, Gratian asked the question in terms of whether God can be satisfied by contrition of the heart alone, and advocates of the first position hold that mercy can be merited "without confession to a church and the judgment of a priest," that is, without oral confession and the satisfaction assigned by the priest. The second view, then, was not about the vocalization of sins in abstraction but in great part about submission to ecclesiastical authority. In presenting the first position, Gratian made no mention of the keys and the power to bind and loose. Now in the section on the second position, many of the *auctoritates* quoted deal exclusively with the church's power and the priests' authority to bind and loose. Therefore, for Gratian, the defense of ecclesiastical powers was part-and-parcel of the view that sins are remitted only once the sinner confesses to a priest and submits to his judgment.[75] A quotation from one of Augustine's homilies connected the dots for Gratian. Augustine commanded his hearers to do penance as it was done in the church so that the church may pray for them. He proceeded to argue that, if penance could be done merely secretly before God, the keys would have been given to the church in vain, and the gospel itself along with the words of Christ would be

[75] Hödl made the point that, for Gratian, a large part of what the power of the keys meant was the power to administer penance. He examined *De penitentia* D.1 as well C.16, C.20, and C.24. In reading his work, one should keep in mind that Hödl did not believe Gratian was the author of *De penitentia* but did believe Gratian had something to do with its incorporation into the *Decretum*. He accepted the second position of *De penitentia* D.1 as Gratian's own. Cf. Ludwig Hödl, *Die Geschichte der scholastischen Literatur und der Theologie der Schlüssgewalt*, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters, Texte und Untersuchungen 38.4 (Münster: Aschendorff, 1960), 164-74.

frustrated.[76] In short, the authority believed to have been given to the church (and to orthodox, ordained priests in particular, as c.49 and c.51 make clear) would be useless. According to Gratian in d.p.c.60, the very fact that God has bestowed the power to bind and loose on priests supports the view that remission does not occur prior to confession and satisfaction.[77] In short, if priests have the power to loose, then their loosing is required for, integral to, and even constitutive of the remission of sins.

The following section of d.p.c.60 provides the first glimpse in *De penitentia* into Gratian's penchant for parading biblical *exempla*, mostly from the Old Testament, before his students. Here his approach combined a historical exegesis with which he created analogies with the contemporary situation and an allegorical exegesis with which he foresaw the ecclesiastical institution of penance in biblical personages and events. He stated that he was going to start from the beginning of the human race in order to show that no one can be

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[76] D.1 c.44: "Agite penitenciam, qualis agitur in ecclesia, ut oret pro uobis ecclesia. Nemo dicat sibi: occulte ago, apud Deum ago, nouit Deus, qui ignoscit michi, quia in corde ago. Ergo sine causa dictum est: 'Que solueritis in terra soluta erunt et in celo.' Ergo sine causa claues datae sunt ecclesiae Dei, frustramus euangelium Dei, frustramus uerba Christi; promittimus uobis quod ille negat: nonne uos decipimus? Iob dicit: 'Si erubui in conspectu populi peccata mea confiteri.'…" This canon is interesting in and of itself. It appears in truncated form (stopping where I have stopped here) in Sg. In Sg, the next canon to follow is D.6 d.p.c.1. This extreme jump in the treatise is one of the reasons I have favored the view that Sg preserves an even earlier version of the *Decretum* than Fd. The issue here in D.1 c.44 is penance before the church in contrast with secret penance before God alone. Its emphasis on the publicity of penance leads smoothly into the issue addressed in D.6 c.2, the punishment for priests who divulge the content of confessions. If Sg does indeed present an earlier stage of C.33 q.3, Gratian's concern appears to have been to clarify the content of c.44 and make sure (especially given the term *populus* in the Job quotation from Job 31:34) that no one thinks he is advocating absolute publicity of confessions. I discuss this leap in Sg in "The Evolution of Gratian's *Tractatus de penitentia*," 106-109. My brief explanation here represents a slight advancement from what is presented there. There I had supposed that the Job quotation presented Job's fear of making his sins known, but in fact Job is boldly declaring that he has kept nothing hidden from anyone. The sequence in Sg tempers that boldness, making clear that the confession of sins to a priest need not and indeed must not involve the broadcasting of those sins to the entire community.

[77] "…si solis sacerdotibus ligandi soluendique potestas a Deo tradita est…: concluditur ergo, quod nullus ante confessionem oris et satisfactionem operis peccati abolet culpam."

cleansed from sin without confession.[78] His argument runs from Adam and Eve down to John the Baptist and Jesus' miracles. Some of his examples work better than others. Oftentimes, the church and priests cannot be interpreted as being part of the narrative (as with Adam and Eve's confession and Cain's lack of confession before God), and, in these instances, the *exempla* serve the point that oral confession is necessary for sins to be remitted.[79] At other times, saints such as David are viewed allegorically or mystically (*mistice*, as Gratian explicitly says) as representing the church, without whose intervention and prayers no one can be freed from the snares of the devil, just as Saul could not rid himself of a vexing spirit without David's soothing music.[80] Some *exempla* highlight the necessity of an act of

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[78] D.1 d.p.c.60 §1: "Denique, ut perspicue appareat, neminem sine confessione a peccato mundari, ab ipsius humani generis principio sumamus exordium." John E. Rybolt noted that the relating of historical examples, either from Scripture or from saints' lives, constituted a consistent part of Gratian's *dicta* throughout the *Decretum*. Since such practice mimicked that of contemporary sermons, Rybolt surmised that such *exempla* might be evidence of the oral presentation of Gratian's work, as opposed to "labored canonical writing" ("The Biblical Hermeneutics of Magister Gratian: An Investigation of Scripture and Canon Law in the Twelfth Century" [Ph.D. diss., St. Louis University, 1978], 55).

[79] D.1 d.p.c.60 §1: "Our parents, having been corrupted by the sin of the first transgression, were questioned by the Lord about their guilt so that, by their confession, they might destroy the sin which they had committed by their transgression. The serpent, however, was not questioned about his guilt because he was not called back to life through confession. Cain as well, when he had added fratricide to the first failure of duty, was similarly asked about his guilt by the Lord, when it is said to him, 'Where is your brother, Abel?' But, because he was proud and refused to confess his sin [and] instead tried to deceive God through an untruthful denial, saying, 'Am I my brother's keeper?', he was judged unworthy of mercy. (Peccato transgressionis primi parentes corrupti a Domino sunt requisiti de culpa, ut peccatum, quod transgrediendo conmiserant, confitendo delerent. Serpens autem de culpa requisitus non est, quia per confessionem non reuocabatur ad uitam. Cayn quoque, cum primae preuaricationi fratricidium addidisset, similiter a Domino de culpa requisitus est, dum dicitur ei: 'Ubi est Abel frater tuus?' Sed quia superbus peccatum suum confiteri noluit, potius mendaciter negando Dominum fallere conatus est, dicens: 'Numquid custos fratris mei sum ego?' indignus uenia iudicatus est.)"

[80] Ibid.: "Also Saul, when he was vexed by a malign spirit, could not return to the functioning of a healthy mind unless David first took up the Psalter and sang psalms in his presence, and in this way the devil ceased his vexation. In this story it is mystically shown that, whoever is delivered up to the devil on account of his sins cannot be torn away from his dominion unless David, that is, the church, take possession of the Psalter and sing psalms in his presence, that is, make him a participant of spiritual grace, and, through salubrious admonition and pious prayer on his behalf and the offering to him of examples of good works, restrain the devil from his invisible vexation. (Saul quoque, cum a spiritu maligno uexaretur, non poterat ad sanae mentis offitium redire, nisi prius Dauid psalterium arriperet, et coram eo psalleret, et ita ab eius uexatione cessaret diabolus. In quo mistice ostenditur, quod quicumque diabolo propter peccatum mancipatur, ab eius dominio eripi non ualet, nisi

satisfaction to appease God's wrath, such as the Ninevites, who humbled themselves and repented in order to avoid impending destruction. Stories such as these "show that no one obtains mercy from God unless he first satisfies him through penance."[81] Accounts of miraculous healings in the gospels, which are always preceded by the afflicted person or his family and friends crying out to Jesus for mercy, emphasize the necessity of oral confession and supplications offered up by the church in order for the sinner to be saved.[82] No other writer of this period brought biblical *exempla* to bear on this issue to this extent. The healing

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Dauid, id est ecclesia, psalterium accipiat, et coram eo psallat, id est participem spiritualis gratiae ipsum faciat, et salubriter ammonendo, et pie pro eo orando, et exempla boni operis sibi prebendo, diabolum ab inuisibili eius uexatione conpescat.)"

[81] Ibid.: "The Ninevites, when they heard, 'Forty days more and Nineveh will be destroyed,' did penance at the order of their king and princes, saying, 'Who knows? If we should turn back, God may both forgive and leave his blessing after him.' By this satisfactory humility, they merited an avoidance of imminent destruction. By their examples, it is clearly shown that no one would obtain mercy from God if they were not first to make satisfaction for themselves through penance. (Niniuita cum audirent: 'Adhuc quadraginta dies, et Niniue subuertetur,' ex edicto regis et principum penitenciam egerunt, dicentes: 'Quis scit, si conuertatur, et ignoscat Deus, et relinquat post se benedictionem?' Hac humilitate satisfactionis inminentem subuersionem euadere meruerunt. Quorum exemplis euidenter ostenditur, quod nullus a Deo consequatur ueniam, nisi primum satisfecerit sibi per penitenciam.)"

[82] D.1 d.p.c.60 §2-§3: "Also we read that Christ raised some from the dead, cleansed others of leprosy, caused others to see, and made firm the loose limbs of the paralyzed. Nevertheless, we read that the pleading of these people's own voice or that of their friends had preceded the healing in every case. For by the report of Luke we learn that Christ was asked for on behalf of Peter's mother-in-law before he returned her to health. The leprous man whom Christ healed while descending the mountain first cried out to him, 'Lord, if you want, you can cleanse me;' afterwards the Lord cleansed him by his touch. Also when the blind man cried out to him, 'Have pity on me, Son of David,' Jesus questioned him: 'What do you want me to do to you?' He replied, 'Rabbi, that I may see light.' Also he heard about three dead people whom he returned to life by the pleas of others. Also he heard of a fourth by the announcement of a disciple, but, because there failed to be any living who would plead for him, this dead person did not deserve to be raised to life. By these examples, it is certainly most clearly given to be understood that he whom the stain of very serious guilt taints will not be able to be healed except through the confession of his own mouth or through the supporting intercession of the church. (Christus quoque alios legitur suscitasse a mortuis, alios a lepra mundasse, alios illuminasse, aliorum membra paralisi dissoluta consolidasse: omnium tamen sanitatem petitio propriae uocis uel amicorum legitur precessisse. Luca enim referente didicimus, quod pro socru Petri prius rogatus est, quam eam sanitati redderet. Leprosus uero ille, quem descendens Dominus de monte mundauit, prius clamauit ad eum: 'Domine, si uis, potes me mundare,' quem postea tangendo mundauit. Cecus quoque dum clamaret ad eum: 'Miserere mei, fili Dauid,' interrogauit eum Iesus: 'Quid uis, ut faciam tibi?' ait: 'Rabboni, ut uideam lumen.' Tres quoque mortuos audiuit, quos aliis orantibus reddidit uitae. Quartum quoque discipulo nunciante audiuit; sed quia defuerunt uiui, qui pro eo precarentur, resuscitari non meruit. Quibus nimirum exemplis euidentissime datur intelligi, quod ille, quem macula grauioris culpae inficit, nisi confessione proprii oris, uel intercessione ecclesiae suffragante, sanari non poterit.)"

of the lepers and Lazarus' resurrection often constituted the breadth of their use of biblical persons and events. Gratian would duplicate this approach in an extensive section of D.2 as well as D.3 when addressing the questions particular to those distinctions. His intellectual arsenal was full: not only did he quote *auctoritates*, analyze them with grammar and dialectic, and formulate his own *argumenta* in support of or against a position, but he also engaged in creative allegorical readings, not just of biblical passages but of biblical persons and events. Biblical exegesis became almost as, if not just as, important to him for wading through various opinions as the quoting of *auctoritates* and dialectical reasoning.

Most of the texts leading up to Gratian's next extensive *dictum* (d.p.c.87) discuss proper acts of satisfaction with special attention to alms-giving. If Wei is correct, all of these texts may have been absent from Gratian's first drafts, but certainly canons 69-77, and 81 §3-86 were added to the original treatise as preserved in Fd. They do seem somewhat out of place, but some make important points. The canon following immediately upon d.p.c.60, for example, states very succinctly, "That confession is sufficient for the penitent which first is offered to God, then to the priest as well, who comes near as the intercessor for the offences of penitents."[83] It combines confession to God and priest, making them equally important, and defines the role of the priest as that of an "intercessor." Others emphasize the necessity of true humility in satisfaction and refraining from evil, not just doing the required deed. Two of the rare rubrics state, "The measure of grief rather than of time ought to be considered in an act of penance," and, "The mortification of vices is more necessary for the penitent than

[83] D.1 c.61: "Sufficit penitenti confessio, que primum Domino offertur, deinde sacerdoti, qui pro delictis penitencium precator accedit."

abstaining from food."[84] This large series of canons brings to a close the second major section of D.1. What follows comprises a further delving into the main question and an interchange between the proponents of both views in which they directly address each other's positions and *auctoritates*.

Reactions and Clarifications by the Two Positions

What appears as D.1 d.p.c.87 in Friedberg consists of additional arguments back and forth between the proponents of the second position, of the first position, and finally of the second position once more. Here Gratian's dialectical style and methodology take center stage. The proponents of each position must now explain the *auctoritates*, and, in one case, the *rationes*, which seem to support the opposite view. They must give an interpretation of those texts in such a way that those texts become reconciled to the *auctoritates* that they originally cited in support of their position and thus in such a way that those texts actually become additional support for, not arguments against, their viewpoint. In other words, d.p.c.87 entails, or at least attempts, the *concordia discordantium canonum* in D.1. In the course of this debate, some common threads emerge on both sides, some of which have already made their appearance and some of which are new. They include the emphasis on obtaining remission of or mercy for sins, a distinction between internal and external penance, the dovetailing of confession and satisfaction, and (this is new) a division between private and public penance.

[84] Rubrics for c.84 and c.86, respectively, both of which are not contained in Fd and Aa: "Doloris mensura potius quam temporis in actione penitenciae consideranda est," and "Mortificatio viciorum magis quam abstinentia ciborum penitenti est necessaria."

In formulating this debate, Gratian began by arguing from the point of view of the second position with a re-evaluation of the opening *auctoritates* that had been used in support of the first position. Gratian explicitly stated this as his intent: "By these authorities [viz. through c.87] it is asserted that no one can be cleansed from sins without penance and the confession of his own mouth. Hence the formerly mentioned authorities, by which it appeared to be proven that mercy is offered by contrition of the heart alone, are to be interpreted in another manner than they are explained by them [the proponents of the first position]."[85] Gratian once more framed the whole issue in terms of cleansing from sins and obtaining mercy – what in the process of penance brings about forgiveness for sins: contrition alone, or contrition plus oral confession plus a work of satisfaction/external penance? First, Gratian dealt with the issue of Peter's tears.[86] The proponents of the second position admit that Peter did not confess and have satisfaction assigned to him in the way that contemporary practice dictated, but they believe Peter confessed and did satisfaction in some sense, for he confessed his love of Christ, which wiped out his sin of denying Christ, and his tears constituted satisfaction. More than this, Peter then devoted his entire life to the renunciation of evil and obedience to Christ. Gratian conceded that if some person could imitate Peter and completely abandon sin in this life, then that person would not need to

[85] D.1 d.p.c.87: "His auctoritatibus asseritur, neminem sine penitencia et confessione propriae uocis a peccatis posse mundari. Unde premissae auctoritates, quibus uidebatur probari, sola contritione cordis ueniam prestari, aliter interpretandae sunt, quam ab eis exponantur."

[86] D.1 c.1. Later redactors of the text did not correct the attribution here; in the original treatise, Gratian attributes c.1 to Pope Leo while later versions corrected it to Ambrose. The attribution to Leo in d.p.c.87 remained.

confess orally and perform a fixed satisfaction under the direction of priests and the church.[87] The unstated assumption is that such a case is extremely rare, if not purely hypothetical, and that normally a person can only get rid of his or her sins through the mediation of a priest and specifically assigned satisfaction since he or she will not live a blameless life in the future. Others in Gratian's time explained this passage away with the historical argument that the institution of penance had not yet been established in the church.[88]

Gratian dealt with the other passages cited in support of the first position by interpreting them as referring to public penance and as emphasizing the importance of

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[87] D.1 d.p.c.87: "For the satisfaction of tears followed Peter's denial, as did the third confession of love for the Lord, by which he completely did away with the sin of the third denial. Therefore a fixed satisfaction for sin was not necessary for him for whom the entire time of his life was being devoted to the obedience of his Maker. For he was expressing that statement of the Prophet: 'Turn away from evil and do good,' and the one of Isaiah: 'Let the wicked man abandon his way of life and the man of iniquity his thoughts, etc.' Nothing more is required of the sinner. Thus the satisfaction of penance is not denied to be necessary for any delinquent person whomsoever by that authority of Pope Leo, but only to him who has imitated the Blessed Peter in completely renouncing this world and utterly mortifying the kindling-wood of all vices in himself. (Negationem namque Petri secuta est satisfactio lacrimarum, et trina confessio dominicae dilectionis, qua penitus deleuit peccatum trinae negationis. Non ergo necessaria sibi erat certa satisfactio peccati, cuius totum uitae tempus obedientiae inpendebatur sui conditoris. Imitabatur enim illud propheticum: 'Declina a malo, et fac bonum;' et illud Ysaiae: 'Derelinquat inpius uiam suam, et uir iniquus cogitationes suas etc.' Amplius horum a peccatore nichil exigitur. Non ergo illa auctoritate Leonis Papae satisfactio penitenciae negatur esse necessaria cuilibet delinquenti, sed ei tantum, qui B. Petrum imitatus huic seculo penitus abrenunciat, et cunctorum uitiorum fomitem in se funditus mortificat.)"

[88] This is the position Peter Lombard took in *Sent.* 4.17.4, as does the *Sententie diuinitatis* 5.4. Both authors followed the *Summa sententiarum* 6.10 (PL 176:147B), which commented on the Bishop Maximus text (*De pen.* D.1 c.1) by saying, "Vel potest dici quod ista institutio in Novo Testamento nondum facta erat, quando scilicet Petrus poenitentiam de peccato egit; et ideo sine confessione oris potuit veniam consequi."

For medieval thinkers, including Gratian, the primitive church did not necessarily represent the fullest development of the church. Thus they recognized that, while the primitive church was on the one hand an ideal, the church had developed somewhat in time (Glen Olsen, "The Idea of the *Ecclesia Primitiva* in the Writings of the Twelfth-Century Canonists," *Traditio* 25 [1969]: 80): "[T]he idea of the primitive Church as the standard of Christian life generally was not held to the detriment of the idea that there might be developments after the period of the primitive Church which also should command respect, and which might in fact perfect that which was unformed in the early Church." On the canonistic tradition of received truth, whether its ultimate source be in the Scripture, in patristic writings, in papal decretals, or in conciliar decrees (the last three of which were always supposed to be based on the objective truth of the first), cf. Brian Tierney, "'Only the Truth Has Authority': The Problem of 'Reception' in the Decretistis and in Johannes de Turrecremata," in *Law, Church, and Society: Essays in Honor of Stephan Kuttner*, ed. Kenneth Pennington and Robert Somerville (Philadelphia: University of Pennsylvania Press, 1977), 69-96.

internal contrition as a necessary but not sufficient element in the seeking of remission. Some passages which emphasize confession to God alone and not having others know what has been confessed (c.2 and c.32) refer to public penance; they do not indicate that confession to a priest is unnecessary for remission, but that a public declaration of sins and/or a public satisfaction for secret sins are not necessary. The passages also speak to the importance of confessing internally to God (in addition to a priest).[89] Other passages highlight the necessity of contrition and the will (e.g. c.4, c.5, c.30, c.33). They show that contrition makes a sin remissible but not yet actually remitted, that the will makes a work remunerable and thus that a good work without a good will or intention will not be rewarded, and that an external satisfaction does not placate God unless an internal satisfaction precedes it.[90] In addition, the will is only considered to be the work when the opportunity to do the work is lacking.[91] In other words, contrition and the desire to confess only suffice when confession and

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[89] D.1 d.p.c.87 §1: "These statements should not be understood in such a way that sins are said to be forgiven without oral confession but rather without public satisfaction. For secret sins are purged by secret confession and clandestine satisfaction, and it is not necessary for us to confess a second time what we have confessed once to a priest. But we ought to confess these things continually before the true Judge with the tongue of our heart, not of our flesh. (non ita intelligendum est, ut sine confessione oris peccata dicantur dimitti, sed sine publica satisfactione. Secreta namque peccata secreta confessione et occulta satisfactione purgantur, nec est necesse, ut que semel sacerdoti confessi fuerimus denuo confiteamur, sed lingua cordis, non carnis apud iudicem uerum ea iugiter confiteri debemus.)"

[90] D.1 d.p.c.87 §2: "In this way also that text of Augustine is understood [c.5]: 'Great is the kindness of God, that he forgives sins in accordance with his promise alone,' – that is, he judges them remissible…. Likewise [c.30]: 'The will is rewarded, not the work' is understood in this way: the will makes a work remunerable, not vice versa…. Likewise [c.33], 'Rend your hearts and not your clothes' is said to those who trust that they can placate God without a preceding internal satisfaction but with an external one alone. (Ita et illud Augustini intelligitur: 'Magna pietas Dei, ut ad solam promissionem peccata dimiserit,' id est remissibilia iudicauerit…. Item: 'Voluntas remuneratur, non opus,' ita intelligitur: uoluntas facit opus remunerabile, non opus uoluntatem…. Item: 'Scindite corda uestra, et non uestimenta,' eis dicitur, qui nulla interiori satisfactione precedente, sed sola exteriori se Deum posse placare confidunt.)"

[91] Ibid.: "Likewise in the same place [c.5]: 'The will is considered to be the work' when the opportunity for a work is lacking. Thus, the will to confess is considered to be a work of the voice when the opportunity for confession is lacking. (Item: 'Votum pro opere reputatur, cum deest facultas operis.' Unde uotum confessionis reputatur pro opere uocis, cum deest facultas confessionis.)"

satisfaction are impossible. The proponents of the second position thus did not deny the necessity of contrition; they objected to its sufficiency for remission.

Gratian followed the same line of thought as he formulated the response of the proponents of the second position to both gospel narratives (the healing of the lepers and Lazarus' resurrection) and to the argument that he produced based on God as the life and light of the soul and the soul being the temple of the Holy Spirit: all these arguments relate not to the remission of sins, but to contrition of the heart. But what did Gratian mean that these stories and arguments relate to contrition of heart and not to remission of sins? Allegorically speaking, the proponents of the first position interpreted the actual healing (of the lepers) and the raising from the dead (of Lazarus) as symbolizing the remission of sins; therefore, the sins of penitents are forgiven before they show themselves to a priest (signified by the Jewish priests and the disciples in these two narratives). Those coming from the second point of view said that the healing of the lepers and the raising of Lazarus symbolize contrition or, more specifically, the ability to be contrite, not full remission – Christ's healing and life-giving power allow the sinner to be contrite, but the sinner's sins are not yet remitted.[92] So also, in the line of argumentation about life, light, the temple of the Spirit, and love, the argument remains valid as long as one interprets it as arguing about what the penitent procures through being contrite prior to confession; it does not mean that the contrite

[92] Ibid.: "Likewise, all those texts which are introduced about the cleansed lepers and the revived Lazarus should be related to contrition of the heart, not to the mercy of remission. For obstinacy of the mind and contempt for confession are a certain death due to impiety and a leprosy due to pride, from which everyone becomes alive again when grief for an offence and longing for confession is breathed into him through grace. (Item cuncta, que de leprosis mundatis uel de Lazaro suscitato inducuntur, ad contritionem cordis, non ad ueniam remissionis referenda sunt. Obstinatio enim animi, et confessionis contemptus, quedam mors est inpietatis et lepra superbiae, a qua quisque reuiuiscit, dum sibi per gratiam dolor delicti et uotum confessionis inspiratur.)"

penitent already is in a state of forgiveness prior to confession.[93] If God as the *uita anime* is present to the soul, this means that the penitent is contrite by the grace of God, not that his sins have already been remitted. Once again, then, the proponents of the second position came out strongly in support of contrition as a necessary element of a penance that is fruitful and yields the remission of sins. It remains insufficient, however, without accompanying oral confession and external (even if non-public) satisfaction. Gratian concluded this response of the second position to the *auctoritates* and *rationes* cited in the first position with a negative statement: "Thus, by the afore-mentioned authorities or arguments, someone is not proven to be cleansed from sin without oral confession and a work of satisfaction."[94]

Gratian indicated the opening of the counter-response by the proponents of the first position with the term *econtra*, after which he proceeded to give their account of how the *auctoritates* cited for the second position should be understood. Two distinctions, that between internal and external penance and that between secret and public or manifest penance, which were both present in the school of Laon, come to the forefront.[95] First, those

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[93] D.1 d.p.c.87 §3: "Those things which have been said concerning those who live or walk in the light, or who have love for God, or who have become dwelling-places of the Holy Spirit also pertain to this point, in that everyone may be said to have procured all these things as a result of contrition of the heart, which he has, not as a result of the plenary remission of sin, which he has not yet found. (Ad hunc etiam articulum pertinent ea, que de uiuentibus, uel in luce ambulantibus, uel dilectionem Dei habentibus, uel de habitaculis Spiritus sancti factis dicta sunt, ut hec omnia quisque dicatur assecutus ex cordis contritione, quam habet, non ex plenaria peccati remissione, quam nondum inuenit.)"

[94] Ibid.: "Non ergo premissis auctoritatibus uel argumentis sine confessione oris et satisfactione operis aliquis probatur a peccato mundari."

[95] The collection *Principium et causa omnium* (the *Sententie Anselmi*) distinguished between internal penance, which pertains to God, and external penance, which pertains to the church, which judges externally. It then distinguished between penance for manifest and for secret sins, and penance for mortal and for venial sins. Like Gratian here in this paragraph, this Anselmian writer did not explain well how these various types of penance relate to one another, and one gets the feeling that they both were leaning toward equating manifest with mortal sins, even though these types of sins do not always correlate to one another. The sentence reads, "Et uidendum est quod penitentia alia interior, que ad deum, alia exterior, que ad ecclesiam pertinet, cuius est de exteriore

holding to the first position objected to the interpretation of John Chrysostom and Prosper by the proponents of the second position. The latter wanted to say that these patristic texts only assert that the public proclamation of sins is not required, not that confession to a priest is not required for remission. The proponents of the first position viewed that interpretation as twisting authorial intent, which was to say that sins can be remitted without oral confession.[96] As for texts which enjoin Christians to confession and penance, the proponents of the first position pursued two angles: either they are exhortations, not commands (in which case oral confession and external satisfaction are urged but not required for remission), or they refer to internal confession and satisfaction made before God alone.[97] They further distinguished internal and external penance (*est penitentia alia interior, alia exterior*), arguing that internal penance, a satisfaction imposed by the sinner on himself for the sins which he confesses internally to God, perfectly fulfills what that text of Augustine (c.42) means when it indicates that some punishment, however small, is required for the attainment of mercy. Although

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iudicare. Item alia de manifestis, alia de occultis. Item alia de criminali, alia de ueniali" (ed. Bliemetzrieder, 121-22).

[96] D.1 d.p.c.87 §4: "On the other hand, that authority of John Chrysostom and of Prosper seems twisted against the intention of the author. For it is not said, 'I do not tell you to accuse yourself publicly,' but, 'I do not tell you to accuse yourself among others.' So also Prosper [c.32] does not say 'with all' but simply 'with others not knowing.' Hence it is most clearly given to be understood that sins can be done away with without oral confession. (Econtra auctoritas illa Iohannis Crisostomi et Prosperi contra mentem auctoris extorta uidetur. Non enim dicitur: 'non tibi dico, ut te publice accuses,' sed: 'non tibi dico, ut apud alios te accuses.' Sic et Prosper non ait: 'omnibus,' sed simpliciter: 'aliis nescientibus.' Unde euidentissime datur intelligi quod sine confessione oris possunt peccata deleri.)"

[97] Ibid.: "Those things which have been said as an exhortation to penance and confession do not seem contrary to this opinion. For these are words of exhortation, not of command, just like that statement (James 5:16), 'Confess your sins to one another, etc.' Or, if they have been said by way of command, they should not be related to confession of the mouth but of the heart, not to external but to internal satisfaction. (Ea uero, que ad exhortationem penitenciae et confessionis dicta sunt, non huic sentenciae contraria uidentur. Vel enim sunt uerba exhortationis, non iussionis, sicut illud: 'Confitemini alterutrum peccata uestra,' uel si qua iubendo dicta sunt, non ad oris confessionem, sed cordis, non ad exteriorem satisfactionem, sed ad interiorem referenda sunt.)"

much of what follows could be construed as the proponents of the first position denying the necessity of confession altogether, not just for the remission of sins, Gratian certainly did not mean to encourage the abandonment of confession; instead, the advocates of the first position distinguished confession to a priest and satisfaction according to his judgment from confession to God and self-imposed satisfaction. The difference is external and internal, and, soteriologically, the difference is expiation or not.[98]

Gratian next brought in the distinction between secret and public sins and between secret and public penance. The way the proponents of the first position approached this distinction greatly weakened their argument, for they conceded that expiation does come through oral confession and public satisfaction for some sins, namely public ones, as it did for the Ninevites and for King Nebuchadnezzar.[99] In other words, they now represented the first position as holding that expiation comes through some form of punishment, and that expiatory punishment consists of secret, self-imposed satisfaction for secret sins (of whatever

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[98] D.1 d.p.c.87 §6-§7: "But that text of Augustine (c.42) in which each person is said to be unable *to attain mercy* unless he first pays however small a penalty, is not found to be against this opinion. For no one is claimed *to be cleansed* if he has not suffered the penalty of sin. *But confessing a sin to a priest and satisfying his judgment about the sin is one thing, and confessing with the heart to God and punishing the sin in oneself by a secret satisfaction is another*…. Thus, this secret satisfaction for light or secret sins should be offered to God, and those which are believed *to be expiated in this manner* are not proven to be loosened without punishment. (Illud autem Augustini, quo quisque negatur ueniam consequi, nisi prius quantulamcumque peccati soluerit penam, non huic sentenciae inuenitur aduersum. Nullus enim asseritur a peccato mundari, nisi penam peccati passus fuerit. Sed aliud est peccatum sacerdoti confiteri, et eius arbitrio de peccato satisfacere: atque aliud Deo confiteri corde, et secreta satisfactione in se ipso peccatum punire…. Hec ergo secreta satisfactio leuium siue occultorum criminum Deo offerenda est, nec sine pena relaxari probantur que sic expiari creduntur.)"

[99] D.1 d.p.c.87 §7: "Thus, this secret satisfaction for light or secret sins should be offered to God, and those which are believed to be expiated in this manner are not proven to be loosened without punishment. But those things which are said about public satisfaction or oral confession should be understood in public and manifest sins. For the sins of Nebuchadnezzar, which the Prophet urged to be paid back with compassion and alms, and also the sins of the Ninevites, which were expiated with public satisfaction, had been known to all. And public injury (as Augustine testifies) requires a public remedy. (Ea uero, que de publica satisfactione uel oris confessione dicuntur, in publicis et manifestis criminibus intelligenda sunt. Peccata namque Nabuchodonosor, que propheta misericordiis et elemosinis redimi suasit, peccata quoque Niniuitarum, que publica satisfactione expiata sunt, cunctis nota erant. Et publica noxa (ut Augustinus testatur) publico eget remedio.)"

seriousness) and light (i.e. venial) sins but of public satisfaction for public sins.[100] This step in their reasoning opened it up for attack, which the proponents of the second position immediately utilized to their advantage.

Gratian concluded this back-and-forth with the response of the proponents of the second position, and this change in perspective is once again indicated by *econtra*. These proponents focused on and attacked the concession just made, for it would seem incongruous to agree that public sins are expiated only through oral confession and public satisfaction while maintaining that very serious secret sins do not require the workings of the church at all in order for the sinner to acquire forgiveness. They concurred on the necessity of contrition, and they could agree to use the term "secret satisfaction" when dealing with secret sins, but they rejected the notion that this involved a self-imposed penalty without the help of a priest. For them, "secret satisfaction" meant satisfaction assigned by the priest, aided by his supplications, but remaining outside of the general public's eye.[101] They thus directed their

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[100] D.1 d.p.c.87 §8: "And so, by the afore-mentioned authorities it is proven that manifest satisfaction and oral confession must be offered up for manifest sins. But it is not proven that hidden sins must necessarily be confessed to a priest and expiated by his judgment. (Premissis itaque auctoritatibus pro manifestis criminibus manifesta probatur offerenda satisfactio et oris confessio. Latentia uero peccata non probantur sacerdoti necessario confitenda, et eius arbitrio expianda.)" While Gratian does seem here to have denied the necessity or utility of confession at all for secret sins, this sentence must be put in the context of the entire distinction. In addition, note that Gratian's underlying concern was still forgiveness, or, as he termed it, expiation of sins and whether expiation comes through internal penance or through the judgment of the priest. The web in which Gratian got entangled here stems, I believe, from his sources and lack of clarity and precision in the school of Laon on these points. As seen above in n.97, public sins seem to have been equated with mortal sins which correlated to external penance, which had to be done before the church. Such correlation did not serve Gratian's argument well because it necessitated the church's involvement for the remission of all manifest and mortal sins, greatly weakening the initial stand of the first position as Gratian had argued for it at the beginning of D.1.

[101] D.1 d.p.c.87 §9: "On the other hand, the things which have been said in support of this opinion partly rely on truth and partly lack weight. For it is agreed that [it is a statement] relying upon the firmest reason that no sin can be forgiven without contrition of the heart, and that secret sin ought to be expiated with secret satisfaction and also public ones with manifest penance. But indeed, [the idea] that some serious offence is expiated without oral confession, if the opportunity to confess were not lacking, is proven to be entirely contrary to authority. (Econtra ea, que in assertione huius sentenciae dicta sunt, partim ueritate nituntur, partim pondere carent. Sine

argument to the role of priests, in particular the power to bind and loose and how that relates to confession and satisfaction and the moment of plenary remission of sins. Gratian gave a taste of this emphasis in d.p.c.60; here he expanded and deepened this argument for the second position based on the power of the keys.

Those backing the second position revisited *auctoritates* that emphasized the role of priests in obtaining forgiveness (c. 44, c.49, and c.51b). Through a series of rhetorical questions, they connected the dots in favor of the second position: Leo said that forgiveness comes only through the supplication of priests, Augustine said that those who do penance without the judgment of a priest frustrate the keys, and Ambrose said that the right to bind and loose belongs to priests alone. If these things are so, then how can a secret sin be remitted without the judgment and prayers of a priest, and how can a priest judge and pray if he does not know the sin of the penitent?[102] For these thinkers, to bind is to assign proper satisfaction, and this belongs to priests alone, not to all Christians generally. Thus, a Christian cannot assign an exculpatory satisfaction on himself without a priest. In addition to revisiting these patristic texts, the advocates of the second view also brought in a gospel

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contritione etenim cordis nullum peccatum posse dimitti, occulta uero peccata secreta satisfactione, publica quoque manifesta penitencia expiari debere, firmissima constat ratione subnixum. Porro sine confessione oris, si facultas confitendi non defuerit, aliquod graue delictum expiari, auctoritati penitus probatur aduersum.)"

[102] D.1 d.p.c.87 §9-§11: "For how, according to the authority of Pope Leo (c.49), is pardon able to be attained only with the supplications of priests if we can be cleansed from our sin without oral confession? For who will make supplication on behalf of a sin of which he is unaware? Likewise, how, according to Augustine (c.44), does he who does penance without the judgment of the priest frustrate the keys of the church if he may procure pardon for his evil deed without oral confession? Likewise, how, according to Ambrose (c.51b), is the right to bind and loose believed to be granted by the Lord to priests alone if everyone who sins binds himself by his own judgment or with a secret penance? (Quomodo enim secundum auctoritatem Leonis Papae sine supplicationibus sacerdotum indulgentia nequit obtineri, si sine confessione oris a peccato possumus emundari? Quis enim supplicabit pro peccato, quod nescit? §. 10. Item, quomodo secundum Augustinum frustrat claues ecclesiae qui sine arbitrio sacerdotis penitenciam agit, si sine oris confessione criminis indulgentiam inpetrat? §. 11. Item, quomodo secundum Ambrosium ius ligandi et soluendi solis sacerdotibus a Domino creditur esse permissum, si quisque suo arbitrio se ipsum peccando ligat, uel secreta penitencia?)"

narrative that they interpreted in a way very similar to Pseudo-Augustine (whom they soon thereafter quoted at length). The story is of the death of a young girl, by which is indicated secret sins. Jesus raised her from the dead with only the parents and three disciples (Peter, James, and John) present, who symbolize, respectively, the prayers of the church and the ministry of priests.[103] Thus, even secret sins require the intercession of priests in order for a penitent to be forgiven.

Finally, Gratian in the voice of proponents of the second position argued that full remission comes only after the duration of penance (i.e. the act of satisfaction) has been completed and therefore that remission does not occur through contrition alone prior to confession and satisfaction. Once again Gratian presented confession and satisfaction as an integral whole. He looked to the Old Testament and the Levitical prescriptions for assigning value to consecrated property according to the relationship of the date of the particular consecration to the next Jubilee (every fiftieth year), at which time the property would be handed over to the priests. The amount of money Gratian likened to the years or amount of penance, and the Year of Jubilee symbolized the full remission of sins. Just as redemption for the Israelite came only by giving the designated sum of money in the Year of Jubilee, so also the penitent receives full remission only when he completes the satisfaction fixed for him by

[103] D.1 d.p.c.87 §12: "She was not returned to life except with the mother and father of the girl being present as well as Peter, James, and John. In this [story] we are instructed according to the moral sense of the text that secret sins, which are understood through the death of the girl, are not judged by the Lord to be forgiven except with the prayers of the church, which are designated through the mother and father of the girl, and the ministry of priests, who are understood through Peter and the others. (Non tamen [filia], nisi presentibus matre et patre puellae, Petro quoque, Iacobo, et Iohanne, uitae reddita est. In quo moraliter instruimur, ut secreta peccata, que per mortem puellae intelliguntur, non nisi supplicationibus ecclesiae, que per matrem et patrem puellae designantur, et sacerdotum ministerio, qui per Petrum et ceteros intelliguntur, a Domino existimentur dimitti.)"

the priest.[104] Satisfaction can only be assigned after confession, therefore remission does not come before confession and satisfaction by contrition of the heart alone.[105] After this venture into Old Testament civil law, Gratian turned to one last argument in favor of remission coming through confession and satisfaction.

Gratian's final argument focused on the relationship between silence about sin and pride. Whereas some in the twelfth century used a related argument to say that sins are remitted through contrition but confession to a priest is necessary because one must humble oneself and not remain silent in pride before the church, disobeying its injunction to confess to a priest,[106] Gratian argued here that oral confession is necessary for the remission of sins because oral confession demonstrates humility (while silence is born of pride), and only humble people receive mercy. In this argument, he appealed again to the acquisition of mercy or remission of sins as the end-goal and emphasis. Confession is not necessary just to demonstrate humility and obey the church; it is necessary in order to have one's sins forgiven, for only through confession, in the shameful act of declaring one's wretched deeds to another, does one practice the humility that is demanded for remission. Gratian argued

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[104] D.1 d.p.c.87 §13: "In the Year of Jubilee full remission was offered. Therefore, in it completed remission of sin is figured. Therefore the priest counts the number of years until the Jubilee when he, by his judgment, defines the time of penance by which each person may find full remission of his sin. (In iubileo plena remissio prestabatur. Unde per eum perfecta remissio peccati figuratur. Sacerdos ergo numerum annorum usque ad iubileum supputat, cum eius arbitrio penitenciae tempora diffiniuntur, quibus quisque plenam peccati remissionem inueniat.)"

[105] D.1 d.p.c.87 §14: "Therefore, since, as is gathered from the preceding, the duration of penance is defined by the judgment of the priest, it is most evidently apparent that sins are not forgiven without the confession of one's own mouth. Now who will fix the duration of penance for someone unless he has first been concerned to make known his sins to him? (Cum ergo, ut ex premissis colligitur, tempora penitenciae sacerdotis arbitrio diffiniantur, euidentissime apparet, sine confessione propriae uocis peccata non dimitti. Quis enim tempora penitenciae alicui prefiget, nisi primum peccata sua sibi manifestare curauerit?)"

[106] Cf. Peter Lombard, *Sent.* 4.17.4, who characteristically took Gratian's argument in d.p.c.87 and flipped it around to give a reason to confess even while maintaining contrition as the remittive element in penance.

that, if a person stays silent, he does so out of pride, out of the desire to keep his true nature hidden from others. Where there is pride, there is no humility, and where there is no humility, there is no mercy.[107]

Gratian asserts that this pride constituted a certain species of pride (*species superbie*). Gratian was referring to a tradition of four species of pride coming out of Gregory the Great's *Moralia*. Gregory originally termed these species the *species in quibus omnis tumor arrogantium demonstrantur*.[108] The order and exact definition of these four species altered somewhat, but the tradition continued into the twelfth century. The way Gratian described the species of pride he had in mind corresponded to Gregory's third species, the belief that one has some good that one in fact does not have.[109] The sinner who refuses to confess believes or at least wants others to believe that he has righteousness that he does not have. William of Champeaux wrote a sentence on these species of pride, though he switched the

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[107] D.1 d.p.c.87 §15: "Likewise: silence about a sin is born of pride of the heart. For everyone desires to hide his sin so that his iniquity may not become manifest to others, so that he may not be considered publicly by people to be the kind of person he long ago since showed himself to be in the sight of God. That this is born of the fount of pride is doubtful to no one; for indeed, for him who is a sinner to want to seem righteous is a species of pride; and he who strives to make his sins small by a shifting of words in imitation of our first parents or, like Cain, seeks to fully suppress his sin by keeping silent is convicted as a hypocrite. But where pride or hypocrisy reigns, humility cannot have a place. Without humility, no one can hope for mercy. Therefore, where there is silence in confession, mercy for the evil deed should not be hoped for. (Item: Taciturnitas peccati ex superbia nascitur cordis. Ideo enim peccatum suum quisque celare desiderat, ne iniquitas sua aliis manifesta fiat, ne talis reputetur apud homines foris, qualem se iamdudum exhibuit diuino conspectui. Quod ex fonte superbiae nasci nulli dubium est; species etenim superbiae est, se uelle iustum uideri, qui peccator est; atque ypocrita conuincitur qui ad imitationem primorum parentum uel tergiuersatione uerborum peccata sua leuigare contendit, uel, sicut Cayn, peccatum suum reticendo penitus supprimere querit. Ubi autem superbia regnat, uel ypocrisis, humilitas locum habere non ualet. Sine humilitate uero alicui ueniam sperare non licet. Nec ergo, ubi est taciturnitas confessionis, uenia speranda est criminis.)"

[108] John Cassian appears to have been responsible for the change in terminology from species tumoris to species superbiae when he cited Gregory in book 12, chapter 1 of his De coenobiorum institutis.

[109] Gregory, *Moralia in Job* 23.6 (CCSL 143.3:1153)*:* "Quattuor quippe sunt species quibus omnis tumor arrogantium demonstratur, cum bonum aut a semetipsis habere se aestimant, aut si sibi datum desuper credunt, pro suis se hoc accepisse meritis putant; aut certe cum iactant se habere quod non habent; aut despectis ceteris, singulariter uideri appetunt habere quod habent."

order around.[110] A tradition closer to the original seems to have survived both in the school of his master in Laon, as is seen in the *Sententie Berolinenses*, and in his school of St Victor, as is seen in the *Tractatus theologicus* and the *Summa sententiarum*. In all three cases, Gratian's species of pride once again corresponds to the third type.[111] Radulphus Ardens (ante 1140-ca. 1200) repeated these species later in the twelfth century; he explicitly connected the third type of pride to hypocrisy, which Gratian also did in his comments.[112] Gratian revealed himself to be in tune with terminology and categorization that was current among the schools in northern France, and he was so familiar with it that it rolled off his tongue, as it were, without him giving a second thought to it or providing Gregory's text. At the same time, he adapted it to his own uses; no one else applied this notion to the debate about penance, and no one else expanded the definition of pride to wanting others to think

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[110] *Sententia* 279 (ed. Lottin, 222): "Superbia est proprie excellentie amor. Huius sunt quatuor species. Prima est quando aliquis putat se habere bonum Dei quod non habet. Secunda est quando bonum quod habet, a se, non a Deo se habere existimat. Tertia est quando bonum quod habet, a Deo se habere cognoscit, sed tamen pro meritis suis. Quarta est quando a Deo omnia credit habere, nec pro meritis suis, sed tamen se meliorem quam alios credit."

[111]*Sententie Berolinenses* ("*Sententiae Berolinenses*: Eine neugefundene Sentenzen-sammlung aus der Schule des Anselms von Laon," ed. Friedrich Stegmüller, *Recherche de théologie ancienne et médiévale* 11 (1939): 43.13-19): "Restat igitur dicere quid sit superbia et inuidia. Superbia est amor propriae excellentiae. Inuidia est odium alienae felicitatis. Superbiae quattuor modi sunt. Primus modus est cum homo bonum quod habet, non a Deo sed a se habere putat. Secundus modus est cum homo bonum quod habet a Deo se accepisse putat, sed tantum pro propriis meritis. Tertius modus est cum homo iactat se habere quod non habet. Quartus modus est cum quis cunctis spretis solus appetit uideri altus." This work is known from one manuscript: Berlin, Staatsbibliothek, Theol. lat. oct. 140. *Summa sententiarum* 3.16 (PL 176:114A): "Et sunt quatuor species superbiae, ut Gregorius dicit: Prima est cum homo bonum quod habet sibi attruibuit; secunda, cum credit a Deo esse datum, sed tamen pro suis meritis; tertia cum se jactat habere ea quae non habet; quarta cum caeteris despectis singulariter vult videri." The authorship of the *Summa sententiarum* was a matter of great debate for decades. For an earlier contribution to the debate, cf. Roger Baron, "Note sur l'énigmatique *Summa sententiarum*," *Recherches de théologie ancienne et médiévale* 25 (1958): 26-42. For a detailed overview of the debate (both on authorship and dating) and a conclusive attribution of the work to Odo, Bishop of Lucca (1138-1146), cf. Ferruccio Gastaldelli, "La 'Summa Sententiarum' di Ottone da Lucca: Conclusione di un dibatto secolare," *Salesianum* 42 (1980): 537-46. The *Tractatus theologicus* took its text from the *Summa sententiarum*.

[112] Homily 25 (PL 155:2030D-2031A): "Tertia [species superbiae] est, cum quis jactat se habere bonum quod non habet, quae proprie est hypocritarum, et haec proprie jactantia dicitur, cui illa species humilitatis contraria est, quae nunquam vult dici melior quam sit."

oneself righteous, not just believing oneself to be righteous. When Peter Lombard did so, he was following Gratian.

The basis for Gratian's thoughts at the end of d.p.c.87 resided in a sentence by Anselm of Laon, a sentence that revisited Lazarus' resurrection and Ambrose's comments which constitute D.1 c.2 (*Lacrime delent peccata, que pudor est uoce confiteri*). Anselm rejected the interpretation of this text that said tears suffice for a penitent if he is too ashamed to confess. He rejected this interpretation because dismissal of confession for the sake of shame is pride, and no one can be saved when he or she abides in pride. For Gratian when arguing for the second position in D.1 as for Anselm, salvation depends on the presence of humility, and the humble person demonstrates his humility in confession. Anselm discussed the raising of Lazarus, using the language of vivification that he apparently standardized in his school. God vivifies the sinner, but the sinner still remains bound. Anselm went so far as to say that the Lord forgives sins but does so in a way that the penitent may be loosed by a priest. Loosing, then, for Anselm did not consist in remitting sins but absolving from punishment or the penalty for sin, for which God's forgiving of sins is a prerequisite.[113] Anselm proceeded to describe the beginning of the penitent's penalty (*pena*) as "the shame that occurs in confession," a sentiment echoed in the pseudo-Augustinian *De vera et falsa*

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[113] *Sententia* 33 (Franz Bliemetzrieder, "Trente-trois pièces inédites de l'oeuvre théologique d'Anselme de Laon," *Recherches de théologie ancienne et médiévale* 2 [1930]: 70): "Inueniuntur quedam in scripturis, que ueritati obuiare uidentur, ut uerbi gratia in ambrosio super lucam: *Lacrimas petri lego, penitentiam non lego, lacrime delent peccata, que pudor est uoce confiteri*. Ecce plane uidetur uelle, quod si aliquem pudeat confiteri, fletus tamen impetret. Quod contra fidem est. Si enim pro pudore dimittit confiteri, superbia est, in qua nemo potest saluari. Iterum resuscitato lazaro dicitur discipulis: Soluite eum. In quo monstratur aperte, quia peccator ingemiscens a deo uiuificatur, sed nunquam nisi per ministros ecclesie soluitur. Agit igitur superior scriptura de eo quod dominus per se facit ad hominem, id est, dimittit peccata, sic tamen ut ille soluatur a sacerdote. Sic enim dimittitur peccatum, ut pena soluatur, cuius inicium est pudor qui in confessione habetur."

penitentia. Gratian followed Anselm's line of thought. They both moved from the notion of pride preventing one from confessing to a priest to the idea that the presence of pride (which is equivalent to the lack of humility in Gratian) prohibits the attainment of salvation (Anselm) or mercy (Gratian) to the notion that the shame of confession constitutes part of the penalty or satisfaction owed for sin (stated directly by Anselm and by extension by Gratian via his quoting Pseudo-Augustine on this point).

The lengthy excerpt from Pseudo-Augustine supported Gratian's comments about the relationship between humility and the obtaining of mercy. The text began by emphasizing that the Lord commands a sinner to confess to a priest in person, not through a representative or in a written statement, since part of what brings about remission of sins is the shame that occurs when one declares one's faults in person to another human being, for such shame comprises a great part of the penalty required for that remission.[114] Gratian also quoted here

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[114] D.1 c.88: "Let he who repents fully repent, and let him show grief with tears, let him show his life to God through a priest, let him come before the judgment of God through confession. For the Lord commanded those to be cleansed to show their mouths to the priests, teaching that sins must be confessed in person; they are not to be made known through a messenger or in writing…. Shame itself has a part in remission. The Lord commanded this, that no one repent in secret, out of compassion. For mercy on the wicked deed occurs in this, that he speaks to the priest on his own and conquers his shame with fear of his offence…. For he who, mastering his shame, has denied none of the things which he has done to the messenger of God has offered a good portion of satisfaction…. For justice alone condemns; but he is worthy of mercy who seeks grace with spiritual labor. The mind labors by suffering shame, and, since great disgrace is a punishment, he who is ashamed for the sake of Christ becomes worthy of mercy. For this reason it is clear that the more he will confess to many the foulness of his wicked deed in the hope of mercy, the easier he will attain the mercy of remission. (Quem penitet omnino peniteat, et dolorem lacrimis ostendat, representet uitam suam Deo per sacerdotem, preueniat iudicium Dei per confessionem. Precepit enim Dominus mundandis, ut ostenderent ora sacerdotibus, docens corporali presentia confitenda peccata, non per nuncium, non per scriptum manifestanda…. Erubescentia enim ipsa partem habet remissionis. Ex misericordia enim hoc precepit Dominus, ut neminem peniteret in occulto. In hoc enim, quod per se ipsum dicit sacerdoti, et erubescentiam uincit timore offensi, fit uenia criminis…. Multum enim satisfactionis obtulit qui erubescentiae dominans nichil eorum, que conmisit, nuncio Dei denegauit…. Iusticia enim sola dampnat; sed dignus est misericordia qui spirituali labore petit gratiam. Laborat enim mens patiendo erubescentiam, et, quoniam uerecundia magna est pena, qui erubescit pro Christo fit dignus misericordia. Unde patet, quia quanto pluribus confitebitur in spe ueniae turpitudinem criminis, tanto facilius consequitur gratiam remissionis.)"

some sections that he would copy again in D.6. The passage closed with an interpretation of the raising of the dead girl and of Lazarus that highlighted the role and importance of priests and the church in penance. With that, Gratian brought to a close his argument for the second position and all of his arguments in D.1.

Who the Proponents of the Two Positions Are

In his article on D.1, Debil identified Hugh of St Victor as one who held to the second position and Peter Abelard and his followers as the *quidam* against whom Hugh argued on this point, who also correspond to the *quidam* in D.1 who adhered to the first position.[115] Indeed, Hugh and Abelard disagreed on this as on many other issues, and their positions do correspond roughly to the two laid out by Gratian in D.1. Such correspondence, however, does not mean that Gratian had these individuals or any of their students specifically in mind when he composed this first section of *De penitentia*. Gratian expanded greatly upon common arguments for both sides of the debate; many of his arguments and *auctoritates* were unique to him and should not be expected to appear in any preceding author's works, and in fact they do not. In addition, Gratian never quoted either Peter Abelard or Hugh; nor did he mention or incorporate any of their more peculiar ideas, distinctions, and terms. In fact, no hard evidence exists that Gratian knew of Abelard or Hugh's work or even of the men themselves.[116] Instead, Gratian's arguments stemmed from other sources, namely the sentences of the school of Laon. A brief review of Abelard and Hugh's treatment of this

[115] "La première distinction," 444-47.
[116] I do believe, however, that it is much more likely that Gratian had met or at least knew of Peter Abelard than that he had met or knew of Hugh of St Victor. Reasons for this belief will become clearer in future chapters.

question prove that Gratian was neither duplicating their positions nor conscientiously pitting them against each other in *De penitentia* D.1.

Peter Abelard held that remission comes through contrition, which he called "true penance" or "penitence" (*uera penitentia*), but that confession to a priest is necessary for other reasons. He repeatedly used *penitentia* to refer to contrition or internal penance while he used the standard *confessio* and *satisfactio* for the other two elements of penance.[117] He very often associated groaning (*gemitus*) with such penitence. This groaning and contrition immediately reconciles the sinner to God; it is motivated or inspired by the love of God, which is incompatible with sin.[118] Gratian's presentation of the first position likewise pitted love against sin, making clear that a soul which has love cannot have evil in it. Thus Gratian and Peter had a roughly similar framework for thinking about this side of the question, but Gratian nowhere quoted Abelard or expressed a notion identical to his. Gratian also nowhere made a point of distinguishing temporal and eternal punishment and associating only the remission of the latter with contrition. For Abelard, contrition and groaning – true penance – reconciles the sinner to God, thereby causing God to release the penitent from the debt of eternal damnation. A temporal punishment, however, still remains. Thus, for Abelard, if a

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[117] *Scito teipsum* (ed. Luscombe, 76:19-20, 22-26). "Tria itaque sunt in reconciliatione peccatoris ad Deum, penitentia scilicet, confessio, satisfactio." "Penitentia autem proprie dicitur dolor animi super eo in quo deliquit cum aliquem…. Haec autem penitentia tum ex amore Dei accidit et fructuosa est, tum dampno aliquo quo nollemus grauari, qualis est illa dampnatorum penitentia." Abelard distinguished between the *penitentia* of the blessed and the damned. The damned may have grief over their sins, but such grief only arises from the dread of the impending punishment. The grief over sins by true Christians arises from love for God, and this *penitentia* is fruitful (i.e. brings forgiveness).

[118] Ibid., 88.6-12: "Cum hoc autem gemitu et contritione cordis, quam ueram penitentiam dicimus, peccatum non permanet, hoc est, contemptus Dei siue consensus in malum, quia karitas Dei hunc gemitum inspirans non patitur culpam. In hoc statim gemitu Deo reconciliamur et precedentis peccati ueniam assequimur, iuxta illud Prophetae, 'Quacumque hora peccator ingenuerit, saluus erit', hoc est, salute animae suae dignus efficietur."

person dies in a state of contrition but not having confessed to a priest or completed satisfaction, he will be saved but must first undergo temporal punishments in purgatory.[119] As Gratian made his argument in D.1, he did not approach this issue or make this distinction; nor would it become a focus of his treatment of penance *in extremis* in D.7. That division became a hallmark of an "Abelardian" approach to this issue, however; that is, it is associated with his school. Gratian did not adhere to the tenets of that school.

Abelard also made a point to spell out why confession is obligatory if it is not that which brings about the remission of sins, something which Gratian likewise did not do as he argued for the first position. Abelard gave three reasons: (1) to be helped by the prayers of those to whom we confess, (2) because the humility involved in confession constitutes part of the satisfaction owed for the sin, and (3) because the priests are the ones to whom God has granted the authority to assign satisfaction even as the penitents' souls are entrusted to these priests, their superiors.[120] In Gratian, these points actually become part of the argument that sins are not remitted without confession and satisfaction through a priest. Abelard's division

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[119] Ibid., 88.15-25: "Et si enim articulo necessitatis preuentus non habeat locum ueniendi ad confessionem uel peragendi satisfactionem, nequaquam in hoc gemitu de hac uita recedens gehennam incurrit, quod est condonari a Deo peccatum, hoc est, eum talem fieri quem iam non sit dignum sicut antea propter illud quod precessit peccatum aeternaliter a Deo puniri. Non enim Deus cum peccatum penitentibus condonat omnem penam eis ignoscit, sed solummodo aeternam. Multi namque penitentes qui preuenti morte satisfactionem penitentiae in hac uita non egerunt, penis purgatoriis, non dampnatoriis, in futura reseruantur."

[120] Ibid., 98.10-24: "Multis de causis fideles inuicem peccata confitentur iuxta illud Apostoli quod premissum est, tum uidelicet propter supradictam causam ut orationibus eorum magis adiuuemur quibus confitemur, tum etiam quia in humilitate confessionis magna pars agitur satisfactionis, et in relaxatione penitentiae maiorem assequimur indulgentiam…. Denique sacerdotes quibus animae confitentium sunt commissae, satisfactiones penitentiae illis habent iniungere, ut qui male arbitrio suo et superbe usi sunt Deum contempnendo alienae potestatis arbitrio corrigantur, et tanto securius id agant, quanto melius prelatis suis obediendo non tam suam quam illorum uoluntatem secuntur." For a fuller treatment of Abelard's view, cf., Richard E. Weingart, "Peter Abailard's Contribution to Sacramental Theology," *Recherches de théologie ancienne et médiévale* 34 (1967): 173-78, Anciaux, *Théologie du sacrement de pénitence*, 65-67, 155-57, 176-81, and P. Polykarp Schmoll, *Die Busslehre der Frühscholastick: Eine dogmengeschichtliche Untersuchung*, Veröffentlichungen aus dem Kirchen historischen Seminar München 3.5 (Munich: J. J. Lentnerschen Buchhandlung, 1909), 28-35.

between eternal and temporal punishment allowed him to do what Gratian could not or chose not to do in his exposition of the first position, namely attribute remission of sins to contrition alone all the while giving the priests a real role in the process of fully reconciling the sinner to God, for the priest is responsible for assigning the penitent a satisfaction that removes all debt of temporal punishment. The humility of confession, which Gratian referenced through Pseudo-Augustine and in his comments leading up to that passage (D.1 c.88), was for Abelard not required for remission but merely became part of the repayment of the debt of temporal punishment, while the debt of eternal punishment had already been removed through contrition inspired by God. Perhaps Abelard's distinction would have given a way to Gratian to wholeheartedly affirm the first position, or maybe, like Hugh, he still would have viewed Abelard's position as far too damaging to priestly power and authority.

As one of Abelard's many intellectual enemies, Hugh of St Victor took the opposite view on this issue. He seems to have explicitly reacted against Abelard in his *De sacramentis christianae fidei*.[121] Like Abelard with his distinction between eternal and temporal punishment as related to different elements in penance, Hugh also developed a distinction that became characteristic of his followers.[122] Hugh argued that the human soul is bound in

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[121] Debil, "La première distinction," 447.

[122] On Hugh's influence in a more general sense, cf. Roger Baron, "L'influence de Hugues de Saint Victor," *Recherches de théologie ancienne et médiévale* 22 (1955): 56-71; Bernard Bischoff, "Aus der Schule Hugos von St. Victor," in *Aus der Geisteswelt des Mittelalters: Martin Grabmann zur Vollendung des 60. Lebensjahres von Freunden und Schülern gewidmet*, ed. Albert Lang, Beiträge zur Geschichte der Philosophie und der Theologie des Mittelalters, Supplementband 3:1 (Münster: Aschendorff, 1935), 246-50; on Hugh's methodology, cf. Heinrich Weisweiler, "Die Arbeitsmethode Hugos von St. Viktor," *Scholastik* 20/24 (1949): 59-87, 232-67; on Hugh's authentic works and their dating, cf. Damien van den Eynde, *Essai sur la succession et la date des écrits de Hugues de Saint-Victor*, Spicilegium Pontificii Athenaei Antoniani 13 (Rome: Apud Pontificium Athenaeum Antonianum, 1960); for an overview of his works and thought, cf. most recently Paul Rorem, *Hugh of Saint Victor*, Great Medieval Thinkers (New York: Oxford University Press, 2009).

two ways: by an obduracy of mind and by the debt of future damnation (*ligatus est obduratione mentis, ligatus est debito futurae damnationis*). God alone can release man from the former bond and does so by returning his grace to the sinner so that the sinner may become repentant of a sin (during which sin God removed his grace). When the sinner becomes repentant, he goes to the priest to confess and receive due penance, in which ecclesiastical activities the penitent becomes free of his debt of damnation. This debt stands as the external bond, as signified by the chains on Lazarus which were loosened by the apostles after Christ raised him from the dead. God forgives and can forgive without any operation of a human priest, but God chooses to forgive *through* the operation of priests.[123] Hugh's interpretation of the raising of Lazarus was very similar to the one Gratian gave in arguing for the second position in D.1 d.p.c.87. They both agreed that vivification and God's work in the dead sinner are symbolized in that story; they both agreed that such vivification is a raising unto the life of contrition, a kindling of sorrow over sin, not that the resurrection indicates the sinner has already received remission of sins. Hugh emphasized that such contrition motivates the penitent then to present himself before a priest and thereby to be

[123] *De sacramentis* 2.8 (PL 176:565C-566B): "Ideo necesse est ut Deus gratiam suam quam peccantibus nobis juste subtraxerat, quando ad poenitentiam vivificandi sumus, sola misericordia nullis nostris meritis praecedentibus reddat, quatenus ipsa gratia adveniens cor nostrum a torpore infidelitatis et a peccati morte exsuscitet, ut scilicet dum primum ipsa sola operante ad poenitentiam compuncti a vinculis torporis absolvimur, etiam ipsa deinde cooperante, poenitentes a debito damnationis absolvi mereamur. Hoc bene in resuscitatione Lazari signatum est, quem ipse Dominus per se prius intrinsecus a vinculo mortis absolvit, vivificatum autem deforis ministerio ipsorum apostolorum solvi praecepit. Sic namque in sancta Ecclesia nunc mortuos peccatis per solam gratiam suam interius vivificans ad compunctionem accendit, atque vivificatos per confessionem foras venire praecipit; ac sic deinde confitentes per ministerium sacerdotum ab exteriori vinculo, hoc est, a debito damnationis absolvit…. Sed tamen ipse sicut ex semetipso Deus est, ita etiam per semetipsum quando vult sine humana cooperatione peccata dimittere potest…. solus Deus peccata dimittit, tunc quoque quando sacerdos ab eo et per eum dimittit. Ipse enim hoc in homine facit quod homo per eum facit; nec ideo dicendum est hominem ibi nihil facere, quia per eum Deus facit." For an English translation, see Hugh of St Victor. *On the Sacraments of the Christian Faith (De Sacramentis)*, trans. Roy J. Deferrari (Cambridge, MA: The Medieval Academy of America, 1951), 417-19.

loosed from his external bond (*exterior uinculum*), which means the absolution from his eternal debt. What God does in inspiring contrition is free the sinner from the bonds of torpor (*uincula torporis*), enlivening him so that he then deserves to be absolved of the debt of damnation by the priest.[124] Again, as with Abelard, Gratian reproduced a similar sentiment and shares a general framework for dealing with this question, but he did not use the same argument or identical, distinctively Victorine terminology. Therefore, one must conclude that Gratian did not know Hugh's work but did participate in the same broad intellectual milieu.

That common intellectual milieu emerged from the school of Anselm of Laon. In the sentences of that school, the shared underpinnings of Abelard's, Hugh's, and Gratian's thinking on this issue appear. That school produced a framework and a basic set of patristic texts, including the one about Peter's tears, with which the question about when sins are remitted in penance could be addressed. Its sentences did not frame the issue in a question meant to elicit a dialectical response, as Gratian did and as Abelard did in *Sic et non*. They did provide the foundations for debate, however, as they offered slightly differing interpretations of patristic and biblical *auctoritates*, as they explained the role of God and of the priest in slightly different ways, and as they identified somewhat differently the effects of contrition and confession with satisfaction.[125] Gratian's two positions did not correspond exactly to any position before him; nor did they match, as we have seen, Abelard and Hugh's precise views. What Gratian did in addressing this first question was to create a debate with

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[124] For more on Hugh's view, see Anciaux, *Théologie du sacrement de pénitence*, 186-93, and Schmoll, *Die Busslehre*, 47-54 (although Schmoll includes in his discussion the *Summa sententiarum*, which he accepts as being penned by Hugh).
[125] Cf. Anciaux, *Théologie du sacrement de pénitence*, 168-75.

dialectically opposed positions out of the somewhat undefined and undeveloped work of Anselm and his students. In other words, the *quidam* to which Gratian referred in D.1 most likely were not real people; they were hypothetical persons to whom Gratian assigns two opposing views, both of which he fashioned out of the bones provided to him by the school of Laon.[126] Using an increasingly common question, which was being discussed in the schools, about whether remission of sins occurs prior to or after confession, he created a debate to suit his dialectical methodology in the *Decretum* that he intended to continue in his treatise on penance. This debate happened to be emerging in real life between individual persons elsewhere in Christendom, but Gratian seems not to have been privy to it. Both debates and serious disagreements, however, the one in northern France between Abelard and Hugh and the one in northern Italy on Gratian's page and in his classroom, resulted from the same intellectual movements and motivations proceeding in infant form out of the school of Laon: the search for greater clarity and definition, the yearning for increasingly consistent and systematic thought, and the developing scholastic methodology of finding truth through reconciling *auctoritates*.

Gratian's Ambivalence in his Conclusion

This last point has never before been postulated by a modern scholar, but it has significant ramifications for the other intensely debated issue of *De penitentia* D.1, Gratian's ambiguous conclusion. After such lengthy debate, he refused to take a stand on the issue. He wrote, "We have briefly explained to all what authorities or what supporting arguments both

[126] I thus disagree with the assessment of both Débil and Hödl, among others, that *De penitentia* D.1 constitutes a pitting against one another of the Abelardian and Victorine views.

opinions about confession and satisfaction rely upon. To which of these one should preferably adhere, however, is reserved to the judgment of the reader. For both have wise and religious men as supporters."[127] Since this statement has evoked such extensive discussion

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[127] D.1 d.p.c.89: "Quibus auctoritatibus, uel quibus rationum firmamentis utraque sentencia confessionis et satisfactionis nitatur, in medium breuiter proposuimus. Cui autem harum potius adherendum sit, lectoris iudicio reseruatur. Utraque enim fautores habet sapientes et religiosos uiros." The phrase *sententia confessionis et satisfactionis* has been a stumbling block to some – they expect *sententia contritionis et confessionis*. They have thought Gratian was using one term (*confessio*) to describe one position and the one (*satisfactio*) to describe the other. Instead, Gratian was speaking of the two opinions *about* confession and satisfaction, taken collectively, namely that remission occurs before and without them, on the one hand, and that remission occurs after and only with them, on the other. Huguccio also read this statement this way, noting (Admont, Stiftsbibliothek 7, fol. 484vb): "'Both opinions,' namely that sin is forgiven an adult or person of the age of discretion in contrition of the heart alone without oral confession and an act of satisfaction, and that sin is not forgiven an adult or person of the age of discretion in contrition of the heart without oral confession and an act of satisfaction. (Utraque sententia, scilicet quod sine oris confessione et operis satisfactione adulto et discreto peccatum in sola cordis contritione dimittatur, et quod sine oris confessione et operis satisfactione in cordis contritione adulto et discreto peccatum non dimmittatur.)"

Gratian followed his concluding statement of indecision and brought the entire D.1 to a close with a not-very-helpful canon which he attributed to Theodore of Canterbury but really came from the Council of Chalon-sur-Saône in 813. This canon exemplifies the danger of basing any interpretation of an author's personal views, intent, and understanding based on a quoted text. The canon was originally written in a situation in which there really was a debate about the necessity of confession, and the bishops and abbots in Lyons were concerned to get the faithful to confession (Debil, "La première distinction," 265). Thus, the canon comes off as debating the necessity of confession. One must keep in mind, though, that Gratian would have viewed it through the lens of his own question, whether remission of sins comes through contrition or through the entire process of penance. Wei misinterpreted the question in Gratian's mind and consequently put great weight on this canon, which seems to fit his view. He also put great weight on changes in the canon that he believed, but cannot prove, Gratian himself made to the text; he then interpreted Gratian's intent in altering the canon as he purportedly did ("Law and Religion," 291-93). I will just comment on how this canon appears to fit into Gratian's conclusion, but I do not take any decisive stand on how Gratian viewed or interpreted it. Gratian seems to have intended this canon to further explain his final statement (end of d.p.c.88) that both positions "have wise and religious men as supporters." While at first glance, the identification of these men seem to be the Greeks on the one hand and "almost the entire holy church" on the other, which are the first two groups mentioned and pitted against one another in the canon, such an interpretation fails when one recognizes that the canon had developed in the canonical tradition (including in Burchard of Worms' *Decretum* 19.145 and Ivo, *Decretum* 15.155) in such a way as to exemplify error in the Eastern church pitted against true doctrine as preserved in the West (cf. Debil, "La première distinction," 266-67). Nowhere else in the first distinction or all of *De penitentia* did Gratian concern himself with the position of the Greeks on a penitential topic, and, if the position of the Greeks was viewed as erroneus but was supposedly equivalent to the first position in *De pen.* D.1, Gratian would not have spent time arguing for it but never conclusively refuting it. Plus, the identification of an entire people (Greeks) and the holy church as *uiri* seems odd. Placing the canon in the context of the distinction as a whole and taking into account Gratian's usage of the term *uiri* (men), I believe Gratian meant through this canon to set up David (one wise and religious *uir*) on the one side and James and the other apostles (other wise and religious *uiri*) on the other, for this canon quotes Psalm 31:5, which formed D.1 c.4 in support of the first position, and James 5:16 which, as the proponents of the first position admit in d.p.c.87, is usually used to support the notion that confession is needed for the remission of sins. Why did Gratian include the

but since the historian cannot get into Gratian's mind and decipher his exact thoughts and motives here, I will pursue two different avenues of thought. Two possibilities, not necessarily mutually exclusive, emerge: first, Gratian never really intended to stand on one side or the other but instead wanted to stir up discussion and debate, particularly among his students, training them in modes of argumentation through *auctoritates*, biblical *exempla*, and *rationes*, or, second, Gratian really could not decide which view was preferable, even though he might have leaned towards one or the other.

While the first possibility may seem highly unlikely, it becomes more likely taking into account the conclusion that Gratian did not have specific people and works in mind when formulating D.1 but was instead formulating a debate based on some of the ideas, trains of thought, and also ambiguities floating around the school of Laon. As will be seen, Gratian had no problem taking a strong stand in D.2, D.3, and D.4, but here he appeared to waffle. Gratian knew the texts of the school of Laon and based his opposing arguments on them, and he must also have known, then, that neither of his positions in D.1 corresponded precisely to those writings and that either of the positions could find support in them. He realized, then, that his discussion created an imaginary dichotomy that was not reflected in his Anselmian sources. With this realization, he did not expect to come to a conclusion, but he was laying out the debate for further discussion and debate and providing many good and

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mention of Greeks, then? He did so probably for the simple reason that his formal source did. As just noted, the Greeks do not appear anywhere else in the treatise, and thus I cannot believe that they were at the forefront of his mind here either. Biblical texts, including these two in the quotation, and biblical personages, however, played an important role in the course of his arguments in D.1 on both sides. These were more likely the focus of Gratian's attention in the canon along with the canon's closing sentences identifying different roles of God and priests in penance. Cf. also chapter 11, in which Huguccio's reaction to this authority is discussed.

relevant *auctoritates* and *argumenta*. Gratian considered neither view as he presented them to be heretical, and he realized that the words of many good men, past and present, could be taken as supporting either one. He probably found truth in both. The entire distinction, then, served as a heuristic device in the education of his students.[128] He intended his students to deal with, engage, and struggle through the rich heritage on the topic and learn how to approach and counter various arguments.

The second possibility has received the attention in the literature. Instead of framing the issue in terms of which view Gratian really preferred but just could not bring himself to advocate openly (which is impossible to determine even if the question were valid, which I doubt), a more fruitful approach may be to ask what may have been the stumbling blocks within Gratian's own thought that hindered him from taking a firm stand. On this front,

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[128] Jason Taliadoros has made a similar argument about the conclusion of Master Vacarius' *Summa de matrimonio*. Cf. Taliadoros, "Synthesizing the Legal and Theological Thought of Master Vacarius," ZRG Kan. Abt. 126 (2009): 67. Vacarius declined to take a stand on what constitutes a marriage but instead, like Gratian, opened the door for a "skilled reader" (*peritus lector*) to make up his own mind. Taliadoros argues that Vacarius was not engaging in rhetorical humility but was instead being consistent with "the pedagogical and heuristic characteristics" of the work (67). From a more general perspective, Giulio Silano makes a related point in his introduction to his translation of Peter Lombard's *Sentences*. He is discussing the role of the master in training his students through dialectical reasoning and pitting authorities against each other. He notes that modern scholars often perceive that an appeal to historical differences (i.e. a recognition that a text was written in a different historical context) would create an easy reconciliation of apparent disagreements; they then argue that men of the twelfth century must have had a limited historical sense. But perhaps the masters did not always intend to come to a resolution. He says ("Introduction" in Peter Lombard, *The Sentences: Book 1, The Mystery of the Trinity*, trans. Giulio Silano, Mediaeval Sources in Translation 42 [Toronto: Pontifical Institute of Mediaeval Studies, 2007], xxv), "It is true that many of these contradictions would have faded away, if the masters had applied a sounder historical judgement to the texts which they were reading… this assumes that the interest of the masters lay primarily in the resolution of such contradictions, which is not at all an assumption that ought to be made gratuitously."

Joseph Goering has recently and independently come to the same conclusion, like me also under the influence of Silano's introduction (to which he directed my attention). He argues ("The Scholastic Turn," 225) that in *De pen.* D.1 Gratian was laying out the whole tradition before his students, and "like a good law professor, he identified the points of conflict and tension in law and society, he made magisterial choices in the authorities he presented, and he argued his points as cogently as possible. In doing so he ensured that future generations of scholars would have before them, when they considered penance, evidence both for the primacy of interiority and of contrition of the heart in penance, and also for the necessity and the fittingness of external confession to a priest and satisfaction for sins committed."

Stanley Chodorow's work on Gratian's ecclesiology proves helpful, especially if one turns one's attention to the relationship between the power of the keys, the power to bind and loose, and the remission of sins in Gratian's thought and that of his contemporaries. Overall, the theology on the keys, as on so many other subjects, remained undefined in this period.[129] Are the two keys of the kingdom equal to the power to bind and loose? Or is the power to bind and loose one of the keys? Of what precisely does the power to bind and loose consist? As Chodorow and others have pointed out, Gratian himself, for being such an important figure in the formation of the systematic study of canon law and for being so intent on studying and preserving the structure of the church, wrote surprisingly little on the power of the keys in his *Decretum*, and what he did write lacked clarity and definition.[130] At one point, Gratian produced what was becoming a familiar formula, identifying the keys as the knowledge of discernment and the power to cast sinners out or receive them back into of the church (*scientiam discernendi inter lepram et lepram* and *potestatem eiciendi aliquos ab ecclesia, vel recipiendi*).[131] While most of his contemporaries associated the power to bind and loose with the latter key of *potestas*, Gratian did not make that distinction. He repeatedly associated the power to bind and to loose with both keys, all of which he connected to the remission of sins.[132] For Gratian and his main Parisian contemporaries, the remission of sins corresponded or even was equivalent to the release from eternal punisment. The school of

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[129] Hödl, *Schlüssgewalt*. For his section on Gratian, cf. pp. 164-75. Cf. also Ancaiux's section on the power of the priests in penance, which of course has great overlap with the issue of the keys: *Théologie du sacrement de pénitence*, 491-600, and the discussion of Heinrich Eugen Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl nach dem Dekret Gratians," *Studia Gratiana* 4 (1956-57): 219-21.
[130] Chodorow, *Ecclesiology*, 169; Anciaux, *Théologie du sacrement de pénitence*, 302.
[131] D.20 d.a.c.1. Cf. Chodorow, *Ecclesiology*, 166.
[132] Chodorow, *Ecclesiology*, 165-69, esp. 168 n.21.

Laon remained vague on how the remission of sins and correlated release from eternal punishment related to priestly powers, but what was clear in their treatment of the raising of Lazarus was that they distinguished between the role of God and priest. God is the *uiuificator*; the priest is the *solutor*. God inspires contrition; the priest remits punishment, the *pena*. Abelard interpreted that *pena* as temporal; Hugh of St Victor interpreted that *pena* as eternal. Both, however, equated the release from eternal punishment and the remission of sins. Therefore, Abelard denied that priests actually remit sins (their power "to remit sins" is limited, Abelard suggested, to the power to impose or remit the penalty of excommunication); only God remits sins and removes the debt of eternal punishment. On the other hand, Hugh affirmed that priests do remit sins (through God) and thus are responsible for loosing sinners from the debt of eternal punishment.[133] For Gratian as well, as is clear in his argument for the first position in D.1 d.p.c.34-d.p.c.37, the remission of sins entailed the removal of eternal punishment. Therefore, when he argued the second position and connected the power to bind and loose to the remission of sins, he stood with Hugh in believing that the priests' power, if they have been given the keys and the power to bind and loose (which they have), consists of the remitting of eternal punishment. Thus, while Gratian may have been tempted by the *auctoritates* and *argumenta* wrought in support of the first position, the connection in his mind between the power granted to priests by Christ himself and the remission of sins and thus of eternal punishment prevented him from endorsing the first

[133] On Abelard and Hugh's views on the role of priests in the process of confession, cf. Anciaux, 290-97.

position.[134] Gratian could not let go of the church's authority; he devoted a great portion of his *Decretum* to establishing and explaining its various components. He thus may have viewed the first position ultimately as a threat to ecclesiastical order and God-given authority.[135] As Wei has pointed out and as will become clearer in the next few chapters, Gratian valued logical consistency.[136] If God has given the power to bind and loose to priests, and if that power consists of remitting sins, which entails the erasing of eternal penalties, then full remission cannot come before a penitent confesses to a priest and carries out the assigned satisfaction. But if Gratian truly could not decide which position to endorse, then he must have found the arguments in support of the first position highly compelling as well.

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[134] That ecclesiastical authority and the power to bind and to loose were in the forefront of Gratian's mind is demonstrated by the fact that, in concluding his argument for the second position in d.p.c.87, Gratian returned to D.1 c.40 (Augustine saying that secret penance frustrates the keys given by Christ to priests) and c.49 (Pope Leo arguing that no mercy can be received without the supplications of priests).

[135] Chodorow came very close to expounding the position I do here, but his treatment suffered from a confusion over the nature of the question of D.1. He usually expressed it in the simple terms of the obligation to confess or not. Nevertheless, based on his extensive work on Gratian's ecclesiology, he saw the focal point of the conflict in Gratian's mind as the power and authority of the ecclesiastical order and how the first position might threaten that. He wrote (*Ecclesiology* 131): "If no confession was necessary for the remission of sins, then the power of the hierarchy would have no value and the Church could not be seen as necessary for the salvation of men. Gratian saw that to support the view first expounded in the quaestio would be to deny the most basic premises of Christian ecclesiology. There was no doubt in his mind that the obligation of confessing one's sins had to be preserved."

[136] "Law and Religion," 279. Wei not only argues that the question at hand in D.1 is whether confession is necessary or not, plain and simple, but he also argues that Gratian leans toward viewing confession to a priest as unnecessary. This view is untenable. First, he cannot then explain the existence of the rest of the treatise, particularly D.3, D.5, and D.6, all of which rely heavily on the assumption that confession to a priest should occur. Second, Gratian does not hint at any such leanings elsewhere in the *Decretum*. In fact, quite the opposite is the case. In C.16 q.1 he addresses the question of whether an ordained monk can administer penance. Such a question would be irrelevant if Gratian believed confession to be unnecessary. Third, such a leaning is entirely inconsistent with the rest of Gratian's ecclesiology as so carefully mapped out by Chodorow. Gratian conceives of the priest's role in highly judicial terms. Such judicial functions are not possible without the institution of confession. Fourth, Gratian would know that such a view was heretical. Why would he open himself up to charges of heresy? Fifth, if the question was really about the obligation to confess or not and if Gratian leaned toward to the view that it was not, why does this reality not emerge in the commentaries on Gratian? As Debil points out, the comments of Gratian's immediate successors are good indicators as to what Gratian really meant and was arguing in his work.

Whatever the motivations and feelings behind his concluding comment and *auctoritas*, Gratian left much upon which his successors could feed. If he meant to kindle debate, he certainly succeeded. In the coming decades of the twelfth century, the first position became the consensus view and the one propounded by Peter Lombard. All the later authors realized, though, that, in taking that position, they needed to explain more clearly what the precise role of the priest is in penance and what the keys and the power to bind and loose are. They too sensed the conflict that Gratian felt and internalized. They needed to defend ecclesiastical order and priestly authority side-by-side with their defense of contrition as remittive all the while explaining the meaning of seemingly contradictory *auctoritates* in the tradition. Some succeeded better than others, but Gratian would have been pleased to see them taking both issues and the various expressions in the tradition seriously.

CHAPTER 2

REGAINING LOVE LIKE DAVID OR LOSING LOVE LIKE SATAN:

DISTINCTIO 2 OF *DE PENITENTIA*

The transition from the end of the first distinction to the beginning of the second highlights the difficulty with dividing *De penitentia* into distinctions but also the sensibility with which early scholars of the *Decretum*, perhaps Paucapalea chief among them, did impose those divisions. In some early manuscripts, the second distinction continues on from the end of the *auctoritas* attributed to Theodore of Canterbury's penitential (D.1 c.90 in Friedberg) with only a small paraph but no enlarged initial; some manuscripts, including Fd, do not even include a paraph.[1] Cologne, Dombibliothek 127, from the mid-twelfth century, does begin the second distinction with a paraph and a red initial, but the scribe uses such marks regularly throughout the treatise; in other words, he did not distinguish the start of the second distinction in any special way.[2] The early scribes did not always seem to recognize that they were copying a new section or moving on to a different theme. Such observations suggest the artificiality of the distinction divisions in use for several centuries. At the same time, when one examines the content of Gratian's words, one notices that Gratian made a clear break here. He did not speak any more about contrition and confession and which one brings about the remission of sins. He did not mention again the raising of Lazarus, Peter's tears, or the keys of the kingdom held by priests. Gratian left these topics behind and

[1] Fd, fol. 91ra. Manuscripts which have a small paraph at the start of D.2 include Biberach an der Riss, Spitalarchiv B.3515, München, Bayerische Staatsbibliothek, lat. 28161, and Bremen, Universitätsbibliothek 142. Cologne 127

[2] Köln, Dombibliothek 127, fol. 268va.

introduced a new question about penance. In short, Gratian asked whether penance can be repeated or reiterated, or is it instead *unica*, a one-time affair. Gratian did not get around to answering this question until the so-called third distinction.

In what came to be called the second distinction, Gratian treated a sub-question (although he never explicitly phrased it as a *questio*) that related analogously to the main issue at hand. The analogous question for Gratian was whether love once possessed (*caritas semel habita*) can be lost. Gratian's affirmative answer to this question in his mind provided direct support for his affirmative answer to the main question, whether penance can be reiterated, the question to which Gratian returned and which he treated thoroughly in the so-called third distinction. The earliest scribes did not always recognize these topical divisions inherent in Gratian's composition or they may not have marked them out in a way that would please modern scholars. Nevertheless, Gratian did ask separate questions, some main and some auxiliary, within his treatise, and his immediate successors formulated labels in the form of *distinctiones* that fit the substance and organization of Gratian's work.

I follow these successors in distinguishing and discussing a second distinction, a section filled with discussion about *caritas* and outside of which exists no discussion of *caritas*. While Gratian's contemporaries asked a wide range of questions about *caritas*, Gratian stuck closely to the matter at hand, namely whether love can or cannot be lost, which he uniquely understood as contributing to the discussion about whether penance could be repeated. In the course of his extensive arguments about *caritas*, related in turn to the elect and to the reprobate, Gratian revealed a wide knowledge of patristic literature, contemporary

theology, and dialectic, giving further clues as to his educational background and his unique intellectual gifts.

The Preface

The second distinction begins with a sentence that is difficult to translate: "Quia uero de penitentia semel cepit haberi sermo, aliquantulum altius repetendum uidetur, diuersorum sententias certis auctoritatibus munitas in medium proponentes."[3] What does Gratian mean by *semel*, and does the *sermo* refer to his own work (viz. the preceding section, D.1) or to something else? The repetition of *semel* in the next sentence, clearly with reference to penance itself,[4] would suggest that the *semel* here likewise relates to the word *penitentia*, but grammatically the construction is nonsensical. Likewise problematic grammatically is the final word, *propontentes*, which has no antecedent, either express (*nos*) or implicit (in a first- or third-person plural verb). A possibility exists that Gratian originally intended *scilicet* and not *semel*, since paleographically an abbreviation for the former could be read as the latter, especially given the subconscious suggestion of the latter given its presence in the next sentence.[5] *Scilicet* would make sense and work grammatically. One should also note the peculiarity that this first sentence of D.2 appears in Fd but not in Aa.[6] Did Gratian really write this sentence? Given its presence in Fd, I believe he did, but perhaps he hastily added it at some point with the desire of providing a better transition from the end of D.1. Given these

[3] D.2 d.a.c.1. With the discussion of the paragraph above in mind, I translate this opening text as follows: "But because we have indeed begun to discuss penance, it seems that the issue should be taken up again a little more deeply, [with us] laying before all opinions on different sides defended by certain authorities."
[4] The next sentence reads, "Alii dicunt penitenciam semel tantum esse utilem."
[5] I thank Wolfgang Müller for making this suggestion to me based on his extensive paleographical experience.
[6] Winroth lists this sentence as being missing from the "first recension," but it is present in Fd (fol. 91ra). None of the second distinction is present in Sg.

various problems related to the text, I believe (but cannot be absolutely certain) that Gratian intended here merely to announce that he was going to continue a discussion (*sermo*) about penance, a discussion that he had "indeed begun to have," and that he was going to discuss other things about penance, moving beyond the question of which element remits sins. Because various aspects of *penitentia* would now be investigated (not just the issue of D.1), the theme as a whole would be examined more deeply (*altius*). As usual, such an investigation would involve presenting various opinions supported by certain authorities. In short, Gratian here made known that he was going to expand his discussion beyond the specific question of C.33 q.3, making an (extensive) aside or indulging a tangent outside of the normal *questiones* of his *causae*. The overriding theme of the tangent was *penitentia*, and the first issue to be introduced was whether penance could be performed only once.

According to Gratian, some people argue that penance is only useful or beneficial once. Penance is a one-time affair and cannot be repeated. If someone does repeat penance, that only proves that the first penance was not really penance at all. A person may have outwardly gone through the motions of penance, but the internal effect of penance (the remission of sins) did not occur. Thus, even if sins seem to have been remitted by the judgment of a priest, they never were remitted in the sight of God, "to whom all things in the future are present."[7] In other words, God sees that the penitent is going to sin mortally again, which would require further penance. True penance, however, according to the holders of this position, means never sinning mortally again and thus never having to do penance again.

[7] Here Gratian employs the standard medieval, Augustinian notion of eternity as the eternal present – all things and events in all times being immediately present to God.

After all, Jesus, the true priest, tells those he heals to "go and sin no more."[8] In the original treatise, Gratian introduced *caritas* immediately after Jesus' commands.[9]

At first, Gratian utilized the notion of *caritas* to make the same point as Jesus' commands to the sick and demon-possessed not to sin after he has healed them, namely that a truly repentant person cannot sin again. Gratian argued that, without *caritas*, no adult can have his or her sin remitted (and thus no adult can do true penance without *caritas*). But anyone who is at some point going to sin mortally does not have *caritas*.[10] Love precludes mortal sin. Therefore true penance, inspired by love, is never repeated because the penitent possessing love never does an evil action necessitating additional penance. Gratian quoted many patristic passages along with 1 Corinthians 13:8 ("Love never fails") that emphasized this mutual exclusivity of love and evil deeds. These texts also appeared to say that true love is never lost, which means that any person who does penance and has love cannot commit another mortal sin, and if he does, the original penance and love were not genuine. Argument on that point, whether love is lost once it has been had, was a very common topic of discussion in Gratian's day, usually in the context of many other questions about the nature

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[8] D.2 d.a.c.1: "Some say that penance is beneficial only once. It is unique and cannot be reiterated. But if it is reiterated, the preceding act was not penance. Even if the sins seem to have been deservedly remitted from the sentence of a person's judge, nevertheless, in the presence of him to whom all future events are present, they are considered to have been never remitted, for that sentence of the True Priest has not been kept [John 8:11]: 'Go and sin no more.' Likewise [John 5:14]: 'Behold, you have been healed, do not sin any longer, lest something worse befall you.' (Alii dicunt penitenciam semel tantum esse utilem. Unica enim est, nec reiterari potest. Si uero reiteratur, precedens penitencia non fuit. Et si de sentencia iudicis eius merito peccata uidentur esse remissa, apud eius tamen presentiam, cui omnia futura presentia sunt, numquam habentur remissa: quia non est seruata sentencia illa ueri sacerdotis: 'Vade, et amplius noli peccare.' Item: 'Ecce sanus factus es, iam amplius noli peccare, ne deterius tibi aliquid contingat.')"

[9] In other words, the original treatise does not include D.2 c.1 but moves from d.a.c.1 to d.p.c.1.

[10] D.2 d.p.c.1: "Item sine caritate nulli adulto peccatum remittitur. Non autem habet caritatem qui aliquando peccaturus est criminaliter."

and development of *caritas*.[11] Gratian turned his attention to this particular question for some time before he returned to address directly the chief question of whether penance can be repeated and therefore whether someone can sin after they perform true penance.

Can Love Once Had Be Lost?

The main part of D.2 lingers briefly on the view that love cannot be lost, but most of it supports the opposite position. Gratian contended that the first several *auctoritates* he cited show that love, once had, is not lost.[12] He then cited an Augustinian passage to support the related idea that the person who has love cannot sin, and he followed this up with an argument similar in style to the one in D.1 d.p.c.34-d.p.c.37 that connected love, faith, and remission of sins to eternal life and the lack of love and faith to eternal damnation. Gratian's argument served to mark a clear dividing line between the elect and reprobate: the elect have love and faith and forgiveness of sins and eternal life; the reprobate do not. The elect receive mercy for their sins, for which they truly repented in love; the reprobate receive punishment for theirs, for which they could not repent because they do not have love.[13] Gratian intended

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[11] Landgraf, *Dogmengeschichte der Frühmittelalters*, 1.2, *Gnadenlehre*, 136-55. *Caritas* is not just a matter of interest for Gratian in the theological context of sin and penance; it also plays a great role in his conception of canon law in general. As Orazio Condorelli explains, it constitutes "an essential principle of the system of law." Law and love do not belong to two different spheres, but rather a continuity exists between them. Cf. Condorelli, "Carità e diritto agli albori della scienza giuridica medievale," in *Diritto canonico e servizio della carità*, ed. Jesús Miñambres (Milan: Giuffré, 2008), 54-55.

[12] D.2 d.p.c.12: "Ex premissis itaque apparet, quod caritas semel habita ulterius non amittitur."

[13] D.2 d.p.c.14: "Therefore he who does not have eternal life does not believe in Christ. But he who has love believes in Christ. Indeed, to believe in Christ is to tend to him in love. This is the faith, as the Apostle defines [it] [Gal. 5:6], which works through love; the remission of sins is to this extent promised to this faith. But if love cannot be disconnected from the faith of Christians, namely that to which alone mercy is promised, how has he who did not have love had the faith of Christians, that is, believed in Christ? How then has he received the mercy for sins which, if he has not received it, how are all his works not instead to be struck with eternal torments? (Qui ergo non habet uitam eternam non credit in Christum. In Christum uero credit qui caritatem habet. In Christum quippe credere est amando in ipsum tendere. Hec est fides, ut diffinit Apostolus, que per dilectionem operatur; huic duntaxat delictorum remissio promittitur. Quod si caritas a fide Christianorum

the chasm between elect and reprobate to bolster the view that love belongs exclusively and eternally to the elect (and thus cannot be lost by them) and, on the flip side, that the reprobate can never have love, because, if they ever did have it, that would mean that they would never lose it and thus would not be reprobate at all but be possessors of saving faith and eternal life.

The general trajectory of this argument seems to reflect the thinking of those who defended that love could not be lost. Evidence that people in fact did make this general argument rests in Hugh of St Victor's *De sacramentis christianae fidei* 2.11, where Hugh reacted against just such an argument. The issue of this chapter is the exact same as Gratian's in *De penitentia* D.2: *utrum caritas semel habita amittatur*. Hugh worried that those who answered the question negatively were advocating a certain determinism, an eternal fixedness out of which no person can escape, even in this life. If it is true, Hugh argued, that once a person has love, the *caritas* can never be lost and the person can never sin, and thus a good person can never become bad, why should we not also maintain that a person without love can never gain it and therefore that a bad person can never convert to the good?[14] He was very uncomfortable with such a line of thought, believing it to insert realities of eternity into

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seiungi nequit, cui scilicet soli uenia promittitur, quomodo qui caritatem non habuit fidem Christianorum habuit, id est in Christum credidit? quomodo ergo ueniam delictorum accepit? quam si non accepit, quomodo non omnia prorsus opera eternis sunt ferienda suppliciis?)"

[14] *De sacramentis* 2.11 (Deferrari, 391; PL 176:540D-541A): "They say that he who once has charity, thereafter cannot lose it, that is to say, he who is good cannot be evil. Why then similarly shall we not say that he who is evil cannot be good, if we say that he who now is good cannot be evil? For he who has charity is good, and he who has not charity is not good….and if this shall be established to be the truth, he who stands must not fear, and he who is fallen must not hope. (Dicunt quod qui semel caritatem habet, deinceps illam amittere non potest, hoc est dicere, qui bonus est, malus esse non potest. Quare ergo similiter non dicemus quod qui malus est, bonus esse non potest, si dicimus quod qui modo bonus est, malus esse non potest? Qui enim caritatem habet bonus est, et qui caritatem non habet bonus non est…. quod si verum esse constiterit, nec stanti timendum est, nec sperandum jacenti.)"

the ever-changing and ever-fluctuating temporal world.[15] He could have made the same argument against the reasoning presented by Gratian. Gratian himself immediately rejected such reasoning and strongly argued for the view that love can be lost (and frequently is).

Gratian began his defense of the view that love can be lost with an emphasis on the growth of love throughout a Christian's life, maintaining that the previous comments by the *auctoritates* about *caritas* can be understood as referring to perfect love. He advanced organic language, presenting love as a seed or a seedling, which needs to be nourished in order to grow but can also be trampled underfoot and destroyed. In other words, virtues, including *caritas*, exist in degrees, and no Christian starts out with the greatest degree of anything.[16] After some *auctoritates* cited to this effect, a short section of later additions to the original treatise appear. Besides the additions of Roman law and patristic texts in D.1 cc.5-30 which emphasized the culpability of the will and intent, this section of additions here (D.2 cc.21-24) fits most smoothly into the flow of the treatise. With two *dicta* and a few *auctoritates*, this later stage of the treatise supports the idea of degrees of virtue by showing

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[15] Ibid. (Deferrari, 391-92; PL 176:541A-B): "Are we in time where all things whirl around in uncertainty, and do you make eternity for me from time?...Those who are evil there [in the afterlife] cannot be good. Similarly those who are good cannot be evil. For this is of eternity and of unchangeableness, that there can be no transition from one to another. But here, as long as there is living by change, both the good can be evil and the evil good. (Nos in tempore sumus ubi incerta volvuntur omnia, et tu mihi de tempore aeternitatem facis?... Qui ergo illic mali sunt, boni esse non possunt. Similiter qui boni sunt, mali esse non possunt. Hoc enim aeternitatis est et immutabilitatis, ut illic de alio in aliud transitus esse non possit. Hic autem quandiu mutabiliter vivitur, et bonus malus, et malus bonus esse potest.)"

[16] D.2 d.p.c.14 §1: "These things which are said about love can be understood concerning perfected love, which is never lost once had. But the beginnings of love are nourished in order to grow, and they are trampled underfoot in order to fail. For no one suddenly becomes the best, but in a good way of life, which does not exist without love, each person starts out from the least things so that he may reach the great things. Therefore, there are degrees not only between one virtue and another but also within the same virtue. (Hec, que de caritate dicuntur, de perfecta intelligi possunt, que semel habita numquam amittitur. Exordia uero caritatis enutriuntur, ut crescant, et conculcantur, ut deficiant. Nemo enim repente fit summus, sed in bona conuersatione, que sine caritate nulla est, a minimis quisque inchoat, ut ad magna perueniat. Sunt itaque gradus non solum inter uirtutem et uirtutem, sed etiam in eadem uirtute.)"

that, correspondingly, there are degrees of vice.[17] Latching onto the mention of Peter in Augustine's text in c.16, Gratian developed his argument by focusing on perseverance. He argued that a person, such as Peter, loses love but will recover it before the end.[18] The majority of his argument, though, relied on the connection between love and good works and the corollary idea that the abandonment of good works amounts to the loss of love.

As in D.1, Gratian turned to biblical *exempla* mixed with further *auctoritates* in order to strengthen his argument, and here his text sounds most like a sermon, putting his rhetorical skills on full display. The biblical examples all highlight good works (flowing necessarily from faith and love) prior to the person sinning egregiously. Gratian traced this pattern of good works, which cannot occur without the possession of love, followed by transgression, which must involve at least the temporary loss of love, through the major figures of the Old Testament, all of whom end up saints. The point is clear: love can and frequently is lost by the elect, but, if they are elect, love will return and persist until death. First comes Adam. Gratian argued that Adam possessed righteousness and innocence and therefore love before the fall. Next comes Moses. Gratian began with the praise of Moses' acts of faith in Hebrews 11. Such praises would not be deserved if Moses did not have love; here Gratian began to use rhetorical questions: "With what praises should all these things be proclaimed if there was no love in him at that time, since the branch of a good work has no life in it unless it proceeds

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[17] The first *dictum* (d.p.c.20) introducing the section reads, "On the other hand, degrees in virtue are also proven to exist since degrees of sin itself are also clearly apparent. For just as no one immediately becomes the best, so also no one immediately becomes base. (E contrario etiam gradus in uirtute esse probantur, quia et ipsius peccati gradus euidenter apparent. Sicut enim nemo repente fit summus, ita nemo repente fit turpis.)"

[18] D.2 d.p.c.24 §1: "Therefore, this love which was in Peter as a young shoot before his denial and is born in each individual person before it is strengthened is lost and recovered before its perfection. (Hec itaque caritas, que in Petro ante negationem herba fuit, et in singulis nascitur ante, quam roboretur, ante sui perfectionem amittitur et reparatur.)" The next *auctoritates* focus on perseverance and sometimes failure before perseverance.

from the root of love?"[19] The final phrase ("cum non habeat in se aliquid uiriditatis ramus boni operis, nisi procedat ex radice caritatis") constitutes a near quotation from a homily by Gregory the Great: "Nec habet aliquid viriditatis ramus boni operis, si non manet in radice caritatis."[20] Gregory's comment itself drew upon language by Augustine of *caritas* as the *radix omnium bonorum* ("root of all good things"), language which was very common in Gratian's time and which appears in an *auctoritas* cited earlier in the distinction (c.13). Gratian gave no announcement of his quoting of Gregory; the clause flowed out of him effortlessly, revealing a mind that had been seeped in patristic authors. He did not simply quote passages out of books in front of him. He quoted passages that had been embedded in his memory. His treatment of Moses continued with several interspersed rhetorical questions following the basic formula, "Did not he have love when he did x?" Gratian gave example after example of good works, including intercessory prayers and the destruction of idols, all of which preceded Moses' sin at Meribah, which God punished by not allowing Moses to lead the Israelites into the Promised Land. As the punishment was assigned to Aaron as well as Moses, Gratian next turned to Aaron, whom he argued must have had love before he supported the erection of the golden calf at Sinai, and he again must have had love shown in various good deeds and being chosen as a priest before he shared in Moses' sin at Meribah. Unsurprisingly, Gratian next brought up the ultimate Old Testament example of a saint-turned-sinner: King David.

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[19] D.2 d.p.c.39 §1

[20] *Homiliae in Evangelia* 27 (CCSL 141: 229-30): "Vt enim multi arboris rami ex una radice prodeunt, sic multae uirtutes ex una caritate generantur. Nec habet aliquid uiriditatis ramus boni operis, si non manet in radice caritatis. Praecepta ergo dominica et multa sunt et unum, multa per diuersitatem operis, unum in radice dilectionis."

David serves Gratian's purposes best, for he was beloved of God and could not be denied to have possessed *caritas*, and his fall was all the more dramatic, given the height from which he fell and the gravity of his sin. Again, Gratian put his finest rhetorical skills on display:

> Did not David also have love, upon whom the spirit of the Lord was directed from the day of his anointing? Will someone happen to say that [the spirit] was directed upon him so that he might from that time on possess the grace to prophesy, [and] not so that he might from then on receive the grace of divine love? It is clearly absurd to think this about him concerning whom the Lord says, "I have found a man after my own heart." How also did he not have love who spared the one [Saul] seeking his life, who, because he cut off the edge of his cloak, afterwards solemnly beat his breast, crying out, "Whom do you pursue, King of Israel, a dead dog and a gnat?" How did he not have love, who brought death to his enemy so very solemnly? How did he not have love, who did not drink the water from the cistern of Bethlehem offered to him because of the danger his men were in but poured it out as an offering before the Lord? How did he not have love, who, ridiculed by Michal the daughter of Saul because he had danced before the Ark of the Lord, playing a guitar and lute, said, "I will play, and I will become more lightly esteemed in my eyes." If he did not have love, with what conscience did he fearlessly call down on himself, saying, "If I have returned evil to those giving it back to me, let me deservedly fall down lifeless by [the hand of] my enemies"? If he did not have love, with what foolhardiness did he ask that he be judged justly, saying, "Judge me, Lord, according to my righteousness and according to my innocence upon me"? The same: "Judge me, oh Lord, for I have entered into my innocence"? And nevertheless, after so many and innumerous other judgments of divine and supernal love, how gravely he offended no one does not know who has heard of the adultery with Bathsheba and the murder of Uriah.[21]

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[21] D.2 d.p.c.39 §3: "Numquid etiam Dauid caritatem non habuit, super quem spiritus Domini a die unctionis directus est? An forte dicetur directus esse super eum, ut ex tunc gratiam prophetandi haberet, non ut ex eo gratiam diuinae dilectionis acciperet? Quod absurdum plane uidetur de eo sentire, de quo Dominus ait [Act. 13:22): 'Inueni hominem secundum cor meum.' Quomodo etiam caritatem non habebat, qui querenti animam suam pepercit, et quia oram clamidis eius precidit, postea cor suum grauiter percussit, clamans [1 Reg. 24:15 (1 Sam. 24:14)]: 'Quem persequeris rex Israel, canem mortuum, et culicem unum?' Quomodo caritatem non habebat, qui mortem inimici sui tam grauissime tulit? Quomodo caritatem non habebat, qui aquam de cisterna Bethleem suorum periculo sibi oblatam non bibit, sed coram Domino libauit? Quomodo caritatem non habebat, qui irrisus a Michol filia Saul, eo quod ante archam Domini cytharam et psalterium percutiens saltasset, ait [2 Reg. (2 Sam.) 6:22]: 'Ludam, et uilior fiam in oculis meis.' Si caritatem non habebat, qua conscientia securus

Gratian argued, however, that love returned to David after his horrible sins. David repented; he demonstrated contrition. He could not have done this without love. Gratian's proof of the return of love was quickly followed by the mentioning of the presumed loss of love when David took a census of all the men in Israel.[22] With these examples of Adam, Moses, Aaron, and especially David, Gratian proved that someone can have love, lose it in the committing of a mortal sin, regain it, and lose it again.

These *exempla* demonstrated that those who claimed that love once had is never lost ignored the clear evidence of the Bible. These people correspondingly took an extreme perspective on the baptized. They wanted to make the argument that no one who commits a mortal sin received remission of sins through baptism. If someone does sin after baptism, he did not have love at the point of his baptism and thus did not receive the effect of the sacrament.[23] To counter this argument, which resembles very closely that made by heretics

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sibi ipsi inprecabatur dicens [Ps. 7:5(4)]: 'Si reddidi retribuentibus michi mala, decidam merito ab inimicis meis inanis?' Si caritatem non habebat, qua temeritate iuste se iudicari rogabat, dicens [Ps. 7:9(8)]: 'Iudica me, Domine, secundum iusticiam meam, et secundum innocentiam meam super me?' Idem [25(26):1]: 'Iudica me, Domine, quoniam ego in innocentia mea ingressus sum?' Et tamen post tot et innumera alia diuinae et supernae dilectionis iudicia quam grauiter deliquerit nullus ignorat, qui Bethsabeae adulterium et Uriae homicidium audiuit."

[22] Ibid.: "It is clearly apparent, then, that he had love at that time and that he offered to the Lord the sacrifice of a contrite heart and a crushed spirit out of love…. And nevertheless, afterwards, in the enumeration of the people, how gravely he offended is indicated by the punishment of that very sin. (Euidenter itaque apparet, eum tunc caritatem habuisse, et ex caritate sacrificium cordis contriti et spiritus contribulati Domino obtulisse…. Et tamen, quam grauiter in populi dinumeratione postea deliquerit, ipsius delicti pena indicauit.)"

[23] Gratian laid out this position by those who say that love cannot be lost in D.2 d.p.c.39 §4. This section should have been separated out as a new part, but such separation did not occur in the manuscript tradition. Therefore, in Friedberg's edition, this paragraph continues on from the comments about David without clear distinction. Gratian presented this view in the following way: "Likewise, according to this opinion, he who offends with a mortal sin did not attain the true remission of sins in baptism, did not undertake baptism either in the years of infancy or adulthood, because he did not have love for God, without which no one ever finds grace. And therefore, according to the heresy of Jovinian, if anyone has truly been reborn by the water and the Spirit, he can no longer sin mortally, or, if he does sin mortally, it is proven that he was reborn by water alone, not by the Spirit. (Item, secundum hanc sentenciam qui criminaliter delinquit ueram peccatorum remissionem in baptismo

under Jovinian in the early church, Gratian did nothing more than to reproduce a lengthy section of Jerome's work *Contra Jovinianum*. He let the text speak for itself. In this extensive excerpt one finds Gratian's inspiration for what preceded (the exposition of the love and good works and subsequent sin of Old Testament figures) and what follows (the discussion of Satan's fall). In much less detail than Gratian, Jerome mentioned David, Solomon, Josiah, Joshua the High Priest, Moses, and Aaron as examples of good men who followed their good deeds and their state of being beloved by God with sin. Finally Jerome turned to Lucifer. Satan will never regain the glorious estate in which he was created, but Jerome pointed to him as the ultimate example of a good creature who fell. And if Satan, the chief of angels, could fall, what man could not fall, even if he has been baptized?[24] In the last few sentences which Gratian quoted, Jerome stated that Jovinian denied that Christians who have been baptized can sin but that he (Jerome) had taught that God is the only being who cannot sin; every creature is "under vice" (*sub uicio*), which does not mean that all have sinned but that all can sin.[25] The final section of D.2 constitutes Gratian's expansion of these last ideas, namely the idea of Satan's fall as the chief example of sin being possible after goodness,

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consecutus non est, siue in annis infantiae siue adultus ad baptisma accessit, quia Dei amorem non habuit, sine quo nemo inuenit umquam gratiam, atque ita secundum heresim Iouiniani, si uere ex aqua et Spiritu quis renatus est, ulterius criminaliter peccare non potest, uel, si criminaliter peccat, aqua tantum, non Spiritu probatur esse renatus.)"

[24] D.2 c.40 §5 (from book 2, *Contra Iovinianum*): "Whence also the Savior in the Gospel says, 'I saw Satan falling from heaven like lightning.' If that highest height fell, who would be able not to fall? If there are fallings in heaven, how much more so on earth? (Unde et Saluator in euangelio: 'Videbam,' inquit, 'sathanam, quasi fulgur de celo cadentem.' Si altissima illa sublimitas cecidit, quis cadere non possit? Si in celo ruinae, quanto magis in terra.)"

[25] D.2 c.40 §6: "We have crossed to the second partition, in which he [Jovinian] denies that those who have attained baptism with complete faith, then can sin, and we have taught that, except for God, every creature is under vice – not that all have sinned, but that they are able to sin, and the fall of similar people who are standing is a cause for fear. (Transiuimus ad secundam particionem, in qua negat eos, qui tota fide baptisma consecuti sunt, deinde posse peccare, et docuimus, quod excepto Deo omnis creatura sub uicio sit, non quod uniuersi peccauerint, sed quod peccare possint, et similium reuina stantium metus sit.)"

which he would phrase more in terms of the loss of love being possible after its possession, and the comparison of God, who is not *sub uicio* and cannot sin, to creatures, who are *sub uicio* and thus can sin.

***Caritas* and the Reprobate**

At this point, Gratian deemed that he had proven that some have love, lose it, and gain it back before death, but then, most likely inspired in part by Jerome's talk of Satan, he chose to discuss the reprobate: though they end up in hell, can they ever have love in this life?[26] His discourse led him back to the issue of perseverance: some start well but do not persevere to the end, as many scriptural and patristic passages testify, and if they started well, they must have had love in them.[27] He quoted extensively from book thirty-four of Gregory's *Moralia in Iob*, which addresses those who appear virtuous and holy but prove to be reprobate in the end, and then he answered the argument of the previous position that reasoned that anyone who loves must have faith, eat the bread that is Christ, drink the water that is Christ, be destined for eternal life, and thus never lose that love. Gratian reverted to a distinction using his familiar *aliud est…aliud est* formula. He stated that to taste is one thing,

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[26] D.2 d.p.c.40 §1: "But, because it is granted by some concerning those predestined to life, that they may lose love and recover it once it has been lost, it should also be seen concerning the reprobate, whether these people have love by which, when it has been lost, they are afterwards condemned. (Sed quia de predestinatis ad uitam a nonullis conceditur, quod caritatem amittant, et amissam recuperent, de reprobis etiam uidendum est, an ipsi caritatem habeant, qua amissa postea dampnentur.)"

[27] See, for example, D.2 c.42-d.p.c.43: "Likewise, in the same work (Augustine): 'We should wonder at why God gives faith working through love to certain sons of perdition and does not give them perseverance in it.' Likewise, [there is] that statement of the Gospel [Matt. 10:22]: 'Not he who begins, but he who perseveres all the way to the end, will be saved.' Likewise Gregory: 'Many begin well who finish life in evil.' But he who never works from love does not begin well. But if he does something out of love, it is necessary that love be in him at some point. (Item in eodem, 'Mirandum est, quare Deus quibusdam filiis perditionis det fidem per dilectionem operantem, nec det in ea perseuerantiam.' Item illud euangelii: 'Non qui ceperit, sed qui perseuerauerit usque in finem, hic saluus erit.' Item Gregorius, 'Multi bene incipiunt, qui in malo uitam finiunt.' Non autem bene incipit qui numquam ex caritate operatur. Quod si ex caritate aliquid agit, et caritatem aliquando in ipso necesse est esse.)"

to eat or drink another. Thus the reprobate can taste the food and water which come down from heaven, but only those who are rooted in *caritas* actually eat and drink it. In short, the reprobate can dabble in virtue and possess love to a certain extent, which they will end up losing prior to death.[28] He turned his discussion to Satan, asking whether or not Satan ever had love, and in this discussion he manifested the depth of his familiarity with current perspectives on Satan and the fallen angels in relation to their creation and their fall.

Gratian argued that Satan must have possessed love at his creation. He began with the *locus classicus* on Satan's current state, John 8:44, in which Jesus stated that Satan does not stand in the truth. Gratian insisted that "not standing" does not equal "not being created in," and that, in fact, Satan was created in the truth. But if Satan was created in the truth, he must have had love for God. Gratian again used a series of rhetorical questions to make his point:

> But how is he said to have been created in the truth if it is proven that he was created without love for his Maker? Or how is it asserted that he was made good by God if he received nothing of divine love when he was created? How did he exist without vice before the movement of pride if he in no way loved his Maker? Or how is he said to have been created equal to or more excellent than the others if, when some of them were created in the love of God, he was made empty of the love of God?[29]

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[28] D.2 d.p.c.44: "But the fact that the reprobate are denied the eating of the bread which comes down from heaven or the drinking of the living water ought not to be understood in such a way that they are believed to be a complete stranger to love but that they are understood not to take root in love. For it is one thing to eat or drink and another to taste. Whence we read in the Gospel concerning Christ [Matt. 27:34], 'And when he had tasted, he did not want to drink.' Therefore, he who takes root in love drinks the living water and eats the bread which comes down from heaven; he who to a certain extent partakes of this, from which afterwards he departs by sinning, [merely] tastes. (Quod uero reprobi negantur comedere panem, qui de celo descendit, uel bibere aquam uiuam, non sic accipiendum est, ut a caritate penitus credantur alieni, sed ut in caritate radicem figere non intelligantur. Aliud est enim manducare uel bibere, atque aliud degustare. Unde in euangelio de Christo legitur: 'Et cum gustasset, noluit bibere.' Bibit ergo aquam uiuam, manducat panem, qui de celo descendit, qui in caritate radicem figit; degustat, qui ea aliquatenus conmunicat, a qua postea recedit delinquendo.)"

[29] D.2 d.p.c.44 §1: "In ueritate autem quomodo creatus perhibetur, si sine dilectione sui conditoris creatus esse probatur? Aut quomodo bonus a Deo conditus asseritur, si nichil diuinae directionis in sui creatione accepit? Quomodo ante superbiae motum sine uicio extitit, si conditorem suum nullatenus dilexit? Aut quomodo par,

This final question stemmed from the universally-held opinion that Lucifer was the most excellent of angels at his creation, an opinion that Gratian enforced a bit later with another lengthy quotation from Gregory's *Moralia*. Gratian also asked from where the difference between good and bad angels arose, to which he answered, "from their own free will" (*ex proprie libertatis arbitrio*). He thus defended the free will of the angelic nature. If the difference originated in the angels' own free will, then they were all created good and some became evil by "their own vice" (*suo uitio*), and if they were created good, love must have been in them. Therefore, Satan, just like all the other angels, was created with the love of God. Gratian returned to the theme of perseverance, now as related to angels, when he quoted the *Glossa ordinaria* on Genesis 1:6 (which gloss spoke of "the angelic virtues which persisted in the love of God").[30] From this commentary, Gratian concluded, "It may be believed that the principle of divine love is common to all, but perseverance may be understood to belong solely to those who were worthy to receive it as remuneration so that, having been confirmed, they might not be able to fall anymore and might know this concerning themselves with great certitude."[31] In other words, the good angels merited perseverance by persisting in their love of God and righteousness through a certain probationary period (during which time other angels fell and became evil); they were then strengthened or confirmed in their love and righteousness, to the point that they now cannot

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siue exellentior ceteris creatus dicitur, si, nonnullis eorum in Dei amore conditis, hic ab eius dilectione uacuus factus est?"

[30] "Angelice uirtutes que in Dei amore perstiterunt."

[31] D.2 d.p.c.44 §1: "…principium diuinae dilectionis omnibus credatur esse conmune, perseuerantia uero eorum tantummodo intelligatur, qui in retributione hoc accipere meruerunt, ut confirmati ulterius cadere non possent, et hoc de se certissime scirent."

fall or sin (*non possunt cadere*); in addition, they know with absolute certainty that they cannot fall. Without announcing it, Gratian quoted again (or rather paraphrased) from the *Glossa ordinaria* in its comments on the change of the term for the sky in the Bible from *celum* to *firmamentum*, the latter term indicating that the angelic nature was strengthened (*confirmata*) in persisting in its love for God. With his slight modification of the *Glossa* text, just as with his rhetorical questions, he directed the entire discussion toward the issue of the possession or loss of *caritas*. The *Glossa ordinaria* reads,

> Angelicae virtutes, quae in Dei amore perstiterunt, hoc in retributione acceperunt, ut in contemplatione Conditoris perenni felicitate maneant, et in hoc quod conditae sunt aeternaliter subsistant. Unde apud Moysen caelum factum dicitur, et idem postea firmamentum vocatur, quia angelica natura prius subtilis est in superioribus condita, et post, ne unquam cadere possit, mirabilius confirmata.[32]

Gratian used bits of this section (the idea of receiving perseverance, or remaining in perennial happiness, as a reward [*retributio*] for persisting in love and the idea of not being able to fall again) in his previous sentence, and he reproduced the entire second sentence with slight alterations and one significant one, changing the phrase *ne umquam cadere possit* to *in persistentibus in amore sui conditoris* in order to emphasize the notion of love.[33] Throughout this paragraph, Gratian unassumingly staked out firm positions on many points of

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[32] Gloss on Genesis 1:6 (ed. Rusch, 1.10[b]): "The angelic virtues, which have persisted in the love of God, have received this as their reward, that they remain in perennial happiness in the contemplation of their Maker and subsist eternally in that [in] which they were made. Whence in the works of Moses it is said that heaven is made and the same is afterwards called 'firmament,' because the angelic nature first was made high in superior things and afterwards, lest it ever be able to fall, was more wondrously confirmed."

[33] D.2 d.p.c.44: "Unde bene apud Moysem prius celum, deinde firmamentum factum esse dicitur, quia nimirum angelica natura prius equaliter subtilis in superioribus est condita, postea in persistentibus in amore sui conditoris mirabiliter confirmata."

disagreement on the nature and fall and current state of angels, revealing intimate knowledge of the questions asked and topics discussed in the schools of northern France.

Far more so than in modern theology, pondering the angels, their creation, their nature, how they are similar to humans and how different, their fall, and the current state of both good and bad angels was fully integral to medieval thought. As a subsidiary of this general topic, Satan or Lucifer himself very often entered into theological thinking and teaching. In the late eleventh and early twelfth century, perhaps no thinker thought more critically about Satan and the angels, with a special attention on their free will and their fall, than Anselm of Canterbury. The sin of the fallen angels and of man through their own choice became a topic of discussion between the *magister* and *discipulus* in Anselm's *De libero arbitrio* (cf. chapters one and two), and Anselm wrote an entire work on Satan's fall, much of which deals with the issue of free will. His *On the Fall of the Devil* (*De casu diaboli*) may constitute one of the least studied of Anselm's treatises, but he certainly did not view it as less important. He grouped it together with his much better known *De Veritate* and *De libertate arbitrii*; in his preface to all three works, he describes *De casu diaboli* as follows:

> The third [treatise] asks how the devil sinned by not remaining steadfast in the truth [John 8:44], since God did not give him perseverance, which the devil could not have unless God gave it to him; for if God had given it, the devil would have had it, just as the good angels had it because God gave it to them. Although I did discuss the confirmation of the good angels in this treatise, I called it *On the Fall of the Devil* because what I wrote about the bad angels was the very heart of the question, whereas what I said about the good angels was a side issue.[34]

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[34] "Preface," *Three Philosophical Dialogues: On Truth, On the Freedom of Choice, On the Fall of the Devil*, trans. Thomas Williams (Indianapolis and Cambridge: Hackett Publishing Co., 2002), 1-2. "Praefatio," in *Sancti Anselmi Cantuariensis archiepiscopi opera omnia*, ed. Franciscus Salesius Schmitt (Edinburgh: Thomas Nelson and Sons, 1946): 1.169-70: "Tertius autem est de quaestione qua quaeritur, quid peccavit diabolus quia

These brief, prefatory remarks reveal what some of the common features of discussion about angels and demons were around the turn of the twelfth century: the starting point of John 8:44, perseverance, God as the giver of perseverance, and the confirmation of the good angels. In the course of his treatment, Anselm argued extensively about the will of the devil and that he willed to sin (thereby having free will); he also maintained that the good angels were able to sin before the evil angels fell (chapter five) and that the good angels were confirmed in their righteousness and thus can no longer sin while the bad angels lost forever whatever good they had (chapters six and twenty-five). Gratian probably did not know this work by Anselm of Canterbury, but it illustrates the pervasiveness and importance of the subject in contemporary thought.

As with so many other theological topics, the medieval discussion about Satan's fall and the creation and current state of good and bad angels had patristic roots. A passage from Jerome's commentary on Job provided much of the background to the early-twelfth-century treatment. The text is particularly relevant for the notions present in Gratian's treatment, since it mentions *caritas* as well as angelic free will and persisting in the truth (allusion to John 8:44). Jerome stated that the good angels, although they did not sin, could have, and that after the bad angels sinned, no angel sinned anymore because the entirety of their free will turned to the love of God alone. These good angels thus became immobile, having persisted in the truth in which Satan and his minions did not. The will of the good angels cannot be

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non stetit in veritate, cum deus non dederit ei perseverantiam, quam nisi eo dante habere non potuit; quoniam si deus dedisset ille habuisset, sicut boni angeli illam habuerunt quia deus illis dedit. Quem tractatum, quamvis ibi de confirmatione bonorum angelorum dixerim, *De casu diaboli* titulavi: quoniam illud contingens fuit quod dixi de bonis angelis, quod uatem scripsi de malis ex proposito fuit quaestionis."

changed; they therefore have through love what God has by nature: an inconvertible will.[35] The medieval tradition fell in line with Jerome's general storyline: the angels were created good and with free will; the good angels persisted in love while the bad angels sinned of their own free will; subsequently, the good angels were fixed in their love for God and in the truth and will never sin, while the bad angels became stuck in their rebellion and sin and will never be saved; the good angels now possess qualities that God possesses in and of himself. By Gratian's day, the standard way of speaking of the immobility or fixedness of the good and bad angels' state was to speak of them having been confirmed (*confirmati*) in that state. That view, that the angels' state could not change (in contrast to humans after their fall), stood in opposition to that of Origen, who believed that conversion or back-sliding was always possible for all spiritual creatures, angels and humans.[36] Even though Gratian's predecessors and contemporaries did ask whether the good angels could sin and the bad angels could be saved or whether their states were fixed, they almost invariably upheld the view of Jerome over against the view of Origen.

In Gratian's day, this generally accepted picture started to experience further clarification and specification. If the angels' states are fixed, do they still have free will? If yes, how so? If the good angels are confirmed in the truth, can they really not sin? In other

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[35] *Commentarius in Iob* 25 (PL 26:687C-D): "…quoniam natura conditae creaturae, licet non peccent: capaces tamen peccati sunt: ut apparuit in aliis angelis ejusdem naturae peccantibus. Sed post eos nullum angelorum peccasse, credendum est, quia omne liberum suum arbitrium in solius Dei charitatem verterunt: sicque immobiles facti sunt, persistentes in veritate, in qua praedictus angelus cum suis stare noluit. Proinde angelorum voluntas per amorem Dei facta est inconvertibilis, quae in Deo est per naturam."
[36] Colish, *Peter Lombard* 1.345.

words, do they now have the *non posse peccare* just like God?[37] Do they currently know they cannot sin? Other questions arose about the original state of angels at their creation: were they righteous and holy, were they blessed or beatified, or, as Gratian asks, did they possess love for their Maker? While other authors devoted much time and attention to these questions, Gratian swiftly revealed his answers to them without dwelling on them. This section of his treatise on penance was not about angels but about whether the reprobate can ever have had love. He stuck close to the issue at hand, all the while divulging a great knowledge and understanding of the theological issues of the day, especially the general consensus on this topic.[38]

While most thinkers of the time dealt with this issue of the creation of angels and Satan's fall and used very similar terminology, some interesting parallels emerge particularly

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[37] Did Gratian believe that good angels now have the *non posse peccare*? Unfortunately, he did not comment enough on the issue to make it clear what he believes. In D.2 d.p.c.44, he said that the good angels have been confirmed to the point of not being able to fall. This would suggest that he affirmed that the good angels cannot sin, not just that they are capable of not sinning. On the other hand, in D.2 d.p.c.45, he seemed to attribute the *non posse peccare* to God alone based on his understanding of God alone being omnipotent. To be able to sin is a non-power, an inability to do something. God alone, as he who cannot sin, can do all things. Perhaps he would have agreed with some, such as the author of the *Sententie Berolinenses*, who argued that the good angels cannot bend to evil because of the blessing of God in their confirmation, or the author of the *Sententie Atrebatenses*, who argued that the good angels still have free will and by nature can sin and can not-sin but by grace cannot sin. Odo of Lucca wrote one of the clearest expositions of this position, writing (*Summa sententiarum* 2.4; PL 176:85A-B), "Angels are mutable by nature, immutable by grace. Hence it seems that we must concede that good angels can sin from their own nature, that is, their nature is not repugnant to it, and nevertheless we should not concede that good angels can sin, but rather that they cannot sin, that is, the grace through which they have been confirmed is repugnant to it. (Angeli mutabiles natura; immutabiles gratia. Unde videtur concedendum: Boni angeli possunt peccare ex sua natura, id est, eorum natura non ad hoc repugnat, nec tamen concedendum est, boni angeli possunt peccare, sed potius non possunt peccare, id est gratia per quam sunt confirmati ad hoc repugnat.)" Such a position would appear to be consistent with Gratian's thinking, but he did not argue explicitly about this point and thus left us without a firm knowledge of his position. On the connection between mutability and the ability to sin, see the next section below.

[38] As Colish observed, given the sometimes fierce debate in the period, this issue about good and bad angels and their original and current states witnessed a remarkable amount of agreement. What was debated was merely how best to defend the positions taken. *Peter Lombard*, 1.342-44. For a general survey of the angelology in Gratian's day up through the first decades of the thirteenth century, cf. Marcia Colish, "Early Scholastic Angelology," *Recherches de théologie ancienne et médiévale* 62 (1995): 80-109.

between Gratian's work and some sentences of, once again, the school of Laon. Different authors have different ways of answering some of the questions, particularly whether or in what way the good angels confirmed in the truth cannot sin.[39] Gratian's specific question in mind, namely whether Satan had love before his fall, which assisted him in his discussion of the broader question of whether love once had is lost, relates quite interestingly to a question posed by the author of the *Sententie Berolinensis*. This author asked whether the devil had beatitude at his creation, and he answerd, "Dicendum est, quod non habuit, quia beatitudo semel habita amitti non potest" – the devil did not have beatitude at his creation, because, if he had it, he could not lose it since beatitude is the type of thing which cannot be lost once had.[40] This author used the phraseology typical of the discussion about love (*utrum caritas semel habita amittitur*) and applied it to the discussion of the creation of the bad angels. This author recognized that some *auctoritates* say that the devil lost beatitude and thus would appear to have had it; after all, how does one lose something one does not have?[41] Gratian drew on this same self-evident principle (one cannot lose what one does not have) in his closing comments in D.2 following a long quotation from Gregory about the original sublimity of Lucifer. That quotation came from his *Moralia in Iob* in a passage which

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[39] Colish identified this issue as one of the ones which did incite debate in the midst of general consensus on the creation and fall of angels. Cf. Colish, *Peter Lombard*, 345.

[40] "*Sententiae Berolinenses*: Eine neugefundene Sentenzen-sammlung aus der Schule des Anselms von Laon," ed. Friedrich Stegmüller, *Recherche de théologie ancienne et médiévale* 11 (1939): 43.22-23.

[41] The author got around this self-evident principle through grammar, utilizing a future contra-factual conditional. The devil is said to lose beatitude not because he had it but because he would have had it if he had not fallen. The author gave a parallel case of a culpable priest: A cleric who has committed a crime is told that today he lost the priesthood and the dignity of the episcopacy. This is not said because he ever had that dignity but because he would have had it if he had not committed a crime. Cf. ibid., 43.24-29: "Si non habuit, quomodo amisit? Dicit enim beatus Augustinus in libro tertio super Genesim: *Diabolus angelicae vitae dulcedinem non gustavit; nec ab eo cecidit quod habuit, sed quod fuerat habiturus*. Utpote dicitur alicui clerico qui aliquod crimen commisit: Hodie amisisti sacerdotium vel episcopatus dignitatem. Non tamen ideo sibi dicitur hoc, quod ille umquam habuerit illam dignitatem, sed quia habiturus erat, nisi crimen commisisset."

comments on Job 40:14, Ezekiel 31:8, and Ezekiel 28:12-13. The author of the *Sententie Berolinenses* quoted the same biblical texts in order to prove that one of the angels, Lucifer, "was created higher and more excellent than the rest."[42] The compiler of another Anselmian sentence collection, the *Sententie Atrebatenses*, also looked to Job 40:14 and then to Gregory's comment on it (which stands at the very beginning of Gratian's lengthy quotation in c.45) to show that God created Lucifer more excellent than all other creatures.[43] The two Anselmian compilers and Gratian shared a general background and terminology on the creation and fall of the angels with all thinkers of the period, but they shared, along with the *Glossa ordinaria*, a more particular heritage as well, one which dwelt on the original glory and superiority of Lucifer and did so via the path set out by Gregory the Great through biblical texts in both Job and Ezekiel.[44] They had different ways of drawing on this tradition, which shows that none of them relied directly on another. One quoted the biblical passages and did not give a hint of Gregory as the source of grouping these texts together in speaking of Lucifer's original sublimity, one gave an abbreviated account by quoting one of the biblical texts and one short sentence from Gregory, and one (Gratian) quoted the full *Moralia*

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[42] Ibid., 42.36-37: "Ex quibus [angelis] unus eminentior et excellentior ceteris a Deo creatus est, qui et Lucifer appelatus est." Abelard includes a very similar sentence in *Sic et Non* 46 along with the quotation from Job (Boyer and McKeon, ed., 211.37-40): "…ex quibus unus spiritus, qui vocatur Lucifer, creatus est, sapientior et eminentior omnibus aliis, quemadmodum Iob dicit de eo: 'ipse est principium viarum Dei'."

[43] "Les 'sententiae Atrebatenses'," ed. Odon Lottin. *Recherches de théologie ancienne et médiévale* 10 (1938): 211.4-8: "Et hunc omnibus aliis in sua creatione digniorem constituit. De eo Dominus ad beatum Iob dicit: *ipse est principium uiarum Dei*, id est principale opus inter omnia opera Dei. Et item Gregorius super eumdem locum: Deus qui cuncta creauit hunc eminentiorem omnibus condidit." Later in question 46, Abelard also quotes from the same place (but with different wording) in Gregory (ed. Boyer and McKeon, 212.15-17).

[44] The *Glossa ordinaria* on Job 40:14 includes the following, which is essentially the first sentence of Gratian's quotation and expresses the main idea picked up by the other Anselmian compilers (ed. Rusch, 2.451[b]): "Principium ergo actionum Dei Vehemot dicitur quia nimirum cum cuncta crearet hunc primum condidit quem eminentiorem reliquis angelis fecit." The *Glossa* does not quote more extensively from Gregory but does cite Ezekiel 31:8 and 28:13, both of which are quoted by Gregory in the extended passage reproduced by Gratian.

passage at length which included all the biblical passages. Based on the fact that the two sentence collections are identified as Anselmian and that, to the best of our knowledge, this tradition does not appear in other schools of the early twelfth century,[45] one can surmise that this tradition stemmed from Anselm's teaching in Laon.

Gratian's Final Argument

After his quotation from Gregory's *Moralia* on Lucifer's original excellence, Gratian built one final argument against those who would say love once had can never be lost. The argument does relate back to his discussion of angels but does not deal specifically with the issue of the reprobate. He considered it demonstrated that the reprobate can have love and then lose it (Satan being the chief and definitive example). His final task was to explain or reconcile to his view that love can be lost two authorities which were quoted in support of the opposite view. Gratian's argument became quite involved and at first glance seems impenetrable. The key to illuminating Gratian's meaning and line of thinking lies in some Augustinian philosophy, a conception of the difference between God and all created beings (including angels) based on mutability, and commentaries on Ecclesiastes.

Gratian referred back to and supplemented the two potentially problematic *auctoritates*, both of which made the point that love which is abandoned is not true or is phony. If he wanted to argue that love, true love, once had can be and frequently is lost, he

[45] Hugh of St Victor did not follow this line of thought, although he spent a great deal of time on the creation and fall of the angels. Here would be an instance in which Odo of Lucca seems to have been influenced directly by the school of Laon, for he did follow this train of thought in *Summa sententiarum* 2.4. While the work is usually designated as Victorine, the influence of Anselm's teaching is sometimes apparent. This point has been acknowledged on occasion in the literature (cf. Ferruccio Gastaldelli, "La 'Summa Sententiarum' di Ottone da Lucca: Conclusione di un dibatto secolare," *Salesianum* 42 (1980): 537) and was acknowledged by the medieval scribe of Rouen, Bibliothèque municipale 553, who entitled his copy of the work, *Ex tractatu magistri Othonis iuxta magistrum Anselmum et magistrum Hugonem*.

had to demonstrate how such a view does not contradict both these authorities, one from Augustine and the other from Ambrosiaster (in Gratian's mind, Ambrose). He phrased the problem in this way: "The love which is abandoned in adversity, however, is asserted to be feigned, that is, fake and fragile, just as the faith from which love proceeds is denied to be feigned, that is fragile, in the works of the apostle. Similarly, the love which can be abandoned in adversity is said to have never been true."[46] Apparently, then, true love is not lost; if love is lost, then it is proven to have not been genuine but to be *ficta*, *fictilis*, *fragilis*, or *non uera*. Love that is lost is just as surely shown to be false as the faith from which love proceeds is shown to be true or not feigned (1 Tim. 1:5).[47] Gratian thereby set up a seemingly powerful objection to his position that true love can be lost. To resolve this problem, Gratian argued by analogy and based on ways of speaking about the divine and creaturely, or the infinite and finite. In essence, he argued that some absolute statements should be understood by way of comparison, and, in comparison with perfect love or God's love, every love can be deemed fake and untrue. Such ways of speaking, however, do not discount the verity of something on its own terms or in its own way.

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[46] D.2 d.p.c.45: "Caritas autem, que in aduersitate deseritur, ficta, id est fictilis et fragilis, esse perhibetur, sicut fides, ex qua caritas procedit, ficta, id est fragilis, apud Apostolum esse negatur." Gratian was alluding back to the *auctoritates* early on in the distinction listed in Friedberg as D.2 c.2 and c.12.

[47] The Latin vulgate of 1 Tim. 1:5 reads, "*Finis praecepti est caritas de corde puro, et conscientia bona, et fide non ficta." The connection between faith and love was extremely common in the medieval period, usually based off* Paul's specification of "the faith that works through love" (Galatians 5:6). Here Gratian clearly turns to 1 Timothy 1:5 instead based on the usage of "non ficta," although allusions to Galatians 5:6 also appear throughout *De penitentia*. For the importance of the notion of *caritas* and the centrality of Galatians 5:6 in medieval theological works, particularly commentaries on Galatians, see Ian Christopher Levy, "*Fides quae per caritatem operatur*: Love as the Hermeneutical Key in Medieval Galatians Commentaries," *Cistercian Studies Quarterly* 43:1 (2008): 41-62.

For his first analogous argument, Gratian returned to a statement by Jerome in his *Contra Iouinianum* which had partially inspired his whole discussion about Lucifer and argued that, because God alone is omnipotent and cannot sin, every creature is considered *sub uicio* since every creature is capable of sinning, even though not every creature does. When Gratian quoted the final sentence from Jerome (quoted previously in D.2 c.40), he slightly altered the text, undoubtedly to stress the Augustinian distinction between *non posse peccare* (the inability to sin), *posse non peccare* (the ability not to sin), and *non posse non peccare* (the inability not to sin).[48] Jerome, as Gratian quoted him, had said, "Omnis creatura sub uicio sit, non quod uniuersi peccauerint, sed quod peccare possint (because all creatures can sin)," while Gratian here quoted him thus: "Omnis creature sub uicio est, non quod omnis peccauerit, sed quia nulla est, que peccare non possit (because there is no creature that cannot sin)." Gratian now has the formula in place to deny the *non posse peccare* (or *peccare non posse*, to use the syntax here) to all creatures while affirming it in God alone. If no

[48] Augustine alluded to these ideas and terminology in many places in his work, often in comparing the original (i.e. at creation) and final (i.e. in glory) states of man. Two clear expositions on this front appear in *De correptione et gratia* 33 (CSEL 92:259) and *De civitate Dei* 22.30.3 (CCSL 48:863-64). In the former, Augustine pits the *posse non peccare* against the *non posse peccare*, with related dichotomies, the latter of which are better and attained in heaven: "Quapropter, bina ista quid inter se differant, diligenter et uigilanter intuendum est; posse non peccare et non posse peccare, posse non mori et non posse mori, bonum posse non deserere et bonum non posse deserere. Potuit enim non peccare primus homo, potuit non mori, potuit bonum non deserere. Numquid dicturi sumus: non potuit peccare, qui tale habebat liberum arbitrium? aut: non potuit mori, cui dictum est, si peccaueris, *morte morieris*? aut: non potuit bonum deserere, cum hoc peccando deseruerit, et ideo mortuus sit? Prima ergo libertas voluntatis erat, posse non peccare; nouissima erit multo major, non posse peccare. Prima immortalitas erat, posse non mori; nouissima erit multo maior, non posse mori. Prima erat perseuerantiae potestas, bonum posse non deserere; nouissima erit perseuerantiae felicitas, bonum non posse deserere." In the latter Augustine addresses the preservation of free will in heaven with the added and much more glorious gift of not being able to sin (a quality which God possesses by nature): "Nam primum liberum arbitrium, quod homino datum est, quando primo creatus est rectus, potuit non peccare, sed potuit et peccare; hoc autem nouissimum eo potentius erit, quo peccare non poterit; uerum hoc quoque Dei munere, non suae possibilitate naturae. Aliud est enim esse Deum, aliud participem Dei. Deus natura peccare non potest: particeps uero Dei ab illo accepit, ut peccare non possit. Seruandi autem gradus erant divuini muneris, ut primum daretur liberum arbitrium, quo non peccare homo posset, nouissimum, quo peccare non posset, atque illud ad comparandum meritum, hoc ad recipiendum praemium pertineret."

creature has the inability to sin, then every creature has the ability to sin, but, Gratian argued based on Augustine, the ability to sin (*posse peccare*) is not the ability to do something (or is not some power), but rather the inability to do something (or some non-power). Therefore, the fact that God cannot sin does not make him weak but instead makes him all-powerful (*omnipotens*), and solely so, for he alone can do all things, all things which are some things (*aliqua*), all of which are good.[49] The background for this argument lies in the Augustinian and therefore pervasive medieval idea that evil is nothing; therefore sinning, or doing evil, is doing nothing, not, as we think of it, doing something. Every existing thing (every *aliquid*) is therefore good to one degree or another, and thus the one who can do all things does only good things, and he cannot sin since sinning would consist of a not-doing-something, or a doing-nothing. That metaphysical argument stands behind Gratian's connection of God's omnipotence to the *non posse peccare*. One must follow Gratian's line of thought throughout this final paragraph in order to see how this intricate argument relates to whether true love can be lost. Essentially, Gratian was saying that love that is lost is said not to be true in comparison with divine love or love that is not lost, but that love can still be true in its own way, just as every creature is said to be corrupt (*sub uicio*) in comparison with the omnipotent God who is unable to sin, but some creature could succeed in living without sin and therefore in not actually existing *sub uicio*, in succumbing to the vice of which it is

[49] Ibid.: "Posse autem peccare, ut Augustinus ait, non est aliquid posse, immo aliquid non posse. Unde ille solus uocatur omnipotens, qui hoc non potest, quia omnia potest, que posse est aliquid posse." The Augustinian text that Gratian apparently had in mind was *De Trinitate* 15.15, in which Augustine stated that the power of the Word (Christ) is great because he cannot lie ("Et magna illius uerbi potentia est non posse mentiri quia non potest esse illic *est et non* sed *est, est; non, non*" [CCSL 50:498.20-22]). In other words, Augustine termed the inability to sin (the specific sin here is lying) a *potentia*, not a lack of power or an inability to do something.

capable. Gratian had in mind here the good angels, thus continuing his thoughts from the previous section. In other words, the good angels can be free from vice/evil/sin and still be said to be *sub uicio* in comparison with the omnipotent God who is incapable of being or becoming *sub uicio*. So also, some creature can have true love, but, in comparison with the perfection of God's love, that creaturely love is deemed as nothing, fake, and fragile.

That this was Gratian's general line of argumentation and that he had in mind good angels becomes clearer in the next section when he moved to a related argument about mutability, claiming that, in comparison to God, every creature is called *uiciosa* (comparable to *sub uicio*), not because every creature changes but because every creature is susceptible to change. Gratian moved from the concept of sin to that of mutability not because it was an equally good albeit separate example but because the two concepts were intimately related in medieval thought. Mutability means the ability to sin, the ability to become corrupt, the ability to move from the good to the bad.[50] It therefore also provides the distinction between God and all creatures, even good angels, as Bishop Odo of Lucca specifically argued.[51] God alone is immutable; all creatures are mutable. As Gratian put it, all creatures have the capacity to change (*capax mutabilitatis*). Based on mutability, Gratian made two distinctions rooted in speech by comparison or relative speech. In these two distinctions, he used phrases like *in comparatione eius* and *dicitur esse*, which divulge Gratian's caution and conscientiousness in this argument as well as his familiarity with ways to deal with the

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[50] For Gregory the Great in his *Moralia in Iob*, mutability constitutes the one aspect of angelic nature that opens the door to sin. *If a creature is mutable and has free will, he can use his will to move from the good to the bad, to choose the good over the bad. See Jeffrey Burton Russell, Lucifer: The Devil in the Middle Ages* (Ithaca: Cornell University Press, 1984), 96-97.

[51] Cf. *Summa sententiarum* 1.5, 2.2-3 (PL 176:50C-51A, 81D-83A); Colish, *Peter Lombard*, 1.343.

perennial question of the relationship of divine to human attributes and how human language can use the same terms to speak of both the divine and the human, the infinite and the finite, the perfect and the imperfect. In comparison with God, who knows no mutability, every creature is said to be corrupt (*uiciosa*), because every creature is capable of change (not because every creature necessarily does change for the worse).[52] So also, in comparison with that creature which does not receive change (*non recipere mutationem*, i.e. the creature who is *capax mutabilitatis* but does not actually change, namely the good angels), every other creature which does change is proven to be not true (*non uera*) or empty (*uana*). Gratian concluded, "For this reason, every man is called a liar and has become similar to vanity."[53] Then he extracted from and simultaneously commented on Ecclesiastes 1:2 ("Vanity of vanities! All is vanity!"), saying, "On this account also Ecclesiastes: All the things that are under the sun, that is, that take in the changes of the seasons, are not only called vanity, which enters into every creature by reason of its mutability, but also vanity of vanities by reason of the variety of the complete change that they take in."[54] The connection between *uanitas* and *mutabilitas* may seem strange, but Gratian's train of thought did not occur in a vacuum.

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[52] D.2 d.p.c.45: "Therefore just as in comparison with him who knows no mutability, every creature is called corrupt because every creature is capable of mutability, according to that text [Ps. 142:2 (143:2)]: 'No living thing will be justified in your sight,' and [Job 15:15], 'The stars are not pure in his sight'… (Sicut ergo eius conparatione, qui mutabilitatem nescit, omnis creatura uiciosa dicitur, quia mutabilitatis est capax, iuxta illud: 'Non iustificabitur in conspectu tuo omnis uiuens,' et 'Astra non sunt munda in conspectu eius'…)"

[53] Ibid.: "…sic conparatione eius creaturae, que mutationem non recipit, omnis creatura, que permutatur, non uera, sed uana esse probatur. Unde omnis homo mendax dicitur, et uanitati similis factus."

[54] D.2 d.p.c.45 §1: "Hinc etiam Ecclesiastes: Cuncta, que sub sole sunt, id est que temporum uicissitudinem recipiunt, non tantummodo uanitas, que omni creaturae ratione mutabilitatis inest, sed etiam uanitas uanitatum, uarietate permutationis, quam recipiunt, esse dicuntur." The paraph which entered the manuscript tradition here and is preserved in Friedberg's edition is unjustified. This sentence should flow from the previous one as part of the same paragraph as it continues Gratian's argument and line of thought. I have treated the sentence as such here.

Ecclesiastes itself follows up the exclamation of vanity with a discussion of seasons changing, the sun rising and setting, winds swirling, rivers flowing, etc. (in other words, change and fluctuation in nature). In addition, Gratian had in mind discussions of Ecclesiastes 1 and perhaps also of Romans 8:20 that interpreted *uanitas* in terms of *mutabilitas*. Some writers, such as Honorius Augustodunensis, followed Jerome (*Epistola* 48) in reconciling Solomon's exclamation of all in the world as vanity with God's declaration of his creation as good in Genesis 1. Both Jerome and Honorius relied on comparative speech, just as Gratian did in this section: in comparison with God, all creation is vanity, but, since it is created by a good God, all creation is good, as Genesis states.[55] Honorius associated creation's vanity with its mutability: "Compared to God, [created things] to be sure are considered and should be considered as nothing because God always will remain that which he is, but all of them will utterly change."[56] The person who best explained the connection between mutability and vanity was Alcuin in his commentary on Ecclesiastes, in which he also commented on Romans 8:20 ("For the creation was subjected to vanity"). Explaining how creatures can be said to be subject to *uanitas*, Alcuin wrote,

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[55] Jerome, *Epistola* 48 (PL 22:503-504): "'Vanitas vanitatum, et omnia vanitas,' dicit Ecclesiastes. Si omnes creaturae bonae, ut a bono Creatore conditae, quomodo universa vanitas? … Sed quae per se bona sunt, ut a bono Creatore condita, ad comparationem meliorum vanitas appellantur. Verbi gratia: lucerna lampadis comparatione pro nihilo est: lampas stellae collatione non lucet: stellam lunae confer, caeca est: lunam soli junge, non rutilat: solem Christo confer, et tenebrae sunt." Honorius Augustodunensis, *Quaestiones et in easdem responsiones in duos Salomonis libros Proverbia et Ecclesiasten*, *In Ecclesiasten* c.1 (PL 172:331C-D): "Quid est quod ait Ecclesiastes: 'Vanitas vanitatum, et omnia vanitas,' cum in libro Genesis scriptum sit: 'Vidit Deus cuncta quae fecerat, et erant valde bona?' Si cuncta, quae fecit Deus, valde sunt bona, quomodo omnia vanitas? et non solum vanitas, sed etiam vanitas vanitatum? Coelum et terra, maria et omnia quae in hoc circulo continentur, per se quidem bona sunt, quando a bono Deo creata sunt; sed comparata Deo…"

[56] Ibid.: "Comparata Deo, utique pro nihilo habentur vel habenda sunt, quia semper Deus permanebit id quod est, illa vero omnia pertransibunt."

> For whatever is mutable and is able not to be what it is can rightly be called vanity, for God alone is immutable and is always the same as he is and not otherwise. For that which will change in some way passes away and is not what it was. For this reason, in comparison with the Creator, every creature can be called vanity, and whatever is contained in this globe can be counted as nothing in comparison with eternal majesty.[57]

Something that is mutable can be called vanity because that which can change can cease to be what it is and thus can even cease to be, thereby becoming nothing, sheer emptiness, and thus vanity in the classical meaning of the term. The *Glossa ordinaria* on Ecclesiastes 1 followed Alcuin's commentary, and, whether Gratian knew Alcuin's commentary directly or through the Gloss, it clearly stood behind his discussion. Gratian's purpose in laying out this *mutabilitas-uanitas* connection to creatures, however, was unique: it all served to create an analogy by which he could explain how love once had can be lost (or abandoned) when Augustine and Ambrosiaster say abandoned love was fake and never true.

Gratian ended his argument and his entire discussion of *caritas* first with a direct application of the principle of speech based on comparison between absolutely opposed entities and then with a syllogism. In comparison with divine virtue and unabandoned, perfect love, love that is lost can be said to be untrue and phony, but, taken on its own terms in its own way, that love which is lost is true, that is, truly exists and is real. And just as every creature is said to be good and true in its own way, so also the love that is abandoned is shown to be true in its own way. After all, if it did not truly exist in any sense (and here an

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[57] *Commentaria super Ecclesiasten*, c.1 (PL 100:671D-672A): "Quidquid enim mutabile est, et non esse poterit quod est, vanitas appellari recte potest: nam Deus solus immutabilis, et semper idem est quod est, et non aliud. Quod enim mutabitur, quodammodo evanescit, et non est quod erat. Idcirco ad comparationem Creatoris omnis creatura vanitas dici potest, et quidquid in hoc circulo continetur, pro nihilo computari in comparatione aeternae majestatis." The *Glossa ordinaria* reads (ed. Rusch, 2.694[a]), "Quidquid enim non esse potest uanitas dici potest, quia mutari potest. Solus Deus semper idem est quod est; quod autem mutatur, quodammodo euanescit et non est quod erat. Ad comparationem creatoris, omnis creatura uanitas potest dici et quasi nihilum computari."

implicit syllogism comes in), then it could not be abandoned. But if it is abandoned, then it must truly exist.[58] If written out in proper syllogistic form, Gratian's final argument would look this way:

> If something does not exist, it cannot be abandoned.
> *Caritas* can be abandoned.
> Therefore *caritas* exists.

Or, put alternatively:

> If something is abandoned, it exists.
> *Caritas* can be abandoned.
> Therefore *caritas* exists.

The major premise is a self-evident truth. The minor premise is proven by Augustine and Ambrosiaster's texts. The conclusion cannot but follow. Gratian used simple logic to make a profound point: all love that is lost or abandoned, if it is lost or abandoned (as Augustine and Ambrosiaster affirmed happens), must have truly been *caritas* in some sense of the word. Such love was surely not perfect, but it did constitute *caritas* to some degree in its own way. Like a destroyed seedling truly was a seedling prior to its trampling and would have grown into a head of wheat were it not for that trampling, so also the love that is lost truly was love prior to its abandonment and could have continued to maturity, even to perfection, if God had granted the person possessing the love perseverance.

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[58] D.2 d.p.c.45 §1: "Sic ergo conparatione diuinae caritatis nulla uirtus uera probatur, aut conparatione eius, que non deseritur, illa, que amittitur, uera esse negatur. Sicut autem omnis creatura suo modo bona et uera esse dicitur, sic et caritas, que deseritur, suo modo uera esse monstratur: alioquin, si nullo modo in eo esset a nullo desereretur. Quod enim nullo modo uere est nullo modo deseri potest. Quod si aliquo modo uere deseritur, et aliquo modo id uere esse oportet." Gratian's specific reference to creatures being good in their own way further proves that the tradition on Ecclesiastes stood in Gratian's mind, for, as was pointed out, Jerome first questioned how the exclamation of vanity in Ecclesiastes could be squared with the proclamation of the goodness of creation/creatures in Genesis 1.

Here in this final section following the final quotation from Gregory's *Moralia*, Gratian put all his intellectual capabilities on display. He combined knowledge of philosophy, Scripture, exegesis, and dialectic into one complex and intricate package that he formed in order to do in this one instance what he had set out to do in the entire *Decretum*: harmonize disparate texts and reconcile a position with apparently contradictory *auctoritates*. As this short section shows, the tools that Gratian could employ to accomplish such an end were numerous and reveal a broad education in patristic exegesis, the burgeoning theology, and the *trivium*.

This last point in some sense states the obvious: Gratian was trained in dialectic. While Gratian may not be hailed as a great dialectician, his dialectical training, which of necessity and according to contemporary practice would have preceded any advanced training in exegesis and theology, clearly stuck with him.[59] In this section, he made use of an

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[59] David E. Luscombe, "Dialectic and Rhetoric in the Ninth and Twelfth Centuries," in *Dialektik und Rhetorik im früheren und hohen Mittelalter: Rezeption, Überlieferung und gesellschaftliche Wirkung antiker Gelehrsamkeit vornehmlich im 9. und 12. Jahrhundert*, ed. Johannes Fried (Schriften des Historischen Kollegs, Kolloquien 27; Munich: R. Oldenbourg, 1997) explained the course of education: "So [the student] needs to be introduced first to grammar, secondly to dialectic and then to rhetoric. When so equipped, he should pass to the study of philosophy, beginning with the *quadrivium*. Finally he can proceed to the study of the *sacra pagina*, the Bible" (13). Note that in this period Aristotelian logic did not predominate because most of his logical works were not yet known and had not yet been translated into Latin. Luscombe explained the state of affairs: "From the 1120s onwards, Latin translations appeared of other logical and scientific writings of Aristotle that had not been known in earlier centuries in the Latin West. Until the twelfth century the only logical works of Aristotle that were available in the Latin translations made by Boethius were the *Categoriae* and the *De interpretatione*. Now other Boethian translations of Aristotle's logic – the *Analytica priora*, the *Topica*, the *Sophistici elenchi* – were found; we do not know where or how…. In the twelfth, as in the eleventh century, we are still in the *aetas Boetiana*, a period strongly influenced by Boethius and by his translations, commentaries and treatises" (9). The logical works which were known in the early twelfth century are collectively referred to as the *logica vetus*. Besides Boethius' translation of Aristotle's *Categoriae* and *De interpretatione*, they included his translation of Porphyry's *Isagoge*, his commentaries on these three works, his logical textbooks, and his *De topicis differentiis*. Cf. Toivo J. Holopainen, *Dialectic and Theology in the Eleventh Century* (Studien und Texte zur Geistesbeschichte des Mittelalters 54; Leiden, New York, and Cologne: Brill, 1996), 3. While, hypothetically, training in the full seven liberal arts was viewed as necessary before any other study, G.R. Evans, *Old Arts and New Theology: The Beginnings of Theology as an Academic Discipline* (Oxford:

implicit syllogism based on a self-evident principle. He was able to make highly involved arguments about God's omnipotence related to his inability to sin in such a way that his words flowed with too much ease for modern readers' comfort. We want to him to include more words and explanation so that we can follow him better, but he knew exactly what he was arguing, and he expected his readers to as well without explaining every detail pertinent to the argument at hand. In addition to these specific arguments at the end of D.2, throughout *De penitentia* Gratian used technical terminology of dialectic such as *argumentum*, *ratio*, *firmatur*, *negatio*, *conuertitur*, and others.[60] All of this begs the question of whether something more stood behind Gratian's argument that Satan's fall proves that the reprobate can have love and then lose it. That argument fits very neatly into Boethian dialectic as Gratian would have learned it. Yes, Gratian seemed to have been inspired to produce this argument based on Jerome's question about Satan (quoted as part of c.40): "If the highest sublimity fell, who could not?" Nevertheless, that question may not have appealed to Gratian and motivated him to make the argument he did if he had not been trained in dialectic.

Clarendon Press, 1980), 10, pointed out that the ideal could not always be realized based on a limitation of masters and the commonality of masters of some subjects more so than of others. Grammar could be found everywhere while dialectic was second most common. Arithmetic and rhetoric were next in commonality, followed by the rest of the quadrivium (geometry, astronomy, and music).

[60] In terms of the terminology for the discipline itself, *dialectica* in the late eleventh and early twelfth century was universal for designating the discipline which directs the exercise of reason, which discerns the true from the false. *Dialectica* was more common than *logica*, but in some writers in the twelfth century, among them Hugh of St. Victor, *logica* began to be used to indicate a broader science of which *dialectica* is one part. For Hugh, *logica*, the art of reasoning, was divided into demonstrative, probable, and sophistical. *Dialectica* (and *rhetorica*) dealt with the second of these – reasoning based on what is probable. For some, though, such as Abelard, the two terms were interchangeable. Cf. Pierre Michaud-Quantin, "L'emploi des termes *logica* et *dialectica* au moyen âge," in *Arts libéraux et philosophie au moyen âge: Actes du quatrième congrés international de philosophie médièvale. Université de Montréal, Canada, 27 août – 2 septembre 1967* (Montreal and Paris: J. Vrin, 1969), 856-57.

Gratian's question was whether the reprobate can have love before losing it, and this question constitutes a simple dialectical question according to Boethian terminology. For Boethius, as he explained in his *De topicis differentiis*, which would have been Gratian's main textbook on dialectic, "simple dialectical questions are about genus, accident, definition, or property."[61] Gratian's question was one about genus. In order to see this more clearly, one can phrase the question this way: "Are those who have love (before losing it forever) among the reprobate," or "Do those who have love belong in the genus 'reprobate'?" That Gratian was thinking in terms of genus and species is explicitly apparent in the terminology he used in his comments that introduced the quotation from Gregory that preceded his argument about Lucifer. He said that Gregory's words apply not to the reprobate generally (*generaliter*, i.e. in terms of the genus "reprobate"), but specifically to hypocrites (*specialiter*, i.e. in terms of the species "hypocrite" within the genus "reprobate").[62] In other words, Gratian viewed Gregory as having been concerned with those

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[61] *De topicis differentiis* 1(PL 64:1178B; Stump 36.1-2). English translation: *Boethius' De topicis differentiis*, trans. Eleanore Stump (Ithaca: Cornell University Press, 2004). Boethius' other main work on dialectic and the Topics was his commentary on Cicero's *Topica*. This work, however, was not rediscovered in the west until about 1130, after Gratian would have studied dialectic. Prior to 1130, *De topicis differentiis*, which is anyway more detailed, was the main text and therefore the one which served as the basis for Peter Abelard's work on dialectic. Cf. Martin Tweedale, "Logic (i): From the Late Eleventh Century to the Time of Abelard," in *A History of Twelfth-Century Western Philosophy*, ed. Peter Dronke (Cambridge: Cambridge University Press, 1988), 197, 223.

[62] D.2 d.p.c.43: "But that statement of Gregory [c.44] ('Those who can be led astray at some point will not turn back, etc.') should not be understood as referring to all the reprobate generally but specifically to hypocrites. (Illud autem Gregorii: 'Qui seduci possunt quandoque non reuersuri etc.,' non de omnibus generaliter reprobis, sed de yposcritis specialiter intelligendum est.)" Meyer does list this *dictum* as a place where Gratian uses technical terminology. He does not see, however, how it sets up an entire argument based on Boethian dialectics. Meyer tends to downplay Gratian's knowledge in the arts and philosophy. Though Gratian certainly was no advanced dialectician nor stand-out philosopher, I believe Gratian deserves a little more credit for absorbing and practicing dialectic than Meyer is willing to give. Cf. Christoph H.F. Meyer, *Die Distinktionstechnik in der Kanonistik des 12. Jahrhunderts: Ein Beitrag zur Wissenschaftsgeschichte des Hochmittelalters*, Mediaevalia Lovaniensia Series 1, Studia 29 (Leuven: Leuven University Press, 2000), 157-58, 168.

who are good and righteous and then turn to the bad and end up damned, not those who have always been evil and never appeared to be God's children. Gregory thus focused on a particular species of reprobate. Similarly, Gratian was concerned to prove that the reprobate includes those who once had love before turning away from it forever, not that the reprobate includes those who never had love for God (which is obvious).

Boethian dialectics consisted primarily in training the student in how to find arguments to answer *questiones* like the one Gratian posed. Topics, of which Boethius recognized two types, constitute the instruments whereby *argumenta* are found. The two types of Topics (*loci*) are maximal propositions and Differentiae. Eleanore Stump defined the first of these thus: "Maximal propositions are truths known per se, or self-evident truths. They are not proved by any other propositions, and knowledge of them is not derived knowledge, drawn from other known propositions."[63] An example of such a self-evident principle would be: "What inheres in the parts inheres in the whole," or "Where the matter is lacking, what is made from the matter is also lacking." These maximal propositions can be divided into categories, and these categories are differentiated by the Differentiae. In other words, the Differentiae identify what makes one category of maximal propositions different from all the others. There are twenty-eight Differentiae, including "from definition," "from description," "from genus," "from whole," "from species," "from efficient cause," "from effects," "from division," "from similars," "from the greater," "from the lesser," "from

[63] *Dialectic and Its Place in the Development of Medieval Logic* (Ithaca: Cornell University Press, 1989), 33. Cf. also Holopainen, *Dialectic and Theology*, 4. On the Topics in the medieval period generally, cf. N. J. Green-Pedersen, *The Tradition of the Topics in the Middle Ages* (Munich: Philosophia, 1984).

contraries," "from privation and possession," and "from affirmation and negation."[64] In essence, the Topics, particularly the Differentiae, help the arguer find a middle term in an argument that would lead to a sure and valid conclusion, but the maximal proposition also serves a very important role, for "it is the principle that gives the argument its force; it is the generalization on which the rest of the argument depends."[65] Boethius gave the following example for a question about genus, which was the type of question Gratian asked about the reprobate: are trees animals? In other words, do trees belong in the genus "animal"? The answer is found by way of the Differentia definition (or *a diffinitione*) and using the maximal proposition related to definition, "That to which the definition of a genus does not apply is not a species of the genus defined." Using that maximal proposition and the notion of definition, the arguer can see that he should use the definition of the genus "animal" in solving the problem. That definition can serve as the middle term in a syllogism, thus leading to a strong conclusion. That syllogism would read, "An animal is an animate substance capable of perceiving; a tree is not an animate substance capable of perceiving; therefore, a tree is not an animal."[66] The Topics do not, therefore, give the answer to the question but provide a means for finding the way to answer it.

As he argued about the reprobate, Gratian found an answer to his *questio* about genus by using the Differentia *a specie* (species) and a maximal proposition about species, which is a part of a whole (viz. the genus). The maximal proposition states, "What inheres in the

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[64] For a full list, see ibid., 48.
[65] Ibid., 41.
[66] *De topicis differentiis* 2 (PL 64:1187A; Stump 49.12-24)

individual parts must inhere in the whole."[67] These Topics suggest Satan as a good middle term for finding the answer. After all, Satan is reprobate. In fact, he is a species of the reprobate, or at least a representative member of the species of reprobate angels (reprobate humans would form the other species within the genus "reprobate"). The fact that Satan and humans are members of different species of rational beings means that Gratian's argument about Satan was not the same as his other biblical *exempla*, such as Moses and David. Here his argument was more sophisticated simply because more than one species was involved. What Gratian did was prove (so he would want his readers to think) that Satan had love at his creation and therefore that he had love before losing it. Based on the pertinent maximal proposition, this would mean that, since a species of the genus "reprobate" possessed true love, the genus as a whole must include those who possessed true love. As the maximal proposition states, "What inheres in the individual parts must inhere in the whole." Fallen angels (chief among them Satan) had love before losing it; fallen angels are part or a species of the whole or genus "reprobate;" therefore, the genus "reprobate" includes those who had love before losing it eternally. Such reasoning proves, then, that reprobate humans are capable of possessing love before losing it and claiming their state as persons to be eternally damned. In this way, Gratian came to a solution to a question following the guidelines for argumentation laid out by Boethius in his *De topicis differentiis*.

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[67] The maximal proposition in Latin reads "quod singulis partibus inest, id toti inesse necesse est." In this case, species is equivalent to part and genus to whole. Thus the *argumentum* is one *a partibus*, "id est a generis partibus, quae species nuncupatur," as Boethius explains in one example (PL 64:1188D). Stump translates this section thus (52.1-7): "We will make an argumentation from species in this way: if justice, courage, temperance, and wisdom are habits of a well-ordered mind, but these four are put under virtue as [their] genus, then virtue is the habit of a well-ordered mind. The maximal proposition: what inheres in the individual parts must inhere in the whole. It is an argument from parts, that is, from the parts of a genus, which are called species; for justice, courage, moderation, and wisdom are species of virtue."

Whether Gratian's usage of Boethian dialectics here was intentional or not is beside the point. Regardless of intention, his education in dialectic demonstrated itself here, providing tools for making arguments in support of theological points. Unlike his contemporary, Peter Abelard, Gratian never, as far as we know, became an expert in dialectic and never formulated his own theories about language and dialectic. Nonetheless, the training of his boyhood and adolescent years molded his mind in such a way that he was prone to fashioning arguments along Boethian lines all the while keeping patristic and biblical *auctoritates* close at hand to support his view. Gratian was not unique in this; in fact, his usage of dialectic side-by-side with *auctoritates* in the study of the Bible and other theological issues made him a man in step with his times.[68] He may have been the founder of the systematic study of canon law, but he also participated in the development of theology as its own field, one which combines study of the Bible with examination of more speculative questions which relies in great part on the *trivium* and other philosophy.

The second distinction also demonstrates the participation of Gratian in the development of theology in another way. This chapter on the second distinction has spoken precious little about penance because Gratian wrote precious little in this section about it. As

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[68] Gratian fit well into the general trend of his century, which followed the pattern, among the giants of the late eleventh century, of the condemned Berengar of Tours more so than the future saint Anselm of Canterbury. Holopainen explained the difference in style and perspective between the two men: "For Berengar, reason is primarily an instrument for analyzing and interpreting the authoritative writings and the doctrine that they contain. Even though he sometimes uses arguments based on reason alone to show that an opinion about the doctrine is false, he never tries to prove with the aid of reason alone the truth of an article of faith. For Anselm, on the other hand, the most important task of reason in theology is exactly to construct rational demonstrations for articles of faith, and he avoids appealing to or even citing the authoritative writings of the Church" (*Dialectic and Theology*, 158-59). Holopainen observed that Berengar's position on revelation and reason and his general way of relating them were the ones that "prepared the ground for the development in the following century" (159).

explained at the beginning of this chapter, Gratian's treatment of *caritas* was an extended tangent but one that he understood as supporting what he would argue next, namely that penance can be repeated because one can repent, sin again, and come back to true repentance again, just as *caritas* can be had, lost, and regained. But the length of time spent and the detailed nature of the argumentation that Gratian formulated in this section of text and the wide range of topics touched upon (including perseverance, the nature of *caritas*, the fall of angels, the current state of angels, the omnipotence of God, and the mutability of creatures) point to a thinker, a theologian, who was capable of and wanted to discuss a variety of theological topics, not just questions pertaining to penance in a strict sense. Gratian made similar excursions in the section of *De penitentia* that came to be identified as the fourth distinction. Before that section, however, he returned to the heart of the issue at hand: can a person truly repent if he then falls back into sin and must do penance again?

CHAPTER 3

SIN AND THE NATURE OF TRUE PENANCE:

DISTINCTIO 3 OF *DE PENITENTIA*

If the early manuscripts of the *Decretum* did not announce the start of the second distinction with much fanfare, they did so even less for the third distinction. Not only did the beginning of the third distinction usually lack a decorated or enlarged initial, it often (and far more often than was the case for the start of the second distinction) lacked even so much as a paraph.[1] This was the case in large part of course due to the fact that Gratian himself did not label the distinctions as such (see the Introduction above), but this was the case especially here at the start of the third distinction because, as explained in the previous chapter, the content of the second and third distinctions was unified under one dominant question, with the vast majority of the second distinction treating a subsidiary question. At the start of what came to be known as the third distinction (and here one sees again the wisdom and appropriateness with which Gratian's successors divided the treatise), Gratian left behind all talk of *caritas* and returned to his chief question pertaining to penance.

Even though an astute reader could have gathered from the opening of the second distinction why Gratian left penance aside in order to discuss *caritas* and the question of whether it can be lost, in the opening words of the third distinction he explicitly stated his motivation for writing the entire previous section on *caritas*: the argument on love served as

[1] Among mid-twelfth-century *Decretum* manuscripts, see for example Salzburg, Stiftsbibliothek a.XI.9, Bremen, Universitätsbibliothek 142, and München, Bayerische Staatsbibliothek, lat. 28161. Fd, fol. 94va, contains a small paraph-like symbol at the start of D.3. Aa, fol. 66^{v}, provides a somewhat enlarged initial at the start of D.3, but the initial is not distinguishable from the initials that start many new *auctoritates* or paragraphs. Sg contains no texts from D.3.

an analogous case, bolstering his position against those who argued that penance can only be done once since true penance, they maintained, is not followed by mortal sin, which would require additional penance. As Gratian stated,

> We have briefly written these things about love on account of those who deny that penance can be repeated, asserting that, just as love, once it is had, is never lost, so also penance, once it is truly celebrated, is not tainted by any subsequent guilt; but if the guilt of a mortal sin follows that penance at some point, it was not true penance and did not obtain mercy from the Lord.[2]

Corresponding to his commitment to the view that true love can be lost once it is had, he argued in this section that penance can be true and effectual, obtaining God's mercy, even if the penitent commits another mortal sin (or several) and must repeat penance in his or her lifetime. One sees as well, that, even though the leading question is that of the repetition or reiterability of penance, the overriding issue is that of the nature of true penance. For some, true penance consists in a one-time act, after which no sin can follow. Once Gratian refuted this notion of penance and asserted that sin can follow true penance and thus that true penance can be repeated, he turned his attention to defining true penance within the construct of such reiterable penance (beginning in d.p.c.33), which he defined as no sin concurrent with a particular act of penance.[3] Throughout the distinction, then, the notion of the

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[2] D.3 d.a.c.1: "Hec de caritate breuiter scripsimus propter eos, qui penitenciam negant reiterari posse, asserentes, quod sicut caritas semel habita numquam amittitur, ita penitencia semel uere celebrata nulla sequenti culpa maculatur; si uero criminalis culpa illam aliquando sequitur, uera penitencia non fuit, nec ueniam a Domino inpetrauit."

[3] One could argue that another distinction should have been made beginning at D.3 d.p.c.33 or that Gratian may have had that place in mind as the start of another *questio*. It seems that the discussion turns away from the reiterability of penance to the nature of true and false penance. But as pointed out here, and keeping Gratian's wording in d.a.c.1 in mind, the nature of true penance is the overriding concern of Gratian throughout the distinction, including in the first half where he answers the question of whether penance can be repeated.

definition of penance stands inextricably bound to the notion of the presence of (mortal) sin.[4] For Gratian, true penance involves repenting for and thus removing all sins at a particular point in time. Penance and sin cannot simultaneously exist in a true penitent. In this world, however, additional sin often follows a time of penance, and, in this case, the sinner has the assurance that he can once more (and as often as needed) come back to the church and before God to repent and receive remission. In the course of making this argument, Gratian dealt with and reconciled some of the most oft-quoted and discussed *auctoritates* in contemporary theology about penance.

The master began by laying out several *auctoritates* that would appear to support the idea that criminal or mortal sin cannot follow true penance. These *auctoritates* tended to say what penance is. In other words, they defined penance. The advocates for this position therefore argued for it, as Gratian noted, *ex diffinitione ipsius penitencie*, from the definition of penance itself. Here, again, Boethius rings loud and clear, for *a diffinitione* comprised one of the Differentiae, one of the categories of maximal propositions which assisted the dialectician and orator in finding arguments for a certain position. In addressing these *auctoritates*, then, Gratian would have to explicate why his opponents' argument *a*

[4] Thus the question of the reiterability of penance is for Gratian not primarily a ceremonial issue but rather a theological one concerning the existential state of a repentant Christian in this world and the compatibility of sin with it. If penance cannot be repeated, it is because no true penitent can fall again into sin. Such an argument connects very closely to the patristic-era arguments about whether a baptized person can ever sin again in this life, especially since penance was viewed as the "second plank after baptism," as the ritual that removed post-baptismal sin and thus restored the Christian to his state immediately following baptism, that is, cleansed of all sin. This explains why Gratian turned repeatedly to Jerome's work against Jovinian in *De penitentia* DD.2-3 (with a lengthy excerpt in D.2 c.40 and allusions to the work in D.3 d.p.c.22 and d.p.c.26).

diffinitione was invalid. The *auctoritates* came from patristic writers and Pseudo-Augustine.[5] Since Gratian was the first known writer to quote the pseudo-Augustinian *De uera et falsa penitentia*, Gratian was not reproducing arguments exactly as he had heard or witnessed them. He took a basic framework of an argument and a position he knew, and he created his own argumentation to suit it. Some of the *auctoritates* were ones commonly quoted in the context of the issue at hand. Others Gratian uniquely picked because he viewed them as relevant and suited to whichever position he was arguing at the time.

All the *auctoritates* here at the start of D.3 stressed the inappropriateness of sin following penance, many of them asserting that such subsequent sin meant that the previous penance was disingenuous and of no use. The first text, in one form or another, appeared almost everywhere in every discussion of penance in the period: "Penance is both lamenting past evils and not committing again the evils to be lamented."[6] The text came originally from Ambrose and was attributed to him here, but, since Gregory quoted a version of it as well, it sometimes was attributed to him (and, in fact, it appears in Gratian's quotation from Gregory

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[5] One section here appears only in a very late stage of the *Decretum*, the second half of c.6 and c.7. These texts from Gregory appear nowhere in Fd, not even in the appendix. They do appear in the appendix of Aa 43 (fol. 339^{r}).

[6] D.3 c.1: "Penitencia est et mala preterita plangere, et plangenda iterum non conmittere." The author of the sentence collection from school of Laon *Principium et causa omnium* (the *Sententie Anselmi*) quotes the text as follows: "Penitentia est deflere commissa, et deflenda ulterius non committere" (ed. Bliemetzrieder, 123). Peter Abelard quotes this text, attributing it to Gregory, in his *Scito teipsum* (ed. Luscombe, 90.4-8): "Sed si fructuosam illam penitentiam intelligamus quam Dei amor inmittit, et quam Gregorius describens ait, 'penitentia est commissa deflere et flenda non committere', nequaquam penitentia dici potest ad quam nos amor Dei compellit, quotiens unus contemptus retinetur." Odo of Lucca quotes the Gregorian version (which Gratian produces as c.6) in his chapter on the definition or nature of penance (*Summa sententiarum* 6.12; PL 176:149B-C): "Poenitentia est perpetrata mala plangere et plangenda non committere. Nam qui sic alia deplorat ut alia tamen committat; adhuc poenitentiam agere aut ignorat, aut dissimulat. Quid enim prodest si peccata luxuriae quis defleat, et adhuc avaritiae aestibus anhelet?"

in c.6). The next quotation from Ambrose explicitly describes penance as unique, as a one-time affair:

> Those who think that penance should be done often, who are wanton in Christ, are found out. For if they were truly doing penance in Christ, they would think that it should not be repeated afterwards, because, just as there is one baptism, so also is penance a one-time affair.[7]

Gregory seemed to be clear that other sins cannot follow or accompany a sin repented of: "For he who deplores some evils in such a way that he nevertheless commits others still either does not know how to do penance or is faking it. For what does it matter if someone weeps over sins of extravagance and nevertheless still pants with the fevers of greed?"[8] Other texts draw attention to the feigned nature of penance that sin follows or highlight the pollution or dirtiness of those whom penance wash but who commit additional sins.[9] These *auctoritates* thus collectively say that sin should not follow penance, and, if it does, that the first penance was not true.

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[7] D.3 c.2: "Repperiuntur qui sepius penitenciam agendam putant, qui luxuriantur in Christo. Nam si uere in Christo penitenciam agerent, iterandam postea non putarent; quia, sicut unum baptisma, ita unica est penitencia."

[8] D.3 c.6: "Nam qui sic alia deplorat, ut tamen alia conmittat, adhuc penitenciam agere aut ignorat, aut dissimulat. Quid enim prodest, si peccata quis luxuriae defleat, et tamen adhuc auaritiae estibus anhelat?"

[9] See, for example, parts of D.3 c.11 (Isidore): "He is a mocker, not a penitent, who still does what he repents of, and he does not seem to ask God submissively but to deride him in pride. The penitent who returns to sin is a dog which returns to its vomit (Irrisor est, non penitens, qui adhuc agit quod penitet, nec uidetur Deum poscere subditus, sed subsannare superbus; canis reuersus ad uomitum est penitens ad peccatum);" c.12 (Augustine): "Penance is empty which subsequent guilt wholly pollutes. A repeated wound is healed more slowly; a person frequently sinning and mourning hardly deserves mercy. Laments profit nothing if sins are repeated (Inanis est penitencia, quam sequens culpa coinquinat. Vulnus iteratum tardius sanatur, frequenter peccans et lugens ueniam uix meretur. Nichil prosunt lamenta, si replicantur peccata);" c.15 (Gregory): "'Be washed, be clean.' For whoever neglects being clean after a bath does not guard the innocence of life after tears. And therefore they are not washed and are not clean who do not cease weeping over the deeds committed but commit again the deeds to be wept over ('Lauamini, mundi estote.' Post lauachrum enim mundus esse negligit quisquis post lacrimas uitae innocentiam non custodit. Et lauantur ergo, nec mundi sunt, qui conmissa flere non desinunt, sed rursus flenda conmittunt)." Gratian quoted the first sentence of c.12 in his preface to D.3 (cf. above) but in a different version (*maculatur* instead of *coinquinat*). The passage was very common; obviously Gratian quoted it from memory in d.a.c.1 while he faithfully copied whatever version of the text was in his formal source for c.12.

Gratian offered two ways of approaching the previous several *auctoritates* in order to reconcile them to the position that penance can be followed by mortal sin and thus that penance can be repeated. His first approach applied to the majority of the *auctoritates*. In Friedberg's edition, this approach is split between two *dicta* (D.3 d.p.c.17 and d.p.c.21), which are separated by four canons (cc.18-21). These four texts, whose common feature is little more than the mentioning of alms-giving and other external penitential acts, were not in the original treatise and were later additions.[10] In the original treatise, as Gratian first addressed the previous *auctoritates* (cc.1-16), he stated that the words of definition (*uerba diffinitionis*) – and he thus acknowledged that many of those texts did define penance – relate not to various times but to one and the same time in which one is doing penance for one sin.[11] In other words, while one is doing penance (performing the prescribed acts of satisfaction) for the sin of theft, one should not be committing additional thefts or engaging in any other mortal sin, such as adultery or murder. Such illicit behavior proves that one is not truly and sincerely doing penance, making that penance futile and false; such penance does not obtain the Lord's mercy. For his students' and readers' benefit, Gratian identified which of the preceding *auctoritates* should be interpreted through this lens.[12] These texts should not be understood, then, as saying that no sin can follow penance, but that no sin can be indulged

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[10] Both the Fd and Aa appendices contain these four additional canons.

[11] D.3 d.p.c.17: "But the words of definition are not related to various times but to the same time, namely, so that in the time in which one is weeping over the evils which one has committed, one may not commit what one still ought to be weeping over. (Sed uerba diffinitionis non ad diuersa tempora, sed ad idem tempus referuntur, uidelicet, ut tempore, quo deflet mala, que conmisit, non conmittat quod adhuc eum flere oporteat.)"

[12] Gratian specified c.6, cc.9-13, and cc.15-16. It is very plausible that Gratian intended to include what we know as c.14, which he may have viewed as part of the text he identified as "Qui admissa plangunt," the incipit of our c.14, which is joined to the previous canon with a simple *Item* and which has an almost identical incipit: "Qui admissa plangit."

during penance, a point to which Gratian would return and emphasize shortly. The second approach Gratian used distinguishes between the general and special custom of penance in the church. The special custom Gratian identified as "solemn penance," the same term he used in D.1. Solemn or public penance cannot be repeated, at least in the opinion of some, and certain of the *auctoritates*, such as Ambrose's, which referred to penance as *unica*, a one-time affair, should be understood as referring to that practice.[13] Here Gratian utilized two very different types of distinctions, one dependent loosely on the *artes* – mostly, I would argue, grammar, distinguishing simultaneous and subsequent points of time – and one dependent on more specialized terminology of the *artes* and philosophy, that of genus and species, which Gratian applied to the *generalis consuetudo* (genus) and *specialis consuetudo* (species).[14] His argument would have also benefitted greatly from a historical understanding of the development of penance and the fact that the patristic writers knew nothing of the private practice of penance as Gratian experienced it. Nevertheless, his emphasis on solemn

[13] D.3 d.p.c.21: "That statement of Ambrose [c.2], however: 'They are found out, etc.,' is understood to be said not according to the general but according to the special custom of the church concerning solemn penance, which, according to certain people, is not repeated once it has been celebrated. (Illud autem Ambrosii: 'Repperiuntur etc.,' non secundum generalem, sed secundum specialem consuetudinem ecclesiae de solempni penitencia dictum intelligitur, que apud quosdam semel celebrata non iteratur.)"

[14] I would argue that the first distinction relies primarily on grammar based on Gratian's emphasis on the same time (*idem tempus*) combined with the sentence from Gregory the Great's text (D.3 c.6) which Gratian re-quoted here to support his interpretation. All the verbs in that sentence, whether indicative or subjunctive, are in the same tense (present) and thus emphasize the simultaneity of the actions mentioned. In fact, I view it as highly likely that Gratian used *uerba* here in its technical sense of "verbs," not in its general meaning of "words," even though in the previous sentence, *uerba* clearly means "words" in the phrase *uerba diffinitionis*. Otherwise I see no reason for Gratian introducing the sentence by Gregory in the way and with the specific diction he did. Following his explanation of the *uerba diffinitionis* as referring to *idem tempus*, Gratian said, "This is given to be understood from the subsequent verbs of the same authority when it is said [c.6], 'For he who deplores some evils in such a way that he nevertheless commits others still either does not know how to do penance or is faking it.' (Quod ex subsequentibus uerbis eiusdem auctoritatis datur intelligi, dum dicitur: 'Nam qui sic alia deplorat, ut tamen alia conmittat, adhuc penitenciam agere aut ignorat, aut dissimulat.')" Meyer discussed the *generalis-specialis* distinction (and he mentioned both *De pen.* D.2 d.p.c.43 and this place in D.3 d.p.c.21). He confirmed that such terminology carried undertones of knowledge in the *artes* and philosophy or of technical methodology. Cf. *Distinktionstechnik*, 168.

penance as a distinct type of the normal or general penance led him to roughly the same conclusion, at least when interpreting some of the *auctoritates*: his patristic author was referring to something other than the private penance which was most common in Gratian's day.

Gratian was particularly concerned to address each and every one of the *auctoritates* cited thus far. He quoted a text from Augustine which referred to penance done once in the church but also questioned who would dare put limits on God's mercy and tell him not to spare someone who has already undergone penance. That passage shed further light on the Ambrose quotation about *unica* penance.[15] Meanwhile, a short quotation from Augustine as well as Christ's command to "go and sin no more" (which is quoted by Pseudo-Augustine) should, Gratian maintained, be interpreted in the same way as the other texts which define penance; in other words, they referred to the same time in which one does penance, not to any and all future times.[16] Gratian next turned to another distinction, this time a three-fold one for interpreting the Pseudo-Augustine texts as well as one from John Chrysostom.

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[15] D.3 c.22-d.p.c.22: "Whence Augustine writes to Macedonius: 'Although there is cautious and salubrious provision that the place of that most humble penance is granted one time in the church, lest a weak medicine be less useful to the diseased – a medicine, which, the more salubrious it is, the less will it be able to be esteemed lightly – nevertheless, who would dare to say to God: why are you yet sparing again this person who binds himself again with the chains of iniquity after a first penance?' By this authority both that of Ambrose is determined and it is shown that mercy is given through the first penance to the one who will sin again; otherwise God, when He had not yet spared, would in no way spare again. (Unde Augustinus scribit ad Macedonium: 'Quamuis caute et salubriter prouisum sit, ut locus illius humillimae penitenciae semel in ecclesia concedatur, ne medicina uilis minus utilis esset egrotis, que tanto magis salubris est, quanto minus contemptibilis fuerit, quis tamen audeat Deo dicere: quare huic homini, qui post primam penitenciam rursus se laqueis iniquitatis obstringit, adhuc iterum parcis?' Hac auctoritate et illud Ambrosii determinatur, et iterum peccaturo per primam penitenciam uenia dari monstratur; alioquin nequaquam iterum parceret Deus, qui nec dum pepercisset.)"

[16] D.3 d.p.c.22: "[The authorities,] [c.3] "the satisfaction of penance" and [within c.5] "Go and sin no more," have the same meaning as the definition. ('Satisfactio quoque penitenciae,' et: 'Vade, et amplius noli peccare,' eundem cum diffinitione intellectum habet.)"

Gratian distinguished between three kinds, or rather stages, of penance which are parallel to three stages of love. In doing so, he branched out from his more typical binary distinctions and revealed once more his connection to the school of Laon.[17] The texts from Augustine's book on penance (Pseudo-Augustine's *De uera et falsa penitentia*) refer, Gratian maintained, to perfect penance. He explained, "For just as one love is incipient, another progressing, [and] another perfected, so also one penance is of those beginning, another of those progressing, [and] another of the perfected."[18] This three-fold delineation of *caritas* pervaded sentences from the school of Laon, and one discovers in the Laon discussions of the progression of love the inspiration for much of what Gratian said throughout D.2 as well.[19] A text within the *Liber pancrisis* spoke of *caritas* first in terms of incipient love to be nourished and, second, in terms of a three-fold development of love. Odon Lottin could not decide whether the text was by Anselm himself or by William of Champeaux. It would seem that it was by the former, but a virtually identical text appears in another manuscript and is attributed to William.[20] Either way, the text stemmed from the master of Laon himself or one of his most important students. The first text claimed that the love of God (*dilectio Dei*) can be considered in two modes, incipient and nourished. A person begins (*incipit*) to love God

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[17] Meyer pointed to this section of *De penitentia* as an example of Gratian moving beyond two-fold *distinctiones* (*Distinktionstechnik*, 167).

[18] D.3 d.p.c.22: "Illud autem, quod in libro de penitencia dicitur, de perfecta intelligendum est. Sicut enim caritas alia est incipiens, alia est proficiens, alia perfecta: sic et penitencia alia est incipientium, alia proficientium, alia perfectorum."

[19] Landgraf discussed the degrees and perfection of *caritas* in the school of Laon. Not every author used the exact same terms. For the first variety, *initialis*, *inchoata*, and *incipiens* are all possibilities; for the second, *perfectior*, *provecta*, or *proficiens*; for the third, usually *perfecta* but sometimes *consummata*. Cf. Landgraf, *Dogmengeschichte* 1.2, *Gnadelehre*, pp.152-53 n.47 and p.161 n.78.

[20] The manuscript in which a very similar text appears is Paris, Bibliothèque Nationale, lat. 18113. Lottin noted that Lefèvre and Bliemetzrieder supposed this latter text to draw upon the one in the *Liber pancrisis*, but Lottin believed the texts were so similar that they must have been by the same author. Cf. Lottin, *Psychologie et morale*, 62.

first, and then that love is nourished and grows by the love of neighbor.[21] This idea stood behind Gratian's comments in organic language about the growth and nourishment of love back in D.2. The passage by Anselm or William went on to distinguish three states of love which were meant in the context of the passage to show that it is not absurd or incongruous to believe that men outside the faith have a certain love. The three states of love can progress from one to the other, but they do not have to. The first state is the initial (*initialis*) one, which is called *caritas* but is not sufficient for salvation. Those outside the faith can have it and those within the faith can have it, and they love God, though imperfectly, but fall into mortal sin, like David. The second state is the more perfect (*perfectior*) one. This love is sufficient for salvation, if one perseveres in it. However, it slips away from certain people for a time and then wholly departs, and then those people are damned. The third state of love is so much more eminent than the rest (*quantum ceteris eminentior*). It prepares salvation for the one who dies in it, and, once it is embraced, it cannot be lost.[22] This passage, albeit with slightly different terminology, provided the basis for Gratian's thoughts on love throughout D.2 as well as his short statement here in D.3. The idea that those to be damned can have

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[21] *Sententia* 71 (ed. Lottin, 62): "Dubitari uero solet, utrum dilectio Dei precedat dilectionem proximi…. Sed sciendum quod dilectio Dei duobus modis consideratur, scilicet incipiens et nutrita. Incipit enim homo diligere Deum antequam proximum. Sed quia illa dilectio non potest perfici nisi nutriatur et crescat per dilectionem proximi, oportet ut proximus diligatur. Sic ergo dilectio Dei precedit ut incipiens, et preceditur a dilectione proximi ut illa nutrienda."

[22] *Sententia* 73 (ed. Lottin, 64): "Est igitur primus status et initialis caritatis qui, licet caritas appellatur, non tamen est ad salutem sufficiens, ideoque non frequentato usu Scripturarum solet caritas appellari. Hunc autem caritatis statum quidam extra fidem positi recipiunt, ut Cornelius; quidam etiam in fide positi, quamuis etiam aliquando labantur in crimina, Deum tamen diligunt et caritatem habent, licet imperfectam, sicut liquet exemplo Dauid regis….

"Secundus uero status caritatis perfectiorem [*lire*: perfectior] in quo etiam perseueranti salus acquiritur, sed a quibusdam ad tempus labitur et postea discedit ab eis et dampnantur….

"Tertius uero status caritatis est quantum ceteris eminentior [*ajouter:* ut] non solum salutem parat homini qui in eo moritur, sed qui semel eam adeptus est caritatem postea non amittit." (I have kept Lottin's editorial notes.)

love, the idea that imperfect love can be lost through mortal sin, not only by reprobate but by saints like David, the idea that perseverance in love is what is required for final salvation, the idea that only the highest, most eminent, perfect love cannot be lost – all these ideas from D.2 in addition to the simple three-fold distinction of *caritas* here in D.3 found expression in kernel form in this early sentence from Laon. The three-fold distinction appeared succinctly in another sentence from the school of Laon: "Love also has three degrees: in the first degree it is sweet and begins and is called initial, in the second degree it is wise and strengthens, in the third it is robust and comes to its consummation."[23] Gratian took these ideas and ran with them, built upon them, and supported them with additional arguments and *auctoritates*.

Gratian used the analogy of progressing love and progressing penance to argue that even the penance of beginners in the faith is effective and obtains God's mercy. Returning to concepts from Jerome's *Contra Iouinianum*, he likened such penance to the baptism of those whose love is weak and incipient. The imperfection of the recipient's love and the fact that mortal sin may follow does not mean that he or she is not baptized by both the water and the Spirit. So also, "mercy is not denied to the penance of those beginning." Even this penance is perfect by a certain principle (*ratio*), since it stems from a grieved and contrite heart. By another principle, however, it is imperfect, because it does not last to the end (i.e. another mortal sin will follow and penance will need to be repeated).[24] Gratian thus distinguished

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[23] *Sententie* 312 (ed. Lottin, 247): "Caritas etiam tres gradus habet: in primo gradu dulcis est et inchoat et initialis dicitur; in secundo gradu sapiens et roborat; in tertio gradu robusta est et consummat."

[24] D.3 d.p.c.22: "But just as mercy for sins is given in baptism for love, although not yet perfected, so that, although someone may afterwards sin gravely, nevertheless it may then be understood that he has been reborn, not with water alone (as Jovinian hands down), but with water and the Spirit (as Jerome writes against him); so also mercy is not denied to the penance of those beginning, which, by a certain principle, can be said to be perfect because it groans and grieves with the whole heart, although, by another principle, it can be said to be

between two modes of perfection in penance: true contrition or persevering to the end, and two of the earlier *auctoritates* should be interpreted in terms of the one and the other type of perfection.[25]

Having explained almost every preceding *auctoritas*, Gratian felt the need to deal with one more statement in detail. One line from Pseudo-Augustine caught his attention: "If penance ends, nothing is left of mercy."[26] Those who said that penance is a one-time affair would have interpreted this sentence as saying that, if penance comes to an end through mortal sin, that penance was not true and did not obtain mercy. Gratian offered two interpretations, based on whether one believes sins return or not. That question became the focus of the fourth distinction and was an intensely debated issue in Gratian's day. As is seen in D.4, Gratian understood this question primarily in judicial and penal terms. It asks, if a penitent falls away into sin again and never repents again, do the sins which were forgiven in penance return to the sinner's account so that he will be punished for them in addition to his new sins? Does the penalty (*pena*) owed a sin return to a penitent after he commits other sins, even though that penalty had been remitted in penance? The question itself presupposes that penance can be repeated, that true penance in which sins are remitted and the sinner receives

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imperfect because it will not last all the way to the end. (Sicut autem caritati, licet nondum perfectae, in baptismo datur uenia peccatorum, ut quamuis postea grauiter aliquis sit peccaturus, tamen tunc intelligatur esse renatus, non aqua tantum (sicut Iouinianus tradidit), sed aqua et spiritu (sicut Ieronimus contra eum scribit): sic et incipientium penitenciae uenia non negatur, que quadam ratione perfecta dici potest, quia toto corde gemit et dolet, licet alia ratione potest dici inperfecta, quia non usque in finem duratura.)" This usage of *ratio* also points to Gratian's training in dialectic.

[25] D.3 c.8 should be understood in light of the first mode of perfection, while c.4 should be understood through the second mode. In Friedberg, Gratian's explanation of this in d.p.c.22 starts a new paragraph. Once again, the manuscript tradition erred in its paragraph divisions. It should be part of the previous section connected to the two modes of perfection.

[26] This line appears in D.3 c.5.

mercy can be followed by additional mortal sin.[27] Depending on one's answer to the question, a different interpretation of Pseudo-Augustine's statement ensues. If forgiven sins do return, Gratian noted, the phrase "nothing is left of mercy" is easy to understand. The penitent commits sins again, which activity expresses a lack of gratitude for the mercy received, and, on account of this ingratitude, the old sins are no longer objects of mercy but are justly rendered to the sinner's account, entangling him once more and meriting punishment. Using a concept from Roman law, Gratian likened this to a manumitted slave who truly is free but might be enslaved again if he does things which demonstrate his ingratitude for the liberty offered him.[28] Gratian implicitly admitted that the phrase "nothing

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[27] This point was recognized by de Ghellinck in 1909. Cf. Joseph de Ghellinck, "La reviviscence des péchés déjà pardonnés à l'époque de Pierre Lombard et de Gandulphe de Bologne," *Nouvelle revue théologique* 41 (1909): 403.

[28] D.3 d.p.c.22 §1: "For if, according to the opinion of certain people, forgiven sins return, 'nothing of mercy is left' is easy to understand, since the sins which had previously been forgiven are repeated again. For just as he who is manumitted from a just servitude into liberty is in the meantime truly free, although he may afterwards be called back into servitude on account of ingratitude, so also sins are truly remitted for the penitent, although he may afterwards have to be entangled by these same sins on account of ingratitude for the mercy. (Si enim iuxta quorumdam sentenciam peccata dimissa redeunt, facile est intelligere, nichil de uenia relinquitur, quoniam peccata, que prius erant dimissa, iterum replicantur. Sicut enim ille, qui ex iusta seruitute in libertatem manumittitur, interim uere liber est, quamuis ob ingratitudinem in seruitutem postea reuocetur: sic et peccata uere remittuntur penitenti, quamuis ob ingratitudinem ueniae eisdem postea sit inplicandus.)" Under Roman law, such a manumitted slave had a specific legal status, that of a *libertinus*. Cf. Dig. 1.5.6, which Gratian specifically quotes (phrase in italics): "Libertini sunt, qui *ex iusta servitute* manumissi sunt." Strictly speaking, as Gratian says, such a person was free or *liber*, but he was always legally distinct from an *ingenuus*, a person born free, and enjoyed fewer political rights. *Libertini* (and their sons) could be returned to their servile status, that of *servi*, if they were found guilty of being ungrateful (*ingrati*) toward their former master for their manumission. Cf. Cod. 6.7.1-4.

This example of the manumitted slave and the emphasis on ingratitude in the question of whether forgiven sins return or not seem to have been pervasive in the schools of the period. Odo of Lucca used the analogy of the manumitted slave (*Summa sententiarum* 6.13) but without quoting Roman law directly. Landgraf noted that most people refused to take a firm position on this difficult question of the return of sins, but they all focused on and denounced the ingratitude which a sinner's return to sin represented. That ingratitude for mercy received could then rightfully be punished by God, even if the previous sins already forgiven were not. Cf. Landgraf, *Dogmengeschichte* 4.1, *Die Lehre von der Sünde und Ihren Folgen*, 196-201. This last opinion was the one which Odo took. According to him, God could in justice punish a sinner for the same sins which he had already forgiven if the sinner turned to other sins, just as an owner could under the law re-enslave a manumitted person, placing him into the same state of slavery from which he had been freed. Nevertheless, Odo argued,

of mercy is left" posed more interpretative difficulties if forgiven sins do not return. If someone is not punished for sins that were forgiven, then it seems that the mercy given stays in place and does not go away. Gratian's solution relied on another analogy with the physical world. He said that, if forgiven sins do not return, the phrase meant that "nothing is left for [the sinner] of the purity of life and the hope of eternal beatitude which he obtained with mercy." The mercy was real, but the benefits which the mercy would have obtained vanish. The situation is like that of polished silver. If it rusts, its original beauty (comparable to "the purity of life and hope of eternal beatitude") goes away. That rust is not the same as the first rust which necessitated the polishing. In this way, a penitent who sins again is not polluted by (and will not be punished for) the original sins from which he was cleansed but is polluted by the new sins, which need mercy but have not yet obtained it.[29] Here, as in so many places,

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justice never exists in God without mercy, and for this reason he thought it more likely that God did not punish sinners for sins formerly forgiven (SS 6.13; PL 176:151C-D): "Nec tamen negamus quin Deus si districte vellet agere, posset juste pro eisdem punire quae ipse prius dimiserat; ex quo homo suscepti beneficii ingratus existit Sicut et qui de servo liber factus est, tam graviter potest offendere Dominum quod jure in servitutem redigatur; sed, quoniam in Deo non est justitia sine misericordia, verisimilius est ut non ulterius pro dimissis puniat." Odo thus stood more in the line with the opinion he had recounted earlier, namely that God punishes not the sins that he had forgiven but the ingratitude that a return to sins represents (PL 176:151B): "Non enim judicat Dominus bis in idipsum, sed pro ingratitudine, scilicet quia gratiae qua ipsi condonata fuerant priora ingratus fuerat, eum vere fotendum est gravius esse puniendum."

[29] Ibid.: "But if forgiven sins do not return, that nothing of mercy is left is said because nothing is left for himself of the purity of life and the hope of eternal beatitude which he obtained with mercy. For just as nothing of its beauty is left for perfectly polished silver, if it should be marred with rust, it would nevertheless not be blemished by its first rust but a subsequent one, so also nothing of mercy is said to be left for the person expiated through penance, since he is nevertheless not polluted by [sins] already destroyed but by [sins] still to be expiated. (Si autem peccata
dimissa non redeunt, dicitur nichil relinqui de uenia, quia nichil sibi relinquitur de uitae mundicia, et spe eternae beatitudinis, quam cum uenia assecutus est. Sicut enim argento perfecte purgato nichil sui decoris relinquitur, si sequenti erugine fedatur, non tamen prima, sed subsequenti sordidatur: sic expiato per penitenciam nichil de uenia dicitur relinqui, cum tamen iam non deletis, sed adhuc expiandis coinquinetur.)" I realize that Gratian does not use the term *pena* here; my reading and understanding of Gratian here is, as indicated above, influenced by my understanding of his discussion of this question of the return of sins in *De pen.* D.4. For Gratian there (and so, I surmise, here), the issue is whether, if a person commits mortal sins again, the old sins return to his account before God, becoming punishable when they had previously received mercy.

one sees the teacher in Gratian. He did not tell his students which position to take. He was showing them ways of interpreting texts, and he offered similes in both cases in order to explain more clearly what he meant.

Satisfied that he had put to rest objections based on the cited *auctoritates* to his viewpoint that penance can be repeated and can be followed by subsequent sin, Gratian began to offer texts to prove that sins are forgiven through penance more than once. Gratian's argument followed a familiar pattern. He combined *auctoritates* with biblical *exempla*. Some of the biblical examples did not so much give evidence of repeated penance but of the fact that mortal sin can and often does follow penance that God views as true. Thus, not only did Gratian cite David in this context but also David's antithesis, the wicked King Ahab, and also the Ninevites. David sinned by committing adultery with Bathsheba and by murdering her husband, Uriah the Hittite. He then truly repented. After some time, David returned to sin by numbering his people.[30] Ahab succumbed to his wife, Jezebel's, wishes and took Naboth's vineyard through bloodshed. He then repented. That the penance was true is proven by the fact that God accepted it and postponed the destruction of Ahab's dynasty until after his death. Afterwards, however, Ahab returned to wickedness and sacrilege.[31] The Ninevites succeeded in evading the annihilation of their city through their penance. But, according to Jerome, they returned to sin, as is made clear by the later destruction of Nineveh by the Medes and Persians.[32] These examples all show that penance can be true and genuine, that a

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[30] Cf. D.3 d.p.c.23-d.p.c.26.
[31] Cf. D.3 d.p.c.26-d.p.c.29.
[32] Cf. D.3 d.p.c.29-c.31. This entire section contains some later additions (cc.25-26, c.29). They consist of additional patristic commentaries on David and Ahab, their repentance, and their subsequent sins.

penitent can obtain mercy, but that mortal sin can recur. Gratian then amply supported that position with a relevant, extended section of *De uera et falsa penitentia* and then of Augustine's *Ad Macedonium*.[33] As throughout *De penitentia*, when Gratian wanted a definitive statement on a topic, when he wanted to put the nail in the coffin of the opposite position, he quoted Augustine (or who he thought was Augustine).

After quoting Augustine, Gratian shifted his focus but without explaining at the outset how this new focus related to the main *questio* of whether penance can be repeated. He asked what true penance is, for which mercy is promised, as distinct from false penance, for which mercy is never promised. Gratian's answer to this question, which he supported with various *auctoritates* and arguments throughout the remainder of D.3, was that true penance means performing penance for all sins at a particular point in time. One cannot repent of one sin while remaining in another. This stance found support from all the initial *auctoritates* cited at the beginning of D.3 by those who argued that penance cannot be repeated because true penance is not followed by mortal sin. Gratian's answer to many of those *auctoritates* had been that they referred to the time of the penance in question, not to various times in the future. Therefore, true penance does not mean that sin does not follow it, but it does mean that sin is not concurrent with it. Thus Gratian's understanding of the definition of penance as put forward in so many of the *auctoritates* cited earlier in the discussion drove his discussion here in the middle of D.3, for the definition of penance necessarily provides a definition for *true* penance. But Gratian had to define more clearly what that true penance is as distinguished from false penance within the framework of the point he just made that

[33] D.3 cc.32-33.

penance can be repeated. In other words, if true penance does not mean one-time penance, a penance performed once in someone's lifetime not followed by any additional serious sin, what indeed does true penance look like within the context of reiterable penance? It means not holding back repentance for one sin while pretending to do penance for another.

Gratian's initial choice of *auctoritates* to make this point seems rather odd. Both are lengthy commentaries on Leviticus 10:16. Gratian identifies the authors as Adamantius and Esitius.[34] Both passages make very clear that God accepts true penance and in no way accepts false penance. How these passages portray what in fact true penance and false penance look like is not so easy to detect. Nevertheless, reading retrospectively from the next section of D.3 in which Gratian made clear that he viewed true penance as penance that involves confession and the seeking of remission for all current sins and does not leave any other sin unconfessed, one can decipher that concept in these passages. The biblical context is quite complex. At the beginning of the Leviticus 10, two of Aaron's sons, Nadab and Abihu, offer "strange fire" before the Lord (in the tabernacle) and consequently are struck dead by God. Whatever this "strange fire" meant, it certainly did not constitute obedience to God's ceremonial and sacrificial prescriptions. The chapter then recounts additional prescriptions for Aaron and his other sons (the priests of Israel). In the verse on which these passages comment, Moses looks in vain for the goat which had been sacrificed as a sin offering for the people, an offering meant to atone for the sins of the people. Moses cannot

[34] Adamantius is Origen. Esitius is Hesychius of Jerusalem (c.450). According to Basil of Caesarea, he wrote a commentary on the whole Bible, but only his commentaries on Leviticus and the Psalms have survived in complete form. Theresa Rodrigues, *Butler's Lives of the Saints: March*, ed. Paul Burns (Collegeville, MN: Liturgical Press, 1999), 265. For a list of edited and non-edited texts by Hesychius, cf. also Georg Röwekamp, "Hesychios v. Jerusalem," *Lexikon für Theologie und Kirche* (1996), 5.73.

find it because it was burned up entirely. This was contrary to God's command. The sin offering, once sacrificed, was not supposed to be consumed by fire but by the stomachs of the priests. They were to eat it. Both passages allegorically interpret the sin offering as penance and the eating of the sin offering by the priests as the church's involvement in penance. The first passage interprets the burning up of the entire sin offering as the burning up and destroying of penance by sin. Just as Nadab and Abihu were destroyed for offering strange fire before the Lord, so also a sinner who burns with the strange fire of greed, lust, or other depraved desires and yet presents himself to the Lord to do penance will be rejected and will not receive mercy.[35] A sinner should first abandon all sin and then present himself for penance, which is a cleansing, not a consuming, fire.[36] This text and the following one made very clear, as Gratian noted, that no mercy is given to false penance.[37] Adamantius said, "A sacrifice to God is not accepted if it is not genuine and sincere,"[38] and Esitius, "For just as true penance deserves mercy, so also feigned penance makes God angry."[39] While Gratian may seem to have been lenient on some issues (in defending the repetition of penance and

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[35] D.3 c.34 §1: "But how had the sin [offering] been able to be burned up in the sight of God, to whom all things are clear, when the fire was strange? [It is] as if he who keeps unrighteousness shut up in his heart and presents himself to do penance pleases God. The strange fire is lust, avarice, and every deprived desire. This fire burns up; it does not cleanse. For in whom it exists, if they should offer it in the sight of God, heavenly fire consumes them, just as [it did] Nadab and Abihu along with these things which had been offered for sin. (Quomodo autem poterat, ubi ignis alienus erat, peccatum exuri et in conspectu Domini, cui cuncta sunt aperta? quasi non conplacet Deo qui iniusticiam corde inclusam tenet, et se penitenciam agere perhibet. Ignis alienus libido, auaricia, et omnis cupiditas praua. Hic ignis exurit, non mundat. In quibus enim est, si offerant in conspectu Domini, ignis eos celestis absumit, sicut Nadab et Abiud cum his, que pro peccato fuerant oblata.)"

[36] Ibid. §2: "Therefore, let he who wants to be cleansed remove the strange fire and offer himself to that fire which burns up guilt, not the man. (Qui ergo uult mundari ignem alienum remoueat, et illi igni se offerat, qui culpam exurit, non hominem.)"

[37] D.3 d.p.c.39: "By these authorities, what is true and what is false penance is shown, and it is proven that no indulgence is given to false penance. (His auctoritatibus, que sit uera, que falsa penitencia ostenditur, et falsae nulla indulgentia dari probatur.)"

[38] D.3 c.34 §2: "Non est acceptum Deo sacrificium, nisi uerum et sincerum."

[39] D.3 c.35: "Nam sicut uera penitencia ueniam promeretur, ita simulata irritat Deum."

affirming that sin following penance does not negate that penance), he showed no softness here: God does not accept false penance; one cannot act sorry for one sin while persisting in another.

Gratian's original and even somewhat strange choice of *auctoritates* becomes more explicable when one realizes his source: the *Glossa* on Leviticus. Both the Origen/Adamantius text and the Esitius text appeared there as long marginal glosses on Leviticus 10:16.[40] In addition, the interlinear glosses prove that the text was interpreted predominantly in light of penance in the school of Laon. In verse 16, which states that Moses looked among these things for the goat that had been offered as the sin offering, the interlinear gloss identified "these things" as "the offering of penance" (*oblationem penitentie*) and the goat as the sinner (*peccatorem*). The phrase "offered as the sin offering" was read as "when penance had been enjoined" (*quando penitentia iniuncta*). Where the verse continues, saying that Moses discovered that the sin offering had been burned up or consumed (*exustum*), the interlinear gloss provided two comments of explanation. First, the sin offering or penance had been burned up "by an intelligible fire of the spirit against whom they had sinned" (*ab intelligibili igne spiritus in quem peccauerant*). Second, it had been burned up "because the penance was not done well" (*quia non bene penituit*).[41] That Gratian was drawing on the *Glossa* here and was familiar with the Anselmian line of interpretation

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[40] Wei has judged with good reason that the *Glossa* is the source for c.34 and c.35. For him, the absence of these canons in what he judges to be Gratian's other formal sources, the lack of significant variants between the *Glossa* texts and Gratian's, and the same incipit and explicit for both canons are proof that Gratian drew these canons from the *Glossa*. He does not pay attention to the evidence of the interlinear glosses which I present here and consider as confirmation of some version of the *Glossa* being Gratian's formal source. Cf. Wei, "Law and Religion," 198-99.

[41] Ed. Rusch, 1.235[b]. München, Bayerische Staatsbibliothek, lat. 4574, fol. 34[v]. The Rusch edition reads *ab intelligibi igne spiritus sancti in quem peccauerant*, clarifying that God's Holy Spirit is the spirit active here.

on this biblical passage receives confirmation in his next *dictum*.[42] The substance of this *dictum* will be discussed shortly. Here the terminology is noteworthy. Gratian expressed the idea that the priest is God or Christ's vicar in matters related to penance as follows: "But God, whose role the priest plays in the church (or whose persona he bears in the church: *cuius personam in ecclesia gerit*), judges him whom the priest judges."[43] This somewhat unusual terminology for Gratian (he does not use it elsewhere in *De penitentia*) in fact appeared in the gloss only a few verses later in Leviticus 10 (v.19). The gloss pertained to Aaron, the first priest of Israel whom, along with his descendants, Gratian would have understood as prefiguring the priests of the church of his day. Aaron gave an explanation to Moses as to why the offering was consumed by fire and not eaten. The gloss explained that Aaron acted "in the role of the church, whose figure he bears, just as he also bears that of Christ" (*in persona ecclesie, cuius figuram gerit, sicut et Christi*).[44] Gratian did not quote this gloss, but the influence of the terminology on Gratian is undeniable. The evidence of this small section of D.3 comprising two lengthy *auctoritates* and a *dictum* once again points to Gratian's affinity to and knowledge of the work of the school of Laon.

After affirming the strong position that God in no way accepts false penance, a penance performed for one sin while persisting in another, Gratian attacked the other view, that a sinner can truly do penance for one sin while remaining in another. In the process he dealt in a unique way with two of the most common and difficult biblical verses in the

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[42] This *dictum*, d.p.c.39, follows immediately upon the Esitius excerpt constituting c.35 in Fd and Aa.
[43] D.3 d.p.c.39.
[44] The gloss is marginal in the Rusch edition, 1.236[a]. The gloss is an interlinear one in München, Bayerische Staatsbibliothek, lat. 4574, fol. 35[r].

twelfth-century treatment of penance. The second of the two, Amos 4:7, and Gregory's comments on it in his commentary on Ezekiel frequently arose in the context of this question; the first, Nahum 1:9, usually arose in the context of the question of whether sins return, the question that Gratian addressed in the next distinction but without reference to this text.[45] Gratian did not make it easy on his reader to decipher how this first text, Nahum 1:9, fit into the present context and could be used to the advantage of those who say that mercy can be obtained for one sin while another sin lingers. The text reads, "God will not judge the same thing twice."[46] Gratian, in the voice of his opponents, approached the passage from two angles, the first of which does not, in fact, relate to the question at hand but the second of which does. The first angle looks at the question in terms of temporal and eternal punishment, wondering whether God can further punish a sin that has already been punished on earth, either through some sickness or injury or through the judgment of God's representative, the priest (i.e. with the imposition of satisfaction). God will not punish again he whom his priest already punished, for that would violate Nahum 1:9.[47] Also, taking a well-known example from Jerome (the extended text of which he quoted later on), he posited that an adulterer who is killed will not be further punished by God. The murder of the

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[45] For example, Hugh raised Nahum 1:9 as a potential threat to his view that forgiven sins do return (*De sacramentis christianae fidei* 2.14.11). Odo of Lucca viewed the passage as incontrovertible proof that forgiven sins do not return; in a final brief paragraph in his chapter on the return of sins, he quoted the Amos passage in relationship to the question of whether one can repent of one sin while remaining in another (*Summa sententiarum* 6.13).

[46] "Non iudicabit Deus bis in idipsum."

[47] Gratian made this explicit connection between God and priest immediately after quoting Nahum 1:9, partially using the words of the *Glossa* on Lev. 10 as already pointed out above, saying (D.3 d.p.c.39), "But God judges him whom the priest, who bears God's person in the church, judges. Therefore, he who is punished once for sin by a priest, will not be judged again for the same sin by God. (Sed quem sacerdos iudicat Deus iudicat, cuius personam in ecclesia gerit. Qui ergo a sacerdote semel pro peccato punitur, non iterum pro eodem peccato a Deo iudicabitur.)"

adulterer constitutes one punishment for him, which God cannot then duplicate, since God does not judge the same thing twice, or, in another translation that Gratian and all his contemporaries also knew, since a double tribulation does not rise up against sinners.[48]

The second angle, on which Gratian spent much less time, is more relevant. If that penance is not true in which a sinner feels remorse for, confesses, and does satisfaction for one sin while secretly remaining in another, then it would seem that the sinner would have to do penance for the first sin all over again when (if) he does finally repent of the other sin. Following the practice of Urban II, Gratian gave the example of a murderer who is also an adulterer.[49] Suppose the sinner repents of the murder while persisting in his adultery. If the satisfaction he thinks himself to offer for the murder is in fact no satisfaction at all, then he will have to repeat satisfaction (the main penal aspect of penance) for the murder when he repents of the adultery.[50] But such a position "is proven to be foreign to reason by ecclesiastical custom, which does not impose penance twice on anyone for the same sin

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[48] D.3 d.p.c.41: "Likewise, this position [that one cannot truly repent of one sin while remaining in another] is opposed to Jerome, who seems to feel [in his thoughts] on Nahum that, if an infidel in committing adultery were to be killed, he would not be punished additionally by God for the adultery. (Item opponitur de Ieronimo, qui super Naum sentire uidetur, quod, si infidelis adulterando interficeretur, de adulterio non amplius a Deo puniretur.)" That Gratian was aware of the other translation of Nahum 1:9 is apparent from d.p.c.42, in which he worked that version ("super quos non consurget duplex tribulatio") into his discussion.

[49] Urban II used the example of the murderer who persists in adultery even while wanting to do penance for the murder at the Council of Clermont (1095). Various manuscripts record various versions of Urban's statements and decrees there. In the so-called LL tradition of the decrees, cf. c.20 (Robert Somerville, *The Councils of Urban II. Volume I: Decreta Claromontensia*, Annuarium historiae conciliorum, Supplement I [Amsterdam: Adolf M. Hakkert, 1972], 79): "verbi gratia, ut si perpetrato homicidio manserit in adulterio vel huiusmodi…" Oxford, Bodleian, Selden supra 90 (Somerville, 115, c.25) reads, "Item si penitentiam agis de homicidio et in adulterior perseveras nil tibi prodest…"

[50] Ibid.: "Likewise, if that which someone offered for a murder while living in adultery was not satisfaction, when he repents of the adultery, penance for both sins will have to be imposed on him. (Item, si illa satisfactio non fuit, quam in adulterio uiuens pro homicidio obtulit, cum adulterii eum penituerit, utriusque penitencia ei inponenda erit.)"

(unless it were to be repeated)."[51] And (the underlying reasoning goes) ecclesiastical custom cannot contradict Nahum 1:9, since the priests stand in God's stead: if God does not judge the same thing twice, neither can his priests.

So went the argument about Nahum 1:9 which Gratian proceeded swiftly to oppose. As he did so, he provided his explanation of the other two *auctoritates* raised in support of the idea that penance can be true even while another sin lingers, Gregory's commentary on Amos 4:7 and a statement by Ambrose commenting on Psalm 118. The first could be read as meaning that a sinner can get rid of some sins through penance even while others remain, for it says that God causes rain (potentially interpreted to refer to mercy) to fall on one part of a city and not on another, and the second could be read as meaning that any punishment, regardless of one's state of faith or the sincerity of one's heart in repenting of all sins, satisfies.[52] Gratian offered a different perspective in interpreting all these *auctoritates*, a perspective that relied on other *auctoritates*, some original exegesis, and a concept central to Anselm of Laon's understanding of sacraments.

First Gratian countered the view as a whole and then he moved to the particulars. To counter the view in general, he referred back to *auctoritates* cited early on in the distinction

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[51] Ibid.: "Quod a ratione alienum ecclesiastica probatur consuetudine, que pro eodem peccato (nisi reiteratum fuerit) nulli penitenciam bis inponit."

[52] The version of Gregory's text which Gratian had reads thus (D.3 c.40): "The Lord caused it to rain over one city, and He caused it not to rain over the second one, and He caused it to rain upon part of the same city, and part of it He left dry. When he who hates his neighbor corrects himself in other vices, one and the same city is rained upon in part, and in part it remains dry, because there are those who hold out gravely in certain vices when they cut off others. (Pluit Dominus super unam ciuitatem, et super alteram non pluit, et eandem ciuitatem ex parte conpluit, et ex parte aridam relinquit. Cum ille, qui proximum odit, ab aliis uiciis se corrigit, una eademque ciuitas ex parte conpluitur, et ex parte arida manet, quia sunt, qui, cum uicia quedam resecant, in aliis grauiter perdurant.)" The Ambrose passage runs as follows (D.3 c.41): "The first consolation is that God does not forget to have pity; the second is through punishment, where, even if faith is lacking, the penalty satisfies and lifts back up. (Prima consolatio est, quia non obliuiscitur misereri Deus; secunda per punitionem ubi etsi fides desit, pena satisfacit et releuat.)"

as well as to the two *Glossa ordinaria* passages on Leviticus 10:16. He then quoted extensively again from Pseudo-Augustine's *De uera et falsa penitentia*. The text makes absolutely clear that one cannot repent of some sins and not of others.[53] As for Nahum 1:9, Gratian relied on a distinction between temporal and eternal punishments. He argued that the verse applies only to those who repent in the midst of temporal scourges, those whom temporal pains and punishment cause to change. The verse does not refuse to God the right and power to punish people eternally for actions for which they have already received temporal punishments.[54] If they remain unrepentant, the temporal punishment merely initiates or is the beginning of the eternal, consummate punishment, as was the case for

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[53] The passage (from chapter 9 of *De uera*) reads in part (D.3 c.42): "For if he [Jesus] were to want sins to be reserved in part, he was able to perfect the man having seven demons after he expelled six [of them]. But he expelled seven, so that he might teach that all wicked deeds have to be cast out together. But, casting out a legion from another, he left not one of all the demons who would take control of the freed man, showing that, even if sins number a thousand, one ought to repent of them all. (Si enim uellet peccata ex parte reseruari, habentem septem demonia, perficere potuit sex expulsis. Expulit autem septem, ut omnia crimina simul eicienda doceret. Legionem autem ab alio eiciens, neminem reliquit de omnibus, qui liberatum possideret, ostendens, quod, etiamsi peccata sint mille, oportere de omnibus penitere.)"

[54] D.3 d.p.c.42: "That authority of the prophet Nahum: 'God will not judge twice, etc.' does not show that all things which are punished temporally must not be punished further by God. For, although Jerome says that Sodomites, the Egyptians, the Israelites in the desert were punished temporally by God upon the same place so that they might not be punished in eternity, this should not be understood generally concerning all things. Otherwise each criminal person should wish that, having been struck with the lightning of heaven or immersed in water or wounded by serpents for his sins, he might die admirably so that the brief and momentary penalty might close off eternal torments…. That statement of Jerome is thus understood only concerning these who did penance amidst scourges. Even though brief and momentary, God did not reject this penance. In this way also that statement of the prophet, 'God will not judge the same thing twice,' ought to be understood only concerning these people whom present punishments change, upon whom a double tribulation will not arise. (Auctoritas illa Naum prophetae:
'Non iudicabit Deus bis etc.,' non ostendit omnia, que temporaliter puniuntur, non ulterius a Deo punienda. Quamquam enim Sodomitas, Egyptios, Israelitas in heremo super eundem locum dicat Ieronimus temporaliter a Deo punitos, ne in eternum punirentur, non tamen intelligendum est de omnibus hoc generaliter; alioquin cuique sceleroso optandum esset, ut celesti fulmine percussus, aut aquis inmersus, aut a serpentibus uulneratus pro peccatis suis diuinitus interiret, ut eternos cruciatus breuis et pena momentanea terminaret…. Intelligitur ergo illud Ieronimi de his tantum, qui inter ipsa flagella penitenciam egerunt, quam, etsi breuem et momentaneam, tamen non respuit Deus; sicut et illud Prophetae: 'Non iudicabit Deus bis in idipsum,' de his tantum intelligi oportet, quos supplicia presentia conmutant, super quos non consurget duplex tribulatio.)"

Antiochus and Herod, for instance.[55] Gratian maintained that Jerome agrees with this sentiment, and the proponents of the opposite position were wrong to cite Jerome as supporting the view that a man punished in this life for a sin will not be additionally punished by God for the same sin in eternity. According to Gratian, when Jerome gave the example of the adulterer who is murdered, he was arguing that light sins are expiated through temporal punishments alone but that great sins (like the adultery here addressed) require both temporal and eternal punishments.[56] Gratian thus provided a satisfactory alternate interpretation of Nahum 1:9 and proceeded to address the other two *auctoritates*.

For Gregory's commentary on Amos 4:7, Gratian produced what appears to be a unique interpretation, and, for Ambrose's statement, he relied on a gloss from the *Glossa ordinaria*. The image of God sending rain on one part of a city and not on another does not signify that God shows mercy for one serious sin at the same time as he does not show mercy for another (i.e. one for which the sinner has not repented). The rain refers instead to the

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[55] D.3 d.p.c.42 §1-d.p.c.43: "But those who become harder and worse amidst scourges, just like Pharaoh, who became harder after being scourged by the Lord, they adjoin eternal scourges to the present ones so that temporal punishment may be the beginning of eternal damnation for them. For this reason, Augustine on the Song of Deuteronomy: "'The fire was kindled, etc." That is, punishment will begin here and will burn all the way to the last damnation.' This should be noted against those who say that 'God will not judge the same thing twice' pertains to all scourges, since certain people are amended or judged by scourges here, [but] others are punished here and in eternity, like Antiochus and Herod. (Qui autem inter flagella duriores et deteriores fiunt, sicut Pharao, qui flagellatus a Domino durior factus est, presentibus eterna connectunt, ut temporale supplicium sit eis eternae dampnationis initium. Unde Augustinus in Cantico Deuteronomii: '"Ignis succensus est etc." Hoc est, uindicta hic incipiet, et ardebit usque ad extremam dampnationem.' Hoc contra illos notandum est, qui dicunt: 'Non iudicabit Deus bis in id ipsum,' ad omnia pertinere flagella, quia quidam hic flagellis emendantur uel iudicantur, alii hic et in eternum puniuntur, sicut Antiochus et Herodes.)"

[56] D.3 d.p.c.43 §1: "But what Jerome seems to feel concerning the infidel adulterer upon the same spot is proven to be false by his own words. For, with an example of him who had cursed the Israelites and who had collected wood on the Sabbath, he shows that small sins are purged with brief and temporal punishments, but great sins are reserved for lasting and eternal punishments. (Quod autem super eundem locum de adultero infideli Ieronimus sentire uidetur, ex uerbis eiusdem falsum esse probatur. Exemplo enim illius, qui Israelitas maledixerat, et qui ligna in sabbato collegerat, ostendit parua peccata breuibus et temporalibus suppliciis purgari, magna uero diuturnis et eternis suppliciis reseruari.)" Cf. also c.44.

hatred for sin (*detestatio criminis*), not mercy. The hatred for different sins, which leads to penance, can come at different times just as rain can fall on different parts of the city at different times, but all sins must be repented of together.[57] Gratian explained why such *detestatio* is signified by rain in the Bible: "The detestation of a wicked deed is called rain because it is instilled in our heart from the fount of divine grace so that either in this way each person may come to true penance or, the more he had piled up punishment for himself because of a rather long delight in the sin, the less he may be punished by God."[58] Thus even if such *detestatio* does not always lead to full repentance of all sins, its existence in relationship to one or some sins can result in the overall lessening of punishment by God.

Gratian's interpretation of the next *auctoritas*, the one purportedly by Ambrose (although Ambrose does not seem to be the true author), hinged on his understanding of the term *fides*. Ambrose said that, even if *fides* is lacking, a penalty makes satisfaction. Underlying Gratian's usage of this *auctoritas* was an assumption that true *fides* would be part of true *penitentia*, repenting of all sins together. Thus, Gratian's opponents would argue, penance can be true or satisfactory even when true faith and thus a lack of full repentance are absent. Drawing on a gloss on this word in Ambrose's text in the *Glossa ordinaria*, Gratian argued that the meaning of *fides* here was not the Christian faith of which James says, "Faith

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[57] D.3 d.p.c.44: "But that statement of Gregory [c.40]: 'The Lord caused it to rain upon one city, etc.' is to be related not to mercy for a wicked deed but to the detestation of it so that part of the city may be said to have been rained upon for this reason, that the wicked deed which it had loved begins to be detested, not that it obtains mercy for it. (Illud autem Gregorii: 'Pluit Dominus super unam ciuitatem etc.,' non ad criminis ueniam, sed ad eius detestationem referendum est, ut ideo pars ciuitatis dicatur esse conpluta, quia crimen, quod dilexerat, detestari incipit, non quod eius ueniam consequatur.)"

[58] Ibid.: "Criminis autem detestatio pluuia uocatur, quia ex fonte diuinae gratiae cordi nostro instillatur, ut uel sic quisque ad ueram penitenciam perueniat, aut eo minus a Deo puniatur, quod diuturniori delectatione peccati maius sibi supplicium accumulasset."

without works is dead," but rather *conscientia*, a mere awareness.[59] Sometimes, Gratian conceded, humans do not realize all of their sins (*delicta*) and thus cannot repent of all of them. Such unawareness does not delegitimize whatever penance, satisfaction, and penalty has been performed for the sins of which one is aware.[60] With this distinction between different meanings of *fides*, Gratian employed a method of *concordia* which Bernold of Constance had already used and which Peter Abelard included when explaining methods of harmonization in his prologue to *Sic et Non*. They recognized that words have different meanings, and the same word in two different texts can signify two different things.[61]

One other problem for Gratian remained, a statement that he himself made in the voice of his opponents on this issue, and to solve this problem, he relied on a concept fundamental to Anselmian thought on the efficacy of sacraments. When espousing the position that one can repent of one sin while remaining in another, Gratian had closed with

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[59] The gloss on *fides* clarified, "id est, conscientia delicti." Gratian used the exact same term, *conscientia*, and, though he initially said *conscientia peccati*, in the very next sentence, only three words later, he used *delicta*. The text purportedly belonging to Ambrose appeared as a marginal gloss on Psalm 118, section Sade (v.137 ff.) (119:137 ff.).

[60] D.3 d.p.c.44 §2: "Likewise, that statement of Ambrose [c.41]: 'Even if faith is lacking, the penalty makes satisfaction,' is not understood concerning that faith of which it is said [James 2:26], 'Faith without works is dead,' but concerning that faith of which the apostle says [Rom. 14:23], 'Everything which is not from faith,' that is, everything which is done against conscience, 'is sin.' Therefore faith is lacking when an awareness of sin is not at hand. But because no one grasps all offences, sometimes there is a sin in a person of which he has no awareness. Whence the apostle [1 Cor. 4:4]: 'I am aware of nothing against me, but I am not justified in this.' Therefore, if it is born patiently, the penalty of him, whose awareness of a sin is lacking, makes satisfaction and lifts back up the one who is burdened. (Item illud Ambrosii: 'Et si fides desit, pena satisfacit,' non de ea fide intelligitur, de qua dicitur: 'fides sine operibus mortua est,' sed de ea, de qua Apostolus ait: 'Omne, quod non est ex fide,' id est omne, quod contra conscientiam fit, 'peccatum est.' Deest ergo fides, cum non subest conscientia peccati. Sed quia delicta omnia nullus intelligit, est aliquando in homine peccatum, cuius conscientiam non habet. Unde Apostolus: 'Nichil michi conscius sum, sed non in hoc iustificatus sum.' Cuius ergo peccati deest conscientia, illius pena, si patienter feratur, satisfacit, et releuat grauatum.)"

[61] Meyer, *Distinktionstechnik*, 113-16, 138. Abelard noted (*Prologus*, *Sic et Non*, ed. Boyer and McKeon, 96.185-87), "An easy solution will be found for many controversies if we can maintain that the same words have been used with diverse meanings by different authors. (Facilis autem plerumque controversiarum solutio reperietur si eadem verba in diversis significationibus a diversis auctoribus posita defendere poterimus."

the argument that, if this were not the case, satisfaction would have to be repeated for the first sin when the other sin was repented of, thereby bringing a double punishment upon a person for a single sin. Gratian now quoted his own previous words and charged that they "do not proceed by argumentation," meaning they do not logically follow.[62] He meant that it does not follow that, if a previous satisfaction was not true, another satisfaction must be imposed. To show this, Gratian relied on an analogy with baptism, which he frequently did throughout *De penitentia* to make points about penance, especially when drawing on Jerome's *Contra Iovinianum*, which countered a heresy about baptism. In essence he stated that satisfaction is not real, does not gain access to forgiveness, and has no fruit as long as the (false) penitent is impeded by another sin which he or she has not yet abandoned.[63] If repentance for that other sin does come, however, the first satisfaction does not need to be repeated. Gratian explained this by pointing to the sacrament of baptism:

> But [the fruit of the first satisfaction] will be received when the penance for that sin ensues, just as a person insincerely approaching the wash-basin receives the sacrament of regeneration but is not reborn in Christ, but he is reborn by the power of the sacrament that he had received when that feigning withdraws from his heart because of true penance.[64]

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[62] D.3 d.p.c.44 §2: "But what is objected in the end: 'If that was satisfaction, he obtained mercy; but if he did not obtain mercy, there was no satisfaction; but if there was no satisfaction, a penalty must still be imposed on him,' does not proceed by argumentation. (Quod autem in fine obicitur: 'Si satisfactio illa fuit, ueniam inpetrauit; si autem ueniam non inpetrauit, satisfactio non fuit; si autem satisfactio non fuit, adhuc sibi pena inponenda est,' non procedit argumentatio.)"

[63] Ibid.: "For there is satisfaction when the cause of that sin is cut out, and access is not granted for intimations of satisfaction, but the fruit of satisfaction is not received when it has been impeded by a sin which is not yet abandoned. (Satisfactio namque est, dum exciditur illius peccati causa, et eius suggestionibus aditus non indulgetur, sed eius fructus non percipitur, inpeditus peccato, quod nondum deseritur.)"

[64] Ibid.: "Percipietur autem, cum eius penitencia fuerit subsecuta, sicut ad lauacrum ficte accedens regenerationis accipit sacramentum, non tamen in Christo renascitur; renascitur autem uirtute sacramenti, quod perceperat, cum fictio illa de corde eius recesserit ueraci penitencia." This last phrase (*cum fictio – penitencia*) is a paraphrase from Augustine's *De baptismo contra Donatistos* 1.12.18 (CSEL 51:163.1-2): "…tunc valere incipiat ad salutem, cum illa fictio veraci confessione recesserit." This text was quoted without much discussion in the passages from Paschasius Radbertus, the *Summa sententiarum*, and Peter Lombard mentioned below.

The first satisfaction may have been false and therefore not gained the fruit of remission, but it still stands as an external sign, just as the *sacramentum* of baptism remains as an external sign whose fruit may only come later. True regeneration results from the *uirtus sacramenti*, and if someone approaches baptism insincerely (*accedens ficte*), he receives only the *sacramentum* but not the *uirtus sacramenti*. Later, if such insincerity flees and true faith and repentance emerge, the power of the sacrament of which he had previously only received the sign comes to be applied to him. No repetition of the external sacrament is necessary. So also with the penitent, argued Gratian. When he repents of the sin to which he was clinging, he obtains the fruit of the earlier penance and does not require additional satisfaction or penalty for the first sin.

The point about those approaching baptism *ficte* was one made precisely and exclusively by Anselm of Laon and his school. The language of *sacramentum* and *res sacramenti* was universal, almost everyone discussed the category of those baptized who "approach the sacrament insincerely" (*accedens ficte*) or without faith, and many wondered whether such persons' sins are remitted at the moment of baptism. Only Anselm and some members of his school, however, specifically asked (and answered positively) whether such a *fictus* would later receive remission for his sins once he gained faith. In a sentence recorded in the *Liber pancrisis*, Anselm spoke to the necessity of baptism. Some people receive it by the *sacramentum*, the external sign, alone without faith, such as infants; some receive it by faith alone without the *sacramentum*, such as adults at the moment of death; some receive it by the *sacramentum* and faith, such as adults who approach it sincerely (*non ficte*

accedentes). Without baptism in one of these forms, a person will be damned. As for adults who approach baptism insincerely (*ficte*), if they die, their baptism is of no benefit to them. If, however, they afterwards cling to faith, the baptism which was feigned becomes efficacious.[65] In other words, for Anselm, the person receives the benefits of baptism without another physical baptism but purely as a result of the new-found faith. Other sentences from the school made the same point about those *ficte accedentes ad baptismum*, using the distinction between *sacramentum* and *res sacramenti*, the latter of which Gratian refers to as *uirtus sacramenti*.[66] The overall concept as well as the terminology (*accedens ficte*) matches up neatly with Gratian's.

That terminology had been passed down through the Middle Ages from Augustine's *De baptismo contra Donatistos*, but the understanding and emphasis on the idea that those who approach baptism insincerely do not receive remission of sins at that moment but only later, and only if they acquire true faith, was distinctively Anselmian.[67] Whether sins are remitted through baptism for an insincere person (*Quod ficto etiam per baptismum peccata*

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[65] *Sententia* 57 (ed. Lottin, 53): "Itaque postquam baptismus institutus est adeo necessarius est ut quicumque non receperit illum, uel solo sacramento absque fide ut pueri, uel et sola fide, ut adulti si articulus necessitatis excludat, uel utroque simul, ut adulti *non ficte accedentes*, damnetur. Adulto tamen qui *ficte accedens* baptizatur, si statim moritur non prodest baptismus. Si autem postea fidem adhibet, ille baptismus qui fictus est prius tunc habet efficaciam."

[66] Cf. *Sententie* 370, 373 (ed. Lottin, 275-76). Cf. also Paris, Bibliothèque Mazarine, 708, fol. 13v, London, British Library, Roy. II.A.V., fol. 27v^{b}, and München, Bayerische Staatsbibliothek, lat. 13088, fol. 150v. This last text (reproduced in Weisweiler, *Schrifftum* 87-88 and Lottin, *Sententia* 370, p. 275) is particularly interesting, since the author uses the terminology of *sacramentum* and *res sacramenti* but also refers to the *uirtus penitentie*, which terminology Gratian's text echoes.

[67] Paschasius Radbertus, for example, used the phrase *ficte accedere*, but he came to a different conclusion, namely that, at least in the moment of baptism, remission of sins did occur, even for the insincere. He based this conclusion on Gal. 3:27 ("Whoever of you have been baptized in Christ have put on Christ"). In his *Expositio in euangelium Matthei*, he writes (Book 8; PL 120:635B), "Ergo quia talis ficte accedit, ideo forte non ei dimittuntur debita sua, quod omnino falsum est. Unde Apostolus ait: '*Quicunque in Christo baptizati estis, Christum induistis*.' Ergo quicunque Christum induit, in corpore Christi consecratur, et ideo non potest fieri, ut per sanctam vim tanti sacramenti peccata ei non dimittantur, saltem in ipsius temporis puncto."

dimittantur et non) was the subject of a question in Peter Abelard's *Sic et non*.[68] He failed to extend the question to considering whether those who approach baptism insincerely receive the benefits of the baptism (or the *res sacramenti*) upon the abandonment of that insincerity and the obtaining of faith. The emphasis for Peter Abelard was on the moment of baptism. He was more concerned with the question of whether sins are remitted for those who approach baptism *ficte* at the moment of baptism and with distinguishing between those who receive the *sacramentum* and the *res sacramenti* and those who receive just one or the other.[69] Hugh discussed those approaching baptism *ficte* only once and did so, as it were, from afar, relating the viewpoints of others. His treatment likewise did not extend to the question of whether the *fictus* receives the benefit of the sacrament once he comes to true faith.[70] Thus, while the general terminology that Gratian used was certainly not without

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[68] *Sic et non* q.111 (ed. Boyer and McKeon, 363-66).

[69] Landgraf included this topic ("The Effect of Baptism in the *fictus* and *contritus*") in his volume on sacramental thought in the early scholastics. He did detect concern with whether sins are remitted the *fictus* in baptism and whether baptism should be repeated once faith is acquired is in Abelard's school in the *Sententie Hermanni* and the *Sententie Florianenses* (Landgraf, *Dogmengeschichte*, 3.2.90-91). Thus it is possible that, as a student of Anselm, Abelard did pass on this concern and question to his disciples in some form even though no extant work by Abelard contains a treatment of it.

[70] The only time Hugh mentioned those approaching baptism *ficte* was in his treatment of marriage in *De sacramentis christiane fidei* 2.11.11. The Anselmian idea made an appearance in Odo of Lucca's *Summa sententiarum* 5.5. Since Hugh of St Victor never directly addressed the question of the person who approaches baptism *ficte*, it seems that Odo in his work was influenced by Anselm on this matter. Here I reproduce the text from Migne's edition collated with two twelfth-century manuscripts which contain additional Anselmian sentences as well as complete copies of the *Summa sententiarum*. The manuscripts are München, Bayerische Staatsbibliothek, lat. 12519 (z) and lat. 13088 (w). (The letters I use here are those assigned by Lottin to these manuscripts.) Here the texts of Augustine and the Gal. 3:27 (the text used by Paschasius Radbertus in support of his view) are placed in opposition to one another and resolved through another Augustinian text (from Book 7 of *De baptismo contra Donatistas*). The text reads (PL 176:130B-131B; z 66r-66v; w 130v^{a}-130v^{b}), "Deinde restat uidere quod quidam sacramentum et rem suscipiunt, alii sacramentum et non rem, alii rem et non sacramentum. Sacramentum et rem sacramenti suscipiunt paruuli, ubicumque et aliquibuscumque baptizentur in nomine sancte trinitatis, in quibus non requiritur propria fides. Adulti quoque, si propria fides acceditur, et sacramentum et rem sacramenti <ipsius zw> habent. In istis propria fides requiritur, sine qua nullam remissionem consecuntur. Sacramentum et non rem illi qui ficte accedunt uel sine fide et corde inpenitenti…. Id <*om.* zw> ideo quoque Augustinus alibi dicit, 'Tunc ualere incipit ad salutem baptismus <*ad – baptismus*]

precedent in his time, the one person with whom he shared the specific idea that a sacrament can be carried out at one time and its effect come to realization at a later time upon demonstration of faith (or true repentance) was Anselm of Laon.

That idea as related to penance, namely that false penance bears fruit when true penance ensues, set up the final main section of this distinction. Based on the *auctoritates* Gratian cited next, he seems to have viewed even false penance as a limited good, as being good in some sense, and therefore as deserving some recompense, even if not remission of sins. Drawing on Jerome's paraphrase of Hebrews 6:10, saying that God is not so unjust as to forget the few good works on account of the bad, Gratian pointed out two benefits of good works (i.e. penance) done in the midst of bad (i.e. the retention of sin) or two ways in which God remembers the good (his *memoria bonorum*): present remuneration and the mitigation of punishment. Thus while false or incomplete penance is not useful or profitable unto salvation, it may yield a temporal benefit or may make eternal punishments more tolerable, as Pseudo-Augustine also intimated.[71] Based on the preceding ideas, Gratian encouraged the

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baptismi absolutio zw> cum illa fictio ueraci confessione recesserit.' Opponitur illud apostoli, 'Quicumque <Omnis qui zw> in Christo tantum baptizati estis, Christum induistis.' Sed dicimus in Christo <apostolo z> baptizari eos qui in conformitate Christi baptizantur, non moriantur uetustati peccati. Sicut in Christo per mortem uetustas peccata <pene zw> crucifixa fuit. Augustinus aliter hec soluit <solum w>, dicens, 'Induunt autem homines Christum aliquando usque ad sacramenti perceptionem, aliquando etiam usque ad uite sanctificationem. Atque illud primum etiam bonis et malis potest esse commune.'"

[71] This section runs from D.3 c.45-d.p.c.49, of which c.48 is a later addition and splits up Gratian's line of thought. The sentence which constitutes d.p.c.46 and leads into c.47 is actually a subordinate clause whose main clause comprises all of d.p.c.48. Thus, Gratian's original treatise read (d.p.c.46-d.p.c.48): "Although the memory of good works is able to be represented in present remuneration, as Gregory writes in his homily on the rich man and Lazarus: [c.47]…, the memory of good things can also be represented in having a lesser penalty [in such a way] that the good things which were done amidst many evil things do not advance to obtain the reward of the present or future life, but approach a more tolerable punishment at the Last Judgment. (Quamquam memoria bonorum ad presentem remunerationem possit referri, sicut Gregorius in omelia de diuite et Lazaro scribit: [c.47]… potest etiam memoria bonorum referri ad mitiorem penam habendam, ut bona, que inter multa mala fiunt, non proficiant ad presentis uel futurae uitae premium obtinendum, sed ad tollerabilius

admittance of all to penance; penance should not be denied to anyone, because, even if the person falsely does penance now, remaining in some other sin, he or she will experience its fruit at the moment of penance for that other sin.[72] False penance can change into true penance as soon as a sinner becomes truly contrite, grieving over all of his or her sins. On this final point, Gratian broke from recent tradition and papal authority. Urban II had explicitly decreed that a person who wants to do penance for one sin (e.g. murder) while remaining in another (e.g. adultery) should not be admitted to penance but should merely be advised about giving alms and doing prayers.[73] Whereas Urban forbade priests from admitting false penitents to penance, Gratian encouraged them to do so and provided a theological basis rooted in the analogy with baptism for it.

Gratian thereby brought this distinction to a close. He had elucidated the true definition of penance and proven such definition with authorities. It was now clear that no one could do penance, that is, a beneficial and fruitful penance, while remaining in some

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extremi iudicii supplicium subeundum.)" The structure of the extended sentence is even lost on the Fd scribe, who inserts a paraph prior to the *potest etiam memoria* (beginning of d.p.c.48), thereby completely splitting the two halves of the sentence (fol. 96vb).

[72] D.3 d.p.c.49: "Therefore, as is clear from the preceding, penance is beneficial to no one persevering in sin; nevertheless if should not be denied to anyone because he will feel its fruit when he does penance for the other wicked deed. (Penitencia ergo, ut ex premissis apparet, nulli in peccato perseueranti utilis est, non tamen alicui deneganda est, quia sentiet fructum eius, cum alterius criminis penitenciam egerit.)"

[73] In the LL tradition of the canons of the Council of Clermont, c.19 gives one example of a situation in which no priest should admit the sinner concerned to penance. The next canon statess (c.20, Somerville, 79), "Similarly also anyone else, unless he should make a complete confession. For example, as if, after a homicide has been perpetrated someone should remain in adultery or some such sin, it is decreed that he ought not be received to a complete penance. Nevertheless, we give counsel that they fast and give alms so that they can be turned back to the way of truth. (Similiter et alium quemlibet nisi perfectam confessionem fecerit: verbi gratia, ut si perpetrato homicidio manserit in adulterio vel huiusmodi, ad perfectam penitentiam minime recipi debere decretum est. Attamen consilium damus ut ieiunent et elemosinas dent ut ad viam veritatis possint reverti." In a manuscript providing a synopsis of the decrees at Clermont, we find (Firenze, Biblioteca Mediceana Laurenziana, 16.15; c.4, Somerville, 108): "Penance is not to be given to anyone for a serious sin if he remains in an equally serious sin; but he is to be counseled to go to prayers. (Nulli detur penitentia de gravi peccato si manserit in eque gravi; sed detur consilium ut eat ad orationes.)" Cf. also c.25 in the synopsis in Oxford, Bodleian, Selden supra 90 (Somerville, 115).

sin.[74] The *questio* was suitably brought to a close, but then Gratian seems to have had an afterthought and realized that he had not treated two important *auctoritates* by Ambrose which say that penance can only be done once. He quoted both briefly and related them to solemn penance.[75] As in the first distinction, Gratian's reference to solemn penance has the feeling of distance and unfamiliarity. He knew of the practice, clearly, but he also seems not to have been intimately acquainted with it or perhaps did not expect his students to be acquainted with it. He described it as "the custom of certain churches, in whose opinion the solemnity of penance is not repeated."[76] Gratian's references to solemn penance fit very well what Mary Mansfield said of Peter Lombard's: they are less concerned with describing current practice and variances between private and public/solemn penance and more concerned with accounting for discrepancies or apparent points of discord within patristic *auctoritates*.[77] Gratian's way of speaking about solemn penance may support the view that

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[74] Ibid.: "Therefore, the definition of penance and the remaining authorities agreeing with it in this way deny that he who perseveres in a wicked deed does penance, specifically a penance which is beneficial to him and fruitful. (Sic itaque penitenciae diffinitio, et ceterae auctoritates sibi consonantes negant, eum agere penitenciam, qui perseuerat in crimine, utilem uidelicet sibi et fructuosam.)"

[75] D.3 d.p.c.49 §1: "But that statement of Ambrose, 'Penance which has been usurped once and not truly celebrated, both removes the fruit of a prior penance and loses the benefit of the subsequent one,' is understood concerning solemn penance…. That statement is also understood [as being] about this same penance: 'There is no second place of penance.' (Illud autem Ambrosii: 'Penitencia semel usurpata, nec uere celebrata, et fructum prioris aufert, et usum sequentis amittit,' de solempni intelligitur…. De hac eadem penitencia etiam illud intelligitur: 'Non est secundus locus penitenciae.')" An expanded version of the first auctoritas gets added at a later stage and constitutes D.3 c.37 in Friedberg. The second *auctoritas* appears in the *prima pars* of the *Decretum* in D.50 d.p.c.61.

[76] Ibid.: "…consuetudinem quarumdam ecclesiarum, apud quas solempnitas penitenciae non reiteratur."

[77] *Humiliation of Sinners*, 24. Mansfield argued that the later tripartite division of penance (private, solemn public, and non-solemn public) in the early thirteenth century was the result of the same thing: accounting for differences among canons and patristic writings, not so much a reflection of reality. She wrote, "The tripartite system gained popularity quickly among the sophisticated schoolmen of Paris preparing compendia of penance and theology more because it explained contradictions in their sources than because it corresponded to the practices evolving before their eyes. As Jean Morin pointed out three hundred years ago, the distinction between solemn penance and nonsolemn public penance conveniently explained away old canons that contradicted each other over the rites and their applicability in different cases. If one canon told the priest to impose public

public penance, at least in the form of expelling public penitents from the church on Ash Wednesday, had gone out of practice in Italy by his day.[78] Gratian specifically referred to solemn penance as a custom of certain churches (*consuetudo quarundam ecclesiarum*), indicating that not all churches did it. Alternatively, Gratian's turn-of-phrase may simply indicate that most people in his day did not view even public penance as a one-time affair. *Manifesta* as well as *occulta penitentia*, to return to distinctions from D.1, could be done more than once. Thus Gratian referred to the opinion or view of certain people or churches (*apud quosdam*) that held that solemn penance can only be done once. Gratian might not have known any such person or church personally, but the *auctoritates* that referred to penance as unique, as something that can only be done once, had to refer to some legitimate practice since, as *auctoritates*, they had to be true. The references to solemn penance thus reflected more than anything else Gratian's deep-rooted desire to reconcile *auctoritates*. His next *questio* presented significant challenges on that front, but he pursued a unique path for addressing them, a path that brought him face to face with one of the greatest mysteries of Christianity: predestination.

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penance and another reserved it to the bishop, later theologians might reason that the canons were dealing with two separate rites" (33). What Mansfield did not note in her discussion of Peter Lombard is that his take on solemn penance most likely stemmed from his reading of Gratian, on whom almost the entirety of his treatment on penance depends, as will be seen below in chapter 9.

[78] Mansfield, *Humiliation of Sinners*, 178.

CHAPTER 4

WHEN FORGIVEN SINS COME BACK TO HAUNT YOU:

DISTINCTIO 4 OF *DE PENITENTIA*

After he spent considerable time demonstrating that penance can truly be celebrated and that sins can truly be forgiven, even when the penitent will fall again into sin, Gratian chose to investigate further one of the side issues mentioned in that discussion, specifically whether forgiven sins return. His choice of words made clear that he was moving on from the previous discussion and advancing a new *questio* with the scholastic cue-word *queritur*, and thus once again, even though many early manuscripts do not expressly divide D.4 out as a separate entity, the early teachers and students of the work did well to create a division at this point. Gratian noted the start of this question, which in the hands of his successors became the beginning of a new distinction, in this way:

> But, because it has been shown above by the authorities of many that penance is truly celebrated and sins are truly forgiven for the person who at some time will fall back into a wicked deed, it is asked whether forgiven sins return.[1]

This question makes more sense in the Latin, in which the word for "forgive," *dimittere*, literally means "to send away." If God has truly sent sins away and had them dismissed, can they return? The question was one discussed by nearly every author who wrote on penance. In a world in which penance was reiterable and in which such reiterability was vigorously defended, one had to wonder in particular about the person who fell away from penance, never to return to it. Were his sins really and truly forgiven? Gratian answered in the

[1] D.4 d.a.c.1: "Quia uero multorum auctoritatibus supra monstratum est, penitenciam uere celebrari, et peccata uere dimitti ei, qui aliquando in crimen recasurus est: queritur, an peccata dimissa redeant?" This issue was briefly raised in D.3 d.p.c.22.

affirmative in D.3. Then do those sins return when the person returns to sin? Can the person be punished for the sins that were forgiven as well as the new sins for which the person never repents?

Gratian discussed this question from two angles. For the most part, he related his question to the individual: do sins committed by and forgiven one person return to that person when he or she commits other sins? In this context, he understood the return of sins in eternal and penal terms. He wondered whether the punishment due those sins before they were forgiven would be inflicted on the sinner in the end after his or her death.[2] In short, Gratian inquired into the return of the sins of the hypocritical reprobate, those, as he put it towards the end of D.2, who did love God but then lost that love forever or, in the terms of D.3, who did repent but then turned away from repentance forever. Gratian also spent some time on an intergenerational angle to this question. Along with many of his contemporaries, Gratian pondered some of the Scriptures which state that the sins of the fathers return to the sons.[3] Although not as obviously so, this question also relates to *pena*: can sons justly be punished for the sins of their fathers, and thus do the sins of the fathers return for penalty in

[2] Gratian phrased the question in terms of sins being turned back for penalty (D.4 d.a.c.1): "Huius questionis diuersorum uaria est sentencia, aliis asserentibus, aliis econtra negantibus, *peccata dimissa ulterius replicari ad penam*." Gratian was not thinking in terms of some temporal penalty; rather, this question applied to those who do not persevere to the end, not to those who temporarily wander into sin but will return to penance. The theme of perseverance will appear frequently throughout the distinction as a subsidiary of the theme of predestination. Gratian's mindset in this distinction was that of eternity – the individual's eternal state (elect or not) and therefore his or her eternal blessedness or punishment.

[3] As Landgraf pointed out, the main text inspiring this question was the verse within the Ten Commandments in which God promised to visit the iniquities of the fathers on the children unto the third and fourth generation (Exodus 20:5). Cf. Landgraf, *Dogmengeschichte*, 4.1, *Die Lehre von der Sünde und Ihren Folgen*, 155.

the sons?[4] Gratian devoted most of his time to the first dimension of the question (related to the individual), but he did offer a firm conclusion to the second (related to successive generations) as well. His treatment stood unique in the period, but, once again, its uniqueness often lay less in Gratian's stance taken than in the way he applied well-known *auctoritates* and common concepts to the question, and, as before, the concepts and biblical exegesis that he employed in addressing this question stemmed from the school of Laon.

Gratian first made reference to the two verses in the Bible that best supported the notion that forgiven sins return. Having acknowledged that diverse opinions were held on this question (and, indeed, this question witnessed some of the most intense debate as well as insecurity among thinkers of his day), he began a defense of the view that sins can return after they have been forgiven.[5] It is to this view that he adhered. The first text appeared in a Psalm in which David called upon God to judge and punish those who had oppressed and betrayed him. As part of that prayer, David demanded that God remember the sins of his adversaries' fathers and mothers. In the Latin phrasing, David specifically asked that the "sin of their fathers return to memory," and in the context of the Psalm this implied that such

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[4] I emphasize the notion of penalty or punishment because some of the literature has claimed that Gratian believed sins to return in their essence – whatever that would mean (Landgraf, *Dogmengeschichte*, 4.1, *Die Lehre von der Sünde und Ihren Folgen*, 223). Gratian did not make such a distinction, at least not explicitly. Even though he may not have thought about the question in such specific terms as later generations would, it is clear from his discussion and his repeated references to *pena*, that Gratian thought about this question in (eternal) penal terms. Sins returning meant the punishment due those sins being exacted from the sinner.

[5] Hugh of St Victor defended the view that forgiven sins return (*De sacramentis* 2.14.9), but Odo of Lucca, though a student at St Victor whose work depended in large measure on Hugh's, denied that forgiven sins return (*Summa sententiarum* 6.13). With his two greatest sources on penance (Gratian and Odo's *Summa sententiarum*) disagreeing, Peter Lombard left the question unsettled (*Sent.* 4.21.1). The one article which overviews this scholastic discussion in the early-mid twelfth century is Joseph de Ghellinck, "La reviviscence des péchés déjà pardonnés à l'époque de Pierre Lombard et de Gandulphe de Bologne," *Nouvelle Revue théologique* 41 (1909): 400-408. For whatever reason, de Ghellinck believed Gratian to have half-heartedly denied that forgiven sins return. He incorrectly interpreted Gratian on this point.

recalling on God's part would lead to further punishment of these fathers' descendants, David's enemies.[6] The second text came from one of Jesus' parables, which served as the basis of this question in all writers of the period. The parable recounted the story of a lord who had mercy on a slave who owed him a large sum of money (ten thousand talents). After the slave was forgiven his very large debt, he came across a fellow slave who owed him a small amount (one hundred denarii). His fellow slave could not repay him, but, instead of forgiving his fellow slave's debt as his lord had forgiven his, this wicked slave threw him into prison. When the lord found out, he summoned his slave and reminded him that he had forgiven him all his debt. As punishment for his lack of similar mercy in the case of his fellow slave, the lord ordered his wicked slave to repay all the original debt.[7] In short, a debt was forgiven and then was reinstated after sin. The parable was instigated by a question by Peter about how many times a person should forgive another. Thus, throughout the ages the debt in the parable had been interpreted as sin, and such Vulgate gospel terminology inspired the usage of the economic *dimittere* in theology to denote the forgiveness of sin viewed as a debt owed to God. In short, the parable was interpreted as saying that God forgave a sin and then, on account of the sinner's return to sin, punished him for the sin already forgiven as well as the new sin. The parable and its application to sin and forgiveness were so well-known that Gratian referred to the entire episode with a short quotation from the lord after he

[6] Gratian wrote (D.4 d.a.c.1 §1): "But that sins once forgiven return is proven by the authorities of many, the first of which is that text of the prophet [Ps. 108:14 (109:14)]: 'Let the sin of his fathers return to memory, etc.' (Quod autem peccata semel dimissa redeant, multorum probatur auctoritatibus; quarum prima est illa Prophetae: 'In memoriam redeat iniquitas patrum eius etc.')"
[7] Cf. Matthew 18:21-35.

discovered his slave's merciless activity: "Wicked slave, I forgave you all your debt, etc."[8] Gratian expected all his students and readers to know the end of the story: the punishment of the slave in order to repay the debt that had previously been forgiven. The first text, from the Psalms, applied to the issue of intergenerational return of sins while the second, from Matthew, applied to the issue of the return of an individual's own sin. Gratian proceeded to quote several patristic texts in support of the idea that forgiven sins do receive punishment, either when a person himself or a descendant falls unrepentantly back into sins.[9] A more nuanced understanding of the return of an individual's sin then became Gratian's exclusive focus for some time.

Gratian tackled the concept of the return of forgiven sins from a distinction between two ways in which sins are forgiven, one according to righteousness (*secundum iustitiam*) and one according to prescience (*secundum prescientiam*); this discussion drew Gratian into the complicated affairs of predestination, the nature of the elect and reprobate, and God's justice and eternal decree. Gratian noted that, among those who support the thesis that forgiven sins return, some say that the sins that will return are forgiven not according to prescience but according to righteousness.[10] They mean that the sins are not forgiven

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[8] This is Gratian's second proof-text in D.4 d.a.c.1 §1: "…secunda illa euangelii: 'Serue nequam, omne debitum dimisi tibi, etc.'"

[9] D.4 c.1 and c.7 relate back to the intergenerational return of sins (c.7 specifically to the return of Adam's sin on all his descendants), while D.4 c.1 §1 and cc.2-6 relate to the individual's return of sins.

[10] D.4 d.p.c.7: "But others of those who follow this opinion say that sins which will return are forgiven according to righteousness but not according to prescience, just as the names of the disciples who withdrew [John 6:66] had been written in the Book of Life [Luke 10:20] according to the righteousness to which they used to be devoted, not according to prescience, which did not have them in the number of those to be saved. (Eorum uero, qui hanc sentenciam secuntur, alii dicunt, quod peccata reditura dimittuntur secundum iusticiam, sed non secundum prescientiam, sicut nomina discipulorum, qui retro abierunt, erant scripta in libro uitae propter iusticiam, cui deseruiebant, non secundum prescientiam, que in numero saluandorum eos non habebat.)"

according to God's foreknowledge and predestination since God knows that these penitents will fall back into sin and are not in the number of the elect, predestined from all eternity for salvation. The sins are forgiven, however, in terms of the righteousness that the penitent has and exhibits at the point of time of his penance. God looks upon that righteousness, impermanent as it may be, and rewards it with forgiveness for as long as that righteousness persists. Only sins forgiven in this way return for punishment in the end.

Gratian immediately looked to the biblical concept of the Book of Life in comparison. Such forgiveness *secundum iustitiam* corresponds to being deleted from the Book of Life according to the justice of God on account of sin (i.e. abandoning righteousness); the people whose names are thus erased were never recorded in the Book of Life *secundum prescientiam* (if they had been written in the book *secundum prescientiam*, they would be elect and thus would never return permanently to sin or be erased from the book). For the idea of being deleted from the Book of Life, Gratian turned to Exodus 33:32 as well as the gospels, which speak of certain disciples being written in the Book of Life (Luke 10:20) who afterwards seem to be among those who abandoned Jesus (John 6:66).[11] He also equated those being written in and then deleted from the Book of Life to those ready to fall from the

[11] Cf. previous note and the following text (ibid.): "On this account, the Lord also says to Moses [Ex. 32:33]: 'If anyone sins before me, I will erase him from the Book of Life,' so that, according to the justice of the Judge, he who had never been written down according to prescience may be said to be erased because of his sinning. (Hinc etiam Dominus ait Moysi: 'Si quis peccauerit ante me, delebo eum de libro uitae,' ut secundum iusticiam iudicis ille peccando dicatur deleri, qui secundum prescientiam numquam fuerat ascriptus.)" Gratian uses the phrase *secundum iusticiam* ambiguously, but for good reason, since his source does as well (see below). Here he is clearly referring to God's righteousness or justice ("the justice of the Judge"), but, in all other instances in this discussion, he means the present, temporal righteousness of the penitent-turned-sinner. This is clear from the *cui deseruiebant* which follows the first instance of the phrase *secundum iusticiam* – the righteousness to which these particular individuals used to be devoted but no longer are and never will again.

side of God (Psalm 90:7 [91:7]) who were never counted as his own by divine prescience.[12] This distinction between righteousness and prescience and its relation to the Book of Life formed the foundation of a great portion of Gratian's discussion. He in fact drew this distinction from Anselm of Laon's gloss on Romans 9, although he alone applied it to the question of the return of sins. Anselm's gloss itself was based on the commentary of Ambrosiaster.[13] Gratian was drawing on Anselm's adaptation of Ambrosiaster, though, and not directly on Ambrosiaster, which is clear from the fact that key differences between Gratian's treatment and Ambrosiaster's already existed in Anselm of Laon's gloss.

In expositing Romans 9:11-13, Ambrosiaster maintained that God foreknew that the unbelieving Jews would become bad; citing Luke 20:10, he likened this to the seventy-two disciples whom Jesus called and claimed were written in the Book of Life. He noted that these disciples afterwards withdrew from Jesus (*qui ab illo postea recesserunt*). Ambrosiaster then introduced the *iustitia/prescientia* distinction. These people were chosen to be disciples on account of righteousness or justice, because it is just to respond to each person in accordance with his merit (*quia hoc est iustum ut unicuique pro merito respondeatur*). When

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[12] Ibid.: "In this way a thousand are said [Psalm 90:7 (91:7)] to be ready to fall from the side of God and, from his right side, ten thousand, whom nevertheless divine prescience had never counted for its own. (Sic a latere Dei dicuntur mille casuri, et decem millia a dextris eius, quos tamen diuina prescientia numquam suis annumerauerat.)"

[13] Ambrosiaster is the name given to the writer of these commentaries by Erasmus. Other writings, including the *Quaestiones Veteris et Novi Testamenti* have been attributed to him. Several candidates have been put forward for the real Ambrosiaster, among them an educated layman of consular rank, Decimus Hilarianus Hilarius, writing in the fourth century during the papacy of Damasus (366-384). No identify has been definitively proven. Cf. the articles under "Ambrosiaster" by Wilhelm Geerlings in the *Lexikon für Theologie und Kirche* and by Alfred Stuiber in the *Theologische Realenzyklopädie*.

Landgraf (*Dogmengeschichte* 4.1, *Die Lehre der Sünde und ihre Folgen*, 209) traced the distinction of *secundum prescientiam* and *secundum iustitiam* in Gratian back to Gilbert de la Porrée's commentary on the epistles, not realizing that the text stemmed ultimately from Ambrosiaster and that Gilbert would have gotten his text, as is shown below, from Anselm of Laon's gloss on Romans. Landgraf's chronology was also incorrect. Gratian was working at the same time as Gilbert (1130s) and did not draw on his work.

he said *propter* or *secundum iustitiam*, then, Ambrosiaster meant God's righteousness or justice. It is just for God to reward humans for their goodness, and, since these people were good at the time, Jesus called them as disciples. But, Ambrosiaster distinguished, they were in the number of the bad according to God's foreknowledge or prescience, because he knew that they would become bad. He then quoted Exodus 32:33, saying that, when the disciples sinned, they appeared to be erased from the Book of Life according to the justice of the Judge, but they were never in the Book of Life according to God's foreknowledge. Ambrosiaster quoted 1 John 2:19 (this is significant because the next major text in *De penitentia* consists in large part of Augustine's treatment of this verse). He stated that God's foreknowledge depends on what man's will (*uoluntas*) will be and will remain being, and that determines whether a person will be damned or crowned in glory. Many people are previously bad, but God knows they will end up being good; others are good for a while, but God knows they will end up being bad.[14] He offered up Saul and Judas as examples of the latter. In concept, terminology, and biblical references, Ambrosiaster's commentary clearly exercised great influence on Gratian's discussion.

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[14] *In epistolam ad Romanos* c.9 (CSEL 81.1:315-319): "4. praescius enim (itaque) deus malae illos voluntatis futuros, non illos [i.e. unbelieving Jews] habuit in numero bonorum, 4a. quamvis dicat salvator illis septuaginta duobus discipulis, quos elegerat secunda classe, qui ab illo post recesserunt: nomina vestra scripta sunt in caelo. sed hoc propter iustitiam, quia hoc est iustum, ut unicuique pro merito respondeatur; quia enim boni erant, electi sunt ad ministerium et erant scripta nomina illorum in caelo propter iustitiam, sicut dixi: secundum praescientiam vero in numero erant malorum. 5. de iustitia enim deus iudicat, non de praescientia. unde et Moysi dixit: si quis peccaverit ante me, deleam eum de libro meo, ut secundum iustitiam iudicis tunc videatur deleri, cum peccat, iuxta praescientiam vero numquam in libro vitae fuisse. hinc et apostolus Ioannes de huiusmodi ait: ex nobis exierunt, sed non fuerunt ex nobis. si enim fuissent ex nobis, permansissent utique nobiscum. non est personarum acceptio in praescientia dei. praescientia enim est quia (qua) definitum habet, qualis uniuscuiusque futura voluntas sit (erit), in qua mansurus est, per quam aut damnetur aut coronetur. denique quos scit in bono mansuros, frequenter ante sunt mali, et quos malos scit permansuros, aliquoties prius sunt boni." The editor (Heinrich Joseph Vogels) copied various recensions of the commentary. I reproduce here the text from recension α β.

Nevertheless, notable differences emerge. First of all, while Ambrosiaster alluded to John 6:66 in saying that the seventy-two disciples departed from Jesus (*ab illo post recesserunt*), Gratian used the precise language of the Vulgate (*retro abierunt*). Second, in terms of general doctrine, Ambrosiaster presented much more of what might be called a Pelagian as opposed to an Augustinian viewpoint, while Gratian was steeped in Augustinian thought. Ambrosiaster viewed God's foreknowledge and the ultimate decision of who will be crowned and who will be damned as dependent on man. God's decision of who will and will not be saved is based on what God foresees humans doing in time, not based on his own eternal predestination and choosing of who are his and who are not. God chose Paul because he foreknew that Paul would become good, whereas, for Augustine and Gratian after him, Paul became good because God chose Paul to be his and to be the recipient of his saving grace from all eternity past. This difference in overall perspective explains the third difference between Ambrosiaster and Gratian's texts, the divergent understanding of the owner of the *iustitiam*. For Ambrosiaster, the righteousness or justice is God's, who must respond to the good acts of humans and reward them accordingly (or justly) with the status of "disciple" or the writing of their names in the Book of Life. For Gratian, the righteousness is the human's, which he or she pursues only for a time and then from which he or she departs. As is clear in Gratian's treatment in D.4, that temporary righteousness is the gift of God (God does not owe anything to a human; any good that a human does results from God's grace). When a person lays aside that gift and sins, God in his justice erases them from the Book of Life. Thus, wheras Ambrosiaster said that the seventy-two disciples were written in the Book

of Life "according to [God's] justice because it is just to respond to each person in accordance with his merit," Gratian said that they were written in the Book of Life "according to the righteousness to which they used to be devoted."[15] These divergences in text and meaning from Ambrosiaster's commentary point to Gratian's reliance on the school of Laon.

Anselm himself seems to have been the source of these changes in Ambrosiaster's words and the more Augustinian tone. People were still quoting Ambrosiaster almost verbatim in the Carolingian period.[16] The exact changes in Gratian's text, however, appeared in a sentence of Anselm of Laon edited by Lottin which is contained in the *Liber pancrisis* as well as a nearly identical passage in the *Glossa ordinaria* on Romans 9. Anselm quoted more directly from Ambrosiaster than Gratian. He mentioned Saul and Judas as a lead-in into the Luke 10:20 passage about the disciples having their names written in the Book of Life, whereas Gratian did not mention these two figures in this context at all. To speak of the withdrawal of the disciples from Jesus' company, Anselm like Gratian used the language of the Vulgate (*post abierunt retro*). Anselm did include Ambrosiaster's words about it being just to respond to each person in accordance with his merit following the first instance of *propter iustitiam*. But, following the second instance of the phrase and following both instances of the phrase in the *Glossa* text, he inserted *cui deseruiebant*, the same phrase Gratian used. Anselm left out the sentences that were most Pelagian in perspective. He

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[15] This divergence from Ambrosiaster here but Gratian's direct quote of Ambrosiaster a few lines later referring to "the justice of the Judge" explains Gratian's ambiguous usage of *secundum iustitiam* as described above in n.11.

[16] Cf. the relevant portion of Rhabanus Maurus's commentary on Romans 9 in his *Enarrationes in epistolas Beati Pauli* (PL 111:1485D-1487A).

quoted Ambrosiaster's comment on Exodus 32:33, saying, "According to the justice of the Judge, a person seems to be deleted when he sins, but he was never in the Book of Life according to prescience." In the version preserved in the *Glossa ordinaria*, Anselm followed Ambrosiaster in quoting 1 John 2:19. He then added a converse statement to the sentence preceding the verse from John: "On the other hand, someone seems to be recorded (*ascribi*) when he ceases being evil, although he was never missing [from it] according to prescience."[17] No form of the verb *ascribere* appeared in Ambrosiaster, but Gratian used one in his version of the explanation of Exodus 32:33.[18]

Anselm's version of Ambrosiaster's commentary did not go unnoticed by his critical student, Peter Abelard. In his *Sic et non*, Abelard showed dependence on Anselm's sentence as recorded in the *Liber pancrisis*. Clanchy noted Abelard's reliance on that collection of sentences or something very much like it in the production of his *Sic et non*.[19] Here is evidence that Abelard did draw from the *Liber pancrisis* itself in terms of content, not just

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[17] *Sententia* 34 (ed. Lottin, 35), with variants from the *Glossa ordinaria* on Romans 9 noted: "Nota quod quibusdam nec gratiam apponit, cum aliis infert eam quasi coactis. Vnde Ambrosius de prescientia pharaonem damnandum censuit sciens eum se non correcturum. Apostolum uero Paulum elegit, presciens utique quod futurus esset fidelis. Quibusdam autem gratia data est in usum, ut Sauli, Iude, [*add.* et Gl. ord.] illis quibus dixit: 'Ecce nomina uestra scripta sunt in celo' (Luc. 10:20), et post [postea Gl. ord.] *abierunt retro*. De quibus Ambrosius: Sed hoc propter iustitiam [*add.* cui deseruiebant Gl. ord.], quia hoc est iustum, ut unicuique pro merito respondeat, [*add.* acsi diceret digni estis nun vita eterna Gl. ord.] quia erant boni, et nomina eorum erant scripta in celo propter iustitiam, *cui deseruiebant*, per [secundum vero Gl. ord.] prescientiam uero in numero erant malorum. De iustitia enim iudicat Deus, non de prescientia. Vnde et [*om.* Gl. ord.] Moysi dicitur: 'Si quis peccauerit ante me, delebo eum de libro uite' (Ex. 32:33), ut secundum iustitiam [iudicium Gl. ord.] iudicis tunc uideatur deleri cum peccat, iuxta prescientiam uero [tamen Gl. ord.] nunquam in libro uite fuerat. [*add.* Unde Iohannes (1 John 2:19), 'Ex nobis exierunt, sed non erant ex nobis.' Gl. ord.] Econtra tunc aliquis uidetur *ascribi*, cum malus esse desinit, qui secundum prescientiam numquam defuit."

[18] Gratian wrote, "…ut secundum iusticiam iudicis ille peccando dicatur deleri, qui secundum prescientiam numquam fuerat *ascriptus*."

[19] M.T. Clanchy, *Abelard: A Medieval Life* (Oxford: Blackwell, 1997), 80-81. Cf. also Franz Bliemetzrieder, "Autour de l'oeuvre théologique d'Anselme de Laon," *Recherches de théologie ancienne et médiévale* 1 (1929): 461-62, 481.

general organization, for Abelard offered these theses stemming from Ambrosiaster's commentary, "Quod de praescientia judicet Deus, et non." Scholars have not identified any place where Abelard quoted the *Glossa ordinaria*, so Abelard most likely drew the text from the *Liber pancrisis* and not the *Glossa ordinaria* (while Gratian seems to have done the opposite). When he quoted from Ambrosiaster's commentary on Romans, he quoted nothing more than what Anselm did in the *Liber pancrisis*. He included the phrase *cui deseruiebant* and something very close to the phrase *abierunt retro* (Abelard has *retrorsum*, no *retro*). Abelard also included Anselm's converse statement in exposition of Exodus 32:33, which provides the strongest indicator that Abelard used the *Liber pancrisis* or some other manuscript that contained this sentence by Anselm.[20] In addition, Abelard did not include the quotation of 1 John 2:19, which further supports the contention that the *Liber pancrisis* and not the *Glossa ordinaria* was his source, as the sentence in the former does not include that biblical passage while the Gloss does. Gratian and Abelard's *Sic et non* thus shared a common source here: (some version of) a sentence by Anselm of Laon that quoted and modified Ambrosiaster's commentary on Romans 9.

Anselm's understanding of the *iustitia* as the temporary righteousness of a human seems to have taken hold, for the distinction between *secundum iustitiam* and *secundum prescientiam* with that same understanding of *iustitia* is found in Hugh of St Victor. Perhaps

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[20] *Sic et non* 26 (ed. Boyer and McKeon, 169.6-16; PL 178:1386C-D): "Quibusdam autem data est gratia in usum, ut Sauli; Iude illis quibus dixit: '*Ecce nomina vestra scripta sunt in caelo, et post abierunt retrorsum.*' *Item:* Nomina eorum erant scripta in caelo propter iustitiam *cui deserviebant*; secundum vero praescientiam in numero malorum erant. De iustitia enim Deus iudicat, non de praescientia; unde et Moysi dicit: '*Si quis peccaverit ante me, delebo eum de libro vitae*'; ut secundum iustitiam iudicis tunc videatur deleri, cum peccat. Iuxta praescientiam tamen nunquam in libro vitae fuerat. *Econtra tunc aliquis videtur adscribi, cum malus esse desinit, qui secundum praescientiam numquam defuit*."

William of Champeaux, the founder of St Victor and pupil of Anselm of Laon, was responsible for that transmittance. In somewhat different language from Anselm, Abelard, and Gratian but with the same basic idea, Hugh commented upon Exodus 32 and the Book of Life in his *Adnotationes elucidatoriae in Pentateuchon*. He specified, as Gratian proceeded to do in more detail in *De penitentia* D.4, what it means to be written in and erased from that Book:

> To be written or erased from the Book of Life is understood in two ways: according to prescience and according to the present state, according to which it now and then happens that if someone would remain in it, they would be saved. But because he abandons the present righteousness that he has, he is said to be erased from the Book of Life, in which God wrote him when He gave him that righteousness. But he who has been written according to prescience will never be erased according to the same [prescience].[21]

Ambrosiaster's discussion of the Book of Life in his commentary on Romans stood behind Hugh's exposition here, but the more Augustinian tenor and the correlating understanding of the *iustitia* as referring to man's righteousness, a gift from God, not God's justice in subservience and response to man's actions, is undeniable. Those elements appear to have originated in or at least been perpetuated by the school of Laon, to which Hugh was indebted in a less direct way than Abelard and Gratian.

For Gratian, the recognition that some people whose names were never recorded in the Book of Life according to prescience are erased from it when they sin correlated nicely with the notion that some people who will end their lives in evil lose the power of the

[21] c.8 (PL 175:73B): "Scribi autem in libro vitae aut deleri, dupliciter intelligitur; aut secundum praescientiam Dei, aut secundum praesentem statum, secundum quem quandoque contingit, quod si talis permaneret aliquis salvaretur; sed quia praesentem quam habet justitiam deserit, dicitur deleri de libro vitae, in quo Deus eum tunc scripsit, quando illam justitiam ei dedit. Secundum praescientiam vero qui scriptus est nunquam secundum eamdem delebitur."

sacraments which they had previously enjoyed. Such correlation led Gratian to discuss briefly the basic Anselmian idea that he had espoused towards the end of D.3, namely the distinction between *sacramentum* and the *uirtus sacramenti*.[22] As Gratian noted, "All sacraments are common, but grace is not common; so also now baptism is common but not its power."[23] He then gave as an example those who approach baptism *ficte* or even those who are baptized outside of the church; these people receive the sacrament of baptism, but not its power. Nevertheless, infants as well as adults who approach baptism with full faith (*plena fide*) receive the sacrament as well as its power and so have their sins entirely remitted, "even if they will at some point withdraw from the good and finish this life in evil."[24] One cannot with ease make a one-to-one correlation between this short discussion of the efficacy of sacraments and Gratian's usage of the *iustitia-prescientia* distinction related to the Book of Life, but the main point is clear and becomes more so in Gratian's subsequent discussion: a person can truly be righteous for a time and, on account of that righteousness, that person can have his or her name written in the Book of Life in some real, though not eternal, sense, just as a person can in full faith approach baptism and truly have his or her sins remitted at that time. In both cases, a later and permanent fall into evil will result in the

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[22] Cf. above, chapter 3, for a fuller discussion of this idea and its prominence in the school of Laon, particularly as related to baptism and those who approach baptism insincerely or *ficte*.

[23] D.4 d.p.c.7 §1: "Communia omnia sacramenta, sed non communis gratia; ita et nunc baptismus communis est, sed non uirtus baptismi." Gratian's identification of a sacrament in its external manifestation as being "common" is reminiscent of a line in Augustine's *De baptismo contra Donatistos*, the same work which serves as a basis of the entire discussion of the twelfth century about those approaching baptism *ficte*. The text is *De baptismo* 7.33.65 (CSEL 51:360.24-25): "Salus enim propria est bonis; sacramenta vero communia et bonis et malis." Cf. also above, chapter 3, n.62.

[24] D.4 d.p.c.7 §2: "Verum hoc de ficte accedentibus, uel de his, qui extra ecclesiam baptizantur, intelligitur, qui sacramenti quidem integritatem accipiunt, uirtutem uero eius minime assecuntur. Paruulis uero, uel adultis plena fide accedentibus omnino peccata remittuntur, etsi aliquando a bono recessuri in malo uitam sint finituri." Gratian employed the standard Anselmian categories of people receiving baptism : infants, adults with faith, and adults without faith. Cf. above, chapter 3, nn. 65, 67.

loss of what had been gained, an inscription in the Book of Life or the effect of baptism. Beyond the substance of Gratian's thoughts in this section following the initial *auctoritates* in D.4, what is most important from a scholarly perspective is that the content was inspired by teachings of Anselm of Laon, Anselm's understanding of sacraments, and Anselm's adaptation of Ambrosiaster's text.

That text by Ambrosiaster and Anselm's adaptation of it also influenced Gratian's next move. Gratian quoted at great length from Augustine's *De correptione et gratia* from a section that discussed why God does not bring death to the temporarily good before they become evil. Augustine's discussion involved a treatment of predestination and God's prescience and what it means to be a son of God and how it is that people who will end up in hell can be called sons of God during certain periods of their lives. The text at the heart of this discussion was 1 John 2:19 ("They departed from us, but they were not of us"), a verse that Ambrosiaster quoted in the midst of the discussion of the Book of Life on which Gratian had just drawn. It seems clear, then, that the particular manuscript from which Gratian drew his *iustitia-prescientia* distinction included the quotation from 1 John 2:19 and was probably a copy of the *Glossa ordinaria* on Romans, since the version of Anselm's sentence preserved there includes that biblical text. Peter Lombard likewise drew on this part of the *Gloss* when composing his *Collactanea*, or what would come to be known as the *Magna glosatura* on the Pauline epistles. Peter's text contained the *cui deseruiebant*, the *abierunt retro*, the quotation from 1 John, and the final sentence of Anselm's own composition presenting a converse (along with some other additions and alterations to Ambrosiaster's original which make it

even more consistently Augustinian in tenor).[25] These elements show that Peter drew indirectly on Ambrosiaster through Anselm of Laon's modification in his gloss on Romans 9 (which became the *Glossa ordinaria*). Thus, both Gratian and Peter Lombard drew on the *Glossa ordinaria*, not the *Liber pancrisis* version of Anselm's sentence as Peter Abelard did.

Having decided to turn to Augustine's comments on 1 John 2:19, Gratian chose to spread his net wide and to include excerpts from *De correptione et gratia* prior to Augustine's coming to 1 John 2:19. This broader section focused on a verse from Ecclesiasticus or the Book of Wisdom. The breadth of this quotation allowed Gratian to set up an apparent disparity within the *auctoritas*, which he then had to resolve and to which he had to bring harmony. The apparent discord between the first section of Augustine's text (focusing on Wisdom 4:11) and the second, larger section (focusing on 1 John 2:19 and some other gospel verses) arose because of the construct within which Gratian was framing his discussion of the return of sins, not because of any inherent inconsistency in Augustine's text. Gratian was setting up two groups of defenders of the thesis that forgiven sins return. The first group defended this thesis without any recourse to the distinction between sins forgiven according to righteousness and sins forgiven according to prescience. For them, just

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[25] *In epistolam ad Romanos* 9 (PL 191: 1467D-1468B): "In Evangelio Dominus dixit: '*Ecce nomina vestra scripta sunt in coelo,*' et *post abierunt retro*. Sed hoc de eis Dominus dixit, propter justitiam *cui deserviebant*, quia hoc est justum ut unicuique respondeat pro merito. Ac si diceret: Digni estis nunc vita aeterna, quia erant boni. Frequenter enim ante sunt mali, qui futuri sunt boni; et aliquoties prius sunt boni, qui futuri sunt et permansuri mali. Tales erant illi, et ideo nomina eorum erant scripta in coelo propter justitiam, *cui deserviebant*; secundum vero praescientiam, in numero erant malorum. De justitia enim judicat Deus, non de praescientia, quia justitia non Dei praescientia causa est quare apud Deum aliquis dignus sit vita. Unde et Mosi dicit: '*Si quis peccaverit ante me, delebo eum de libro vitae'*; ut secundum justitiam judicis videatur deleri cum peccat, juxta praescientiam tamen in libro vitae nunquam fuerat. *Unde Joannes ait: 'Ex nobis exierunt, sed ex nobis non erant.' Econtrario vero tunc aliquis videtur ascribi, cum malus esse desinit, qui tamen secundum praescientiam nunquam defuit.*"

as a person who approaches baptism with full faith has his or her sins fully remitted and are baptized with the Spirit as well as water, so also a penitent is perfectly expiated through an act of true penance. Such genuine baptism and true penance occur regardless of what a person will do later in life, including if they turn eternally away from God.[26] Such a person's sins were forgiven, pure and simple, and they will return; God's prescience has no bearing on this point. The second group of defenders of the return of sins preferred, as Gratian just elucidated prior to the quotation from Augustine, to make a distinction between sins which are forgiven according to righteousness and those forgiven according to prescience and say that the sins that are forgiven according to present righteousness but not according to prescience are the sins that return.

Gratian set up this debate probably more as a pedagogical exercise for harmonization or reconciliation than as a reflection of actual, current debate (no evidence yet exists to suggest this was a real point of conflict among Gratian's contemporaries). For the sake of this exercise, Gratian asserted that the first part of Augustine's text, his comments centered around Wisdom 4:11, seemed to support the first group, while the second part of Augustine's text seemed to support the second, and the two sections of Augustine's text were therefore in

[26] D.4 d.p.c.8: "But others, although they confess that sins return, nevertheless assert that sins are entirely remitted either through baptism or through penance, and the person approaching the wash basin with full faith is reborn not only by water but also by the Holy Spirit, and, if he is going to sin afterwards, they affirm that, even if he is going to fall again at some point, then he, as a penitent, has nevertheless been expiated completely at the time of his penance in such a way that, if he were to die at that moment, he would find eternal salvation. (Alii uero, quamuis fateantur peccata redire, tamen seu per baptisma, seu per penitenciam asserunt omnino remitti peccata, et plena fide accedentem ad lauacrum renasci non aqua tantum, sed etiam Spiritu sancto, et, si postea peccaturus sit, deinde penitentem, etsi aliquando recasurus sit, tamen tempore suae penitenciae ita perfecte expiatum affirmant, ut, si tunc moreretur, salutem inueniret eternam.)"

conflict.[27] The verse from Ecclesiasticus or Wisdom stated that a man "was seized so that malice might not change his understanding and so that a fiction might not deceive his soul."[28] Therefore God brought death to a good man before he could become evil, which suggests that, if a good man who was going to turn evil died before doing so, he would go to heaven and be saved.[29] Therefore, this man's sins were forgiven wholly and simply. No need exists for distinguishing between prescience and present righteousness. Very frequently throughout the second major section of the excerpt from *De correptione et gratia*, Augustine spoke of God's prescience and predestination. Based upon 1 John 2:19, in which John said, "They departed from us but were not of us; for if they had been of us, they would have remained with us," Augustine distinguished between those who are called sons of God and those who really and truly are sons of God, between those whom God calls and summons and those

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[27] Ibid.: "The end of this authority agrees with the opinion of those who say that sins are remitted according to righteousness and not according to prescience…. The beginning of this same authority consents to [the others'] opinion. (Finis huius auctoritatis eorum sentenciae concordat, qui peccata dicunt remitti secundum iusticiam, et non secundum prescientiam…. Quorum sentenciae eiusdem auctoritatis principium consentit.)"

[28] Gratian quoted the verse thus: "Raptus est, ne malicia mutaret intellectum eius, et ne fictio deciperet animam illius."

[29] The idea that a person in a present state of righteousness would be saved if he died in that state, even if he would have become evil had he lived, was one that was quite common in Gratian's day. This notion appears to have been based on another patristic text that dealt with what it meant to be written in the Book of Life. This work was the anonymous *Cantici Magnificat Expositio*, which defined three ways of being written in the Book. The first way is *secundum praescientiam* and the third *secundum operationem*, which seem to have corresponded to and depended on Ambrosiaster's two ways. The second way is *secundum causam*. People whose names are written in the Book of Life in this way begin along the way of truth but then depart from it by turning to errors. Sometimes, the author noted, there are such people who would be worthy of salvation if they would remain such (i.e. on the way of truth) (PL 40:1141): "Secundum causam scripti sunt, qui a via veritatis coepta ad errores declinando recedunt. Tales autem sunt aliquando, qui digna salvatione existerent, si tales usque ad finem permanerent." Hugh of St Victor copied this work and this section at length in his composition on the same topic, his *Explanatio in canicum Beatae Mariae*. It comes as no great surprise, then, that he expressed the sentiment in his discussion of the Book of Life in his *Adnotationes* mentioned above. Hugh said that those whose names are written *secundum presentem statum* would be saved if they would remain such (i.e. in their present state of righteousness) (PL 175:73B): "…secundum praesentem statum, secundum quem quandoque contingit, quod si talis permaneret aliquis salvaretur." The righteousness is real and would be salutory if the person died in that state.

whom he has also chosen and given to Christ to be his own ("many are called but few are chosen"), between those who belong to the faith and exercise righteousness for a time and those to whom God has given the gift of perseverance to the end.[30] Such distinctions would appear to have supported those who wanted to separate the remission of sins *secundum iustitiam* from the remission of sins *secundum prescientiam*. Gratian wanted to reconcile the first and second parts of Augustine's text and therefore reconcile these two viewpoints on the forgiveness and return of sins. To do so, he delved deeper into what it means to be written in and erased from the Book of Life according to righteousness and what it means to be written in and erased from it according to prescience.[31]

Gratian proceeded to give a brief statement along with a biblical verse in order to define being written in the Book of Life according to prescience, erased according to prescience, written according to righteousness, and finally erased according to righteousness. "To be written according to prescience is to be fore-ordained to life, which was done from eternity."[32] In support, Gratian quoted from Ephesians 1, including the passage that speaks of

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[30] For instance, Augustine said (D.4 c.8 §1): "And let it not disturb us that God does not give that perseverance to certain of His sons. For far be it that this be the case if they were to be from among those who have been predestined and called according to His purpose, who truly are sons of promise. For those others, when they live piously, are called sons of God; but because they will live wickedly and will die in this same wickedness, the prescience of God does not call them sons…. And again, there are certain people who are called sons of God by us on account of at least temporarily received grace, and, nevertheless, they are not of God. (Nec nos moueat, quod filiis suis Deus quibusdam non dat istam perseuerantiam. Absit enim, ut ita sit, si de illis predestinatis essent, et secundum propositum uocatis, qui uere sunt filii promissionis. Nam isti, cum pie uiuunt, dicuntur filii Dei; sed quia uicturi sunt inpie, et in eadem inpietate morituri, non eos dicit filios prescientia Dei…. Et sunt rursus quidam, qui filii Dei propter susceptam uel temporaliter gratiam dicuntur a nobis, nec tamen sunt Dei.)"

[31] D.4 d.p.c.8: "Therefore, so that the end [of this authority] may fit the beginning, and lest it seem self-contradictory, we should define what it is to be written in the Book of Life or to be erased from it according to righteousness, and what [it is to be written or erased] according to prescience. (Ut ergo finis principio conueniat, et ne sibi ipsi contraire uideatur, diffiniendum est, quid sit scribi in libro uitae, uel de eodem deleri secundum iusticiam, quid secundum prescientiam.)"

[32] D.4 d.p.c.8: "Secundum prescientiam scribi est ad uitam preordinari; quod ab eterno factum est."

God choosing his people before the foundation of the world. "Similarly," Gratian continues, "to be erased according to prescience is to be foreknown to death not to life, which very thing has also been done from eternity."[33] In support, Gratian quoted John 3:18 and a comment by Augustine on 2 Timothy 2:19 ("The Lord knows who are his"), in which Augustine declared, "The judgment has not yet appeared, but it has already been done."[34] Gratian moved on: "Indeed, to be written according to righteousness is, with God as the author, to perform the things on account of which a person is worthy of eternal salvation."[35] He mentioned here Jesus' statement to his disciples that he was going to prepare a place for them. With support from comments by Augustine on this text, Gratian argued that the conditional statement that ensues ("if I leave and prepare a place for you") showed that the disciples had yet to establish for themselves a mansion and had yet to have their names inscribed in the Book of Life on account of their good works.[36] Finally, a person "is erased [from the Book of Life] according to righteousness because, when grace has been removed, he is allowed to work those things by which he deserves eternal damnation."[37] In support, Gratian turned to Psalm 68:29

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[33] D.4 d.p.c.9: "Similiter secundum prescientiam deleri est ad mortem, non ad uitam presciri, quod et ipsum ab eterno factum est."

[34] D.4 d.p.c.9-c.10: "Unde Dominus in euangelio: 'Qui credit in me, habet uitam eternam; qui autem non credit, iam iudicatus est.' Hinc etiam Augustinus ait: '"Nouit Dominus qui sunt eius." Ex his nemo seducitur. Nondum apparuit iudicium, sed iam factum est.'"

[35] D.4 d.p.c.10: "Porro secundum iusticiam scribi est Deo auctore ea operari, quorum merito sit dignus eterna salute."

[36] Ibid.: "Saying, 'In the house of my Father are many mansions; if it were not so, I would have told you, for I am going to prepare a place for you,' he shows that those to whom he was speaking were written in the Book of Life by predestination. Adding, 'If I leave and prepare a place for you, etc.,' he shows that these still had to be written [in the Book of Life] by their works. (Dicens: 'In domo patris mei mansiones multae sunt; si quo minus, dixissem uobis, quia uado parare uobis locum,' ostendit, eos, quibus loquebatur, scriptos in libro uitae predestinatione. Subiciens: 'si abiero, et preparauero uobis locum etc.,' ostendit, illos adhuc esse scribendos operatione.)"

[37] D.4 d.p.c.11: "Secundum iusticiam deletur quia gratia subtracta ea operari permittitur, quibus eternam dampnationem meretur."

(69:28), which Gratian claimed was written by David in the persona of Christ. Here David/Christ called on God to erase his adversaries' names from the Book of Life and not have their names recorded with the righteous. Gratian interpreted this prayer in terms of God not giving and indeed removing his grace from them so that they might not perform good works worthy of salvation.[38] In his explanation of these four modes, Gratian laid great stress on God's eternal predestinating activity as well as God's grace as the fount of all good works. In addition, for him, being written according to prescience and according to righteousness were not mutually exclusive categories. In fact (and Gratian further clarified this point shortly thereafter), if one is written from eternity in the Book of Life according to prescience, one will also at some point in time be written in it according to righteousness, for he who is predestined will be given the grace to perform good works. Gratian then applied his distinctions to the remission of sins:

> Therefore, in this way sins are remitted according to prescience, when grace is prepared from eternity, by which the person, having been called, may be justified, and, having been justified, may in the end be eternally glorified. But sins are remitted according to righteousness when either baptism is received with full faith or penance is celebrated with the whole heart.[39]

Thus, whenever a person accepts baptism with faith and performs penance well, regardless of his or her eternal destiny, his or her sins are remitted according to righteousness. Only the

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[38] Ibid.: "Speaking from the persona of Christ, the prophet thus says [Ps. 68:29 (69:28)], 'May they be erased from the book of the living,' that is, may grace be removed from them, for, when it is removed, these may be hurled down into the depth of vices and then into eternal damnation, 'and may they not be written down with the righteous,' that is, let grace, by which they may be made worthy of salvation, not be placed on them. (Hinc Propheta loquens ex persona Christi ait: 'Deleantur de libro uiuentium,' hoc est: subtrahatur eis gratia, qua subtracta hi in profundum uiciorum, deinde in eternam dampnationem precipitentur, 'et cum iustis non scribantur,' id est: non apponatur eis gratia, quo fiant digni eterna salute.)"

[39] Ibid.: "Sic itaque peccata secundum prescientiam remittuntur, cum ab eterno gratia preparatur, qua uocatus iustificetur, iustificatus tandem eternaliter glorificetur. Secundum iusticiam uero peccata remittuntur, cum uel baptisma plena fide accipitur, uel penitencia toto corde celebratur."

sins forgiven in this way, not sins remitted through God's eternal election and preparation of his children for grace, can return.

Gratian's appetite for distinctions, though not as ravenous as later scholastics' such as Thomas Aquinas's, remained unsatisfied, so he explained how even the sins forgiven *secundum iustitiam* can be said to be forgiven *secundum prescientiam*, based on two different kinds of fore-ordinations. For the exposition of these two fore-ordinations, he relied on Anselm of Laon's exegesis of the prologue of Ephesians, which became the gloss in the *Glossa ordinaria*. Gratian had just quoted from Ephesians 1 to define what being written in the Book of Life *secundum prescientiam* meant, namely being predestined to life. He returned to that passage, claiming that Ephesians 1:3-8 in actuality presents two different fore-ordinations along with their effects. The first consists of a fore-ordination to present righteousness and forgiveness of sins in this life, and so its effect is present justification. This fore-ordination is expressed in Ephesians 1:4 and its effect in Ephesians 1:6. The second consists of a fore-ordination to eternal life in the future, and thus its effect is future glorification. This fore-ordination is expressed in v. 5, while its effect is expressed is v. 3.[40]

[40] D.4 d.p.c.11-d.p.c.11 §1: "But sins are remitted according to righteousness when either baptism is received with full faith or penance is celebrated with the whole heart, but this very remission also is not unsuitably said to occur according to prescience. For, as is given to be understood from the preceding authority of the apostle, there are two fore-ordinations: one by which each person is fore-ordained here for receiving righteousness and the remission of sins, the second by which someone is predestined for obtaining eternal life in the future. The effects of these are present justification and future glorification, all of which are suitably distinguished in the preceding authority. For the first predestination, by which people are fore-ordained for present righteousness, is designated when it is said [Eph. 1:4], 'Just as he chose us in him before the foundation of the world, etc.,' the effect of which is added below [Eph. 1:6]: 'according to which He gave us a present in his beloved Son, etc.' The second fore-ordination is shown here [Eph. 1:5]: 'who predestined us in the adoption of sons, etc.' The effect of this is put forward when it is said [Eph. 1:3], 'who blessed us in every blessing, etc.' (Secundum iusticiam uero peccata remittuntur, cum uel baptisma plena fide accipitur, uel penitencia toto corde celebratur, que remissio et ipsa secundum prescientiam non inconuenienter fieri dicitur. Ut enim ex premissa auctoritate Apostoli datur intelligi, duae sunt preordinationes; uno, qua quisque preordinatur hic ad iusticiam et

Gratian explained that many people are objects of the first fore-ordination who are not objects of the second, but whoever are the objects of the second necessarily are objects of the first as well.[41] In short, one can be justified and receive remission of sins in this life and not be predestined to eternal life. That assertion would govern Gratian's reading of 1 John 2:19, to which he turned next. It also constituted a break in doctrine and a shift in emphasis from his source for this exegesis of Ephesians 1: Anselm of Laon.

Anselm provided the language of two fore-ordinations and their effects, but he did not concede that a person can be the recipient of the first and not of the second. A sentence of his on Paul's prologue to the Ephesians is preserved in a Valenciennes manuscript.[42] The

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remissionem peccatorum percipiendam; altera, qua aliquis predestinatur ad uitam eternam in futuro obtinendam. Harum effectus sunt presens iustificatio, et futura glorificatio, que omnia in premisso auctoritate conuenienter distinguuntur. Prima enim predestinatio qua preordinantur ad presentem iusticiam, designatur, dum dicitur: 'Sicut elegit nos in ipso ante mundi constitutionem etc.,' cuius effectus infra supponitur: 'in qua gratificauit nos in dilecto filio suo etc.' Secunda preordinatio ibi ostenditur: 'qui predestinauit nos in adoptionem filiorum etc.' Eius effectus premittitur, dum dicitur: 'qui benedixit nos in omni benedictione etc.')"

[41] D.4 d.p.c.11 §1: "For if someone is fore-ordained for life, he is consequently brought forward [and] therefore has been fore-ordained for righteousness, and, if he attains eternal life, he therefore has attained righteousness; but the converse is not true. Whence there are many participants of the first fore-ordination and its effect, to whom the second and its effect are proven not to belong. (Si enim est aliquis preordinatus ad uitam, consequenter infertur, ergo predestinatus est ad iusticiam, et, si consequitur uitam eternam, est ergo consecutus iusticiam; sed non conuertitur. Unde multi sunt participes primae preordinationis et eius effectus, ad quos secunda uel eius effectus minime pertinere probantur.)" The phrase *sed non conuertitur* is a technical phrase, meaning "but the converse is not true." It provides further evidence of Gratian's comfort with dialectical terminology and reasoning.

[42] Valenciennes, Bibliothèque municipale, 82 (89), fols. 155^{r}-155^{v}; *Sententia* 11 (ed. Lottin, 22): "*Benedictus* etc (*Eph*. 1:3). In hac ergo prima parte distinctis locis quatuor sunt notanda, scilicet due electiones et duo effectus earum que Deus preordinauit et postea fecit circa genus humanum. Deus enim ante mundi constitutionem, cum nullus quicquam meruerat, preordinauit ut aliquos a massa perditorum separaret et iustos et immaculatos faceret. Hec prior predestinatio et ordinatio apud Deum existens ante ipsas creaturas notatur in libro ubi dicit: *Sicut elegit* usque *qui predestinauit* (1:4-5). Huius autem prioris electionis effectus notatur ubi dicit: *in qua gratificauit* usque *que superabundauit in nobis* (1:6-8). Ibi enim ostenditur nos tempore gratie gratos Deo et immaculatos esse factos per sanguinem Christi, quod Deus elegerat fieri. Altera electio Dei siue predestinatio fuit quod Deus preuidit illos iustos et Christi morte redemptos ad eternitatem perducere post hanc uitam in qua iustificarentur: hec predestinatio in Deo ante mundum existens notatur ubi dicit: *qui predestinauit nos* usque *in qua gratificauit* (1:5-6). Huius predestinationis secundus effectus notatur ubi dicit: *qui benedicit* usque *sicut elegit* (1:3). Harum duarum electionum alteram hic adimplet, ut diximus, quando iustos facit,

attribution of this sentence to Anselm along with the virtual replication of this text in the *Glossa ordinaria* demonstrates the authorship of Anselm for that *glossa* text on the Pauline epistles.[43] Once again, Gratian's text shares more with the *Glossa ordinaria* version of the passage than the independent sentence. The Valenciennes sentence spoke of *due electiones*, whereas the *Glossa ordinaria* and Gratian spoke of *due preordinationes*. The Valenciennes sentence lacked a succinct statement of the two fore-ordinations and their effects, while both the *Glossa ordinaria* and Gratian included one. The Gloss stated that the first fore-ordination concerns (or results in – i.e. its effect) "righteousness in the present" (*iustitia in presenti*) and the second "glory in the future" (*gloria in futuro*), while Gratian observed that the effects of the two fore-ordinations are "present justification and future glorification" (*presens iustificatio, et futura glorificatio*). Gratian used the more abstract, theological version of the

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alteram in futuro adimplebit. Ab ultima impletione et consummatione incipit, utens preterito pro certitudine rei future."

[43] *Glossa ordinaria*, Eph. 1:3-6 (relevant portions of the marginal gloss; ed. Rusch, 4.369): "Enumerat beneficia que a Deo per Christum toti humano generi sunt data. Duas Dei preordinationes et earum effectus quarum altera est de presenti ad iusticiam, altera de futuro ad coronam. Nec dicuntur sic due quin una sit Dei predestinatio, que est ipse Deus sed quia de duobus est ipsa Dei preordinatio eterna, scilicet de iusticia in presenti et de gloria in futuro. Deus ante mundi constitutionem, cum nullus quidquam meruerat, preordinauit quod in tempore gratie aliquod a perditis separaret, et iustos et immaculatos faceret. Preordinauit etiam quod illos iustos ad eternam beatitudinem perduceret. Harum preordinationum alteram hic implet quod iustos facit. Alteram in futuro adimplebit que erit omnium perfectio. A qua consummatione omnium incipit, utens preterito pro certitudine future rei. Qui benedixit nos meritis nostris maledictos in futuro exaltabit dando immortalitatem." The interlinear gloss specifies which verses apply to which predestination and its effect.

Peter Lombard used these words by Anselm in the Gloss in his *Collectanea*, just as he had drawn on the *Gloss* on Romans 9. His text reads (PL 192:171A-B): "Post actionem gratiarum enumerat beneficia quae a Deo per Christum toti humano generi sunt data, et distinguit duas Dei praeordinationes, et earum effectus, quarum altera est de praesenti ad justitiam, altera de futuro ad coronam: nec dicuntur duae, quin una Dei sit praedestinatio quae est ipse Deus, sed quia de duobus est ipsa Dei aeterna praeordinatio, scilicet de praesenti in justitia, et de gloria in futuro. Deus enim ante mundi constitutionem, cum nullus quidquam meruerat, praeordinavit quod in tempore gratiae aliquos a perditis separaret, et justos et immaculatos faceret; praeordinavit etiam quod et illos justos ad aeternam beatitudinem perduceret. Harum praeordinationum alteram hic implet, id est quia justos facit; alteram in futuro implebit, quae erit omnium perfectio a qua consummatione omnium incipit, ostendens effectum ejus, et utens praeterito pro futuro pro rei certitudine, cum ait: *Qui* Deus *benedixit*, id est benedicet, *nos*, nostris meritis maledictos, id est in futuro exaltabit, dando immortalitatem."

terminology used in the *Glossa ordinaria* but absent from the Valencienne manuscript. The *Glossa ordinaria* passage, however, did not include direct quotations from Ephesians 1:3-8, indicating which verse describes which fore-ordination and which effect. Gratian's passage in this sense was more like the Valenciennes sentence. The interlinear gloss on these verses in the *Glossa ordinaria*, however, did identify the relevant verses. Gratian seems to have absorbed and drawn from both the marginal and interlinear glosses on these verses in the *Glossa ordinaria*. The other possibility is that Gratian possessed a sentence similar to the one in the Valenciennes manuscript (containing within it the identification of the applicable verses) but which was closer to the version preserved in the Gloss in terms of the language used. Given Gratian's confirmed usage of the *Glossa ordinaria*, particularly the sections on the Pauline epistles, the plausibility is high that Gratian did draw on the marginal and interlinear glosses of the *Glossa ordinaria*.

Whatever the case, Anselm of Laon's exegesis of Ephesians 1 stood behind this section of *De penitentia* D.4, even though Gratian diverged from Anselm's teaching on one important point. Gratian affirmed that a person can be the object of the first but not the second fore-ordination or predestination. For Anselm, this cannot be so. The first predestination in its effect (present righteousness) temporally precedes but also serves as a guarantee of the second predestination and its effect (glory in heaven). God works from the reality of the second predestination, making a person the object of the first predestination only if and because they are objects in his eternal decree of the second predestination. Both the version of Anselm's sentence in the Valenciennes manuscript and in the *Glossa ordinaria*

made this clear.[44] Gratian drew closely from his source, but, ultimately he presented his own interpretation that best suit his current argument. Anselm had nothing about the forgiveness of sins or the return of sins in mind when he commented on Ephesians 1, but Gratian used Anselm's exegesis and adapted it to support his claim that sins can truly be forgiven someone and then return for punishment in the afterlife. Such forgiveness and return of sins belongs to those who are objects of the first fore-ordination but not of the second.

After describing the two fore-ordinations and asserting that many people receive the one and not the other, Gratian revisited many of the texts addressed by Augustine in the excerpted section of *De correptione et gratia* along with some of Augustine's own words. When John said in 1 John 2:19 that certain people in the church departed but were not of us, because if they had been of us, they would have remained with us, he was referring to people of the first fore-ordination who are not also participants of the second.[45] As on so many occasions throughout *De penitentia* and in keeping with Augustine himself, Gratian returned to the notion of perseverance: "For many become participants in present righteousness and holiness who nevertheless do not persevere in them. Whence the Lord says in the gospel

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[44] The *Glossa ordinaria* reads, "God will fulfill the second [predestination] in the future, which will be the perfection of all things. He begins from this consummation of all things, using the past thing [i.e. the first predestination and its effect] as the certitude for the future thing [i.e. the second predestination and its effect]. (Alteram in futuro adimplebit que erit omnium perfectio. A qua consummatione omnium incipit, utens preterito pro certitudine future rei.)" The Valenciennes manuscript similarly reads (ed. Lottin, 22): "[God] begins from the final fulfillment and consummation, using the past thing as the certitude for the future thing. (Ab ultima impletione et consummatione incipit, utens preterito pro certitudine rei future.)"

[45] D.4 d.p.c.11 §3: "Iuxta hanc distinctionem intelligenda est auctoritas illa Iohannis: 'Ex nobis exierunt; sed non erant ex nobis.' Nam si fuissent ex nobis, mansissent utique nobiscum. 'Ex nobis,' inquit, 'exierunt,' id est: a nostra societate recesserunt, qua primae preordinationis et eius effectus nobiscum participes erant; 'sed non erant ex nobis,' id est secundae preordinationis et eius effectus societatem nobiscum non inierant. Quod ex eo uideri potest, quia, si fuissent ex nobis, id est, si illius preordinationis nobiscum participes essent, mansissent utique nobiscum, id est, a societate effectus eius preordinationis, quam nobiscum contraxerant, non recessissent. Si enim ad secundam preordinationem utrumque referretur, non conuenienter illud inferretur: 'mansissent;' immo cepissent utique esse nobiscum. Si uero ad primam, falsa esset propositio: 'si fuissent ex nobis etc.'"

[Matt. 10:22], 'Not he who begins, but he who perseveres all the way to the end will be saved.'"[46] At this point, Gratian moved away from Augustine's meaning and intent. Throughout the excerpt from *De correptione et gratia*, Augustine specified that those who depart from the faith are not sons of God. They can temporarily have true faith and righteousness, but, without perseverance, they are only so-called sons of God. They are "the non-predestined sons of God" and so not true sons of God. Humans refer to them as sons of God as long as they are righteous (after all, how can a fellow human know the eternal destiny of his neighbors?), but they are not truly called thus. Gratian, however, wanted to equate present righteousness and true penance that fully remits sins with being a son of God. If someone is righteous, he is, at that time, a son of God. He likened this situation, with various Scriptures in support, to those who are sons of wrath now even though they may be destined for eternal life and a heavenly existence as sons of God due to a conversion later in life. So also, those righteous in the present truly are sons of God even though they may be sons of perdition in eternity.[47] Gratian unsurprisingly distinguished different ways of being called a son of God, one eternally, in which the person experiences a heavenly inheritance, and one in

[46] Ibid.: "Multi enim presentis iusticiae et sanctitatis participes fiunt, qui tamen in ea non perseuerant. Unde Dominus in euangelio ait: 'Non qui ceperit, sed qui perseuerauerit usque in finem, hic saluus erit.'"

[47] D.4 c.12: "Therefore, just as those, although they will be sons of God, are nevertheless first sons of the devil, so also these, concerning whom this discourse is being held, although by withdrawing from righteousness they are future sons of eternal perdition, nevertheless, when they live piously and faithfully, they truly are sons of God and righteous and worthy of eternal beatitude. (Sicut ergo isti, quamuis sint futuri filii Dei, tamen prius sunt filii diaboli: sic hi, de quibus sermo habetur, quamuis recedendo a iusticia sint filii futuri perditionis eternae, tamen cum pie et fideliter uiuunt, uere sunt filii Dei, et iusti, et eterna beatitudine digni.)" What is labeled as D.4 c.12 in Friedberg is really a continuation of Gratian's words interspersed with various small, mostly biblical quotations.

the present.[48] In the present, people can be called sons of God in three ways (and Gratian gave Bible verses to further clarify each one): by predestination only (these are people currently living in sin who have not yet converted but will before their death), by predestination and hope of eternal beatitude (these are people living well in the faith and so have the hope of being eternally blessed; they will persevere to the end because they are predestined), and by present faith and righteousness (these are people currently living righteously but who will fall away).[49] With all of his distinctions and sub-distinctions, Gratian may have muddled as much as he clarified, but, through it all, he remained consistent on this one point: a person can be truly righteous, truly have love, truly do penance, truly have sins remitted (at least *secundum iustitiam*), even truly be a son of God, but, if he lacks perseverance, he will fall away into sin and permanently lose that righteousness, love, penance, remission of sins, and status as God's son.

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[48] D.4 c.12 §1: "They are called sons of God in two ways. They are said to be sons of God by participation in the eternal inheritance, as John says in his gospel [John 1:12], 'However many have believed in him, he gave to them the power to become sons of God.' … Therefore in this way they are not sons unless they are participants in eternal beatitude. (Filii Dei duobus modis appellantur. Dicuntur filii Dei participatione hereditatis eternae, sicut Iohannes ait in euangelio: 'Quotquot crediderunt in eum, dedit eis potestatem filios Dei fieri.'… Hoc ergo modo non sunt filii, nisi participes beatitudinis eternae.)"

[49] D.4 c.12 §2: "In the present life, people are also said to be sons in three ways: either by predestination only (like those of whom John says [John 11:52], 'so that he might gather the sons of God, etc.'), or by predestination and hope of eternal beatitude (like those to whom the Lord says [John 13:33], 'My little children, I am still with you for a little while') or by virtue of faith and present righteousness, but not by the predestination of eternal splendor (like those of whom the Lord says [Psalm 88:31 (89:30)], 'If his sons forsake my law and do not walk in my judgments, etc.'). Therefore, these of whom it is a matter of the present life are sons by virtue of their faith and present righteousness, but they are not sons of eternal adoption. (In presenti etiam dicuntur filii tribus modis, uel predestinatione tantum (sicut hi, de quibus Iohannes ait: 'ut filios Dei, qui erant dispersi etc.;' uel predestinatione, et spe eternae beatitudinis (sicut illi, quibus Dominus ait: 'Filioli, adhuc modicum uobiscum sum),' uel merito fidei et presentis iusticiae, non autem predestinatione, claritatis eternae, (sicut hi, de quibus Dominus ait: 'Si dereliquerint filii eius legem meam, et in iudiciis meis non ambulauerint etc.)' Hi ergo, de quibus in presenti agitur, filii sunt merito fidei et presentis iusticiae, non autem sunt filii adoptionis eternae.)"

Gratian next stated a semi-conclusion, a conclusion at least on the matter of sins forgiven *secundum iustitiam*. He did not seem to care whether a person makes a distinction between sins forgiven *secundum iustitiam* and those forgiven *secundum prescientiam*, but if one does make such a distinction while affirming the return of sins, Gratian posed a word of advice for the sake of logical consistency. If you hold that forgiven sins do return for punishment, but only those that were forgiven *secundum iustitiam*, then you must also admit the converse position. If the sins of those to be damned are forgiven *secundum iustitiam* (i.e. during the state of righteousness prior to apostacy), then the sins of those to be saved are imputed for damnation *secundum iustitiam* (i.e. during the state of non-righteousness prior to conversion), and if all previously forgiven sins are turned back for punishment for the first group, then all previously imputed sins will be forgiven and not be punished for the second group.[50] This view could have strong implications for any doctrine of purgatory, but Gratian did not pursue such an avenue of thought.

Even with so much discussion about the *iustitia/prescientia* distinction, Gratian never took a strong stand in support of it or not. He did believe that forgiven sins return, but he did not insist that such a view required the *iustitia/prescientia* distinction. His devotion and intensity to the discussion about predestination that that distinction initiated but his apathy about using that distinction in the affirmation of the return of sins lends credence to Huguccio's amusing comment on this section: Gratian merely wanted an excuse to talk about

[50] Ibid.: "Qui ergo peccata dimissa redire fatentur, secundum iusticiam, non etiam secundum prescientiam ea dimitti necesse est ut confiteantur, sicut saluandis peccata secundum iusticiam ad eternam dampnationem inputantur, non secundum prescientiam, quia et illis a bono in malum deficientibus singula replicabuntur ad supplicium, et his usque in finem in bono perseuerantibus nulla inputabuntur ad penam."

predestination.[51] Huguccio's observation may have been an exaggeration, but it may have been right on target, especially given the fact, as mentioned before, that none of Gratian's contemporaries argued about the return of sins in this way with reference to the *iustitia/prescientia* distinction.

Before closing out this *questio* with a short discussion of the intergenerational return of sins, Gratian decided to provide a paltry defense of the view that forgiven sins do not return in the case of individuals. He provided two *auctoritates*, one by Gregory the Great and the second by Prosper of Aquitaine, by which people "attempt to bolster their opinion" that forgiven sins do not return.[52] To deal with an apparent internal contradiction in the latter, Gratian presented the following reconciliation on the part of those who deny that forgiven sins return: sins are said to return because God punishes more severely those whom he did forgive but who then ungratefully return to sin. As Gratian puts it, "Forgiven sins are said to return because, whoever returns to his vomit after remission has been received, – the more he has abused the kindness of God and the more he shows himself to be ungrateful for the remission received for each individual sin, the more severely will he be punished."[53] As throughout D.4, Gratian's understanding of the return of sins remained penal: the issue was

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[51] Huguccio, *Summa, De pen.* D.4 d.p.c.7 (Admont, Stiftsbibliothek 7, fol. 496vb): "Modicum ualet hec differentia, sed uoluit Gratianus habere occasionem tractandi de prescientia siue predestinatione Dei."
[52] D.4 d.p.c.12: "Qui autem dicunt, quod peccata dimissa non redeant, auctoritate Gregorii et Prosperi sententiam suam affirmare conantur." Gratian left no doubt that he was unconvinced by these *auctoritates*.
[53] D.4 d.p.c.14: "Peccata dimissa redire dicuntur, quia quisquis post acceptam remissionem ad uomitum redierit tanto grauius punietur, quanto magis benignitate Dei abusus singulorum remissionis acceptae ingratus extitit." The phrase noting the returning to one's vomit clearly constitutes an allusion to 2 Peter 2:22. This passage occurs frequently in medieval discussions of penance, as also other discussions, particularly under consideration of the falling back into sin after penance.

whether people are punished for sins that were previously remitted after they return to sinful lives and never again repent.

Gratian did not hesitate to declare his support for the first view, namely that forgiven sins do return, and he told his students and readers why. "But the former opinion seems more viable, because it is strengthened by more authorities and is firmed up with clearer reasoning."[54] As Meyer noted, this phrasing expressed Gratian's thoughts about when and how a person is justified in holding a particular position or interpreting a text or collection of texts in a particular way. Any position or interpretation must be substantiated or proven (*confirmatur*, *firmatur*, *probatur*) by argument and authority, reason and authority, or examples and authorities.[55] The position with more authorities and then better reasons in support and clarification of those authorities wins out.[56] In the first distinction, *auctoritates* and good reasons could be brought to bear on both sides of the debate, but in the next three distinctions, Gratian had no trouble choosing sides. The witness of the *auctoritates* and the firmness of rational argumentation leaned heavily on one side. Under such circumstances, Gratian planted himself on that side.

For good measure, Gratian threw in a few more *auctoritates* in support of the return of sins along with some comments on Hebrews 6:1 stemming from the *Glossa ordinaria*, thereby bringing to a close his treatment of this issue from the angle of the individual's return of sins. He quoted the opening verse of Hebrews 6, which called on Christians not to lay a

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[54] D.4 d.p.c.14 §1: "Verum illa sentencia fauorabilior uidetur, quia pluribus roboratur auctoritatibus, et euidentiori ratione firmatur."
[55] Gratian used all three formulations in various places within the *Decretum*.
[56] Meyer, *Distinktionstechnik*, 159.

foundation of penance from dead works. He explained what "dead works" means: "Saying 'dead works,' he means prior good works, which, through subsequent sin, had died, because in their sin these people made their prior good works null and void." These works can become alive again, however, through penance and can merit, each in their turn, eternal beatitude.[57] Gratian was employing the *Glossa ordinaria* on this verse, which read, "Just as prior good works had died and been made null and void through following evil works, so these very same works become alive again through penance and other good works following [it]."[58] Sin brings death; penance brings life. Good works can die, as it were, and become useless to the person who performed them if he or she then sins without repeated penance, but any penance can revive those sins and make them meritorious for salvation.

The language of dead sins becoming alive allowed Gratian to tackle briefly but decisively the return of sins from the intergenerational angle, in other words, to answer the questions of whether the sins of fathers return in the form of punishment on sons or, put most simply, whether sons are punished for the wrong-doing of their fathers.[59] Here Gratian looked to Hosea 7. Hosea brought attention to the old sin of idolatry, which had been forgiven through the intercessory work of Moses long ago and which had become alive again

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[57] D.4 d.p.c.19: "Dicens opera mortua, priora bona significat, que per sequens peccatum erant mortua, quia hi peccando priora bona irrita fecerunt. Hec, sicut peccando fiunt irrita, ita per penitenciam reuiuiscunt, et ad meritum eternae beatitudinis singula prodesse incipiunt etiam illa, que peccatis inueniuntur admixta."

[58] *Glossa ordinaria*, *Epistola ad Hebraeos*, c.6 (PL 114:654A): "Sicut enim priora bona per sequentia mala mortua fuerant et irrita facta, ita ipsa eadem per poenitentiam et alia bona sequentia reviviscent." The Rusch edition does not have this sentence but does include the following, which corresponds to the first phrase of Gratian's words: "Mortua opera dicit peccata que occidunt vel priora bona per sequens malum mortua erant."

[59] A work that addresses the broader related issue of innocent people (including small children of parents) being punished for the sins of others is Vito Piergiovanni, *La punibilità degli innocenti nel diritto canonico dell'età classica*, Collana degli Annali della Facoltà di giurisprudenza dell'Università di Genova 29-30 (Milan: Giuffrè, 1971/74). Much of the first volume is devoted to Gratian but does not discuss *De pen.* D.4.

in the Israelites during Hosea's day who had been taken into captivity by the Assyrians. Along with Hosea 7, Gratian quoted some comments by Jerome on this text.[60] Gratian's conclusion about the intergenerational return of sins was quite simple: sins of the fathers return when the sons also incur guilt (*culpa*) through their own iniquity, but sins of the fathers do not return when the sons are righteous and do not sin.[61] Gratian viewed this conclusion as bolstered by reasoning stemming from that gloss on Hebrews 6. If good works die as the result of sin and become alive again through penance, then, Gratian argued, bad works (sins) die as the result of penance and become alive again for punishment through sin.[62] Gratian understood such reasoning as equally applicable to the individual and the intergenerational return of sins. Within one person, if he sins, repents, sins again, and does not repent again, his previous sins are now risen from the dead (which death penance brought about) and will be punished. So also, across generations, if the ancestors sin and then repent but then their descendants sin as well, the sins of the fathers are now alive again and worthy of punishment. The sons are not punished for their fathers' sins but for their own sins which

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[60] Following the two texts from Jerome is a brief text from Pope Gelasius (D.4 c.24). The text is the one later addition in all of D.4 and is entirely misplaced, for it states quite simply that forgiven sins do not return: "Diuina clementia dimissa peccata in ultionem ulterius redire non patitur." This addition does not appear in the appendix of either Fd or Aa.

[61] D.4 d.p.c.24: "But by these authorities the sons, having been expiated from original sin [and] not to be punished for the reason that their fathers sinned, are taught that the sins of their fathers do, however, return to them for the reason that they follow the guilt of their fathers…. For the iniquity of the parents is returned to those who are punished because they drew along in their root the bitterness of sin. But [the iniquity of the parents] is said not to return to those in whom the sins of the parent do not come alive again by virtue of their own iniquity. (Sed his auctoritatibus docentur filii, ab originali peccato expiati, non ideo puniendi, quia patres peccauerunt, sed ideo peccata patrum in eos redire, quia eorum culpam secuntur…. Illis namque parentum iniquitas redditur, qui propterea puniuntur, quia in radice traxerunt amaritudinem peccati. Illis autem non reddi dicitur, in quibus merito suae iniquitatis non reuiuiscunt parentis peccata.)"

[62] Ibid.: "Therefore, just as good works, which die as the result of sin, come alive again through penance, so also evil works, which are destroyed through penance, come alive again for punishment. (Sicut ergo bona, que peccato moriuntur, per penitenciam reuiuiscunt ad premium: sic et mala, que per penitenciam delentur, reuiuiscunt ad supplicium.)"

mimic those of their fathers. In terms of original sin, though expiated through faith and circumcision (in the Old Testament) or faith and baptism (in the New Testament), it too becomes alive again and worthy of punishment through subsequent sin. Therefore Gratian claims that David's original sin became alive again when he committed adultery and murdered Uriah.[63] Without his subsequent penance, he would have been punished by God not only for the adultery and murder but also for his original sin. The picture is sobering, Gratian's underlying message clear: God in his mercy allows his people to repent as often as they need, but, if someone shows contempt for and neglects penance, he will face punishment for all the sins he has ever committed or inherited.

Hugh of St Victor on the Return of Sins

The material of D.4 provides another good opportunity for comparison between Gratian and Hugh. As is the case for the question at hand in D.1, one finds that, while these contemporaries shared some common concerns and patristic *auctoritates* for dealing with them, their approaches differed greatly, and no evidence exists that Gratian knew of Hugh's work. Nevertheless, even working in Bologna, Gratian stood well in-line with the trends and discussions of the Parisian masters.

Like Gratian, Hugh defended the return of sins. In his *De sacramentis christiane fidei*, he entered into the discussion reluctantly, knowing the topic was difficult, but then he argued

[63] Ibid.: "Although [David] recognizes that he has been cleansed from original sin with faith and the sacrament of circumcision, nevertheless, understanding that the original sin had become alive again by the adultery and murder which he had committed, not without reason confesses the original sin itself among other things, and says [Ps. 51:5], 'For behold, I was conceived in iniquities.' (Quamuis fide et sacramento circumcisionis ab originali peccato se mundatum cognosceret, tamen adulterio et homicidio, quod conmiserat, illud reuixisse intelligens, non sine causa inter cetera ipsum confitetur, et dicit: 'Ecce enim in iniquitatibus conceptus sum etc.')"

strongly for his view. His specific question was "whether the sins that have once been forgiven the penitent are again charged to him."[64] He spent more time than Gratian in producing an argument for the negative position. It would seem that God changes (which would contradict his immutability) if he pardons sins and then charges them. Hugh countered that God's change of action is not the result of a change in him but a change in the human. God remains the same, punishing sin when sinners are unrepentant and forgiving sins when sinners repent.[65] Hugh examined the example of a man who commits homicide twice but only repents of the first before his death. He argued that the man would be punished for both homicides using reasoning similar to the type Gratian liked: examining the converse. A later penance results in the pardon of a previous fault; thus a later fault should result in the removal of a previous pardon. An additional virtue closes the wound of sin; thus an additional sin re-opens a closed wound. Then Hugh looked to the same idea expressed in the *Glossa ordinaria* on Hebrews 6:1 as Gratian: good works die with sin and the dead become alive again through righteousness; thus evil works which were dead through penance become

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[64] *De sacramentis*, 2.14.12 (Ferarri 424; PL 176:571B): "Sic ergo quaeritur utrum peccata quae semel poenitenti dimissa fuerunt amplius imputentur."

[65] Ibid. (Ferrari, 425; PL 176:572B):"He charges sins when He judges a sinner worthy of punishment. He pardons sins when He judges a penitent worthy of forgiveness. And in both cases He himself is the same. You change from one thing to another, now a sinner through blame, now a just man through repentance. He himself is not changed but remains the same always, and standing in that which He is unchangeably, He sees and discerns that which you have been made variably, whether evil from good or good from evil. (Peccata imputat quando peccatorem dignum poena judicat. Peccata condonat quando poenitentem dignum venia judicat. Et utrobique idem ipse est. Tu mutaris de alio in aliud; modo peccator per culpam, modo justus per poenitentiam. Ipse non mutatur, sed idem permanet semper; et stans in illo quod ipse est immutabiliter videt et discernit quod tu variabiliter factus es, sive de bono malus, sive de malo bonus. Et quando te peccatorem videt, imputat tibi peccata tua, quia talem te discernit quem digne puniat; quando autem poenitentem te videt, peccata tua tibi condonat, quia talem te discernit, cui juste parcat.)"

alive again through additional faults.[66] Unlike Gratian, Hugh did not apply this to intergenerational return of sins.

Throughout this chapter, Hugh avoided all discussion of predestination; his treatment focused instead on justice. He asked if it was just if a person returned to blame (sin) and yet still held onto the reward of previous penance (i.e. forgiveness). In the person's penance, he merited the reward of forgiveness. When he fell back into sin, he no longer merited forgiveness. The merit was man's; the reward God's to give. If man took back his merit by returning to sin, it is only fair that God took back his reward of forgiveness, thus leaving the man to be charged once more for his sin.[67] Although Hugh did not discuss predestination and perseverance here, he had discussed them back in his discussion of lost love and whether all love (*dilectio*) of God is *caritas*. In that section, just as Gratian in D.4, Hugh based his treatment on Augustine's *De correptione et gratia*, looking at many of the same verses (e.g. Wisdom 4:11, 1 John 2:19) and quoting Augustine at length, though without attribution.[68] That passage by Augustine had clearly become a standard text in dealing with and discussing the difficult ideas of predestination and understanding how people who are presently righteous but not given perseverance fit into the church. But while Gratian and Hugh shared

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[66] Ibid. (Ferrari, 426; PL 176:573C): "Justum tibi videtur ut propter subsequentem poenitentiam praecedens culpa quae imputabatur condonetur, et non similiter propter subsequentem culpam illa quae dimissa fuerat praecedens culpa iterum imputetur? Si subjuncta virtus plagam peccati hiantis claudit, subjuncta culpa non aperit clausam? Si opera bona viventia per culpam moriuntur, et per justitiam iterum mortua vivificantur, quare similiter opera mala quae per virtutem excusantur, per culpam iterum non imputantur?"

[67] Ibid. (Ferrari, 429; PL 176:576D): "Nonne tibi magna remuneratio esse videtur peccati remissio; iste quando poenitentiam egit, dimissum est ei peccatum suum. Quandiu poenituit, peccatum suum non imputabatur illi. Quandiu meritum fuit praemium permansit."

[68] Cf. *De sacramentis*, 2.13.12.

this *auctoritas*, they brought it up in two very different contexts. And while Hugh did not consider the return of sins in terms of predestination and God's prescience, Gratian did.

Hugh closed out his discussion of the return of sins with an examination of Nahum 1:9, the focus of much of the end of D.3 in Gratian's *De penitentia*. This text normally was discussed in the context of the return of sins: how can sins return for punishment after penance if God does not punish the same thing twice? Hugh's approach to this passage was far more mathematical and again emphasized justice. His discussion was quite problematic, however, for he did not truly deal with the issue at the heart of the question of whether forgiven sins return: whether a person is punished in eternity for the very same, numerically identical sin for which he was forgiven through an earlier penance. Hugh's discussion rested on the presumption of a person repeating the same (type of) sin, a qualitatively identical sin, such as adultery. God, Hugh argued, justly punishes the sinner for adultery although he had previously forgiven him for adultery. The first instance of adultery was punished through penitential satisfaction; the second will be punished in eternity. Thus there are two punishments for two instances of fault and blame, not a double punishment for one sin. One for one, two for two – that is justice.[69] Gratian never made any such argument; he lacked Hugh's mathematical and philosophical bent. Both he and Hugh knew they had ro address Nahum 1:9, but they treated it in different contexts and in very different ways. In sum,

[69] *De sacramentis* 2.14.12 (Ferrari, 430; PL 176:577D-578A): "When blame was corrected, punishment was taken away; when blame returned, punishment also returned. One against one and two against two, not one against two nor two against one. This is justice. As much as is placed aside, so much is replaced. (Quando correcta est culpa, subtracta est poena, quando reversa est culpa, reversa est et poena. Unum contra unum, et duo contra duo non unum contra duo, nec duo contra unum. Haec est justitia. Quantum ponitur, tantum reponitur.)"

Gratian proceeded along the general theological paths being taken simultaneously in the schools of Paris, but the specifics of his treatment were often very different. Gratian and Hugh came out of the same broad intellectual milieu, but the distance between them remained great. Their work came from the same mill but not the same cloth.

By the end of the fourth distinction, when he had finished treating the *questio* of whether sinners may be punished for sins previously forgiven, Gratian had completed his theological argumentation on issues related to penance. He had not covered penance exhaustively, addressing every possible question about penance in a systematic fashion. He had addressed what element in penance yields the remission of sins, what the nature of true penance is, whether penance can be repeated, and whether sins forgiven in penance can return for punishment. Along the way, he had dealt with the nature of true *caritas*, who may possess it, in what state the angels and Lucifer were created, in what state the good and evil angels currently are, what the difference in this life is between the predestined and the non-predestined, how the current righteousness and penance of the non-predestined should be understood, and what the efficacy of sacraments are for those who approach them insincerely or *ficte*. He had spanned the Scriptures, taking *exempla* and biblical *auctoritates* from the beginning of time in the book of Genesis and the person of Adam to the time of grace in the events and record of Jesus' life and the writings of his apostles. Throughout his discussion, he had demonstrated great reliance on the Fathers, particularly Augustine, Jerome, and Gregory the Great. He had depended on the *Glossa ordinaria* and sentences from the school

of Laon, including sentences of Anselm himself. He had used dialectical and grammatical argumentation and terminology to bolster and clarify his viewpoints. In contrast, he left aside argumentation and biblical exegesis in the final parts of his original treatise (DD.5-7). He quoted almost wholly (with one exception) from Augustine, or so he thought (most excerpts are from Pseudo-Augustine's *De uera et falsa penitentia*), and let those words stand on their own in all their perspicuity and authoritativeness. The excerpts from Pseudo-Augustine addressed what things a penitent should consider during penance (D.5), to whom a penitent should confess (D.6), and whether a sinner can successfully repent at the end of life (D.7).

CHAPTER 5

TRUE PENANCE, PROPER CONFESSOR-PRIESTS, AND SECURE DEATH:

DISTINCTIONES 5-7 OF *DE PENITENTIA*

The final three distinctions of the *Tractatus de penitentia* stand out visually as different from the other four as they appear in late medieval manuscripts, early print editions, and Friedberg. First of all, they are shorter, running from just over two columns (D.7) to four columns (D.5) in Friedberg's edition. Second, at least half of each distinction consists of extended, uninterrupted quotations from Pseudo-Augustine's *De uera et falsa penitentia*. Third, the three distinctions combined contain only one multi-sentence *dictum*, D.6 d.p.c.2. Fourth, a much larger percentage of the canons contain rubrics (in D.5, the final seven of eight canons and in D.6, the final two of three canons). In addition, in terms of content, the subject matter is far more practical, far less abstract. When one strips away all the later additions to the treatise, many of these unique features remain. While all the rubricated canons disappear (they are not present in the original treatise as preserved in Fd, keeping with the pure-treatise nature of *De penitentia* lacking all rubricated, separated canons in that manuscript), this only makes the prominence of the pseudo-Augustinian passages all the more conspicuous. The sole section of Gratian's own words remains, making it clear that Gratian views Pseudo-Augustine's words as clear and definitive, in little need of explanation with but one exception. Throughout *De penitentia*, Gratian strove to make his own arguments and to weigh *auctoritates* against one another in his own words. The fact that he failed to do so here combined with the fact that he often turned to Augustine/Pseudo-Augustine when

wanting a definitive answer or conclusion to a question intimates that Gratian adhered to what he quoted from Pseudo-Augustine in these final sections of *De penitentia* and understood these texts as adequately addressing his three final questions: what things should a penitent consider if he is to perform penance properly (D.5), to whom should a penitent confess and what qualities should this confessor possess (D.6), and can a sinner successfully repent at the end of life (D.7).

Perhaps because of this nearly sole voice of Pseudo-Augustine in this final section of the original treatise and also because of the more practical content, the final three distinctions were ripe for additions, particularly from more purely canonical, less theological sources. They contain the greatest number of additions compared to the length of each distinction. All these additions appear in Fd's appendix, but most of them appear in Aa's main body, not its appendix. As a result, these distinctions provide some of the most interesting opportunities for seeing the expansion of the original treatise in the manuscripts and the distinctive qualities of both Fd and Aa. In addition, while none of DD.2-4 are present in Sg (and indeed none of D.5 is either), parts of D.6 and D.7 do appear in that manuscript, and thus this chapter will also briefly revisit questions related to Sg and the content of C.33 q.3 in it.

The Content of DD.5-7 in the Original Treatise

In the fifth distinction, Gratian turned his attention (through Pseudo-Augustine) to the responsibilities of the penitent in penance. His new *questio* consisted in and the subsequent passage explained "what things the sinner is to consider in penance."[1] Pseudo-Augustine

[1] D.5 d.a.c.1: "In penitencia autem, que peccatorem considerare oportet, Augustinus in libro de penitencia docet."

instructed the sinner to consider the various circumstances of his or her sin along with a number of things the sinner, in his contrition, should grieve over. The circumstances that Pseudo-Augustine mention fall in line with the circumstances that priests in early medieval penitentials were instructed to examine when determining the proper penance (i.e. satisfaction) for their penitents.[2] The innovation of Pseudo-Augustine here was to instruct the penitent to examine these things in himself (although, as will be seen from the excerpt in D.6, he expected the priest to do this as well).[3] The penitent should consider in what place (in a church?, in a place where he was to be particularly trustworthy, as in the house of his lord?) and at what time (on a feast day?, during time to be devoted to prayer?) he sinned, how fervently and long he persevered in the sin, whether he reluctantly succumbed to temptation or pursued the sin with delight, and how many times he executed the sin. Not just every sin,

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[2] Johannes Gründel, *Die Lehre von den Umständen der menschlichen Handlung im Mittelalter*, Beiträge zur Geschichte der Philosophie und Theologie des Mittelalters: Texte und Untersuchungen 39.5 (Münster: Aschendorff, 1963), 66. Gründel explained that, though the early medieval theologians and penitential writers did not have a developed doctrine of circumstances, the practice of penance in the period utilized the basic notion of circumstances that had developed in the ancient world and been passed on particularly through Boethius. The priest-confessor bore the responsibility to weigh publicly or secretly known sins according to their type and with all their circumstances and to impose an appropriately stiff penance on the sinner for his offence. The penitentials reflected this duty and practice. Karen Wagner noted the emphasis on deciphering the condition of the penitent and the circumstances of the sin beyond the penitentials in early medieval liturgical *ordines* ("*De vera et falsa penitentia*: An Edition and Study," 126-28).

[3] Gründel picked up on this important point but with a different emphasis. He rightly situated this in the development of the changing focus in penance from external satisfaction to internal remorse leading to confession. He noted that, if the penitentials and early canonical collections valued circumstantial factors as instructive for assigning suitable *penance*, this treatise emphasized the importance of circumstances for *repentance/remorse and confession*, an indication that, in the twelfth century, the focus of penitential practice was shifting from the performance of external works of penance to inner repentance and confession (*Lehre von den Umständen*, 124). Gründel dated *De uera et falsa penitentia* too late; he included it in early theological literature and discussed it after Anselm of Canterbury, Anselm of Laon, Hugh of St Victor, and Bernard of Clairvaux. His point was valid however, if one pushes the possible date for the treatise back into the second half of the eleventh century. For more on the dating of the treatise, cf. below, n.5.

but each various aspect of sin must be confessed and wept over.[4] Such consideration entails not just self-reflection but even a self-discovery of sorts. This self-discovery involves a comparison of one's own sinful self with those who are not sinning and should result in the purging of one's own vice through tears.[5] The things that the sinner/penitent should grieve over include not just the vice or sin itself, but also the absence of virtue, the possibility of not attaining glory, the fact that guilt in one sin makes a person guilty of all, the corrupting

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[4] D.5 c.1: "Let him consider the nature of his wicked deed: in what place, at what time, with what perseverance, with what difference of his person, and with what kind of temptation he did this, and how many times he executed this very vice. For the fornicator ought to repent according to the eminence of his state or office, or according to the manner of the whore and the manner of her work, and how he carried out his foul act – whether in a sanctified place, or [in a place] to which he owed the highest level of trustworthiness (as are the houses of lords and of many others), whether at a time established for prayer, such as feast days of the saints and times of fasting. Let him consider how much he persisted, and let him weep over what he persistently sinned, and [let him consider] with how great of an assault he was conquered. There are those who are not only conquered but, beyond this, offer themselves to sin, and they do not wait for temptation but anticipate the delight and they churn over in their minds how delightfully they sinned in the multiple doing of the vice. Every varied aspect [of sin] must be confessed and wept over so that, when [the sinner] recognizes that his sin is great, he may quickly find God to be propitious. (Consideret qualitatem criminis in loco, in tempore, in perseuerantia, in uarietate personae, et quali hoc fecerit temptatione, et in ipsius uicii multiplici executione. Oportet enim penitere fornicantem secundum exellentiam sui status aut offitii aut secundum modum meretricis, et in modo operis sui, et qualiter turpitudinem suam peregit, si in loco sacrato, aut cui debuit exellentiam fidei (ut sunt domus dominorum, et aliorum multorum), si in tempore orationi constituto, ut festiuitates sanctorum et tempora ieiunii. Consideret, quantum perseuerauerit, et defleat quod perseueranter peccauit, et quanta fuerit uictus inpugnatione. Sunt qui non solum non uincuntur, sed ultro se peccato offerunt, nec expectant temptationem, sed preueniunt uoluptatem, et pertractet secum, quam multiplici actione uicii delectabiliter peccauit. Omnis ista uarietas confitenda est et deflenda, ut, cum cognouerit quod peccatum est multum, cito inueniat Deum propitium.)"

[5] D.5 c.1 §1: "In recognizing the growth of his sin, let him find himself – of what age he is, of what level of wisdom, and of what order, and [let him find out] every condition of the other person who is not sinning. Let him linger in each of these matters for consideration individually, and let him perceive the effects of the manner of his wicked deed, purging every quality of the vice with tears. (In cognoscendo augmentum peccati inueniat se, cuius etatis fuerit, cuius sapientiae, et ordinis, et statum omnem alterius non peccantis. Inmoretur in singulis istis, et sentiat modum criminis, purgans lacrimis omnem qualitatem uicii.)" Perhaps more than any other section of *De uera et falsa penitentia*, this section and, in particular, the phrase *inueniat se* places the date of this treatise's composition no earlier than the second half of the eleventh century. The emphasis on the individual and his self-reflection fits the intellectual currents of the late eleventh and early twelfth century. The phrase *inueniat se* and the general tenor of this section quoted by Gratian anticipates Abelard's title for his work on ethics, *Scito teipsum* – Know Thyself. Wagner devoted much of her dissertation to the enigmatic and complex question of dating *De uera et falsa penitentia*. Two fairly clear parameters emerge: 1000 and 1140. The treatise was written within that timeframe, but she struggles to get a more precise range, finding evidence supporting a dating in both the early and the late end of that period. Cf. "*De vera et falsa penitentia*: An Edition and Study," 28-42, 51, 96-97, 144-45, 187-89.

influence or encouragement in evil that he exercised on other people involved in the sin, the pain and sadness he inflicted on the morally good through his sin, and the offence he gave to a just God. He should fear that all his previous goods will be nullified.[6] In short, the personal examination of the circumstances of one's own sins should lead to the proper amount of grief and remorse over one's transgressions; it should instigate suitable contrition for the deed done.

In addition to reflecting on all these things, the penitent should also do (and not do) certain things. He should abandon the world or at least the things in the world that cannot be exercised without sin. He should perform whatever satisfaction the priest assigns. He should even abstain from certain licit acts in addition to illicit ones. He should offer to God a contrite heart and then also some of his possessions (this is a call to almsgiving). He should confess all his sins to one priest, not reserving some sins for another priest out of shame, not wanting one priest to know all his sins. If true penance is not in him, he should abstain from participating in the Eucharist. A good penitent will also abstain from games and worldly spectacles.[7] Pseudo-Augustine placed great demands on the penitent. Most of the final ones

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[6] D.5 c.1 §2-§5: "Defleat uirtutem, qua interim caruit…. Anxietur et doleat, quod modo effugiens de preteritis penam, miser non inde exspectet gloriam…. Defleat etiam, quoniam offendens in uno factus est omnium reus…. Animaduertere etiam oportet, et animaduertendo deflere animam proximi, quam fornicator Deo eripuit, uel ereptam in malo confirmauit…. Doleat de tristicia, quam bonis peccando intulit, et de leticia, quam eis non adhibuit. Et non solum cogitet quid et qualiter fecerit, sed quam iniuste Deum, ut diximus, peccando offenderit…. Timeat ergo, ne omnia bona, que fecit, dum in uno peccato perseuerauerit, excommunicatione mali perdiderit."

[7] D.5 c.1 §6-§9: "In omnibus dolens aut seculum derelinquat, aut saltim illa, que sine ammixtione mali non sunt amministrata, ut mercatura, et milicia, et alia, que utentibus sunt nociua, ut amministrationes secularium potestatum, nisi his utatur ex obedientiae licentia…. Ponat se omnino in potestate iudicis, in iudicio sacerdotis, nichil sibi reseruans sui, ut omnia eo iubente paratus sit facere pro recipienda uita animae…. Abstineat a multis licitis qui in libertate arbitrii conmisit illicita. Semper offerat Deo mentem, et cordis contritionem, deinde et quod potest de possessione…. Cautus sit, ne uerecundia ductus diuidat apud se confessionem, ut diuersa diuersis uelit sacerdotibus manifestare…. Paueat preterea quem uera delectat penitencia; non prius ad corpus

(the non-reflective, active ones) stemmed from the long history of the church and its requirements of penitents in conciliar canons and papal decretals, originally intended for public penitents. The later additions to this distinction consist of some of these canons and epistles.

Gratian moved from the responsibilities of the penitent to the identity and responsibilities of the confessor in the section that his successors labeled the sixth distinction. Again he quoted wholly from Pseudo-Augustine to address this next *questio*, "to whom confession ought to be made or of what kind of character he ought to be who judges the wicked deeds of others."[8] The section Gratian quoted begins with the injunction to confess to a priest who knows how to bind and loose. Such a priest is contrasted with a careless or negligent priest. If a penitent confesses to this careless, ignorant priest, then both will fall into a pit (an allusion to the blind man leading the blind of Matthew 15:14). Sometimes it happens, however, that no priest is available, that a penitent cannot find or does not have the time to find a priest. In such dire circumstances, the penitent may confess to his or her neighbor, a layperson.[9] Although the layperson does not have the power to loose, the person

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Domini accedat, quam confortet bona conscientia…. Cohibeat se preterea a ludis, a spectaculis seculi, qui perfectam uult consequi gratiam remissionis."

[8] D.6 d.a.c.1: "Cui autem debeat fieri confessio, uel qualem illum oporteat esse, qui aliorum crimina iudicat, ex eodem libro docetur."

[9] The standard work on the history of the theology of lay confession is Amédée Teetaert, *La confession aux laïques dans l'église latine depuis le VIIIe jusqu'au XIVe siècle: Étude de théologie positive* (Wetteren: J. De Meester et Fils, 1926). Lay confession was not something new and innovative laid out by Pseudo-Augustine. As Teetaert explains, lay confession emerged out of the monastic context in which it became common practice for monks to confess to each other their breaches of ceremony and ritual. Such confession was deemed non-sacramental. Meanwhile the confession of light or venial sins was deemed sacramental and as preparatory for communion by monks (26-27). In his exposition of James 5:15-16, which would become quite famous (although Gratian does not quote it), Bede asserted that no sin could be remitted without confession. Venial sins could be confessed to a neighbor, while grave sins had to be confessed to a priest. Confession in both cases is necessary because, in the first case, the prayers of the church bring about remission of sins and, in the second,

confessing nevertheless becomes worthy of mercy because of his internal desire for a priest, for his intention to confess to a priest. Pseudo-Augustine thus encouraged every sinner to confess to the best priest possible.[10] As is clear from the preceding statements, chief in his mind as to what makes a "good" priest was the knowledge (*scientia*) of binding and loosing, the understanding of how to administer penance properly so that the penitent may correctly

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the satisfaction assigned by the priest brings about remission (27-28). According to Teetaert, the development of lay confession of serious sins is a classic case of practice preceding and instigating theory. The practice of it can be seen in chronicle accounts from the early eleventh century; the practice occurred "in the case of necessity and in the absence of a priest" (44). Teetaert identified *De uera et falsa penitentia* as the first work to give theological justification for this practice (50-51).

Wagner discussed this section, perhaps the most famous of all in the treatise, in her dissertation (169-73). She noted that the author was in fact being quite conservative and more rigid than some of his contemporaries, like Lanfranc. Lanfranc and others believed that confession of secret sins could always be done to anybody, including a layperson. Pseudo-Augustine restricted lay confession to exceptional circumstances; the norm, even for secret sins, was confession to a priest. And although his position on venial sins was not clear, Pseudo-Augustine also seems to have rejected the fairly common view of the eleventh century that one can remit venial sins through confession to a companion.

[10] D.6 c.1: "Let he who wants to confess his sins in order to find grace seek out a priest who knows how to bind and loose, lest, when a careless priest lives in his area, he fail to be attended to by [a priest] who mercifully warns and seeks after him, [and] lest both fall into a pit which the foolish priest did not have the will to avoid…. So great, then, is the power of confession, that, if a priest is unavailable, one may confess to a neighbor. For it often happens that a penitent cannot express their shame in the presence of a priest, whom neither place nor time offers to the one desiring [him], and, if he to whom one will confess does not have the power of loosing, the one who confesses the foulness of his wicked deed to a companion nevertheless becomes worthy of mercy because of his desire for a priest.... Whence it is clear that God looks at the heart as long as people are necessarily hindered from reaching priests. Indeed, oftentimes people seek them when they are healthy and happy; while they are seeking, they die before they reach them. But the mercy of God is everywhere, who knows how to spare even the righteous, even if not as quickly as if they were loosened by a priest. Therefore, let those who confess completely confess to the best priest he can; if the sin is secret, let it suffice to relate it to the notice of a priest so that the offering of a gift may be acceptable. (Qui uult confiteri peccata, ut inueniat gratiam, querat sacerdotem scientem ligare et soluere, ne, cum negligens circa se extiterit, negligatur ab illo, qui eum misericorditer monet et petit, ne ambo in foueam cadant, quam stultus euitare noluit…. Tanta itaque uis confessionis est, ut, si deest sacerdos, confiteatur proximo. Sepe enim contingit, quod penitens non potest uerecundari coram sacerdote, quem desideranti nec locus, nec tempus offert, et, si ille, cui confitebitur, potestatem soluendi non habet, fit tamen dignus uenia ex desiderio sacerdotis qui socio confitetur turpitudinem criminis…. Unde patet, Deum ad cor respicere, dum ex necessitate prohibentur ad sacerdotes peruenire. Sepe quidem eos querunt sed sani et leti; dum querunt ante, quam perueniant moriuntur. Sed misericordia Dei est ubique, qui et iustis nouit parcere, etsi non tam cito, ut soluerentur a sacerdote. Qui ergo omnino confitetur, sacerdoti meliori, quam potest, confiteatur; si peccatum occultum est, sufficiat referre in noticiam sacerdotis, ut grata sit oblatio muneris.)"

Gratian quoted bits and pieces of the extended *De uera et falsa penitentia* quotations of DD.5-7 in previous sections of *De penitentia*. This first part of D.6 c.1 also appears towards the end of the Pseudo-Augustine excerpt in D.1 c.88.

be bound with the appropriate punishment (satisfaction) and loosed from his or her sin due to the discernment of true contrition.

Pseudo-Augustine proceeded in more detail as to what makes a good priest and by what criteria one priest can be judged better than another. First of all, since effective penance relies on the prayers and almsgiving and good works of the whole (true) church, the priest to whom a sinner confesses should be united to that church; that is, he should not be a heretic or schismatic. Pseudo-Augustine offered up Judas as the example not to follow. He confessed to the Pharisees, to no avail.[11] Second, the priest to whom one confesses should not be entangled in grievous sins. He cannot judge that for which he himself should be judged. Priests should first judge themselves and remove their own sin before judging those under their care.[12] Just as the penitent must know himself and discern within himself the nature and extent of his sin, so also must the priest know himself and not allow himself to judge in

[11] D.6 c.1 §1: "No one can worthily repent whom the unity of the church does not support, and for this reason let him not seek priests divided from the unity of the church through some guilt. For Judas, who went to the Pharisees as a penitent, deserting the apostles, found no help but the increase of despair. For they said [Matt. 27:4], 'What is that to us? You are found out;' if you have sinned, may it be on you; we do not help you, we do not lovingly welcome your sins, we do not promise that they are to be born together; we do not teach how you may put down your burden. For what even of mercy is there in us who do not follow works of justice? (Nemo digne penitere potest, quem non sustineat unitas ecclesiae, ideoque non petat sacerdotes per aliquam culpam ab ecclesiae unitate diuisos. Iudas enim qui penitens iuit ad Phariseos, relinquens Apostolos, nichil inuenit auxilii nisi augmentum desperationis. Dixerunt enim: 'Quid ad nos? tu uideris;' si peccasti, tibi sit; non tibi succurrimus, non peccata tua karitatiue suscipimus, non conportanda promittimus, non qualiter deponas onus docemus. Quid enim nobis et misericordiae, qui nec opera sequimur iusticiae?)" This section appears in a larger section of *De uera et falsa penitentia* which discusses public penance, and thus the prayers, alms-giving, and righteous acts of the church are viewed in light of their assistance to the public penitent. Gratian does not quote the parts about public penance.

[12] Wagner pointed out that, in contrast to most early medieval penitentials and canonical collections, Pseudo-Augustine emphasized the role of the priest as judge (*iudex*) as opposed to the priest as doctor (*medicus*) ("*De vera et falsa penitentia*," 175). The same emphasis appears throughout Gratian's *De penitentia*. Despite the long tradition of viewing the confessor-priest as a physician, Gratian tended to conceive of him as a judge.

others what he possesses unpurged in himself.[13] Third, the priest should be wise and discerning, knowing how to draw out a confession from those who are shy or embarrassed and knowing how to discern every aspect of the sin (its various circumstances). After drawing out a complete confession, the priest should be kind and compassionate, offering alms and prayers and other good works for the sake of the penitent.[14] In short, "let him teach with his words, instruct with his deeds, be a participant of the [penitent's] labor as one who desires to become a participant of his joy."[15] If the priest should falter and commit a grave sin, he is not guaranteed restoration to his office and dignity. The bishop must decide based on whether the priest fully repents or whether he has sinned using his esteemed office as an

[13] D.6 c.1 §2: "Therefore, the priest before whom every sinner is brought, in front of whom every faintness takes root, must not be judged for any of the things which he is ready to judge in another. For he who, while judging another, has to be judged condemns himself. Therefore, let him know himself and purge in himself what he sees others expose to him. (Sacerdos itaque, cui omnis offertur peccator, ante quem statuitur omnis languor, in nullo eorum sit iudicandus, que in alio est iudicare promptus. Iudicans enim alium, qui est iudicandus, condempnat se ipsum. Cognoscat igitur se, et purget in se quod alios uidet sibi offerre.)"

[14] D.6 c.1 §3: "Let a spiritual judge take care that, just as he has not committed a deed of great evil, so he does not lack the gift of wisdom. It is proper for him to know how to recognize whatever he has to judge. For judiciary power demands this, that he discern what he must judge. Therefore, let him as a diligent inquisitor, a subtle investigator, wisely and, as it were, cunningly question from the sinner that which he perhaps does not know or wants to hide due to shame. Thus, when the wicked deed has become known, let him not hesitate to investigate its various aspects, both time and place, etc., which we have said above in explaining the nature of wicked deeds. After these things have become known, let him be benevolent, prepared to encourage and bear the burden with him; let him have sweetness in his disposition, kindness towards the wicked deed of the other, discretion in its various aspects; let him assist the one confessing by praying and giving alms and doing all other good things for him; let him always help the one confessing by soothing, consoling, promising hope, and, when there is need, reproaching. (Caueat spiritualis iudex, ut, sicut non conmisit crimen nequiciae, ita non careat munere scientiae. Oportet, ut sciat cognoscere quicquid debet iudicare. Iudiciaria enim potestas hoc expostulat, ut quod debet iudicare discernat. Diligens igitur inquisitor subtilis inuestigator sapienter et quasi astute interroget a peccatore quod forsitan ignoret, uel uerecundia uelit occultare. Cognito itaque crimine uarietates eius non dubitet inuestigare, et locum, et tempus, et cetera, que supra diximus in exponenda eorum qualitate. Quibus cognitis adsit beniuolus, paratus erigere, et secum onus portare; habeat dulcedinem in affectione, pietatem in alterius crimine, discretionem in uarietate; adiuuet confitentem orando, elemosinas faciendo; et cetera bona pro eo faciendo; semper eum iuuet leniendo, consolando, spem promittendo, et, cum opus fuerit, etiam increpando.)"

[15] Ibid.: "Doceat loquendo, instruat operando, sit particeps laboris qui uult particeps feri gaudii."

excuse for acting badly.[16] All in all, then, the priest to whom a sinner should confess lives in communion with the Roman Church, is morally upright, and wise and discerning. He is aware of his own person and failures, and, if he does fall into sin, he quickly and fully repents. This kind of priest surely knows how to bind and loose, and it is to this kind of priest that a sinner should seek to confess.

Gratian perceived a conflict between this idea of choosing the best priest possible and the principle handed down through the canons that no priest should hear the confession of another priest's parishioner. If a priest can only administer penance to his parishioners, then every sinner must confess to his or her own priest (*sacerdos proprius*), the priest to whose care he or she as a parishioner has been entrusted. Gratian swiftly reconciled this apparent conflict, utilizing an *aliud est…aliud est* distinction. In the one section of Gratian's own thoughts in these final distinctions, he reasoned,

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[16] Ibid.: "Let him be careful not to fall down, lest he justly lose his judiciary power. For even if penance may obtain grace for him, he will nevertheless not soon restore [himself] in his former power. For even though Peter was restored after his lapse, and the power of dignity is often return to lapsed priest, it is nevertheless not necessary that it be granted to all as if the authorities demand it. An authority is found which allows and as it were commands it; another is found which does not allow it in the least but forbids it; these Scriptures do not oppose each other but agree, if time and place and the manner of penance should bring peace. For when there are so many who fall that [some priests] defend their former dignity with authorities and use it as an excuse, as it were, to sin themselves, that hope must be cut down. But if there is a place where those things do not occur, those who sin can be restored. Therefore, a righteous and discrete bishop is not compelled always to get rid of his [sinful] priests and not soon restore them, unless it has been established by the Roman pontiff. (Caueat, ne corruat, ne iuste perdat potestatem iudiciariam. Etsi enim penitencia ei possit acquirere gratiam, non tamen mox restituit in primam potestatem. Etsi enim Petrus post lapsum restitutus fuerit, et sepe lapsis sacerdotibus reddita sit dignitatis potestas, non tamen est necesse, ut omnibus concedatur quasi ex auctoritate. Inuenitur auctoritas, que concedit et quasi inperat; inuenitur alia, que minime concedit, sed uetat; que scripturae non repugnant, sed concordant, si tempus et locus, et modus penitenciae pacem adhibeant. Cum enim tot sunt qui labuntur, ut pristinam dignitatem ex auctoritate defendant, et quasi usum peccandi sibi faciant, recidenda est spes ista. Si uero locus est, ubi ista non concurrant, restitui possunt qui peccant. Itaque pontifex iustus atque discretus non cogitur suos sacerdotes semper abicere, nec mox restituere, nisi statutum fuerit a Romano Pontifice.)"

Note here the recognition of apparent discord among *auctoritates* and the resolution or finding of agreement (*concordia*). This reconciliation of authorities constitutes another aspect of *De uera et falsa penitentia* which dates it to the late eleventh or early twelfth century.

> But what is said, that a penitent should select a priest who knows how to bind and loose, seems to be contrary to that which is found in the canons, that no one indeed should presume to judge the parishioner of another priest. But it is one thing to reject one's own priest because of partiality or hatred, which is prohibited by the holy canons; it is another to avoid a blind priest, which by this authority each person is advised to do, lest, if a blind man offer to lead the blind, both fall into a pit.[17]

In other words, a penitent cannot refuse to confess to his own priest on the flimsy basis that he does not like him. The law of the church prohibits such partiality. On the other hand, a penitent should be prudent and look out for the interests of his own soul. If he perceives that his *sacerdos proprius* will not properly administer penance because he is blind, as it were, and does not know how to bind and loose, he can and should seek out a more qualified priest. As Chodorow noted, as a canonist Gratian was concerned with the stability and structure of the church, but his chief concern was for the salvation of the individual.[18] If following all the normal rules of the church endangers a person's soul (e.g. by submitting himself to a negligent and ignorant priest in penance), the person has the permission to step outside the normal bounds of conduct and the set ecclesiastical structure for the sake of ensuring his salvation. The structure of the church is meant ultimately for the protection of souls, for the

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[17] D.6 d.p.c.2: "Quod autem dicitur, ut penitens eligat sacerdotem scientem ligare et soluere, uidetur esse contrarium ei, quod in canonibus inuenitur, ut nemo uidelicet alterius parrochianum iudicare presumat. Sed aliud est fauore uel odio proprium sacerdotem contempnere, quod sacris canonibus prohibetur; aliud cecum uitare, quod hac auctoritate quisque facere monetur, ne, si cecus ceco ducatum prestet, ambo in foueam cadant."

[18] Chodorow described and defended a hierarchy of values in Gratian's mind: "It will be seen that Gratian's theory of obedience implies a scale of values that is an important element in his ecclesiology. The first place in the scale is occupied by the sanctification of the individual, the highest good in Christian cosmology and the fundamental justification for the existence of the Church. In second place, the Magister valued the stability of the ecclesiastical community. Only in third place did he put the conformity of the ecclesiastical governor's judgments with higher law" (*Ecclesiology*, 112). Chodorow best argued for the relationship between the first two and the preeminence of the individual's salvation for Gratian. He later explained further: "The highest importance is attached to the ability of every individual in the Church to attain his goal as a Christian. But the primary vehicle for achieving this goal is the Church, and Gratian's next highest concern is to preserve that community. Only when the Church ceases to be the vehicle of individual sanctification does he counsel that Christians withdraw their obedience to the ecclesiastical authority" (*Ecclesiology*, 123).

salutary exercising of the *cura animarum*. Ecclesiastical structure serves pastoral care. In exceptional cases, if that structure in fact would work toward the detriment of the soul, the structure must be temporarily bent. Fischer perceived additional difficulties beyond this conflict between ecclesiastical order and soteriological care.[19] How does this allowance of confession to a non-*sacerdos proprius* square with Gratian's understanding of the priestly power to bind and loose? How does a non-*sacerdos proprius* obtain the authority to hear the confessions of those who are not placed under his care? Fischer looked to other sections of the *Decretum* on penance and priestly power for answers, sections to which we will turn in the next chapter.

In the final distinction, Gratian turned to a topic always present in the minds of thinkers of his time: deathbed repentance. Whenever his contemporaries used phrases like the *si tempus habuerit* of D.1 d.p.c.37, they had in mind extreme situations in which a person might be prevented from confessing and performing satisfaction due to the sudden arrival of death, whether through disease, an accident, or battle; these people have no time left and no opportunity for full penance. If penance is required for the remission of any sin and especially if the second and third aspects of penance, namely confession and satisfaction, are required for remission of sins and the removal of eternal punishments owed, then what hope remains for those who die before they can confess to a priest and carry out the assigned satisfaction? Gratian began to address this question with a statement of assurance: "But the time for penance extends to the last moment of life." Then he turned to a sermon attributed to

[19] Eugen Heinrich Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl nach dem Dekret Gratians," *Studia Gratiana* 4 (1956-57): 185-231.

Augustine to issue a warning.[20] His assurance was limited; those who put off performing penance until the last moment cannot be guaranteed their penance will be accepted and beneficial. For explanation of these stern words, Gratian quoted briefly from Cyprian and then closed with another extended quotation from Pseudo-Augustine's *De uera et falsa penitentia*.

The sermon affirmed that penance will not be denied to the dying, but it expressed uncertainty as to the result. As Gratian quoted it in the original treatise, it read,

> If anyone positioned in the last dire stage of his illness should want to undertake penance, and he undertakes it and is quickly reconciled and passes on from this place: I profess to you, we do not deny to him what he seeks, but we do not presume that he departs from this place well. For if you want to do penance when you cannot now sin, your sins have sent you away, not you those sins.[21]

Unbeknownst to Gratian and his contemporaries, these words stemmed from a historical period in which people practiced only non-reiterable, solemn penance and in which people postponed penance as much as possible because they only had one opportunity to do it right.[22] The later in life one performed penance, the less likely one would be to sin again

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[20] This sermon is known as "Penitentes, penitentes," based on its incipit, or Sermon 393, based on its numbering among Augustine's sermons. Its authorship remains uncertain. Many sermons attributed to Augustine in the Middle Ages in fact belong to Caesarius of Arles, but this sermon, while similar to one written by Caesarius, may not be by him either. Wagner, "*De uera et falsa penitentia*," 32-34. The sermon is printed in PL 39:1713-1715 and in the collection of Caesarius of Arles's sermons edited by Germain Morin in CCSL 103.272-74 (Sermo 63: "De paenitentia ex dictis sancti Augustini").

[21] D.7 c.2. I produce here the text from Fd fol. 99ra: "Si quis positus in ultima necessitate sue egritudinis uoluerit accipere penitentiam et accipit et mox reconciliabitur, et hinc uadit, fateor uobis non illi negamus quod petit, sed non presumimus quia bene hinc exit. Nam si tunc uis agere penitentiam quando iam peccare non potes, peccata te dimiserunt, non tu illa."

[22] Thomas Tentler, "Peter Lombard's 'On Those who Repent at the End': Theological Motives and Pastoral Perspective in the Redaction of *Sentences* 4.20.1," *Studi e Testi* 9 (1996): 281-318 noted that all writers in the twelfth-century used such patristic passages written under entirely different historical circumstances when they discussed death-bed repentance. They were unaware of the historical development up to their time: "Twelfth-

without any hope of doing penance for that sin. Thus, the preacher proclaimed that a person who willfully waits to do penance until death looms is condemned by his sins rather than forgiven of them. They have sent him away (*dimittere*) to punishment and damnation; he has not sent them away (*dimittere*) so that they are no longer credited to his account before God. Gratian perceived that this text required some explanation, and, for that, he quoted Cyprian on the same topic.[23]

Cyprian made the point that a person who waits until death is imminent to do penance is not truly motivated by repentance but by fear of death. The church offers hope and peace to those who exhibit repentance with tears of grief over their offences, but some people go about their lives without any concern for their souls or their sins until they are in danger and believe death to be at hand. That belief, not any sorrow over sin, compels them to pray for mercy. Such people do not deserve comfort in the time of their death, for they gave no inclination to repenting when they did not think they were about to die.[24] In Gratian's mind, then, the words of the previous sermon applied to this type of person, the one who repents in the end only out of fear of death, not with true contrition. To further explain this warning and

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century writers did not fully grasp the differences that separated the opinions of Christian antiquity from the practice and assumptions of their own ecclesiastical world" (284).

[23] Gratian explicitly stated that the text from Cyprian explains why Augustine made the previous statements: "Hoc autem quare Augustinus dixerit, Ciprianus ostendit" (D.7 d.p.c.4).

[24] D.7 c.5: "For this reason, dearest brother, we have resolved that those who do not do penance and do not demonstrate a clear profession of their lamentation in grief for their offences with their whole heart ought to be fully held back from the hope of communion and of peace if they should begin to pray earnestly in times of illness and danger: because it was not penance for the offence but the suggestion of imminent death which compelled these to make their request, and he who did not think that he was going to die [and repent] is not worthy of receiving comfort in death. (Idcirco, frater karissime, penitenciam non agentes, nec in dolore delictorum suorum toto corde manifestam lamentationis suae professionem testantes, prohibendos omnino censuimus a spe conmunionis et pacis, si in infirmitate atque periculo ceperint deprecari, quia rogare illos non delicti penitencia, sed mortis urgentis ammonitio conpellit, nec dignus est in morte accipere solatium qui se non cogitauit moriturum.)"

distinguish between those who truly repent at the end and those who do not, he relied on the words of Pseudo-Augustine.

The words of *De uera et falsa penitentia* on this topic, an exposition in fact of the pseudo-Augustinian sermon just quoted by Gratian, affirmed two points: true penance at the end of life is possible, and true penance at the end of life is exceedingly rare. It is possible because God, the one who motivates true contrition, is all-powerful at all times.[25] It is exceedingly rare because most people who wait until the end of life to repent do so only out of fear, not out of love for God, the joyful anticipation of glory, or sorrow for sin.[26] Therefore, waiting until the end of life to do penance is not just imprudent but dangerous and even self-destructive. Nevertheless, if God inspires true penance and the penitent believes

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[25] D.7 c.6 §1: "Indeed, I believe him who said [Ez. 33:12], 'In whatever hour the sinner cries out and converts, he will live with life.'… he is converted, that is, turned wholly and completely, who now not only does not fear punishments but hastens to strive for the Good, which is God. If this conversion happens to someone even at the end, there should be no despair about his remission…. since God is always powerful – always – He is able even in death to help those whom it pleases Him to help. Therefore, since fruitful penance is the work not of man but of God, by His mercy He is able to inspire it whenever He wants and to reward mercifully those whom he can damn justly. (Credo quidem illi, qui dixit: 'Quacumque hora peccator ingemuerit, et conuersus fuerit,uita uiuet.'… conuertitur id est totus et omnino uertitur, qui iam non penas tantum non timet, sed ad bonum Deum festinat tendere. Que conuersio si contigerit alicui etiam in fine, desperandum non est de eius remissione…. quoniam Deus semper potens est, semper, etiam in morte iuuare ualet quibus placet. Cum itaque opus sit non hominis, sed Dei fructifera penitencia, inspirare eam potest, quandocumque uult, sua misericordia, et remunerare ex misericordia quos dampnare potest ex iusticia.)"

[26] D.7 c.6: "For penance should produce fruit in order to obtain life for the deed. It is written that no one is saved without love. Man does not thus live in fear alone. Therefore, he who repents at a late hour should not only fear God the Judge but love God the just; let him not only fear punishment but be anxious for glory. For he ought to grieve for his wicked deed and its every afore-mentioned aspect. Since this is only very narrowly permissible, Augustine was able to doubt the salvation of such a man. (Oportet enim, ut penitencia fructificet, ut uitam mortuo inpetret. Scriptum est, sine karitate saluum neminem esse. Non itaque in solo timore uiuit homo. Quem ergo sero penitet, oportet non solum timere Deum iudicem, sed iustum diligere; non tantum penam timeat sed anxietur pro gloria. Debet enim dolere de crimine, et de omni eius predicta uarietate. Quod quoniam uix licet, de eius salute Augustinus potuit dubitare.)" This mention of Augustine was the primary factor leading to the denunciation of Augustine's authorship of *De uera et falsa penitentia* by Renaissance intellectuals such as Trithemius and Erasmus (Wagner, "*De uera et falsa penitentia*," 1).

D.7 c.6 §1: "But since such a righteous conversion hardly or rarely exists, there should be fear concerning the one who repents in the last hour. For he whom sickness pushes and punishment terrifies will hardly come to true satisfaction. (Sed quoniam uix uel raro est tam iusta conuersio, timendum est de penitente sero. Quem enim morbus urget et pena terret, uix ad ueram ueniet satisfactionem.)"

that God's mercy and goodness supersede all sin and wickedness, the penitent can be comforted in the knowledge that his penance is efficacious.[27] Gratian ended on a sober note, quoting Pseudo-Augustine's comments on purgatorial and eternal punishments. Those who truly repent when they believe themselves to be dying but end up surviving may face purgatorial punishment for having put off penance. Such punishment exceeds all punishment in this life. One should try to avoid such punishment in any way possible by doing timely penance.[28] Those who do not truly repent, even at the end, face eternal torments as punishment for what would be a life of sin without end if God were not to bring that life to a close.[29] Gratian stopped there without comment and proceeded to C.33 q.4. Though commenting on the entirety of D.7 including its later additions, Tentler's observation remains relevant: the balance in this section leans much more heavily toward the danger of repenting

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[27] D.7 c.6 §1: "But since there are many things which impede and draw back the one who lingers, it is very dangerous and in the vicinity of self-destruction to defer the cure of penance to death. But [the remedy] is great for he in whom God inspires true penance at that time, who waits for the clemency of God, perceiving that the goodness of God is greater than his wickedness. (Sed quoniam multa sunt, que inpediunt et languentem retrahunt, periculosissimum est, et interitui uicinum, ad mortem protrahere penitenciae remedium. Sed magnum est, cui Deus tunc inspirat ueram penitenciam qui exspectat, Dei clementiam, maiorem sentiens Dei bonitatem sua nequicia.)"

[28] D.7 c.6 §2: "But if he should convert even in this way, live with life, and not die, we do not promise that he avoids all punishment. For he who delayed the fruit of penance in the other world must first be purged with the fire of purgation. This fire, however, even if it is not eternal, is serious in an astonishing way. For it exceeds every punishment which anyone has ever suffered in this life.… Therefore, let each person make an effort to correct their offences in such a way that they do not have to tolerate punishment after death. (Sed si etiam sic conuersus fuerit, uita uiuat et non moriatur non promittimus, quod euadat omnem penam. Nam prius purgandus est igne purgationis qui in aliud seculum distulit fructum conuersionis. Hic autem ignis, etsi eternus non sit, miro modo est grauis. Exellit enim omnem penam, quam umquam passus est aliquis in hac uita…. Studeat ergo quisque sic delicta corrigere, ut post mortem non oporteat penam tollerare.)"

[29] D.7 c.6 §3: "But he who dies impenitent dies completely and is eternally tormented. For if he who finishes his life impenitent were to live always, he would always sin. But it belongs to the compassion of God that he bring about the end of the sinner; on account of this, he is also tortured without end, because he is never enriched with virtue; always full of iniquity, always lacking love, he is tortured without end. (Qui autem inpenitens moritur omnino moritur, et eternaliter cruciatur. Qui enim inpenitens finitur, si semper uiueret, semper peccaret. At Dei est miserentis, quod operatur finem peccanti; ob hoc etiam sine fine torquetur, quia numquam uirtute ditatur; semper plenus iniquitate, semper sine karitate, torquetur sine fine.)"

at the end than to an affirmation of its possibility.[30] Gratian seemed less inclined to encourage his readers and students here and more inclined to scare them, or at least to impress upon them the seriousness and dangers of deathbed penance. Such may not have been his intention in his presentation, but it was its effect.

The Content of the Later Additions to DD.5-7

Later additions to the final section of Gratian's *De penitentia* significantly altered its appearance in the manuscripts and its nature as a treatise. In its original form extant in Fd, the final three distinctions continued the theological treatise with a compilation of excerpts from *De uera et falsa penitentia* along with some other patristic texts and a few sentences of Gratian's reconciling activity; through the later additions the final three distinctions of the treatise gained the flavor of a canonical collection. Nine of the twelve additions are separate canons with rubrics. The tenth (D.7 c.1) does not contain a rubric, although Gratian's opening statement could now be interpreted as one. The eleventh (additions to D.7 c.2) and twelfth (D.7 cc.3-4, really one text) consist of additional excerpts from the same sermon quoted at the beginning of D.7.[31] Most of the later additions, as far as they can firmly be identified, originate in conciliar canons or papal decretal letters, neither of which type of source Gratian used in his original treatise.[32] Thus, while DD.5-7 in Fd runs straight through each column in black ink without so much as an enlarged, let alone decorated, initial, in

[30] "Peter Lombard's 'On Those Who Repent at the End,'" 289.
[31] One could consider D.7 c.2 along with cc.3-4 as one addition since they all come from the same material source, but for reasons based on the manuscript tradition, I consider them two additions since they were added at different points in time. See the next section of this chapter.
[32] Gratian did quote papal letters in the treatise, particularly from Leo I, but the content of those letters were theological, not canonical.

manuscripts of the later stages the black ink and continuous text is interrupted with red rubrics, separate canons, and variously decorated initials. In terms of layout on the page, the final three distinctions of *De penitentia* (along with certain sections of D.1, like the later additions of cc.6-30) take on much more the appearance of the rest of *Decretum*, looking more like a canonical collection and less like part of a treatise. Meanwhile, in step with the new look, the content makes the section feel more like a canonical collection as well, for it presents in large part regulations for penitents.

In the fifth distinction, the passage from *De uera et falsa penitentia* about the things a penitent should consider and do is followed by seven canons emphasizing the subsequent proper behavior of penitents and what activities are prohibited for them. These texts or ones like them were the basis for what Pseudo-Augustine said about penitents renouncing public office, business, and the (secular) military along with all other worldly things. They add nothing to what Pseudo-Augustine said; they merely provide extra witnesses. The seventh additional canon comes from Pope Innocent II and the Second Lateran Council in 1139, making it the most recent source in all of *De penitentia*. That canon, a reproduction of a canon from Urban II's Council of Melfi (1089), expresses the same idea as Gratian in D.3 and the ninth chapter of *De uera et falsa penitentia* that false penance entails penance for one sin while remaining in another. It goes on to mention the matters of concern in early Christian councils, such as engagement in business, secular office, and the secular military.[33]

[33] D.5 c.8 (cf. Second Lateran Council c.22, Council of Melfi c.16): "We admonish our brothers and priests not to allow the souls of the laity to be deceived with false penances and to be led away to the inferno. But it is agreed that there is false penance when penance is done for one sin only while many have been disregarded or when penance is done for one sin in such a way that the penitent does not abandon another. Whence it is written

As a whole, then, these seven canons served to reinforce the prescriptions in *De uera et falsa penitentia*, exhorting the penitent not to engage in activities that cannot be done without sin; a true penitent will not pursue that which would threaten the fruitfulness of his penance.

In D.6, two canons were added to the pseudo-Augustinian description of priestly qualifications and Gratian's comments reconciling the obligation to confess to one's own priest with the encouragement to confess to a priest who knows how to bind and loose. The first deals with priests who break the seal of confession. Priests who lack discretion and divulge the content of a confession are to be deposed. So says the short *dictum* leading up to

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[James 2:10]: 'He who observes the whole law but offends in one thing has become guilty of all.' Indeed, how much [it takes to reach] eternal life. For just as if he would be enveloped by all sins, so also if he should remain in one only, he will not enter the gate of eternal life. There is also false penance when the penitent does not withdraw from either a court or business post which cannot in any way be done without sin. [There is also false penance] if [someone] either bears hatred in his heart or does not make satisfaction to whatever person he has wronged or, after he is wronged, does not show kindness to the offender, or if anyone bears arms against justice. (Fratres nostros et presbiteros ammonemus, ne falsis penitenciis laicorum animas decipi et in infernum pertrahi patiantur. Falsam autem penitenciam esse constat, cum spretis pluribus de uno solo penitencia agitur, aut cum sic de uno agitur, ut ab alio non discedatur. Unde scriptum est: 'Qui totam legem obseruauerit, offendat autem in uno, factus est omnium reus;' scilicet quantum ad uitam eternam; sicut enim si peccatis omnibus esset inuolutus, ita si in uno tantum maneat, eternae uitae ianuam non intrabit. Falsa est etiam penitencia, cum penitens ab offitio uel curiali uel negotiali non recedit, quod sine peccatis nullatenus agi preualet; aut si odium in corde gesserit, aut si offenso cuilibet non satisfaciat, aut si offendenti offensus non indulgeat, aut si arma quis contra iusticiam gerat.)" The canons of the Second Lateran Council with facing English translation may be found in *Decrees of the Ecumenical Councils*, ed. G. Alberigo, trans. Norman P. Tanner, 2 vols. (London: Sheed & Ward and Washington DC: Georgetown University Press, 1990). An edition of the canons of Melfi followed by English translation may be found in Robert Somerville with Stephan Kuttner, *Pope Urban II, the "Collectio Britannica," and the Council of Melfi (1089)* (Oxford: Clarendon Press, 1996), 252-63. Urban II apparently repeated this notion of false penance at Clermont, as is testified in a Parisian manuscript (Bibliothèque Nationale, lat. 14193) that, according to Somerville's best judgment, provides a summary or notes on an oral address given by the pope on the occasion of his preaching the first crusade. In a section of the manuscript that presents a canonical collection of papal statements, in the fifteenth chapter, these words appear from Urban (Somerville, *Councils of Urban II*, 34-35): "False penance occurs when a man confesses his sin and nevertheless does not repent for having committed it in his heart, or when he confesses certain sins but not others, just as if someone should have many wounds but heal two or three and die through the ones that remained untreated. (Falsa penitentia est quando homo peccatum suum fatetur et tamen in corde non penitet fecisse, vel quando quedam peccata confitetur et quedam non, velute si aliquis multa vulnera haberet et sanaret duo vel tria, et per illa que inprocurata remanerent moreretur.)" Translation mine. Note also the emphasis on internal contrition, or repentance in the heart.

the canon as well as the canon's rubric.[34] The canon goes further, adding that a priest who commits this sin should be sent on a pilgrimage to wander all the days of his life (i.e. a permanent penitential pilgrimage).[35] The canon, with an attribution to Gregory the Great that cannot be confirmed, expresses an idea (prohibition of breaking the seal of confession) that received ever increasing iteration among Carolingian synods and theologians of the ninth century.[36] Such a prohibition did not appear in canonical collections until Burchard of Worms and Ivo of Chartres.[37] The prohibition specifically in the form of this canon appeared, sometimes with slight variations, in several penitentials and the decisions of early medieval, regional councils.[38] The seal of confession did not become a matter for intense and detailed discussion until after the canon made its way (via Gratian) into Peter Lombard's *Sentences*,[39] but the topic was ripe for debate. For centuries the church warned priests not to assign public penances for secret sins. Secret sins were to be satisfied through private penances. But the assignment of certain penances could give clues to nosy neighbors or observant spouses as to the nature of a sin confessed. Therefore, great discretion was required on the part of the priest

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[34] D.6 d.p.c.1: "Caueat sacerdos, ne peccata penitencium aliss manifestet. qudo si fecerit, deponatur." Rubric for D.6 c.2: "Deponatur sacerdos, qui peccata pentientis publicare presumit."

[35] D.6 c.2: "Above all, a priest should take care not to repeat to anyone, neither to relatives nor to strangers nor – may it be never be! – to create some scandal, what was confessed from those people who confess their sins to him. For if he should do this, he is to be deposed and is to go on for all the days of his life wandering around in shame. (Sacerdos ante omnia caueat, ne de his, qui ei confitentur peccata sua, recitet alicui quod ea confessus est non propinquis, non extraneis, neque, quod absit, pro aliquo scandalo. Nam si hoc fecerit, deponatur, et omnibus diebus uitae suae ignominiosus peregrinando pergat.)"

[36] Peter Browe, "Das Beichtgeheimnis im Altertum und Mittelalter," *Scholastik* 9 (1934): 14. Browe claims that the prohibition may have been made as early as 419 at the Council of Carthage, but that attribution cannot be confirmed and what such a prohibition would mean in the context of early Christian public penance is unclear.

[37] Burchard of Worms' *Decretum* (19.127 and 159) and Ivo of Chartres' *Decretum* (15.167 and 5.363) contain the decisions on this issue attributed to the Council of Carthage in 419 and Pope Leo I in 459.

[38] Browe, "Beichtgeheimnis," 20-21. Variations included changing the life-long penitential pilgrimage to entrance into a monastery and also removing that penalty altogether, leaving deposition as the sole punishment.

[39] Ibid., 15.

to be able to assign a proper satisfaction while not making it obvious to all closely associated with the penitent what sins that penitent had confessed.[40] From this perspective, one can perceive why a person would have added this canon next to Pseudo-Augustine's passage on priestly qualifications. The priest must have discretion to assign the proper penance, as Pseudo-Augustine says, and such discretion also involves assigning a penance that does not make the sin obvious, and, more explicitly, such prudence and discretion involves a priest being discrete in the sense of keeping private things private, not shouting the sins of his parishioners from the rooftops.[41] If a priest does not show such self-control and discretion, he is no longer worthy of his office. He should be deposed.

The substance of the other addition to D.6 supports the viewpoint espoused by Gratian that someone can confess to a non-*sacerdos proprius* if the *sacerdos proprius* is ignorant. The canon, most likely correctly attributed to Urban II, focuses on the priests themselves.[42] In normal circumstances, a priest can hear the confession of someone not under

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[40] Ibid., 6.

[41] Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl," 196 offers his explanation of how this canon fits with D.6 c.1. He does not work from the premise that c.2 is a later addition, but he rightly perceives how the discretion enjoined in c.2 fits with the qualities of a good priest as described by Pseudo-Augustine in c.1.

[42] Although the canon does not appear in documents listing decrees by Urban II at his councils, its content does fit with those decrees. At least one decree recorded from Clermont (1095) replicates the notion that a priest should not welcome to penance the parishioner of another except by that priest's command or with his consent. It does not however give the ignorance on the part of the original priest as an excuse for hearing the confession of another priest's parishioner. This canon is the third listed among the decrees for the Council of Clermont in Oxford, Bodleian, Selden supra 90 printed by Somerville (*The Councils of Urban II*, 113): "The holy authority forbids in all things that the parishioner of one priest be judged by another or received to either communion or penance. He especially does not in any way allow this for a parishioner of another unless with the command or consent of the priest whose parishioner he is. For if this is not permitted to bishops, much less so is it permitted to priests. (Idem interdicit per omnia sancta auctoritas alterius parrochianum non iudicari ab alio, nec ad communionem nec ad penitentiam accipi. Presertim nullo modo intromittit se quis de parrochio alterius nisi precepto vel consensu illius cuius parrochianus est. Nam si id eposcopis non licet multo minus presbiteris.)" The translation is my own and admittedly quite loose since the Latin text is clearly defective, especially with the illogical negatives in the first sentence.

his care only if he has the consent or permission of the penitent's *sacerdos proprius*. The exception to this rule comes into play when the *sacerdos proprius* is ignorant. In this instance, the other priest may hear the penitent's confession without negative repercussions.[43] The canon therefore affirms the resolution posed by Gratian that a penitent cannot avoid his own priest for any reason at all, just as a priest cannot hear the confession of another priest's confession for any reason at all. Divergence from the canonical norm is justified only when the *proprius sacerdos* is not qualified to administer penance due to his ignorance, his lack of knowledge of how to bind and loose.

The first addition to D.7 is a small text from Pope Leo I, the second and third collectively an expansion of the already-quoted sermon. In the context of D.7 and Gratian's opening statement that "the time for penance is all the way until the last moment of life," Leo's text adds further assurance, calling on Christians not to despair as long as they are still alive in their bodies. As long as they have physical life, they have hope, and that which youthful indiscretion prevents or delays (such as penance), more mature age often brings.[44] The other additions augment the original quotation from the sermon attributed to Augustine,

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[43] D.6 c.3: [Rubric] Another priest is not to receive to penance a person committed to any other priest, except on account of that priest's ignorance. (Cuilibet sacerdoti conmissum, nisi pro eius ignorantia alter sacerdos ad penitenciam non suscipiat.) [Inscription] Whence Urban II (Unde Urbanus II): [Canon] "It is resolved that no priest is allowed in turn to receive to penance anyone whomsoever committed to another priest without the consent of that priest to whom he was first committed, except on account of the ignorance of that priest to whom the penitent first confessed. But he who attempts to act against these statutes will be subject to the loss of his office. (Placuit, ut deinceps nulli sacerdotum liceat quemlibet conmissum alteri sacerdoti ad penitenciam suscipere sine eius consensu, cui se prius conmisit, nisi pro ignorantia illius, cui penitens prius confessus est. Qui uero contra hec statuta facere temptauerit gradus sui periculo subiacebit.)"

[44] D.7 c.1: "No one should despair while he is constituted in this body, because sometimes what is put off by the defiance of [young] age is perfected by more mature counsel. (Nemo desperandus est, dum in hoc corpore constitutus est, quia nonnumquam quod diffidentia etatis differtur consilio maturiore perficitur.)"

comprising in Friedberg the middle portion of D.7 c.2 and cc.3-4.[45] As a whole, these additions add some hope and clarification to the rather stark and disconcerting words in Gratian's original. They make the assurance that those who truly repent and afterwards live well do go to heaven and specify certain other groups of people who can be secure and certain in their salvation (e.g. the baptized, the faithful living well, the repentant living well). The new texts clarify that the only group of people for which uncertainty remains are those who repent at the end of life.[46] Such uncertainty applies just as much for damnation as for salvation. In other words, the preacher was not saying that the person repenting at the end of life will be damned; he was simply saying he was not sure of such a person's fate.[47] He would still administer penance because it might be profitable, but he could not give assurance of its benefit. If he had known it not to be profitable, he would not have even admitted a person at death's door to penance.[48] Based on this uncertainty, the preacher urged his hearers

[45] The development and augmentation of this quotation from "Penitentes, penitentes" led to a mis-ordering of the text. In terms of Friedberg's edition, the order of the text in the original sermon runs as follows: D.7 c.3, D.7 c.2 (*Si quis positus…bene hinc exit*), D.7 c.4 (beginning…*dare non possum*), D.7 c.2 (*si securus hinc exierit…*end), D.7 c.4 §1. See the discussion later in this chapter as well as Appendix A.

[46] D.7 c.4: "He who has been baptized in time departs from this place secure; the faithful living well depart from this place secure; he who does penance and has been reconciled while he is healthy and afterwards is living well departs from this place secure. He who does penance at the end of life and has been reconciled – I am not sure if he departs from this place secure. (Baptizatus ad horam securus hinc exit; fidelis bene uiuens securus hinc exit; agens penitenciam, et reconciliatus, cum sanus est et postea bene uiuens, hinc securus exit. Agens penitenciam ad ultimum, et reconciliatus, si securus hinc exit, ego non sum securus.)"

[47] D.7 c.2: "If he has departed from here secure, I do not know; we can give penance, but we cannot give security. I did not say, 'He will be damned,' did I? But I do not say, 'He will be liberated.' (Si securus hinc exierit, ego nescio; penitenciam dare possumus, securitatem autem dare non possumus. Numquid dico: dampnabitur? Sed nec dico: liberabitur.)"

[48] D.7 c.4 §1: "For I give penance to you for this reason: because I do not know; for if I were to know that it profits you nothing, I would not give it to you. Likewise, if I were to know that it profits you, I would not admonish you, and I would not scare you. (Nam ideo do tibi penitenciam, quia nescio; nam si scirem nichil tibi prodesse, non tibi darem. Item si scirem, tibi prodesse, non te ammonerem, non te terrerem.)"

to do penance while they were healthy so that they might be freed from all doubt.[49] With these additions in place, the text from Cyprian that Gratian had originally inserted to explain the harsh and vague words of the Augustinian sermon became less necessary and recedes into the background, but the *De uera et falsa penitentia* text retains its force.

DD.5-7 in Sg, Fd, and Aa

While the Saint Gall, Florence, and Admont manuscripts contain points of interest throughout their copies of C.33 q.3 or *De penitentia*, the final three distinctions of the treatise provide the most fodder for contemplating the specific nature of each manuscript as well as the development of the treatise over time. The following discussion builds upon the general observations I have made previously, the source work of John Wei, and the very detailed analysis of these manuscripts, in particular the *additiones* of Fd, by Melodie Harris Eichbauer.[50] I maintain the framework of my previous argument: Gratian's *Tractatus de penitentia* is a genuine treatise, distinct in genre from the rest of the *Decretum*, and Gratian self-consciously composed it that way. The earliest version of that treatise is preserved in the main body of Fd. What is contained in Sg is merely another *questio* in a *causa*. In other words, Sg does not contain the *Tractatus de penitentia* but possibly some sort of outline of Gratian's original teaching on C.33 q.3.

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[49] D.7 c.2: "Do you want to be liberated from doubt? Do you want to avoid what is uncertain? Do penance while you are healthy. (Vis ergo a dubio liberari? uis quod incertum est euadere? age penitenciam, dum sanus es.)"
[50] Larson, "Evolution of Gratian's *Tractatus de penitentia*;" Wei, "A Reconsideration of St. Gall;" Harris Eichbauer, "St. Gall Stiftbibliothek 673;" idem, "From Gratian's *Concordia discordantium canonum* to Gratian's *Decretum*: The Evolution from Teaching Text to Comprehensive Code of Canon Law" (Ph.D. diss., The Catholic University of America, 2010).

While Wei has not definitively identified all of the formal sources of the canons within DD.5-7, he has shown that, as it stands in Sg, D.7 c.2 (the excerpt from the sermon "Penitentes, penitentes") stems from a mixed source tradition. The source tradition is not mixed for the canon as found in the main body of Fd; the mixed tradition emerges at a later stage of the development of the *Decretum*. The very same mixed tradition that appears at this later stage also appears in Sg. While this in no way proves that Sg is an abbreviation of the "first recension" with interpolations from the "second recension" (Wei's thesis), it does provide good evidence for a version of the latter half of the thesis: Sg does have interpolations from later stages in the development of the *Decretum*, stages later than the main body of Fd represents. As will be shown below, the appendix of Fd visually demonstrates the formation of those stages and how the mixed tradition of D.7 c.2, both in later versions of the *Decretum* and in Sg, came about.

With a very different approach from other scholars, Harris Eichbauer has argued that the majority of Sg contains text that points to and reflects an earlier stage in the development of the *Decretum* than Fd, Bc, P, and Aa. She has shown that Sg lacks regular characteristics of abbreviations. Abbreviations possess a regularized usage (or neglecting) of rubrics, they focus on the canons, and they ignore to some extent Gratian's *dicta*. Sg has an apparently random and very low usage of rubrics and contains a very high ratio of *dicta* to canons.[51] Since it breaks known patterns for abbreviations, it should not be considered one.

With the previous points in mind, a brief re-assessment of the closing section of C.33 q.3 in Sg is in order. Sg contains much of the text in D.6 and D.7 that is absent from the

[51] Harris Eichbauer, "From Gratian's *Concordia discordantium canonum* to Gratian's *Decretum*," 53-55, 90-91.

original treatise as recorded in the main body of Fd. Wei's argument about D.7 c.2 and demonstration that the canon in Sg contains a mixed source tradition stemming from a stage after Gratian's composition of the treatise raises the possibility that the other texts present in Sg but not in Fd (D.6 d.p.c.1, D.6 c.2, D.6 c.3, and D.7 c.1) along with the texts that are in the midst of these but are present in Fd (D.6 d.p.c.2 and D.7 d.a.c.1) also stem from that later stage. My first hypothesis about the former group of texts was that they were part of the content of Gratian's early teaching on C.33 q.3. When he transformed this *questio* into the *Tractatus de penitentia*, Gratian chose to remove them because, on the whole, they were more canonical and less theological and thus did not fit into his vision for composing a theological treatise based off of biblical, patristic, and theologically-oriented papal material. At some point after completing the treatise, either Gratian or, more likely, one or more of his students added these texts back in, viewing them as relevant to the issues discussed in depth in the excerpts from Pseudo-Augustine's *De uera et falsa penitentia*. Although the texts were relevant in substance, their re-insertion along with rubrics contributed to the violation of Gratian's original vision of *De penitentia* as a theological treatise.[52] This hypothesis still remains possible, with the exception of D.7 c.2, which does seem to stem from a later stage in the development of the *Decretum*. That exception does not cause the whole hypothesis to tumble, however, since the content of that canon does not necessitate it having been part of Gratian's original teaching. He logically could have ended with his statement that the time of penance is until the last moment of life and with the brief text from Leo I to that effect. In short, Gratian's original teaching on C.33 q.3 could have included everything in Sg with the

[52] Larson, "Evolution of Gratian's *Tractatus de penitentia*," 111-13.

exception of D.7 c.2, which for some reason was added later as a fuller exposition on penance at the end of life.

The other hypothesis, which is made a possibility by Wei's source analysis and strengthened through my own research on the Fd appendix explained below, would be that, just as D.7 c.2 in Sg stems from a later stage (and would have to be an abbreviated form of the canon from that stage),[53] so also do the other mentioned texts in Sg which belong to D.6 and D.7. If this is the case, then the original C.33 q.3 included only texts and some argumentation that became part of *De penitentia* D.1 (since Sg contains no texts from DD.2-5). This would mean that, in his early teaching, Gratian stuck closely to the question at hand, providing texts that explicitly addressed the issue of whether sins are forgiven through internal contrition alone.[54] Such a hypothesis is tempting for three reasons. First it asserts a concise and focused content to Gratian's instruction on the original C.33 q.3. Gratian asked whether sins are forgiven by contrition alone and proceeded to provide some *auctoritates* and argumentation to answer the question in the affirmative and some *auctoritates* to answer the question in the negative; then he moved on to C.33 q.4. Second, the hypothesis results in the removal of the one true rubric from C.33 q.3 in Sg, which would be in keeping with Harris

[53] D.7 c.2 in Sg ends with the exhortation to do penance while you are healthy ("age penitenciam dum sanus es"). It then includes an "etc." The Sg scribe found that sentence to be a fitting conclusion. That sentence, along with the preceding few (from "si securus hinc exierit") are not present in the main body of Fd. The canon as a whole in Sg reads (fol. 184a-184b; =D.7 c.2): "Si quis positus in ultima necessitate suae egritudinis uoluerit accipere penitentiam et accipit et mox reconciliabitur et hinc uadit, fateor uobis, non illi negamus quod petit, set non presumimus quia bene hinc exit. Si securus hinc exierit, ego nescio. Penitentiam dare possumus, securitatem autem dare non possumus. Numquid dico dampnabitur? Set nec dico liberabitur. Vis ergo a dubio liberari? Vis quod incertum est euadere? Age penitentiam dum sanus es, etc." Cf. also Appendix A.

[54] Thus, Gratian would have used D.1 d.a.c.1, c.1 (*Lacrimas…non lego*), cc.2-5, c.30 §1, d.p.c.30, d.p.c.37 (*Fit itaque confessio…*end), cc.38-40, c.42, and c.44 (beginning…*peccata mea confiteri*) to deal with, but not answer with any resolution, the question of whether someone can satisfy God with contrition of the heart alone and secret satisfaction.

Eichbauer's general thesis that Sg's low number and random appearance of rubrics are very important for the understanding of that manuscript. Third, the hypothesis makes the reference in D.6 d.p.c.2 (present in Sg) to the pseudo-Augustinian text of D.6 c.1 (not present in Sg) much easier to account for, since it supposes that all the material in Sg from D.6 is an interpolation from later stages of the text.[55] In those later stages, the excerpt from *De uera et falsa penitentia* is present, but the scribe responsible for interpolating later material into Sg (or an exemplar of Sg) did not reproduce this lengthy excerpt but did reproduce Gratian's reconciling commentary on it. Nevertheless, while the second hypothesis may be more likely, no good reason exists to reject the first hypothesis out of hand, especially given the living tradition of Gratian's text for years after its production.[56] Regardless of which hypothesis one takes, the majority of Sg C.33 q.3 remains a witness to Gratian's early teaching on penance and his presentation of opposing texts on the issue of whether contrition or confession to a priest brings about the remission of sins.

Perhaps the most fascinating manuscript for understanding the history of Gratian's *De penitentia*, the Florence manuscript in its main body preserves to the greatest extent the treatise in its original form and formatting while its appendix indicates at least two stages of *additiones* to the treatise as well as stages in ways that scribes indicated where the *additiones*

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[55] Sg fol. 184[a] (=D.6 d.p.c.2): "*quod autem dicitur* ut penitens eligat sacerdotem scientem ligare et soluere uidetur esse contrarium ei quod in canonibus inuenitur, vt nemo uidelicet alterius parrochianum iudica re presumat. Set aliud est fauore uel odio proprium sacerdotem contempnere, quod sacris canonibus prohibetur; aliud cecum uitare, quod *ab hac auctoritate* quisquis facere monetur ne, si cecus ceco ducatum prestet, ambo in foueam cadant." The italicized sections indicate the places where Gratian refers to the text from *De uera et falsa penitentia* which appears as D.6 c.1 in later stages.

[56] As just one example, consider C.26 q.7 c.16a, as discussed in the next chapter. This canon appears in both Fd and Aa but somehow vanishes from the manuscript tradition soon thereafter. Why this occurred is inexplicable given the current evidence. All one can say is that such appearance and then disappearance exemplifies the fluid nature of Gratian's text.

were to fall in the main text. Thus, the manuscript gives clues as to how, as Larrainzar and Harris Eichbauer would say, the *Concordia discordantium canonum* changed into the *Decretum* and also how readers and scribes dealt with that change.[57] In the main body, DD.5-7 run continuously with only a few paraphs here and there.[58] The folios are clean in the margins with the exception of a few letters, U, X, Y, and Z (see Fig. 1). The letters in the margin are cued to a point in the text with three dots placed in a horizontal line. These letters and their dots reappear in the margins of the appendix, cued to texts in the main columns (and in one case the right margin) of the folio. Text U corresponds to D.6 d.p.c.1-c.2, text X to D.6 c.3, text Y to D.7 d.a.c.1-c.1, and text Z to the additional text of D.7 c.2 (which is in the right-hand margin) combined with D.7 cc.3-4 (in the main column following upon D.7 c.1).[59] The letter markers, used throughout the manuscript along with some other symbols made of lines and open circles, constituted a finding device that functioned exactly like endnote numbers in a modern printed text. The user of the manuscript could read along in the main manuscript, and, when he came across three dots and a letter or symbol in the margin,

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[57] On this point, I stand opposed to Winroth. While he acknowledges that the additions in margins and extra folios of Fd, Aa, and Bc could be taken to indicate intermediate stages between his first and second recension, in the end he finds no reason to posit such intermediate stages. Instead, he prefers to see the second recension as a complete entity intentionally produced with fixed content. In his view, only the so-called *paleae* would be later additions not part of the production of the second recension. Cf. Winroth, *Making of Gratian's* Decretum, 130-33. Winroth's most recent statement is a weak admission of the possibility that each of his two recensions developed in stages, but he does not admit that such stages are at all represented in Fd, Bc, and Aa. He says ("Marital Consent in Gratian's *Decretum*," 111), "It is possible that each recension as preserved in the manuscripts represents the result of a process of development, which might have been slow but also could have been rapid." Thus, in his view, the manuscripts represent the end-result of a development which is possible but not certain; no manuscript in its marginal and appendix additions represents stages in that development. Cf. Appendix A for a further refutation of this view.

[58] D.5 begins on fol. 98va and D.7 ends on fol. 99va.

[59] All of the *additiones* to DD.5-7 appear on fol. 162^{r}. Rubrics are present for D.5 cc.2-6 but are missing for D.5 cc.7-8 and D.6 cc.2-3.

he could turn to the corresponding section in the appendix, locate the same letter or symbol and three dots, and read another canon relevant to the issue he was reading about.

Quite perplexingly, D.5 cc.2-8 are present in the appendix (and quite noticeably due to their rubrics), but they have no letter cued to them. In the main part of the manuscript, the end of the *De uera et falsa penitentia* text in D.5 is cued with the letter U, which is cued in the appendix to D.6 d.p.c.1-c.1, not to D.5 cc.2-8. Some mistake was made. Is it possible that the warning to priests against revealing the content of a confession upon pain of deposition was intended initially to appear prior to, not after, the *De uera et falsa penitentia* text in D.6? This way, Gratian's comments reconciling that text's injunction to confess to a priest who knows how to bind and loose with the canons prohibiting a priest from hearing the confession of another priest's parishioner (D.6 d.p.c.2) would still follow immediately upon that same text as in the original treatise. But this theory does not hold up when one understands the other marker system in the margins of the appendix: incipits; the incipit marker system orders the texts in Fd just as they would become standardized in Friedberg. Out in the margin beside the end of the additional text in the appendix appears the first few words of the original text intended to immediately follow the *additio*. Thus, out beside the end of the *additio* D.3 c.48 in Fd's appendix's margin are the first few words of D.3 d.p.c.48, and in the margin beside the end of the *additio* D.7 cc.3-4 are the first few words of D.7 d.p.c.4 (*Hoc autem quare Augustinus dixerit*). This second (although chronologically first, as will be shown shortly) system orders the canons in DD.5-6 appropriately. Out beside the end of the *additio* D.5 c.8 in the appendix appear the words *Cui autem fieri debeat confessio*, the

opening words of D.6, while out beside the end of D.6 c.2 are the words *Quod autem dicitur ut penitens eligat*, the opening words of D.6 d.p.c.2. In other words, according to this method of markers by incipits, D.5 cc.2-8 and D.6 d.p.c.1-c.2 should appear as they do in Friedberg. The person who developed the later system of letter and symbol markers made a mistake, assigning no letter to D.5 cc.2-8 and thereby mislabeling the placement of D.6 d.p.c.1-c.2.

The double system of markers adds confusion due to the fact that oftentimes the letter marker, which is cued to the *beginning* of an *additio*, appears in the margin above the incipit marker, which is meant to connect to the *end* of the previous *additio*. Thus, the order of the *additiones* themselves is one thing while often the order of their markers, one from the later letter system and one from the earlier incipit system, is the opposite. At the same time, the often close proximity of the letter and the incipit gives the first impression that they are being cued to the same *additio*, when in fact they are marking and being cued to two different *additiones*, one following the other.

That in fact the letter marker system post-dates the incipit marker system is proven in this section of the manuscript by the *additiones* D.7 c.2 and D.7 cc.3-4 (see Fig. 2); their appearance in Fd's appendix also shows that they were added at different times to *De penitentia*. One of the most perplexing and incongruous features of Wei's theory about these canons was his claim that they were all added to *De penitentia* at the same time. Meanwhile, he asserted that the formal source of the first new text (the end of c.2) was the *Tripartita* (3.28.2) while the formal source of the second new text (cc.3-4) was the *Collection in Three*

Books (3.19.37), even though the latter collection also contains the text inserted into c.2.[60] If the same person were adding text from the same material source (the sermon "Penitentes, penitentes") all at once, surely he would have used the same formal source. Why draw the text from two formal sources when the *Collection in Three Books* alone provides the whole text to be quoted? The appendix of Fd demonstrates, contrary to Wei's hypothesis, that these texts were added at different points in time.[61] The first (the end of c.2) appears in the margin in a different hand ($G\tau^1$, to use Larrainzar and Harris Eichbauer's labels) from the main part of the appendix (in hand B). That marginal hand also differs from the hand for the marginal incipits (which is far closer to and may be the same as B).[62] The second *additio* (cc.3-4) appears in the main column in hand B following D.7 c.1 (the short text by Pope Leo I).[63] Thus, cc.3-4 were part of an earlier stage of *additiones* to *De penitentia* than c.2, finding their way into the main columns of the appendix while c.2 was tucked into the margin.[64] This

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[60] Wei, "The Sources of *De penitentia* D.5-D.7," 166-71.

[61] This dual source tradition and its visual demonstration in the appendix of Fd also, then, as explained further below, provide proof against the view of Wei's mentor, Winroth, that the various additions in Fd do not indicate progressive adding to the first recension but instead merely indicate additions to a first-recension manuscript at different times from a fixed second recension (*Making of Gratian's* Decretum, 132-33). No, the appendix texts and lay-out of D.7 cc.2-4 in Fd prove that the second recension was not a fixed production but rather developed in stages.

[62] At first glance, the hands look similar, but the difference is clear from the letters "d" and "g".

[63] Preceding the Leonine text are Gratian's opening words ("Tempus uero penitencie est usque in ultimum articulum uite"), which are also in the main text (fol. 99rb). Harris Eichbauer has found many such repeated texts (usually canons). She hypothesizes that these texts represent a different stage of development and were not present in all very early manuscripts of Gratian's work. Her hypothesis is possible, but in the case of D.7 d.a.c.1, these words must have been part of Gratian's original D.7; otherwise the *quamquam* of d.p.c.1 would make no sense, for there would be no statement with which to create a contrast.

[64] This earlier stage is also the largest. The vast majority of texts not in the original treatise but in the vulgate version of *De penitentia* do appear in the main columns of Fd's appendix. Another text written in the margin of the appendix and in the same hand and ink as the *additio* D.7 c.2 is a Chrysostom passage inserted into D.1 d.p.c.87. Meanwhile, D.3 cc.36-39 appears to stem from another stage of additions. It is incomplete (picking up mid-word towards the end of c.37) and written in an entirely different hand and ink in the lower margin of fol. 161^{v}. Still other canons and parts of canons (all very short) do not appear at all within Fd or in Aa either. These are D.1 c.1 (*Petrus doluit…quod fleuerit*), D.1 c.19 (*et ideo apud Graecos…scriptum est*), D.1 c.41, and D.4

finding is consistent with Harris Eichbauer's extensive examination of the entire manuscript and her subsequent thesis contra Winroth that the *Decretum* developed through stages and was not published in two clear, fairly standardized recensions.[65] This finding is also consistent with and explains Wei's argument that the end of D.7 c.2 stems from a different formal source than D.7 cc.3-4; they come from different formal sources because they were added at different times and perhaps by different people.

The location of the end of D.7 c.2 in the margin in relation to the marginal letter markers shows that the letter marker system is contemporaneous with or post-dates the marginal *additiones* in the appendix made by hand $G\tau^1$. Out beside the Leonine text of D.7 c.1 are the opening words of d.p.c.1 (*Quamquam de differentibus*), indicating that the Leonine text should come right before that statement by Gratian. Directly above that incipit in the margin is the letter Y with three dots, which links to the inscription *Unde Leo papa*, which has three dots above it in keeping with the letter marker system; directly beside it is the letter Z with its dots; directly below it is the *additio* of D.7 c.2. That *additio* contains three dots above its first two words (*Si securus*). The text of cc.3-4 in the main column contains no dots. It has the incipit marker in the margin at its end, but no letter is cued to it, as is apparent from the lack of dots and the placement of the Z in the margin a few lines too high and situated snugly against the marginal text of c.2 (see Fig. 2). What this folio of Fd

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c.24. These appear to be the latest *additiones* to *De penitentia*. A later *corrector* added D.1 c.1 (*Petrus doluit…quod fleuerit*), along with a corrected attribution (Aa 43, fol. 145^{r}), and D.1 c.41 (fol. 146^{v}) into the margins of the main part of the treatise in Aa 43. This same *corrector* made interlinear and marginal corrections to the text, rectifying such things as omissions by homoteleuticon. He must have been working from a standardized if not vulgate text.

[65] For her general arguments about the development from the version present in Fd, Bc, Aa, and P into the final version of the *Decretum* minus the paleae and for her specific arguments about Fd, cf. Harris Eichbauer, "From Gratian's *Concordia discordantium canonum* to Gratian's *Decretum*," 230-58.

reveals, then, is not only a sequence of *additiones* but also a sequence of marker systems. When a scribe first copied the appendix, he or a fellow scribe used the incipit system. A later scribe (hand $G\tau^1$) added more texts in the margin. He or someone after him created a new marker system that would be far more useful.[66] The incipit system was impractical, having the disadvantage of making the reader locate a few words within the body of a massive manuscript without any indicators in the margins of the main text. The new system using letters and symbols and dots made finding where the additional texts fit much easier. One merely needed to find the matching letter/symbol in the margin within the correct *causa* or *distinctio* (indicated at the top of the folios) and connect the dots, literally.

Final evidence for the later addition of D.7 c.2 as compared to D.7 cc.3-4 (and the rest of the *additiones* to DD.5-7) appears within the text of cc.3-4 itself. This section of D.7 cc.2-4 as it appears in later manuscripts, early print editions, and Friedberg greatly skews the original order of the sentences in the sermon. The first person to add to Gratian's original quotation in no way intended such skewing.[67] When one ignores the end of c.2 (in the margin of Fd's appendix) and pays attention to the text of cc.3-4 as it appears in the main column of Fd's appendix, one sees that the person merely intended to expand the quotation both before and after the text Gratian had originally quoted. In the sermon and in Gratian's source, the

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[66] The folio at question here and its marker systems is more confusing than some others. In other places in Fd, one can clearly and immediately see that the letter/symbol marker system postdates the incipit marker system and was added only with or after the marginal additions in the appendix. This is clear from the fact that the marginal additions in the lower margin in the appendix obviously have a letter/symbol assigned to them but no incipit marker. Cf., for example, a text marked with a symbol of a vertical line with open circles at each end located in the lower margin of fol. 122^{r}, which is C.1 q.4 d.p.c.12, or text "C" in the lower margin of fol. 152^{r}, which is C.25 q.2 c.2.

[67] For a concentrated treatment of the following paragraphs as well as textual charts and comparisons, cf. Appendix A.

Collection in Three Books (3L) 3.19.37 or some collection with a text very similar to that in 3L, the text of c.3 immediately precedes Gratian's original quotation. The *additor* indicated this by following that text with the first few words of what Gratian originally quoted (*Si quis autem*) along with an "etc." The reader was supposed to understand through this that the text he had read in the main body of the manuscript (beginning of c.2) should be situated here, *after* the present text (c.3). Then the *additor* added text from the sermon which, in both the original, material source and the likely formal source of 3L, followed upon Gratian's original quotation. Next, this *additor* consciously skipped over the text that was added even later (the end of c.2), indicating this skip with the words *et post pauca*. He then closed the *additio* with a subsequent section of the sermon that ends with the exhortation, "Hold onto what is certain, and set aside what is uncertain," the place where the likely formal source (3L) also ended.[68] This *additor* may also have been responsible for deleting the final sentence of the original quotation by underlining it in the main body of the manuscript, although the second *additor* also could have done this (see Fig. 1).[69] In other words, the first *additor* intended to communicate to the reader that these excerpts from the sermons should be read in the following order: c.3, the original c.2 (as in the main body of Fd), and then c.4.

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[68] For the full text of 3L 3.19.37, cf. Appendix A. The edition is *Collectio canonum trium librorum. Pars altera (Liber III et Appendix)*, ed. Joseph Motta, MIC B, vol. 8.2 (Vatican City: Biblioteca Apostolica Vaticana, 2008).

[69] To see the faint underlining that cancels the original final sentence of c.2, look in Fig. 1 at the far-right-hand column, half-way down, to the left of the Z in the margin. Whichever *additor* was responsible for striking the final sentence in the main body of Fd, understanding how this section of D.7 was put together over stages explains how and why this final sentence in Gratian's quotation was struck. His final sentence in the main body of Fd began *Nam si tunc uis agere penitenciam*; his possible formal source of 3L began this sentence with *Si autem tunc uis*. As Wei also suggested ("Reconsideration," 150), Gratian most likely altered the opening of the final sentence, changing the *autem* to the *nam*, to create a smooth transition from his preceding sentences, which did not precede Gratian's final sentence in the original sermon or in 3L. Scribes copied the sentence in its correct placement and with its correct opening (*Si autem* instead of *Nam si tunc*) because the second *additio* (very likely from the *Tripartita* 3.28.2) included the sentences leading up to this sentence along with the sentence itself in its original form.

The second, later *additor* revisited the text of the sermon in a different formal source and added part of the section indicated by the first *additor*'s "et post pauca." The formal source was perhaps *Tripartita* 3.28.2, as Wei has stated, but certainly a tradition of the sermon text similar to that handed down in the *Tripartita*.[70] The *additio* corresponding to the first *additor*'s "et post pauca" could not now be fit neatly into the text as a whole, and, given the likely formal source, the *additor* did not realize that the text he was adding corresponded to the section so indicated by the first *additor*. Instead, this second *additor* cued his *additio* (beginning *si securus hinc exierit*) to follow upon the *quia bene hinc exit* of the original text because his formal source also presented this sequence of text. The fact that this second *additor* inserted his text to follow upon the original *quia bene hinc exit* provides solid proof that he was working from a textual tradition of this sermon that differed greatly from that of

[70] Both Trip. 3.28.2 and *Polycarpus* 8.1.11 contain a canon roughly equivalent to *De pen.* D.7 c.2 in the vulgate version, which means their extract from the Pseudo-Augustinian sermon is very different from that of 3L 3.19.37. The *Polycarpus* text contains sharp differences from what is in the margin of Fd's appendix and the vulgate version of D.7 c.2 and thus could not have been Gratian's source here. Whether the *Tripartita* was for sure Gratian's formal source here or not, it and the *Polycarpus* are witnesses to a second, vary divergent textual tradition within canonical collections of this sermon (also preserved in Ivo's *Decretum* 15.22 and Burchard's *Decretum* 18.12), and it is clear that the second *additor* was drawing on that tradition while the first *additor* was drawing on the tradition represented in or at least very similar to what is contained in 3L 3.19.37. I reproduce here the text of Trip. 3.28.2 (taken from the in-progress edition by Martin Brett, Bruce Brasington, and Przemysław Nowak, http://project.knowledgeforge.net/ivo/tripartita.html, accessed 13 April, 2010): "Sane quisquis positus in ultima necessitate egritudinis sue acceperit penitentiam et mox ut reconciliatus fuerit exierit de corpore, fateor uobis non illi negamus quod petit, sed non presumo dicere [marked end of c.2 in Fd main body after the original final sentence was struck:] *quia hinc bene exierit.* [Beginning of marginal *additio* to c.2 in Fd appendix:] *Si securus hinc exierit*, ego nescio. Penitentiam dare possumus, securitatem autem dare non possumus. Numquid dico dampnabitur? Sed nec dico liberabitur. Vis ergo a dubio liberari? Vis quod incertum est euadere? Age penitentiam dum sanus es. Si sic agis, dico tibi quia securus es, quia penitentiam egisti eo tempore quo peccare potuisti. Si autem uis agere penitentiam quando iam peccare non potes, peccata te dimiserunt, non tu peccata." Cf. also below, Appendix A.

What speaks against the *Tripartita* being Gratian's source is the fact that no Italian manuscripts of the work survive (and the one manuscript in Italy, in Rome, has a French provenance), suggesting very strongly that the collection did not circulate in Italy. Cf. Kéry, *Canonical Collections*, 244-46. On the *Tripartita* itself and its relationship to Ivo of Chartres, his letters, and his *Decretum*, cf. Christof Rolker, *Canon Law and the Letters of Ivo of Chartres*, Cambridge Studies in Medieval Life and Thought (Cambridge: Cambridge University Press, 2010), 100-107, 112-14, 145-48.

the first *additor*'s source. When later scribes took marginal texts from their exemplars and incorporated them into the main columns of their manuscripts, these few sentences from the second *additor*, which in the sequence of the original sermon and the initial formal source (something similar to 3L) should have appeared in the middle of c.4, became tacked onto the end of c.2. They were simply following markers such as the one by $G\tau^1$, who put a carrot at the end of his marginal *additio* and right before the text that would become c.3. Future scribes followed the signs, and the result is D.7 cc.2-4, an excerpt from one material source put together from at least two formal sources and in three stages, the last stage of which ended up making the sequence of sentences in *De penitentia* vastly different from that of the original sermon.

Those three stages must have occurred with some rapidity, for, based on the presence of text from the end of c.2 in Sg, the final stage pre-dates the physical production of Sg, a mid-twelfth-century manuscript. And regardless of which collections actually served as Gratian's formal source for the two sections of D.7 c.2, one can see in the main body of Fd and the margin of its appendix how the version present in Sg came into existence, for the text in Sg constitutes a verbatim replica of those two texts, although it is slightly truncated (indicated by the Sg scribe with an *etc.*).[71] Thus, Fd itself actually provides evidence for what Wei wanted to argue about Sg, that it contains later interpolations. The problem with Wei's arguments remains his insistence on a clear, definitive second recension from which those later interpolations came. Fd proves that such terminology is misleading, for it demonstrates more than one stage of *additiones*. What we can say about Sg is that it contains texts from

[71] Sg, fol. 184b. For text, cf. above, n.53.

one of those later stages of *additiones*. D.7 c.2 is one of those texts, and, as suggested above, the remaining texts in Sg from DD.6-7 (D.6 d.p.c.1, D.6 c.2, D.7 d.a.c.1, D.7 c.1, and D.7 c.2) may also be, revealing that the original teaching of Gratian on C.33 q.3 consisted of some *auctoritates* and arguments for and against contrition causing remission in penance.

Finally, DD.5-7 also exhibit interesting characteristics in Aa, for most of the *additiones* are present in the main body of the manuscript. Unlike Fd, all the canons in Friedberg that have rubrics also have rubrics in Aa 43.[72] Some of the rubrics, however, are missing words (such as *secularem* in the rubric for D.5 c.3) and others are different. For D.5 c.6, Friedberg and Fd have the rubric *Que sit falsa penitentia*, whereas Aa has *De falsa penitentia*. For D.5 c.8 (from Lateran II), Friedberg has the simple rubric *De eodem*, whereas the Aa scribe writes the inscription in red (*Innocentius secundus*). Such evidence supports Harris Eichbauer's assertion that the text and rubrics of the *Decretum* developed in stages and that Gratian (or someone else) did not publish a standard "second recension." By the time of the copying of Fd's appendix and Aa's main body and appendix, the new texts and their rubrics were still in flux. These same canons with rubrics, all the *additiones* to D.5 and D.6, appear integrated into the main text of Aa. Either the Aa scribe or his exemplar copied and interpolated *additiones* that he deemed particularly important. Then he decided to copy the other *additiones* available to him (which do not equal all the texts that would become part of the vulgate) on additional folios, or another manuscript containing more *additiones* later came to his attention, prompting him to create the appendices. These other *additiones*

[72] D.5 cc.2-8 with rubrics appear on Aa 43 fols. 180^{v}-181^{r}, and D.6 cc.2-3 appear with their rubrics on fol. 183^{r}. Fd has no rubrics for D.5 cc.7-8 and D.6 cc.2-3. The treatise as a whole appears on Aa 43 fols. 145^{r}-183^{v}, and the appendix on fols. 329^{v}-337^{r}.

included the end of D.7 c.2 and cc.3-4.[73] Whether the Aa scribe initially did not view this text as being very important or simply did not have it until a later time is unclear. What is clear is that, by the time the Aa scribe got his hands on this text, both stages of augmentation to Gratian's original quotation from the sermon in D.7 had already occurred.

One is hard-pressed to come to any grand conclusions based on DD.5-7 in Aa. While for the whole of *De penitentia* in its main text and its appendix, Aa 43 contains more text than Fd, Harris Eichbauer has found that, in their entirety, Aa 23 and 43 omit more vulgate texts than either Fd or Bc. For *De penitentia*, Fd and Aa share the common omission of two canons and two partial canons.[74] What all the data means will perhaps take scholars years to work out. What it definitely does not mean is that Fd and Aa are "first recension" manuscripts brought up-to-date with "second recension" manuscripts. If that were the case, as Winroth maintains, why, then, are supposedly "second recension" texts missing from both? Why are some of these missing texts different and some of them the same? Why were not all the texts added at the same time?[75] Why do rubrics not match, and why are still other

[73] These appear on Aa 43 fol. 337^{r}.
[74] D.1 c.1 (*Petrus doluit…fleuerit*), D.1 c.19 (*et ideo apud Graecos…scriptum est*), D.1 c.41, and D.4 c.24. For Harris Eichbauer's findings on Aa, cf. "From Gratian's *Concordia discordantium canonum* to Gratian's *Decretum*," 265-74. She noted the absence of more vulgate texts in Aa as compared to Fd and Bc on p.268.
[75] Harris Eichbauer showed that even Aa added a few texts at a later time in the margins, although such additions were far rarer than was the case for Fd ("From Gratian's *Concordia discordantium canonum* to Gratian's *Decretum*," 273). Winroth argued (*Making of Gratian's* Decretum, 132) that several scenarios are plausible that would explain why additions from a fixed second recension were added at different times or incompletely. A student might not have room in his manuscript of the first recension to add the new texts, or someone might simply first add texts which were of interest. In theory, such scenarios are indeed plausible, but connected to Fd, in particular, Winroth's reasoning does not hold water. There ample room existed for all the texts to be added at once since the new texts were added in additional folios in an appendix. Also, the vast majority of texts are present in the appendix. It is unlikely that the scribe found 95% of texts from a supposed second-recension manuscript interesting but picked out a few that he just did not deem important or interesting enough to include.

rubrics missing? Why do each of the manuscripts contain texts unique to it?[76] As Harris Eichbauer argues, the differences (and the similarities, like some of the same non-palea canons being missing) are far too numerous and great to be explained by scribal mistakes on the one hand and scribal ingenuity on the other. Instead of positing two recensions, one must acknowledge that Gratian's text grew over time in different stages. The standardization of what texts belonged in this canonical collection and where they belonged took time and the copying of many, many manuscripts. The precise stages and which canons should be situated in each may never be determined. Harris Eichbauer has proposed a general order, but any attempt at precision beyond that may start to obscure the living, organic nature of Gratian's text even as the insistence on two clear recensions does.

[76] For example, Fd fol. 122^{r} contains a text ([inscription]: Item Leo iiii. ebranio et adelfrido, [canon]: Quia presulatus nostri quod – super eum fiat remissio) in its right-hand margin which does not appear in Bc or Aa and which does not make its way into the vulgate text. It is, nevertheless, written in the same hand (Gτ^{1}) and ink as most of the other marginal additions in the appendix, indicating that it was added at the same time. With Winroth's theory, one must assert that these marginal additions in the appendix are second-recension texts which a later scribe had noticed were omitted from the initial copying of second-recension texts. In such a hypothesis, unidentified and unique canons such as the one mentioned here added at the same time as other texts that do appear in the vulgate edition are difficult to explain.

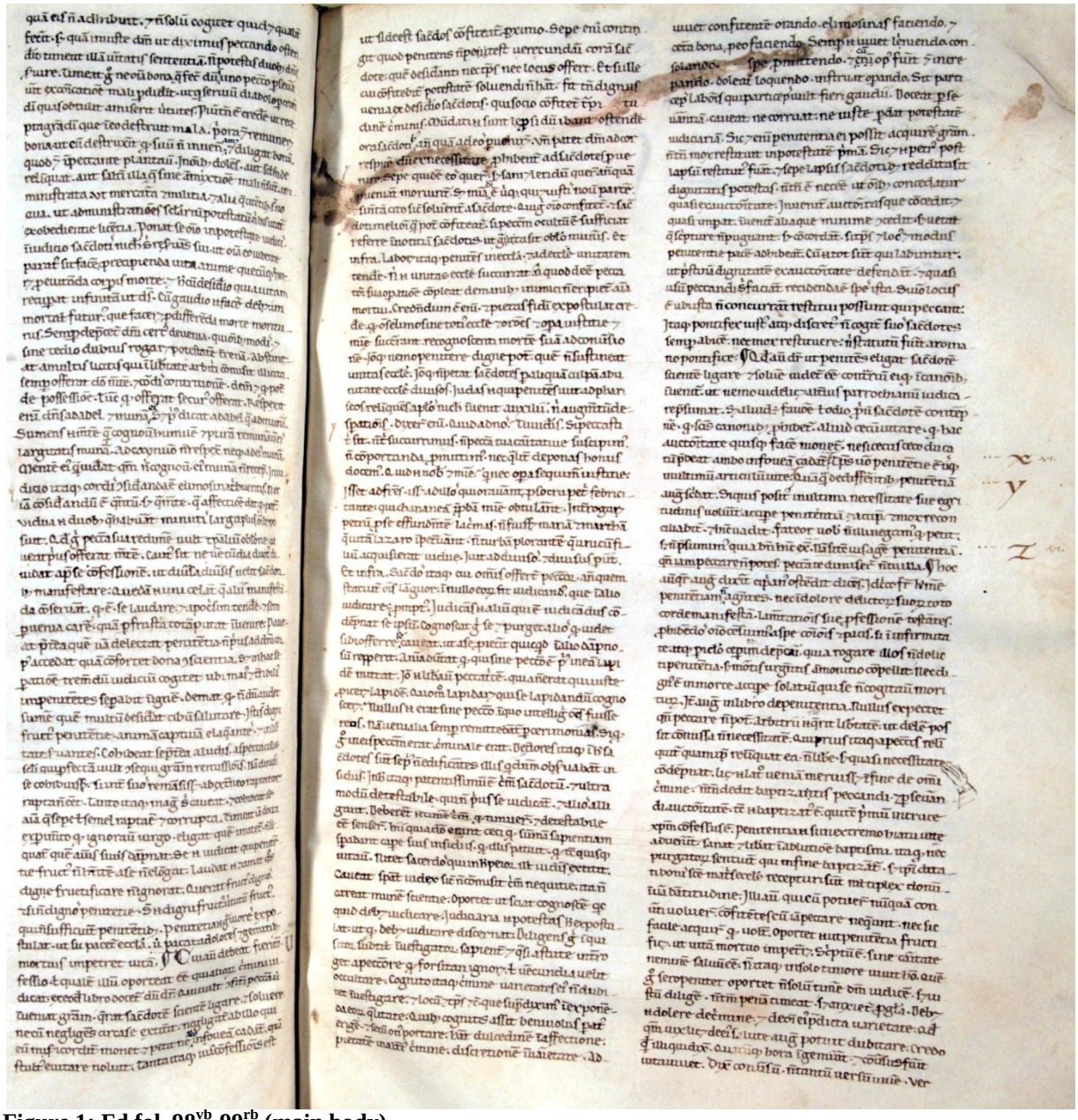

Figure 1: Fd fol. 98vb-99rb (main body)

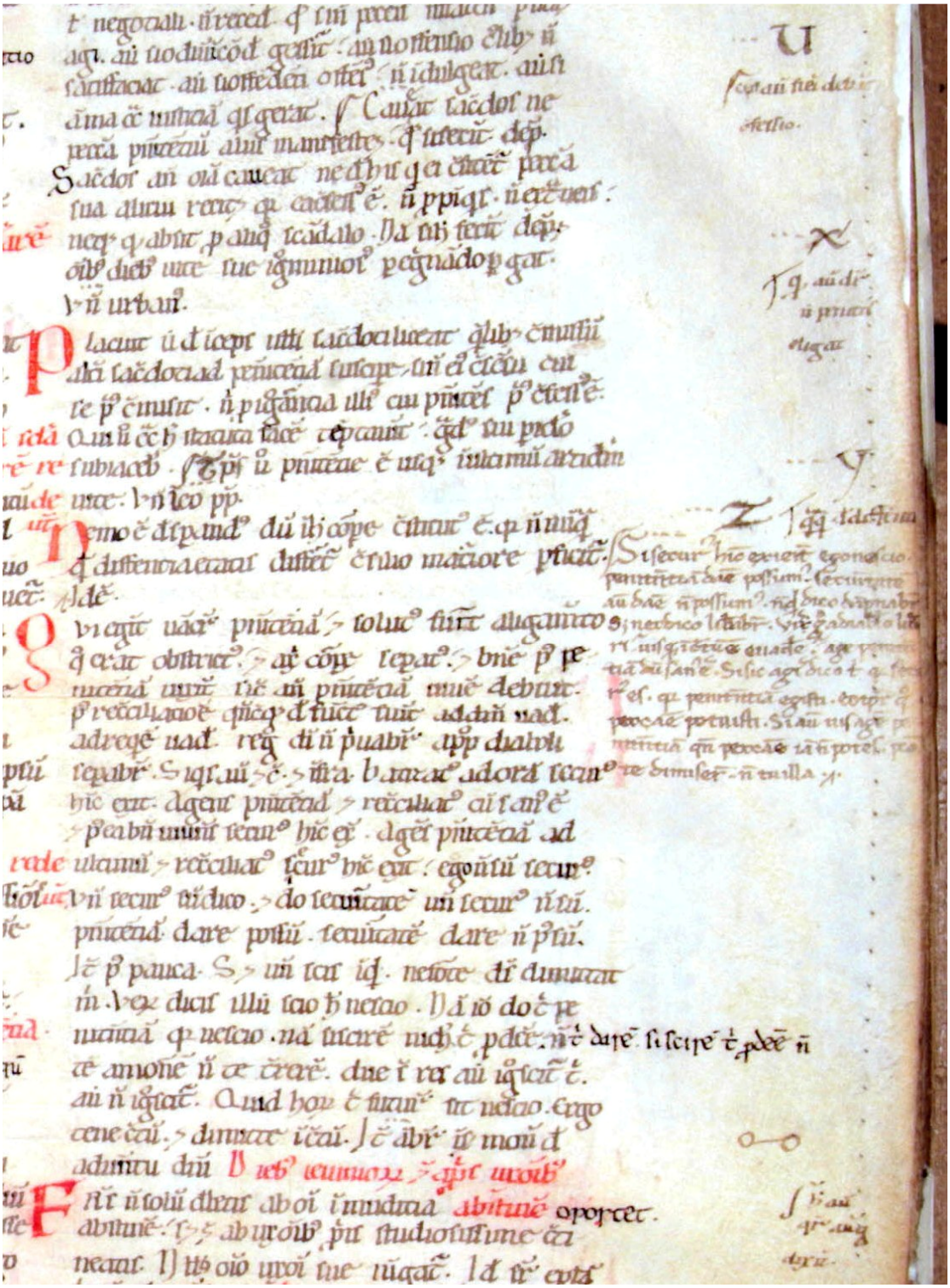

Figure 2: Fd fol. 162[rb] (appendix) and right-hand margin

CHAPTER 6

PENANCE IN PRACTICE:

EXTRA-*DE PENITENTIA* TEXTS ON PENANCE IN THE *DECRETUM*

As a systematically organized collection of canon law, Gratian's *Decretum* lacks the systematic order the modern reader expects. Not surprisingly, then, Gratian did not limit his treatment of penance to the *Tractatus de penitentia*. That treatise presented Gratian's thoughts on various theological aspects of penance, but it left an array of canonical questions about penance unanswered. As with any subject in the *Decretum*, canons and *dicta* related to penance appear scattered throughout Gratian's work. This scattering resulted from Gratian's teaching methodology rooted in *causae* investigated through various *questiones*, a methodology that did not lend itself easily to systematic organization even though it may have been very effective from a pedagogical perspective. In several instances, a particular *causa* (e.g. C.16 and C.26 of the *secunda pars*) or discussion of ecclesiastical orders (e.g. D.50 of the *prima pars*) lent itself to some question about the administration of penance, and so one finds discussions about practical penitential matters in these places.

A comprehensive study of penance in Gratian and a full understanding of *De penitentia* and how it fits into the *Decretum* demand an inquiry into Gratian's other sections in the *Decretum* that discuss penitential issues in some depth. Such an inquiry brings clarity to Gratian's personal views on some of the theological issues while also revealing how Gratian's theological understanding of penance influenced his approach to canonical issues of penance. One sees how important penance was to Gratian's understanding of the church,

both in the life of clerics and laypeople. A question about guilt or discipline in the church could have one, clear answer for Gratian when penance was not in view, and yet, when penance entered into the equation, the answer often changed. One also sees why Gratian, as a person who primarily taught and collected canons, viewed a theological treatment of penance as necessary for and instrumental to his work. In short, one begins to understand why the *Decretum* includes *De penitentia*. Thus, an inquiry into the extra-*De penitentia* penitential texts of the *Decretum* and their relationship to the *Tractatus de penitentia* yields some insight into that old and nagging question: how did Gratian conceive the purpose of his work? Why did he compose his *Concordia discordantium canonum*?

D.50: The Sin and Penance of Clerics

One distinction in Gratian's *prima pars*, which contains his treatment of law in general (DD.1-20, the *Tractatus de legibus*) and the ecclesiastical orders (DD.21-101), stands out for its attention to issues of penance: D.50. Its placement within the *Decretum* meant that it dealt in some fashion with the penance of clerics, not laypeople.[1] Specifically it treated the issue of the restoration of a cleric's office and his advancement within clerical orders after sin. This *distinctio* followed upon one (D.49) that had dealt with whether laymen ensnared in sins could be ordained (Gratian answers "no"); he then turned to those men who have already been ordained. For sin, Gratian used the word *crimen*, indicating a serious or mortal sin, not

[1] Since Sg does not contain the *prima pars* but instead a *causa prima* containing texts now identified as part of DD.27-101 of the *prima pars*, this distinction in Sg is part of the *causa prima*. Quite a bit of D.50 is contained in the *causa prima*: pr., c.1, c.2, c.3, c.6, c.7, c.9, c.11, c.12, d.p.c.12, c.17, c.18, c.20, d.p.c.24, c.25, d.p.c.28 (different), c.34, d.p.c.35, c.36, d.p.c.36, c.37, c.38, d.p.c.51, c.52 (*Hii qui altario – ulterius promoueri*), d.p.c.52, c.53, d.p.c.54, c.55, d.p.c.60, c.61, c.62, d.p.c.62, c.63, d.p.c.64, c.65, and c.66.

just some light, daily sin.[2] Thus, the question at hand was whether a priest or other cleric who had become ensnared in serious sins could, after penance, retain his office or even rise to a higher one.[3] Gratian answered "yes" to the first part of the question, provided the cleric's penance was true, but he answered with a categorical "no" to the second part.

Gratian's initial opinion was strict but only because he was not yet taking penance into account. As he said at the end of the opening *dictum*, "By many authorities, those ensnared in various crimes are cast down from their orders and are forbidden to accede to higher orders."[4] Canons 1-13 took this side of the argument,[5] while c.14, a Pseudo-Isidorian decretal, began to take the opposite position, that a priest can be restored to his office or remain in his office after falling into sin. The rubric of c.17 is the first to mention penance: "After very zealous penance, lapsed [priests] are restored."[6] Gratian reconciled the two opposing viewpoints in both d.p.c.24 and d.p.c.28. He explained that some clerics feel compelled to do penance not because they hate their crime but because they fear for their reputation, do not want to lose their rank, and have ambitions for a higher one. The holy canons rebuke these without any hope of recovering their former office. Those clerics, however, who offer penance worthily to God can receive back the rank of their former

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[2] Cf. above, chapter 1, n.3. While Gratian does not clearly define what he understands a *crimen* to be, he certainly has in mind sin of a serious nature.
[3] D.50 d.a.c.1: "Ex premissis auctoritatibus liquido demonstratum est, quod uariis criminibus irretiti in sacerdotes ordinari non possunt. Nunc autem de hisdem queritur, utrum post actam penitenciam, uel in propriis ordinibus remanere, aut ad maiores gradus conscendere ualeant?"
[4] Ibid.: "Multorum auctoritatibus deiciuntur uariis criminibus irretiti a propriis ordinibus, et ab accessu maiorum prohibentur."
[5] All but c.13 are present in Fd, Bc, and Aa.
[6] D.50 c.17 rubric: "Post acerrimam penitentiam lapsi reparantur."

dignity.[7] Gratian's words and overall point here echoed his emphasis on intent and the distinction between true and false penance throughout *De penitentia* and in the quotations from *De uera et falsa penitentia* in particular. As Gratian firmly stated in *De penitentia* D.3 d.p.c.39, God in no way accepts false penance, which would mean that no priest should be able to retain or gain back his office if he offers false penance. While false penance entails doing penance for one sin while remaining in another (the point of all of *De penitentia* D.3), it also entails doing penance without truly being sorry for sins and without being motivated by love for God and hatred for sin but instead being motivated purely by fear.[8] In the context of *De penitentia* D.7, that fear is a dread of eternal torment.[9] In the present context, that fear is an aversion to loss of standing and reputation. Also, as Gratian explained in *De penitentia* D.1, some people do not want to do penance because of their pride in wanting people to think they have a righteousness that they do not.[10] Similarly, here Gratian condemned those who do want to do penance, but only in order to preserve the high opinion others have of them and advance their own personal ambitions for higher ecclesiastical rank. In both cases, a type of worldly pride and ambition rule; in both cases, the actors are to be condemned.

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[7] D.50 d.p.c.24: "Quomodo igitur huiusmodi auctoritatum dissonantia ad concordiam reuocari ualeat, breuiter inspiciamus. Sunt quidam, quos non odium criminis, sed timor uilitatis, amissio proprii gradus et ambitio celsioris ad penitenciam cogit. Hos sacri canones irrecuperabiliter deiciunt, quia qui simulatione penitenciae uel affectione honoris adeo non consequitur ueniam, nec ab ecclesia meretur reparationem." D. 50 d.p.c.28: "Quicumque igitur pro criminibus suis digne Deo penitenciam obtulerint, auctoritate Gregorii et Ieronimi et Augustini et Ysidori gradum pristinae dignitatis recipere possunt. Qui autem non odio criminis, sed timore uilitatis uel ambitione honoris falsas Deo penitencias offerunt, in pristini honoris gradum reparari minime poterunt."

[8] Cf. the explanation of what should be driving the penitent and filling his thoughts in *De pen.* D.5 c.1.

[9] Cf. *De pen*. D.7 c.6.

[10] Cf. *De pen*. D.1 d.p.c.87 §15.

At the end of d.p.c.32, Gratian offered another way of solving the apparent contradictions among the canons as to whether or not clerics may be reinstated after sin. Now the determining factor lay in the secret or manifest nature of the sin and the secret or manifest nature of the accompanying penance. As in many other instances, including in *De penitentia*, Gratian found more than one way to address an issue and more than one way to bring harmony to discordant canons. Like in portions of *De penitentia* D.1, Gratian discovered in the distinction between secret and public sins a framework within which to view the differing authorities. Canons that call on priests to lose their office after sin can be understood as referring to public or manifest sins. Canons that allow priests to retain or be reinstated in their office after sin refer to priests who commit secret sins, which can be purged by the priests equally secretly through a clandestine satisfaction.[11] As in *De penitentia* D.1, confusion for the modern reader emerges. A bit later, Gratian mentioned solemn penance, which can only be performed once; here he did not mention solemn penance or identify it with manifest penance for manifest sins. One is left wondering exactly how Gratian conceived of the relationship between types of penance (private v. solemn and secret v. manifest) and the relationship between types of sin (venial/light v. mortal/grave and secret v. manifest).[12] Do they correspond to each other (e.g. is solemn penance the same as manifest penance, and are all manifest sins considered mortal sins)? If not, do they overlap, and how

[11] D.50 d.p.c.24: "Possunt et aliter distingui premissae auctoritates. Quorum crimina manifesta sunt ante uel post ordinationem, a sacris ordinibus deiciendi sunt; quorum autem peccata occulta sunt et secreta satisfactione secundum sacerdotis edictum purgata, in propriis ordinibus remanere possunt."
[12] Cf. D.1 d.p.c.87.

so? As suggested above in the chapter on *De penitentia* D.1, this lack of clarity was standard for the time and pervaded the *sententie* of the school of Laon.

Gratian may not have recognized the lack of precision on this issue or was not interested in seeking to make it precise because Gratian seems to have preferred thinking in terms of true and false penance. While he acknowledged a distinction between secret and manifest sins and, correspondingly, secret and manifest penance, above all Gratian was concerned with the exercise of true penance, whatever external form that penance may take. His preference for the true penance/false penance distinction is apparent a few *dicta* later. In d.p.c.51 Gratian moved to consider the other issue of the distinction, whether those who have fallen may be promoted at some point. He unequivocally answered no. At the same time, his summation of the previous section of the distinction simply stated that the reinstatement of a priest in his former orders can occur after penance.[13] If he had preferred the distinction between secret and manifest sins and penance for solving this problem, he would have needed to specify *post penitentiam secretam*. Instead, he merely said *post penitentiam*, understood to indicate true, real, genuine, sincere penance, regardless of whether it was manifest or secret. Even a fallen cleric who exercises true penance, however, cannot advance in the ecclesiastical hierarchy. The sin that demands penance has long-term consequences, serving as a barrier to advancement as a churchman. Penance restores a person to his former dignity; it cancels a debt; it is not a stepping stone to additional honor and glory in this world.

[13] D.51 d.p.c.51: "Premissis auctoritatibus, lapsis permittitur, ut post penitenciam in suis ordinibus reparari ualeant; ad maiorem autem conscendere post lapsum nulla eis auctoritate permittitur, immo penitus prohibetur."

This idea that penance restores but is not a pathway for advancement was further highlighted as Gratian continued to make his argument against ecclesiastical advancement for priests after penance through an analogy with the prohibition of penitents being ordained at all. Thus he in essence returned to the topic of D.49 but with even more particulars. Beginning with c.55, Gratian laid out a series of canons that prohibited penitents from entering the priesthood. Many of these canons came out of the historical context of penance in the early church, in which penitents went to monasteries (e.g. c.58) and in which penitents constituted a specific *ordo* in the church, only to be released from that order when publicly reconciled to the church by proclamation of the bishop on Easter. Gratian was unaware of these very different historical circumstances that formed the basis for his *auctoritates*; for him, *penitens* indicated any person doing penance of any kind, while for his sources, *penitens* indicated a person ceremonially inducted into a specific *ordo* in the church on Ash Wednesday. Given this difference in perspective, he had to find a way to reconcile his *auctoritates* with his views and current practice. In Gratian's opinion, the prohibitions against ordination of penitents applied not to any and all penitents whatsoever but only to those penitents who entered the secular military after penance.[14] Perhaps with such an apparently random distinction he was trying to preserve the ability of the vast majority of lay penitents in his day (who would have done penance more than once and often for sins far less serious than would have placed one in the order of penitents in the early church) to enter the priesthood.

[14] D.50 d.p.c. 60: "Hoc non de quibuslibet penitentibus intelligitur, sed de illis tantum, qui post penitenciam secularis militiae cingulum accipiunt."

Gratian himself seemed uncomfortable leaving the matter there and proceeded to offer a better and in fact more historical explanation: the canons prohibiting penitents from entering the priesthood applied to those penitents who perform solemn penance, which is only granted once in the church.[15] Gratian provided a good reason for barring such penitents from the priesthood: priests are not allowed to perform this penance; therefore any who perform this penance are not allowed to become priests.[16] Gratian was alluding to early Christian texts that prohibited priests from performing penance. In Gratian's day, this prohibition came to be understood as referring to solemn penance, which, by the time of Robert of Flamborough in the early thirteenth century, was distinguished from non-solemn public penance, which could be imposed on priests.[17] As in *De penitentia* D.3, Gratian turned to the specific practice of solemn penance to make sense of some of his *auctoritates*. In keeping with his interpretation in *De penitentia*, he provided as texts that refer to solemn penance some Ambrosian texts he repeated in *De penitentia* D.3: two portions of D.3 c.2 and the short quotation to which he referred at the very of end of D.3 ("Non est secundus locus penitentie").[18] His understanding of these texts as referring to solemn penance in D.50 matched his understanding in *De penitentia* D.3.[19] But since priests cannot perform solemn penance, the analogy between repentant laymen not entering ecclesiastical orders after

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[15] D.50 d.p.c.61: "Potest et aliter intelligi. Est quedam penitencia, que solempnis appellatur, que semel tantum in ecclesia conceditur."
[16] D.50 d.p.c.64: "Hanc penitenciam nulli umquam clericorum agere conceditur, atque ideo huiuscemodi penitentes ad clerum admitti prohibentur."
[17] Mansfield, *The Humiliation of Sinners*, 29-30.
[18] D.50 d.p.c.61: "Est quedam penitencia, que solempnis appellatur, que semel tantum in ecclesia conceditur, de qua Ambrosius ait: 'Sicut unum est baptisma, ita unica est penitencia.' Item: 'Non est secundus locus penitenciae.' Item: 'Reperiantur quam plurimi, qui sepius agendam penitenciam putant, qui luxuriantur in Christo. Nam si uere penitenciam agerent, numquam iterandam postea putarent.'"
[19] Cf. *De pen*. D.3 c.2 and d.p.c.49.

solemn penance and repentant priests not advancing after some non-solemn penance would seem to break down. Gratian did not deal with this problem.

In sum, his position consisted in the following: laymen who have done penance, as long as the penance was not solemn, may become priests; priests who perform true penance after some sin may be restored to their former dignity but may not at any time advance beyond their former dignity. In the case of priests (and, it should be assumed, men intent on becoming priests), the determination of the sincerity and verity of penance plays a key role in canonical procedure. One of the things *De penitentia* did was provide an explanation of what true penance is; it therefore served as an intellectual guide to determining when penance is true and when it is false. *De penitentia* did not present a mere theological exercise; it was essential for ecclesiastical discipline, for determining who should fill the ranks of the ecclesiastical hierarchy and how lapsed priests should be treated. In one sense, then, the entire structure of the church for Gratian depended on the proper determination of true and false penance.

C.16 q.1: The Administration of Penance by Priest-Monks

The first question of C.16 also dealt with canonical issues of penance, this time with whether ordained monks (priest-monks) can administer penance. The issue is one subsidiary to a matter of intense debate and wide-ranging ramifications in Gratian's life-time: whether monks can receive ordination and become priests at all.[20] As Chodorow noted, Gratian's answer to this question, affirming the validity of priest-monks and their right, as priests, to

[20] Giles Constable, *The Reformation of the Twelfth Century* (Cambridge: Cambridge University Press, 1996), 227-33.

administer penance among other priestly functions, placed him in agreement with the reform camp of Chancellor Haimeric and Innocent II in the 1130s.[21] And as Eugen Fischer recognized, Gratian's treatment of this question offers insights into *De penitentia* D.6.[22] For one thing, if Pseudo-Augustine and Gratian encouraged penitents to confess to the best priest possible, according to C.16 q.1, which recognizes the validity of priest-monks and their ability to administer penance, such a priest could in fact be a monk. For another, C.16 q.1 helps explain how a *sacerdos non proprius* can administer an effective penance, for it explains from where a priest (or priest-monk) derives his power and the right to execute it. The *causa* presents the following situation: an abbot has a parochial church in his possession and then installs a monk there in order to celebrate the office for the people (i.e. to officiate over the Eucharist and in general carry out the duties of a parish priest). Later on the clerics of the baptismal church of the diocese within which the abbot's parish church is located make a complaint against the abbot. The first question asks whether monks may celebrate offices for the people, give penance, and baptize.[23] In other words, is the abbot in the case acting outside canonical boundaries by installing a monk in his parish church in order to

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[21] *Ecclesiology*, 53.
[22] Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl."
[23] C.16: "Quidam abbas habebat parrochitanam ecclesiam; instituit ibi monachum, ut offitium celebraret populo; possedit eam per quadraginta annos sine aliqua interpellatione; tandem querela aduersus abbatem mouetur a clericis baptismalis ecclesiae, in cuius diocesi parrochitana ecclesia illa consistebat. (Qu. I.) Hic primum queritur, utrum monachis liceat offitia populis celebrare, penitenciam dare et baptizare? (Qu. II.) Secundo, si contigerit eos capellas habere episcopali beneficio, an ab eis sint instituendae, an ab episcopis? (Qu. III.) Tertio, an iura ecclesiarum prescriptione tollantur? (Qu. IV.) Quarto, si ecclesia aduersus ecclesiam prescribat, an etiam monasterium aduersus ecclesiam prescribere possit? (Qu. V.) Quinto, si capellam in suo territorio edificatam iure territorii sibi uendicare ualeat? (Qu. VI.) Sexto, si archipresbiter uel episcopus sua auctoritate, non iudiciaria sententia capellam illam inrepserit, an cadat a causa, ut ecclesia, cui presidet, non ultra habeat ius reposcendi quod suus pastor illicite usurpauit? (Qu. VII.) Septimo queritur, si laici capellam illam tenebant (ut quibusdam moris est) et in manibus abbatis eam refutauerint, et ordinandam tradiderint, an consensu episcopi et clericorum abbas possit eam tenere?"

carry out priestly functions there? Gratian's treatment of this question highlighted the unique powers and authority of the priesthood as well as the particular authority of the bishop in the administration of penance.

For Gratian, ordained monks, just like any other priest, may perform the duties and enjoy the privileges associated with the priestly office. Gratian first presented canons that suggest the inability of monks to be priests, the fundamental incompatibility of the priesthood with monastic life. He then argued that certain canons forbid monks from administering penance not because monks cannot also be priests but because no priest can bind and loose the parishioner of another priest.[24] Gratian was recounting the canonical standard to which he also referred in *De penitentia* D.6.[25] Gratian's point seems to have been to clarify that a monk who is also an ordained priest cannot go around administering penance to whomever he wants; because of his consecration, the priest-monk has the power to administer penance, but this does not mean he has the ability or right to execute that power wherever and whenever he pleases. Gratian thus distinguished the priest's *potestas* from his *executio potestatis*. Even if the priest-monk receives the *potestas*, the power, to baptize, hear confessions, preach, remit sins, and enjoy a benefice at his ordination, he must be canonically elected by the people and ordained by the bishop with the consent of his abbot for him to carry out, exercise, or execute that power.[26] Part of that ordination by the bishop would entail the conferment of the new

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[24] C.16 q.1 d.p.c.19: "Quod uero penitenciam dare prohibeatur, inde est, quod nulli sacerdotum licet parrochianum alterius ligare uel soluere."
[25] *De pen.* D.6 d.p.c.2.
[26] C.16 q.1 d.p.c.19: "Monachi autem, et si in dedicatione sui presbiteratus (sicut et ceteri sacerdotes) predicandi, baptizandi, penitenciam dandi, peccata remittendi, beneficiis ecclesiasticis perfruendi rite potestatem accipiant, ut amplius et perfectius agant ea, que sacerdotalis offitii esse sanctorum Patrum constitutionibus conprobantur: tamen executionem suae potestatis non habent, nisi a populo fuerint electi, et ab

priest's office of the care of souls, the *cura animarum*. With this conferment, those for whose souls the priest-monk now must care would be made manifest. In short, through proper election and ordination with a particular institution by the bishop, the monk becomes the priest for certain people; he gains parishioners to whom he may now preach and for whom he may now administer baptism and penance and remit sins.[27] Much like a college education graduate who gains the power to teach when she earns her degree but can only exercise that power once she is hired to be a teacher in a particular school, the monk earns the power to do all the things other priests do when he is ordained but must receive a particular assignment and office through the institution and permission of the bishop in order to carry out those priestly powers.

Gratian emphasized that episcopal institution in d.p.c.40 as part of his explanation for why priest-monks and priests have the same powers. According to Gratian, one should not divide and split up the powers of priests and priest-monks; their ordinations are the same and

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episcopo cum consensu
abbatis ordinati." Cf. Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl," 209-10. The "election" by the people consisted of a vote of assent to a man's ordination within the service wherein the man was ordained. Cf. R. Meßner, "Ordination," *Lexikon des Mittelalters* (1993), 6.1435.

[27] Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl," 214-15. In Gratian's day and for the canonists following him, the *cura animarum* was inextricably bound to *iurisdictio* and these were in turn conceived of within the parochial setting, within the parish and in terms of a priest being granted the office of caring for the souls within that particular parish. As is clear from Gratian's list of functions here, being a pastor and caring for the souls of one's newly assigned parishioners would involve hearing confessions and thus judging the penitents, or exercising jurisdiction over them. Thus, Winfried Trusen noted that *cura animarum* and *iurisdictio* remained interchangeable terms and linked with parochial rights and law until it was accepted that mendicant orders possessed the right to hear confessors. Dominicans and Franciscans and members of the other mendicant orders were not parish priests, but, after various struggles and changes in papal policy in the thirteenth century, they were nevertheless given the power to hear confessions (and also preach) and assign satisfaction on the basis of an independently sovereign power or authority, a *iurisdictio* separate from a parish context and separate from ordination as a parish priest. They were thereby granted *iurisdictio* in the internal forum, and *iurisdictio* as a term came to override and predominate over *cura animarum* in discussions about the duties of confession. Cf. Winfried Trusen, "Zur Bedeutung des Forum internum und externum für die spätmittelalterliche Gesellschaft," ZRG Kan. Abt. 76 (1990): 259-60.

thus so are their powers. The bishop uses the same words when consecrating both groups and asks for the same blessing to be bestowed on both by the Lord:

> It has sufficiently been shown that, for monks distinguished with the honor of the priesthood, elected by the people, [and] instituted by the bishop, the same things are permitted as also for other priests. This is also proven from the similarity of their consecration. For nothing different is said in their consecration than in the consecration of others. For the bishop resolutely requests that blessing be poured out by the Lord on both groups in common.[28]

Gratian returned to the *potestas*/*executio potestatis* distinction, clarifying that the newly ordained priest, whether monk or not, receives the *potestas* to perform priestly duties when he is blessed during his ordination, and he receives the *executio potestatis*, the actual ability and right to carry out those priestly duties, when the bishop institutes such.[29] The bishop is supreme. No priest can administer penance or do the other things priests do without the ordination and institution of his bishop.

Gratian's discussion validating priest-monks illuminates two points in his *Tractatus de penitentia*. First, the idea that Gratian's expressed lack of commitment in *De penitentia*

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[28] C.16 q.1 d.p.c.40 §2: "Ecce sufficienter monstratum est, quod monachis presbiterii honore decoratis, a populo electis, ab episcopo institutis, eadem liceant, que et aliis sacerdotibus. Probatur hoc etiam ex similitudine consecrationis. Non enim in consecratione eorum aliud dicitur, et aliud in consecratione aliorum. Utrisque enim in commune a Domino benedictionem infundi episcopus obnixe deposcit." Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl," 210.

[29] Ibid.: "Sicut ergo in benedictione utrique communem nanciscuntur potestatem, ita in institutione communiter assecuntur potestatis executionem." The consecration of a cleric to whatever rank and the granting of an office (*officium*), were bound together prior to the end of the twelfth century. Gratian thus viewed these logically separable entities as part and parcel of the same process; they necessarily went together. The granting of an office was understood to be the granting of a spiritual mission to exercise the authority bound to the level of consecration (i.e. the rank within ecclesiastical orders) and, more specifically, to exercise the appropriate jurisdictional authority assigned by law or custom. The granting of an office was even more closely bound to the granting of a benefice (*beneficium*), which granting can be meant by the term *institutio* that Gratian used in this *causa*. Until the thirteenth century, the granting of the benefice in principle occurred together with the granting of the office. Thus, at a priest's initial ordination or his consecration to some rank in the ecclesiastical hierarchy, he would be assigned a particular office by the bishop as well as a benefice for his physical support. That benefice could be a local church which the priest was then called to serve in the function of pastor, as the parish priest exercising there the office of the *cura animarum*. Cf. R. Puza, "Weihe," multiple authors, "Amt," R. Meßner, "Ordination," and Peter Landau, "Beneficium, Benefizium," *Lexikon des Mittelalters* (1993).

D.1 could have stemmed in part from his high valuation of sacerdotal power and association of the power of the keys with the remission of sins finds support here. Gratian's definition of priestly powers included "the remission of sins."[30] If such is the framework within which Gratian understood the role of the priest, he would not have been able to cling to a view that made the remission of sins independent of priestly involvement. As tempting as some of the texts and arguments he put forward in defense of the first position in *De penitentia* D.1 may have been, he could not see a way of adhering to that view while still protecting the God-given powers and role of the priesthood. While some of his successors came up with a way to explain how priests are said to remit sins even though sins are really remitted through internal contrition, Gratian did not even attempt such an explanation, perhaps on pedagogical grounds but also perhaps on personal ones. Second, as Fischer noted, while Gratian does refer here in C.16 q.1 to the principle that no priest should hear the confession of another priest's parishioner, he did not mention the right of the penitent to choose his or her own confessor (i.e. a priest who knows how to bind and loose). A brief examination of that issue would be logical here since priest-monks, given their holy reputation, were the preferred choice of penitents who found their own priests lacking in knowledge or morality.[31] Fischer suggested that perhaps Gratian fell under the spell of *De uera et falsa penitentia* later.[32] More likely Gratian's intent here consisted purely in establishing the validity of priest-monks with

[30] C.16 q.1 d.p.c.19.
[31] Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl," 215.
[32] Ibid. He also asked whether the lack of discussion of this matter provided evidence against Gratian's authorship of *De penitentia*. Throughout his article, Fischer assumed the stance that, even if Gratian did not pen *De penitentia* (which we now know he did), early manuscripts demonstrate that Gratian incorporated *De penitentia* into his work and therefore must have approved of it.

a focus on ecclesiastical structure and orders. Penance constituted a component part of the discussion of C.16 q.1, not the center of it, and Gratian dealt with penance here only in terms of the power to administer it, not in terms of the lay penitent seeking a good confessor-priest. While he could have chosen to breach the subject here as he did in his comments following the *De uera et falsa penitentia* quotation in *De penitentia* D.6, the fact that he chose not to should not raise any eyebrows. Perhaps what the lack of discussion of the subject does show, however, is the lack of obsession on Gratian's part with the idea of a penitent's right to choose a confessor. He was not adamant in making such a potentially subversive point. He opened the door for it in *De penitentia* D.6, but it was not an all-consuming idea in his mind. He viewed the situation of a penitent refusing to confess to his own ignorant priest and choosing another priest as the exception to the rule, not some intrinsic right for all Christians to be exercised in normal circumstances. As mentioned before, Gratian made allowance for this exception due to the value he placed above all else on the salvation of individual souls. On the whole, though, he expected ecclesiastical forms and rules to create a structure that would in the vast majority of cases advance the goal of saving souls, not inhibit it. Thus, whether one's priest is a regular parish priest or a priest who is also a monk, one should confess to him. Not doing so is justifiable only in rare instances in which one's *sacerdos proprius* is incompetent of binding and loosing sins.

C.26 qq.6-7: Deathbed Repentance

The final two questions of C.26 contain the most material pertaining to penance outside of *De penitentia*. In this case, a priest is convicted of sorcery and divination by a

bishop; he refuses to stop, and so the bishop excommunicates him. At the end of his life another priest, without the knowledge and consent of the bishop, reconciles the excommunicated priest through penance. The penance he assigns is temporally delimited.[33] In other words, in accord with the tariff penances of the penitentials, based on his sin of sorcery and divination, the priest receives a penance of a certain number of years, despite the fact that his death appears certain and imminent. The sixth question asks whether someone excommunicated by a bishop can be reconciled without the bishop being consulted on the matter. From the case statement and in the way Gratian pursued this question, it is clear that the chief type of reconciliation in view was that which occurs at the end of the excommunicated person's life. The seventh question asks whether such a penance under strict temporal prescriptions ought to be imposed on the dying.[34] The issues at hand in these two questions are thus the relationship of sacerdotal and episcopal powers in reconciling sinners to the church and the administration of penance *in extremis*, i.e. at the end of life.

In q.6, Gratian argued that priests cannot reconcile sinners to the church without the approval of the bishop unless the sinner is about to die and the bishop is unavailable. Throughout the *questio*, even while he acknowledged the distinction between reconciliation and penance, Gratian assumed a similarity or analogy between them that helped him come to his conclusion. One must keep in mind that this entire *causa* focuses on an excommunicated person, not just any sinner. Here is a sinner who persisted in his sin to the point of ignoring

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[33] C.26 pr.: "Quidam sacerdos sortilegus esse et diuinus conuincitur apud episcopum; correctus ab episcopo noluit cessare; excommunicatur; tandem agens in extremis reconciliatur a quodam sacerdote episcopo inconsulto; indicitur penitencia sibi sub quantitate temporis canonibus prefixa."

[34] C.26 pr.: "Sexto [queritur], an excommunicatus ab episcopo possit reconciliari a presbitero, illo inconsulto? Septimo, si morientibus est indicenda penitencia sub quantitate temporis?"

all orders from his bishop to cease his sin. In normal circumstances, this sinner cannot simply confess his sins to his priest and do the penance prescribed for the original sin. He must undergo a ceremonial process of reconciliation to the church, from which he has been formally cut off through excommunication. In short, this *causa* and this *questio* in particular deal with the most severe cases of church discipline, not with the usual cases of penance with which priests were qualified and commissioned to deal through their ordination.

Gratian took his favorite two-pronged approach using reason (*ratio*) and authority (*auctoritas*) to prove that priests cannot reconcile excommunicate sinners to the church without consulting the bishop. Gratian clarified that the bishop's metropolitan and also the pope could reconcile a sinner without the excommunicating bishop's approval, but the reason (*ratio*) why priests cannot do this is because they derive their power of excommunicating and reconciling from bishops, not vice versa. So also, then, priests cannot reconcile those excommunicated by bishops, although bishops can reconcile those excommunicated by priests (just as a metropolitan bishop or the pope could reconcile those excommunicated by a bishop under him).[35] Gratian therefore recognized a hierarchy of authority and power within the church, and he who receives his power cannot use that power over and against he from whom he received that power. The giver of the power holds more power than the recipient of power, and the recipient of power cannot override the giver of power. The only way a priest

[35] C.26 q.6 d.a.c.1: "Quod autem ab episcopo excommunicatus eo inconsulto ab alio reconciliari non possit, nisi forte per eius metropolitanum uel per summum Pontificem, ratione et auctoritate probatur. Presbiteri namque potestatem excommunicandi uel reconciliandi ab episcopis accipiunt, non episcopi a presbiteris, atque ideo excommunicatos a sacerdotibus reconciliare possunt, excommunicatos uero ab episcopis sacerdotes reconciliare non ualent."

could reconcile a sinner excommunicated by the bishop is if the bishop gives the priest permission to do so and thus effectively reconciles the sinner by proxy.

After he presented his *ratio*, Gratian summarized the witness of *auctoritates* on this matter: priests cannot reconcile someone excommunicated by a bishop without that bishop's permission because, as the *auctoritates* state, reconciliation is an episcopal, not sacerdotal, office, meaning that it belongs to episcopal jurisdiction.[36] Originally, Gratian provided one canon from the Second Council of Carthage (390) to substantiate this claim, a canon that prohibits priests from reconciling penitents in the church.[37] Thus he applied a canon about reconciling penitents to reconciling the excommunicate. Gratian's *auctoritas* came from a period of time with an entirely different penitential practice in which only public penance administered by the bishop existed. To make sense of this disparity between the penitential reality of Gratian's day and what the canon states, Gratian made an *alia est…alia est* distinction.

Whereas in *De penitentia* Gratian made a distinction between private/secret and public sins and penance, here he made a parallel distinction between private and public reconciliation. He said, "So it is that a person excommunicated by a bishop cannot be reconciled by a priest. But we should note that public reconciliation is one thing, private reconciliation another."[38] He described the former as that which occurs when penitents are publicly presented before the entrance of the church and reconciled through the laying on of

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[36] Ibid.: "Reconciliatio namque penitentium episcopale offitium est, non sacerdotale."
[37] C.26 q.6 c.1. The original content of C.26 q.6 as present in Fd and Aa is d.a.c.1, c.1, d.p.c.3, c.4, c.5, d.p.c.11, c.12, sections of c.13, d.p.c.13, c.14. This *causa* is not present in Sg.
[38] C.26 q.6 d.p.c.3: "Ecce, quod ab episcopo excommunicatus per sacerdotem reconciliari non potest. Sed notandum est, quod reconciliatio alia est publica, alia priuata."

the bishop's hands. He said that this reconciliation appears to be prohibited to priests. The latter occurs when those repenting of secret sins or those doing penance at the end of life receive the grace of reconciliation. This reconciliation can be done by priests.[39] These sentences raise all sorts of questions as they blur the distinction between excommunication/ reconciliation and regular penitential discipline. If there is a private reconciliation for those repenting of secret sins, is there also a private excommunication in which a priest excommunicates one of his parishioners, initially unrepentant, but does not involve the bishop in the process? Or was Gratian using *reconciliatio* here as a broad term covering the return of excommunicate persons to communion with the church as well as the regular absolution of sins through penance? For public reconciliation, Gratian seems to have described what he elsewhere identified as solemn penance, the practice that may be granted only once to a person. This confusion pervaded this, earlier, and later periods. What seemed to be a clear-cut division in theory between penance and excommunication/reconciliation or, in terminology to become prevalent in the next century, between the internal and the external forum often became blurred in practice.[40] As this passage in the *Decretum* shows, even the theory of the division between the two rites remained in its infant stages in the middle of the

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[39] Ibid.: "Publica reconciliatio est, quando penitentes ante ecclesiae ingressum publice representantur, et per inpositionem manus episcopalis ecclesiae publice reconciliantur. Hec uidetur sacerdotibus esse prohibita…. Priuata uero reconciliatio est, quando de peccatis occultis penitentes uel in extremis agentes ad gratiam reconciliationis accedunt. Hec reconciliatio potest fieri per sacerdotem."

[40] Mansfield described how the clear-cut terminology of internal and external *fora* which became prevalent in the 1230s and 1240s obscures the murky border between the two. The latter forum, the ecclesiastical court, could result in excommunication. Public penance occupied a sort-of middle ground between the two (*Humiliation of Sinners*, 49-50). Joseph Goering, *"The Internal Forum and the Literature of Penance and Confession," Traditio 59 (2004): 175-227,* recounts how, even though the two *fora* were hypothetically divided, increasingly the church began to prosecute people and deal with sins in the external forum if the culprits refused to confess their sins and have them remitted in the internal forum of auricular confession and priest-assigned satisfaction (183). In addition, Christians could be excommunicated (associated with the external forum) for refusing to participate in the internal forum (177).

twelfth century. Gratian went on to quote one canon to support sacerdotal reconciliation in cases of secret sins and one canon to support sacerdotal reconciliation in cases of imminent danger. In his rubrics based on the wording of the canon, Gratian highlighted the role and authority of the bishop. A priest may reconcile a person repenting of secret sins "by the command of the bishop," and a priest may reconcile those about to die "if the bishop is absent."[41] The bishop alone holds, then, the authority of reconciliation, and this authority passes to priests only by his direct command and permission or by virtue of his absence in extreme circumstances, in cases of *necessitas*.[42]

In light of the case at hand, Gratian focused his argument on the second of the two instances of private reconciliation, when someone's death is imminent. In defending the reconciliation of a sinner excommunicated by a bishop without the bishop's consent, Gratian created an argument reminiscent of sections of *De penitentia* D.1 and D.3 in a style (a series of rhetorical questions) reminiscent of a section of *De penitentia* D.2. Gratian argued,

> But if a sinner is compelled by death's necessity and a bishop is so far away that the priest cannot consult him, will penance be denied to the one dying? And will the blessing of reconciliation not be offered to the one repenting whom, when he has converted, God receives to mercy, according to that text, "In whatever hour the sinner turns back," [and] likewise, "Turn back to me with your whole heart and I will turn to you" – will the church neglect to reconcile [such a person] to itself? Will the church be reluctant to absolve externally him whom God raised to life internally? Will the absence of a bishop damn him whom the grace of the divine presence illuminates through the washing of regeneration?[43]

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[41] C.26 q.6 c.4 rubric: "Iussione episcopi presbiteri de occultis peccatis penitentes reconcilient." C.26 q.6 c.5 rubric: "Si episcopus absens est, per presbiterum reconcilietur in periculo constitutus."
[42] Cf. above, chapter 1 for a discussion of the notion of *necessitas* in Gratian and the early canonists.
[43] C.26 q.6 d.p.c.11: "Sed si necessitate mortis peccator urgetur, et episcopus ita remotus est, quod eum presbiter consulere non possit, negabitur penitencia morienti? et beneficium reconciliationis non prestabitur penitenti, quem conuersum Deus recipit ad ueniam, iuxta illud: 'In quacumque hora peccator conuersus fuerit etc.,' et item: 'Conuertimini ad me in toto corde uestro et ego conuertar ad uos,' ecclesia sibi reconciliare

If one wanted confirmation beyond the manuscript tradition that Gratian authored *De penitentia*, the style and substance of these questions provides it. Overall, the argument follows along the lines of a text by Augustine that Gratian quoted in *De penitentia* D.3. Augustine questioned how the church could dare to contradict God and to question why he offers mercy again to someone who has already done penance and fallen back into sin.[44] Gratian made the same point here: how could the church, merely because of the absence of a bishop, refuse to reconcile someone when God himself accepts and forgives the sinner when he converts and turns to him? The two verses from the Minor Prophets (Ezekiel 33:12 and Zechariah 1:3) also appear (and in the same order) in *De penitentia* D.1.[45] Gratian's final two questions as quoted above match in thought and word the extended arguments Gratian made in support of the first position in *De penitentia* D.1. When he discussed the raising of Lazarus, he made clear that God is the one who raises sinners to life internally. He described God as "the life of the soul," meaning that the soul cannot be alive without God being present to it. He wrote, "Therefore the soul has *God present* to itself through the *grace* by which a living person confesses his sin, and the Life which God is indwells that [soul], which it causes to live by its indwelling. If, however, [Life] indwells that [soul], it has therefore been made the temple of the Holy Spirit, which means it has been *illuminated*."[46] Here in C.26 q.6

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negliget? quem intus Deus suscitauit ecclesia foris absoluere contempnet? dampnabit episcopi absentia quem gratia diuinae presenciae illustrat per lauacrum regenerationis?"

[44] *De pen.* D.3 c.22. Cf. also D.3 c.33 and d.p.c.33. Both *auctoritates* come from Augustine's epistle to Macedonius.

[45] *De pen*. D.1 d.p.c.32 and c.34.

[46] *De pen.* D.1 d.p.c.35. "Habet itaque anima sibi *Deum presentem* per *gratiam*, que uiuens peccatum suum confitetur, eamque uita, que Deus est, inhabitat, quam inhabitando uiuere facit. Si autem illam inhabitat, ergo templum Spiritus sancti facta est, ergo *illuminata* est." Italics mine.

d.p.c.11, Gratian expressed the exact same sentiment with much the same terminology, only much more succinctly, when he described the repentant sinner as the one "whom the *grace* of the *divine presence illuminates* through the washing of regeneration." Meanwhile, the series of rhetorical questions possesses the flavor and force of Gratian's approach to biblical *exempla* in *De penitentia* D.2 when he made the point that Old Testament saints possessed love before sinning. He asked repeatedly a version of the question, "Did he not have love when he…?"[47] Here he repeatedly posed a version of the question, "Will the dying penitent be denied reconciliation when…?" Such rhetorical questions serve to reinforce Gratian's point, pushing his readers' thoughts into agreement with his.

The overlap with *De penitentia* also provides ground for contemplating once again Gratian's presentation of both sides of the argument in *De penitentia* D.1 and his avoidance of a firm conclusion. If parts of C.16 q.1 stood in agreement with the second position of *De penitentia* D.1, affirming that the remission of sins constitutes a part of sacerdotal duties and authority, this section of C.26 q.6 agreed with the first position of *De penitentia* D.1, appealing to the priority and power of God's forgiveness and understanding the absolution of the church as a kind of external expression or sign of what God has accomplished internally in the penitent. The extra-*De penitentia* penitential texts confirm what the source analysis of *De penitentia* D.1 suggested: Gratian recognized verity in both the first and second positions, formulating both out of theological truths and ideas that he had learned partially from the school of Laon and that he believed. A modern scholar who attempts to identify which of the two positions Gratian really or secretly held misses the point of *De penitentia* D.1 and

[47] *De pen.* D.2 d.p.c.39.

engages in a futile exercise. Gratian formulated appealing arguments on both sides and rooted each side in certain truths, truths to which he appealed in other places in the *Decretum*. By composing *De penitentia* D.1 in such a way, he gave his students an ultimate exercise and challenge in reconciling dialectical *auctoritates* and *argumentationes*. As argued before, Gratian himself might not have been confident himself in a mode of reconciliation, and that lack of confidence most likely stemmed from an uncertainty in how to defend the necessity of priestly involvement in reconciliation and penance all the while affirming God's identity as the sole forgiver of sins and giver of life to the soul. After all, with one brush of the pen he appealed to that identity and treated ecclesiastical involvement as a sign of what God has done; with the next he made an argument based on the assumption that episcopal consultation is not just desired as a sign but actually necessary for reconciliation itself just as confession to a priest is necessary for the forgiveness of sins.

Gratian created the argument with another question and an analogy based on the pseudo-Augustinian idea as quoted in *De penitentia* D.6 that a penitent may confess to a lay companion if a priest is unavailable. Gratian took this principle as applying to emergency death-bed situations, which was logical since a penitent not about to die could take the time to seek out a priest or wait for an absent priest's return. Gratian reasoned from the appropriateness of lay confession when priests are absent to the appropriateness of sacerdotal reconciliation when bishops are absent:

> There is help even by laypeople for those about to die if priests are not present. Why therefore can there not be assistance for the one dying by the blessing of reconciliation through a priest if it should happen that a bishop is not present? If, according to [Pseudo-]Augustine, he who acts at the end of

> life and confesses the foulness of his sin to a companion becomes worthy of mercy because of his desire for a priest, why is he not similarly worthy of reconciliation because of his desire for a bishop who does not deny the stain of his guilt to a priest?[48]

Gratian looked to the intention. When the norm is not possible, the intention to follow the canonical norm (confession to a priest or reconciliation by a priest after consultation with and approval by the bishop) suffices. Gratian thus adhered to the principle he quoted as part of his argument in favor of the first position in *De penitentia* D.1: the will is counted for the deed.[49] Indeed some of Gratian's successors interpreted that statement as applying in instances when the deed is not possible.[50] With this argument, Gratian solidified his stance that priests can reconcile a person excommunicated by a bishop without consulting the bishop if the bishop is unavailable and the person's end is drawing near.

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[48] C.26 q.6 d.p.c.11: "Morituris succurritur etiam a laicis, si presbiteri defuerint. Cur ergo beneficio reconciliationis per presbiterum subueniri ei non poterit, si contigerit episcopum deesse? si secundum Augustinum qui agens in extremis confitetur socio turpitudinem criminis fit dignus uenia ex desiderio sacerdotis, cur non similiter sit dignus reconciliatione ex desiderio episcopi qui sacerdoti non negat maculam sui reatus?" Fischer uses this text somewhat out of context to argue that Gratian believes a *sacerdos non proprius* should seek the bishop's permission (*licentia*) to administer penance to the parishioner of another priest but can assume such permission if the bishop is unavailable. While such a view may be the logical conclusion to what Gratian is saying here, Gratian never explicitly states that view as his own, and his concern here is not with any penance administered by a *sacerdos non proprius* but with deathbed reconciliation of an excommunicated priest. Certainly Gratian esteems episcopal authority, but he nowhere states that the priest administering penance to the parishioner of another must seek episcopal permission before he does so. In brief, Fischer correctly perceives that such a stance would be consistent with Gratian's arguments in D.50 and C.26, but he goes too far is assigning this view to Gratian himself. Cf. Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl," 216-17.

[49] *De pen.* D.1 c.5 §1: "Votum enim pro opere reputatur."

[50] Here they followed the interpretation of the followers of the second position in D.1 d.p.c.87. Huguccio comments on *De penitentia* D.1 c.5 *uotum enim pro opere reputatur* (Lons-le-Saunier, Archives Dép., 12 F.16, fol. 379ra), "That is, the will and intention to act are counted for the work if the time or place for acting are lacking. For where the time and place for acting are lacking, someone is remunerated on the basis of the will alone, just as he is otherwise remunerated for the will and the act. (Id est, uoluntas et propositum operandi pro opere reputatur si deest tempus uel locus operandi. Ubi enim deest tempus uel locus operandi, ita remuneratur quis pro solo uoto sicut alias pro uoto et opere.)" For all his emphasis on intention and, in the present context, on the sufficiency of contrition for the remission of sins, Huguccio still maintained that the act (e.g. confession) does matter and is a necessary successor to the will in normal circumstances.

Gratian spent the remainder of this *questio* arguing that a priest *should* reconcile a person under such circumstances, not just that he is justified in doing so. He began by stating, "Likewise, priests ought not deny penance to the dying."[51] He followed this statement with two more canons and then connected the obligation to administer death-bed repentance to the obligation to administer death-bed reconciliation: "But reconciliation should not be denied to him to whom penance is not denied," meaning that reconciliation should not be denied anyone since penance should not be denied anyone.[52] Gratian concluded the *questio* with a statement drawn from the final canon he was about to quote: "When a bishop has not been consulted, a priest should not reconcile a penitent unless final necessity compels him to."[53] Gratian held firmly to canonical regulations, but, as in *De penitentia*, he conceded exceptions. He could not accept that God would allow a person's soul to be put in jeopardy when the limitations of humans as finite creatures, such as the inability to be present whenever one is needed and the inability to extend one's own life until what is required may be present, preclude the possibility of following rules.

The amount of overlap in style and substance between C.26 q.6 and the *Tractatus de penitentia* suggest that Gratian composed them in the same general period of time. When he wrote C.26, he was already familiar with *De uera et falsa penitentia*. Given the opportunity *De penitentia* presented to Gratian to work out the ideas that stood behind his rhetorical questions in C.26 q.6 d.p.c.11, the writing of *De penitentia* very likely preceded the writing

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[51] C.26 q.6 d.p.c.11: "Item morientibus penitenciam negare presbiteri non debent."
[52] C.26 q.6 d.p.c.13: "Cui autem penitencia non denegatur, nec reconciliatio sibi deneganda est."
[53] Ibid.: "Inconsulto ergo episcopo penitentem presbiter reconciliare non debet, nisi ultima necessitas cogat." The rubric for c.14 repeats this statement. Both copy the first sentence of c.14 from the Third Council of Carthage (although that canon adds *absente episcopo* to the subordinate clause).

of C.26, although this cannot be proven. The dating of *De penitentia* and C.26 to roughly the same period is consistent with the absence of both from Sg. If Sg is chiefly an abbreviation and does not reflect an earlier stage in the development the *Decretum*, this dual absence presents a rather remarkable coincidence.[54] If on the other hand Sg preserves chiefly an earlier version of Gratian's work, then the absence of both *De penitentia* and C.26 from it show that Gratian turned his attention to penitential matters in large part later in his career. Whatever motivated Gratian to compose his theological treatise on penance may have spurred him to formulate additional *causae* in which he could treat some penitential issues of more canonical import as well.

Gratian dealt with the seventh question, whether the dying should be imposed a penance of a certain length, in greater brevity and with far less of his own commentary and argumentation than the sixth question. The concern of this question, which Gratian answered without debate, stemmed from the standard lengths of time, normally in terms of years, prescribed for serious sins both in the early church for those inducted publicly into the order of penitents and in the medieval church in accordance with the tariff penances of the penitentials. As preserved in Fd and Aa, the *questio* originally consisted of d.a.c.1, c.1, c.13, c.14, c.15, c.16, an extra canon later omitted (designated c.16a by Winroth), and c.18.[55] The omitted canon brings some meaning and coherence to an otherwise disjointed collection of

[54] Proponents of the view that Sg is an abbreviation would claim that *De penitentia* is present in Sg, just in an extremely abbreviated way. I maintain that Sg presents in C.33 q.3 a *questio* like any other, not a theological treatise on penance, although I admit that it contains additions from later stages in the development of Gratian's work (cf. above, chapter 5). I am not claiming here that the absence of C.26 and of *De penitentia* in Sg along with the overlap of content proves that Sg is not an abbreviation; I do claim, however, that such evidence fits the view that, with a few exceptions of later interpolations, Sg presents an earlier version of Gratian's work than any other extant manuscript.

[55] Winroth, *Making of Gratian's* Decretum, 221.

canons, so its later, inexplicable omission from the *Decretum* is unfortunate.[56] Originally, Gratian answered the question quite succinctly with one canon, which stated that the dying should not be assigned a penance that requires a certain amount of time to fulfill but that the priest should note what that length of time would normally be (i.e. if the penitent were not about to die).[57] The remaining six original canons of the *questio* remind one of the specific *causa* at hand, a priest excommunicated for refusing to stop practicing sorcery or divination. They forbid engaging in pagan festivals and observing the ancient Roman calendar centered on pagan deities and celebrations. The canon later omitted specifies the length of penance to be assigned for those who practice divination: five years.[58] As the only canon among the group that mentions a length of time, it is the one that explains the presence of canons forbidding involvement in pagan festivities in this *questio* about the imposition of temporally delimited penance on the dying. Some extra commentary would be helpful, but Gratian seems to have wanted to reiterate the illicit nature of all involvement in pagan religious rites and sorcery and to specify the length of penance usually imposed on people guilty of such a sin. The priest who reconciles the dying excommunicate priest in the *causa* should, then, offer penance and note that the proper length of satisfaction would be five years.

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[56] As noted above in chapter 5, n.56, this canon exemplifies the living nature of Gratian's text in the version preserved in Fd and Aa. Especially in this instance, one cannot explain based on content why this canon would have been removed since it played a crucial role in giving coherence to a group of the canons in the *questio*.

[57] C.26 q.7 c.1 rubric: "For those in grave danger, a quantity of penance is not to be imposed but is to be noted. (In periculo constitutis penitenciae quantitas non est inponenda, sed innotescenda.)"

[58] C.26 q.7 c.16a (from the Council of Ancyra) (Fd fol. 78ra-78rb, Aa 43 fol. 110^{v}): "*Quinquennio peniteant qui diuinationes expetunt*. Qui diuinationes expetunt et morem (more Fd) gentilium subsecuntur aut in domos suas huiusmodi (huiuscemodi Aa) homines introducunt, exquirendi aliquid arte malefica aut expiandi causa, sub regula quinquennii iaceant secundum gradum penitentie (finitos *add.* Fd) definitos."

As a whole, the original content of q.7 does not offer much to assist one in interpreting *De penitentia*. Later authors who drew from the *Decretum* for their discussions of penance did in fact pass over most of the original content of the *questio* with the exception of c.1 and then copied more from later additions to it. The later additions turned more to penitents generally, not just the dying. Gratian or some other *additor* clarified that for others (*aliis*, that is, those not dying) times of penance are to be discerned in proportion to the quality of the sin and in accord with the judgment of those presiding over them.[59] Canons two through eight make the case for this point. The sources and the content of the canons differ substantially from what is found in *De penitentia*.[60] The ninth canon makes explicit that true penitents should be welcomed with love as Christ rejoices over finding lost sheep, and c.10 stresses the love to be manifest in the hearts of the penitents themselves, namely, a love for the law of God and, on the other hand, a hatred for their offence.[61] This last canon touches on an issue (the state of mind of the true penitent) that would be treated quite forcibly via Pseudo-Augustine in *De penitentia* D.5, but that text does not appear here. Finally, c.12 makes the point that, for the priest, it is better to err on the side of mercy than on

[59] C.26 q.7 d.p.c.1: "Aliis uero pro qualitate peccati et presidentium arbitrio tempora penitenciae decernenda sunt."
[60] The canons come from papal decretals and councils. None of the canons are duplicated in *De penitentia*.
[61] C.26 q.7 c.9: "*Intimo caritatis affectu penitentem debemus suscipere*. Penitentem ex corde ita oportet suscipi, sicut Dominus ostendit, cum dicit, quia conuocaui amicos meos et uicinos, dicens: Congratulamini michi, quia inueni ouem meam, quam perdideram." C.26 q.7 c.10: "*Penitentes legem Dei diligant, iniquitatem odio habeant*. Affectum illum in se recipiat penitens, quem gerebat ille, qui dicebat: 'Iniquitatem odio habui, et abhominatus sum;' secundum ea, que scripta sunt in sexto Psalmo atque in aliis quamplurimis; uel ea, que Apostolus dixit ad eos, qui secundum Deum contristati sunt: 'Quantum operatum est,' inquit, 'in nobis sollicitudinem, sed excusationem, sed indignationem, sed emulationem, sed uindictam. In omnibus exhibuistis uos cautos esse negocio.' Sed et ipsis in quibus deliquit, agens multa contraria, sicut et Zacheus fecit."

vengeance. God is after all merciful and kind.[62] Nothing in this section contradicts what Gratian writes in *De penitentia*. It adds substance to this *questio* and makes it more useful. Whether Gratian added it is difficult to tell, but, together, the first canon (included in Gratian's original q.7) and the next eleven (added later) confirm some of the basic assumptions of the penitentials, namely that, in normal circumstances, people repenting of serious sins should be assigned a penance that will last a significant amount of time (several years) and that the severity of the punishment (satisfaction) should be comparable to the severity of the sin. As a whole, the *Decretum* does not contradict or attempt to supersede the penitentials of previous generations.

Conclusions: How *De penitentia* Fits in the *Decretum*

The sections of the *Decretum* outside of the *Tractatus de penitentia* that deal with penance, most prominently D.50, C.16 q.1, and C.26 qq.6-7, stand in agreement with it. They support several of the points made in *De penitentia* and demonstrate how Gratian understood the theological truths of penance to inform the canonical practice of it. Gratian did not set about showing every way in which his theological treatise on penance could apply to canonical cases. Gratian's cases are not exhaustive, and the majority most likely pre-dated the composition of *De penitentia*. Nevertheless, when issues and cases related to penance did

[62] C.26 q.7 c.12: "*Melius est errare in misericordia remittendi quam in seueritate ulciscendi*. 'Alligant autem opera grauia et inportabilia, etc.' Tales sunt sacerdotes etiam nunc, qui omnem iusticiam populo mandant, et ipsi nec modicam seruant, uidelicet, non ut faciendo sint, sed ut dicendo appareant iusti. Tales sunt qui graue pondus uenientibus ad penitenciam inponunt, quia dicunt, et non faciunt, et sic, dum pena penitenciae presentis fugitur, contempnitur pena peccati futura. Sicut enim, si fascem super humeros adolescentis, quem non potest baiulare, posueris, necesse habet ut aut fascem reiciat, aut sub pondere confringatur: sic et homo, cui graue pondus penitenciae inponis, aut penitenciam reiciet, aut suscipiens, dum sufferre non potest, scandalizatus amplius peccat. Deinde, etsi erramus modicam penitenciam inponentes, nonne melius est propter misericordiam rationem dare, quam propter crudelitatem? Ubi enim paterfamilias largus est, dispensator non debet esse tenax. Si Deus benignus, ut quid sacerdos eius austerus uult apparere?"

arise, he brought the same framework of thought on penance to bear as he worked out in his treatise. At the same time, those issues and cases demonstrate in various ways the necessity of a solid, theological framework that can guide the clergy in its practical dealings with penitents. In short, in these extra-*De penitentia* penitential texts and their relationship to the treatise, one can perceive reasons for Gratian's composition of *De penitentia* and its inclusion in the *Decretum*. Through this, one can perceive how Gratian came to understand his entire project, at least in part.

Throughout the *Decretum*, a recurring theme on penance emerged: penance cancels or balances out previous sins; for the earthly life of penitents, this means that, through penance, they may be restored to their previous state. The discussion of priests who fall into mortal sins in D.50 demonstrates this point well. Lapsed priests who are then deposed may be reinstated after penance. Without penance, such reinstatement cannot occur. Penance serves as a game-changer, but, more than that, it acts as an equal balance on a scale with the sin on the other side, thereby restoring the person to his original state prior to the sin. The same principle appears in several other places in the *Decretum*. In C.27 q.1, Gratian affirmed that a nun who marries a man may return to her monastery and the monastic life once she performs the appropriate penance for the breaking of her vows.[63] In C.32 q.1, Gratian looked upon prostitutes as the same as adulterous wives. Men may not take prostitutes as wives just as they may not take back adulterous wives. If the women fully repent, however, their status as

[63] C.27 q.1 d.p.c.43: "Post propositum namque sacrae religionis non potest Deo per penitenciam reconciliari que ad habitum professionis suae redire neglexerit." Gratian here enjoins the return to monastic life and living in accord with one's vows as part of true penance – true penance requires this return. He assumes, therefore, that such a return is possible. A nun who sins mortally, even in breaking her vow of chastity, is not excluded forever from her profession but may (and indeed must) take it up again.

prostitutes and adulterers dissolves, and they may be taken or taken back in marriage.[64] Perhaps most interestingly, in C.36 q.2 Gratian considered the possibility of marriage between a *raptor* and his *rapta*, between a man who forcibly abducts (and rapes) a girl and the girl he abducts. At first, in his usual form, Gratian said no, offering up several canons in support of this refusal. These canons, however, did not take into account penance, or, as Gratian phrased it in d.a.c.1, "the purging of the vice."[65] Then Gratian considered the potential for such purging through penance. He noted that the terms "raptor" and "rapta" are names of vices, not of persons. Vices can be purged through penance, and, in that process, their names are erased.[66] In other words, once the sin of abduction has been purged through penance, the man is no longer a "raptor" and thus the previously quoted canons no longer apply to him. In his next dictum Gratian clarified that the girl and her abductor are thus prohibited from marrying before the vice of abduction has been erased, as long as the man is

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[64] C.32 q.1 d.a.c.1: "Quod autem meretrix in coniugem duci non debeat, multis auctoritatibus et rationibus probatur. Illa enim, que adulterii rea conuincitur, nisi post peractam penitenciam in coniugii consortio retineri non debet." Gratian argued that men cannot marry prostitutes because men should not take back their adulterous wives. He created a parallel between the two types of women that he followed throughout the *questio*. Therefore, although Gratian never explicitly stated such, the same exception applied to prostitutes as to adulterous wives: if they perform penance for their sins, they may marry or return to their marriages. Later in the *questio* (d.p.c.13), when considering the biblical examples of the prostitute Rahab and the prophet Hosea, whom God commanded to marry a prostitute, Gratian made a distinction between marrying a prostitute whom one adorns with one's own righteousness and marrying a prostitute without any real intention of calling her away from her carnal profligacy: "Sed aliud est meretricem ducere, uel adulteram retinere, quam tua consuetudine, castitate et pudicitia exornes: atque aliud aliquam habere earum, quam nullo pacto a luxu carnis suae reuocare ualeas. Hoc enim penitus prohibetur: illud laudabiliter factum legitur." Given the opening *dictum* requiring penance and Gratian's understanding of conversion to righteousness as involving and being a part of penance, one should understand this distinction in terms of penance. True conversion and penance must occur before a valid marriage between a man and a (former, repentant) prostitute.

[65] C.36 q.2 d.a.c.1: "Nunc queritur, an *purgato uicio* rapinae raptor in uxorem possit raptam accipere?"

[66] C.36 q.2 d.p.c.6: "His auctoritatibus euidenter datur intelligi, quod raptor in uxorem raptam ducere non ualet. Sed raptor et rapta nomina sunt uiciorum, non personarum. Vicia autem cum per penitenciam purgata fuerint, nomina eorum abolentur."

still called "raptor" and the girl is still called "rapta."[67] They are not so called after penance. In general terms, penance removes the label of "sinner" and creates a situation in which the former label means nothing.[68] Penance makes an adulterer no longer an adulterer, a thief no longer a thief. Therefore, canons concerning adulterers and thieves no longer apply to them after their penance has been completed.

De penitentia created a theological basis for this change. After penance, a person should not be treated in light of his former sin because God does not see a penitent in light of his former sin. Before contrition, a person is a child of darkness, dead, a son of the devil; after contrition inspired by God's grace, a person is a child of light, alive, a son of God. Through penance, whatever aspect of it actually causes remission of sins, God sends away (*dimittere*) the sins of the penitent and does not hold those sins against him (unless he returns to and perseveres in sin until death). The church should imitate God. If God views the penitent as righteous and no longer considers the penitent in terms of his sin, so also should the church treat the penitent as a righteous Christian who should not be punished further for his former sins. In theory and in practice, then, penance wipes out and cancels sin. It balances the scale, returning the person to his state before the sin.[69] In this case, *De penitentia* offered

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[67] C.36 q.2 d.p.c.7: "Prohibetur ergo premissis auctoritatibus rapta copulari raptori ante, quam uicium rapinae aboleatur, donec ille raptor, et illa iure rapta appellatur."

[68] The exception, as noted above, is the advancement to higher orders. A layman who performs solemn penance and a priest who performs penance are restored to their former state but may not seek ordination, in the case of the layman, or higher office, in the case of the cleric. Penance cancels a previous debt but still has consequences. It should not be used by the wiles of men to assist them in their personal ambitions.

[69] Gratian thus followed in the dual penitential tradition in his understanding of penance. As Lutterbach argued, the early medieval penitentials maintained an understanding of penance focused on intent and the moral transformation of the sinner that predominated in the early church as well as the newer, Irish understanding of penance as an equaling out of sin, a balancing of the scale, through a punishment which equaled in severity the sin committed. Gratian carried on this dual tradition. He focused on intent, on contrition, on love for God and

a solid, theoretical grounding to canonical practice. Gratian applied the reality of the spiritual world and God's court to the physical world and the ecclesiastical court. The two should be in harmony; the practice of the latter should follow the practice and principles of the former. Most of Gratian's teaching and writing was geared toward the practical, but *De penitentia* underscores how well he understood and believed that the structures and governance of the church are rooted in eternal realities. He not only believed this, as all his contemporaries would, but he believed that the education of his students should include an education in these eternal realities – hence the inclusion of *De penitentia* in his textbook.

Next, as regards the administrator of penance, Gratian placed great import on ordination and on the ecclesiastical hierarchy. Only ordained priests can hear confessions and administer penance. Regardless of whether the priest is also a monk, the person who administers penance must be canonically ordained and given his office by the bishop. Only when a priest has received his *offitium* from the bishop can he exercise the duties associated with that *offitium*. Such ideas underlay much of what Gratian quoted and argued when presenting the second position in *De penitentia* D.1. Much of his argument there focused on the role of the church, understood primarily in terms of the priesthood, in penance and the necessity of the intercession of priests and the exercising of their keys in attaining the

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hatred for sin, and on turning away from sin to righteousness after penance, but he also conceived of penance as a punishment that, if appropriately assigned by a discerning priest, cancels out the debt caused by the sin. On this dual tradition and its preservation in early medieval penitentials (with the early Christian tradition being preserved mostly in the prefaces and epilogues of the penitentials), see Hubertus Lutterbach, "Intentions- oder Tathaftung? Zum Bußverständnis in den frühmittel-alterlichen Bußbüchern," *Frühmittelalterliche Studien* 29 (1995): 120-43.

remission of sins.[70] Meanwhile, the emphasis on priestly powers and authority clarified the material in *De penitentia* D.6. Gratian quoted Pseudo-Augustine in describing the qualities of a good priest, but the rest of the *Decretum*, particularly D.50, show that Gratian could not conceive of a morally good and competent priest who had not been properly ordained. Ordination is the absolute pre-requisite for administering penance. Only the most extreme circumstances allow one to confess to a layperson. In all other cases, one must confess to a priest who has received his *potestas* and the *executio potestatis* from the bishop. Normally that priest is one's *sacerdos proprius*; when one's *sacerdos proprius* exhibits failings of discernment to such an extent that he endangers one's soul, one may then, and only then, proceed to another priest who possesses the power to administer penance. The ecclesiastical structure should coincide with the existence of good, wise, and discerning priests. Stress on the latter cannot weaken or threaten the former. Rather, the latter should be sought within the bounds of the former. With this in view, one should not be surprised that Gratian chose to write a treatise on penance, a treatise that could educate priests and assist them in becoming wise and discerning in penitential matters. The more priests gained understanding into penance and their power to bind and loose, the less often parishioners would have been compelled to step outside ecclesiastical norms and confess to a priest who was not their own.

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[70] The overlap of material outside of *De penitentia* with both the first and the second positions in *De pen.* D.1 gives further credence to the theory put forward at the end of chapter 1. Gratian was not producing an argument between two mutually opposed positions. He was in fact creating an argument between two hypothetical positions, both of which positions he formulated based on ideas taught in the school of Laon. Gratian had such difficulty choosing between the two sides because he saw truth in both of them, and he saw truth in both of them because elements of both were part of his education, out of which he created this hypothetical debate. He just as truly saw God as the life of the soul, whose presence presupposes the remission of sins, as he saw priests as integral and essential to the process of penance and the remission of those same sins. As this chapter has shown, both points find resonance outside of *De penitentia*.

De penitentia served to help already ordained men, who already had the power and even the right to administer penance, become the wise and discerning priests described by Pseudo-Augustine so that they might effectively minister to penitents and ensure that those penitents did not fall blindly into a pit.

The final area of main thematic overlap between *De penitentia* and the extra-*De penitentia* penitential texts lies in the emphasis on true penance and the insistence on that alone as the determinative factor in making penance effective, both in God's eyes and in the church's. In addition, no external circumstances should be allowed to inhibit true penance. Much of *De penitentia* D.1, D.3, D.7, and all of D.5 focus on the nature of true penance. True penance means having a contrite heart; it means abandoning sin and turning to God and righteousness; it means repenting of all present sins of which one is aware. True penance is always possible, because it is the work of God, who is all-powerful and merciful. True penance is not inhibited by such external factors as the absence of a priest or the lack of time to perform the normal satisfaction. God accepts the sinner as his own whenever the sinner turns to him in repentance (Ezekiel 33:12). The same principles governed Gratian's treatment of concrete cases. As seen in D.50, the determining factor in whether a fallen priest may be reinstated is true penance. The penance must be from the heart, not motivated by personal ambition or fear of loss of reputation. Gratian also signaled the necessity of true or worthy penance in C.27 q.1. When discussing the possibility of the return of a nun to her habit after a marriage, he stated that the canons that prohibit holy virgins who marry and whose husbands are still alive from being admitted to penance should not be understood to exclude them from

penance when they desire to do penance worthily.[71] No, those who want to perform true and worthy penance should and must be admitted to penance. His next statement showed that the worthy penance would entail abandoning the marriage and returning to "the habit of her profession," that is, returning to her life as a nun living under her vow of chastity.[72] In other words, true penance involves the complete desertion of all things associated with the sin, a sentiment in concurrence with *De penitentia*. Gratian then specified that the woman's husband does not need to be physically dead before such penance can occur. Canons which suggest this really are speaking of spiritual death, a renunciation of the things of the world, including marriage and sexual relations.[73] In other words, as long as a nun who married truly repents by abandoning all that her vow of chastity forbids, she may be admitted to penance and welcomed back to her life as a *religiosa*. Gratian refused to allow some external circumstance, including the fact of her husband still being alive, to stand as a stumbling block to penance. If such an external circumstance can inhibit penance, then Ezekiel 33:12 is false and God does not allow the sinner to live at whatever hour the sinner turns to him.[74] True penance resides in the heart and the personal abandonment of sin. Such cannot be

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[71] C.27 q.1 d.p.c.43: "Illud autem Innocentii, quo uirgines sacrae publice nubentes, illo uiuente, cui se coniunxerant, prohibentur admitti ad penitenciam, non ita intelligendum est, ut aliquo tempore excludantur a penitencia que
digne penitenciam agere uoluerint."

[72] Ibid.: "Sed prohibentur admitti ad penitenciam que ab incesti copula discedere noluerint. Post propositum namque sacrae religionis non potest Deo per penitenciam reconciliari que ad habitum professionis suae redire neglexerit."

[73] Ibid.: "Tunc enim ille, cui se iunxerat, ei defunctus erit, cum ab eius illicitis amplexibus hec penitus recesserit, ut iste sit sensus capituli: 'Que Christo spiritualiter nubunt, si postea publice nupserint, non eas admittendas esse ad penitenciam censemus, nisi hii quibus se iunxerant, de mundo recesserint,' eis, subaudiendum est, nubentibus. Tunc enim uiri de mundo recedunt, tunc defunguntur, cum ab eorum concupiscentia ipsae penitus se alienauerint, sicut mundus ei dicitur mortuus, quem suis illecebris non astringit, et ille perhibetur mortuus mundo, qui nichil mundi concupiscit."

[74] Ibid.: "In utroque autem, nisi sic intelligeretur, esset contrarius Domino, dicenti per Prophetam 'In quacumque hora peccator conuersus fuerit, etc.' et cunctis interpretibus diuinae legis inueniretur aduersus."

hindered by external factors, whether it be the health of an illicitly-gained husband or the absence of a bishop or priest, none of which the penitent can control.

In this case, *De penitentia* served as a guide to what true penance is. The ecclesiastical hierarchy must be able to recognize true penance and distinguish it from false penance. It can only do this if its members are educated in the nature of true and false penance. In the examination of D.50 above, it became clear that the strength of the structure of the church through the determination of who may fill its ranks depends upon the ability to identify true penance. Additional parts of the *Decretum* and *De penitentia* as a whole show that, for Gratian, the entire governance of the church in its multivalent aspects, orders, and institutions depends upon the ability to identify true penance. Without this ability, the priesthood becomes filled with ungodly and ambitious men, monasteries become inhabited with men and women who have not truly renounced the world and the things of it, and churches become attended by laypeople who are not committed to the faith and who take the sacraments unworthily. The result would be not only the weakening of the foundations of the church in this world but also the damnation of more and more souls, for without penance and proper priests who know how to administer penance, no one can be saved. His *distinctiones* and *causae* did not offer Gratian the opportunity to present this ultimate result, but *De penitentia* did. It was there that he could warn that God in no way accepts false penance; it was there that he could lay out the fate of eternal torment for the reprobate; it was there that he could equate the reprobate with those who once had love and then lost it, with those who once performed true penance and then abandoned it; it was there that he could sound the

alarm against incompetent priests who would lead their parishioners into the pit of hell. On the flip side, it was there that Gratian could most fully offer and explain the hope of true penance. The *distinctiones* and *causae* allowed Gratian to give examples of how a person's earthly life in the church is affected by true penance; *De penitentia* allowed Gratian to elucidate the eternal rewards of true penance and persistence in it. In brief, *De penitentia* served to create a theological framework within which the nature of true penance could be learned and the gravity of false penance and glories of true penance could be grasped.

Finally, the totality of penitential texts in the *Decretum* is notable for what is does not contain: a series of tariffs. Gratian's *Decretum* contains nothing comparable to the nineteenth book, dubbed "The Corrector," of Burchard of Worms' *Decretum*. Gratian did not provide the priest with explicit instructions on how to question those confessing to him; nor did he provide a listing of sins with the appropriate satisfactions. Gratian apparently had no desire to reproduce or re-formulate the penitentials of previous centuries. He was no radical; he assumed their continued usage and accepted their validity. Nowhere did he disparage them; quite the opposite, he quoted several canons that gave a prescribed length of penance for a particular type of sin. C.26 q.7 c.16a in Fd and Aa, prescribing a five-year penance for those who practice sorcery, is but one example. The absence of an exhaustive list of tariffs means that Gratian did not intend to create a canonical collection to overrule and replace all others. He was not trying to create a book that would make all other canonical books unnecessary. The organization of his *secunda pars* into *causae* made such exhaustiveness a near impossibility. The lack of tariffs, the failure to include a penitential, demonstrates that he

never meant it to be even a possibility. He devoted great attention to matters of penance but trusted the old penitentials to serve their purpose. He had no reason to alter them. His treatment of penance, both in *De penitentia* and out, was intended to do something else. The examination of the extra-*De penitentia* texts on penance has provided significant insights into the purpose of *De penitentia* and its function within the *Decretum*, while the absence of a compilation of tariff penances suggests that the purpose of the *Decretum* as a whole was not the composition of an all-encompassing, exhaustive canon law book. But to understand the treatise's purpose and function more deeply and to begin to understand the purpose of the *Decretum* as a whole, inclusive of *De penitentia*, one must understand more fully its author, specifically in terms of his roles as student and then teacher.

CHAPTER 7

FROM *DISCIPULUS ANSELMI* TO *MAGISTER CLERICORUM*

The *Tractatus de penitentia* has always garnered attention for its uniqueness in the *Decretum* and its unusual placement within the thirty-third *causa*, but the questionable attribution of it to Gratian himself until the mid-1990s stifled any attempts to draw conclusions about Gratian from it. The ambiguous thought process among modern scholars has run along the following lines: If Gratian was the author, then he was a theologian as well as a canonist, but we cannot be sure of this and such a dual identity is difficult to process;[1] if he was not the author, then he had no original theological thought and his successors in Bologna, such as Rolandus and Omnebene, stepped far afield from their predecessor by composing theological works as well as canonical.[2] If he was the author, he had some

[1] In her manuscript studies which led her to posit most of *De penitentia* D.1 and DD.5-7 as written by Gratian and original to his text, Jacqueline Rambaud noted that DD.2-4 are simply too theological for a practical canonist such as Gratian. Cf. "Le legs de l'ancien droit: Gratien," in *L'âge classique 1140-1378*, ed. Gabriel Le Bras, Charles Lefebvre, and Jacqueline Rambaud (Histoire du droit et des institutions de l'Église en Occident 8; Paris, 1965), 85-86. Chodorow took the view in his introduction that Gratian did not author *De penitentia*. He curiously proceeded to use the treatise in great measure to analyze Gratian's thought. He seems to have taken the position of Fischer, that, even if Gratian was not the author, the treatise became part of the *Decretum* so early that one can assume that Gratian agreed with its positions and arguments. He followed Rambaud in discounting Gratian's authorship of at least most of *De penitentia*: "It is too theological to be considered the work of Gratian" (*Ecclesiology*, 13). Cf. Fischer, "Bussgewalt, Pfarrzwang und Beichtvater-Wahl," 192. Stephan Kuttner found no such incongruity between Gratian the canonist and Gratian the theologian. Kuttner correctly viewed Gratian as important for the development of the field of theology and a person whose thought should be weighed not just against theological compilers but also against theological dogmaticians. Cf. "Zur Frage der theologischen Vorlagen Gratians," ZRG Kan. Abt. 23 (1934): 245.

[2] David Luscombe offered an account that suffered from personal ambivalence on the issue of Gratian's authorship of *De penitentia* as well as an incomplete knowledge of the treatise. He judged Gratian, whether author of *De penitentia* or not, as lacking theological acumen but noted the apparent disparity between this and the fact that his students were well-versed in contemporary theology: "Gratian has never led his modern students to credit him with great theological originality or depth….He inaugurates the age of the masters of canon law rather than ends that of the theologian-canonists. On the other hand, his two disciples, Roland and Omnebene, were most conversant with contemporary French theological teaching….Yet, if we could only judge Roland and Omnebene, as we have to judge Gratian, by their canonical writings, we should similarly know little about their interest in contemporary theological thought or about Abelard's influence in the schools of Bologna"

connections somehow to the schools in northern France, although he did not seem to know Peter Abelard or Hugh of St Victor's works directly;[3] if he was not the author, he appears more like a purely local figure engaged in the teaching and practice of canon law in northern Italy who may also have been involved in the papal politics of the schism of the 1130s.[4] Knowing that Gratian was the author of *De penitentia* clears away some of these ambiguities, especially once the content of *De penitentia* is given due attention. The examination of that content, particularly Gratian's own words, yields an overwhelming impression: the dominance of the school of Laon in Gratian's thought, concepts, terminology, exegesis, and methodology. This mountain of internal evidence along with chronological considerations and the educational trends of the period lead one to accept as highly probable that Gratian did study in northern France, possibly under Anselm of Laon himself.

De penitentia not only provides clues to Gratian's past and his intellectual formation as a student, it also sheds light on his later work as a teacher. In Gratian's time, being a student was just as much about imitation of one's master as accumulating a body of

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(*The School of Peter Abelard: The Influence of Abelard's Thought in the Early Scholastic Period* [Cambridge: Cambridge University Press, 1969], 221-22).

[3] Luscombe noted in consideration of *De penitentia* and some other more theological portions of the *Decretum*, "Gratian does appear occasionally in his *Decretum* to have been aware of the theological questions which were being raised in northern France in the second quarter of the century and possible parallels do exist between some of his authorities and opinions and some of those employed by Abelard and by the Victorine school. But a direct utilization of their writings is not proven and their influence always appears somewhat remote" (*School of Peter Abelard*, 221).

[4] Chodorow admirably attempted to set Gratian and his work in a broader context, in particular the politics of the papal curia, led on one side by Chancellor Haimeric, which led to the papal schism of the 1130s between Innocent II and Anacletus. Any possible connection to the theological schools of northern France fell outside his purview, but the failure to suggest any such connection may in part have stemmed from his deep doubt as to Gratian's authorship of *De penitentia*. For a critical review of Chodorow's book and skepticism over the political connections Chodorow attempted to make, cf. Robert L. Benson, Review of *Christian Political Theory and Church Politics in the Mid-Twelfth Century: The Ecclesiology of Gratian's Decretum*," by Stanley Chodorow, *Speculum* 50:1 (1975): 97-106.

knowledge; on the whole, students studied under a master in order to become like that master. In most cases, this meant becoming able administrators in the church, just like many of their masters were; in other cases, this meant becoming a master oneself; in some cases, it meant both.[5] *De penitentia*, contained within Gratian's great textbook of canons and organized in a classic, early scholastic way according to *questiones* to be argued from both sides, shows that Gratian became a master who to some extent taught theology as well as canon law. Gratian did not compose *De penitentia*, then, as a work of personal reflection but as one intended to hand down knowledge to another generation of clerics. Understanding *De penitentia* as a teaching text and, more than this, a pastoral text in that it was used in the instruction of clerics, many of whom would receive the office of the *cura animarum*, opens the way to uncovering Gratian's purpose in composing all of the *Decretum*, inclusive of *De penitentia*. Without the treatise, the *Decretum* has an entirely different flavor.[6] With the

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[5] Mia Münster-Swendsen, "The Model of Scholastic Mastery in Northern Europe c. 970-1200," in *Teaching and Learning in Northern Europe, 1000-1200*, ed. Sally N. Vaughn and Jay Rubenstein, Studies in the Early Middle Ages 8 (Turnhout: Brepols, 2006), 307-42 wrote about the affective bond between master and disciple that assisted the master in teaching his disciple as an instructor in conduct as well as knowledge: "The love relationship between teacher and pupil was a deliberately cultivated construct to further an education whose ultimate goal was more than a transference of literary and scientific skills; it sought to recreate the whole man, perfect in both learning and conduct" (317). She also noted the eventual equality between the two when the disciple truly did become like his master: "The student should wish to emulate his teacher, even to become like him, as if another self. But in the end he would also become his equal: a master himself" (330). Other essays in Vaughn and Rubenstein's volume emphasize the practical learning that occurred in the schools (they focus on monastic schools). The students were trained to become bishops or abbots or lower officials. Their masters were models not only of biblical, patristic, or canonical erudition but also of administrative competence. Cf. Sally N. Vaughn, "Anselm of Bec: The Pattern of his Teaching," in *Teaching and Learning*, 99-128, and Bruce C. Brasington, "Lessons of Love: Bishop Ivo of Chartres as Teacher," in *Teaching and Learning*, 129-48. On the administrative and even political career of Anselm of Laon and also William of Champeaux, cf. Clanchy, *Abelard*, 72-75.

[6] Chodorow recognized this, and this recognition coupled with his belief that neither *De penitentia* nor *De consecratione* was penned by Gratian led him into agreement with the majority of twentieth-century Gratian scholarship against Rudolph Sohm's sacramental interpretation of the *Decretum*: "When stripped of the *Tractati* [sic] *de consecratione* and *de penitentia*, the Decretum becomes very much a work concerned chiefly with the

treatise, the *Decretum* becomes more than a canonical collection that can be used to teach ecclesiastical canons and decide ecclesiastical cases; it becomes a vehicle for the reform of the governance of the church through the instruction and formation of its officers, through the creation of a clergy that lacks *ignorantia* and is marked by *scientia* and *discretio*.

Gratian: *Discipulus Anselmi*

The Confused Image from the Historiographical Landscape

No extant document or letter records Gratian studying in northern France, let alone being a student of Anselm of Laon. Nonetheless, many scholars have put forward theories about Gratian's relationship to the French schools. Shortly before his death, Southern postulated that Gratian was a practicing lawyer-turned-scholar in Bologna who, in the early or middle years of his career, made a trip to the schools of northern France, there becoming familiar with some of the theological topics and debates of the day.[7] With his ambivalence about Gratian's authorship of *De penitentia* and his somewhat surface reading of the treatise itself, Luscombe surmised that Gratian gained indirect knowledge of the substance and general trends of teaching in northern France, either through oral reports by French visitors to Bologna or through some anonymous master of theology in Bologna who had studied in France.[8] Thus, for both Luscombe and Southern, Gratian possessed only a cursory knowledge of the teaching of the schools, which could just as easily be explained through oral reports as through brief, personal visits.

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theory and practice of ecclesiastical government. Sohm's position has become untenable, even if it could, at one time, have been taken seriously" (*Ecclesiology*, 13-14).

[7] *Scholastic Humanism and the Unification of Europe*, 2 vols. (Oxford and Cambridge, MA: Blackwell, 1995/2001), 1.287.

[8] *School of Peter Abelard*, 221.

These assessments have not been based on close examinations of sources; on that front the early 1930s proved to be fruitful. In 1931, Gabriel Le Bras re-affirmed and strengthened a nineteenth-century discovery: Gratian used Alger of Liège's *De misericordia et iustitia* in the composition of his *Decretum*. Le Bras argued that Alger's methodology of reconciliation and inclusion of canons and *dicta* most likely influenced Gratian.[9] While not connecting Gratian to any particular school, Le Bras's article nevertheless established a connection between Gratian and a rather obscure, northwestern European, early twelfth-century text that has no extant manuscripts in Italy and that no other contemporary of Gratian quoted.[10] A year later, Franz Bliemetzrieder published an article entitled "Gratian und die Schule Anselms von Laon," an article that was quickly and strongly countered two years later in one by Stephan Kuttner, who suggested a connection with Hugh of St Victor rather than Anselm of Laon.[11] To understand the dynamics of the debate appearing in these two

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[9] Gabriel Le Bras, "Alger of Liège et Gratien," *Revue des Sciences Philosophiques et Théologiques* 20 (1931): 5-26.

[10] See the introduction to the critical edition in Robert Kretzschmar, *Alger von Lüttichs Traktat "De misericordia et iustitia": Ein kanonistischer Konkordanzversuch aus der Zeit des Investiturstreits. Untersuchungen und Edition*. Quellen und Forschungen zum Recht im Mittelalter 2 (Sigmaringen: Jan Thorbecke, 1985). One partial copy of Alger's treatise has survived in a manuscript in Parma (Parma, Biblioteca Palatina, Fondo Parmense 976), but this copy does not include the portions quoted by Gratian. The three, complete extant manuscripts are all in France or Belgium (Troyes, Bibliothèque municipale 443, Cambrai, Bibliothèque municipale 562, and Brussels, Bibliothèque royale 10611-14), as were three other manuscripts known to have existed at some point. Gratian's readings are closest to the Brussels manuscript which dates from the fifteenth century (157). The work was written between 1095 and 1121, but Kretzschmar could not narrow the dates any further (27). Cf. also Lotte Kéry, *Canonical Collections of the Early Middle Ages (ca. 400-1140): A Bibliographical Guide to the Manuscripts and Literature*, History of Medieval Canon Law 1 (Washington DC: The Catholic University of America Press, 1999), 272-73.

[11] Franz Bliemetzrieder, "Gratian und die Schule Anselms von Laon," *Archiv für katholisches Kirchenrecht* 112 (1932): 37-63; Stephan Kuttner, "Zur Frage der theologischen Vorlagen Gratians," ZRG Kan. Abt. 23 (1934): 243-68; repr. in idem, *Gratian and the Schools of Law, 1140-1234*, Collected studies series 113 (Aldershot: Variorum, 1980), 728-40 (III).

articles, one must look almost two decades earlier at the debate between their respective teachers, Rudolph Sohm and Ulrich Stutz.

Sohm's famous and famously denounced book, *Das altkatholische Kirchenrecht und das Dekret Gratians*, appeared posthumously in 1918.[12] Sohm presented an understanding of Gratian's *Decretum* rooted in a particular conception of history and the nature of canon law from the times of the early church. He understood that law as being "sacramental law" (*Sakramentsrecht*), a law free from the secular influences of Roman law and based entirely on the essence of the church. This canon law regulated the church from within as the body of Christ, governing the administration of the sacraments, which included ordination and thus various rules controlling who could become ordained and how an ordained person could be deposed and restored to office. In this period, canon law was a subsidiary field of theology, and all those who created canonical collections were primarily theologians. Sohm viewed Gratian's work as the culmination of this "old Catholic" or "old canonical" law and Gratian himself as the culmination of the old Catholic theologian who viewed the regulations of the church as a constituent part of the sacramental identity of the church. He found support for this assertion in the structure of the *Decretum*, which treated primarily ordination (*prima pars* through *secunda pars* C.26, dealing with qualifications, deposition, and restoration) and marriage (CC.27-36) and then also penance (*De penitentia*) and the other sacraments (*De consecratione*).[13] He railed against the prevailing notion of Gratian as the "Father of the

[12] Rudoph Sohm, *Das altkatholische Kirchenrecht und das Dekret Gratians* (Munich and Leipzig: Duncker & Humblot, 1918).
[13] Sohm was writing in a time when scholars had not yet been seriously tempted by the possibility that *De penitentia* and/or *De consecratione* did not stem from Gratian's pen; such developments in the scholarship came

Science of Canon Law," as someone who conscientiously founded a new juristic science next to and incorporating methods from Roman law, as someone who stood at the forefront of a new age rather than at the end of one. He rejected the identification of Gratian as a canonist with theological interests.[14] For him, Gratian was first and foremost a theologian.

Sohm's work received a quick and fierce rebuttal from one of the, in his view, culprits of the wrong understanding of Gratian, the eminent Ulrich Stutz, the founder of the *Kanonistische Abteilung* of the *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte*. Stutz had published an important article on Gratian's role in the law regarding proprietary churches in which he had made generalized comments about the nature of Gratian's work that confirmed Sohm's understanding of the prevailing view about Gratian's significance in the literature, especially since the nineteenth-century work of Friedrich von Schulte.[15] In his review of Sohm's book, Stutz criticized not only the underlying presuppositions of Sohm, his source-work, and his usage of the secondary literature (the only positive thing he could say was that Sohm's work was compelling from a literary or artistic point of view) but also Sohm's characterization of the dominant understanding of Gratian.[16] While Stutz's criticisms carried strong merit on most fronts, he to some extent confirmed Sohm's characterization of

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a few decades later, as is evidenced from the comments made at the beginning of this chapter. For Sohm's explanation of the divisions or structure of Gratian's *Decretum* (which even Stutz admitted could be correct), cf. idem, 26-35. That question deserves reconsideration in light of Winroth's discovery of the earlier recension.

[14] Idem, 1-18.

[15] Ulrich Stutz, "Gratian und die Eigenkirchen," ZRG Kan. Abt. 1 (1911): 1-33.

[16] Ulrich Stutz, Review of *Das altkatholische Kirchenrecht und das Dekret Gratians*," by Rudolf Sohm, ZRG Kan. Abt. 8 (1918): 238-46. In the first issue of the *Studia Gratiana*, Klaus Mörsdorf, "Altkanonisches 'Sakramentsrecht'? Eine Auseinandersetzung mit dem Anschauungen Rudolph Sohms über die inneren Grundlagen des Decretum Gratiani," *Studia Gratiani* 1 (1953): 483-502, explained the particular theological perspective out of which Sohm's final work stemmed. Stutz was correct in saying that, even if Sohm's understanding of the structure of the *Decretum* based on the sacraments was correct, that did not mean that Gratian shared the same understanding of sacramental law that Sohm did ("Review," 241).

his view when he claimed, "We all [i.e. the main scholars of canon law] have never evaluated [Gratian] as anything other than a theological canonist interested in law."[17] Precisely, Sohm would have countered. Stutz and his peers viewed Gratian primarily as a canonist who worked in theology as a side field or interest (*Nebenfach*) and adopted elements of secular (Roman) law, whereas the pre-Gratian collectors of canon law were primarily theologians who engaged canon law as a *Nebenfach*.[18] Thus a main part of the debate between the two men (or rather between Sohm and everyone else) was whether Gratian should be viewed primarily as a theologian or primarily as a canonist and only secondarily as a theologian.

Fifteen years later, a trend in Gratian scholarship was to look to the master's sources. As already noted, Le Bras re-examined the question of the usage of Alger of Liège. Meanwhile, Sohm's student, Bliemetzrieder, who had already published an edition of theological *sententie* from the school of Anselm of Laon, investigated a connection between Gratian's work on marriage and penance with those sentences. His article represented a continuation of the view of Sohm of Gratian as a theologian who considered canon law as a part of theology, but he was willing to identify Gratian partially, with qualifications, as a jurist or canonist.[19] From this perspective, he had no problem accepting the authenticity of

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[17] Idem, 240: "Wir alle haben ihn [Gratian] nie anders denn als juristisch interessierten theologischen Kanonisten eingeschätzt."

[18] Sohm, *Das altkatholische Recht*, 10-11.

[19] Bliemetzrieder nearly chided his scholarly predecessors and colleagues for treating Gratian exclusively as a canonist and his work as a mere canonical collection: "It is really a distorted image that does not correspond to the truth to describe Gratian's great three-part work as a collection of canons, an image that has become common in today's literature, namely canonical literature. (Es ist schon eine schiefe Vorstellung, welche der Wahrheit nicht entspricht, Gratians großes dreiteiliges Werk als eine Kanonensammlung zu qualifizieren, eine Vorstellung, die heute in der Literatur, namentlich der kanonistischen, allgemein geworden ist.)" (41) For him, Gratian himself conceived of canon law as a sort of practical theology that belonged under the umbrella of theology or dogmatics, generally speaking: "It is thus shown that Gratian was not exclusively a canonist and

De penitentia. In the article, Bliemetzrieder compared texts in Gratian concerning marriage to texts in the *Sententie Anselmi* (in current scholarship referred to by its incipit, *Principium et causa omnium*), which he had edited in 1919 and by 1932 acknowledged was most likely compiled by a student of Anselm, not Anselm himself. He unearthed similarities in concepts, terms, methodology, and exegesis between Gratian's *dicta* and the *Sententie Anselmi*. The similarities, he posited, were far too extensive to be explained by mere literary dependence; Gratian had to have had a personal connection to the school of Anselm. For whatever reason he stopped short of claiming Gratian had studied in Laon, instead proposing that Gratian studied under an Anselmian master in Paris (perhaps the compiler of the *Sententie Anselmi*) and then brought works from northern France back with him to Bologna that he subsequently used in his teaching.[20]

Bliemetzrieder's specific arguments tying the *Decretum* to the Anselmian sentence collection did not convince Kuttner. And even though Kuttner possessed an appreciation for the unity of canon law and theology in Gratian's person and work, he seemed determined to cut down any thesis stemming from Bliemetzrieder in the Sohmian tradition, just as his professor, Stutz, had rejected the work of Sohm himself. While Kuttner was willing to suppose a connection between Gratian and theologians in France, he was absolutely unwilling to grant the possibility that the school behind Gratian's theological formation was the one that Bliemetzrieder had suggested. The unintended consequence of this rivalry seems

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jurist but that he thought *ius canonicum* to be within the entire structure of theology in connection with dogmatics (Es zeigt sich also, dass Gratian nicht der ausschließliche Kanonist und Jurist war, sondern dass er sein ius canonicum innerhalb des Gesamtgebäudes der Theologie im Zusammenhang mit der Dogmatik dachte.)" (45)

[20] Ibid., 57-58.

to have been that his 1934 article on Gratian's theological sources contra Bliemetzrieder shut down any additional research connecting Gratian to the school of Laon and its theology (until very recently) and, concomitantly, any detailed research that took serious stock of Gratian's significance in the history of twelfth-century theology.[21] Kuttner encouraged more research on pre-Gratian theology before reaching any firm conclusions on possible connections between Gratian and the theological activity and schools in northern France, but he found Gratian's reliance on Hugh and Peter Abelard more likely than any dependence on Anselm of Laon. In fact, he found as highly improbable any relationship between the two, claiming that their work was temporally and textually too far apart.[22] So he encouraged research into a connection with Hugh and Abelard and not with Anselm of Laon, but, since there is nothing significant to be found there, research on Gratian's theological sources and background did not advance much over the following seventy years. Much like the central points of Sohm's work under the weight of Stutz's criticism, Kuttner's critique of Bliemetzrieder and his subsequent dominance in the field of canon law suppressed further reflection on Bliemetzrieder's work. Bliemetzrieder's hypothesis consequently fell into oblivion.

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[21] Kuttner may have had some valid criticisms of Bliemetzrieder's article, but he also unfairly characterized the argument Bliemetzrieder was making. Kuttner was especially critical of Bliemetzrieder's stance against any connection between Gratian and Abelard, and he deemed his colleague's work as particularly weak on research into textual sources. He also thought that Bliemetzrieder could not make any positive assessment of a relationship between Gratian's work and the *Sententie Anselmi*, which he dated to the early twelfth century, until he had definitively disproved any reliance by Gratian on temporally closer theological works, namely those of Abelard and Hugh of St Victor ("Zur Frage der theologischen Vorlagen Gratians," 253-55). Kuttner was fair in criticizing Bliemetzrieder's assessment of the reliance of *De penitentia* on the *Sententie Anselmi*. I have not found any significant overlap beyond terminology and arguments common for the period between the two works. Both Bliemetzrieder and Kuttner's articles suffer from the lack of early-twelfth-century works, particularly sentence collections, in print, a problem that has only partially been rectified in the succeeding decades.

[22] Kuttner, "Zur Frage der theologischen Vorlagen Gratians," 268.

Very recently, its central point – namely some connection between Gratian and the school of Laon – has begun to be resurrected. Without explicitly saying so, Anders Winroth has argued for dependence of Gratian's thought on marriage on that of Anselmian theological masters based off of some of the same texts Bliemetzrieder noted in his 1932 article.[23] Winroth maintained that identifying the precise treatise that Gratian used is virtually impossible and suggests that he may have based his comments on notes that he had taken while studying in the schools in northern France.[24] Meanwhile, Winroth stuck to the idea that Gratian may have studied under Hugh in the school of St Victor or at least was familiar with Hugh's *De sacramentis* (not completed until 1137).[25] Winroth's student John Wei has also affirmed some relationship between Gratian and at least the school of Anselm of Laon although he has made no attempt to situate Gratian himself in Laon or northern France. His work has focused on identifying Gratian's formal sources and thus has not analyzed Gratian's thoughts, methodology, and concepts but only his potential library. Through this

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[23] Winroth, "Neither Slave nor Free: Theology and Law in Gratian's Thoughts on the Definition of Marriage and Unfree Persons," in *Medieval Church Law and the Origins of the Western Legal Tradition: A Tribute to Kenneth Pennington*, ed. Wolfgang P. Müller and Mary E. Sommar (Washington DC: The Catholic University of America Press, 2006), 97-109. Winroth refers to the French work by an incipit, *Cum omnia sacramenta*. This work is included within the sentence collection which Bliemetzrieder edited and published as the *Sententie Anselmi* (it begins on p. 129 of Bliemetzrieder's edition).

[24] Ibid., 102: "I do not think there can be much doubt that, in defining marriage, Gratian's closest inspiration came from the thought of French theologians…. It is inadvisable and probably impossible to attempt to pinpoint exactly which treatise he might have used. The texts of these treatises are even more fluid than those of canonical collections…. Gratian probably did not have any one of these [treatises] in front of him. He might even have worked on the basis of his own notes and memories from the actual teaching of a French master in this tradition. Gratian's thoughts on defining marriage begin with what he learned from French theologians."

[25] Ibid., 103-105. The parallels which Winroth points to between *De sacramentis* 1.11.19 and the *Decretum* C.29 q.1 I find unconvincing. Essentially Hugh and Gratian both ask the same question (phrased very differently), both appeal in part to the distinction between the *error personae* and the *error qualitatis* to answer the question, and both identify a certain action as *dolus*. Since Winroth has not found an early-twelfth century treatise that could serve as a common source for both, he assumes that one person must have influenced the other, and, given his understanding of the dating of the *Decretum*, he has opted for Hugh influencing Gratian.

study, he has come to the conclusion that Gratian relied on Anselmian sentence collections circulating in northern Italy. He also confirms the research of others: despite the similarity in methodology with Peter Abelard and similarity in some topics discussed with Hugh of St Victor, no concrete textual evidence exists to posit a direct reliance by Gratian on either one of them. His conclusions make no requirement that Gratian ever studied in north-western France or even ever travelled there; one can imagine that Gratian sat in Bologna, reading, absorbing, and copying texts of the school of Laon that somehow made their way to Italy.[26]

And so modern scholarship on the man seeking concordance is left with a most discordant picture. A man sat down and wrote what the preceding chapters have shown to be a deep, thoughtful, complex theological treatise on penance. This man used the teaching methodology of the *questio* and the methodology of reconciling texts propounded by Peter Abelard and earlier in the school of Laon, he took stances on numerous theological topics taught in northern France by teachers who attracted students from all over Europe, he dealt with those topics in ways and with *auctoritates* very similar to the school of Laon, he followed the exegesis of the people responsible for the soon-to-be standard glosses on the Bible, and he composed this treatise within a broader work that drew on a virtually unknown treatise written in Liège. Despite all of this, he apparently had no direct connection to the masters or schools of France. The pieces of this puzzle simply do not fit.

A Closer Look at the Connection Between Gratian and the School of Laon

The analysis in preceding chapters of *De penitentia* reveals an immense amount of dependency on the school of Laon and no other. At the very least, Gratian should be

[26] Wei, "Law and Religion," 325, 332-33.

identified as a member of that school, that is to say, theologically educated in an environment informed by the teachings and methods of Anselm of Laon.[27] A review of some of the most pertinent evidence and some additional considerations about Gratian's usage of the *Glossa ordinaria* and the general historical trends of his day suggest that, more than being influenced by the school of Laon, Gratian could have studied directly under Anselm in Laon.

Besides the lack of an in-depth analysis of *De penitentia* in its entirety in previous scholarship and the doubt about Gratian's authorship of it until recently, the other stumbling block to theorizing that Anselm was one of Gratian's masters seems to be chronology. Even without Winroth's distinction of the first and second recensions, the classic date of 1140 for the completion of the *Decretum* has, for whatever reason, blocked off the possibility of a master-disciple relationship between Anselm and Gratian in the imaginations of scholars. As noted above, Kuttner found the two men temporally too distant for an influence of the former on the latter to be plausible. But is this so? Anselm of Laon died in 1117. He had taught for a good thirty years. As far as we know, Gratian died in the 1140s. Supposing he died at a relatively young age of 50 in 1145, his studying under Anselm in his late teenage years or early twenties would be entirely possible. Meanwhile, scholars have continued to try to find some reliance of Gratian on the works of Abelard and Hugh.[28] Whatever the date of the completion of Gratian's *Concordia discordantium canonum* in the stage preserved in Fd, Bc,

[27] As of 1992, Landau had found no evidence to place Gratian in anyone's theological school. In his terms, he could not identify a person in the realm of theology who had exercised the kind of influence on Gratian that Isidore of Seville and Ivo of Chartres had in terms of legal theory and canon law, respectively. Cf. Peter Landau, "Gratian und die Sententiae Magistri A.," in *Aus Archiven und Bibliotheken: Festschrift für Raymund Kottje zum 65. Geburtstag*, ed. Hubert Mordek, Freiburger Beiträge zur mittelalterlichen Geschichte, Studien und Texte 3 (Frankfurt a. M., 1992), 322. Repr. in idem, *Kanones und Dekretalen: Beiträge zur Geschichte der Quellen des kanonischen Rechts*, Bibliotheca eruditorum 2 (Goldbach: Keip, 1997), 172*.

[28] Wei also included Gilbert of Poitiers in his study in his dissertation.

P, and Aa, scholars can agree that Gratian must have been teaching and writing in the 1130s.[29] That means he was directly contemporary with Hugh, who completed his *magnum opus*, *De sacramentis christianae fidei*, in the mid-late 1130s, probably 1137. Peter Abelard was also writing in the 1130s, although he did compose many works, including his *Sic et non*, in the 1120s. The fact that Gratian did not know the written works of his direct contemporaries working in a different context and with a different purpose hundreds of miles away should not be surprising. At the same time, the similarities in methodology and material sources between Abelard and Gratian and the similarities in topics and sources between Hugh and Gratian must have some explanation. The explanation lies in the person of Anselm of Laon, the most consistent (as Southern points out, he taught thirty years without an accusation of heresy and apparently with only one man, Rupert of Deutz, finding him and his teaching abhorrent[30]) and therefore most influential teacher in the first quarter of the twelfth century. Anselm is the key to the mystery: he taught Peter Abelard in 1113 and taught William of Champeaux, the founder of the school at St Victor (c. 1108) of which Hugh would become master. Gratian shared so much with his contemporary masters in northern France even though he had no direct knowledge of them or their work because they all

[29] For a recent re-evaluation of the dating of the work and a conclusion that suggests a *terminus post quem* of June 1133, not the Lateran Council of 1139, for the completion of the stage preserved in Fd, Aa, Bc, and P, see my "Early Stages of Gratian's *Decretum* and the Second Lateran Council: A Reconsideration," BMCL 27 (2007): 21-56.

[30] Southern, *Scholastic Humanism*, 2.27. Clanchy, *Abelard*, 76 describes Anselm as a "reputed model of orthodoxy – except by eccentrics like Rupert of Deutz." Rupert did not acknowledge Anselm's status as a great master, but he wrote his *De uoluntate Dei* against what he perceived to be false teachings of Anselm and also Anselm's student, William of Champeaux, about God's will. Cf. John Van Engen, *Rupert of Deutz* (Berkeley: University of California Press, 1983), 191-200.

participated in a common intellectual heritage and education emanating from the person and school of Anselm.

The influence of the school of Laon on Gratian's theological thought makes itself evident throughout *De penitentia*, but the way in which Gratian used terms and ideas from Anselmian *sententie* makes clear that Gratian was not deriving his knowledge second-hand, by reading through and copying texts and opinions in front of him. His knowledge of the ideas was far more intimate. His own words are of the utmost importance in this respect. Wei based his conclusions off of an attempt to identify Gratian's formal sources for his *auctoritates*. Gratian's comments and analysis, however, constitute the locus for his own thoughts and thus for the revelation of the formative influences on them. His own words manifest a framework of thought shared with the Anselmian *sententie*. He went to the same material sources when discussing a particular topic. In dealing with Lucifer's former greatness, for example, he turned to Gregory the Great's *Moralia* and the section discussing Job 40:14 as well as passages in Ezekiel, the very same patristic and biblical texts that Anselm's students quoted on the same topic.[31] Gratian and a student of Anselm both quoted Psalm 87:11 – a verse that was not chosen by Hugh or Abelard – when discussing Lazarus' resurrection and a sinner's confession.[32] At times, the ideas and thoughts seemed to flow naturally out of his head without any recourse to written texts as when he used Anselmian ideas in different contexts and with application to different issues. For instance, Gratian utilized the Anselmian notion of the progress and nourishment of *caritas* or the stages of love

[31] See above, chapter 2. Gratian's quoting of Gregory appears in D.2 c.45. The Anselmian collections which follow the same pattern include the *Sententie Berolinenses* and the *Sententie Atrebatenses*.
[32] See above, chapter 1 on *De pen.* D.1 d.p.c.34 and *Sententia* 363 in Lottin's edition.

when interpreting texts about one-time penance.[33] Most strikingly, perhaps, Gratian applied to penance Anselm's own and apparently original teaching that those who approach baptism *ficte* will receive the internal/spiritual benefits of that external baptism when they acquire true faith. Gratian argued that, in a similar vein, those who perform penance (thinking here primarily of external confession and satisfaction) *ficte*, that is, without remorse for and without having confessed all current sins, do not need to repeat penance when true penance for all sins does arise in the sinner. Instead, the internal/spiritual benefits of that former penance at that point become realized for the penitent.[34] None of Gratian's contemporaries made such a point; his idea constituted a unique and original adaptation – a borrowing and re-application – of a teaching by Anselm himself. As Smalley noted for this period, "Borrowing always makes one scent a master-pupil relationship."[35] That Gratian borrowed from Anselm is indisputable; that he should somehow do so from Bologna in this period without being Anselm's pupil is highly implausible, especially given the fact that Anselm published nothing. Anselm taught; he did not write.[36] Somehow Gratian learned and absorbed what Anselm taught and developed an entire framework of thought on an array of theological issues that corresponded to that imbued at Laon. Gratian could not have done so

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[33] See above, chapter 3 on *De pen.* D.3 d.p.c.22 and *Sententia* 71 and *Sententia* 73 in Lottin's edition.
[34] See above, chapter 3 on *De pen.* D.3 d.p.c.44 and *Sententia* 57 in Lottin's edition (a sentence by Anselm of Laon as recorded in the *Liber pancrisis*).
[35] Beryl Smalley, *The Study of the Bible in the Middle Ages*, 3rd ed. (Notre Dame: University of Notre Dame Press, 1964), 49.
[36] On the fact of Anselm and other great masters of the period (including Anselm's student William of Champeaux) being unproductive in terms of writing and reasons for that, see Clanchy, *Abelard*, 76-80 and Smith, *The* Glossa ordinaria, 37. I do not mean to imply that Anselm did not write anything but rather that he did not compose any work, assign his name to it, and intentionally distribute it. A full assessment of Anselm's written work must await settlement of the issue of his authorship of various sections of the *Glossa ordinaria*.

from an oral report of Anselm's teaching or by reading a manuscript recording some of Anselm's sentences.

Moreover, Gratian's whole work depended on an approach to *auctoritates*, analyzing them linguistically and reconciling them through verbal and rational distinctions, that echoed that of *sententie* from the school of Laon. These *sententie* expressed an awareness and acknowledgment of divergences among *auctoritates*. A sentence that Lottin identified as one that may be by Anselm himself discussed the question of whether a lapsed priest can be reinstated (the issue that Gratian addressed in *prima pars* D.50). Like Gratian, this sentence noted an apparent disparity between *auctoritates*, with some saying that a priest who falls into sin cannot be restored to his office, a point that the examples of David and Peter counter. Using a local example to demonstrate his position, the author argued (like Gratian) that such prohibitions apply to those who offer "feigned penances" (*simulatas penitentias*).[37] In other words, if a priest offers true penance, he may be reinstated. In another sentence from Anselm's school, one that dealt with the question of whether the actual sins of fathers constitute the original sin of sons, the author likewise presented *auctoritates* (all scriptural) from both sides, noting that "in this question certain divine scriptures seem to disagree."[38] He then used Jerome to reconcile the passages, appealing to an *auctoritas* to find the unity in the discord. The Anselmian collection *Principium et causa omnium* pitted authorities against

[37] *Sententia* 221 (ed. Lottin, 140): "Errant qui negant sacerdotes Domini post lapsum posse restitui, cum Petrus post lapsum in apostolatum restitutus sit, Dauid post lapsum dixerit: *docebo iniquos uias tuas* (Ps. 50:15). Si alia auctoritas dicat eos non debere restitui, sane intelligenti nulla suboritur contrarietas. Vera quippe est prior auctoritas, Ezechiele testante: *Confundere* Iuda, *porta ignominiam tuam* et reuertere *ad antiquitatem tuam* (Ez. 16:52-55). Qui uero dixerunt non debere restitui bene dicunt, credo, quorundam simulatas penitentias experti. Ergo ubi metus iste non subest, bene restitui possunt. Quod euidentius est, si diuino aliquo indicio monstretur, sicut legitur de beato Remigio qui Genebaldum Laudunensem episcopum ita comprobatum restituit…."
[38] *Sententia* 330 (ed. Lottin, 257-58): "In hac questione quedam diuine <scripture> uidentur discordare."

each other on the issue of whether penance can always (or repeatedly) be done in this life. Just as Gratian often did not restrict himself to one solution, the author of this collection presented a couple different ways of reconciling the *auctoritates*.[39] When dealing with the question of whether the evil angels ever possessed *beatitudo*, the author of the *Sententie Atrebatenses* explained how Augustine could in one place say that they did and in another place that they could not. In a way reminiscent of Gratian's affinity for interpreting texts in terms of a perfected form of the entity involved, this author argued that the conflicting statements could be resolved with the idea of "the fullness of beatitude, the abundance of love" (*plenitudo beatitudinis, id est abundantiam caritatis*). Evil angels never possessed beatitude or love in their fullness or in their most abundant form.[40] To speak of a virtue generally is one thing; to speak of it in its perfected form is another.

Some modes of reconciliation were linguistic or grammatical in approach. The *Glossa ordinaria* on the Psalms (written by Anselm) acknowledged that words have different meanings, identifying a certain usage of *fides* by Ambrose as meaning *conscientia*, an awareness. As discussed above, Gratian replicated this understanding in *De penitentia* D.3, distinguishing that *fides* from the *fides* that without works is dead.[41] Another mode of reconciliation in the school of Laon involved logical distinctions based on a careful understanding of grammar and especially verb tenses. Like Gratian understanding the early *auctoritates* in *De penitentia* D.3 as referring to the same time as the actual penance based on the consistent usage of the present tense in the verbs, the author of the *Sententie Berolinenses*

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[39] *Sententie Anselmi* ed. Bliemetzrieder, 122.
[40] "Les *Sententiae Atrebatenses*," ed. Lottin, 212.55-60.
[41] See above, chapter 3 on *De pen.* D.3 c.41 and d.p.c.43 and the gloss on Psalm 118 (119).

used a keen sense of grammar to his advantage.[42] Without announcing as much, he appealed to a past contrafactual conditional to understand how Satan could be said to lose a beatitude that he never had (he maintained that Satan never possessed *beatitudo*). Satan is said to have lost it because he was going to gain it if he had not fallen, just as a priest is said to lose the episcopal dignity when he sins because he was going to achieve it if he had not lapsed.[43] A good understanding of grammar and dialectic, then, became an important tool in the school of Laon for resolving apparent conflicts between *auctoritates*.

A famous letter by Anselm of Laon to the abbot of St Lawrence in Liège substantiates that the reconciliation of authorities was an integral and self-conscious part of the education at Laon. In it Anselm explained that all *auctoritates* are in agreement even though they may sound contradictory, but many people struggle to find the consonance:

> Indeed the opinions of all Catholics run together in a diverse, but not adverse, way into one harmonious structure. In words, however, certain ones sound like, as it were, contradictions and disputes, in which small minds find a stumbling block, nimble minds are kept busy, the proud struggle, [and] the tried and true, who readily show to others who are faltering how the discordant sounds come together in harmony, stand out in prominence.[44]

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[42] Cf. above, chapter 3 on *De pen.* D.3 d.p.c.17 and d.p.c.21, particularly at n.12.

[43] *Sententie Berolinenses* (ed. Stegmüller, 43.24-29): "Si non habuit, quomodo amisit? Dicit enim beatus Augustinus in libro tertio super Genesim: 'Diabolus angelicae vitae dulcedinem non gustavit; nec ab eo cecidit quod habuit, sed quod fuerat habiturus.' Utpote dicitur alicui clerico qui aliquod crimen commisit: Hodie amisisti sacerdotium vel episcopatus dignitatem. Non tamen ideo sibi dicitur hoc, quod ille umquam habuerit illam dignitatem, sed quia habiturus erat, nisi crimen commisisset."

[44] *Sententia* 230 (ed. Lottin, 176.10-16): "Sententie quidem omnium catholicorum diuerse, sed non aduerse, in unam concurrunt conuenientiam, in uerbis uero sonant quedam quasi contrarietates et pugne, in quibus scandalizantur pusilli, exercentur strenui, contendunt superbi, excluduntur probati qui aliis languentibus expedite dissonantia consonare ostendunt." On the historical context of this letter, the last known writing by Anselm before his death, cf. Van Engen, *Rupert of Deutz*, 209-10.

While a certain level of reconciliation of authorities had been occurring in various circles for decades,[45] one should not be surprised if the man who entitled his work the *Concordia discordantium canonum* and brought such reconciliation to new heights studied under a man with such a developed sense of the relationship between ecclesiastical *auctoritates*, of human language's limitations and obstacles, and of the people who approach and study the *auctoritates*. In the history of scholasticism, this was the area where the school of Laon made its mark: it advanced "one area of scholastic pedagogy, the analysis and criticism of authorities."[46] In his methodology, Gratian was being a good student: imitating his master, who himself sought to bring harmony out of dissonance through the careful analysis of authorities. He also imitated many of the specific ways his master and school attempted to do so, appealing to true penance in cases of clerical discipline, to different meanings of the same word, to the fullness or perfection of entities in contrast to their limited or unperfected forms,

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[45] Charles M. Radding, *A World Made by Men: Cognition and Society, 400-1200* (Chapel Hill: University of North Carolina Press, 1985), 181 noted the inklings of reconciliation of potentially contradictory laws in the legal studies at Pavia in the eleventh century. Many scholars have pointed out the harmonization and, in particular, the usage of dialectical distinctions in the polemical writings of the Investiture Controversy. Cf., for example, Wilfried Hartmann, "Rhetorik und Dialektik in der Streitschriftenliteratur des 11./12. Jahrhunderts," *Dialektik und Rhetorik im früheren und hohen Mittelalter: Rezeption, Überlieferung und gesellschaftliche Wirkung antiker Gelehrsamkeit vornehmlich im 9. und 12. Jahrhundert*, ed. Johann Fried, Schriften des Historischen Kollegs, Kolloquien 27 (Munich: R. Oldenbourg, 1997), 73-95. In his *Distinktionstechnik*, Meyer pointed out the harmonizing activity of the late eleventh century and in people like Ivo of Chartres. Their reconciliation techniques and purposes were very under-developed in comparison to Abelard's and Gratian's. Oftentimes, their harmonization served as a way of organizing material, not so much resolving tensions and answering *questiones* of the scholastic sort (131-38). Gratian surpassed all his predecessors in terms of the scale and pervasiveness of his harmonization throughout his work as well as the variety of ways in which he accomplished reconciliation. For an overview of the harmonization intentions in the decades preceding Gratian, cf. also Orazio Condorelli, "Il *Decretum Gratiani* e il suo uso (secc. XII-XV)," in *Medieval Canon Law Collections and European Ius Commune*, ed. Szabolcs Anzelm Szuromi (Budapest, 2006), 177-80; Rosemann, *Peter Lombard*, 21-23.

[46] Colish, *Peter Lombard*, 1.42. A bit later, Colish added, "Well before Peter Abelard had formulated his famous rules for the analysis and evaluation of authorities in his *Sic et non*, the Laon masters indicate that they had already grasped and had learned how to apply the principles of authorial intention and historical criticism" (1.44).

and to logical distinctions based on grammatical nuances. In the *Decretum*, Gratian put this approach and methodology into practice more than anyone, even Abelard, as Abelard did not offer solutions in his questions/statements of *Sic et non*, only guidelines for reaching them in his prologue.

Another aspect of *De penitentia* that connects Gratian to the school of Laon and suggests a personal involvement with that school is its extensive usage of the *Glossa ordinaria*. In reality, to speak of "the *Glossa ordinaria*" during Gratian's lifetime is misleading; at this stage, it consisted of a series of glosses on individual books and/or sections of the Bible. As it was not yet complete or widely used (it would not be before the end of the twelfth century), it was not yet conceived as one coherent commentary on and guide to the interpretation of the Bible.[47] In other words, Gratian would not have thought of himself as quoting from "the Gloss," but as quoting from numerous glosses on certain portions of Scripture. Many scholars acknowledge Gratian's usage of it, but they pass over

[47] Smalley recounted the usage of the *Glossa ordinaria* by Robert of Bridlington writing in the 1150s (post Gratian). Robert referred to the *Gloss* on the prophets as "the glosses of Gilbertus Universalis." Smalley commented, "I would suggest that Robert must have been using the *Gloss* before it became known as a standard authority. He quotes it, not as 'Glosa', but as the glosses of Anselm and Gilbert the Universal – two of the scholars who compiled various portions of it" ("Gilbertus Universalis, Bishop of London (1128-34) and the Problem of the Glossa Ordinaria [2]," *Recherches de théologie ancienne et médiévale* 8 [1936]: 34). Cf. more recently the chapter on the Gloss in Guy Lobrichon, *La Bible au Moyen Age*, Les Médiévistes français 3 (Paris: Picard, 2003), 158-72; Margaret T. Gibson, "The Place of the Glossa Ordinaria in Medieval Exegesis," in *Ad litteram: Authoritative Texts and their Medieval Readers*, ed. Kent Emery and Mark D. Jordan (Notre Dame: University of Notre Dame, 1992), 5-27; Patricia Stirnemann, "Où ont été fabriqués les livres de la glose ordinaire dans la première moitié du XIIe siècle?" in *Le XIIe siècle: Mutations et renouveau en France dans la première moitié du XIIe siècle*, Ed. François Gasparri. Cahiers du Léopard d'Or 3 (Paris: Le Léopard d'or, 1994), 257-85. Lobrichon's chapter provides a good overview of the development and production of the Gloss, particularly in terms of its physical form, in other words its specific *mise-en-page*. Stirnemann attempts to locate the physical place of production of the glossed books.

the fact as interesting but not terribly significant.[48] In reality, Gratian's employment of the *Glossa ordinaria* in the early 1130s, if not earlier, is remarkable for its uniqueness. No one else in the period is known to have been using it.[49] Peter Lombard may have become aware of the gloss on the Psalms as early as the mid-1130s at Reims, which intellectual center housed masters who had studied under Anselm of Laon, or he learned about it from Gilbert de la Porrée after this master's arrival in Paris in 1137.[50] Whatever the case, Peter only

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[48] Charles Munier actually spent a bit of time looking at Gratian's usage of the *Glossa ordinaria* in his "À propos des textes patristiques du décret de Gratien," in *Proceedings of the Third International Congress of Medieval Canon Law. Strasbourg, 3-6 September 1968*, ed. Stephan Kuttner, MIC, Ser. C, vol. 4 (Vatican City, 1971), 43-50. He seemed most interested, though, in seeing when Gratian gave a unique interpretation of the tradition and when he compiled and drew on the interpretations passed through the school of Laon in the *Glossa ordinaria*. He concluded, almost as if this were a negative thing, that Gratian was usually content to rely on the interpretation of others. In his dissertation, John E. Rybolt also noted Gratian's usage of the *Glossa ordinaria*, and given the traditional dating for the two works and the apparent incompatibility of Gratian's usage of the latter, rightly concluded that individual books of the Gloss must have circulated earlier than it was welcomed into the teaching curricula in Paris ("The Biblical Hermeneutics of Magister Gratian: An Investigation of Scripture and Canon Law in the Twelfth Century" [Ph.D. diss., St. Louis University, 1978], 17-18). The acknowledgement of Gratian's usage of the glosses has not become mainstream, however, among scholars working on the *Glossa ordinaria*. In the most recent book-length treatment of the Gloss (Lesley Smith, *The* Glossa ordinaria: *The Making of a Medieval Bible Commentary*, Commentaria: Sacred Texts and Their Commentaries: Jewish, Christian and Islamic 3 [Leiden/Boston: Brill, 2009]), the usage of the Gloss by various authors receives extensive treatment; Gratian is not mentioned.

[49] Smalley found evidence for portions of the Gloss being in circulation, at least in northwestern France and England, by the late 1130s and for it being used by theologians (Robert of Melun, Peter Lombard) of the Parisian schools in the 1140s. Cf. Smalley, "Gilbertus Universalis (2)," 44-45.

[50] Smalley noted that there was some evidence to suggest a limited amount of copying of certain books of the Gloss in Paris prior to 1137, but only through the work of Peter Lombard and Gilbert de la Porrée did the glosses begin to be established as the standard glosses on Scripture to replace all others. Gilbert expanded the glosses on Paul and the Psalms (his version is known as the *media glosatura*); this must have occurred prior to 1117, for we know that he presented this expanded gloss to Anselm for correction (*causa emendationis*). The former standard account of the *media glosatura* being Gilbert's expansion of Anslem's gloss, the *parva glosatura*, has recently been emended. On the basis of Theresa Gross-Diaz, *The Psalms Commentary of Gilbert of Poitiers: From Lectio divina to the Lecture Room*, Brill's Studies in Intellectual History 68 (Leiden/New York: Brill, 1996), it is now widely believed (though not universally accepted) that the *parva glosatura* post-dates the *media glosatura* because the *parva glosatura* appears to be a re-working of an earlier, non-extant commentary and/or gloss on the Psalms by Anselm of Laon combined with material from Gilbert's own gloss (the so-called *media glosatura*). Peter Lombard, during the earlier years of his time in Paris (sometime between 1136 and 1143) produced an expanded version of Anselm's gloss; his work, which became even more authoritative on the Pauline epistles and the Psalms than Anselm's, is known as the *magna glosatura* (*Study of the Bible*, 64). Gilbert de la Porrée came to Paris to teach logic and theology at the cathedral school sometime around 1137 after having served as chancellor in Chartres. He became bishop of Poitiers in 1142. As his time as

worked on the glosses on the Psalms and Pauline epistles. Only from the late 1130s at the earliest is there evidence of individual glossed books or sets of books being produced and dispersed in northern Europe, while the rapid production and dissemination of complete and standardized sets of the *Glossa* dates only from the last few decades of the twelfth century.[51] Despite this rarity of knowledge and usage of the glossed books of the Bible in northern France itself, the very region of their inception and production, in the early 1130s, Gratian had access to and was making good and extensive use of many of them in northern Italy precisely during this time and possibly earlier in the 1120s. The most logical explanation for this is a close acquaintance with the school that produced these glosses, which resulted in Gratian acquiring copies of them, most likely through his studies in that school in northern France.

In addition, the portions Gratian used are the earliest portions written and the very portions which have traditionally been affiliated with certain individuals at Laon: Anselm of Laon for the Psalms, Pauline epistles, and possibly gospel of John; his brother Ralph for Matthew; and Gilbertus Universalis (Gilbert of Auxerre) for the Pentateuch and Major Prophets, including Lamentations, and possibly Joshua, Judges, and the Kings. Either Gilbert or Ralph, or both, might have been responsible for the gloss on the Minor Prophets.[52] While

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master in Paris coincided with the early period of Peter Lombard's time there as student, it is possible that Gilbert brought the glosses on these two sections of Scripture (however and wherever they had come to their final form) to Peter Lombard's attention. Rosemann, *Peter Lombard*, 43, made the suggestion about Peter first encountering the glosses in Reims. Cf. Christopher F. R. de Hamel, *Glossed Books of the Bible and the Origins of the Paris Booktrade* (Woodbridge, Suffolk, and Dover, 1984), 4-10.

[51] de Hamel, *Glossed Books on the Bible*, 4-5, 9-10.

[52] Smalley, *Study of the Bible*, 60-61, and idem, "Gilbertus Universalis, Bishop of London (1128-34) and the Problem of the Glossa Ordinaria," *Recherches de théologie ancienne et médiévale* 7 (1935): 259-62 and idem (2), 8 (1936): 30-34, 39-40, 48. Gilbert's glosses have recently received quite a bit of attention, especially with

the story is most likely far more complicated and a single authorial attribution for individual books or sections most likely obscures the truth of the matter (as Theresa Gross-Diaz's research on the Psalms suggests), no evidence has yet been unearthed to mandate a radical alteration of this standard, albeit not soundly confirmed, account.[53] Gratian definitely drew from the *Glossa ordinaria* on the Pentateuch, prophets, and Pauline epistles. Specifically, in *De penitentia* DD.1-4, he quoted or paraphrased the *Glossa* on Genesis, Leviticus, Deuteronomy, the Psalms, Hosea, Jonah, Nahum, John, Romans, 2 Corinthians, Ephesians, 2 Timothy, and Hebrews.[54] He therefore quoted only those portions of the *Glossa ordinaria* whose authors have been most conclusively connected to the school of Laon and, in particular, the work of Anselm and Gilbert. While many questions remain, it seems reasonable to claim that the portions used by Gratian were all composed prior to 1128, and

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the critical edition of the first chapter of his Lamentations commentary: Alexander Andrée, *Gilbertus Universalis Glossa ordinaria in Lamentationes Ieremie Prophete Prothemata et Liber I: A Critical Introduction and a Translation*, Studia Latina Stockholmiensis 52 (Stockholm: Acta Universitatis Stockholmiensis, 2005). Cf. also E. Ann Matter, "The Legacy of the School of Auxerre: Glossed Bibles, School Rhetoric, and the Universal Gilbert," *Temas Medievales* 14 (2006): 85-98. For the latest, most comprehensive review of the issue of authorship and the evidence for assigning a particular author to an individual glossed book, cf. Smith, *The* Glossa ordinaria, 17-38.

[53] Gross-Diaz, *The Psalms Commentary of Gilbert of Poitiers*. In his extensive research on the glosses on Lamentations (cf. preceding note) and John, Alexander Andrée remains cautious about attribution to specific authors, but, simultaneously, he has not found evidence that contradicts the standard account. Cf. Andrée, "The *Glossa Ordinaria* on the Gospel of John: A Preliminary Survey of the Manuscripts with a Presentation of the Text and Its Sources," *Revue Bénédictine* 118 (2008): 114-15, 304.

[54] Examples of places just within *De penitentia* include (for canons listed, I am agreeing with Wei's assessment as put forward in his dissertation; for *dicta*, the assessment is my own): D.2 d.p.c.44 for Genesis, D.4 c.13 for Exodus, D.3 cc.34-35 for Leviticus, D.1 c.5 and D.3 c.41 for the Psalms, D.4 cc.22-23 for Hosea, D.3 c.30 for Jonah, D.3 c.31 for Nahum, D.4 c.11 for John, D.4 d.p.c.7 for Romans, D.2 c.12 for 2 Corinthians, D.4 d.p.c.11 for Ephesians, and D.4 c.10 for 2 Timothy. For the comparison of *De pen.* D.3 c.43 to the *Glossa ordinaria* on Deut. 32:22, see Wei, "Law and Religion," 200-201. It is possible but cannot be proven that Gratian's formal source here was the *Glossa*.

many of them may have reached a highly-developed (though perhaps not final) form prior to Anselm's death in 1117.[55]

One scholar who has noticed the importance of the history of the *Glossa* and its connection to Gratian's *Decretum* is Titus Lenherr. His research has shown that issues of dating the compilation and dispersal of the *Glossa* in terms of its individual sections and also its various versions has important repercussions for the understanding of the dating and development of Gratian's *Decretum*. For sections within the *prima pars* (in the unit D.25 d.p.c.3-D.48) of the earlier version of the *Decretum* as appears in Fd, Bc, P, and Aa, he found quite extensive usage by Gratian of the glosses on the Psalms and the Pauline epistles. By looking at early manuscripts of these individual sections of the *Glossa*, not just printed editions, Lenherr discovered that Gratian used versions of the glosses on the Psalms and Pauline epistles that were prior to Gilbert's expansion of them.[56] In other words, Gratian's versions are traceable directly to Anselm of Laon; he had Anselm's gloss, not Gilbert's, and thus they dated from the first two, maybe three, decades of the twelfth century.[57] Wei has found a place in *De penitentia* in which Gratian seems to have quoted from an earlier version of the gloss on the Minor Prophets, Jonah specifically. A canon in the third distinction

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[55] The date of 11228 comes from the biography of Gilbertus Universalis. In that year he left Auxerre as master (which he had first become by 1110) and became bishop of London.

[56] Titus Lenherr, "Die *Glossa Ordinaria* zur Bibel als Quelle von Gratians *Dekret*: Ein (neuer) Anfang," BMCL 24 (2000): 97-129. Lenherr does not accept Gross-Diaz's revisions to the account of the sequence of the *parva* and *media glosatura*. I believe that their work can be reconciled and that, regardless of whether the *parva glosatura* is an expansion of Anselmian glosses pulling from Gilbert's already completed gloss or not, Lenherr has shown that Gratian's *glossa* leads back to an earlier version of the gloss.

[57]Cf. especially Lenherr's conclusions in idem, 116-18. Lenherr has been attuned to what manuscripts can tell us about the development of Gratian's text for a long time in his research. One area that he has examined is the omission or inclusion of *paleae* in early *Decretum* manuscripts. Cf. Lenherr, "Fehlende 'Paleae' als Zeichen eines überlieferungsgeschichtlich jüngeren Datums von Dekret-Handschriften," *Archiv für katholisches Kirchenrecht* 151 (1982): 495-507.

appears in none of the collections or works that Wei has judged to be Gratian's usual formal sources; nor does it appear in the *Glossa ordinaria* as later printed by Rusch in 1480/81. The canon, with the same beginning and ending and without major variants, does appear in an early manuscript of the glossed Minor Prophets.[58] While much more research can and should be done on this front working with early manuscripts of the *Glossa*, already it seems certain that Gratian possessed early versions of the glossed books of the Bible that he quoted – further evidence of a close relationship between Gratian and the school of Laon with Anselm at its helm.

The way in which Gratian used the glossed books on the Bible also distinguishes his knowledge of it. As can be expected for the period, he quoted from and drew ideas from the *Glossa* without referring to it as such or referring to its compilers (in his cases, Anselm of Laon, Gilbertus Universalis, and possibly Ralph). He used it both as a formal source for patristic *auctoritates* and as a guide to biblical exegesis.[59] In contrast with the earliest known users of the *Glossa* in Paris in the late 1130s and early 1140s, Gratian utilized a broad cross-section of it, and he used it in order to treat a topic, not further comment on or answer questions pertaining to a specific book of the Bible. Peter Lombard quoted the gloss on Ephesians when expanding it and creating his own gloss on Ephesians. Gratian drew on the gloss on Ephesians when he was answering the question of whether forgiven sins return. Gratian's usage, though earlier, was in fact more sophisticated, indicating a more

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[58] The canon is D.3 c.30. The manuscript is München, Bayerische Staatsbibliothek, lat. 16005, fol. 61^{v}. Cf. Wei, "Law and Religion," 196-97.

[59] On biblical exegesis in general in Gratian's day and the century leading up to it, including a consideration of what distinguishes monastic from scholastic exegesis, cf. Ambrogio M. Piazzoni, "Exegesis as a Theological Methodology Between the Eleventh and Twelfth Centuries," *Studi Medievali* 35:2 (1994): 835-51.

comprehensive awareness of the glosses' contents and thus a closer connection to their production. He knew where to look in the glosses to find support for what he was arguing at the time and oftentimes found support in sections that would not seem to have relevant comments. For example, he turned to two extensive sets of comments on Leviticus 10:16 in order to express what true penance is and the fact that God does not accept false penance. Someone would not do this unless he was thoroughly familiar with the contents of these glosses, likely through hearing lectures on these books of the Bible by the same people who compiled the glosses or others closely connected to them.

At times, one cannot be certain that Gratian's apparent usage of the *Glossa ordinaria* is in fact what it appears to be. For example, in D.1 d.p.c.34 when Gratian quoted Psalm 87:11 and related it to confession in a way that the *Glossa* also does, one cannot be sure that Gratian was in fact looking at the *Glossa*. After all, as mentioned above in chapter one, *sententie* from the school of Laon also quoted this verse in the same context as Gratian: confession and the raising of Lazarus from the dead. These *sententie* give evidence that Anselm cited this verse when lecturing on Lazarus' resurrection and/or on confession. Possibly, Gratian was similarly drawing on notes of lectures by Anselm of Laon that expressed ideas that also made their way into the gloss on the Psalms since Anselm compiled it. In short, both the definite usages of the *Glossa ordinaria* in *De penitentia* as well as similarities that suggest an awareness of the content of the *Glossa* but perhaps without specific reference to or quoting of it give support to the hypothesis that Gratian studied under Anselm of Laon.

The textual evidence for Anselm being a master of Gratian finds increased plausibility in consideration of the historical educational trends of the period. From the late eleventh century, masters and schools in northwestern France attracted students from all over Europe. These schools could be associated with a monastery (Bec), cathedral (Laon), or house of canons regular (St Victor). The masters who lured students away from home for advanced study in theology (*diuinitas*), dialectic, and law and in all practical knowledge related to ecclesiastical administration and business (*negotia*) included Lanfranc of Bec, St Anselm of Bec/Canterbury, Anselm of Laon, William of Champeaux, Peter Abelard, and Hugh of St Victor. Students could find basic education in the liberal arts, especially the *trivium*, close to home, but advanced education was an itinerant affair with students travelling around to find the best masters and the ones that most appealed to them personally in any given field. Most students seem to have returned to their homelands after their studies abroad, intent on becoming masters and/or rising in the ecclesiastical hierarchy back in their native regions. Therefore, since Gratian taught in Bologna, one can safely assume that he was native to northern Italy.

Did Italians follow the trends of the day and make the trek to northern France for study in theology? Milanese chronicles from the period provide evidence for this very thing. Writing in the last quarter of the eleventh century, Landulf of Milan assumed that a clerk who sought higher learning and training in the arts and theology would travel north to Germany, Burgundy, and France in order to gain advanced knowledge.[60] A few decades

[60] Southern, *Scholastic Humanism*, 1.268. In discussing the "rectors and masters" who insisted on the proper carrying out of the divine office, Landulf wrote of those in the choir who were devoted to the study of letters

later, Landulf of St Paul, a member of a prominent Milanese family, took three trips to France for advanced study (in 1103 to Orleans, in 1106-1107 to Tours and Paris, and ca. 1110 to Laon). As Southern observed, Landulf was a major figure in his city's politics, but his career "confirms a cheerful acquiescence in the scholastic superiority of northern France."[61] Italians of the period confirmed that they and their peers went north of the Alps and particularly to northern France for advanced study. Peter Lombard, who studied in Reims and then in Paris, was simply another, later example of someone who followed in the general practice of his fellow Italians.[62] Another example, slightly prior to Peter Lombard, was Odo of Lucca, a student of Hugh of St Victor, the author of the *Summa sententiarum*, and the person who brought the bright, young Peter Lombard to the attention of Bernard of Clairvaux. In short, studying theology in northern France would not be atypical but in fact quite typical for an Italian of the early twelfth century who was seeking advanced studies. Not studying *divinitas* or advanced secular letters (particularly dialectic) in northern France would be atypical. More than this, based on our current knowledge of education in northern

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and mentions that such study occurred in Burgundy or Germany or France: "…ut si aliquem chori Ambrosiani totius in Burgundia aut in Teutonica aut in Francia literarum studiis deditum invenires…" (*Historia Mediolanensis*, MGH SS 8, 71.2-3).

[61] Southern, *Scholastic Humanism*, 1.268. Landulf portrayed his time in Tours and Paris as a period in which he assisted and accompanied another Italian, Anselm of Pusterla. He mentioned studying in the school of Master William (William of Champeaux) in Paris: "Cum Anselmo [de Pusterla] namque per annum et dimidium Turoni et Parisius in scolis magistri Alfredi et Guilielmi legi, et legendo, scribendo multisque aliis modis Anselmo multam comoditatem dedi" (*Historia Mediolanensis*, MGH SS 20, 29.38-41).

[62] As Swanson noted in discussing the different character of education south of the Alps (*Twelfth-Century Renaissance*, 24), "In the twelfth-century, although there were prominent Italian scholars (like Peter Lombard), it is notable that they sought philosophical and theological learning outside Italy; there was no native tradition of such higher studies, and it seems not to have developed." The trend continued in the second half of the century; particularly noticeable were the number of Roman students in Paris who came from prestigious families and were expected to be competent enough to fill the ranks of the cardinalate. Cf. Peter Classen, *Studium und Gesellschaft im Mittelalter*, ed. Johannes Fried, MGH Schriften 29 (Stuttgart: Anton Hiersemann, 1983), 133-41.

Italy in the late eleventh and early twelfth century, advanced study of theology outside of northern France would be not just unusual but impossible – no evidence exists for masters of theology teaching in Italy during this time. That some theological reflection occurred in Italian schools and monasteries is to be expected, but that theological teaching there of the depth required to produce the theological acuity of Gratian is highly doubtful. In short, the historical context of the period in and of itself supports the hypothesis that Gratian studied theology in northern France.

While one cannot discount the possibility that some intermediate master in Italy or France between Anselm and Gratian existed, such a possibility remains a mute point until evidence of such a master should arise. Whatever consensus emerges on whether Gratian sat in the lectures of Anselm of Laon himself, one point is clear: Gratian belongs in the school of Laon. Histories of twelfth-century dogma and the schools merit revision, inserting Gratian as a member of the school of Laon. His methodology, exegesis, and terminology, as well as his framework for understanding certain topics and biblical passages and many of his specific positions were Anselmian. Gratian as theologian was the student, perhaps only intermediately but possibly directly, of Anselm of Laon.

Gratian: *Magister clericorum*

Anselm of Laon's students distinguished themselves in many arenas.[63] Gilbert of Auxerre studied under Anselm.[64] He became bishop of London in 1128 after a long teaching

[63] Ivo of Chartres has been thought to have been an early student of Anselm (Southern, *Scholastic Humanism and the Unification of Europe*, 1.252-54), but no concrete evidence exists that Ivo ever studied in Laon. Cf. Rolker, *Canon Law and the Letters of Ivo of Chartres*, 7. His education and teaching took place predominantly at St Quentin near Beauvais, the latter being a theological and legal center of sorts toward the end of the

career in Auxerre (since 1110), during which time he gained the reputation for universal knowledge, from theology to law (hence his nickname, Gilbertus Universalis). The other famous Gilbert on the continent at the time, Gilbert de la Porrée, studied under Anselm and made his way to Chartres in 1124, eventually becoming chancellor there, in charge of the cathedral's business. Sometime around 1137 he became master at the cathedral school in Paris before advancing to the rank of bishop in Poitiers. William of Champeaux also became a bishop (of Châlons-sur-Marne in 1113), but first he established a reputation for erudition and fine teaching, first at the cathedral school in Paris as archdeacon and then outside the city walls at the abbey of St Victor where he established a school in 1109.[65] Peter Abelard, perhaps the most famous (and, in some contemporary circles, infamous) of Anselm's students, though he studied under Anselm only briefly, became an abbot (of St Gildas-de-Rhuys), but he was renowned in his day for his learning, quick wit, and his skill as a teacher. These men followed the model of their master, Anselm, not only as able ecclesiastical administrators, but also as masters themselves.[66] Whatever the exact nature and course of

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eleventh century (Rolker, 89-92). Regardless of the location of his education, Ivo followed the pattern of a scholar/ecclesiastical administrator. If Bruce Brasington is right, Ivo should also be understood as a teacher, a master of the clerics under him at his cathedral, who instructed those clerics in the canons of the church and a pastoral appreciation of love (*caritas*) as the guiding force in all ecclesiastical affairs.Brasington, "Lessons of Love: Bishop Ivo of Chartres as Teacher," 136-38, 146-47.

[64] Smalley, *Study of the Bible*, 60. In her earlier articles on Gilbert, Smalley stopped short of calling him a student of Anselm, although she acknowledged it being a possibility. In her book, she did identify him as a student of Anselm in consideration of his borrowing from Anselm in his work and their common, though not necessarily coordinated, efforts in writing glosses that became part of the *Glossa ordinaria*.

[65] Several others of Anselm's students became bishops throughout Europe, from Britain to Italy. Cf. Clanchy, *Abelard*, 72.

[66] Describing Abelard as an able administrator may be a stretch. He had a reputation for lacking common sense. In addition, the events that initially forced Abelard into the refuge of the monastery of St Denis (his castration) indicate that he would not have voluntarily become a monk and hence an abbot under less extreme circumstances. Clanchy suggested that Abelard may have conjured up the story of the monks of St Gildas-de-

Gratian's ecclesiastical career (although it seems likely that he did rise to the episcopacy), he too became a master, and only within that context can one understand Gratian, the *Decretum*, and the *Tractatus de penitentia*.

The great books of the period were textbooks, originating in the lectures of their authors, intended for the instruction first and foremost of the master's own students. Gratian's *Concordia discordantium canonum* is no exception, and it is for this reason that Gratian's purpose in writing the *Decretum* is inseparable from his teaching. In other words, the *Decretum* is a record of Gratian's teaching, and its purpose is therefore irrevocably linked to Gratian's role as a *magister*. Though some have continued to doubt whether Gratian did in fact teach,[67] his work testifies that it originated in the classroom, and no scholar within the

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Rhuys plotting to kill him in order to cover up his failings there and justify his desertion (*Abelard*, 248). Guy Lobrichon also commented on the distinguished careers of Anselm's students. Cf. *La Bible au moyen âge*, 166.

[67] Southern, *Scholastic Humanism*, 1.303-304. Southern gave three reasons for thinking Gratian did not teach: (1) an early commentator on the *Decretum*, the author of the *Summa Parisiensis* called Gratian *magister* but said he was a master *antonomasice*, indicating, according to Southern, that Gratian never actually taught but was considered a *magister* because his work served to teach all those after him, (2) early glossators on Gratian's work did not claim to have been taught by him, and, in France, such tutelage under a great master was readily admitted and claimed, and (3) Lateran II c.9 prohibited monks from studying law in the schools. On the first matter, one cannot be sure what the author of the *Summa Parisiensis* intended by that term, but he could just be indicating that he himself was not taught by Gratian. On the second, one cannot expect practices in the French schools to compare to what was occurring in Bologna in the 1130s, and, given the number of anonymous students of all the French masters, I am not sure that one can claim students readily admitted to studying under famous masters (besides, Gratian did not seem to have enjoyed an international reputation until after his death). On the third reason, neither I nor Friedberg found Gratian quoting this canon, which in fact is a copy of a canon promulgated at both the Councils of Clermont (1130) and Reims (1131). Besides, the canon forbade monks and canons regular from learning (*addiscere*) and practicing civil law (*leges temporales*), not canon law. In addition, the objection was not to the subject matter, but to the worldly gain intended to be obtained through it (also prohibited was the study and practice of medicine for the same reason). Winroth has also specifically addressed Southern's rejection of Gratian's teaching activity. As he pointed out by quoting an entire statement of a *causa* (C.32), Gratian wrote *causae* that would be fascinating and memorable for students, and the *questiones* he posed pertaining to those *causae* were often not questions that would have been answered in a court of law for the settlement of the case. Instead they provided an opportunity for Gratian to teach and discuss what he wanted. Cf. Winroth, *Making of Gratian's* Decretum, 7-8.

specific field of medieval canon law doubts that Gratian taught.[68] The *causae* make no sense outside of a teaching context. A man intent merely on compiling and reconciling canons would not have compiled them in *causae*, which do not lend themselves to systematic organization but do lend themselves to instruction and to the engagement of students. Moreover the methodology of reconciling *auctoritates* and the pursuit of truth through *questiones* were marks of the schools of the twelfth century. At the end of *De penitentia* D.1, Gratian referred to the *lector*. While the term literally means "reader" and could refer to the master doing the lecturing, in the period it referred as well to the student, whose studies involved listening and reading.[69] As any master of the period would have, Gratian understood his students as his readers, those who would read the words of his teaching.

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[68] Kuttner reviewed the evidence and maintained that Gratian was indeed a master, rightfully so-called by the decretists, including one of his last students, Simon of Bisignano, who referred to Gratian as "my master" (*magister noster*) (so much for Southern's second objection in the above note). Cf. "Research on Gratian: Acta and Agenda," In *Proceedings of the Seventh International Congress of Medieval Canon Law*, Monumenta iuris canonici, Ser. C vol. 8 (Città del Vaticano, 1988), 6-7. Repr. in *Studies in the History of Medieval Canon Law*, Collected Studies Series 325 (Hampshire: Variorum, 1990), 1-26 (V). The emphasis that I make here on Gratian's role as a teacher is in keeping with some of the recent literature on Gratian and the development of the *Decretum*. Cf. Winroth, *Making of Gratian's* Decretum, 7-8, 144-45; Kenneth Pennington, "Gratian, Causa 19, and the Birth of Canonical Jurisprudence," in *"Panta rei": Studi dedicati a Manlio Bellomo*, ed. Orazio Condorelli (Rome, 2004), 4.351-355; Carlos Larrainzar, "La ricerca attuale sul 'Decretum Gratiani'," in *La cultura giuridico-canonica medioevale. Premesse per un dialogo ecumencio*, eds. Enrique De León and Nicolas Álvarez de las Asturias, Monografie Giuridiche 22 (Milan: Pontificia Università della Santa Croce, 2003), 78; and for a summary of this focus in recent literature, Orazio Condorelli, "Il *Decretum Gratiani* e il suo uso," 174-75.

[69] Landulf of St Paul said that he went to Tours and Paris with his companion, Anselm, to read (*legere*), and he assisted Anselm by reading and writing and in many other ways (*Historia Mediolanensis*, MGH SS 20, p. 29.38-41): "Cum Anselmo namque per annum et dimidium Turoni et Parisius in scolis magistri Alfredi et Guilielmi *legi*, et *legendo*, scribendo multisque aliis modis Anselmo multam comoditatem dedi." Peter Lombard used the same term, appealing to his readers/students not to apply a certain idea generally without discretion: "Attende, lector, his verbis, et cave ne de omnibus generaliter intelligas" (*Sent.* 4.15.3). As Clanchy noted, "At lectures master and students concentrated on reading the prescribed text. Depictions of masters teaching generally show them holding open a book, while the students hold similar (usually smaller) book in which they follow the text" (*Abelard*, 89).

Thus, Gratian was a teacher, and the *Decretum* was a teaching text. The question then becomes whom, what, and to what end Gratian taught. The first two are easy to answer in broad strokes: Gratian taught clerics, which is obvious since, for the most part, only clerics received education at a high level at the time; and Gratian taught ecclesiastical law and, to a certain extent, theology that, based on *De penitentia*, was mainly sacramental and pastoral in focus.[70] To answer the final question (pertaining to Gratian's purpose in teaching and writing the *Decretum*), a section of the *prima pars* becomes particularly relevant, especially when one keeps in mind the content and pastoral concerns of *De penitentia* and the content and structure of the rest of the *Decretum*.

In light of Gratian's status as a teacher of clerics, his thoughts on the education and learning of clerics become especially important. He put forward these ideas in the *prima pars* of the *Decretum*, DD.36-39. His comments usually pertained to both priests and bishops, though sometimes he narrowed in on bishops. Without any doubt, Gratian supported an educated clergy. He exhibited great anxiety over a clergy marked by *ignorantia* while fully advocating one marked by *scientia* and *discretio* or *prudentia*. This section of the *prima pars* thus overlaps with the crux of *De penitentia* D.6. In addition, Gratian envisioned a broad

[70] One cannot be sure whether Gratian predominantly taught local clerics, though this seems likely, given the lack of reference in chronicles and letters to students coming from all over Europe to study under Gratian as they did for Lanfranc, both Anselms, and Peter Abelard. In the next generation, Bologna attracted students of all nationalities for the study of civil and canon law, largely as a result of Gratian's work. His teaching may have been less widely famous because more locally centered, but the effects of it demonstrate its importance and potency. Southern wanted to see evidence of Gratian's teaching in the same way that he saw evidence of teaching in France, but the two contexts, as he himself admitted, were vastly different. Gratian may not have taught in the same circumstances and in the same format as Anselm of Laon and other French masters. Northern Italy had a different tradition of education, very practically and locally based. It took a couple decades for schools in this region to attract the attention of the rest of Europe. Gratian along with the tradition of teaching and scholarship he established there was one of the primary reasons why it did.

education producing a clergy that was learned in everything from secular letters (the liberal arts) to sacred letters (the Bible, the Fathers, and divine law) to practical administration and business (*negotia*). In short, Gratian supported an education program in keeping with his own experience as well as that of his most famous and prominent contemporaries but wanted to see that program participated in by all members of the clergy who would be ordained – any and all priests and bishops should pass through this program.

D.36 advocates intelligence and skill as proper and necessary characteristics of ordained men, making the specific point that such learning and development of skill needs to occur prior to ordination and, in particular, prior to the execution of the office of preaching. Gratian opened with a simple statement: "The man to be ordained should also be intelligent (or practiced, skilled)."[71] He insisted that this point must be made against those who "excuse the foolishness of priests in the name of simplicity."[72] In other words, some people abuse the concept of the virtue of simplicity, using it to defend stupidity: priests have no need of learning because they ought to be simple men, unattached to the things and ambitions of this world, devoted entirely to the love of God and service of the church. Gratian argued in this distinction that unlearned priests in fact constitute a disservice to the church. He first specified that the learning or skill of a bishop should be not only in letters (theoretical

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[71] D.36 d.a.c.1: "Oportet etiam esse ordinandum prudentem." The adjective *prudens* has many meanings indicating a generally sensible and intelligent person. It also is frequently used to describe a person skilled or well-versed in a particular field, such as law (hence *iurisprudens*, a jurist, someone skilled in the law). Giulio Silano discussed this term in his introduction to his translation of Peter Lombard's *Sentences* in relation to the usage of the term by William of Tyre in his *History* when describing his study under Peter in Paris. Silano's discussion is very helpful, and, given my argument here, one statement about Peter's purposes stands out: "It will not perhaps now seem unreasonable to suggest that the formation of such *prudentes* was the aim of Peter's *Sentences*" (Peter Lombard, *The Sentences, Book 1: The Mystery of the Trinity*, trans. Giulio Silano, Mediaeval Sources in Translation 42 [Toronto: Pontifical Institute of Mediaeval Studies, 2007], xxi).

[72] D.36 d.a.c.1: "Quod contra eos notandum est, qui sub nomine simplicitatis excusant stulticiam sacerdotum."

knowledge) but also in the dispensing of secular business.[73] After a couple canons, Gratian entered into a fairly long *dictum* reminiscent of parts of *De penitentia* as he weaved through biblical stories and verses. This *dictum* emphasized the necessity of ordained men to be skilled in sacred letters (*sacrae litterae*), which he identified with the truth (*ueritas*). Gratian turned to the ark of the covenant in the Old Testament, comparing priests and bishops, particularly in their capacity as preachers, to the Israelite priests responsible for carrying the ark on poles. The poles are like learning or knowledge in sacred letters – just as they must be in place before the ark is carried, so also priests must be educated before they preach. In addition, as the poles were never removed, lest there be a delay in preparing the ark to be transferred, so also priests should always be applying themselves to sacred letters, "lest they be seeking to learn at the time when they as a result of their office ought to be teaching others." Gratian referred to preachers as those "by whom the church is carried around."[74] He was comparing them to the Israelite priests carrying the ark, but this small phrase also indicates the importance Gratian assigned to priests, particularly in their preaching capacity: the whole church rests on their shoulders. Without priests learned in Scripture, the Fathers, and ecclesiastical law, the church falls to the ground and breaks to pieces. Gratian next cited biblical *exempla*, including David, Solomon, and Jesus himself. David first received the gift of knowledge (*donum scientie*) and then the administration of the kingdom.[75] Solomon asked

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[73] Ibid.: "Prudentem autem oportet episcopum intelligi non solum litterarum peritia, uerum etiam secularium negotiorum dispensatione."
[74] D.36 d.p.c.2 §1: "Hinc etiam uectes, quibus archa portabatur, iugiter annulis erant inserti, ut, cum archa esset portanda, nulla fieret mora de intromittendis uectibus, quia predicatores, per quos ecclesia circumfertur, sacris litteris semper debent insistere, ne tunc querant discere, cum ex offitio alios docere debeant."
[75] D.36 d.p.c.2 §2: "Hinc etiam Dauid prius ex gratia Spiritus sancti donum scientiae percepit, et postea regni administrationem assecutus est."

God for wisdom instead of riches and long life.[76] Jesus sat in the midst of learned men, listening to and questioning them; only then did he assume the office of preaching.[77] Gratian recalled as well the miracle of the feeding of the five thousand. He noted that Jesus first broke the bread, then gave it to his disciples, who then distributed it to the masses. These events signify that first Christ exposited and discussed the mysteries (*sacramenta*) of the law and prophets, then he gave his disciples the knowledge of these things, and finally he dispensed that knowledge to the faithful through the disciples.[78] This chain represents Gratian's understanding of the role of preachers: they spread the knowledge of divine things to the faithful after having learned it themselves. They are the mediators of divine knowledge to the church. Gratian's concluding statement leaves no doubt as to his thinking on this matter: "From all these things it is clearly gathered that a morally good way of life and honorable behavior are not sufficient for prelates unless the knowledge of doctrine is added."[79] *Scientia* is a requirement for priests; in particular, as preachers, priests must have a knowledge of Christian doctrine brought about through the learning of sacred letters. Without this sacerdotal *scientia*, the church faces danger because the faithful will not understand the faith of which they claim to be members. They will not receive the Bread of Life, and their very salvation, Gratian intimated, is threatened.

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[76] Ibid. §3: "Salomon quoque non diuitias, non longa tempora huius uitae, sed sapientiam a Deo petiit et inpetrauit."
[77] Ibid. §6: "Hinc idem saluator noster prius in medio doctorum sedit, audiens illos et interrogans, et postea predicare cepit, quia prius quisque debet discere, et postea predicandi offitium usurpare."
[78] Ibid. §9: "Unde cum de quinque panibus quinque milia hominum uellet reficere, prius panes accipiens fregit, et postea discipulis dedit, et per eos demum turbis apposuit, quia sacramenta legis et prophetarum prius disserendo exposuit, et postea eorum scientiam discipulis dedit, et tandem per eos illam fidelibus dispensauit."
[79] Ibid. §12: "Ex quibus omnibus liquido colligitur, quod non sufficit prelatis bona conuersatio et morum honestas, nisi addatur scientia doctrinae."

Gratian then treated the more contentious issue of the secular learning of clerics: should men to be ordained in the church be learned and skilled in secular letters (*seculares litterae*), in particular the *trivium*? In this distinction, Gratian set up more of a dialectical treatment, first posing a question and then arguing both sides.[80] First he provided *auctoritates* that deride secular learning. He began to sway in favor of secular learning with two biblical *exempla*, Moses and Daniel, who were learned in all the knowledge of the Egyptians and Chaldeans (Babylonians), respectively. He also made the typical reference to the Lord commanding the Israelites to take the gold and silver of the Egyptians with them when they fled under Moses; this incident had long been interpreted as God approving the usage of secular erudition by Christians as long as it is put to good use (e.g. the better understanding of Scripture).[81] Gratian knew he must explain why so many *auctoritates* seem to condemn secular learning: "Therefore why are things prohibited from being read for which it is so rationally proven that they ought to be read?"[82] His reconciliation focused on the intended end of such reading/studying, either pleasure or erudition, the latter aimed at enabling one to renounce errors and advance one's understanding of holy matters and texts.[83] The former

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[80] D.37 d.a.c.1: "Sed queritur, an secularibus litteris oporteat eos esse eruditos?"

[81] D.37 d.p.c.7 §2: "But against this, we read that Moses and Daniel were learned in all the knowledge of the Egyptians and Chaldeans. We also read that the Lord commanded the sons of Israel to despoil the Egyptians of their gold and silver, instructing us according to the moral sense of Scripture to discover either the good of wisdom or the silver of eloquence in the works of the poets [and] to turn it to the use of salutary learning. (Sed econtra legitur, quod Moyses et Daniel omni scientia Egiptiorum et Caldeorum eruditi fuerint. Legitur etiam, quod precepit Dominus filiis Israel, ut spoliarent Egiptios auro et argento, moraliter instruens, ut siue aurum sapientiae, siue argentum eloquentiae apud poetas inueniremus, in usum salutiferae eruditionis uertamus.)" The idea of the plundering of the treasures of Egypt as an analogy for mining what is good in secular learning and philosophy stems from Augustine's *De doctrina christiana* 2.144-48.

[82] D.37 d.p.c.8: "Cur ergo legi prohibentur, que tam rationabiliter legenda probantur?"

[83] D.37 d.p.c.8: "Sed seculares litteras quidam legunt ad uoluptatem, poetarum figmentis et uerborum ornatu delectati; quidam uero ad eruditionem eas addiscunt, ut errores gentilium legendo detestentur, et utilia, que in eis inuenerint, ad usum sacrae eruditionis deuote inuertant."

Gratian condemned – one should not read Livy in order to take joy in his eloquent turns of phrase. The latter Gratian endorsed: those who study and use secular learning to that end "laudably learn secular letters."[84] After a few more canons, Gratian revealed once more his pastoral concern.

The secular learning of priests was not important primarily for their own intellectual development or sanctification but for their competent care and guidance of the souls entrusted to them. Gratian expressed his concern in the same terms as he did in *De penitentia* D.6: the blind leading the blind into a pit. While that biblical reference did arise in an upcoming canon (D.38 c.5), this *dictum* in D.37 and Gratian's words commenting on Pseudo-Augustine in *De penitentia* D.6 constitute the only two places in the *Decretum* where Gratian himself alluded to this biblical image and concept. Here the context is the general *scientia* of priests; in *De penitentia* the context is the specific *scientia* of binding and loosing. For Gratian, the two were inseparable; no priest without broad *scientia* has the *scientia* to bind and loose, and a priest filled with general *scientia* possesses the *scientia* to bind and loose. Besides the fact that the reference to the blind leading the blind only appears in these two places in the *Decretum*, the unity of the two types of *scientia* in Gratian's mind is further emphasized by the mention of "the burdens of sins" upon the faithful here in D.37. First Gratian stated, "As it is thus apparent from the aforementioned authorities, the lack of learning ought also to be adverse to priests, since, when those blind through ignorance will

[84] Ibid.: "Tales laudabiliter seculares litteras addiscunt."

have begun to offer leadership to others, both fall into the pit."[85] Then he made clear that the real peril in such ignorance is that those following will be weighed down with their sin: "For when those who go in front are blinded, those who are following with ease are brought down to bear the burdens of their sins."[86] In other words, the priest full of *ignorantia* and lacking *scientia*, the very *scientia* that can be gained from secular learning, is unable to absolve his parishioners from their sin. The sin remains; the penance remains ineffective. The possibility of the faithful being unable to unload the burdens of their sins provides one of the primary reasons for the education of priests: "*Therefore* priests ought to take pains to cast ignorance aside like a certain pest."[87] Gratian viewed ignorance as a disease, threatening the health of the faithful and thus of the church itself. Gratian thus formulated two pastoral reasons for education, both sacred and secular: priests as preachers must be able to pass on the knowledge of divine things to the faithful, and priests as confessors must be able to bind and loose penitents from their sins.

Given the force with which Gratian defended the learning of priests as a prerequisite for being ordained but also as a continuous aspect of their lives and the concern that he exhibited for the salvation of those under priests' care, the opening statement of the next distinction should come as no surprise. Gratian stated, "While willful ignorance is harmful to all, it is dangerous for priests."[88] The subsequent canons promoted the knowledge of the

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[85] D.37 d.p.c.15: "Ut itaque ex premissis auctoritatibus apparet, inperitia sacerdotibus semper debet esse aduersa, quoniam, cum per ignorantiam cecati aliis ducatum prestare ceperint, ambo in foueam cadunt."
[86] Ibid.: "Cum enim obscurantur illi, qui preeunt, ad ferenda onera peccatorum facile sequentes inclinantur."
[87] Ibid.: "Elaborandum est itaque sacerdotibus, ut ignorantiam a se quasi quandam pestem abiciant."
[88] D.38 d.a.c.1: "Cum itaque uoluntaria ignorantia omnibus sit noxia sacerdotibus est periculosa."

canons (ecclesiastical law), liturgical books and penitentials, and of Scripture itself.[89] Gratian's previous arguments clarified that he did not believe such *scientia* was possible without a solid foundation in the secular learning of grammar, dialectic, and rhetoric. The final, very brief distinction of this section on the education and learning of priests advocated skill in secular business (*negotia*) since they have responsibilities related to the material as well as the spiritual needs of the church.[90] In sum, then, Gratian stood in favor of a broad education for clerics, and he expected priests and bishops to be intelligent, well-versed, and skilled in sacred and secular learning as well as administrative matters.

As a textbook from the pen of a *magister*, the *Decretum* should be understood as Gratian's intentional contribution to this program of learning for clerics. From this perspective, *De penitentia* is not out of place at all.[91] Gratian's intention was not to create a professional class of ecclesiastical jurists, even though that was the eventual result of his work; it was to educate clerics, many of whom would practice as canonists and judges in ecclesiastical courts but almost all of whom would have the responsibility to serve as pastors, as preachers, and as confessors. Gratian's students would have already had an education in the *trivium*; he advanced their learning, using grammar, dialectic, and rhetoric in order to

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[89] Originally, this *distinctio* consisted of d.a.c.1, c.1, c.3, part of c.4, c.5, c.8, c.9, and c.16 (Winroth, *Making of Gratian's* Decretum, 200). The fifth canon is quite well known, for it lists the books which a priest should own.

[90] D.39 d.a.c.1: "Nunc queritur, an secularium negotiorum oporteat eos habere peritiam? Hanc prelatis esse necessariam, multis rationibus probatur. Debent namque prelati subditis non solum spiritualia, sed etiam carnalia subsidia ministrare, exemplo Christi, qui turbas sequentes non solum uerbo docebat, sed etiam uirtute sanabat et corporalibus alimentis reficiebat. Ut autem prelati hec omnia plene perficere possint, secularium negotiorum oportet eos habere sollertiam, ut eorum cautela et ecclesiae seruentur indempnes, et cuique necessaria pro suo modo subministrentur."

[91] While I continue to doubt Gratian's authorship of *De consecratione*, I will note that that treatise also fits into this program of clerical education. The addition of it, even if not by Gratian himself, was fully in keeping with Gratian's intentions.

advance and deepen their knowledge of ecclesiastical law, doctrine, and Scripture. In addition, the employment of concepts and terminology from the *trivium* in order to deal (in a reverential way) with the great *auctoritates* of the church created a learning environment that welcomed the student into dialogue with those *auctoritates*. As Silano noted in his introduction to his translation of Peter Lombard's *Sentences*, the great textbooks of this era find their greatness in large part in their effective induction of the student/reader into the church's tradition.[92] These books put the student in dialogue with Augustine and brought the reader face-to-face with Jerome. The teacher assisted the student in becoming a participant of the great discussions and debates that had been going on for centuries. This was precisely what Gratian did at the end of *De penitentia* D.1, welcoming the student to make his own judgment and take his place in the discussion with the past and present. In this way, through the active engagement of *auctoritates* with a mind trained in the *trivium*, the cleric gained not just abstract knowledge but a true set of skills that prepared him for further, competent dealings with each individual legal problem and penitent's plight.[93] Thus Gratian spoke of

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[92] Silano, "Introduction," xxiv. He was speaking with reference to the theological sentence collections, but his words are applicable to Gratian as well: "This laborious activity of collecting sentences from ancient works and framing new ones of their own occurred in the classrooms of the twelfth-century masters. By observing them at this work, their students became *prudentes* in turn. That is why it makes little sense to separate the work of teaching from the effort to identify and point out the coherence of the Christian tradition. An appreciation of the importance of teaching seems preferable to the view that the undertaking in which the masters were engaged was the elaboration of systematic theology…. The enterprise in which they were engaged was a deeply personal one; if it also became rational, scientific, or whatever else one may wish to call it, it was because these features of their activity were effective in making the tradition alive and relevant to their students and the larger communities whom those students would serve. It was not out of ideological presuppositions that they prized technique, rationality, or dialectic, but because, without these, they would not be offering their students what was required for the lively understanding and reduction to present normativeness of the massive inheritance they had received from earlier times."

[93] This is the same point Silano made with reference to the sentence collections and the specific practice of reconciling authorities ("Introduction," xxv): "If we remember that teaching was the crucial activity of the masters, and if we accept that an effective presentation of the development of Christian doctrine requires that

priestly *scientia* as well as the priest being *prudens* and having *peritia*. The knowledge that he hoped his teaching would impart was to be an active knowledge, a skill-set, emanating from a generally sensible and intelligent person. All in all, then, Gratian intended his teaching, in spoken and written form, to contribute to the eradication of *ignorantia* and the promotion of *scientia* and *peritia* among the clergy.

But to what end? Why must priests obtain an education? Why must priests and potential future bishops know who should be ordained, what qualifications are necessary for ordination, how a man prepares for ordination and the offices that ensue? Why must priests understand the hierarchy of law, learn how to think through legal cases, grasp the tradition of canons and principles, and perceive the nature and power of penance? Gratian's teaching endeavors had a further goal; he did not teach solely to impart knowledge, just as he did not advocate learning solely for the procurement of knowledge. Ultimately, Gratian sought the preservation of the church through the proper and effective ministry to the faithful. In other words, Gratian sought a reform of the governance of the church through education of the clergy for the sake of the salvation of any and all individual souls.

Perhaps "reform" is a word used too frequently to have any meaning, but one should bear in mind that Gratian's age was one filled with reform, with attempts of improving various aspects of society with an eye toward a better future rooted in a respectful gaze into

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the students re-live the dramatic and problematic character of that development, then the identification of supposed contradictions and arguments about their possible resolution are necessary teaching moments which present the development of doctrine more authentically and serve to make the lesson memorable for the students. If we remember, too that the fundamental activity of the students, once they leave the school, would be the application of the tradition to contemporary problems, whether in the pulpit, the confessional, or ecclesiastical and other forms of administration, then we can see how the skills acquired and practiced in this kind of exercise would prove useful in the dynamic application of doctrine to a great variety of situations."

the past. Whether or not one wants to associate Gratian with the specific reform party of Haimeric, one can see in the *Decretum* a man eager to contribute to the reform of the church. While Chodorow cut *De penitentia* out of the picture and saw a man intent on reforming the structure of the church and Christian society, now one must keep *De penitentia* in view.[94] With the treatise confirmed as a part of the *Decretum*, composed by Gratian and deliberately embedded by him in it, the work as a whole becomes less dominated by a concern with a static structure and more concerned with an active governance, both within the ecclesiastical hierarchy and outside in the pastoral oversight of the faithful. Some of the learning gained from the *Decretum* and from *De penitentia* may seem abstract (e.g. *De penitentia* D.4 on the return of sins and God's predestination), but what *De penitentia* D.6 and the *prima pars* section on clerical education reveal is that, for Gratian, the proper execution of the duties of the priesthood depended on a broad and deep education that would lead to full-fledged *scientia*. As the usage of secular letters, including dialectic, contributed to the development of that *scientia*, it was fully justifiable as part of that education. Only with prelates who had gained *scientia* through education in this secular learning followed by advanced study in sacred learning would the church's faithful be well-governed and cared for. Only through that *scientia* might the *cura animarum* be successful. Good morals and proper behavior among priests were essential, but not sufficient. The *Decretum* insisted on morality in the priesthood but contributed to its *scientia*. Both aspects of the priesthood were necessary in the service of the church's members. Thus, inasmuch as the production of a well-educated clergy would have been an improvement in and for the church, the *Decretum* constituted a

[94] Chodorow, *Ecclesiology*, 13, 15-16.

work of reform. In this light, *De penitentia* should not be viewed as external to but fully integral to the purpose of Gratian's teaching and work. Gratian wrote *De penitentia* for the same ultimate reason he wrote the rest of the *Decretum*: the formation of an educated clergy that would be filled with the *scientia* necessary for the spiritual well-being of the faithful.

And while, as noted above in the Introduction, ecclesiastical leaders had for centuries been concerned with an educated clergy and had included sections on penance in their canonical collections to help achieve that end, the novelty of Gratian, as evidenced in his writing of *De penitentia*, consisted in his position that a theological, not just practical, education in penance was necessary for such a clergy. An educated body of confessor-priests did not just mean a body that understood guidelines for assigning appropriate satisfactions; it also meant a body that comprehended the theoretical grounding for those satisfactions. Priests were to be educated in the new theology; they were to be trained in how to think about penance and why it was practiced as it was, not just in how to oversee that practice. The old penitentials may still have been needed, but they were not sufficient for what Gratian had in mind for the ecclesiastical hierarchy. What Gratian had in mind required the application of the theology marked by dialectical reasoning and reconciliation of authorities and the infusion of that way of thinking into his students. In short, it required the development and passing on of the methods of approaching Scripture and other *auctoritates* taught by Anselm of Laon, and, in particular, it required doing this in relationship to penance in order to form a well-developed *scientia* able to unburden the faithful of their sins.

CHAPTER 8

DE PENITENTIA IN THE CLASSROOM:

THE EARLY RECEPTION OF GRATIAN'S *DE PENITENTIA*, 1140-1170

Gratian's treatise on penance received a great amount of attention from numerous authors/masters in the first few decades after its composition. The extent of the usage of *De penitentia* likely would have been far less if Gratian had not incorporated it into his *Concordia discordantium canonum*, but the fact of its inclusion there meant that any master who taught canon law and any student who studied canon law in the middle and late twelfth century encountered it. What they did with it after such an encounter differed greatly. What did not differ was the understanding of it as a theological work and the respect with which it was viewed. In other words, none of Gratian's successors in the twelfth century derided him for a lack of theological ability.

The fate of the treatise in this period is one of usage or adaptation, not of commentary. As will become clear in the examination of the reception of *De penitentia* in *summae* and sentence collections on the continent in this chapter and, in chapter ten, theological works in England, no one produced a commentary on *De penitentia* in this period (Huguccio around 1190 would be the first). The early teachers of canon law passed over the treatise because of its length and its theological nature, at most giving brief summaries of each of the seven distinctions. Meanwhile, those same masters when teaching or writing theological material, other masters renowned for theology, and some anonymous writers treated *De penitentia* like other theological works and sentence collections. They quoted

from it, mined it for patristic quotations, and grappled with the positions taken in it (sometimes agreeing and sometimes not). The quintessential example of this treatment is in Peter Lombard's *Sentences*, which deserves an entire chapter to itself (see chapter 9). Here some of the smaller and lesser known, though not necessarily less sophisticated, theological works composed in Italy and north of the Alps that drew on *De penitentia* will be investigated.

The Cursory Treatment of *De penitentia* in the *Summae*

Gratian's successors in Bologna took very quickly to teaching the *Decretum*. Such teaching is preserved in written *apparatus* and *summae*. In general, the former provided glosses on individual words and phrases while the latter were compositions in their own right. These compositions expanded upon what Gratian had said and sometimes contradicted him. They often included specific explanations of words and phrases, but such explanations were worked into the composition. On the whole, *summae* were copied as their own works, whereas *apparatus* were copied in the margins of a copy of the work that they glossed, in this case Gratian's *Decretum*.[1] In theory, a master taught through the entire *Decretum* and thus would have produced some form of commentary on each section of it. In reality, some sections received deeper and more detailed treatment than others. Based on the length and depth of the written treatments of *De penitentia*, C.33 q.3 constituted one of the least-lectured-upon sections of the *Decretum* by masters of canon law. What little the masters did

[1] Kenneth Pennington and Wolfgang P. Müller, "The Decretists: The Italian School," *The History of Medieval Canon Law in the Classical Period, 1140-1234: From Gratian to the Decretals of Pope Gregory IX*, History of Medieval Canon Law 6 (Washington DC: The Catholic University of America Press, 2008), 127-28.

write, however, often provides interesting insights into which aspects of *De penitentia* they considered most important and how they viewed the relationship between law and theology.

The earliest *summa* on Gratian's *Decretum* appeared sometime between 1144 and 1150 and was written by Paucapalea. He commented on a few canons within *De penitentia*, mostly among the Roman law canons in D.1 that were later additions to the original treatise. About a quarter of the commentary on *De penitentia* consists of a reproduction of Gratian's opening words and first few *auctoritates* in the treatise. After giving a taste of the two sides of the debate in D.1, Paucapalea gave his answer to the question, the one time in his limited comments on *De penitentia* in which he offered his own view. Expressing discomfort with the mass of *auctoritates* that Gratian had cited in D.1, he stated,

> But disliking the abundance of so many authorities coming together from this side and from that, I determine such a controversial topic in this way: sins are forgiven by contrition of the heart alone if [penitents] do not have the time to confess orally and do a work of satisfaction. This is what the authorities of John Chrysostom, Augustine, and the prophet [at the beginning of D.1] want [to say]. I stand in agreement with them, but I also say that sins are not forgiven by contrition of the heart alone if there is time for repenting and doing satisfaction.[2]

Even though Paucapalea presented himself as taking a middle ground in the debate, he in fact sided with the proponents of the second position in D.1, who would have affirmed the sufficiency of contrition when the penitent had no time for confession or satisfaction. Paucapalea's *Summa* as a whole, though not terribly intricate or deep, did serve as an

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[2] Paucapalea, *Die Summa des Paucapalea über das Decretum Gratiani*, ed. Johann Friedrich von Schulte (Giessen: Emil Roth, 1890), 132: "Nos autem tantarum copiam auctoritatum hinc inde contractantium fastidientes huiusmodi controversiam ita determinamus: Sola cordis contritione dimittuntur peccata, si confitendi ore tempus non habuerint, -- et satisfaciendi opere. Quod volunt auctoritates Iohannis Chrysostomi, Augustini atque prophetae etc. His consonantes dicimus etiam, quod peccata non dimittuntur sola cordis contritione, si tempus poenitendi et satisfaciendi habet."

influential first treatment of Gratian's work as a whole.[3] The way in which he dealt with *De penitentia* and even the position he took on D.1 were also influential. Many of his successors, when they said anything about the content of the treatise at all, like Paucapalea gave a brief synopsis of and opinion on the question at the heart of the first distinction, and sometimes they followed the basic opinion that Paucapalea had espoused, as was the case with Stephen of Tournai. On the whole, like Paucapalea, they ignored the remainder of the treatise.

Magister Rolandus wrote the next important *summa* on Gratian's *Decretum* after Paucapalea. According to Rudolf Weigand, who also conclusively showed that Magister Rolandus was not Rolandus Bandinelli, the future Pope Alexander III, the first of the five recensions of Rolandus's *Summa* was written around 1150. Most likely the later recensions were all produced during the 1150s, during which time Rolandus was one of the two most important masters in Bologna (the other being Rufinus). He gave short shrift to the *prima pars*, giving his greatest attention to the marriage *causae* (C.27 to C.36).[4] Within this section on marriage, Rolandus naturally came across *De penitentia*. He passed over the treatise, announcing that he was postponing treatment of it until his *Sentences*:

> In the third [*questio*] it is asked whether someone can satisfy God by contrition of the heart alone and secret satisfaction without oral confession. But because of its great length and its lack of utility for the treatment of the cases, we set it aside for now and save it to be investigated and thoroughly treated in our sentences.[5]

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[3] Pennington and Müller, "The Decretists," 129-30.

[4] Ibid., 131-32; Weigand, "Magister Rolandus und Papst Alexander III.," *Archiv für katholisches Kirchenrecht* 149 (1980): 3-44; idem, "Glossen des Magister Rolands zum Dekret Gratians," in *Miscellanea Rolando Bandinelli Papa Alessandro III*, ed. Filippo Liotta (Siena, 1986), 389-423.

[5] *Die Summa magistri Rolandi*, ed. Friedrich Thaner (Aalen: Scientia, 1962 [repr.of Innsbruck, 1874]), 193: "Tertio queritur, utrum sola contritione cordis et secreta satisfactione absque oris confessione possit quis Deo satisfacere. Verum pro sui prolixitate eiusque quod ad causarum tractatum inutilitate eam ad praesens dimittimus atque sententiis inferendam et pertractandam reservamus."

Rolandus demonstrated a practicality here: *De penitentia* really had nothing to offer in terms of discussing the case at hand (about the impotent man and his relationship to his wife) or any of the marriage *causae* that were the special focus of Rolandus's attention, so he did not take the time to discuss it at that time. He did not view *De penitentia* as unimportant, however. Quite the contrary, it deserved thorough investigation and treatment. He preferred to deal with it in a different context in his *Sententiae* (see below). Why precisely did Rolandus defer treatment of *De penitentia* to his *Sentences*? Did he do so merely because he did not find a treatise on penance useful for the topic at hand and he wanted to keep to task? This is possible, but another possibility is that, in his teaching and writing, Rolandus was making distinctions between genres. The treatment of *causae*, of legal cases, was one thing, but theological *sententiae* were another. If such a distinction between canon law and theology and between the types of works related to each was in place in Rolandus' mind (of which one cannot be absolutely sure from the present text), no distinction existed between canonists and theologians. In other words, Roland may have differentiated fields and subjects, but he most certainly did not differentiate professions to the point of exclusivity. In Roland's mind, the same person could both treat legal cases and write theological works, and he intended to be (and succeeded in being) such a person. A division between canon law and theology may have existed, but a barrier between "canonists" and "theologians" did not. On this point, then, Rolandus stood in the tradition of Gratian, although he might have preferred to keep various genres separated in different works, whereas Gratian was willing to have various genres coalesce in his one grand work.

Rolandus's colleague in Bologna in the 1150s, Rufinus, also produced a *Summa*. He may have begun teaching a little later than Rolandus; after all, his *Summa* was written later, after 1157 and most likely finished around 1164. His *Summa* has been praised as surpassing in depth, detail, originality, and elegance those of his predecessors, including Rolandus.[6] Certainly he spent more time on *De penitentia* than Rolandus, noting that the long work was divided into seven distinctions, for each of which he provided summaries.[7] This section of commentary on *De penitentia*, still quite brief and cursory, does not appear in all the manuscripts, only three of the eight collated for Singer's 1902 edition. Nevertheless, it is present in Paris, Bibliothèque Nationale, lat. 15993, which Singer took to be the oldest and most important of the extant manuscripts and which served as the base text for his edition.[8] This varied manuscript tradition could mean that Rufinus included this summary of *De penitentia* only in a later recension or that not all later scribes deemed it worthy of copying.[9] In any case, Rufinus did summarize or write a brief commentary on *De penitentia*. He thereby revealed which points out of the massive treatise he deemed particularly interesting and important, but he also revealed an independence of thought, not falling in line with everything Gratian advanced.

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[6] Pennington and Müller, "The Decretistis," 135; introduction to Rufinus von Bologna, *Summa Decretorum*, ed. Heinrich Singer (Aalen: Scientia, 1963 [repr. of Paderborn, 1902]).

[7] *Summa* C.33 q.3 (ed. Singer, 501): "Questionis de penitentia longus est tractatus, discretus in distinctiones septem." That Rufinus is the early decretist who devoted the most attention to *De penitentia* within his *Summa* is perhaps not surprising. Some scholars have noted that Rufinus operated within a theological conception of canon law, resisting its Romanization with the implementation of Roman law methodology. Cf. Herbert Kalb, "Bemerkungen zum Verhältnis von Theologie und Kanonistik am Beispiel Rufins und Stephans von Tournai," ZRG Kan. Abt. 72 (1986): 344-47; idem, "Die Autorität von Kirchenrechtsquellen im 'theologischen' und 'kanonistischen' Diskurs: Die Perspektive der frühen Dekretistik (Rufinus, Stephan von Tournai, Johannes Faventinus) – einige Anmerkungen," ZRG Kan. Abt. 84 (1998): 318.

[8] *Summa*, ed. Singer, xliii and 501 (second note "a" in *apparatus*).

[9] The former would seem more likely since every *Summa* underwent changes and additions throughout the course of a master's career, but a reevaluation of the manuscripts would be required for confirmation.

For the first distinction, Rufinus noted that, for the question of whether sins are remitted by contrition of the heart alone, Gratian introduced contradictory authorities for both sides of the question, but he left it up to the reader to decide which side to favor. Rufinus stated his own opinion, which he claimed was the opinion of several, nay rather of almost everybody, namely that sins are forgiven in contrition of the heart alone, but this remission will be judged unfruitful and as if nothing, if oral confession does not follow when a priest and time are available.[10] For the second distinction, Rufinus laid out the debate: some say love cannot be lost once had, others say it can. He focused on Gratian's distinction between imperfect and perfect love and the organic nature of love that develops through stages. He provided an analogy with a seed and concluded (agreeing with Gratian) that imperfect love, like young shoots, can be lost and regained, but perfect love, which is like a seed that has taken root and developed into a flourishing crop, can never be lost.[11] Rufinus was not interested in highlighting what Gratian did. While Gratian focused on the imperfect love, the love that can be lost by elect and reprobate alike (although always regained by the elect), Rufinus emphasized the purity and strength of perfect love, providing three additional scriptural quotations (not quoted by Gratian) that highlight perfect love.[12] Without explaining the connection in Gratian's treatise between D.2 and D.3, Rufinus gave his take on the issue

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[10] *Summa* C.33 q.3 (ed. Singer, 501): "…in distinctiones septem, in quarum prima agitur, an in sola cordis contritione peccata remittantur. Ubi pro utraque parte questionis controversantes auctoritates alternatis sepe vicibus introducit, tandem cui partium potius favendum sit, lectoris arbitrio reservat. Nostra vero et plurimorum, quin immo prope omnium sententia hec est, ut in sola cordis contritione peccata dimittantur, que tamen remissio infructuosa et quasi nulla iudicabitur, si parata copia sacerdotis et temporis oris confessio non sequatur."

[11] Ibid. (ed. Singer, 502): "Sed caritas aliquando perfecta, aliquando inperfecta; caritas enim multiplices gradus habet. Primo enim est in semine, secundo in germine, tertio in flore, post in herba, deinde in spica, tandem in messe…. Que inperfecta est et quasi herba est, frequenter amittitur et recipitur; que vero radicata est et perfecta, non amittitur, non convellitur, non extinguitur, non siccatur."

[12] Rom. 8:35, a mixture of Augustine and Prov. 5:17 (cf. above, chapter 1, n.44), Song of Solomon 8:7.

of the latter, namely whether penance can be repeated. He distinguished solemn penance and what he called simple penance. He also utilized a distinction between the *causa* of the penance (presumably the sin that necessitates it) and the *factum* of the penance (the actual act or carrying out of the penance). Essentially Rufinus stated that one should not repeat a sin and thus repeat the *causa* of simple penance, but, if one does, one can and should repeat the act or *factum* of simple penance.[13] What is quite puzzling is that Rufinus seemed to be agreeing with Gratian, but he diverged on a small but very important point. For Gratian, one can repeat penance, and the repetition of penance due to the repeated fall into sin does not signify that the earlier penance was invalid or unfruitful. A genuine penance can be followed by sin, which can then be followed by another genuine penance. Rufinus appears to have taken the opposite position, namely that repetition of penance means that the earlier penance was unfruitful and worthless.[14] Thus, while Rufinus allowed for repeated penance, he in fact fell more into the line of thinking that Gratian was opposing in D.3. He and Gratian were in agreement, though, that solemn penance should not be repeated, even though it was in the custom of certain churches. It should not be repeated because it is a sacrament, which is the position Peter Lombard famously took based on the stance of Odo of Lucca in the *Summa sententiarum*.[15]

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[13] Ibid.: "Tertia distinctio continet, an penitentia de iure valeat iterari. Sed penitentia alia sollempnis, alia simplex: simplex non debet iterari quoad causam, sed quantum ad factum iterata causa repeti debet. Non enim iterum in peccatum debet recidere, propter quod eum oporteat denuo penitere; si tamen iterato peccaverit, replicato penitere debebit."

[14] Ibid. (continuing from the same place): "tuncque dicetur priorem penitentiam fuisse falsam et prope nullam, quia infuctuosa, quia inconstantiva."

[15] Ibid.: "Sollempnis vero, quia sacramentum est, ideo etiam quoad factum non est repetenda, licet quarundam ecclesiarum consuetudine fequentissime reiteretur." Cf. *Summa sententiarum* 6.12 (PL 176:150B) and Peter Lombard, *Sent.* 4.14.4.

For the fourth distinction, Rufinus seemed happy to accept Gratian's arguments in full, but he added a further distinction. He accepted that Gratian had produced far more numerous and clearer *auctoritates*, both scriptural and patristic, in favor of the view that forgiven sins do return, and so he concurred but at the same time distinguished between *actum* and *reatum*. The sins forgiven return in terms of guilt but not in terms of the act itself. The essence of the sin is gone; the sin does not somehow come back into being at a point in time after it was committed and after it had been repented of. But the sinner becomes as guilty as he had been when he first sinned and thus deserves and will receive as much punishment.[16] This position is congruous with Gratian's, even though Gratian did not explicitly make such a distinction. As argued above in chapter four, Gratian understood the return of sins in terms of penalty – do past sins return to a person's account so that he will be judged and condemned and punished for them as if he had never repented of them? Such an understanding of the issue would require that the sinner be deemed guilty (*reatus*) of the former sins to be punished as well as the new ones.

For the final three distinctions, Rufinus provided succinct and accurate summaries with slight clarifications and modifications. For D.5, he noted what things are to be considered and grieved over by the penitent during penance. He clarified that the injunctions against returning to the military or commercial business and other such things apply to those

[16] Ibid. (ed. Singer, 502-503): "In quarta distinctione queritur, an peccata dimissa redeant necne. Et quia huius questionis affirmatio infinitis et evidentissimis divine scripture testimoniis roboratur eique prudentiores doctores favent, ideo sentimus quod dimissa peccata redeunt non quantum ad actu, sed quoad reatum: non enim id ipsum peccatum essentialiter iterum esse incipit, quod iam omnino esse desiit, sed quoniam ita pro eodem essentialiter singulariterque reus ad gehennam constituor, sicut prius eram, quando ipso actualiter inquinabar." On Rolandus' position here, cf. Landgraf, *Dogmengeschichte*, vol. 4.1, *Die Lehre von der Sünde und Ihren Folgen*, 200.

performing solemn penance, a point that Gratian did not explicitly make but that helps in wading through the lengthy Pseudo-Augustinian excerpt and the stringent regulations expressed in the canons following it.[17] Rufinus pointed out that D.6 treats to what kind of priest a penitent should confess. Above all, in Rufinus' opinion, one must avoid confessing to a priest who lies outside the fellowship of the true church – this was Judas' problem, who went and confessed to the scribes and Pharisees instead of Christ or his fellow apostles. Rufinus agreed that one should search out a learned and qualified priest but not avoid one's own priest on the grounds of contempt or dislike. What Rufinus did not seem to allow for was lay confession; it was imperative for him that confessors be priests, who alone have the power to bind and loose.[18] For D.7, Rufinus stressed the relationship between love and fear, *caritas* and *timor*. No repentance at the end of life is valid if it stems purely from a fear of judgment. One must love as well, for fear without love deserves nothing but punishment.[19] From this brief treatment of such a long treatise, one cannot gain a detailed picture of how much Rufinus departed from Gratian in particular views, but it is clear that Rufinus did

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[17] Ibid. (ed. Singer, 503): "In quinta distinctione tractat, que in penitentia sint consideranda…. Hec omnis varietas in penitentia exprimenda est dolenda. Si quis vero sollempnem subiit penitentiam, non solum non debet in peccata relabi, sed ad eum statum vel officium reverti interdicitur, quod vix sine culpa exercetur, ut militia et mercatura."

[18] Ibid.: "In sexta distinctione tractatur, cui penitens peccata debeat confiteri: non utique his, qui extra ecclesiam sunt. Nam et Iudas expositurus peccatum suum non ad ipsum remissionis auctorem Iesum Christum, non saltem ad coapostolos fugit, sed scribis et principibus Iudeorum illud confessest … ideoque non absolutionem, sed damnationem incurrit. Catholicis peccata sunt confitenda non autem omnibus, sed sacerdotibus, qui potestatem ligandi et solvendi habent, neque his passim et quibuslibet, sed instructioribus, qui melius sciant solvere et ligare, dummodo non ex contemptu vel odio sacerdos proprius relinquatur, sed maturitate melioris consilii scientior eligatur."

[19] Ibid.: "Septima autem agit de his, qui in fine vite penitent: quorum quidem penitentia salubris erit, si cum timore admixtam dilectionem habent, inutilis autem, dumtaxat metu districti iudicii sine caritate peniteatur; sine dilectione namque timor non nisi penam habet."

exercise independence, at some points merely stressing different points and at others disagreeing with him.

Brief as it is, Rufinus's short synopsis of *De penitentia* is the most extensive we have from Bologna in the first few decades after its appearance. It would seem that *De penitentia* did not serve as a focal point in the Bolognese school from ca.1140-1170. Such a perception is further strengthened from the *Summa* of Rufinus' student, Stephen of Tournai, and that of Johannes Faventinus. While the former based his *Summa* (ca. 1166) off of his master's,[20] his treatment of *De penitentia* constitutes only a brief paragraph which, like Rolandus's, mentions only the topic of the first distinction. Like modern scholars, many of Gratian's successors seem to have devoted their attention to D.1 more than to the other sections of *De penitentia*. Perhaps this was fitting, since D.1 was the distinction that treated the precise *questio* mentioned within the statement of the thirty-third case and thus would have been a more imperative object of their attention as they lectured through the *causae*. Stephen took no definite stance on the matter but directed his attention to the issue of time. Among those who have contrition for their sins, some have the time and opportunity to confess and some do not. He affirmed that, for those who do not have time to confess and do penance, contrition suffices for the remission of sins. As for those who do have time but still do not confess, he notes the two opinions: some say they do not receive remission; others say they fall back into their sin (presumably then remission is temporarily received at the moment of contrition but later removed when the person fails to carry out confession and satisfaction). All in all, Stephen did not want to spend time on the treatise; it was too long (*prolixus*), and

[20] Pennington and Müller, "The Decretists," 136.

thus he would omit it and continue on to C.33 q.4.[21] As for Rolandus, so for Stephen, the length of the treatise constituted a chief reason for passing over it. This does not mean that Stephen viewed it as unimportant or did not respect its contents. The reasons for not treating it were practical. In Johannes Faventinus's case, his treatment of *De penitentia* followed the pattern of the rest of his work, being a copy of Rufinus and/or Stephen's work. In this case, he copied the seven-paragraph summary from Rufinus.[22] By 1170, then, no Bolognese master had produced a full-scale commentary on *De penitentia*.

The same pattern continued in the schools outside of Bologna, in Paris and Cologne, for example. The *Summa Parisiensis* (late 1160s) receives its name from the school within which it was written. Its author knew and drew upon the work of the Bolognese school,

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[21] Stephen of Tournai, *Die Summa über das Decretum Gratiani*, ed. Johann Friedrich von Schulte (Aalen: Scientia, 1965 [repr. of Giessen, 1891]), 246-47: "Notandum, quia eorum qui de peccatis suis cordis contritionem habent, alii tempus habent confitendi, alii non. Qui non habent tempus confitendi, sola cordis contritione peccati remissionem consequuntur; qui tempus habent et non confitentur, secundum quosdam non consecuti sunt remissionem, secundum alios recidunt in idipsum. Item dicas de confessione et poenitentia. Intermisso interim prolixo illo tractatu de poenitentia transitum faciamus ad quartam quaestionem." I do not engage here the debate about the reception of Roman law in Stephen of Tournai and whether he is the crucial figure at the origin of canon law (*Kanonistik*) as a distinct science, a fellow juridical science next to and incorporating methods from Roman law and emancipated from theology. For this perspective, cf. Herbert Kalb, *Studien zur Summa Stephans von Tournai: Ein Beitrag zur kanonistischen Wissenschaftsgeschichte des späten 12. Jahrhunderts* (Innsbruck: Wagner, 1983); idem, "Bemerkungen zum Verhältnis von Theologie und Kanonistik am Beispiel Rufins und Stephans von Tournai," 338-48; and idem, "Die Autorität von Kirchenrechtsquellen im 'theologischen' und 'kanonistischen' Diskurs," 307-329. Kalb's work has received a measure of acceptance but not without some criticism. See, for example, the critique in Wolfgang P. Müller, *Huguccio: The Life, Works, and Thought of a Twelfth-Century Jurist*, Studies in Medieval and Early Modern Canon Law (Washington DC: The Catholic University of America Press, 1994), 113-14, who did not wholly disagree with Kalb's conclusions but found his argumentation to be rather selective in terms of the texts chosen to be studied.

[22] Faventinus composed his *Summa* around 1170. It is not in print; I have consulted Bamberg, Staatsbibliothek, Can. 37. The one area in which Faventinus did show some originality was in his thoughts on marriage, which anticipated and may in some form have influenced the decisions of Alexander III. Cf. Charles Donahue, Jr., "Johannes Faventinus on Marriage (With an Appendix Revisiting the Question of the Dating of Alexander III's Marriage Decretals)," in *Medieval Church Law and the Origins of the Western Legal Tradition*, 179-97. Donahue, who dates Johannes's work to 1170, places it slightly earlier than Pennington and Müller, "The Decretistis," 138-39, who date it to after 1171.

including Paucapalea, Rolandus, and Rufinus.[23] When treating *De penitentia*, this master simply dealt briefly with the issue at hand in D.1. For him, contrition remits sins. Nevertheless, external satisfaction and thus confession (without which the proper satisfaction cannot be assigned) are absolutely necessary (for what purpose he did not say), if the person has time. In other words, the master was trying to straddle the fence between the two positions presented in *De penitentia* D.1, which several after Gratian in fact attempted. He noted how the two different groups of *auctoritates* should be understood. Those authorities that say sins are not remitted without external satisfaction only mean that confession should be made to a priest and external satisfaction completed, if there is time. Otherwise, if the opportunity to confess is lacking, it is sufficient to confess to God alone with internal contrition. And it is in relationship to this point that those authorities should be interpreted who say that sins are remitted by contrition of the heart alone.[24] The master mentioned nothing of the other distinctions and did not note that he was skipping over a large portion of text.

A few years later a *summa* appeared from the school of Cologne known as the *Summa Coloniensis* or the *Summa 'Elegantius in iure diuino'*. This *magister*, recently identified as

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[23] Rudolf Weigand, "The Transmontane Decretists," in *History of Medieval Canon Law in the Classical Period*, 181-82.

[24] *The Summa Parisiensis on the Decretum Gratiani*, ed. Terence P. McLaughlin (Toronto: Pontifical Institute of Medieval Studies, 1952), 252: "Accedit Magister deinceps ad tertiam quaestionem qua quaeritur [an] sola cordis contritione absque oris confessione Deo quis possit satisfacere. Sola cordis contritione si vera et pura sit constat peccata dimitti. Exigitur tamen exterior satisfactio et ut [ms *inv.* ut et, which I think is correct] sacerdoti confiteamur, si tamen tempus sit confitendi. Et in eo casu intelligendae sunt illae auctoritates quae dicunt absque exteriore satisfactione non remitti peccata. Ceterum si desit confitendi facultas, sufficit interiore contritione soli Deo confiteri. Et in eo casu intelligendae sunt illae auctoritates quae dicunt sola cordis contritione peccata remitti." The sole manuscript is Bamberg, Staatsbibliothek, Can. 36, and this section is contained on fol. 91vb.

Berthold (Bertram) of St. Gereon, future bishop of Metz, used the *Summa Parisiensis* as well as some of the Bolognese material, including Rufinus and Stephen's *summae*.[25] The *summa* followed the structure of the *Decretum* but had an original organization with different distinction divisions than the *Decretum*. It was ideally organized for teaching.[26] For *De penitentia*, Berthold provided succinct, one sentence summaries of the issue at hand and the position Gratian took in each of the seven distinctions.[27] In his assessment of the first distinction, he assigned to Gratian a definite position (perhaps his own, namely that contrition is only sufficient if there is no time or opportunity for confession). For the fourth distinction, he stated that Gratian permitted both positions (sins do return and sins do not return) without violation of the faith (i.e. one can hold to either position without being a heretic). Gratian in fact supported the view that forgiven sins do return for those who were once faithful in the church but become apostate but, it is true, never condemned the other position as heretical. Nor, however, did Gratian ever explicitly describe the opposite position as allowed in the faith. Perhaps Berthold preferred to see the issue as too complex and

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[25] Peter Landau, "Die Kölner Kanonistik des 12. Jahrhunderts: Ein Höhepunkt der europäischen Rechtswissenschaft," Vortrag vor dem Rheinischen Verein für Rechtsgeschichte e. V. in Köln am 27. Mai 2008, Kölner Rechtsgeschichtliche Vorträge 1 (Badenweiler: Bachmann, 2008), 17. Schulte had first suggested this identity, while Kuttner had suggested an Augustiner by the name of Gottfried. Landau argues in favor of Berthold, also known as Bertram, who became bishop of Metz in 1180.

[26] Weigand, "The Transmontane Decretists," 183.

[27] *Summa Coloniensis* 14.73 (*Summa 'Elegantius in iure diuino' seu Coloniensis*, ed. Gerard Fransen with Stephan Kuttner, MIC ser. A, vol. 1 [Vatican City: Biblioteca Apostolica Vaticana, 1990], 90): "Tractatum de penitentia apud Gratianum vii. ariticulos continere. Subsequenter Gratianus de penitentia vii. distinctionibus disserit. Prima est an in sola cordis contritione peccatum dimittatur, et dicit quod non si tempus assit confitendi et satisfaciendi. Secunda est de caritate, utrum semel habita amittatur, et dicit quod amittitur et recuperatur. Tertia est de penitentia an possit iterari et dicit quod potest. Quarta an peccata redeant et dicit salua fide utrumque sentiri posse. Quinta est quod sacerdos in impositione penitentie personam, locum, tempus, modum aliasque peccatorum circumstantias pensare debet et secundum hec iudicare. Sexta est quod sacerdos celare debet que sibi committuntur. Septimas est de qualitate penitentium, quod uidelicet quidam fructuose, quidam infructuose penitent."

difficult to take a stand on it. In his summary of D.5, he focused on the side of the priest, not the penitent. For Pseudo-Augustine, the circumstances of sins were to be reflected upon and grieved over by the penitent; the Cologne master took the more traditional approach (also acknowledged by Pseudo-Augustine) of placing the responsibility of considering the *circumstantie peccatum* in the hands of the priest. He mentioned nothing of the quality of priests for D.6 or lay confession; instead he stressed the seal of confession, that priests must keep secret all that is entrusted to them. For the seventh distinction, he did not refer to deathbed repentance, instead focusing on the nature of true or fruitful penance.

In a way far clearer and more apparent than Rolandus, Berthold of Metz created a distinction between theology and canon law. He noted that he had passed over the material of *De penitentia* with only a few words because, first, Gratian had dealt with all of these matters in a copious way (and he apparently felt he had nothing significant to add) and, second, the matters treated were more theological than decretal or canonical.[28] This sentence presents a clear delineation between law and theology, one that was hinted at but not expressly stated by Rolandus. Berthold did not deem the theological material of *De penitentia*, as aptly as it may have been investigated by Gratian, as appropriate for his curriculum in canonical studies. *De penitentia* did, however, provide some legal material of interest for him. The later insertion of Roman law and patristic material in D.1 cc.5-30 inspired Berthold to consider the issue of whether sin belongs to the will as to the work (*an sit peccatum voluntatis ut operis*). He spent

[28] Ibid.: "Que omnia quia a Gratiano nimis sunt diffuse pertractata magisque theologica quam decretalia paucis pertransimus." This sentence is present in P (Paris, Bibliothèque Nationale, lat. 14997) but omitted in V (Wien, Österreichische Nationalbibliothek, lat. 2125) and in the opinion of the editors does not belong to the primitive text. Thus one cannot be sure that the same author wrote this sentence as the rest of the work.

several paragraphs discussing this issue and others related to those texts in D.1.[29] He thus revealed a desire to teach all that could be taught about law from the *Decretum*, including the bit from *De penitentia* D.1, but his theological interests were limited.

The fate of *De penitentia*, then, was not a glorious one in the schools of canon law. The masters of the twelfth century perceived it as as much of an anomaly in the *Decretum* as the scholars of the twentieth. Its length certainly served as a deterrent to it being thoroughly treated in the lectures of the masters, but another current was beginning to run its course as well. Gratian had written *De penitentia* as a theological treatise and incorporated it within a canonical collection, viewing the whole *Decretum* as a work that could serve to instruct clergy in order to build a learned hierarchy for the betterment and reform of the church. As Gratian's successors turned to this book, it became the counterpart to the Bible in theological study. Here was the book from which to teach canon law, just as the Bible and increasingly *sententiae* of masters were the books from which to teach theology. And as the *Decretum* formed the bedrock of a canonical curriculum, *De penitentia* fell outside the bounds of that curriculum because it was not useful for training in canon law, the particular aim of those masters who taught and commented on the *Decretum*. This marginalization of *De penitentia* within this curriculum explains why twelfth-century manuscripts of the *Decretum* exist with the treatise appended at the end along with *De consecratione*. Jacqueline Rambaud had taken the existence of such manuscripts to suggest that *De penitentia* was not originally part of the

[29] *Summa* 14.74-80.

Decretum.[30] What they visually depict instead is a movement away from Gratian's original design and intent for the *Decretum* even as schools arose and flourished by teaching it. The situation seems to have been a simple case of the majority winning out. The majority of Gratian's text was of a canonical nature; Gratian mostly taught canon law. His successors focused their teaching on the canonical majority of the *Decretum*. *De penitentia* was not disrespected or demeaned; it was simply the odd-man out when it came to the new canonical curriculum stemming from the *Decretum*.

One notices a subtle shift, however, in why *De penitentia* was viewed as an anomaly in the *Decretum*. Rolandus ignored *De penitentia* in his *summa*, in his treatment of cases (*causae*), but he utilized it thoroughly in his *sententiae*. He recognized a difference of genre and classified material as belonging more suitably to one genre or another. He, as all his predecessors in the twelfth century would have, thus acknowledged a distinction between canon law and theology, but he did not view them as separate disciplines with their own specialists. A learned man would be versed in both and could teach and write about both, as he himself did. The Cologne master, Berthold of Metz, gave no indication that he could do so or wanted to. He dealt with the canonical; he seems to have left the theological to others. The anomaly of *De penitentia* was to be passed by quickly and apparently not dealt with at all, even in another context or genre. After all, Gratian wrote so much, there did not seem to be

[30] Rambaud, "Le legs d'ancien droit: Gratien," 88-90. One such manuscript is Paris, Bibliothèque Nationale, lat. 3895.

much else to say, or so the Cologne master thought. Here was a canonist, not a theologian.[31] Inklings were emerging indicating that the theoretical distinction between canon law and theology was turning into more of a concrete and institutional separation.

The Influence of *De penitentia* on *Sententiae*

If the fate of *De penitentia* had lain solely in the hands of masters teaching canon law, it might have been very grim indeed. Fortunately, some of the same early masters who taught canon law were also theologians, just as Gratian had been. They were learned men of their time and thus spanned different disciplines. For them, *De penitentia* served as an important theological work, both as an original composition and as a treasure-trove of *auctoritates*. Other people who worked in theology, who may have had little background in law, also noticed *De penitentia*. Perhaps it was the one section of the massive and newly popular *Concordia discordantium canonum* that appealed to them and their intellectual abilities. The usage of *De penitentia* by these masters mimicked their usage of other theological works, such as, for example, the *Summa sententiarum* of Odo of Lucca. The work served as an invaluable resource for *auctoritates*, as an interpretive aid to those *auctoritates*, as a source for ideas about how to deal with particular theological problems related to penance, and sometimes as a basic guideline for how to structure a treatment of penance. Gratian's work was accepted as theologically valuable and authoritative but not as definitive. His successors expressed doubt about some of his positions, rejected some of them outright, and became convinced by his argumentation on others. What such an apparently mixed reception means,

[31] Berthold was also a legist. He wrote two tracts pertaining to Roman law, *De regulis iuris* on procedural law and *Sepenumero in iudiciis* on laws of evidence. Landau, "Die Kölner Kanonistik," 27-28. In other words, his talents and writings were directed toward legal matters, whether canonical or Roman, not theological.

however, is that Gratian was indeed accepted as a theologian and *De penitentia* as a valid and valuable work of theology. Such a reception was normal and standard for any theologian and work of theology of the twelfth century. Therefore, the reception of *De penitentia* in the *sententiae* of the next several decades signifies that Gratian was to these authors a *magister* in theological matters as much as he was a *magister* in canonical ones to those teaching canon law.

The first theological work after the composition of the *Decretum* that is certain to have used it and, in particular, *De penitentia* is the *Sententie divinitatis*. The work was identified by Hödl as being from the Porretan school,[32] although heavy traces in it exist from the Victorine and even Abelardian schools as well, as the editor of the text, Bernhard Geyer, noted. Such mixture was becoming increasingly common in the period, the 1140s. Geyer identified the *terminus post quem* as 1141, since the author referred to a position of Abelard condemned at Sens in that year as condemned. He somewhat more speculatively provided a *terminus ante quem* of 1148, since the author freely used opinions of Gilbert de la Porrée that were condemned in that year in Reims.[33] Most likely it was a work of the mid-late 1140s. Of any single work, it drew most extensively on the *Summa sententiarum* of Odo of Lucca from the late 1130s, and such usage is apparent in the section on penance. Hödl criticized Geyer for denying any usage of Gratian in this section (book five, section four). Hödl's suspicion of the usage of Gratian stemmed from the fact that the author of the *Sententie divinitatis* quoted Pseudo-Augustine's *De vera et falsa penitentia*, which no one besides Gratian is known to

[32] Hödl, *Schlussgewalt*, 221.
[33] Geyer, "Introduction," *Die Sententiae divinitatis: Ein Sentenzenbuch der Gilbertischen Schule*, ed. idem, Beiträge zur Geschichte der Philosophie des Mittelalters 7:2-3 (Münster: Aschendorff, 1909), 62.

have used at the time, and, moreover, the usage of *De vera* appears to have been derivative, than is, not directly from a manuscript of that work but rather through an intermediary source. Hödl also detected similarities between the *Sententie divinitatis* and the canonical works of the Bolognese school, further suggesting a connection to Bologna and a knowledge of Gratian.[34] Hödl could not identify, however, any place where the *Sententie divinitatis* used Gratian's own words or ideas in *De penitentia*.

Indeed, most of the section on penance derives from the *Summa sententiarum*, and while at times the *Sententie divinitatis* quotes *auctoritates* that are in Gratian but not in Odo of Lucca's work, the *auctoritates* could have come from any number of sources.[35] At other times, terminological similarities hint at a knowledge of *De penitentia*, but the similarities are not strong enough to render any usage conclusive. While the similarities are not found with the *Summa sententiarum*, one could argue that the similarities are merely coincidental or stem from common language of the time.[36] A stronger hint that the author of the *Sententie divinitatis* was at least familiar with some of Gratian's interpretations of *auctoritates* comes in his treatment of Nahum 1:9 ("God does not judge the same thing twice"). On the whole, he followed the *Summa sententiarum* again, but he provided two interpretations of Nahum 1 depending on whether forgiven sins do or do not return. If forgiven sins do return (which is

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[34] Hödl, *Schlussgewalt*, 221.

[35] For example, when discussing whether forgiven sins return, the SD includes *auctoritates* which make up D.4 c.4 and D.4 c.14 in *De penitentia*, but the SS does not quote either one of these.

[36] For example, at one point when discussing sin following earlier penance, the SD reads, "Quidam huic definitioni adhaerentes dicunt: Si post paenitentiam contingat aliquem criminaliter peccare, *non valuit paenitentia illa*…" (ed. Geyer, 143.4-6) A few lines later, the SD defends the position that someone who sins after penance did perform true penance: "Quaeritur, si contingat postea eum peccare. Non minus dimissa sunt praecedentia peccata, et *vera fuit paenitentia illa*…" (ed. Geyer, 143.17-18) This language is very similar to Gratian's wording in D.3 d.a.c.1 (*uera penitencia non fuit*) and D.3 d.p.c.41 (*si illa satisfactio non fuit*), a section that deals with the same general concern, the relationship of sin subsequent to prior penance.

the position Gratian took in *De penitentia* D.4 and which would suggest that God does punish the same thing twice, once on earth through penitential satisfaction and again after death), the Nahum 1 passage can be understood as applying to the elect, to those who are to be saved (*salvandis*).[37] This is in fact the interpretation (though not in so many words) in D.3 d.p.c.42, where Gratian argued that the verse does not apply generally to all, for it does not apply to the Sodomites, Egyptians, or rebellious Israelites in the desert (none of whom are saved). On the other hand, Gratian argued that those who repent of their sins through their first punishment (and thus will be saved) are not punished again by God.

The hint of the knowledge of Gratian's work and the usage of *De penitentia* D.3 is confirmed shortly thereafter. The *Sententie divinitatis* asks the question at the heart of the end of D.3: can one repent of one sin while remaining in another? While he again followed the *Summa sententiarum* in some of his thoughts, the author also quoted here from Pseudo-Augustine, from a section of text that fell in Gratian's treatment of this very same question and constituted D.3 c.42. Then he made the point that a priest should not turn away a penitent who is still engaged in another sin because that sinner may in the future repent of the other sin as well, and at that time, the former penance will also become efficacious. The situation parallels that of an insincerely received baptism that becomes efficacious when that insincerity recedes. This point and in particular the analogy with the person approaching the baptismal fount *ficte* match precisely the unique ideas put forward by Gratian in D.3 d.p.c.44 and d.p.c.49.

[37] SD 5.4 (ed. Geyer, 149).

Sententie divinitatis 5.4[38]	*De penitentia* D.3 d.p.c.44, d.p.c.49
Si vero instat peccator et vult confiteri de uno remanendo in alio, *non est negandum* consilium. Verumtamen debet eum monere sacerdos et dicere ei, quod non valet ei ad salutem, nisi de omnibus confiteatur. Incipiet tamen valere, cum de omnibus confessus fuerit, sicuti incipit valere baptismus illi, qui *ficte accessit*, cum *fictio de [c]orde recesserit* vel incipit recedere.	Percipietur autem, cum eius penitencia fuerit subsecuta, sicut ad lauacrum *ficte accedens* regenerationis accipit sacramentum, non tamen in Chirsto renascitur; renascitur autem uirtute sacramenti, quod perceperat, cum *fictio illa de corde* eius *recesserit* ueraci penitencia…. Penitencia…*non* tamen alicui *deneganda est*, quia sentiet fructum eius, cum alterius criminis penitenciam egerit.

The *Sententie divinitatis* does not quote Gratian extensively, but the terminology is the same, and more importantly, the analogy of those baptized *ficte* to penitents repenting of one sin and not others and the usage of this analogy to encourage priests not to deny penance to anyone were ideas found only in Gratian's *De penitentia*.[39] This connection with Gratian proves even stronger when one considers that one of the collated manuscripts of the *Sententie divinitatis* adds after the *recedere* an abbreviated form of the Augustinian text that comprises *De penitentia* D.3 c.45, the text immediately following Gratian's introduction of the analogy of those approaching baptism insincerely. Finally, the *Sententie divinitatis* goes on to quote and adapt much of the Pseudo-Augustinian material from *De penitentia* D.5 and D.6. At the close of this section, the author made the same point as Gratian in D.6 d.p.c.2 with regard to confessing to a priest who is not one's own, namely that this cannot be done for the mere reason that the parishioner dislikes his priest: "If it be found that no one ought to dismiss his

[38] ed. Geyer, 151.13-19.

[39] Moreover, the lack of a direct quotation from this author is not surprising. He rarely did so; even when he was quoting Pseudo-Augustine, he greatly adapted the wording, inserted his own phrases, and sometimes even altered the meaning. Likewise, while his usage of the *Summa sententiarum* was clear, such overlap is obvious from similar terminology, the repetition of ideas, and the copying of organization and structures of treatment of various topics, not from direct quotations.

own priest and go to another, such a statement is to be understood thus: he ought not dismiss [him] on the grounds of hatred (*odium*) or contempt (*contemptus*).”[40] The usage of a form of *odium* and the nominal *contemptus* parallels Gratian’s own usage of *odium* and the verbal *contempnere* in D.6 d.p.c.2. The resolution is precisely the one Gratian gave to the same problem: some canons say a priest cannot judge the parishioner of another, which means that a parishioner cannot disregard his own priest and choose his own confessor, as the passage from Pseudo-Augustine quoted both by the *Sententie divinitatis* and by Gratian (D.6 c.1) suggests. These texts only mean that you cannot choose another confessor merely because you like him better and do not like your own. The drawing on Gratian here also means that the writer of the *Sententie divinitatis* in the mid-late 1140s had a later stage of Gratian’s *Decretum*, for D.6 d.p.c.2 constitutes a later addition to *De penitentia* that is not found in the original treatise as preserved in the main body of Fd. Less than a decade after its full completion and perhaps after only a few years, Gratian’s theological work was being recognized as instructive on penitential issues. This writer may have preferred the *Summa sententiarum*, but he found in Gratian a good and valuable supplement.

A much more extensive usage of Gratian’s *De penitentia* appeared in Rolandus’s *Sentences*, which is not surprising given his announcement in his *Summa*. Rolandus’s theological work was very well organized and its treatment very methodical, methodical to a point that belies the influence of the jurists and canonists of Bologna and that distinguishes it

[40] SD 5.4 (ed. Geyer, 152.22-55): “Si inveniatur, quod nemo debet dimittere proprium sacerdotem et ad alium ire…, ita intelligendum est: Non debet dimittere causa *odii* et ex *contemptu*.”

from the work being done at the same time in the theological schools of northern France.[41] The work, which dates to ca. 1155, after the third recension of the *Summa* was completed, relied quite a bit on Abelardian teaching, but in the section on penance it is Gratian who exercised the most influence. Influence does not mean acceptance – Rolandus did not always side with his Bolognese predecessor. For example, long before Rolandus reached the issue of penance, he treated the angels, a major focus of any *sententiae* of the twelfth century. He disagreed with Gratian's position in *De penitentia* D.2 that the fallen angels had *caritas* when they were created, before their fall. I find it extremely likely that Rolandus had that section of *De penitentia* in mind as he made his argument. First, when he argued from the side that Satan and the fallen angels did possess love before their fall, he followed the line of Gratian's argument, turning to Gregory the Great's comments on Ezekiel and the originally premier position of Lucifer.[42] Second, the question itself, "whether the angelic nature that fell into ruin had love before its fall,"[43] belies the influence of Gratian, for while most sentence writers in the twelfth century discussed the state of the angelic nature and the fallen angels before their fall, that discussion did not revolve around the issue of *caritas*, even though *caritas* might have been mentioned here and there. The possession of goodness or blessedness (*beatitudo*) was more frequently at the heart of the question.[44] It was Gratian, because he was discussing the angels in relationship to the question of the possession of love

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[41] Luscombe, *School of Peter Abelard*, 245. For almost every question raised, Rolandus argued both sides of the issue and then clearly introduced his opinion with a phrase like *hec dicimus*….
[42] *Die Sentenzen Rolands*, ed. Ambrosius Gietl (Amsterdam: Editions Rodopi, 1969 [repr. of Freiburg, 1891]), 89-90. Cf. *De pen.* D.2 c.44, d.p.c.44, and c.45.
[43] Ibid. (ed. Gietl, 89): "de angelica natura que corruit, utrum ante lapsum caritatem habuerit."
[44] E.g. the *Sententie Berolinenses* (ed. Stegmüller, 43) and the *Sententie Atrebatenses* (ed. Lottin, 212).

by the reprobate, who geared the discussion of the pre-fall fallen angels toward *caritas*. As shown above in chapter two, Gratian even adapted his sources, like the gloss on Genesis 1, in order to emphasize *caritas* and its possession or not by Satan. Rolandus thus addressed the specific issue of the possession of *caritas* by the fallen angels before their fall due to his encounter with Gratian's discussion in *De penitentia* D.2. He reached, however, the opposite conclusion, maintaining that they did not possess *caritas*; thus, when it is argued that the angelic nature was created in the fullness of love (*plenitudo caritatis*), as he himself believed, this means that it was created not in the love that it had but in the love that it would have had if it had persisted (i.e. in love of God, like the good angels did).[45] Rolandus understood Gratian's argument but rejected it.

In his discussion of penance, Rolandus adhered on the whole to Gratian's positions, but he did not simply follow along through *De penitentia* and create, as it were, a commentary on it. He created his own composition and used Gratian's own words and arguments as well as *auctoritates* from Gratian in different ways. Nor did he rely solely on Gratian for *auctoritates*; several citations appear in Rolandus that do not appear in *De penitentia*. But on some occasions, Rolandus relied exclusively on Gratian for a string of *auctoritates* to address a particular issue, as when he cited *auctoritates* to argue from the viewpoint that contrition does not remit sins, all of which are contained within *De penitentia*

[45] Ibid. (ed. Gietl, 91-92): "Nos vero dicimus in caritate minime fuisse creatos, et tamen dicimus, quod boni, mundi et sancti fuerunt creati, non quia virtutem aliquam haberent, sed quia nulli vicio penitus subiacebant…. fuit creata in caritate, non quam habebat, sed quam esset habitura, si persistisset." Note also that Rolandus said that the angels were good, pure, and holy in the sense that they were not subject to any vice (i.e. before the fall of the bad angels). The language of *vicium* is reminiscent of Gratian's argument in D.2 d.p.c.45.

D.1.[46] His presentation in this case was much briefer and more succinct, as it was later in his *Sentences* when he discussed the viewpoint that love once had is not lost. In that section, all the texts came from the first part of *De penitentia* D.2, but Rolandus used only a select few *auctoritates* and also abbreviated the longer ones.[47]

Rolandus absorbed Gratian's arguments, sometimes taking an argument that Gratian made for one thing and applying it to a different issue. For example, when addressing the issue of whether one can repent of one sin while remaining in another (the issue at the heart of the end of *De penitentia* D.3), Rolandus turned to the line of argumentation that Gratian presented back in D.1 in arguing that contrition alone remits sins. Rolandus agreed wholeheartedly with Gratian that no one can truly do penance while remaining in other sins; true penance and accompanying guilt are mutually exclusive, as almost every *auctoritas* proves.[48] He also maintained that this position is proven *a ratione*. His argument from reason began from the premise that true penance stems from *caritas*, but that *caritas* and mortal sin are mutually exclusive, so that they cannot inhabit the same soul at the same time.[49] The argument continues from this principle of mutual exclusivity, the same principle to which Gratian appealed in his extended argument for contrition as remissive in D.1, arguing that

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[46] The texts that Rolandus quoted, according to the numbering in Friedberg's edition of *De penitentia*, are D.1 c.40 (John Chrysostom), within D.1 d.p.c.37 (Is. 43:26), D.1 d.p.c.87 (James 5:16), D.1 c.38 (Ambrose), D.1 c.39 (Ambrose), and D.1 c.40 (John Chrysostom; not in Fd/Aa).

[47] He uses D.2 c.2 (Augustine), D.2 c.3 (Augustine), D.2 c.4 (Gregory), first bit of D.2 c.5 (Prosper), D.2 c.14 (Augustine) (cf. ed. Gietl, 321 ff.).

[48] Ed. Gietl, 241: "Contra probatur fere omnibus illis auctoritatibus, quibus probatum est, non esse vera penitencia, quam sequens culpa fuerit comitata. Idem quoque ratione probatur." Rolandus here was quoting Augustine as in *De pen.* D.2 c.12, a text that Gratian interpreted in terms of the same time, not subsequent time (cf. D.2 d.p.c.17 and d.p.c.21). In other words, true penance can be followed by some sin, but some sin cannot be present when one repents of another. Rolandus followed Gratian's interpretation.

[49] Ibid.: "Vera penitencia absque caritate esse non potest. Caritas autem cum mortali peccato esse non valet iuxta illud Augustini: 'caritatem habere et malus esse non potes'."

light and darkness, love and hatred, the members of Christ and the members of the devil cannot exist together – one belongs either to one group or another, never to both at the same time. Rolandus stated,

> And elsewhere the same: "Love is the fount of all good things, which something foreign to it cannot share" [quotation given without attribution in *De penitentia* D.1 d.p.c.37]. If therefore love cannot exist together with mortal sin, and true penance cannot exist without love, therefore it remains that no one can repent of one mortal sin while remaining in another. Likewise, [quoting Gratian in D.1 d.p.c.35 and d.p.c.37 as an *auctoritas* introduced with the standard *item*] no one can simultaneously be a member of God and a member of the devil, hence the Truth in the Gospel [Rolandus followed Gratian in quoting Matt. 6:24 (in d.p.c.35)], "You cannot serve two masters." But if someone could do penance for one mortal sin while standing in another, he would in truth be a member of God and of the devil; for inasmuch as he has penance, he would be a member of God, [and] inasmuch as he has mortal sin, he would be a member of the devil.[50]

Not only, then, did Rolandus use Gratian's argument, he appealed to him as an authority.

Rolandus was drawn to this section of argumentation by Gratian in *De penitentia* D.1 again immediately afterwards as he dealt with the issue of contrition. In other words, he turned to the argumentation of D.1 d.p.c.34-d.p.c.37 and used it in the same way that Gratian did, to argue for the remission of sins through contrition alone. After quoting various *auctoritates*, the standard ones that almost all appear in the first section of *De penitentia* D.1,

[50] Ed. Gietl, 241-42: "Et alibi idem: 'caritas est proprius fons bonorum, cui non communicat alienis'. Si ergo caritas una cum mortali peccato esse non valet, et vera penitencia non potest esse absque caritate: relinquitur ergo, quod nullus potest penitere de uno peccato mortali perseverando in alio. Item, *nullus simul potest esse membrum Dei et membrum diaboli*, unde Veritas in evangelio: ' non potestis duobus dominis servire'. Sed si penitenciam agere posset de uno mortali existendo in alio, esset membrum Dei revera et diaboli; quatenus enim penitenciam habet, membrum Dei esset, quatenus mortale peccatum, esset diaboli membrum." When citing Gratian, Rolandus took the sentence from D.1 d.p.c.35, "Nemo autem filius Dei et diaboli simul esse potest," but used the labels from d.p.c.37 of *membri* instead of *filii*.

he turned to the example of healed lepers.[51] He drew his analysis of the story from Gratian in D.1 d.p.c.34. If sin is not remitted before it is confessed, the soul is dead. But something that is dead cannot confess, and physicians, that is, priests, cannot raise a person from the dead so that they will confess. All of the short *auctoritates* Rolandus quoted in this paragraph appeared within Gratian's *dictum*.[52] The argument stemmed completely from Gratian's.

What position did this reader of Gratian take on the issue that Gratian left open to his readers? Rolandus adopted an Abelardian stance: sin in terms of its guilt (*culpa*) is remitted through contrition, whereas sin in terms of its penalty (*pena*) is remitted through confession and satisfaction. As for the *culpa*, specifically, it can be said to be remitted through confession and satisfaction in the sense that it is shown to be remitted by the ecclesiastical authorities. While the position was strongly Abelardian in its specifics and particularly the distinction between *culpa* and *pena*, Gratian still shone through in the language Rolandus chose in his conclusion: "Oral confession and a work of satisfaction are certain signs of remission already done."[53] The sentence mimics the language and grammatical usage of

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[51] Rolandus first turned to Ezekiel 18:21-22 and 33:12, 15, variations of which appear in *De pen.* D.1 d.p.c.32 and within Pseudo-Augustine in D.7 c.6, then the passages which make up D.1 cc.4-5. Then he turned to the example of the raising of Lazarus, which narrative makes clear, "quod in cordis contritione peccatum remittitur, sed in oris confessione de remissione facta ecclesia certificatur" (ed. Gietl, 244). He quoted Joel 2:13 and provided the same explanation Gratian gave to the passage (D.1 c.33-d.p.c.33), followed by Prosper's text in D.1 c.31 (word-for-word the same as Gratian's text with a bit in the middle omitted), and then Bishop Maximus' and John Chrysostom's texts making up D.1 cc.1-2. Then he turned to the lepers.

[52] Ed. Gietl, 245: "Item, si non est ei remissum peccatum, antequam illud confiteatur, et mortuus est in anima. Si mortuus est, confessio ergo eum non liberat, quia 'a mortua' velut ab eo, qui non est, texte Augustino, 'perit confessio'. Unde propheta: 'numquid mortuis facies mirabilia aut medici', id est, sacerdotes 'resuscitabunt' mortuos 'et confitebuntur tibi' mortui? Quare non? Perit enim a mortuo, ut dictum est, confessio."

[53] Ed. Gietl, 247-68: "Dicimus ergo, quod peccatum, id est, culpa remittitur in cordis contritione, remittitur quoque in oris confessione operisque satisfactione, sed aliter in cordis contricione remittitur, id est, penitus aboletur, in oris confessione operumque satisfactione remittitur, id est, remissum monstratur. *Oris enim confessio operisque satisfactio sunt certa signa facte remissionis*, in quibus duobus peccatum, id est, pena temporalis debita pro peccato remittitur, id est, minoratur."

Gratian after his analogy with Abraham's circumcision in *De penitentia* D.1: "Confession is offered to the priest as a sign of mercy already accepted."[54] Thus the argumentation in the first section of *De penitentia* D.1, especially when viewed through an Abelardian lens, proved most convincing to Rolandus. The *auctoritates* here undoubtedly played a role, but also of strong influence on Rolandus was the extended argumentation by Gratian stemming from the reflection on the healing of the lepers and raising of Lazarus. As will be seen, this section of D.1 appealed to other theologians of the century as well.

In the next decade, the 1160s, another member of Bolognese circle who lectured on Gratian's *Decretum* produced a major theological work. Gandulphus left no complete *summa* but was responsible for a number of glosses on Gratian's *Decretum*; like Rolandus, he also composed theological *sententiae*.[55] Gandulphus's *Sentences* have been the subject of much debate, particularly in terms of their relationship to Peter Lombard's. In the first decades of the twentieth century, a borrowing was clear but in which direction was not. The editor of Gandulphus's *Sentences* took a new approach to the matter and agreed with the assessment of de Ghellinck: Gandulphus drew on Peter Lombard. Conclusive evidence came in the fact that

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[54] *De pen.* D.1 d.p.c.37: "…confessio sacerdoti offertur in signum ueniae acceptae, non in causam remissionis accipiendae."

[55] On Gandulphus's glosses, cf. Rudolf Weigand, "The Development of the *Glossa ordinaria* to Gratian's *Decretum*," in *The History of Medieval Canon Law in the Classical Period*, 73-74. Although all we have are various individual glosses, Gandulphus was recognized as a great teacher and authority in his time, and the transmontane decretists put particular weight on his opinions. Weigand noted, "The Bolognese John Faventinus and Gandulphus were in fact *the* authorities by whom the transmontane canonists measured themselves and their thought" ("The Transmontane Decretists," 208). Pennington and Müller, "The Decretistis," 139 noted that the identity of the glossator and the *Sentences* writer may not be the same. In my opinion, the extensive usage of Gratian's *Decretum* within the *Sentences* supports the idea that the two Gandulphuses are the same person. The dual role of master of canon law and theologian should note deter one from making this conclusion; Rolandus and Gratian also exercised such a dual role, as has been emphasized here. Pennington and Müller also described Gandulphus's *Sentences* as an "abridgement" of Peter Lombard's. That term masks the original quality of Gandulphus's work and the fact that he independently drew on other texts besides Peter Lombard's *Sentences*, such as Gratian's *Decretum*.

Gandulphus quoted Peter Lombard, citing him as an authority and assigning his words or ideas to a patristic figure such as Augustine or Jerome.[56] Usage of Gratian abounds in the section on penance in the fourth book of Gandulphus's *Sentences*, but his borrowing from Peter Lombard begs the question whether his usage of Gratian was indirect, through Peter. While the general structure of the treatment of penance seems to have been influenced by Peter and does not follow the order of *De penitentia* (roughly speaking, in terms of the texts drawn ultimately from Gratian, both Peter and Gandulphus treat *De pen.* D.3, then D.1 and D.5, then D.7 along with C.26 qq.6-7, then *De pen.* D.6, and finally the controversial issue of D.4), the independent and direct usage of Gratian is confirmed by *auctoritates* as well as some of Gratian's own ideas and statements taken from Gratian that do not appear in Peter's *Sentences*.

A section of Gandulphus's treatment of penance that draws much from *De penitentia* D.3 provides a good opportunity to see his usage of Gratian apart from Peter Lombard as well as his respect for Gratian. In short, Gandulphus treated Gratian the same as he did Peter Lombard: he quoted him, sometimes silently without attribution, but sometimes citing him as a patristic *auctoritas*. Once Gandulphus got into the issue at the center of *De penitentia* D.3, namely the reiteration of penance and its true nature, he drew several canons from Gratian. Peter Lombard did as well, but Peter did not include a third of Gandulphus's texts that came from Gratian.[57] Thus Gandulphus must have been working from a manuscript of Gratian's

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[56] "Introduction," *Magistri Gandulphi Bononiensis Sententiarum Libri quatuor*, ed. Joannes de Walter (Wien-Breslau, 1924), lii-liv. Cf. de Ghellinck, *Mouvement théologique*, 191-213 (chapter 3.2).

[57] In this section, the texts which overlap with Gratian's are: in Book 4 §146 D.3 c.1 and D. 3 c.6, in §147 D.3 c.12, in §148, D.3 c.2 and D.3 c.22, in §149 D.3 c.32 (Ps-Aug.) and D.3 c.33, in §150 D.3 c.5 and D.3 c.36 (not

Decretum alongside of one of Peter Lombard's *Sentences*. In his discussion, Gandulphus mentioned the same example Gratian does of a man who repents of murder while still engaging in adultery. Here he quoted Gratian but attributed the statement to Jerome, introducing Gratian's text like any other *auctoritas* with a simple "Item Hieronymus."[58] His next sentence, though not an exact quotation, corresponds to Gratian's next statement.[59] Gandulphus then quoted parts of Gratian's next *auctoritas* from Pseudo-Augustine, followed by an analysis with language reminiscent of D.1 d.p.c.37. Since Rolandus did the same thing at this junction, Gandulphus very likely was influenced by his colleague here. Gandulphus's version reads,

> Likewise, if one mortal sin is forgiven while a person remains in another, he would be serving righteousness as much as iniquity through the second [sin], or as much as the devil through the second. But through the second of those sins he is a member of the devil. Therefore he is simultaneously a member of Christ and the devil through this situation in which he is repentant of one sin while standing impenitent of the other.[60]

The point is that such a dual identity is impossible. Once again, the argumentation of Gratian in *De penitentia* D.1 proved strong and convincing to his successors and was deemed as

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in Fd/Aa), in §151 D.3 d.p.c.41 and D.3 c.42 (Ps-Aug.), in §152 D.3 c.26 (not in Fd/Aa) and D.3 c.35, in §155 D.3 c.40, D.3 d.p.c.44, and D.3 c.44. The texts that are not in Peter Lombard's *Sentences* are c.22, cc.35-36, d.p.c.41, and c.44. I cannot prove in every instance that Gandulphus took these texts from Gratian and not from some other formal source. But, given the indubitable usage of Gratian, one can reasonably assume that, if *auctoritates* from the same general section of *De pen.* appear in close proximity in Gandulphus, especially in combination with some of Gratian's own ideas or words, then the canons come from Gratian.

[58] *Sentences*, Book 4, §151 (ed. de Walter, 467). The part he quotes is from D.3 d.p.c.41: "Si illa satisfactio non fuit, quam in adulterio uiuens pro homicidio obtulit, cum adulterii eum penituerit, utriusque penitencia [ei *om.*] inponenda erit." His choice of Jerome was logical, since a text of Jerome (cf. D.3 c.44) provided the inspiration for this discussion and example, as Gratian noted prior to the statement Gandulphus quoted.

[59] Ibid.: "Sed hoc non secundum generalem ecclesiae consuetudinem dictum videtur." Gratian's text reads, "quod a ratione alienum ecclesiastica probatur consuetudine."

[60] Ibid. (ed. de Walter, 467-68): "Item, si unum mortale dimitteretur alio remanente, serviret tantum iustitiae, quantum iniquitate servivit per alterum vel quantum per alterum servivit diabolo. Per alterum autem illorum est *membrum diaboli*. Simul ergo *membrum est Christi et diaboli* per hoc, quod de uno paenitens est et de altero impaenitens exsistit."

applicable to other issues besides the one on which Gratian brought it to bear. A couple paragraphs later, Gandulphus quoted Gratian almost word-for-word, this time without any attribution, patristic or otherwise. In this usage, he was accepting Gratian's interpretation of an *auctoritas*, the text *Pluit Dominus* from Gregory the Great.[61] A short while later, Gandulphus actually turned back to the second distinction of *De penitentia*, quoting much from Gratian himself, but once again he attributed the words to a patristic *auctoritas*, this time Augustine.[62] In sum, what one witnesses in Gandulphus's *Sentences* in terms of its relationship to *De penitentia* is that Gandulphus viewed Gratian's work as important and instructive, beneficial for its handing down of *auctoritates* but also for Gratian's own interpretations of those *auctoritates* and his independent thoughts and argumentation. Gratian was far from Gandulphus's only source, but Gandulphus placed him in high company, utilizing Gratian and quoting him the same way that he did Peter Lombard. And as he did with Peter Lombard, Gandulphus viewed some of Gratian's words as so important and reflective of the truth that he could not simply quote them tacitly; he imbued them with patristic authority.

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[61] Gregory's text appears as D.3 c.40 in Friedberg's edition. Gandulphus's text consists of the quotation from Gregory directly followed by (§155; ed. de Walter, 470): "Hoc autem referendum est ad criminis detestationem, non ad eiusdem criminis veniam." Gratian's text reads (D.3 d.p.c.44): "Pluit Dominus super unam ciuitatem etc.,' non ad criminis ueniam, sed ad eius detestationem referendum est."

[62] Book 4, §161 (ed. de Walter, 473-74): "Sine caritate vero, ut Augustinus ait, nullus habere potest veram cordis contritionem. Ait enim: 'Sine caritate quomodo veram cordis contritionem quis habere potest? Quomodo delictorum remissionem habet, si non sunt dimissa?' Et infra: 'In Christo quippe credere est amando in ipsum tendere. Haec est fides, ut definit apostolus, quae per dilectionem operature. Huic dumtaxat delictorum remissio promittitur, per quod, si caritas a fide Christianorum seiungi nequit, cui scilicet soli venia promittitur, quomodo, qui caritatem non habuit, fidem Christianorum habuit, id est in Christum credit? Quomodo veniam delictorum accepit, quam si non accepit, quomodo non omnia opera prorsus aeternis supplicis ferienda sunt?'" The text of Gratian Gandulphus quotes is D.2 d.p.c.14.

The respect which Rolandus and Gandulphus possessed for their Bolognese predecessor in his theological work was not limited to Bologna. A small testimony to this fact appears in a marginal note in a twelfth-century manuscript of German provenance currently catalogued as München, Bayerische Staatsbibliothek, lat. 22273.[63] The manuscript contains a medley of theological *sententiae*, much like the so-called *Liber pancrisis*, and the two collections in fact share many of the same texts. A majority of the extensively quoted texts are patristic, but many of them belong to recent masters, particularly Anselm of Laon. Among the Anselmian texts quoted is his famous final letter to the Abbot of St Lawrence in Liège.[64] In a margin next to a section of Jerome's commentary on Nahum is written, "Gratianus: Intelligitur illud de his tantum qui inter ipsa flagella penitentiam egerint, quam, etsi breuem et momentaneam non tamen respuit Deus."[65] This text constitutes a direct quotation from *De penitentia* D.3 d.p.c.42, and the scribe inserted it here in the margin as an interpretation, as a commentary on, Jerome's text. While the ink is lighter than that of the main text, this marginal text was written in an almost identical script of the same size and on the same lines as the main text. These details mean that Gratian's text was very deliberately added (it was no marginal note scribbled in on a whim) and added within a short time after the entire manuscript was produced (third quarter of the twelfth century). Here is perhaps the first known direct attribution of *De penitentia* to Gratian in a manuscript. Even more significantly for the discussion here, the scribe acknowledged Gratian as a master of great

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[63] A very similar manuscript containing many of the same texts is München, Bayerische Staatsbibliothek, lat. 19136.
[64] fol. 45^{v}-46^{r}.
[65] fol. 67^{v}.

stature. His text, though written in the margin, was copied in the style and with the care of all the other texts in the manuscript. He was the only very recent master mentioned – there are no quotations from Gilbert or Hugh or Abelard – and he was put in the company of the Fathers and the great masters of the early twelfth century. He was viewed as a valuable and able interpreter of the Fathers, here Jerome. The fact that the collection is an Anselmian one, filled with sentences from the master of Laon beside the Fathers, is most likely only a coincidence, but how serendipitous that Master Gratian joined his theological master on the page.

The preceding discussion highlights two points about the reception of Gratian's *De penitentia*: first, *De penitentia* was viewed by those who were writing theology as being of theological merit, not just as being a valuable resource for *auctoritates* related to various topics, and second, Gratian was understood as a master, as a teacher whose opinions were to be respected but also evaluated and possibly rejected. In short, *De penitentia* was understood as a theological work like any other by a great master in its day, and Gratian was accepted as a theological master like any other in his day. While modern scholars have often ignored and even demeaned Gratian's theological ability and downplayed the richness of theological content in *De penitentia*, twelfth-century masters exhibited a respect for Gratian as a theologian and *De penitentia* as a theological text.

These conclusions create a historical context in which it could be conceived that, just as the students of Anselm took notes on his lectures and produced sentence collections based off of them, so too could students of Gratian, either from class notes or directly from

Gratian's written work, have produced derivative texts. These derivative texts could have been merely an attempt to fashion some class notes into something of a more cohesive composition; they could also have been an attempt to reevaluate and re-treat some topics taught by Gratian based largely on ideas, arguments, and *auctoritates* present in Gratian's lectures and treatise on penance. I mention this hypothetical case because of tracts that have recently been discovered and that in the manuscripts are often appended to or incorporated into twelfth-century sentence collections that belong doctrinally to the school of Laon. Two tracts in particular, one on *caritas* and one on penance, overlap in an overwhelming way with D.2 and D.3 of *De penitentia*, respectively. They are not nearly so polished, though, and what argumentation is present alongside of *auctoritates* is not nearly as deep. The discovery of and early research on these tracts has been done by John Wei. Through his textual analysis, Wei has come to the conclusion that these tracts pre-date Gratian's *Decretum* and served as sources for those two distinctions of *De penitentia*.[66] While this is possible, I remain

[66] Even though Wei has performed some painstaking and tedious textual analysis, I believe his position that these tracts served as sources for Gratian's *De penitentia* is partially prejudiced by two things: first, Wei's research for his dissertation was on identifying the formal sources of the *auctoritates* in *De penitentia* and thus he was always looking for sources, for works that pre-dated Gratian and could have provided Gratian with texts for his work; second, based on flimsy evidence, Wei maintains that Odo of Lucca knew of and drew upon one of these tracts in his *Summa sententiarum* (Wei, "Law and Religion," 75-78). Thus he conceives of the tracts as written at the latest in the early 1130s, which, on his timeline, would put them prior to the earliest stage of Gratian's *Decretum*. In my opinion, the slight similarities (and they are very slight) between the *Summa sententiarum* and these tracts are all explained by common elements in the theological discussions on penance at the time. No direct literary borrowing need be posited at all.

Wei's examination of the treatise on penance, *Baptizato homine*, its relationship to *De penitentia* D.3, and an edition of the text appears in "Penitential Theology in Gratian's Decretum: Critique and Criticism of the Treatise Baptizato homine," ZRG Kan. Abt. 126 (2009): 78-100. I will take the space to rebut only one of Wei's arguments in that article at this time: Wei found that both the anonymous author and Gratian use the term *infidelis* in an example alluding to a passage from Jerome, a passage in which Jerome technically used the example of a *fidelis*. Wei argued that Gratian's usage of *infidelis* in *De penitentia* D.3 d.p.c.39 but his quoting Jerome correctly with *fidelis* shortly thereafter in c.44 would indicate that Gratian's argument in d.p.c.39 did not stem from him. After all, he had access to and quoted the correct text with the *fidelis*. Since *Baptizato homine* also says *infidelis* (cf. n.25 in Wei's edition), Wei concluded that this is evidence that Gratian copied the

unconvinced and have found textual evidence to support the relationship going the other way.[67] At the very least, scholars should leave open the possibility that these tracts are in fact dependent in one form or another on Gratian's teaching, that they are further witnesses to the positive and fruitful effects and reception of *De penitentia*. Hopefully a conclusive answer to this problem will not take decades to reach, as it did with the question of the relationship between Gratian's *Decretum* and Peter Lombard's *Sentences* and that between the latter and Gandulphus's *Sentences*. For the time being, one can affirm that these tracts and Gratian's *De penitentia* emerged from the same academic and intellectual milieu, a not un-noteworthy finding in and of itself.

Conclusion

In the early decades after the composition of *De penitentia*, the treatise had the chance of falling into oblivion. Those who began to teach and comment on the *Decretum* ignored it in their lectures on canon law; as they taught through the *distinctiones* of the *prima pars* and the *causae* of the *secunda pars*, *De penitentia* seemed not quite to fit. Besides, it was prohibitively long. Fortunately for the legacy of *De penitentia*, Gratian's *Decretum* stood

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example from that work and failed to correct the *infidelis* to *fidelis* in d.p.c.39 on the basis of Jerome's original text, which he proceeded to insert as c.44. The problem with Wei's argument lies in the fact that both Fd (fol. 96va) and Aa (fol. 172^{v}) as well as two of Friedberg's manuscripts, including the very early Köln, Dombibliothek 127 (Friedberg's manuscript A), read *infidelis* both in d.p.c.39 and in c.44. In other words, Gratian's formal source of the Jerome text read *infidelis*, not the correct *fidelis*. Later scribes corrected the word in c.44 but not in Gratian's own discussion in d.p.c.39. This manuscript evidence refutes Wei's claims on this point, and, with this information, one can imagine that the example in d.p.c.39 did indeed originate with Gratian based off of his reading of the Jerome passage and that *Baptizato homine* copied that example from Gratian.

[67] For example, *De penitentia* D.2 c.17 is twice as long as the text of paragraph n.82 in *Ut autem hoc euidenter* and thus could not have been copied from it. Gratian's text reads, "Sicut seta introducit linum, ita timor caritatem; crescit caritas, minuitur timor, et e conuerso." The other tract reads only "Crescit caritas, minuitur timor, et e conuerso." Such data would not be inconsistent with a shared source for both works. I thank John Wei again for making available to me his in-progress edition. In addition, I have consulted personally the following manuscripts of this work: München, Bayerische Staatsbibliothek, lat. 22307; Fulda, Hessische Landesbibliothek, Aa 36 4°, and Firenze, Biblioteca Medicea Laurenziana, Plut. V sin 7.

at the beginning point of a development of the separation of the sciences, providing a textbook around which a specialized curriculum for canon law could emerge but also around which an exclusive and fully separate discipline had not yet been solidified and institutionalized. This meant that most of Gratian's immediate successors in Bologna were just as well-rounded as he was, and they engaged in theological enquiries as well as canonical, just as he had. Thus masters such as Rolandus and Gandulphus took note of *De penitentia* in their progress through lecturing on the *Decretum* and decided to make good use of it in their theological *sententiae*. One cannot be certain how the author of the *Sententie divinitatis* came to know of *De penitentia*, but at least for the case of Rolandus and Gandulphus, Gratian's inclusion of *De penitentia* within his *Concordia discordantium canonum* seems to have ensured its influence. The initial survival and influence of *De penitentia* seems, then, to have relied on two things: first, its incorporation within the *Decretum*, and second, the continued existence of well-rounded intellectuals who studied and sometimes also taught canon law as well as theology (beyond, of course, the liberal arts). These intellectuals acknowledged the theological aptitude of their predecessor and recognized the theological richness present in his *De penitentia*.

CHAPTER 9

FROM ONE MASTER TO ANOTHER:

PETER LOMBARD'S USAGE OF GRATIAN'S *DE PENITENTIA*

When and how Peter Lombard acquired his copy of Gratian's *Decretum* is not known, but that he did so is testified to by his bequeathal of a *Decretum* manuscript to his chapter of Notre Dame upon his death in 1160 after having been bishop of Paris for only a year.[1] The copy would have already been well-worn based on how extensively Peter drew from it in the production of his *Sententiae in quattuor libris distinctae* (final edition 1155-57).[2] Peter utilized every part of the *Decretum*, especially when discussing the sacraments. In his section on penance (Book IV, distinctions 14-22), Peter's two main sources were Odo of Lucca's *Summa sententiarum* and Gratian's *De penitentia*. On the surface, very little of these distinctions came from the renowned theologian himself, but Peter Lombard's genius lay in adopting and refashioning the sources in front of him, both patristic and more contemporary, in order to create his own unique composition and let his ideas shine through. Such was the nature of a Book of Sentences, and Peter Lombard composed the best sentence collection of the twelfth century, thus ensuring its reception as the textbook of theology for centuries to come.[3] As Philipp Rosemann stated,

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[1] For this document, cf. M. Guérard, ed. *Cartulaire de l'église Notre-Dame de Paris*, Collection des cartulaires de France 4 (Paris: Crapelet, 1850), 1.60.

[2] The final edition of the *Sentences* incorporated the newly translated *De fide orthodoxa* of John of Damascus. It was the result of close to two decades of teaching in Paris. Cf. Marcia Colish, *Peter Lombard*, 2 vols. (Leiden: Brill, 1994), 1.25.

[3] Much of Colish's work is centered on showing how Peter Lombard's *Sentences* was far superior to that of others composed in the mid-twelfth century. Through such comparison, the wide and definitive acceptance of the Lombard's work is made more comprehensible.

> The *Book of Sentences* not only constituted the point of departure for much of theological reflection from the time of the first universities through the Council of Trent; it was also the point of arrival for the development of the Christian thought that preceded it. For that was the nature of the sentence collection as a literary genre: to gather together the most important scriptural and patristic quotations – the *sententiae* – and to synthesize, as far as possible, the positions represented by the quotations, while bearing in mind contemporary theological debates. A good sentence collection – and Peter Lombard's is an outstanding one – would thus represent the state of the art in theology.[4]

"The state of the art of theology" – and where did Peter Lombard predominantly turn in order to find and then portray the state of the art in the theology on penance? Neither to Hugh of St Victor nor to Peter Abelard; first and foremost he turned to Gratian.

Scholars have long known and acknowledged that Peter Lombard was greatly indebted to Gratian for his treatment of penance. After Fournier conclusively proved that Peter had used Gratian and not vice versa, scholars were free to perceive how many *auctoritates* and *dicta* Peter had drawn from the Bolognese master.[5] On the whole, however, Gratian's *Decretum* and *De penitentia* have been understood as providing Peter Lombard with a treasure trove of patristic and biblical citations.[6] If the careful citing of authorities formed one of the key elements of a good book of *sententiae*, then Peter Lombard was a very

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[4] Philipp W. Rosemann, *Peter Lombard* (Oxford: Oxford University Press, 2004), 4.

[5] Paul Fournier, "Deux controverses sur les origines du Décret de Gratien. Première Partie: Gratien et Pierre Lombard," *Revue d'histoire et de littérature religieuses* 3 (1898): 97-116. Fournier's argument was two-fold: (1) he presented a few examples of erroneous attribution shared by the two men and argued that the error could not have stemmed from Peter Lombard, who did not use or may not have known about the formal source of the canon, but had to stem from Gratian; (2) he gave an example comparing the contrary positions of the two men on marriage, showing that Peter Lombard was responding to and criticizing Gratian's consummation position, defending instead the Parisian consensual position.

[6] This is largely how Hödl portrayed Peter Lombard's usage of Gratian, even though he did acknowledge that Peter took over some of Gratian's *dicta* as well. On the whole, his understanding of Peter's utilization of Gratian remained rather cursory. Cf. *Schlüssgewalt*, 188. The idea of Gratian providing later theologians, especially Peter Lombard, with a treasure trove was already present in the work of Schmoll, *Busslehre der Frühscholastik* (1909), 42, who referred to the patristic material in *De penitentia* as a *Fundgrube*.

lucky theological master indeed when he came into possession of an entire *Decretum*. Such a perspective diminishes the genius of both men and their works. Meanwhile, Colish conceived of the craft of the Lombard's usage of *auctoritates* in Gratian in almost a purely negative way: Peter was perfectly capable of rejecting Gratian's citing of authorities and aptly putting forward an entirely different view.[7] A proper understanding of how Peter Lombard used Gratian's *De penitentia* in Book IV of his *Sentences*, mostly in a very positive and receptive way, reveals the abilities and gifts of both masters.[8]

Furthermore, while Gratian is universally acknowledged as a source for Peter Lombard, he is considered in that capacity as a canonist, never a theologian. In the literature, Hugh and Peter Abelard along with more recent figures such as Odo of Lucca and Robert of Melun are the theologians whose work Peter Lombard knew and drew upon; Gratian meanwhile is coupled with Ivo of Chartres as providing Peter Lombard with numerous

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[7] Here is Colish's description of Peter Lombard's usage of Gratian (*Peter Lombard*, 1.89-90): "Peter goes a long way toward incorporating the work of Gratian into his sacramental theology. He draws heavily on the dossier of authorities assembled pro and con in the *Decretum*. But, Peter does not hesitate to edit Gratian's citations, to contextualize or to relativize them historically, or to subject them to theological criteria not advanced by Gratian himself, as a means of dismissing positions which Gratian cites, or supports, with which Peter disagrees. In the manner typical of his theological compeers, he has a pastoral and moral outlook on the sacraments, not a legalistic one, and he feels free to emphasize aspects of the sacraments not of interest to Gratian and to dismiss considerations high | on Gratian's agenda as unimportant. And, in areas where he takes a position diametrically opposed to Gratian's, Peter does not hesitate to stand him, and his catalogue of sources, on their heads when it suits his purpose. Further, since he does not rely exclusively on Gratian's research, he is able to correct some textual corruptions cited by Gratian as well as some apocryphal attributions which he makes." The emphasis is on the rejection of Gratian; she writes nothing of the creative and positive incorporation of Gratian's ideas into the *Sentences*.

[8] One scholar who did acknowledge and emphasize the positive reception and usage of Gratian by Peter Lombard was Joseph de Ghellinck, whose best-known work laid out the preparation for Peter Lombard's work by the canonists of the eleventh and early twelfth century. He noted that Peter Lombard's successors understood well the reliance of him on Gratian, which is clear from the copious marginal references to Gratian's work in manuscripts of the *Sentences*. Cf. de Ghellinck, *Le mouvement théologique du XIIe siècle: Sa préparation lointaine avant et autour de Pierre Lombard, ses rapports avec les initiatives des canonistes*, 459.

canonical decrees.[9] Such a perspective possesses real and important ramifications for the understanding of the twelfth-century development of sacramental theology, particularly as it relates to penance. With Gratian understood as a canonist who gave Peter Lombard an ecclesiastical canon here and there, Peter Abelard gets the credit for formulating the most influential view of penance and contrition in the twelfth century. Since Peter Lombard asserted that sins are forgiven through contrition and that priests affirm a forgiveness that has already taken place, it seems clear that Peter Abelard's view won the day through the author of the *Sentences* while the Victorine school of thought on the matter was shut out.[10] This narrative becomes doubtful, or at least grossly over-simplified, when one realizes to what

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[9] Rosemann, *Peter Lombard*, 56. Anciaux did acknowledge that a good portion of Peter Lombard's work on penance came out of Gratian, but he did not delve into specifics on that front (*Théologie de penitence*, 80).

Colish perceived in the generation of the 1140s and 1150s (the generation after Gratian) an increase in "the tendency toward eclecticism, already visible to some degree in the *Summa sententiarum* and the *Sententie divinitatis*" (*Peter Lombard*, 1.65). She meant that the figures of those years adopted and incorporated the teaching of several different masters into their works, a phenomenon that was made possible due to the increasing number of theological masters of high repute, the travels of their international students, and the production of texts. Colish stated in relation to Peter Lombard's broad use of recent and contemporary masters, "It was certainly possible in this period [i.e. the 1140s and 50s] to acquaint oneself with the teachings of thinkers with whom one was not bound in a formal master-disciple relationship" (Ibid., 1.18). Note the difference in comparison with the 1100s through the 1120s, Gratian's formative years, in which great masters were fewer in number and produced fewer if any published texts. In those years, drawing on someone's work does point to a master-pupil relationship.

[10] This is the line of thought taken by Anciaux, *Théologie de penitence*, 223-30.

Another example of a skewing of theological development by not acknowledging the influence of Gratian on Peter Lombard is the portrayal of the treatment of solemn penance. When discussing the topic, Mansfield (*Humiliation of Sinners*, 24) mentioned Peter Abelard and then Hugh and next Peter Lombard (clearly grouping them together as the chief theologians of the twelfth century), and then she mentioned Gratian in the same breath as the decretists (clearly grouping them together as canonists). She did not realize that Peter Lombard's discussion of solemn penance in *Sent.* 4.14.4 was drawn from both Gratian and Odo of Lucca, but primarily the former. He quoted *auctoritates* out of *De penitentia* and gave Gratian's interpretation of them, namely, that when they speak of penance as unique, only able to be done once, they are to be understood concerning solemn penance in accordance with the special custom of the church, which according to certain people is not repeated once celebrated" (from *De pen.* D.3 d.p.c.21). What he took from Odo of Lucca was the notion that solemn penance is not repeated "out of reverence for the sacrament" (*pro reuerantia sacramenti*; cf. *Summa sententiarum* 6.12; PL 150B).

extent Peter Lombard made use of not just the *auctoritates* within *De penitentia* but Gratian's own thoughts and argumentation.

Peter Lombard's Usage of *Auctoritates* and Gratian's Own Words and Arguments

The best way to summarize Peter Lombard's usage of Gratian's *De penitentia* is to say that it was varied and complex. He did not always treat Gratian's *auctoritates* or Gratian's own words and arguments in the same way. He also did not walk through *De penitentia* in order. Like Rolandus and Gandulphus, Peter composed a unique work and fit *De penitentia* into it in a correspondingly unique way. In relationship to his drawing on *De penitentia*, Peter's work is distinguished from that of the others by its length, depth, and ingenuity. More of *De penitentia* made its way into Peter Lombard's work than that of any other twelfth-century theologian.[11] At the same time, his varied usage of individual elements and extended arguments in Gratian reveals that Peter not only read *De penitentia* but fully absorbed it. Having absorbed it, he then took charge of the material in it, creating a composition that bears testimony to his own ideas and intellectual abilities.

Even in his quoting of *auctoritates* from *De penitentia*, Peter Lombard did not simply copy; he actively adopted. Sometimes he copied the *auctoritates* word-for-word; other times he truncated or abbreviated them, especially the exceptionally long ones. For example, Peter cut the quite lengthy quotation from Pope Leo I in *De penitentia* D.1 c.49 to about a quarter of its length.[12] Peter even modified phrases within the quotation, sometimes shortening three

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[11] See Appendix B for a listing and comparison of all the sections of *De penitentia* that Peter Lombard used in *Sent.* 4.14-22.

[12] *Sent.* 4.17.3: "Item Leo: 'Multiplex misericordia Dei ita lapsibus humanis subvenit, ut non modo per baptismum, sed etiam per poenitentiam spes vitae reparetur: … sic divinae voluntatis praesidiis ordinatis, ut

words down to two (e.g. *per baptismi gratiam* becomes *per baptismum* and *per penitentiae medicinam* becomes *per penitentiam*). Such changes seem unnecessary, but they exhibit the care and tediousness with which Peter was crafting his work, even within the quoted *auctoritates*. Sometimes Peter's changes within *auctoritates* or the inscriptions for them stemmed not from personal style preferences but from critical scholarship. He seems to have consulted other manuscripts that contained a certain *auctoritas* or to have gone back to Gratian's formal source, if he recognized it, and adapted the text to make it match the original. Peter's quoting of *De penitentia* D.4 c.16 (Gregory the Great) provides a short example of a place where Peter must have consulted another manuscript and made a correction. Peter's version of the *auctoritas* reads, "Hoc nobis maxime considerandum est, quia cum mala committimus, sine causa ad memoriam transacta bona revocamus…"[13] Gratian's version did not include the *ad memoriam*, but the original homily from Gregory did.[14] Gratian had attributed the second *auctoritas* in all of *De penitentia* to John Chrysostom, but in fact the text came from Ambrose, just like the first *auctoritas*. The texts were quoted after Ambrose by Bishop Maximus. Peter put the texts together, filled in the connecting sentence from Ambrose that was entirely missing in Gratian, and attributed them

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indulgentiam Dei nisi supplicationibus sacerdotum nequeant obtinere. … Christus enim hanc praepositis Ecclesiae tradidit potestatem, ut confitentibus poenitentiae satisfactionem darent, et eosdem, salubri satisfactione purgatos, ad communionem sacramentorum per ianuam reconciliationis admitterent…'" The ellipses indicate where Peter has cut out text from *De pen.* D.1 c.49. The critical edition (now in its third edition) is Peter Lombard, *Sententiae in IV libris distinctae*, 2 vols., 3rd ed., Spicilegium Bonaventurianum 5 (Grottaferrata, 1981).

[13] *Sent.* 4.15.7.

[14] The *Correctores Romani* added the *ad memoriam* in their notes. The Gregorian text is in Homily 11, *In Ezek.* I, on Ezekiel 3:20, at paragraph 21 in Gregory the Great, *In Hezechielem prophetam*, CCSL 142, ed. Marcus Adriaen (Turnhout: Brepols, 1971), 178.370-374.

correctly while also noting Maximus' usage.[15] Meanwhile, in the same chapter, in which Peter took numerous texts from *De penitentia* D.1, he recognized in c.4 and c.5 similar material to what appears in the *Glossa ordinaria* on Psalm 31:5, which he knew from creating his own gloss that would become the standard one (the so-called *magna glosatura*).[16] Peter returned to Anselm of Laon's gloss, quoting directly from it (while adding his own words here and there) instead of Gratian's adapted version.[17] Peter was not a passive copier; he actively assimilated the texts from Gratian and showed himself to be an able and critical scholar.

As far as how he put the *auctoritates* to work, sometimes Peter accepted Gratian's usage of an *auctoritas* to support a certain point, and sometimes he used one in a different way from Gratian, even supporting some other point that could be unrelated to the one addressed in *De penitentia*. For example, in the fifteenth distinction of Book IV, Peter addressed the issue of the second half of *De penitentia* D.3, namely whether one can truly repent of one sin while persisting in others. As a concluding and definitive statement on the matter, denying that true penance can be done while still indulging in other sins, Peter

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[15] *Sent.* 4.17.1: "Item Ambrosius: '[*De pen.* D.1 c.1] Ideo flevit Petrus, quia culpa obrepsit ei. Non invenio quid dixerit, invenio quod fleverit. Lacrymas eius lego, satisfactionem non lego. [added text] Sed quod defendi non potest, ablui potest. [*De pen.* D.1 c.2] Lavant lacrymae delictum, quod voce pudor est confiteri, et veniae fletus consulunt et verecundiae.' Hoc idem etiam Maximus dicit episcopus."

[16] Cf. above, chapter 1, n.18, on the likely, but not provable, view that Gratian's formal source for D.1 cc.4-5 was the *Glossa ordinaria*, and chapter 7, n.42 on Peter's composition of the *magna glosatura*.

[17] *Sent.* 4.17.1: "Unde Propheta: *Dixi, confitebor adversum me iniustitiam meam Domino, et tu remisisti etc.* Quod exponens Cassiodorus ait: '*Dixi*, id est, deliberavi apud me, quod *confitebor, et tu remisisti*. Magna pietas Dei, quod ad solam promissionem peccatum dimiserit! Votum enim pro operatione iudicatur.' Item Augustinus: 'Nondum pronuntiat, promittit se pronuntiaturum, et Deus dimittit; quia hoc ipsum dicere, quoddam pronuntiare est corde. Nondum est vox in ore, ut homo audiat confessionem, et Deus audit.'" The gloss reads (ed. Rusch, 490[b]-491[a]), "Cassiordorus: Dixi, enim prius, ide est, deliberaui apud me. Magna pietas ut ad solam promissionem dimiserit, votum enim pro operatione iudicatur. Nondum pronunciat promittit pronunciaturum et deus iam dimittit quia hoc ipsum dicere quoddam pronunciare est corde nondum est vox in ore, ut homo audiat confessionem et deus audit."

followed Gratian in quoting Pseudo-Augustine, the text that makes up *De penitentia* D.3 c.42.[18] (Peter quoted significant portions of Pseudo-Augustine's *De uera et falsa penitentia*, all out of Gratian; he did not have independent access to a complete manuscript of the work.) Just prior to quoting this text, though, Peter quoted D.4 cc.15-16. He had been arguing, as Gratian did towards the end of *De penitentia* D.3, that good works, including a penance that is not fully genuine (i.e. one reserves some sins to oneself), have some benefit – they do not merit an eternal reward, but they may result in a lessening of punishment. God remembers the limited good and responds in his justice accordingly. Peter Lombard summarized this point, and then he briefly noted, conversely, that those acts that someone does in love, if that person subsequently falters and does not return to good, will not be remembered by God. To support this point, Peter turned to D.4 cc.15-16, texts that Gratian had used as a sort of nail-in-the-coffin for the view that forgiven sins return to the apostate for punishment.[19] When Peter addressed the question of the return of sins, he left the conclusion open, but he took these two texts here to state that God does not remember the good works that people had previously done in love who end their lives without love and without good works.[20] Thus God may not render punishment for previous sins, but he certainly will not in the case of the apostate count previous works performed with *caritas* still worthy of eternal life. In short, Peter took texts from Gratian but applied them to an entirely different discussion.

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[18] *Sent.* 4.15.7. Peter abbreviated Gratian's text a little.

[19] In introducing these texts, Gratian stated (D.4 d.p.c.14) that "verum illa sentencia (i.e. that forgiven sins return) fauorabiiior uidetur, quia pluribus roboratur auctoritatibus, et euidentiori ratione firmatur." Then came his introduction to the text in Ezekiel (c.15): "Ut enim Dominus ait per Ezechielem…"

[20] *Sent.* 4.15.7: "Illa etiam que in caritate quis facit, si postea prolapsus fuerit nec exsurrexerit, non esse in memoria Dei Ezechiel dicit [*De pen.* D.4 c.15]: … In cuius loci expositione Gregorius ait [D.4 c.16]: … Intelligendum est hic ad vitam percipiendam bona praeterita non dare fiduciam, etsi ad mitiorem poenam."

Peter did the same thing in the twentieth distinction where he addressed a question not put forward by Gratian but one that both Peter Abelard and Hugh of St Victor asked. The question concerned what happens at death to a penitent who completes the penance assigned to him, but the penance, having been determined by an ignorant and negligent priest, was insufficient for the sin.[21] He argued that, if the heart of the person is truly contrite, he is saved. As proof, he looked to the thief on the cross. He added that laws concerning which penance to do for what sin are in place because human priests cannot determine the true heart of the penitent in front of them as God can. Nevertheless, some priests are better at such discerning than others, and all priests should endeavor to become better discerners of human hearts. To support his case, he included *De penitentia* D.1 c.84 (Augustine) and c.86 (Jerome), texts that had been added in a later stage of the *Decretum* in order to bolster the view that confession to and judgment by a priest are essential for the remission of sins.[22] Thus, even when he was discussing an issue never touched upon by Gratian, Peter still found *auctoritates* from *De penitentia* of use, and he knew the treatise well enough to be able to find the texts he wanted embedded deep within it.

If Peter Lombard's usage of *auctoritates* within *De penitentia* reveals an active mind intent on making conscientious choices every step of the way, his usage of Gratian's own words and arguments do so even more. At times, Peter quoted Gratian almost verbatim, and, given how much he edited and re-worked Gratian's words in other places, one can be sure in

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[21] Cf. Peter Abelard, *Scito teipsum*, ed. Luscombe, 106-108; Hugh of St Victor, *De sacramentis*, 2.14.3.
[22] *Sent.* 4.20.3. Peter truncated D.1 c.84 a bit but quoted D.1 c.86 in full. These two canons are two of many that show that Peter's copy of the *Decretum* was a late version and seems to have been very close to the vulgate version that would eventually be edited by Friedberg.

these instances that he highly approved not only of the idea Gratian was presenting but of the way Gratian formulated that idea. In the seventeenth distinction, which is inundated with passages from *De penitentia* D.1, Peter Lombard presented his opinion that the remission of sins does come through contrition alone, but he wanted to make clear that such a position did not diminish the importance and necessity of confession. In explaining why confession is necessary and why so many *auctoritates* speak of confession, often seeming to say that confession is needed for remission, he focused on the notion of quietness and secrecy over sin as prideful and on shame as penalty. He thus emphasized the embarrassment that accompanies confession as part of the penalty owed God for the sin. Not surprisingly, he turned to the closing sections of *De penitentia* D.1, sections in which Gratian continued to advance the notion that confession is needed for the remission of sins but which Peter used to emphasize the necessity of confession despite the already-received remission of sins. He quoted portions of Gratian's excerpt from Pseudo-Augustine's *De uera et falsa penitentia* that highlighted the idea that the shame of confessing one's sins constitutes part of the penalty for sin.[23] Before he did so, he quoted Gratian's words preceding this excerpt.

Peter Lombard, *Sent.* 4.17.4	Gratian, *De penitentia* D.1 d.p.c.87 §15
Taciturnitas enim peccati ex superbia nascitur cordis. Ideo enim peccatum suum quis celat,	Taciturnitas peccati ex superbia nascitur cordis. Ideo enim peccatum suum quisque celare desiderat, ne iniquitas sua aliis manifesta fiat, ne talis reputetur apud homines foris, qualem se iamdudum exhibuit diuino conspectui. Quod ex fonte superbiae nasci nulli dubium est; species etenim superbiae est, se uelle iustum uideri, qui peccator est; atque ypocrita conuincitur, qui ad imitationem primorum parentum uel
ne reputetur foris qualem se iam divino conspectui exhibuit: quod ex fonte superbiae nascitur. Species enim superbiae est, se velle iustum videri, qui peccator est; atque hypocrita convincitur, qui ad instar primorum	

[23] *De pen.* D.1 c.88.

parentum vel tergiversatione verborum peccata sua levigare contendit, vel sicut Cain peccata sua reticendo supprimere quaerit. Ubi ergo superbia regnat vel hypocrisis, humilitas locum non habet; sine humilitate vero alicui veniam sperare non licet. Ubi ergo est taciturnitas confessionis, non est speranda venia criminis.	tergiuersatione verborum peccata sua leuigare contendit, uel, sicut Cayn, peccatum suum reticendo penitus supprimere querit. Ubi autem superbia regnat, uel ypocrisis, humilitas locum habere non ualet. Sine humilitate uero alicui ueniam sperare non licet. Nec ergo, ubi est taciturnitas confessionis, uenia speranda est criminis.

Peter's changes could be described as stylistic; they certainly did not change the substance of Gratian's passage, and, on the whole, he retained Gratian's diction and syntax. Even while he strongly affirmed the sufficiency of contrition, he accepted the argument Gratian made here: going to confession involves humility; not going to confession is a mark of pride; one needs humility in order to be forgiven, and, for Peter, a truly contrite person will exhibit such humility by confessing his sins to a priest.

At other times, Peter greatly changed Gratian's texts, shortening and paraphrasing them and often skillfully weaving Gratian's own words and terminology into his own. Peter treated much of Gratian's text in *De penitentia* D.3 this way in his fifteenth distinction in his discussion treating the false nature of that penance which is done for one sin while remaining in another. Often his re-workings, sometimes only slight, of Gratian's words served to clarify the issue at hand. Gratian's phrasing was not consistently lucid and sometimes one must work hard to understand the substance of what he was saying; Peter proved to be a superb editor, preserving Gratian's meaning but structuring his sentences in such a way as to make the issue and substance clear right from the start. Peter's introduction to this important topic contained both a better, more lucid syntax as well as a more straight-forward explanation of the proponents' position.

Peter Lombard, *Sent.* 4.15.1	Gratian, *De penitentia* D.3 d.p.c.39
Et sicut praedictis auctoritatibus illorum error convincitur, qui poenitentiam saepius agendam, et per eam a lapsu peccantes frequenter surgere diffitentur; ita eisdem illorum opinio eliditur, qui pluribus irretitum peccatis asserunt de uno vere poenitere, ejusdemque veniam a Domino consequi posse sine alterius poenitentia.	His auctoritatibus, que sit uera, que falsa penitencia ostenditur, et falsae nulla indulgentia dari probatur; in quo illorum sentencia destruitur, qua eum, qui pluribus irretitus fuerit, asseritur unius delicti penitencia eiusdem ueniam a Domino consequi sine alterius criminis penitencia.
Quod etiam auctoritatibus astruere[24] conantur. Ait enim propheta: *Non iudicabit "Deus bis in idipsum;"* vel, ut alii transtulerunt: "*Non consurget duplex tribulatio."* Si ergo, inquiunt illi, aliquis sacerdoti fuerit confessus unum de duobus vel pluribus peccatis, et de illo iniunctam sibi a sacerdote satisfactionem expleverit, caeteris tacitis, non pro illo peccato amplius iudicandus est, de quo satisfecit ad arbitrium sacerdotis, qui vicem Christi in Ecclesia gerit. Ideoque si de eo iterum iudicetur, bis in idipsum iudicat Deus et consurget duplex tribulatio.[25]	Quod etiam multorum auctoritatibus probare conantur. Quarum prima est illa Naum prophethae: "Non iudicabit Deus bis in idipsum." Sed quem sacerdos iudicat Deus iudicat, cuius personam in ecclesia gerit. Qui ergo a sacerdote semel pro peccato punitur, non iterum pro eodem peccato a Deo iudicabitur.

Peter's presentation was based off of Gratian's, but he filled in the holes. Most importantly, he clearly explained to his students how people relate Nahum 1:9 to satisfaction (which is the result of the judgment of the priest who stands in God's stead) for one sin while a person remains silent and thus does not perform satisfaction for other sins. The priest acts in God's

[24] Peter Lombard preferred the verb *astruere* for "to prove," while Gratian invariably used *probare*. Both verbs are found in Boethius' works on logic.

[25] "And just as the afore-mentioned authorities defeat the error of those who deny that penance is to be done often and that, through this, sinners frequently rise up from their fall, so also the same authorities dash to pieces the opinion of those who assert that a person ensnared in several sins can truly repent of one and obtain mercy from the Lord for the same without penance for the other.
"They attempt to prove this with authorities. For the prophet says, 'God will not judge the same thing twice' or, as others have translated it, 'A double tribulation will not rise up.' If therefore, they say, someone confesses one of the two or many sins to a priest and fulfills the satisfaction enjoined by the priest on him for the one sin, and he remains silent about the other sins, he is not to be judged further for that sin for which he made satisfaction according to the judgment of the priest, who acts as Christ's vicar in the church. And thus, if he will be judged again concerning that one sin, God is judging the same thing twice and a double tribulation is rising up."

stead as his vicar; therefore, if he assigns satisfaction for a sin while other sins remain and then must reassign satisfaction since the first confession and then satisfaction were false, then the priest is in effect punishing the same thing twice since he assigns satisfaction twice for the same sin. Also, Peter helpfully provided the alternative Latin translation of Nahum 1:9 at the start, while Gratian did not refer to it until much later (d.p.c.42).

Creating a more streamlined argument, Peter jumped to the section of *De penitentia* D.3 in which Gratian exegeted Nahum 1:9. Gratian argued that the verse applies only to those who repent as a result of earthly punishments (such as satisfaction) – God can indeed punish an unrepentant person twice, both here on earth and then in eternity, in which case the first serves as the initiation of the second. Peter accepted Gratian's exegesis wholesale but again edited Gratian's words, removing some redundant phrases (e.g. *qui flagellatus a Domino durior factus est*) and adding some clarifying ones (e.g. *in bonum et sic perseverant*).

Peter Lombard, *Sent.* 4.15.1	Gratian, *De penitentia* D.3 d.p.c.42
Sed de his ergo tantum oportet illud intelligi, qui praesentibus suppliciis commutantur *in bonum et sic perseverant*; super quos non consurget duplex tribulatio. Qui vero inter flagella duriores et deteriores fiunt, ut Pharao, praesentibus aeterna connectunt, ut temporale supplicium sit eis aeternae poenae initium.	…sicut et illud Prophetae: 'Non iudicabit Deus bis in idipsum,' de his tantum intelligi oportet, quos supplicia presentia conmutant, super quos non consurget duplex tribulatio. Qui autem inter flagella duriores et deteriores fiunt, sicut Pharao, *qui flagellatus a Domino durior factus est*, presentibus eterna connectunt, ut temporale supplicium sit eis eternae dampnationis initium.

Peter similarly copied but re-worked to one degree or another almost every other section of Gratian's own words towards the end of *De penitentia* D.3.[26] His editing, though, did not change the substance of Gratian's interpretations and arguments; Peter Lombard accepted Gratian's exegesis of Nahum 1:9, his interpretation of many of the other *auctoritates* brought up in this discussion, and Gratian's line of argumentation against those who would say that one can truly repent of one sin while remaining in another.

Peter Lombard found other arguments by Gratian similarly compelling. When he turned to the issue at the heart of *De penitentia* D.1, namely the element in the process of penance that actually causes remission of sin, Peter famously argued for contrition as that element. Thus, he roughly agreed with the first position argued in Gratian's first distinction. As he presented this side of the argument, he made his case using *auctoritates* from early on in *De penitentia* but also Gratian's own argument stemming from the two gospel narratives of the healing of the lepers and the raising of Lazarus. Like others such as Rolandus, Peter found in this section of Gratian a convincing argument; he found it so convincing that he used it in laying out the position that he adopted as his own. Peter abbreviated it significantly but reproduced its main points.

Peter Lombard, *Sent.* 4.17.1	Gratian, *De penitentia* D.1 d.p.c.34-d.p.c.35
Unde datur intelligi quod etiam ore tacente veniam interdum consequimur. Hinc etiam leprosi illi quibus Dominus praecepit ut ostenderent se sacerdotibus, in itinere, antequam ad sacerdotes venirent, mundati sunt. Ex quo insinuatur quod antequam sacerdotibus ora nostra aperiamus, id est,	Unde datur intelligi, quod etiam ore tacente ueniam consequi possumus. Hinc etiam leprosi illi, quibus Dominus precepit, ut ostenderent se sacerdotibus, in itinere, ante, quam ad sacerdotes uenirent, mundati sunt. Ex quo facto nimirum datur intelligi, quod ante, quam sacerdotibus ora nostra

[26] Earlier sections of *De pen.* D.3 d.p.c.42 in *Sent.* 4.15.2 and 4.15.3; D.3 d.p.c.43 §1, d.p.c.41, and the lengthy d.p.c.44 in 4.15.3. Cf. Appendix B.

peccata confiteamur, a lepra peccati mundamur. Lazarus etiam non prius de monumento est adductus, et post a Domino suscitatus; sed intus suscitatus, prodiit foras vivus; ut ostenderetur suscitatio animae praecedere confessionem.	ostendamus, id est peccata confiteamur, a lepra peccati mundamur. Hinc etiam Lazarus de monumento uiuus prodiit; non prius de monumento est eductus, et postea a Domino suscitatus, sed lapide remoto, quo monumentum claudebatur, in sepulchro reuixit, et foras uiuus prodiit….
Nemo enim potest confiteri nisi suscitatus, quia "a mortuo, velut qui non est, perit confessio."	Item: "A mortuo, ut auctoritas ait, uelut ab eo, qui non est, perit confessio." …
Nullus ergo confitetur nisi resuscitatus; nemo vero suscitatur nisi qui a peccato solvitur,	Si ergo nullus confitetur, nisi suscitatus,…patet, quod ante, quam quisque confiteatur peccatum…per gratiam internae conpunctionis absoluitur….
quia peccatum mors est animae: quae ut est vita corporis, ita eius vita Deus est.	Cum enim Deus sit uita animae, anima uero uita corporis, sicut corpus uiuere non potest anima absente, ita non nisi Deo presente anima uiuere ualet…

Phrases like Peter's *quia peccatum mors est animae* at the end show that he digested Gratian's argument even while compressing it. Gratian never used that phrase, but it expresses the precise point he was making. Once again, Peter distinguished himself as a superb editor, and, once again, Peter adopted an argument of Gratian as his own.

Peter did not always accept Gratian's arguments so enthusiastically. A notable example, given the importance of this argument in connecting Gratian to the school of Laon and Anselm himself, is the analogy that Gratian created between those who repent of one sin while remaining in others and those who insincerely approach the sacrament of baptism. Peter presented this view and argument but attributed it to certain individuals (*quibusdam*). He did not state his own opinion, suggesting that he was not convinced by the argument but nevertheless found it worthy of note. Perhaps he even considered it novel and intriguing and for that reason included it. Whatever the case, he summarized the position as presented by

Gratian (at the end of D.3 d.p.c.44) and then quoted the same two *auctoritates* that Gratian did (cc.45-46). He described the position as follows:

> Nevertheless, in the opinion of certain individuals, satisfaction does seem to have existed, but an unfruitful one, while someone persists in another sin. But its fruit is received and begins to have an effect (*incipiet proficere*) when he repents of that other sin. For then both sins are forgiven, and the preceding satisfaction, which had been dead (*mortua*), is brought to life (*uiuificatur*), just as the baptism of those who approach it insincerely first has power when that insincerity withdraws from the mind through penance. And these individuals introduce authorities in support of this opinion.[27]

Next come *De penitentia* D.3 c.45 and c.46. What makes Peter's summary of Gratian's argument particularly remarkable is that it reveals how deeply Peter had digested all of *De penitentia*. His presentation here mimicked Gratian's in D.3 d.p.c.44, but it also incorporated elements and language entirely missing from that section of Gratian's text but present in one at the end of *De penitentia* D.4 in which Gratian spoke of dead works (*mortua opera*) that come back to life (*reuiuiscunt*) through penance and begin to have an effect (*incipiunt prodesse*) for the meriting of eternal blessing.[28] In sum, Peter was not inclined to follow Gratian in this application of Anselmian baptismal theology to penance, but he fully grasped

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[27] *Sent.*4.15.6: "Quibusdam tamen videtur fuisse satisfactio, sed infructuosa dum in peccato altero persistit; percipietur autem eius fructus *incipietque proficere* cum peccati alterius poenituerit. Tunc enim utrumque dimittitur peccatum, et satisfactio praecedens *vivificatur*, quae fuerat *mortua*: sicut baptismus illi qui ficte accedit tunc primitus valet, cum fictio a mente recedit per poenitentiam. Et in huius opinionis munimentum auctoritates inducunt."

[28] *De pen.* D.3 d.p.c.44 §2: "[Fructus satisfactionis] Percipietur autem, cum eius penitencia fuerit subsecuta, sicut ad lauacrum ficte accedens regenerationis accipit sacramentum, non tamen in Christo renascitur; renascitur autem uirtute sacramenti, quod perceperat, cum fictio illa de corde eius recesserit ueraci penitencia." D.4 d.p.c.19: "Dicens *opera mortua*, priora bona significat, que per sequens peccatum erant mortua, quia hi peccando priora bona irrita fecerunt. Hec, sicut peccando fiunt irrita, ita *per penitenciam reuiuiscunt*, et ad meritum eternae beatitudinis singula *prodesse incipiunt* etiam illa, que peccatis inueniuntur admixta." Peter uses *proficere* instead of Gratian's *prodesse*; while *proficere* has other meanings as well, these two verbs can be synonyms.

Gratian's argument, deemed it worthy of reproduction and teaching, and even restated and enhanced it elegantly with Gratian-esque language from elsewhere in *De penitentia*.

Where Peter Lombard refused to follow Gratian was in Gratian's argument for the return of sins. This question occupied the Parisian master in his twenty-second distinction of the fourth book, the final distinction in which he addressed questions related to penance. As could be expected, he drew on *De penitentia* D.4 to answer this question, but he was not willing to go nearly as far as Gratian in arguing for the position that forgiven sins do return. In fact, Peter left the question open and for his readers to decide.[29] Evidently, like Gratian, he did not find such indecision a mark of shame but part of valid pedagogy on difficult matters. In the first chapter of the distinction, Peter restricted himself to arguments surrounding the gospel parable, which Gratian's first several *auctoritates* addressed.[30] He did not follow Gratian into discussions about the Book of Life and predestination, perhaps because he perceived that Gratian did not have nearly as defined a concept of predestination as he did or perhaps because he was not convinced of either side of the argument and so did not want to spend time and energy getting involved in so intricate a line of argumentation.[31] All in all, Peter must not have considered Gratian's argumentation in *De penitentia* D.4 convincing.

While Peter often accepted Gratian's arguments as they were and occasionally did not accept them at all, he also found in some of Gratian's arguments a good starting point and

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[29] *Sent.* 4.22.1: "Utrique parti quaestionis probati favent doctores; ideoque alicui parti non praeiudicans, studioso lectori iudicium relinquo, addens mihi tutum fore ac saluti propinquum sub mensa dominorum micas edere."

[30] Peter's treatment included an adapted version of D.4 d.a.c.1, c.1 §1, and cc.2-6.

[31] Cf. *Sent.* 1.35.1-5. Peter Lombard differentiated very clearly between terms such as *predestinatio* and *prescientia*, which Gratian essentially uses interchangeably in *De penitentia* D.4. Such imprecision in Gratian and the resultant conflicts between Gratian's terminology and arguments and Peter's ideas about God's eternal decree may have rendered Gratian's arguments in D.4 unusable by Peter.

proceeded to modify them or take them in a slightly different direction. The best example on this point lies in Peter's interpretation of the phrase *nihil de venia relinqui* (nothing of mercy remains, or no mercy is left) from the Pseudo-Augustinian text constituting *De penitentia* D.3 c.5. Peter quoted this text in his first distinction on penance (*Sent.* 4.14). He followed Gratian in deeming this phrase worthy of extra attention and interpretation; he followed Gratian in judging that it can be interpreted in two ways; he followed Gratian in dividing those two ways based on opposite premises, namely either that forgiven sins do return or that they do not; and he followed Gratian in the first interpretation. For the second interpretation, however, Peter departed from Gratian.

Peter Lombard, *Sent.* 4.14.3

Illud vero: 'Si poenitentia finitur, nihil de venia relinquitur', dupliciter accipi potest. Si enim, juxta quorumdam intelligentiam, peccata dimissa redeunt, facile est intelligere nihil de venia relinqui, quia peccata dimissa iterum replicantur.
Sicut enim ille qui ex servitute in libertatem manumittitur, interim vere liber est, et tamen propter offensam in servitutem postea revocatur; sic et poenitenti peccata vere dimittuntur, et tamen propter offensam quae replicatur, iterum redeunt.

Si vero non redire dicantur, sane potest dici etiam sic nihil de venia relinqui; non quod dimissa peccata iterum imputentur, sed quia *propter ingratitudinem* ita reus et immundus constituitur ac si illa redirent.

Gratian, *De penitentia* D.3 d.p.c.22 §1

Illud autem, "Si penitencia finitur, nichil de uenia relinquitur," dupliciter intelligi potest. Si enim iuxta quorumdam sentenciam peccata dimissa redeunt, facile est intelligere, nichil de uenia relinquitur, quoniam peccata, que prius erant dimissa, iterum replicantur.
Sicut enim ille, qui ex iusta seruitute in libertatem manumittitur, interim uere liber est, quamuis *ob ingratitudinem* in seruitutem postea reuocetur: sic et peccata uere remittuntur penitenti, quamuis ob ingratitudinem ueniae eisdem postea sit inplicandus.
Si autem peccata dimissa non redeunt, dicitur nichil relinqui de uenia, quia nichil sibi relinquitur de uitae mundicia, et spe eternae beatitudinis, quam cum uenia assecutus est.
Sicut enim argento perfecte purgato nichil sui decoris relinquitur, si sequenti erugine fedatur, non tamen prima, sed subsequenti sordidatur: sic expiato per penitenciam nichil de uenia dicitur relinqui, cum tamen iam non deletis, sed adhuc expiandis coinquinetur.

Both Gratian and Peter worked on the assumption that the lack of mercy is equivalent to the imputation of sin. The question in the case of someone who falls permanently back into sin after penance is, then, whether that imputation and thus meriting of punishment come from the same sin as before (which is the case if sins do return) or from a different one (which is the case if sins do not return). Peter copied Gratian in presenting the first interpretation through the analogy of a manumitted slave, but he departed from Gratian in what casts the free man back into servitude. For Gratian, the re-enslaving offence is ingratitude. Most theologians of the twelfth century, however, utilized the concept of ingratitude in the argument that forgiven sins do *not* return but that they can be said to return since any falling back into transgressions represents ingratitude for God's mercy, and this ingratitude makes the sinner just as, if not more, worthy of punishment as if his original sins, now forgiven, were re-imputed to him.[32] Peter undoubtedly was well aware how the concept of ingratitude usually played into the argument over the return of forgiven sins, and he correspondingly utilized it in his second interpretation of *nichil de uenia relinquitur* based on forgiven sins not returning (note italicized words in the table above). For whatever reason, Peter stayed away from analogies in this second interpretation and did not reproduce Gratian's metaphor of the polished but newly stained silver.[33] The point the two made was, nevertheless, the

[32] This was the line of thought taken by Odo of Lucca in his *Summa sententiarum* 6.13 (PL 176:151A-B): "Aliis [Alii?] (quibus magis videtur assentiendum) dicunt quod pro illis peccatis pro quibus Deo per poenitentiam satisfecit non sit amplius puniendus; etiam si postea vel similia vel graviora committat: Non enim judicat Dominus bis in idipsum, sed pro ingratitudine, scilicet quia gratiae qua ipsi condonata fuerant priora ingratus fuerat, eum vere fotendum est gravius esse puniendum." Remember that the *Summa sententiarum* was Peter Lombard's other main source for his section on penance. Gratian was also aware of this line of argumentation, as is clear from *De pen.* D.4 d.p.c.24.

[33] For a discussion of this somewhat complicated section in Gratian, cf. above, chapter 3.

same: If a person cannot be imputed with, deemed guilty and punishable for, a sin that was previously forgiven, then mercy will still be removed, or no mercy will be left, because the person has committed a new sin, which Peter terms ingratitude and Gratian describes as a new stain on polished silver. God rightly punishes the person for that new sin and shows him no more mercy. Peter once more agreed with Gratian in substance, but he chose to reformulate part of Gratian's argument.

Finally, on the topic of the usage by the *Magister sententiarum* of Gratian's *auctoritates* and own words and arguments within his section on penance (Book IV, dd.14-22), one should note that Peter Lombard did not restrict himself solely to *De penitentia*. He knew the rest of the *Decretum* well and drew on it in other parts of his book of sentences. He was well aware, then, that C.26 qq.6-7 contained a significant amount of material relevant to deathbed repentance. He incorporated much of that material and the main questions at hand in it (i.e. whether satisfaction should be imposed on the dying and whether a priest can reconcile a sinner without consulting a bishop in moments of necessity) into his distinction treating penance at the end of life (*Sent.* 4.20.4-6).[34]

Peter Lombard's Reconceptualization of *De penitentia* D.1

While Peter Lombard's usage of Gratian's *De penitentia* reveals a talented editor, a mind that had absorbed all of its content, and originality, where Peter's genius displayed itself most was in his adaptation of Gratian's first distinction. As explained above in chapter

[34] An article that has looked at Peter Lombard's treatment of death-bed repentance, including the adaptation of *De penitentia* D.7 in *Sent.* 4.20.1 is Thomas Tentler, "Peter Lombard's 'On Those Who Repent at the End': Theological Motives and Pastoral Perspectives in Redaction of *Sentences* 4.20.1," *Studi e Testi* 9 (1996): 281-318. Tentler addressed this chapter as a piece of pastoral theology.

one, Gratian came to no express conclusion on the question of when the remission of sins occurs in the process of penance, whether before oral confession and satisfaction through contrition alone, or after. He allowed his students and readers to make up their own minds. Peter, on the other hand, came to a firm conclusion: the remission of sins comes through contrition, a contrition that is motivated by the grace of God and involves a willingness and desire to confess orally to a priest. As argued above, either Gratian purposely formulated the first distinction in a way oriented toward pedagogy without any intention of declaring a position on the matter or, if Gratian really was incapable of coming to a decision, part of what seems to have led him into his conundrum consisted in his refusal to separate the question of remission from the question of priestly authority. Even if one takes the former hypothesis, that Gratian did not intend to present a fixed position but to offer various texts and arguments to give his students the tools to deal comprehensively with the issues at hand and formulate a conclusion, one can see that the conundrum that he created for his students lay in large part in him not separating out the questions of remission and of ecclesiastical authority. In other words, Gratian linked the notion of remission coming through confession and priestly judgment assigning satisfaction to the exercising of the keys and the power of binding and loosing on the part of priests. Thus, in Gratian's presentation of the issues, the assertion that remission comes prior to and hypothetically without confession threatens the authority of priests granted and instituted by Christ himself and the contrary assertion, that remission comes only after confession, preserves that authority and institution by Christ. The bond in Gratian's mind and/or pedagogical wizardry between the soteriological issue of the

moment of remission and the ecclesiastical issue of the priestly power to bind and loose resulted in *De penitentia* D.1 being filled with *auctoritates* and arguments that addressed each issue. With a deep grasp of the entire treatise, including every bit of D.1, Peter Lombard took the ingenious step of separating what Gratian presented as one question into two. In so doing, he obtained the freedom both to affirm contrition as the remittive element in penance and to affirm the authority of priests and their power to bind and loose in penance. Whether he was successful from a theological perspective is another matter, but at least he reconceptualized *De penitentia* D.1 in such a way as to enable him to yield a conclusion and avoid the conundrum in which Gratian entangled himself and his students.

From the start of the seventeenth distinction, Peter Lombard established a division in questions that Gratian treated all together as one issue. He stated that three questions are to be asked: first, whether a sin is forgiven someone without satisfaction and oral confession by contrition of the heart alone; second, whether it is sufficient for someone to confess to God without a priest; and third, whether a confession made to a lay believer is valid.[35] The third question naturally led Peter to *De penitentia* D.6 and the Pseudo-Augustinian passage there. For the first two questions, Peter took texts and statements by Gratian out of D.1. Peter's preference for the viewpoint that contrition alone suffices is without a doubt,[36] but in

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[35] *Sent.* 4.17.1: "Primo enim quaeritur utrum absque satisfactione et oris confessione, per solam cordis contritionem peccatum alicui dimittatur; secundo an alicui sufficiat confiteri Deo sine sacerdote; tertio, an laico fideli facta valeat confessio."

[36] After giving *auctoritates* and arguments in favor of contrition, he summarized them and then introduced the opposing argument thus: "By these and several other authorities, it is proven that sin is forgiven by compunction alone before confession or satisfaction. Those who deny this work hard to determine these things, and they bring in the witnesses of authors in the suppression of this authoritative view and the assertion of their own opinion. (His aliisque pluribus *auctoritatibus probatur*, ante confessionem vel satisfactionem, sola compunctione peccatum dimitti. Quod qui negant, eas determinare laborant, necnon in huius sententiae

defending that position, he introduced a very important concept, one that also assisted him in explaining the necessity of confession despite remission coming prior to it. That concept was the *uotum confitendi*, the desire and even vow-like intention to confess. He summarized the two positions on the first question thus: "Certain people say that no one can be cleansed from sin without oral confession and a work of satisfaction if he has the time to do them. But others say that a sin is forgiven by God in contrition of the heart before oral confession and satisfaction, provided that [the penitent] has the will to confess."[37] Peter stressed the notion of the *uotum confitendi* in his conclusion on this first question, and that notion provided a lens through which he could easily accommodate those *auctoritates* that emphasize confession. For Peter, all the texts enjoining confession should be respected and accepted because a person should confess in this life if he has the time, opportunity, or ability to do so. In addition, those texts can refer to either internal or external penance. When a person fulfills his obligation to confess, however, his sin has already been remitted by God who has himself instigated or inspired the will to confess. Through contrition or confession of the heart, a person's soul is cleansed and released from its eternal debt. The penitent should confess orally, however, if he has time (i.e. if he is not at death's door), but the remission still comes

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depressionem et suae opinionis assertionem auctorum testimonia inducunt.)" Peter's language is revealing: he said that the first opinion is *proven* by authorities (*auctoritates*); the other position is supported by mere authors (*auctores*). The first view is a *sententia*, an authoritative opinion (this is the word used for the collections of authoritative statements on theological matters by patristic writers and contemporary, respected maters); the second view is a mere opinion (*opinio*), the result of musings by men that have no firm, authoritative grounding.

[37] Ibid.: "Dicunt enim quidam, sine confessione oris et satisfactione operis neminem a peccato mundari, si tempus illa faciendi habuerit. Alii vero dicunt, ante oris confessionem et satisfactionem, in cordis contritione peccatum dimitti a Deo, si tamen *votum confitendi* habeat." The first sentence comes directly out of *De pen.* D.1 d.p.c.37.

as long as the will to confess resides in his heart.[38] With the emphasis on the *uotum confitendi*, Peter can more easily defend the necessity of confession to a priest; it ties remission through contrition to the ecclesiastical order, something that Gratian did not accomplish. In his argument about Abraham's circumcision, Gratian had argued that confession to a priest followed contrition as a sign of the remission already accomplished, but he did not portray confession before a priest as part of what it meant to be contrite. Peter did the latter and thus more firmly bound God-given contrition and remission to ecclesiastical custom.

In the next question, the Lombard turned his attention not yet to explaining how remission through contrition does not threaten ecclesiastical authority but merely to asserting that confession to a priest is normally necessary. He asked whether it is sufficient to confess to God alone or whether one should confess to a priest.[39] He provided two examples (Peter

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[38] Ibid.: "Sane quod sine confessione oris et solutione poenae exterioris peccata delentur, per contritionem et humilitatem cordis. Ex quo enim aliquis proponit, mente compuncta se confessurum, Deus dimittit; quia ibi est confessio cordis, etsi non oris, per quam anima interius mundatur a macula et contagio peccati commissi, et debitum aeternae mortis relaxatur. Illa ergo quae superius dicta sunt de confessione et poenitentia, vel ad confessionem cordis et ad exteriorem poenam referenda sunt…. Nonnulli enim in vita peccata confiteri negligunt vel erubescunt, et ideo non merentur iustificari. Sicut enim praecepta est nobis interior poenitentia, ita et oris confessio et exterior satisfactio, si adsit facultas; unde nec vere poenitens est, qui confessionis votum non habet. Et sicut peccati remissio munus Dei est, ita poenitentia et confessio per quam peccatum deletur, non potest esse nisi a Deo…. Oportet ergo poenitentem confiteri, si tempus habeat; et tamen, antequam sit confessio in ore, si votum sit in corde, praestatur ei remissio." On the understanding of the phrase *si tempus habeat* and a criticism of Colish's and Rosemann's understanding of it, cf. above, chapter 1, n.66.

[39] *Sent.* 4.17.2: "Iam secundum quaestionis articulum inspiciamus, scilicet utrum sufficiat peccata confiteri soli Deo, an oporteat confiteri sacerdoti." This question may, by its very existence, seem to counter Debil's thesis that Gratian and his contemporaries and successors were unconcerned with the issue of whether confession was necessary. One must, however, note how Peter framed this issue in the next sentence. He did not say, "Quidam dicunt" or "A quibusdam dicitur" or "Apud quosdam videtur" that confession to a priest is not necessary. What he said was that it seemed that confession to God alone with no confession to a priest or to the church has been sufficient for some ("Quibusdam visum est sufficere, si soli Deo fiat confessio sine judicio sacerdotali et confessione Ecclesiae"). The *quibusdam* here does not refer to authors or writers but to certain penitents, and the next two proof-texts clarify the two primary biblical examples of such men: David and Peter. Thus, this question put forward by Peter is not evidence that anyone (at least not any master) in his day doubted the

and David) with corresponding *auctoritates* from *De penitentia* D.1 that suggested that it is possible to confess only to God in exceptional circumstances, but then he provided other texts from *De penitentia* D.1 that stressed confession to priests. In other words, Peter turned to the same distinction and the same body of texts to address two issues that Gratian had lumped together. His genius thus lay in separating out the two questions, namely, whether confession to a priest is necessary *for the remission of sins* and whether confession to a priest is necessary (for what purpose or to what precise end is not elucidated). As Peter acknowledged by picking out *auctoritates* from D.1 in addressing both questions, Gratian did in fact provide material to deal with both issues.

As Peter made his way through related questions, he continued to draw on *auctoritates* and Gratian's own comments and arguments scattered throughout *De penitentia* D.1. For example, he had to provide some better explanation of why confession is necessary if indeed contrition comes without it and why therefore he considered the *uotum confitendi* as a constituent part of true contrition. As noted above in examining his usage of Gratian's own words, Peter turned to the notions of silence and shame: silence about one's sins results from pride and lack of humility, without which one cannot obtain mercy, and the shame of confessing one's sins to another human being, which constitutes part of the penalty owed for sin. He also followed Gratian in some of the latter's arguments for confession as remittive,

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necessity of confession. Rather, this series of questions should be understood as a further defense of the position that remission of sins occurs prior to confession against opponents (the Victorines) who would object that such a position takes away the necessity of confession. Peter had to explain why confession is necessary if remission occurs prior to it (4.17.6), and so preliminarily he had to address and defend the act of confession itself in order to make clear that his position on the moment of remission would not lead him to rebut the centuries-old practice of confession.

distinguishing between private and public sins and penance and asserting that certain texts that seem to deny the necessity of confession are merely renouncing the public proclamation of one's sins.[40] Here, one can affirm with Colish that Peter turned Gratian's authorities and arguments on their head. Texts that Gratian had used to defend remission coming through confession and satisfaction Peter Lombard used to affirm the necessity of confession all the while insisting that remission comes through contrition. He continued in the next distinctions to treat the power of the keys and defend the authority of priests, asserting that the church remits sins in its own way but only God remits sin in himself, and that the church's power of loosing consists in affirming that what God has already in actuality forgiven has been loosed.[41] Throughout these distinctions, Peter continued to find texts throughout *De penitentia* D.1 of benefit.

In sum, Gratian had composed a massive answer to one single question about the remittive element in penance, but Peter Lombard found in that treatment of one question a wealth of material, in the form of both quoted *auctoritates* and original argumentation, that could address several different questions. Peter's perception of those different questions and his division of the material in *De penitentia* D.1 into parts applicable to each of those questions allowed him to create a unique composition. The uniqueness had a precise function: it gave Peter the freedom to answer the one question Gratian could not, did not dare

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[40] *Sent.* 4.17.4.

[41] Cf., for example, *Sent.* 4.18.5: "Hoc sane dicere ac sentire possumus, quod solus Deus peccata dimittit et retinet, et tamen Ecclesiae contulit potestatem ligandi et solvendi. Sed aliter ipse solvit vel ligat, aliter Ecclesia. Ipse enim per se tantum ita dimittit peccatum, qui et animam mundat ab interiori macula, et a debito aeternae mortis solvit," and 4.18.6: "Hi ergo peccata dimittunt vel retinent, dum dimissa a Deo vel retenta iudicant et ostendunt."

to, or simply did not want to, and it allowed Peter, at least in his view, to preserve what Gratian may have been afraid the first position in D.1 threatened: ecclesiastical authority and the institution of the keys by Christ.

Conclusions

As should be clear from the preceding and also from Appendix B, in his entire presentation of the debate about remission in penance and the authority of priests, Peter Lombard relied very heavily on Gratian. Even though he may have come to different conclusions on a few issues, Peter viewed Gratian's work as foundational to his treatment. He appreciated the wealth of *auctoritates* that Gratian had provided, but he also valued Gratian's own statements and arguments. By the same token, Peter Abelard is absent here. Peter Lombard undoubtedly knew of and drew upon the work of his predecessor at Notre Dame, but one searches in vain in the section weighing contrition and confession/satisfaction in the forgiveness of sins for traces of Peter Abelard's *Scito teipsum*. Peter Lombard did specify that through contrition, the debt of eternal death is released, and, given his emphasis on confession as part of penalty owed for sin, he evidently accepted that temporal punishment for sin remained even after remission, but one is hard-pressed to attribute such language and concepts to Peter Abelard without any evidence of direct usage of his works. As far as I can tell, Peter Lombard nowhere succinctly stated a division of eternal and temporal penalty, emphasizing that contrition removes one while confession and satisfaction removes the other, which view is generally considered the distinctive element of an

Abelardian approach to the question.[42] Moreover, Abelard gave several reasons for confession while defending contrition as remittive, including the idea that confession achieves a great part of satisfaction.[43] There is no reason to believe that Peter Lombard drew this notion from Abelard and every reason to believe he got it from Gratian since he drew on the arguments on silence, pride, and shame provided by Gratian at the end of *De penitentia* D.1 and quoted the relevant passage from *De uera et falsa penitentia* as excerpted by Gratian.[44] In other words, Peter Lombard and Peter Abelard's positions might have been similar, especially when placed in contrast with that of the Victorine school, but to assert as the scholarship generally does that Peter Abelard's position gained victory through Peter Lombard distorts the truth. Peter Lombard gave no indication of intending to do so, and he certainly did not rely on Peter Abelard to build his view on the remission of sins in penance and the necessity of confession. Instead, Peter Lombard turned to Gratian. The former's presentation is an adoption and then adaptation of the material and arguments advanced by the latter. Through Peter Lombard's work and its great success in becoming the standard theology textbook of the medieval universities, Gratian's work on penance, not Abelard's, was preserved. Peter Lombard accepted Gratian's challenge at the end of *De penitentia* D.1; he read and absorbed and evaluated all of the texts and arguments advanced, and then he

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[42] Cf. Peter Abelard, *Scito teipsum*, ed. Luscombe, 88.21-25: "Non enim Deus cum peccatum penitentibus condonat omnem penam eis ignoscit, sed solummodo aeternam. Multi namque penitentes qui preuenti morte satisfactionem penitentiae in hac uita non egerunt, penis purgatoriis, non campnatoriis, in futura reseruantur." Magister Rolandus took such a position in his *Sententie*. Cf. above, chapter 8 at n.53

[43] Ibid., 98.10-15: "Multis de causis fideles inuicem peccata confitentur iusta illud Apostoli quod premissum est, tun uidelicet propter supradictam causam ut orationibus eorum magis adiuuemur quibus confitemur, *tum etiam quia in humilitate confessionis magna pars agitur satisfactionis*, et in relaxatione penitentiae maiorem assequimur indulgentiam."

[44] Peter quoted the relevant portion of pseudo-Augustinian text in *Sent.* 4.17.3.

reached his own conclusions. He presented his conclusions not by departing from Gratian's material and arguments but by re-organizing them and presenting them in a different light according to different questions.

Finally, the study of Peter Lombard's usage of Gratian's *De penitentia* gives important information related to the methodology of determining the lineage of texts in the twelfth century. Because the usage of Gratian by Peter (and not the other way around) is universally accepted, one can assess from Peter's borrowing how and in what ways writers in the twelfth century did indeed borrow, quote from, and adopt texts from their predecessors. Scholars have attempted to put forward criteria by which to determine when one source draws on another source.[45] These criteria can be very helpful, but Peter's usage of Gratian proves that the usage of sources could be extremely complex and varied, and his usage does not fit neatly within the criteria created by modern scholars. Thus, while it may be true that a series of *auctoritates* all in the same order in two different texts indicates a literary relationship of borrowing, the lack of such a series does not indicate the opposite. Peter Lombard frequently drew texts from all over *De penitentia* and put them together. Occasionally he drew on a series of texts in Gratian, but usually he reordered them. Also, while scholars may look to the length of *auctoritates*, the incipits and explicits, and the inscriptions as indicators as to whether two texts have a direct literary relationship, one borrowing from the other, again Peter's usage proves that medieval authors could truncate and abbreviate *auctoritates* from their formal sources, change and correct inscriptions, alter

[45] A brief explanation of this methodology and these criteria may be found in Wei, "A Reconsideration of St. Gall, Stiftsbibliothek 673," 143-44.

texts through consulting other manuscripts, and even modify the phrasing within texts apparently at their whim. Many arguments trying to determine the priority of one text over another assume that the later author did not correct texts; perhaps Peter Lombard is an exception but most likely not, since recent research on the manuscript transmission of canonical collections in the twelfth century points to many instances of such corrections and revisions.[46] In other words, scholars may create a methodology for determining which texts and authors stand in a direct relationship to one another, but such a methodology may not be able to perceive many instances of borrowing, since the borrower could make significant changes to the work from which he borrowed. The acknowledgment of this fact makes the task of creating trees of textual lineage even more difficult and daunting, and it means that other clues will often have to be pursued if one is intent on creating such trees.

[46] Martin Brett, "Margin and Afterthought: the *Clavis* in Action," in *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, ed. Martin Brett and Kathleen G. Cushing (Farnham, Surrey and Burlington, CT: Ashgate, 2009), 137-64, esp. 146-50.

CHAPTER 10

DE PENITENTIA OUTSIDE THE CLASSROOM:

USAGE OF *DE PENITENTIA* IN ENGLAND AND THE PAPAL CURIA, 1160-1180

In the two decades following Peter Lombard's death, *De penitentia* began to exert influence outside of the classroom. While masters still dealt with it, mentioned it in passing in their *summae* (e.g. Berthold of Metz in Cologne), and drew on it substantially in their theological *sententiae* (e.g. Gandulphus), other authors looked to it for guidance and assistance in the composition of different types of literary works, and even popes took note of it as they considered cases and wrote their decretals. Bishop Bartholomew of Exeter found in Gratian's work helpful content for a penitential in the service of his priests and, through them, the faithful under his care. The master and legal advisor Vacarius appealed to the theological reasoning of Gratian about predestination and the identity of the elect and non-elect in the earthly church in *De penitentia* D.4 in order to counter the theological errors and fatalism of a childhood friend. Meanwhile, Alexander III implemented the spirit and principles of *De penitentia* as he dealt with inquiries from bishops regarding penitential matters. Each individual approached *De penitentia* in a different way and with different aims, revealing the diversity of functions and purposes to which Gratian's extensive work could be applied.

The Absorption of *De penitentia* in Pastoral and Theological Works in England

Across the channel in England the reception of *De pentientia* was quite different from what it had been in Bologna and other continental learning centers, no doubt in large part due

to the fact that those using Gratian's work were more removed from the classroom lectures and format in which it was addressed in those places. For the first time, we see the influence of Gratian's *De penitentia* on non-teaching texts, in the one case a penitential, a type of pastoral manual, in the other case a theological tract written against a heretical position on predestination. The authors of these works were both learned men who became avid administrators. Bartholomew, bishop of Exeter, most likely wrote his penitential between 1161 and 1170; Master Vacarius wrote his anti-heresy work entitled *Liber contra multiplices et varios errores* in the mid-1170s.

Bartholomew's penitential was the first work specifically devoted to penance that drew upon *De penitentia*. As a pastoral work addressing many practical matters and considering canons relating to various sins, the work quoted many other parts of the *Decretum* as well, especially the *causae*. While the work was not a teaching text (i.e. it did not originate in the classroom in lectures),[1] that does not mean that instruction and education were not at its heart. Quite the contrary. Bartholomew was renowned for his learning and respected as a *magister* in Paris.[2] As he rose through the ecclesiastical ranks to the position of archdeacon in 1155 and then bishop of Exeter in 1161, it was in keeping with his intellectual background to produce a work of instruction for his priests, even if he no longer played the

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[1] Weigand, "The Transmontane Decretists," 175.

[2] Adrian Morey, *Bartholomew of Exeter, Bishop and Canonist: A Study in the Twelfth Century* (Cambridge: Cambridge University Press, 1937), 4-5, 103. As Morey pointed out, Bartholomew's time in Paris most likely provided him the opportunity to get to know many of the works that he used in composing his penitential, including those of Ivo of Chartres, Burchard of Worms, Peter Lombard, and Gratian. Morey's book includes a study of Bartholomew's life and works and then an edition of the penitential itself that consists of a transcription of a single manuscript: London, British Museum, Cotton MS Vitellius A.xii.

role of *magister* with oral lectures. His instructional purposes with a pastoral aim were apparent right from the start in his *prologus*:

> There is never too much teaching or knowledge about that which is not talked about or is ignored at the cost of salvation. Therefore let priests be eager in all things to come to know both the bad things with which and the good without which no one can be saved.[3]

Then, in the first chapter, he wrote,

> Since all the councils of the canons that have been received are to be read by priests, and the priests are thereby to live and preach them, we have deemed it necessary that those things that pertain to the faith, and where it is written about rooting out vices and planting virtues, be read quickly by them [the priests] and well understood and preached to the people.[4]

Bartholomew's ultimate concern lay in the salvation of souls, but, as for Gratian, the pathway to that ultimate goal ran through educated priests. Priests must understand what their parishioners need for salvation and what things threaten that salvation. Such understanding comes in great part through knowing the conciliar canons of the church. Moreover, the priests should live morally in accordance with these canons and then teach them to the people through preaching. Bartholomew's book served this purpose of educating priests in the canons that they should both live and preach, particularly laying out material related to virtues and vices and to the penance that may remit the sins of parishioners when they fall into the latter. This emphasis on the education of the priesthood appears in later sections of

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[3] *Penitential*, prol. (ed. Morey 175.1-4): "Nunquam nimis docetur aut scitur quod cum salutis dispendio tacetur et ignoratur. Studeant itaque sacerdotes omnibus innotescere et mala cum quibus et bona sine quibus nemo saluari potest." The edition of the penitential is contained within Morey's book as its second half on pp.175-300.

[4] Ibid., c.1 (ed. Morey, 175.14-19): "Cum omnia concilia canonum que recipiantur sint a sacerdotibus legenda, et per ea sit eis uiuendum et predicandum, necessarium duximus ut que ad fidem pertinent, et ubi de exstirpandis uiciis et plantandis uirtutibus scribitur, hec ab eis crebro legantur et bene intelligantur et in populo predicentur."

the work as well. In his twenty-third chapter, Bartholomew quoted the Augustine text that constituted D.38 c.5 of the *Decretum* but was also present in many other works. This is the text that names the types of books in which priests should be learned and ends with the gospel text about the blind leading the blind into the pit.[5] Immediately thereafter lies a chapter entitled "Item de vita et scientia sacerdotum ut ligare et solvere possint et sciant." The bishop of Exeter exhibited the same thinking as Gratian: the education of priests, which forms in them a body of *scientia*, is absolutely essential for their ability to bind and loose and thus to administer penance properly. The wisdom necessary for administering penance requires formation through learning. A few chapters later, Bartholomew warned priests not to break the seal of confession, quoting in this context *De penitentia* D.6 c.2. As a sort of introduction to the next major section of his text, he then noted that many unlearned priests exist who do not know how to administer penance and what satisfaction to prescribe. They read that terms of penances should be left up to the priest, and so they think that they can prescribe whatever they want. The next part of Bartholomew's work served to provide guidelines and train such priests so that they could properly impose and oversee penance.[6] A bishop with such educational and pastoral aims was naturally drawn to much of the content of Gratian's *Decretum*, including *De penitentia*, as that work was composed with similar motivations and concerns.

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[5] Ed. Morey, 192. The Augustinian text constitutes the entirety of Batholomew's chapter. Cf. above, chapter 7 for a discussion of this canon in Gratian.

[6] c. 29 (ed. Morey, 198.10-16): "Quoniam plerique canones tempora penitentiarum et formas in sacerdotum arbitrio ponunt, quidam sacerdotes non intelligentes arbitrii modum ex aliorum canonum auctoritate sumendum estimant in dandis penitentiis totum sibi licere quod libeat. Qualiter ergo arbitrari debeant et ueras et non falsas penitentias imponant ex sequentibus discant."

Bartholomew wrote in large measure a practical work, and thus he used many sections of the *Decretum* that were correspondingly practical while a large portion of *De penitentia* remained of little use to him – too theological, too abstract. As Morey noted, "Only indirectly was the author concerned with the theological aspect of his subject, or with contemporary theological controversies."[7] This "indirect concern" is apparent through the fact that Gratian's deepest arguments found no reflection in Bartholomew's work, and precious little of the first four distinctions of *De penitentia* made its way into it. Bartholomew's eighth chapter treated *penitentia*, the ninth chapter *confessio*, and the tenth *satisfactio*, yet these three chapters together pale in length and theological depth in comparison to any one of Gratian's first four distinctions. In the ninth chapter, he treated in a very succinct manner some of the material in *De penitentia* D.1 and D.6, all with a practical focus. He was not interested in the theological debate about the moment of remission; instead he simply stated, "Oral confession is necessary, if the penitent has time."[8] He next quoted a few texts out of *De penitentia* D.1 (from d.p.c.37 and cc.38-39 and from Pseudo-Augustine in c.88). Whereas he sometimes drew on Gratian through Peter Lombard, here he was drawing directly on Gratian.[9] He then defined a pure confession as one in which the sinner

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[7] Morey, *Bartholomew of Exeter*, 172.
[8] c. 9 (ed. Morey, 180.1): "Confessio oris necessaria est, si penitens tempus habuerit."
[9] He quoted the beginning of c.39 ("Ecce nunc tempus acceptabile adest,") whereas Peter Lombard did not (*Sent.* 4.17.1). A place where he drew on Gratian indirectly through Peter Lombard was in the previous chapter (c.8), where he dealt with some of the material of *De pen.* D.3. Like Gratian and the Lombard, Bartholomew accepted that some of the *auctoritates* that define penance as lacking further sin are to be interpreted in terms of the same time, not subsequent times. Bartholomew wrote (ed. Morey 178.20-23), "Hoc autem non ad diuersa tempora sed ad idem referendum est, ut scilicet tempore quo flet commissa, non committat uel uoluntate uel opera flenda." Peter wrote (*Sent.* 4.14.3), "…recte sic accipi possunt, ut non ad diversa tempora, sed ad idem referantur: ut scilicet tempore quo flet commissa mala, non committat voluntate vel opere flenda." Since

does not hold anything back from the confessor, again revealing a more pastoral mindset. One can tell a parishioner that he should confess from a truly contrite heart, but the parishioner possesses a much more concrete guideline and perhaps attainable goal if he is told to confess everything at once to the same priest.

At this point he naturally moved to *De penitentia* D.6, noting that someone should not seek out an unjust or unskilled confessor. After quoting from D.6 c.1 (Pseudo-Augustine), he in essence warned against putting too much stock in the passage's encouragement to seek out the best priest one can, cautioning that there are many to whom it is not permitted to choose a priest, because they have an ordinary priest that they cannot change by their own authority.[10] He quoted the full text attributed to Urban II (D.6 c.3). Despite his cautious response to Pseudo-Augustine, Bartholomew still accepted Gratian's point in explaining this text: one cannot refuse to confess to a priest because of personal dislike, but one can, nevertheless, avoid a priest who is spiritually blind. Bartholomew's phrasing here was his own.[11] Next, Bartholomew revealed that he did not want to discourage people finding a proper confessor if theirs was inept, but he wanted them to search out the right confessor through the proper means, through the bishop. He thus encouraged the parishioner to address issues related to the identity of a confessor to the bishop. Perhaps the bishop could find a useful pastor or could receive the confession himself. In moments of necessity, however, for both venial and

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Gratian did not use the phrase *voluntate vel opere* in D.3 d.p.c.17, Bartholomew must have worked from Peter's text at this point, not Gratian's.

[10] c.9 (ed. Morey, 180.34-181.4): "Sunt autem multi quibus non licet sacerdotem eligere, eo quod ordinarium habeant quem sua auctoritate mutare non possent."

[11] Ibid. (ed. Morey, 181.7-9): "Ex huius decreti parte prima prohibetur quis ne fauore uel odio alicuius proprium sacerdotem contemnat; ex parte sequenti permittitur cecum uitare, quod monet Augustinus."

mortal sins one can, as (Pseudo-)Augustine stated, confess to a lay neighbor.[12] Although Bartholomew's treatment was far less specific than Gratian's in terms of the theology behind penance, he did add helpful details related to practice and the ecclesiastical structure. His brief mention of the bishop explained how the problematic situation of a penitent subject to an ill-qualified confessor portrayed in *De penitentia* D.6 could be resolved. Gratian provided no concrete suggestions. Bartholomew also clarified that in cases of necessity, for example at the end of life, the confession of both venial and mortal sins may be done to a lay neighbor. Gratian had never specified the type of sin that could be so confessed. Thus, while Bartholomew ignored or simply chose not to incorporate much of *De penitentia* into his work, he extracted portions and enhanced them to make them more practically applicable.

With Bartholomew of Exeter's penitential, the reception of *De penitentia* moved into a different genre. Those who were producing canonistic commentaries on Gratian's *Decretum* largely ignored *De penitentia*; those who were producing somewhat comprehensive theological *sententiae* turned to *De penitentia* particularly in their sections on penance but also sometimes in their discussions of the angels and of *caritas*. The former may have respected *De penitentia* but found it of little use in treating the legal cases of the rest of the *secunda pars* of the *Decretum*. The latter found it of great use for finding *auctoritates* related to penance, for interpreting those *auctoritates*, and for the formulation of arguments of theological weight. Bartholomew went in between these two. He wrote a work of

[12] Ibid. (ed. Morey, 181.10-15): "Cum tamen aliquid acciderit (When something [like this] occurs), id penitens suo demonstret episcopo, ut uel utilis pastor ei prouideat uel ipsi episcopo confiteatur. In necessitatis tamen articulo sufficit, si deest sacerdos, non solum cotidiana et leuia sed et grauia peccata socio confiteri, ita ut numquam sacerdos ex contemptu pretermittatur."

pastoralia, a work that would guide priests as pastors but in a way, he hoped, to instruct them and develop their intellects, their sense of right and wrong, their wisdom. The idea was less of a how-to manual and more of an educational primer aimed at practical activity and results, namely the proper administration of penance and instruction of the faithful. In such a program that dovetailed very neatly with Gratian's, he found the whole of the *Decretum* of use, including the treatise on penance, but the depths of *De penitentia*, the weightiest sections outside of the fifth and sixth distinctions, were too deep for his primer. He did not expect all his priests to be so advanced in theological argumentation and reflection as Gratian had expected his priest-students to be. Bartholomew thus used what he deemed suitable for his audience and left the rest for the more theological adept to handle.

One such theologically adept man turned to some of the deepest material in *De penitentia* in the next decade. This man, Master Vacarius was, like Bartholomew, more renowned for his skills in law, Roman law in particular. Nevertheless, this *magister* and administrator wrote a few theological works that, though they may not earn him a spot among the luminaries of twelfth-century theology, exhibit a high level of education in theology and an awareness of current debates.[13] One of Master Vacarius's three theological

[13] Jason Taliadoros, "Master Vacarius, Speroni, and Heresy: Law and Theology as Didactic Literature in the Twelfth Century," in *Didactic Literature in the Medieval and Early Modern Periods*, ed. J. Ruys (Turnhout: Brepols, 2008), 345. Taliadoros noted that the place and years of Vacarius's activity as a teacher remain uncertain, but we know that he served in the courts of the archbishop of Canterbury from ca.1145 to ca.1150 and of the archbishop of York from ca.1150 all the way until or close to his death in ca.1200. Cf. also idem, *Law and Theology in Twelfth-Century England: The Works of Master Vacarius: (1115/20-c.1200)*, Disputatio 10 (Turnhout: Brepols, 2006). For a review of evidence about Vacarius' biography and especially evidence for a tenure teaching law in Lincoln, see Peter Landau, "The Origins of Legal Science in England in the Twelfth Century: Lincoln, Oxford and the Career of Vacarius," in *Readers, Texts and Compilers in the Earlier Middle Ages: Studies in Medieval Canon Law in Honour of Linda Fowler-Magerl*, ed. Martin Brett and Kathleen G.

works, the *Liber contra multiplices et varios errores*, consists of a response to a former friend and companion, a fellow Italian named Hugo Speroni. Based on Vacarius's comments in the prologue to this work, scholars know that Vacarius and Hugo's friendship originated from their years as students, in all probability in Bologna studying Roman law, although Vacarius seems to have been slightly older or at least more advanced in his studies than Hugo and may have served as a master or some sort of mentor to him.[14] Most likely written in the mid-1170s before 1177, the *Liber contra* rejected and countered the anti-clerical, anti-sacramental ideas of Speroni, who had written a letter (no longer extant) to his old companion and mentor seeking feedback on his radical ideas on a new religious order.[15] Speroni's ideas involved or even revolved around a fatalistic view of predestination. According to this extreme view, a person's eternal destiny as non-elect or elect was so fixed as to mean that nothing a person did in this life could change it, thus making good works and the sacraments, including confession, of no consequence.[16] One of the places Vacarius turned in order to counter Speroni's views on predestination, particularly as they connected to a denial of the necessity of confession, was the fourth distinction of *De penitentia*. While everyone else in the past few decades, including masters of the highest theological ability,

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Cushing (Farnham, Surrey and Burlington, CT: Ashgate, 2009), 165-82. Landau also considered the possibility of Vacarius studying theology at Northampton.

[14] Taliadoros, "Master Vacarius, Speroni, and Heresy," 347.

[15] Ibid., 346-47. The other two theological works penned by Vacarius are the *Tractatus de homine assumpto*, on Christology, and the *Summa de matrimonio*, a work contemplating the formation of a valid marriage.

[16] Taliadoros (ibid., 351) described the thrust of Speroni's purported view thus: "From Vacarius's account, it would appear that Speroni formulated a religious heresy which centred on a concept of predestination by which salvation and justification were confined to those who, through the foreordination/predestination of God, possessed an inner holiness or purity, a state attainable neither by good works nor sacraments. As a consequence, Speroni denied the validity of the sacraments, particularly baptism, the Eucharist, and confession; he also rejected the sacrament of holy orders and the priesthood because, he insisted, all priests were bound by sin … so that they defiled rather than sanctified whatever they touched."

passed over most of D.4, at long last someone found a good use for Gratian's technical and involved discussion of predestination, and that someone was a person who could have studied in Bologna at the very time of Gratian's flourishing (the 1130s).

Vacarius's usage of Gratian's thoughts on the predestined came towards the end of the *Liber contra* as he addressed the closing arguments of Speroni's work. Vacarius claimed that, although everything he had said earlier should be sufficient for the industrious reader to persuade them of Speroni's error, he did not want to risk seeming to be in agreement with the end of Speroni's work. He therefore addressed it directly, showing more fully Speroni's errors and inadequacy through "reasons and authorities that cannot be resisted."[17] A good portion of those *rationes* and *auctoritates* came out of Gratian. Vacarius specifically opposed the opinion of Speroni by which he denied the necessity and utility of confession. Vacarius reported Speroni's view as follows:

> You say to him [a sinner who is grieved over his sin], he can and ought to be washed through the water which is Christ, and he ought not approach another tainted man [i.e. a priest] in order to be cleansed, because that water is sufficient which is Christ, so that confession made to some priest is superfluous and worthless.[18]

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[17] *Liber contra multiplices et varios errores*, §31 (in *L'eresia di Ugo Speroni nella confutazione del Maestro Vacario. Testo indito del secolo XII con studio storico e dottrinale*, ed. Ilarino da Milano, Studi e Testi 115 [Vatican City: Biblioteca Apostolica Vaticana, 1945], 565): "Non formidasti contra Ecclesiam Dei multos dampnandos errores, ad periculum salutis animarum respicientes, proponere; et quamvis contra illum errorem, quem nunc in fine libri tui exponis, supra dicta sufficiant industrio lectori, tamen, ne hic tacendo in fine aliquo modo videar acquiescere tibi, rationes et auctoritates quibus non est resistendum, plenius ostendere curabo ad tuam imperitiam demonstrandam."

[18] *Liber contra*, §31 [II] (ed. da Milano, 566): "Tu dicis ei, per aquam que Christus est lavari potest et debet, nec ad alium inquinatum ut mundetur debet accedere, quod aqua illa sufficiat, que est Christus, ut superflua sit confessio aliquo sacerdoti facta et vana." The edition reads *aliqua* instead of *aliquo*, but the manuscript, as da Milano notes, contains the latter reading, and I prefer it here. Da Milano uses Roman numerals in brackets to indicate the recounting of Speroni's position, while Vacarius's arguments are arranged in sections marked by Arabic numerals in brackets.

Such a view of course countered contemporary orthodox church practice, canon law, and theology, and Vacarius proceeded to refute it. He recounted James' command to "confess your sins to and pray for one another so that you may be saved" (James 5:16) and then pointed out, "Here sinners are commanded to confess their sins to one another, that is, the unclean to the unclean. And he submits to what purpose confession is done among them: namely, 'so that you may be saved.'"[19] His next sentence was brief: "Therefore, great is the power of confession (*Magna ergo est vis confessionis*)." This sentence suggests very strongly that Vacarius was familiar with *De vera et falsa penitentia*, which stated in the section quoted by Gratian in both *De penitentia* D.1 and D.6, "So great is the power of confession that, if a priest is not available, one may confess to a neighbor (*Tanta itaque vis confessionis est*…)."[20] Vacarius's later clear usage of Gratian shows that he was indeed familiar with *De vera* and was so via *De penitentia*. In the next section, Vacarius countered Speroni's claim that those who hold a true confession (according to Speroni, one in the mind before God alone) ought not vary their status (before God) but should remain stable all the way to the day of death.[21] In other words, after a true confession, one will inevitably persist to death as a Christian and has no chance of turning away from the faith and ultimately being among the reprobate. This was a view that contradicted the one put forward by Gratian, and while Vacarius in his response might not have copied exact words from Gratian, his position was identical to Gratian's and manifested a dependence upon Gratian's discussion, particularly in *De*

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[19] §31 [2] (ed. da Milano, 567): "Hic peccatores peccata sua invicem confiteri precipiuntur, hoc est immundus immundo. Et ad quid inter eos confessio fiat, subicit: scilicet, *ut salvemini*."
[20] D.1 c.88 and D.6 c.1.
[21] *Liber contra*, §31 [III] (ed. da Milano, 567): "Adicis etiam quod talem confessionem tenentes, propositum variare non debent, sed stabilem usque in diem mortis permanere oportet."

penitentia D.4 and sections of D.2. Vacarius argued that one's life can be full of variations (one thinks of Gratian's insistence of the capability of having, losing, and regaining love and the validity of frequent confession after repeatedly falling back into sin); what matters is one's state at the end of one's life. He stated that the verse "Not he who begins but he who perseveres to the end will be saved" (a verse frequently alluded to by Gratian in *De penitentia*[22]) does not contradict his position. It means that we should not pay attention to the beginning but to the end, although the middle may be full of variation. God will judge according as he finds us at the end.[23] Prior to the final judgment, however, people are known by their fruit, and thus those who live well are understood to be of the home and family of God, and those who live a deprived life, even if they profess the Christian faith, are not of the family of Christ and his sheep. The members of this latter group, however, if they later convert and follow Christ, are established as and begin to be of Christ's family on account of the merit of their life. Conversely, those from the former group, if they abandon their morally good life, cease being of Christ's family.[24] In essence, Vacarius was arguing that we should consider people as we see them at the time: Christians if they live morally good lives, not

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[22] Cf. especially *De pen.* D.2 c.41, d.p.c.41, c.42, d.p.c.42, and c.43.

[23] *Liber contra* §31 [3] (ed. da Milano, 567): "Cum, e contra, ipsa confessio in fine sufficiat, etiamsi propositum confitentis ante finem fuerat variatum…. Nec adversatur Scriptura qua dicitur: *Non qui inceperit, sed qui perseveraverit usque in finem, hic salvus erit*. Quod non est aliud, nisi quod non inicium attendere debemus, sed finem, quamvis in medio sit variatum; et hoc est quod dicitur: *Qualem te invenero*, scilicet in fine, *talem te iudicabo*. Hec autem de ultimo iudicio intelliguntur, quod pertinet ad perpetuam salutem vel dampnationem."

[24] Ibid. (ed. da Milano, 568): "Nam qui bene vivunt, quamdiu bene vivunt, de domo et familia Domini intelliguntur; non tamen numero, sed etiam vite merito. Hii vero, quorum vita apparet prava, quamvis quantum ad cuturam et professionem quamdam christiane fidei religionis inter christianos computentur, ut sint interim numero, non tamen ita de Christi familia et de ovibus eius sunt ut vox illa eis conveniat, qua dicitur: *Et cognosco meas et cognoscunt me mee, et vocem meam audient, et me sequuntur*. Verbis enim profitentur Christum, sed *factis negant*. Qui si ad Christum postea convertantur, ut eum sequantur, etiam merito vite de eius familia constituuntur et incipiunt esse, dum ab immundicia mundantur. Sic, e contra qui bonam deserunt vitam, eius ratione de Christi familia esse desinunt."

Christians if they bear only bad fruit. But such a status can change, and those who appear now to be evil may in fact be predestined by God for eternal life, which will be shown when they repent and begin to live good lives later in life. Again, everything here is consistent with Gratian's reasoning throughout *De penitentia* and particularly in D.4.

In the next section, Vacarius divulged how much he had digested D.4 of *De penitentia*. He opened by telling Speroni that his errors were refuted by words of Scripture. He turned quickly to Luke 10:20 together with John 6:67, and then he immediately looked for added support from Exodus 32:33. Jesus told his disciples that their names were written in heaven, but some of them withdrew, "and thus they perished erased from the Book of Life, according to the words of the Lord, which Moses said, 'If anyone sins against me, I will delete him from the Book of Life.'" These three verses were the very ones alluded to or quoted by Gratian in D.4 d.p.c.7 as he drew on Anselm of Laon's commentary on Romans 9. Vacarius noted that a person is written in the book of life by the very one by whom someone lives righteously and piously. On account of the righteousness of his life (*propter iusticiam uite eius*), his name is written in heaven, which means his name has been written in the book of life. But after sin, his name is deleted from this book and is no longer counted among the heavenly beings.[25] Vacarius was perhaps not as clear as Gratian, especially since he did not go into the four-fold distinction of what it means to be written and erased from the Book of

[25] §31 [4] (ed. da Milano, 569): "Dixit Christus quibusdam discipulis: *Nomina vestra scripta sunt in celis*, qui tamen postea *retro [h]abierunt*, et sic de libro vite exempti perierunt, secundum Domini verba, que dixit Moysi: *Si quis peccaverit ante me, delebo eum de libro vite*. Eo enim ipso quo iuste et pie quis vivit, scriptus est in libro vite. Nam propter iusticiam vite eius celestis nomen eius scribitur in celis, id est inter celestes interim numeratur, qui sunt scripti in libro vite, id est in illa cognicione, qua docet nos ad instar cuiusdam libri esse dignos vita eterna. De quo libro post peccatum nomina eorum delentur, nec inter celestes nominantur, et ita ab illa Dei cognicione removentur, et hoc est nomina eorum deleri de libro vite."

Life according to prescience and according to righteousness. Nevertheless, with Gratian in the background, Vacarius's position becomes evident. In terms of present righteousness and then subsequent sin, people can be present in and then erased from the Book of Life, but these people were never in the Book of Life according to God's prescience. Vacarius did not say this latter part explicitly, but his usage of *propter iustitiam* showed that he was following Gratian's distinctions and divisions in understanding the relationship between humans in the temporal world and the Book of Life even if he did not explicitly refer to the opposite category of *propter* or *secundum prescientiam*. He was working within the categories set forward by Gratian; he did not take the time to restate and re-explain them all, perhaps expecting his old friend from Bologna to recognize the source of his thoughts and recall himself the details of that treatise of the Bolognese master.

Finally, Vacarius briefly turned to 1 John 2:19 ("They departed from us, but they were not of us"), the biblical text that stood at the heart of Augustine's text in D.4 c.8 and Gratian's following comments. He reconciled this text with his position in a way parallel to Gratian. He argued that, if people departed from us, they must have been within (i.e. the church) in some way, by some accounting or reason (*aliqua ratione*), namely by the faith of Christ and the merit of a good life. As Gratian would have termed it, they were part of the church according to their present righteousness. Vacarius maintained that John's words "but they were not of us" means that they were not of us (i.e. in the church) by way or reason of everlasting life. Vacarius's next few sentences appear a bit convoluted, but they become clearer once again with Gratian in the background, here *De penitentia* D.4 d.p.c.11, a section

in which Gratian himself got a little carried away with making distinctions at the expense of consistency and clarity. Gratian had maintained a clear division between being in the Book of Life according to prescience or predestination and according to righteousness. Then he created a sub-division of prescience or fore-ordination (or predestination) in which only the second entails eternal life; the first fore-ordination involves being fore-ordained for righteousness in this life (but not necessarily a righteousness that will persevere all the way to the end).[26] Vacarius had these two fore-ordinations or predestinations in view as he explained 1 John 2:19 (Gratian also returned to explaining that text once he had laid out the two fore-ordinations). Vacarius essentially argued that, according to predestination those who had the faith of Christ were of us by reason of faith and the merit of a good life, and according to (another kind of) predestination, they were not of us by reason of eternal life, because they were not predestined with us for eternal life.[27] Once again, Vacarius emphasized that a person's status as a Christian or not, saved or not, elect or not, at least in terms of how humans view that status, may change over the course of life. What does not change is God's eternal predestination that comes to temporal fruition at some point in an individual's life.

In sum, in order to counter Speroni's denunciation of confession and its relationship to his fatalistic, rigid understanding of predestination, Vacarius turned to the section on

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[26] Cf. above, chapter 4 for a fuller discussion of Gratian's views and arguments.

[27] Ibid.: "Nec est contra quod ait Iohannes: *Ex nobis exierunt, sed non erant ex nobis*. Immo si exierunt, intus erant ratione aliqua, scilicet fide Christi et merito bone vite. *Ex nobis* autem *non erant* ratione vite permanentis, id est eterne. Et quia predestinatio nichil est aliud quam gratie preparatio, et fides Christi sine eius gratia non potest haberi, patet quod predicti, qui fidem Christi habuerunt, secundum predestinacionem ex nobis fuerunt ratione fidei et merito vite bone, et [non] ratione vite permanentis in eternum, quia predestinati nobiscum ad vitam non erant eternam."

predestination within Gratian's treatise on penance and confession. The influence of Gratian's teaching and/or text on Vacarius is clear despite the fact that Vacarius never quoted Gratian directly. One wonders if Vacarius had Gratian's text in front of him or was merely recalling the text from his previous study of theology or even remembering lectures by Gratian that he had heard while studying in Bologna decades earlier.[28] Whatever the case, he understood these arguments to be rock-solid, to present "*rationes* and *auctoritates* that cannot be resisted." Once again, Gratian's work as a theologian was held in high regard, and Vacarius esteemed it so greatly as to deem it strong enough to counter theological error.

Alexander III's Implementation of Principles from *De penitentia* in Penitential Decretals

The longest-ruling pope during Vacarius and Bartholomew's lifetime was Alexander III (1159-81), born Rolandus Bandinelli. Although the identification of Rolandus Bandinelli with the Magister Rolandus discussed previously has long been discounted and although any sort of canonical education is uncertain for the pope, modern scholars do know that Alexander III filled the ranks of the papal curia with several men well-trained in canon law and that his chancery utilized Gratian's *Decretum*.[29] Alexander III's papacy also witnessed

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[28] Landau believes that Vacarius only studied Roman law in Bologna and that theological education may have occurred later in Northampton. I do not see a reason to suppose that Vacarius could not have heard Gratian lecturing on penance even if he did not pursue a theological study systematically in Bologna, if that were even possible. Cf. Landau, "The Origins of Legal Science in England," 168, 173.

[29] The first to question the identification of the two Rolanduses was John T. Noonan, "Who was Rolandus?," in *Law, Church, and Society: Essays in Honor of Stephan Kuttner*, ed. Kenneth Pennington and Robert Somerville (Philadelphia: University of Pennsylvania Press, 1977). Weigand confirmed the misidentification of the pope with the Bolognese master: Rudolf Weigand, "Magister Rolandus und Papst Alexander III.," *Archiv für katholisches Kirchenrecht* 149 (1980): 3-44. Alexander III's advisor, chancellor Albert of Morra (future Pope Gregory VIII) along with six of his cardinals, including most importantly Cardinal Laborans, studied and/or taught canon law, which at this time would have meant Gratian's *Decretum*. I. S. Robinson, *The Papacy, 1073-*

the substantial expansion of legal business brought to the pope's attention and, in turn, resulted in the increase of papal decretals sent out from the papal curia to various parties, including kings and princes as well as archbishops and bishops.[30] Alexander III's decretals thus formed much of the new legislative body of materials that began to be collected during the second half of the twelfth century, supplementing Gratian's *Decretum*.[31] In none of his decretals did Alexander III create a general statement of law. Instead, they were all based on inquiries directed toward him about cases facing his judge delegates, or the letters were themselves inquiries seeking further information in cases that had reached the papal curia through the appeal process or as a court of first instance, or they constituted the final decision in a particular case. This means that Alexander's letters have a very particular case behind them, but sometimes not all of the details of these cases remain available to modern scholars since Alexander III's register does not survive and since many who collected decretals in collections removed specifics and left only those parts of the letter that they felt would be generally beneficial for legal study and judicial application.[32]

While the proportion is small in comparison to other types of decretal letters, several of Alexander's decretals survive that treat penitential matters. Three such decretals made

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1198: Continuity and Innovation (Cambridge: Cambridge University Press, 1990), 483. In their editing of papal decretals from the twelfth century, Chodorow and Duggan concluded that Alexander's curia drew from the *Decretum*: Stanley Chodorow and Charles Duggan, "Introduction," *Decretales ineditae saeculi XII: From the Papers of the Late Walther Holtzmann*, ed. and rev. Chodorow and Duggan, MIC B, vol. 4 (Vatican City: Biblioteca Apostolica Vaticana, 1982), viii.

[30] Walther Ullmann, *A Short History of the Papacy in the Middle Ages* (London: Methuen, 1972), 199; Robinson, *Papacy*, 184-85.

[31] For an overview of these complex body of material, cf. Charles Duggan, "Decretal Collections from Gratian's *Decretum* to the *Compilationes antiquae*: The Making of the New Case Law," in *History of Medieval Canon Law*, 246-92.

[32] Robinson, *Papacy*, 200-201. On the loss of papal registers from the twelfth century and the difficulty that creates for historical interpretation of papal activity at the time, cf. Duggan, "Decretal Collections," 250.

their way into the *Compilatio prima* (ca. 1191) and another into the *Compilatio secunda* (ca. 1210-15).[33] The latter compilation also contained two letters on penance by Clement III (1187-91).[34] All four by Alexander III and one by Clement III became further preserved and established as official church law when Raymond of Peñafort compiled the *Liber extra* at the behest of Pope Gregory IX in 1234.[35] Besides these six penance-related decretals, the research into twelfth-century decretals has uncovered others. Among this body of decretals answering questions and giving instructions about penance, the ones from Alexander III most clearly reflect the teaching in *De penitentia* and the principles about penance employed by Gratian throughout the *Decretum*. Whether he himself or other members of his curia had read *De penitentia* and studied the *Decretum*, the Bolognese master's thought on penance exercised an influence on decisions coming out of the highest ecclesiastical court in the 1160s and 1170s.

In none of Alexander III's decretals is *De penitentia* or other penitential parts of the *Decretum* expressly quoted. In one particular decretal is the influence of Gratian's *De penitentia* nonetheless undeniable. In most of the others, one sees the same principles and concerns at work. Many of these principles and ideas, such as the division between private and public penance, the concern that priests pay attention to the particular circumstances of each sin and sinner, the prohibition of a priest revealing the content of a confession, or the injunction against a priest administering penance to another priest's parishioner, had been

[33] 1 Comp. 5.33.1-3 and 2 Comp. 5.17.3.
[34] 2 Comp. 5.17.1-2.
[35] X 5.38.1, 3, 4, 5, and 7. For these texts, I quote below from Friedberg's 1881 edition, vol. 2 of the *Corpus iuris canonici*.

present in the Christian tradition for some time. Nevertheless, with the first decretal to be discussed kept in mind, one knows that Alexander III's chancery did make use of Gratian's work on penance, and thus one can accept that most likely even the emphasis on principles that had governed penance for centuries, was influenced in part by the clear and strong presentation of such matters in Gratian's *Decretum*, particularly *De penitentia* D.6 and the excerpt from *De vera et falsa penitentia*, as well as by the legal approach to these texts emanating from the canonical study of all of Gratian's work in Bologna.

At some point during his papacy, Alexander III must have received a query from the bishop of Beauvais expressing confusion about whether he or his priests should receive to penance and hear the confessions of people who remained in some sins. His reply, which entered the *Compilatio secunda* and later the *Decretales Gregorii IX*, marked a change in opinion from his late-eleventh-century predecessor, Urban II. Gratian's *De penitentia* D.3 was responsible for that change. As noted above in chapter three, Urban II maintained that a priest should admit to confession only those who will confess fully and turn away from all their sins; if a person insists on remaining in some sin, then his false confession about other sins should not be heard and a satisfaction should not be imposed. Instead, he should be urged to pray and give alms.[36] Alexander III took the opposite position:

> Because certain people, as you assert, come to confession for their sins and, although they want to confess, they claim that they cannot abstain [from them], we respond in this way to your inquiry, that you ought to receive their confession and offer advice to them concerning their sins, because, although penance of this type is not true, their confession should nevertheless be

[36] Cf. above, chapter 3 at n.73.

> allowed, and penance should be indicated to them with frequent and salubrious admonitions.[37]

Alexander worked from the same understanding of true and false penance as perpetuated by Gratian in *De penitentia* D.3 and present in Urban II's conciliar decrees from the late eleventh century: true penance involves repenting of all sins at once and not persisting in one while confessing and doing penance for another. But he followed the former in urging priests to accept anyone, even someone refusing to confess all his sins, wanting to confess to confession and to assign satisfaction, despite the fact that such penance is not true. Alexander did not give a theological grounding for this decision (or perhaps that part of the decretal has not survived), but the only reason for him departing from the position of Urban II is that he or his advisors had absorbed the argumentation of *De penitentia*. Specifically, he accepted Gratian's unique argument that a priest should not deny penance to anyone, even if the penance is false, since later full and true repentance will activate, as it were, the effects of the former, false penance which, like the waters of baptism on the heads of those lacking faith, was something merely external. The potential later, true penance will, like the faith that arises in the insincerely baptized, make the internal fruit and benefits of the previous act alive. As a result, no priest should refuse confession and satisfaction to anyone.[38] In the next century, Tancred of Bologna recognized that this theological reasoning of *De penitentia* D.3 stood behind or at least gave an explanation for Alexander III's decision in this decretal. His

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[37] 2 Comp. 5.17.3 (X 5.38.5; JL 13772): "Quod quidam, *sicut asseris*, ad confessionem de criminibus veniunt, et, quamvis confiteri velint, se tamen asserunt abstinere non posse, consultationi tuae taliter respondemus, quod eorum confessionem recipere debes, et eis de criminibus consilium exhibere, quia, licet non sit vera huiusmodi poenitentia, admittenda est tamen eorum confessio, et crebris et salubribus monitis poenitentia *est* indicenda." Note that in some manuscripts of 2 Comp., this canon appears as the first of the three in this title.
[38] *De pen.* D.3 d.p.c.44 and d.p.c.49.

gloss read in part, "Such penance is not true, that is, fruitful unto eternal life; it nevertheless is valid for him [the false penitent], because he will feel its fruit when he does penance for the other sin. *De penitentia* D.3 'Penitentia ergo ut' (d.p.c.49)."[39] In my opinion, Tancred appealed to the exact text that had indeed inspired Alexander III's answer to the bishop of Beauvais's query.

In the case of that letter, a very specific section of *De penitentia* can be identified as the motivating force behind the decision; in other decretals, more general principles and ideas present in Gratian's treatment of penance and governing his approach to practical issues of penance guided Alexander III's pen. As explained above in chapter six, when Gratian considered real-life situations pertaining to penance, he operated on the principle that penance cancels out a debt. Regardless of which element in penance remits sins, after penance the debt of the sinner before God is wiped out. Similarly, in the church, sinners should be appropriately punished through the imposition of penance, but, afterwards, they should be restored to their former position. Their acts of penance atone for the sins and allow for restoration of status and office. That is the case for priests but also for the laity. A nun who violates her vow of chastity by marrying should be admitted to penance and then restored to her position as a nun after fulfilling it; a priest who sins gravely but then performs sincere penance should be readmitted to his office; a man who kidnaps a young woman may

[39] "Penitentia talis penitentia non est vera, id est fructuosa, quoad vitam eternam; tamen valet ei quia sentiet fructum eius, cum de alio crimine penitentiam egerit. De pen. D.3 Penitentia ergo ut (d.p.c.49)." This gloss was preserved in Bernard of Pavia's ordinary gloss on the *Liber extra* (cf. *Decretalium Gregorii noni compilatio* [Basel, 1494], fol. 481^{r}). The gloss may also be seen in glossed manuscripts of the *Compilatio secunda*, such as Bamberg, Staatsbibliothek, Can. 19, fol. 113ra and Can. 20, fol. 96^{r}. This particular gloss is not present in Berlin, Staatsbibliothek, fol. lat. 427.

later marry her provided that he has performed the appropriate penance.[40] After penance, the fallen nun, the lapsed priest, and the blemished man are no long fallen, lapsed, and blemished. Nevertheless, consequences of the former sin may remain. For example, while Gratian allowed for a lapsed priest to be restored to his former office, he did not permit him to advance in the ecclesiastical hierarchy.[41] Although Gratian never gave a clear rationalization for prohibiting such advancement, based on his comments in D.50 about priests doing penance for false motives, for example, to preserve one's reputation,[42] his apparent fear was that such permission for advancement would open the doors for abuse: priests could sin, even purposefully, and then repent publicly, using that penance as a pretext to advance his reputation for holiness and thus ultimately his career.

Alexander III followed the same line of thinking as Gratian. A case had come before Roger, Archbishop of York, involving a certain Walter who had sexual relations with the mother of the young girl to whom he was betrothed. After considering Roger's letters on the case and Walther's own confession, Alexander III decided on the information he had (acknowledging that other facts could have remained unknown to him since man cannot see into and judge secrets of the heart) that Walter must not be allowed to marry either the mother or the daughter but, after carrying out at least most of the penance enjoined on him, he should be allowed to marry someone else.[43] The assumption is that, without such penance,

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[40] Cf. C.27 q.1, D.50, and C.36 q.2.
[41] Cf. the discussion above in chapter 6 on D.50.
[42] D.50 d.p.c.24 and d.p.c.28.
[43] Decretal 72 (in *Decretales ineditae saeculi XII*, ed. Chodorow and Duggan, 126): "Since therefore we neither can nor ought to judge the secret things of the heart, but [only] those things that the aforementioned Walter confessed to us, we command your Brotherhood that you keep him entirely away from both [the mother and daughter]. And, after the penance has been completed or a great part of that penance that you will have

the man should not be allowed to marry anyone. Just as with Gratian dealing with fallen priests, Alexander still put in place restrictions on the penitent, but, on the whole, like in the case of the *raptor* in C.36, penance was to restore the man to his former status as an eligible bachelor.

Given the varied topics in Alexander's letter to the Archbishop Eystein of Trondheim, the latter must have desired the advice of the pope on numerous issues. Two of them touched on penance. One concerned priests who had gotten married. Alexander III demeaned the unlawful relationship by calling it concubinage, not marriage, using in fact the term (*contubernia*) in Roman law designating the sexual relationships between non-married

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considered ought to be enjoined on him, you may allow him to take another woman as his wife on account of the weakness and capacity of human flesh**.** (Quoniam igitur non possumus nec debemus de occultis cordium iudicare, sed ea que predictus Galterus nobis confessus est, fraternitati tue mandamus quatinus ipsum ab utraque omnino prohibeas et eidem post peractam penitentiam uel maiorem partem penitentie quam sibi duxeris iniungendam propter fragilitatem carnis humane et facultatem indulgeas aliam in uxorem ducendi.)" Since Roger was archbishop during Alexander's entire papacy, the letter cannot be dated more specifically than 1159-81. All translations of decretals are mine.

The literature on medieval marriage, including its regulation in canon law, is enormous, but much research remains to be done. A foundational work on marriage in canon law, not excluded to the Middle Ages, is Adhémar Esmein, *Le Mariage en droit canonique*, 2nd ed., rev. R. Génestal and J. Dauvillier, 2 vols. (Paris: Sirey, 1929-35); on marriage in canon law in the classical period, cf. Jean Dauvillier, *Le mariage dans le droit classique de l'Eglise: Depuis le Décret de Gratien (1140) jusqu'à la mort de Clément V (1314)* (Paris: Sirey, 1933). Major works in the field include Josef Georg Ziegler, *Die Ehelehre der Pönitentialsummen von 1200-1350: Eine Untersuchung zur Geschichte der Moral- und Pastoraltheologie*, Studien zur Geschichte der katholischen Moraltheologie 4 (Regensburg: Pustet, 1956), Georges Duby, *Medieval Marriage: Two Models from Twelfth-Century France*, trans. Elborg Foster (Baltimore: John Hopkins University Press, 1991), Jack Goody, *The Development of the Family and Marriage in Europe* (Cambridge: Cambridge University Press, 1983), Jean Gaudemet, *Le Mariage en Occident: les moeurs et le droit* (Paris: Éditions du Cerf, 1987), James A. Brundage, *Law, Sex, and Christian Society in Medieval Europe* (Chicago: Chicago University Press, 1987), Christopher N. L. Brooke, *The Medieval Idea of Marriage* (Oxford: Oxford University Press, 1989), Andrea Esmyol, *Geliebte oder Ehefrau: Konkubinen im frühen Mittelalter*, Beihefte zum Archiv für Kulturgeschichte 52 (Cologne: Böhlau, 2001), and D. L. d'Avray, *Medieval Marriage: Symbolism and Society* (Oxford: Oxford University Press, 2005). Research into actual cases heard in ecclesiastical courts has to date focused on England and somewhat on France. Cf. Richard H. Helmholz, *Marriage Litigation in Medieval England* (Cambridge: Cambridge University Press, 1974), Frederik Pedersen, *Marriage Disputes in Medieval England* (London: Hambledon, 2000), and Charles Donahue, Jr. *Law, Marriage, and Society in the Later Middle Ages* (Cambridge: Cambridge University Press, 2007).

slaves.[44] Despite the seriousness of this offense, however, he instructed the archbishop to restore such priests to their office if they had performed an appropriately long penance and had not gotten into other trouble.[45] Once again, true penance was viewed as the precondition for restoration, and the human, ecclesiastical judge was to approach the fully repentant offender as worthy of his former position, in other words no longer a sinner but instead an honorable priest.

Other decretals indicate the influence of *De penitentia* D.6, including the pseudo-Augustine passage there. Some of the old ideas present for centuries in penitentials received new force and vigor through Gratian's presentation utilizing *De vera et falsa penitentia*. The study of Gratian's text by many in Alexander's curia meant that these ideas came in force as well to that body. While it is perhaps possible that Alexander III could have written these decretals without any influence from Gratian's *De penitentia*, I find that scenario highly unlikely. Besides the known presence of canonists in his curia and the confirmed usage of *De penitentia*, particularly in the letter to the bishop of Beauvais, I also consider the scenario unlikely based on the fact that every main point of *De penitentia* D.6 (with the exception of the possibility of lay confession) and every point that was being picked up and expanded upon by other authors composing more practical works from *De penitentia* (e.g.

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[44] James A. Brundage, "Marriage and Sexuality in the Decretals of Pope Alexander III," in *Miscellanea Rolando Banidnelli Papa Alessandro III*, ed. Filippo Liotta (Siena, 1986); repr. in idem, *Sex, Law and Marriage in the Middle Ages* (Aldershot: Ashgate, 1993), IX, 69.

[45] Decretal n.89.f.ii (ed. Chodorow and Duggan, 155; JL 14206): "Indeed, those priests who contracted forbidden marriages, which should not be called marriages but rather concubinage, can be restored to their office and possess this authority from the remission of their bishop after a long penance accompanying a praiseworthy life. (Sane sacerdotes illi qui uititas nuptias contrahunt, que non nuptie sed contubernia sunt nuncupanda, post longam penitentiam uitam laudabilem comitantem officio suo restitui poterunt et eius executionem ex indulgentia episcopi sui habere.)" Based on the overlap of Eystein's episcopacy with Alexander III's papacy, Chodorow and Duggan date the letter to 1164-81.

Bartholomew of Exeter already discussed and Alan of Lille discussed in the next chapter) find expression in these decretals from Alexander III. In other words, Alexander's decretals follow the trend of other practice-oriented works utilizing *De penitentia*, paying particularly close attention to the more practical content of D.6.

That content included the emphasis on priests considering the various circumstances of a sin and the sinner's condition, on the discretion and mercy necessary on the part of a priest, on the requirement that a priest keep the content of confessions secret, and on priests only judging their own parishioners unless they have the permission of the *sacerdos proprius*. Among these topics, the last point most strongly connects Alexander's decretals to Gratian and the study of the Gratian in the schools, for no one prior to Gratian had drawn such attention to this issue and, as is evidenced in the *summae* and other works like the penitentials, his attention to the issue spurred much more discussion about it. The first issue, the concentration on determining the *circumstantie* of the sin, finds expression in the other section of the letter to Eystein of Trondheim that dealt with penance, in this case the appropriate satisfaction for homicide. Alexander III avoided giving any specific prescription, instead giving a rough guideline of at least seven years "according the mode of the sin, unless someone did this by command of a legitimate prince or legitimately, namely for the sake of doing righteousness, or by chance unknowingly."[46] The imposer of penance should take into consideration "the nature of the deed and the person" and correspondingly adjust the

[46] Decretal n.89.b (ed. Chodorow and Duggan, 155): "Ceterum de homicidiis nostrum uobis consilium respondemus quod, cum hominem quemlibet occidi contigerit, interfectori septennis et maior secundum modum delicti penitentia est iniungenda, nisi id aliquis de rpecepto legitimi principis et legitime, scilicet pro iustitia facienda, aut forte inscienter hoc fecerit."

penance, even lessening it or making it lighter so long as discretion is employed. Ultimately, Alexander noted, he could not give a fixed prescription because such matters are arbitrary, that is, up to the priest's own judgment or *arbitrium*.[47] Everything in Alexander's decretal fits with the Pseudo-Augustine text in *De penitentia* D.6 c.1., including the emphasis on *discretio* and the concern to consider every circumstance as well as the nature of the person involved, which Pseudo-Augustine had encouraged on the part of the penitent (viz. in the excerpt in *De penitentia* D.5 c.1) as well as the priest.

Alexander also instructed the bishop of Bayeux to pay attention to circumstances and be discrete in lightening penances. The bishop had apparently inquired about the custom of relaxing penances on the occasion of the dedication of churches and other such occasions. The pope responded encouraging him to "pay attention to the nature and extent of the sins in the penitents" and noting that he could "lighten the load of penance through relaxations of this kind, provided that they are employed with caution and circumspection." Alexander III's concern lay with the salvation of the souls. If a relaxation was more beneficial for a person's salvation, then it should be imposed, but the bishop was to be careful not to exceed his own authority and relax a penance to the extent that the sin was then not properly paid for and would have to be punished additionally after death. If the latter occurred, then certainly he had impeded the penitent's salvation.[48] Again, circumstances and discretion (or wisdom, prudence, caution) lay at the heart of Alexander III's instructions on penance.

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[47] Ibid.: "Verum modus penitentie secundum facti et persone qualitatem augeri uel minui poterit et discretione adhibita mitigari, de quibus, quoniam arbitraria sunt, nullam tibi certitudinem possumus respondere."
[48] Decretal n.21 (ed. Chodorow and Duggan, 39): "It was asked of us on the part of your Brotherhood whether you ought to allow these various ways of relaxation for penitents that they are accustomed to do in the

As apparent in the previous decretal, Alexander III also desired priests to be attuned to what was most beneficial for their members' salvation. Another decretal shows that Alexander viewed mercy as central to achieving that goal, again a quality in keeping with Gratian's presentation of ecclesiastical penance in *De penitentia*, never wanting to discourage people from coming to penance but always portraying the administration of penance as a process of unburdening, freeing, and cleansing, not of harsh punishment. The archbishop of Milan faced a difficult case. A certain nobleman had refused to hand over a castle to Frederick Barbarossa and was responsible for the subsequent destruction of castles and over 2,000 houses as well as the killing of many people, not to mention other atrocities too numerous to recount. The man wanted to confess and do penance. Alexander instructed the archbishop to give the man advice about his situation and then to "impose penance on him mercifully, according to what would seem [so], taking note of the fact that he did this for his own liberty and out of devotion to the church." In other words, the archbishop should take the circumstances into consideration: the man came forward of his own volition, wanting to right this wrong, with a heart full of faith and devotion to the church, and wanting to free himself of the burden of his sin and guilt. For this, he should be treated mercifully. Moreover,

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dedication of a church and in other ways. About this we certainly respond to your consultation in this way, that you ought to pay attention to the nature and extent of the sins in the penitents, and, according to what you know to be more beneficial for the salvation of the penitents, you can lighten the load of penance through relaxations of this kind, provided that they are employed with caution and circumspection, so that you may not appear to be going beyond your place and so that flesh may not remain unpunished which ought to undergo that penalty for sins either here or in the future. (Quesitum fuit a nobis ex parte tue fraternitatis utrum penitentibus relaxationes illas multimodas concedere debeas, quas ipsi in dedicatione ecclesie et aliis modis facere consueuerunt. Super quo utique consultationi tue taliter respondemus quod in penitentibus qualitatem et quantitatem debes attendere delictorum, et secundum quod magis penitentium saluti expedire cognoueris, per huiusmodi relaxationes penitentie sarcinam poteris alleuare, ea tamen cautela et circumspectione adhibita, ut non uidearis modum excedere nec caro impunita remaneat quod uel hic uel in futuro oportet eam penam pro delictis sustinere.)" Chodorow and Duggan judge the decretal to be by Alexander III but cannot absolutely confirm it.

the archbishop should exercise such discretion (*discretio*) in light of the fact that a harsh sentence could drive this man as well as others in the public away and discourage them from doing penance and serving the church in the future.[49] Penance should not be a deterrent to salvation and life in the church but a stimulation for it.

Besides an overly harsh penance, the threat of the exposing of private sins to the public could also be a deterrent to penance, and thus Alexander III followed the tradition of the church as reinforced and highlighted by the prohibition against priests revealing the content of confessions in *De penitentia* D.6 c.2. As noted above in chapter five, this prohibition had appeared in many early medieval regional conciliar canons but had not found a place in canonical collections until Burchard of Worms and Ivo of Chartres. Only after Gratian's *Decretum* and Peter Lombard's adoption of the canon as present in the *Decretum* did it become a topic of focused and detailed discussion among the masters of the schools and part of the increasingly centralized church's program.[50] Alexander had to face the issue through a case brought to his attention from the bishopric of Larino. A man there, from

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[49] 1 Comp. 5.33.2 (X 5.38.3; JL 12628; written between 1160 and 1176): "It thus happened that, after four castles were destroyed, more than two thousand houses were destroyed and many people killed, and other evil things are said to have been committed here that would take too long to narrate one by one. Therefore, since the aforementioned P. desires after that to be reconciled to God and to receive worthy penance, we command Your Brotherhood through apostolic writings to give advice to him about this situation and impose penance on him mercifully, according to what would seem [so], taking note of the fact that he did this for his own liberty and out of devotion to the church. And why ought you to have such discretion in these matters? So that others and the man himself may not in any way be hindered from service to the church because of the austerity of penance, and they ought not in any way undeservingly dread some danger to their salvation. (Unde contigit, quod, IV. castris destructis, plus quam duo millia domorum destructa fuerunt et multi homines interfecti, et alia mala ibi commissa *dicuntur*, quae longum esset per singula enarrare. Quoniam igitur praefatus P. Deo exinde reconciliari desiderat, et poenitentiam dignam suscipere, fraternitati vestrae per apostolica scripta mandamus, quatenus eidem super hoc consilium detis, et ipsi poenitentiam, secundum quod visum fuerit, misericorditer imponatis, attendentes, quod pro libertate sua et pro ecclesiae devotione hoc fecit. Quare in his debetis talem discretionem habere, ut alii et ipse idem pro austeritate poenitentiae a servitio ecclesiae nullatenus retardentur, nec aliquod salutis periculum merito debeant formidare.)"

[50] Cf. above, chapter 5, at nn.36-40.

whom Alexander was aware of the circumstances of the case, had first fornicated with a woman and then married another woman who was within the third or fourth degree of consanguinity. This man became convicted of his sins and approached a priest among Hospitallers in order to be administered penance. After hearing this man's confession, the priest made the content of the confession public (whether to the body of Hospitallers or to others is not clear). The devastation of the public humiliation apparently drove this man to appeal to the pope and seek punishment for the priest. Alexander III took this situation very seriously, accusing the priest (if the report was in fact true) of "forgetting the office and dignity of the priesthood and the command of the Lord by which he is prohibited from revealing the foulness of a brother" and of engaging in "so sinful and disgraceful an act, by which men can easily fall into the throws of despair." The bishop of Larino was to investigate further and, if the priest was determined to have broken the seal of confession, the bishop was to suspend him from his duties and send him in person to the pope (presumably to face further judgment and punishment).[51] Although Alexander III did not mention here the

[51] Decretal 187 (*Kanonistische Ergänzungen zur Italia pontificia*, ed. Walther Holtzmann [Tübingen: Max Niemeyer, 1959], 141): "The messenger of the present matters by the name of A. reported to us with a lamentable claim that, when, out of the weakness of the flesh, he fell into fornication with a certain woman, he joined to himself another woman in marriage who belonged to the third or fourth degree. Afterwards, he was led by penance through divine kindness and confessed his sins to a certain priest who was with Hospitallers. But [the priest] forgot the office and dignity of the priesthood and the command of the Lord by which he is prohibited from revealing the foulness of a brother, and he did not hesitate to make the sins of that man public. But because so sinful and disgraceful an act, by which men can easily fall into the throws of despair, should be punished with worthy attention, we respond to your Brotherhood, that, after the truth of the affair has been brought to light, if you should find it to be so, do not delay in sending the said priest suspended from his priestly office to our presence along with your letters containing the truth of the matter when the appeal comes to an end. (Lator presentium A. nomine lacrimabili nobis assertione proposuit, quod, dum de dragilitate carnis cum quadam in fornicationem incideret, aliam in tertio vel in quarto gradu priori attinentem sibi in coniugem copulavit. Postea vero divina miseratione penitentia dictus cuidam presbitero cum hospitalariis existenti sua est delicta confessus. Verum ipse presbiteratus officii et dignitatis oblitus et dominici precepti, quo prohibetur fratris turpitudinem revelare, illius non est veritus publicare delicta. Quia vero tam piaculare flagitium, quo

specific punishment of deposition or life-long exile as prescribed in *De penitentia* D.6 c.2, he may have considered those punishments as possibilities once he had personally met and interrogated the priest. All the same, Alexander took this issue as seriously as the man, whether Gratian or someone else, who appended D.6 c.2 to *De penitentia*.[52]

Alexander III also took seriously one remaining issue highlighted in *De penitentia* D.6, namely that normally a priest can only hear the confession of the parishioners under his care and must have the permission of another priest if he is to administer penance to that priest's parishioners. This situation of administering penance for parishioners who were not one's own apparently arose in situations like the dedication of churches and bridges. One priest may be involved in the dedication, but the people there could come from various places. He thus faced a problem due to the custom of hearing confessions and remitting sins on such occasions. In a letter to the archbishop of Canterbury, Alexander gave his solution:

> But because you have inquired whether remissions that are made in the dedications of churches or for those contributing to the building of bridges are of benefit to persons other than those who are subject to [the priests] who are doing the remissions, we want your Brotherhood to hold to this, that, since no one can be bound or absolved by a judge who is not his own, we judge the aforementioned remission to be beneficial only to those who have received special allowance from their own judges that such remissions be beneficial to them. And in this you may understand that question solved in which it is

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facile possent homines in desperationis laqueum cadere, digna est animadversione plectendum, fraternitati tue etc., quatenus rei veritate comperta, si ita esse inveneris, iamdictum presbiterum a sacerdotali officio suspen[sum cum] litteris [tuis re]i veritatem contentibus ad [nostram presentiam appellatio]ne cessante mittere non postponas." Charles Duggan briefly discussed this decretal and favored the bishop of Larino as the recipient in his "Italian Marriage Decretals in English Collections: With Special Reference to the Peterhouse Collection," in *Cristianità ed Europa: Miscellanea di Studi in Onore di Luigi Prosdocimi*, ed. Cesare Alzati, 2 in 3 vols. (Rome: Herder, 1994-2000), 1.432.

[52] Remember that D.6 c.2 was not in the original treatise but is part of the *additiones* to Fd and was retained in the vulgate version.

> asked whether he who gives communion to the excommunicate ought to implore the grace of absolution for the excommunicate from the bishop.[53]

The faithful who attended such events administered by a priest who was not their own were thus to receive express permission from their priest beforehand to be administered penance. As in *De penitentia* D.6 c.3, the *consensus* of the *sacerdos proprius* was necessary. Otherwise, the remission offered was not valid, had no effect. The same principle governed the question of whether a priest could give communion to (and thus reconcile again to the church) an excommunicated person. Since such an excommunicate lies under the jurisdiction of the bishop, not the priest, for only the episcopal office may reconcile excommunicates, the priest must have the permission of the bishop to reconcile the sinner. In other words, Alexander III applied a principle from *De penitentia* D.6 to an issue similar to that raised in C.26 q.6 and reached the same conclusion as Gratian there, namely that (in normal circumstances) the bishop's permission must be sought by a priest before he reconciles an excommunicate to the church and administers communion to him.[54] Simultaneously, he quietly used the teaching about respective episcopal and sacerdotal authority and offices in C.26 . This decretal thus displays well the canonical learning of Alexander's curia.

Finally, some of Alexander III's decretals dealing with penitential matters reveal how the Carolingian dichotomy of private penance for private sins and public penance for public sins, a dichotomy that Gratian maintained, had significant real-life consequences for the

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[53] 1 Comp. 5.33.3 (X 5.38.4; JL 12411): "Quod autem consuluisti, utrum remissiones, quae fiunt in dedicationibus ecclesiarum aut conferentibus ad aedificationem pontium, aliis prosint, quam his, qui remittentibus subsunt, hoc volumus tuam fraternitatem [*firmiter*] tenere, quod, quum a non suo iudice ligari nullus valeat vel absolvi, remissiones praedictas prodesse illis tantummodo arbitramur, quibus, ut prosint, proprii iudices specialiter indulserunt. Et in hoc eam intelligas quaestionem solutam, in qua quaeritur, utrum is, qui excommunicato communicat, a suo episcopo vel excommunicati absolutionis gratiam debeat implorare."
[54] Cf. C.26 q.6 d.a.c.1 and the treatment of this section above in chapter 6.

people involved, particularly for married couples. Towards the end of *De penitentia* D.1, Gratian put the Carolingian dichotomy in the mouths of both sides of the argument over the remittive element in penance. The proponents of the second position argued that calls for penance before God and not before men must be understood as specifying that God does not require public confession and satisfaction for secret sins to be forgiven:

> These statements should not be understood in such a way that sins are said to be forgiven without oral confession but rather without public satisfaction. For secret sins are purged by secret confession and clandestine satisfaction, and it is not necessary for us to confess a second time [i.e. in public] what we have confessed once to a priest.[55]

In turn, the proponents of the first position maintained that secret sins are forgiven through internal contrition and self-imposed, secret satisfaction, but they came to admit that public sins do require external, public satisfaction in order to be remitted. After all, "public injury (as Augustine testifies) requires a public remedy."[56] They concluded, "And so, by the afore-mentioned authorities it is proven that manifest satisfaction and oral confession must be offered up for manifest sins."[57] Then in D.3, Gratian appealed to solemn penance in order to explain several texts that explicitly stated that penance can only be performed once.[58] While scholars are prone to consider the difference between private and public penance in liturgical terms, recipients of the latter being subjected to a ceremonialized casting out of and then reception back into the church, Alexander III's letters show that the difference affected what

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[55] *De pen.* D.1 d.p.c.87 §1: "Non ita intelligendum est, ut sine confessione oris peccata dicantur dimitti, sed sine publica satisfactione. Secreta namque peccata secreta confessione et occulta satisfactione purgantur, nec est necesse, ut que semel sacerdoti confessi fuerimus denuo confiteamur."
[56] *De pen.* D.1 d.p.c.87 §7: "Et publica noxa (ut Augustinus testatur) publico eget remedio."
[57] Ibid. §8: "Premissis itaque auctoritatibus pro manifestis criminibus manifesta probatur offerenda satisfactio et oris confessio."
[58] *De pen.* D.3 d.p.c.21 and d.p.c.49.

satisfaction was imposed on the sinner, and the different satisfactions could bring vastly different life situations for the parties involved.

In the same letter to the bishop of Larino in which Alexander ordered further investigation into whether the said priest had divulged the content of the sinner's confession, he also ordered further investigation into the sinner's sin. If, at the time it was committed, the sin was public (presumably known by his surrounding community but perhaps not known by those whom the priest allegedly informed), the sinner was to be separated from his wife immediately. If the consanguinity was not known, a penance should be enjoined after which the man could lead a normal marriage with the woman.[59] Presumably the penance would have had to have involved something that could be kept secret and private, away from public eyes. Since the man stayed living with his wife, potentially for years in the future, no one would discover that they had illegitimately married and undergone penance for it.

Alexander advised similarly in broad terms to the bishop of Thérouanne sometime between 1168 and 1181. The bishop had inquired about a particular case of incest, in which a man married a woman who already had a daughter and then slept with and impregnated the daughter. Alexander III's reply addressed incest in general, whether with one's own or with one's spouse's family members, and even adultery broadly speaking. Alexander refused to give one, standard decision. The correct course of action depended on many things, particularly whether the sin was public or secret. If the former, then the man should be

[59] Decretal n.187 (ed. Holtzmann, 141-42): "And if the sin and consanguinity of the said man is public, you should not delay in separating him from the woman. But if the transgression is secret, you should permit him to stay with his wife after a penance has been enjoined on him. (Et dictum virum, si p[ublicum] est crimen et consanguinitas, a muliere non differas separare. Si autem occultum est delictum, eum cum uxore sua iniuncta sibi [penitentia perma]nere permittas.)"

separated from his wife and not be allowed to marry again his whole life. The wife, if she did not consent to the sexual promiscuity and perversion of her husband, could marry whom she wanted in the Lord. If the latter, then the marriage should remain intact, but the husband should be prohibited from having sexual relations with his wife as much as he was able, unless she desired it, in which case he should fulfill the conjugal debt. In the midst of these particulars, Alexander reminded the bishop that particular circumstances of the sin and sinner must be taken into account: "But concerning adultery or incest, penance ought to be imposed for them in accord with what the sin itself and the nature of the sinner demand."[60] When dealing with specific cases, Alexander thus advised ecclesiastical judges to pay particular attention to whether sins were public or secret and correspondingly to impose public or private penance. In other words, he judged according to the Carolingian dichotomy, which he succinctly stated thus in another decretal preserved as the first canon in the title *De poenitentiis et remissionibus* in the *Liber extra*: "Manifest sins are not to be purged with secret correction."[61] Regardless of how much scholars want to debate how clearly the so-called Carolingian dichotomy exhibited itself in reality, it remained in some measure in place, not just in the theory laid out by Gratian and his successors but in the practice advised

[60] Decretal n.16 (ed. Chodorow and Duggan, 29): "De illis autem qui duas sorores, uel amitam et neptem, siue sorores proprias aut etiam matrem et filiam carnali commixtione cognoscunt certum tue prudentie, sicut rogasti, non possumus dare responsum, cum quidam eorum publice, quidam solent occulte peccare, et diuersi casus consueuerunt in talibus frequenter emergere, de quibus certum non possumus iudicium promulgare. Veruntamen hoc tuam uolumus cognitionem tenere quod, si quis uxoris sue sororem, matrem uel filiam, amitam uel neptem carnaliter diabolica suggestione cognouerit, et crimen eius publicum et notorium fuerit, tu eum sine spe coniugii facias in tota uita sua manere, ita quidem quod uxor eius, si his non consensit, possit eo de medio sublato cui uoluerit in Domino nubere. De adulterio uero siue incestu penitentia debet eis imponi secundum quod ipsum peccatum et qualitas peccatoris requirit. Quod si aliquem in his labi contigerit cuius peccatum occultum existat, penitentiam secretam debet accipere. Et non tamen ut ab uxore sua recedat est aliquatinus compellendus, sed ut quantum potest abstineat diligentius et sollicitius ammonendus, ita tamen quod ei debitum, si requisierit, ita non debeat denegare quod ipsa grauius cogatur peccare."

[61] 1 Comp. 5.33.1 (X 5.38.1): "Manifesta peccata non sunt occulta correctione purganda."

and guided by Pope Alexander III. The Carolingian dichotomy in the twelfth-century constituted more than a matter of theoretical categorization; if Alexander's bishops followed his instructions (and we have no reason to doubt that they did), the dichotomy produced significant consequences in the lives of the faithful to the point of determining whether a married couple stayed married or not.

In Alexander's decretals, then, we see how the general principles about penance in the *Decretum* as well as some specific ideas in *De penitentia* could be and were put into practice. The collection and treatise provided the papal curia with guidance on how to deal with specific cases and problems related to penance. To a great extent, Alexander put the power where Gratian had also perceived it, that is, in the hands of discrete priests and bishops, and he prioritized as Gratian had, valuing above all the salvation of souls and then the ecclesiastical structure and hierarchy. Most of what Gratian had written was not radical, but on one point it was, and, when Alexander took up this point and it became part of the *Compilatio secunda* and then the *Liber extra*, this radical point based on what many of Gratian's successors judged to be a far-fetched if not blatantly incorrect theological argument became church law.[62] To be precise, without *De penitentia* D.3 d.p.c.44 and d.p.c.49 on the reception to confession of even false penitents, those who wanted to remain in some sins while confessing others would not have been allowed to be admitted to penance. Their confessions would have remained unheard and satisfactions not imposed.

[62] Cf. above, chapter 9, on Peter Lombard's amused but skeptical reaction to the argument and below, chapter 11, on Peter the Chanter's flat-out rejection of it.

In sum, within thirty years of its composition, *De penitentia* began affecting the world outside of the classroom. A bishop viewed it as a helpful source for formulating a primer for his priests to prepare them to hear confessions and administer penance. A legal expert, administrator, and teacher turned to it to attempt to debunk the theological error stemming from an old friend in a distant land at a time when, as will be stressed in the next chapter, theological error and heresy was increasingly becoming a problem for the church. A pope surrounded by men who had studied in Bologna and absorbed Gratian's text wrote decisions and gave advice reflecting the principles and ideas embedded in it. Gratian had never intended his work to be a mere academic exercise. Not even counting the individual students who must have implemented what they learned about penance from the *Decretum* and *De penitentia* when they acted as confessors, Bartholomew of Exeter, Master Vacarius, and Pope Alexander III show that, by the 1160s and 70s, it was anything but. It had expanded beyond being a tool for canonical and theological instruction to being an instrument for ecclesiastical governance and even the fight for theological orthodoxy.

CHAPTER 11

BUILDING ON A FOUNDATION:

THE LEGACY OF *DE PENITENTIA* AT THE END OF THE TWELFTH CENTURY

The extensive usage of Gratian's *De penitentia* in Peter Lombard's *Sentences* ensured that the treatise would be treated and commented upon, albeit indirectly, in the theological schools for the remainder of the Middle Ages, even while, as shown in chapter eight, from the start the treatise garnered little attention in the lectures on canon law in Bologna and elsewhere. More than half a century after its composition, however, *De penitentia* still exercised an influence independent of Peter Lombard's *magnum opus* in the works produced by the new premier theologians north of the Alps (such as Peter the Chanter and Alan of Lille), and it received fresh attention south of the Alps by the great canonist Huguccio. At the end of the twelfth century, Gratian's influence on penitential thought thus remained strong, but one sees that certain sections and ideas from *De penitentia* had more influence than others, including the concern to defend ecclesiastical power and the keys even while affirming the necessity and even sufficiency of contrition in penance for the remission of sins, the notion of shame in confession as part of satisfaction, the possibility of confessing to a lay person, the qualifications of a priest required for hearing confessions, and the absolute prohibition of confessors revealing the content of confessions made to them.

At this time, historical conditions were changing – the schools were becoming more established, radical groups were springing up particularly in southern France, and collections of decretals were emerging and would soon become the focus of canonical jurisprudence. All

of these factors contributed to how texts and ideas from *De penitentia* were received and adapted and gave the legacy of *De penitentia* a different flavor in the late 1180s-early 1190s than it had in the third quarter of the century. That legacy affirms unequivocally, though, that Gratian's presentation and individual arguments remained compelling to the best of minds and that *De penitentia* constituted not just *a*, but *the* foundational text on penance in the twelfth century.

Peter the Chanter's *Summa de sacramentis et animae consiliis*

After reading Gratian's *De penitentia* and the section on penance in Peter Lombard's *Sentences*, one feels as if in another world when reading Peter the Chanter's *Summa de sacramentis et animae consiliis* (ca. 1192-1197). In large part, such was the intention of the author. Peter the Chanter, who had been educated in Reims, arrived in Paris as a *magister* by the early 1170s, been named head chanter (*cantor*) at Notre Dame in 1183, and died in 1197 before being able to assume his duties as newly elected dean back in Reims, left many of the more purely theological questions behind him, deeming that Peter Lombard had dealt sufficiently with them. Although engaging several theoretical issues, his work was far more practical, treating theological issues in terms of their application to various concrete cases.[1] Because he was moving beyond or at least in a different direction from Peter Lombard in his treatment of penance, Peter the Chanter also diverged from Gratian in his treatment. His

[1] For a biographical sketch of Peter the Chanter, cf. John W. Baldwin, *Masters, Princes, and Merchants: The Social Views of Peter the Chanter and his Circle*, 2 vols. (Princeton: Princeton University Press, 1970), 3-11. On the nature of Peter's work, cf. ibid., 53. All page references refer to the first volume (the second volume contains notes and indices). On the schools of Paris in Peter's day and in the couple generations leading up to him, cf. Stephen C. Ferruolo, *The Origins of the University: The Schools of Paris and Their Critics, 1100-1215* (Stanford: Stanford University Press, 1985).

approach differed; many of the questions differed. The differences make the places where Gratian's questions and ideas do come through all the more noticeable and significant, revealing which parts of *De penitentia* had a lasting impact in the moral and pastoral theology of Paris at the end of the twelfth century.

The differences between Peter the Chanter's treatment and that of Gratian and Peter Lombard should not be considered as a rejection of their works or ideas but rather as an advancement of the discussion about penance. Great works spur additional work and inspire new questions. Peter the Chanter built on the basis of the mostly theoretical discussion about penance in *De penitentia* and the fourth book of the *Sentences* and asked unique questions or more detailed questions related to old issues and texts. Some questions remained quite theoretical; others were eminently practical. For example, he quoted the oft-used Ambrosian/Gregorian text: "Penitere autem commissa deflere et flenda deinceps non committere" (*De pen*. D.3 c.1 and c.6), but he then asked a question that no one else had, namely whether a penitent should have the same intention regarding venial sins, namely, not to commit them again. He said that someone is not required to do that, because no one can completely avoid venial sins, but the penitent ought to intend to turn away from and avoid venial sins as much as he is able.[2] Peter Cantor was also much more concerned with issues of merit. Much of the second part of his *Summa*, the part that dealt with penance and excommunication, treated questions about what sinners deserve or merit through their sin or

[2] Peter the Chanter, *Summa de sacramentis et animae consiliis, secunda pars* §73 (*Summa de sacramentis et animae consiliis*. *Secunda pars: Tractatus de paenitentia et excommunicatione*, ed. Jean-Albert Dugauquier, Analecta mediaevalia Namurcensia 7 [Louvain: Editions Nauwelaerts, 1957], 8.15-18): "Dicimus quod non tenetur ad hoc aliquis, quia nemo potest ex toto uitare uenialia, sed debet penitens proponere quod pro posse suo declinabit uenialia et uitabit."

what penitents deserve or merit through their penance. Thus, Peter asked a question like whether a person merits more if he has more contrition than another person over his sin.[3] Such questions never entered Gratian's discussion. Moreover, Peter the Chanter grew more specific on certain issues, such as the differentiation of the nature and function of the individual elements of penance. Gratian focused on the distinction between contrition on the one hand and confession and satisfaction on the other, conceiving of *penitentia* as having an internal and an external aspect. Peter the Chanter spent much more time attempting to define each step within the penitential process, beginning even prior to contrition. For example, Peter addressed the gospel texts that say to "go and sin no more." Peter specified that stopping sinning is not sufficient for penance but rather is a first and necessary step.[4] He said the same thing about love. People act as if it is sufficient for all guilt and for bearing the penalty for sin. Instead love is said to cover a multitude of sins because it produces (and thus precedes) contrition and external satisfaction.[5] He also addressed the question of which external penitential works (i.e. satisfaction) have more value for freeing one from purgatorial punishments.[6] Again, Gratian never got this technical. In sum, Peter the Chanter's work on penance steered the discussion in new directions while at the same time trying to make the standard discussion ever more precise and detailed.

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[3] Ibid., §104 (ed. Dugauquier, 159.4-5): "Utrum, si aliquis maiorem habet contritionem quam alius, ea magis mereatur."
[4] Ibid., §106 (ed. Dugauquier, 169.23-28) "Sed forte quia Dominus femine deprehense dixit: 'Vade et amplius noli peccare', et alibi dicitur: 'Peccasti, quiesce', credet aliquis sibi sufficiere si a peccato quiescat. Dicimus non ideo dictum esse hoc quod sufficiat ad penitentiam, sed quia est initium a quo incipit penitentia et sine quo nulla agitur penitentia."
[5] Ibid., §106 (ed. Dugauquier, 169.29-32): "Dicitur quod 'caritas operit multitudinem peccatorum' quasi caritas sufficiat ad omnem culpam et penam peccati tollendam. Sed non est ita, sed ideo hoc dicitur quia caritas parit contritionem affligentem et satisfactionem exteriorem."
[6] Ibid., §107.

This desire for greater specification is also exemplified in his addressing of individual cases, of how penance differs practically in different situations for different people. In Peter the Chanter's *casus*, the methodology of the whole of Gratian's *secunda pars* of the *Decretum* and of the canonists in general was applied to an unparalleled degree to penance. As Leonard Boyle noted, Peter's *Summa de sacramentis et animae consiliis* is a work "of medieval casuistry, of, that is, the teaching and dissemination of practical theology through the medium of cases or case-histories from everyday experience."[7] Thus Baldwin rightly pointed out that Peter the Chanter's work (as well as that of Robert of Courson) served as an important predecessor to the *summae confessorum*, pastoral manuals with the specific goal of helping priests understand their duties as confessors and assist them in carrying those duties out, works that became overwhelmingly popular in the next century.[8] Peter's work was far too unwieldly and disorganized to serve as a basic manual for confessors, but the spirit behind it, the intention of applying the theological and also canonical learning of the schools

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[7] Leonard E. Boyle, "The Inter-Conciliar Period 1179-1215 and the Beginnings of Pastoral Manuals," in *Miscellanea Rolando Bandinelli Papa Alessandro III*, ed. Filippo Liotta (Siena: Accademia Senese degli Intronati, 1986), 53.

[8] Baldwin, *Masters, Princes, and Merchants*, 53: "The discussion of specific cases for the guidance of the confessor was the Chanter's and Courson's important contribution to the medieval development of penance. By concentrating on individual and concrete moral questions Peter and Robert inspired the literature of the 'Guides to Confessors.' Both their general approach and many of their specific solutions were adopted by Robert of Flamborough, Thomas of Chobham, Peter of Poitiers of Saint-Victor, and other anonymous penitentialists."

Much good introductory literature on the *summae confessorum* and other types of pastoral manuals exists, including Boyle, "The Inter-Conciliar Period 1179-1215 and the Beginnings of Pastoral Manuals" and Pierre Michaud-Quantin, "A propos des premières Summae confessorum: Théologie et droit canonique," *Recherches de théologie ancienne et médiévale* 26 (1959): 264-306. A number of texts have been collected in Pierre Michaud-Quantin, *Sommes de casuistique et manuels de confession au moyen âge (XII-XVI siècles)*, Analecta Mediaevalia Namurcensia 13 (Louvain: Nauwelaerts, 1962), and the introduction is also informative. Studies of specific works are also available, including Joseph Goering "The *Summa* of Master Serlo and Thirteenth-Century Penitential Literature," *Mediaeval Studies* 40 (1978): 290-311, which is notable for placing Master Serlo's work in the broader historical context of penance and the use of casuistry in the treatment of penance, and idem, *William de Montibus (c. 1140-1213): The Schools and the Literature of Pastoral Care*, Studies and Texts 108 (Toronto: Pontifical Institute of Mediaeval Studies, 1992).

to everyday situations of priests and the regular faithful, was the same spirit that would motivate the later manuals.

While Peter the Chanter's work on penance offered a different approach and new questions, it still relied heavily on and built upon certain concepts of Gratian's *De penitentia* and even drew on particular arguments made by Gratian on various issues. One sees this, for example, in the concept of shame as part of the penalty owed for sin and thus as part of satisfaction, a concept presented by Gratian in his first distinction through Pseudo-Augustine's *De uera et falsa penitentia*. The first of three reasons Peter the Chanter gave for the necessity and utility of confession consists in the fact that it constitutes "a great part of satisfaction and external penance." His next sentences make clear that this is so on account of the shame (*erubescentia*) that confessing our faults to others causes. He noted that if penitents wants to embarrass themselves by declaring their sins to numerous priests, that is fine, but such publicity is not to be required of all; after all, on account of shame, it is hard enough to find the strength to confess to one priest, let alone several.[9] This general point had already been made by Peter Lombard, so the fact that Peter the Chanter chose to reproduce it shows how important he considered this concept in the discussion of penance and confession.

Also of great influence from Gratian was the question posed in *De penitentia* D.6, namely to whom one should confess and what their qualities should be. The statement there by Pseudo-Augustine that one may confess to a lay person if a priest is unavailable prompted

[9] Ibid., (ed. Dugauquier, 282.33-37): "Hic notandum est quod propter tres causas necessaria et utilis est confessio; et primo facienda. Prima est quod ipsa est magna pars satisfactionis et exterioris penitentie, adeo quidem quod si uellet aliquis coram pluribus erubescere sacerdotibus et confiteri turpia scelera sua, sufficeret ei ad penitentiam; sed ideo hoc alicui non iniungunt sacerdotes quia uix uni possumus propter erubescentiam confiteri."

the treatment by Peter the Chanter of that question, of whether one can confess to a lay person. He placed the discussion in the context of penance *in extremis*, in the final moments of life. He expanded the discussion and made it more detailed by asking whether one may confess to various types of lay persons, including stupid (Christian) ones, Jews, pagans, and heretics.[10] He thus took the discussion in a unique direction, but the question stemmed from Gratian's quoting of Pseudo-Augustine in *De penitentia* D.6.

Peter the Chanter also reiterated the point that one should confess to one's *sacerdos proprius* but observed that this seems to be in conflict with the opinion that one should seek out a capable priest. Peter turned to another Pseudo-Augustinian text in the *Decretum* to create this conflict (C.3 q.7 c.7 from *De salutaribus documentis*). His solution, much as Bartholomew of Exeter's had, emphasized the ecclesiastical hierarchy, ultimately placing the bishop in charge and allowing him to grant permission to a person to confess to someone other than his *sacerdos proprius*.[11] Again, Peter steered the discussion in a somewhat different direction and provided a more detailed and practically-oriented answer, but the

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[10] Ibid., §135 (ed. Dugauquier, 312.1-9): "An si deest copia sacerdotis in articulo mortis confitendum erit laico, aut maiori aut paruulo, aut surdo qui non magis intelligeret quam asimus, aut iudeo uel gentili qui fidem christianam deriderent si christianorum enormia audirent et dicerent detrahendo: 'Ecce tales sunt christiani', aut etiam heretico, ut cataro, siue occulto siue preciso, qui confitenti ei se corpus Domini conculcasse aut indige tractasse, statim adiceret ipsum bene fecisse, nec ob id penitendum esse, sed gaudendum quia non est corpus Christi."

[11] Ibid., §138 (ed. Dugauquier, 322-23): "Unusquisque debet confiteri proprio sacerdoti." Peter provided his reconciliation of this statement and the Pseudo-Augustian text in C.3 q.7 c.7 ("Sicut peritior medicus querendus est cure corporali, ita discretior sacerdos cure animarum") in the following way: "Sed hoc forte locum habet post confessionem factam ordinario prelato uel per eius licentiam. Dissonant etiam consuetudo quarumdam ecclesiarum in quibus clerici uitant suum decanum, unde et eis indulgetur licentia aliis confitendi." Thus perhaps one can confess to another, better confessor after one has already confessed to his own confessor or if he has his own confessor's permission to do so. Peter was especially concerned about clerics avoiding confession to their own deacon. Then he drew attention to the authority of the bishop: "Dicit subditum se episcopo loci et debere confiteri uel episcopo loci, uel alicui eorum cui episcopus uices suas commisit siue presbytero parrochiali uel religioso, si cui episcopus hoc dederit et consulit semel electum non mutare nec diuidere confessionem."

discussion was based on the opposing *auctoritates* and the issue raised by Gratian in *De penitentia* D.6. Finally, Peter the Chanter could not neglect to mention that priests are prohibited from divulging the confessions that they hear. Peter gave an interesting reason for why confessions should be kept secret: the confession is made more to God than to the priest. In other words, the priest is not the owner of the information, so to speak, and after he hears a confession, he should ignore its contents and forget about it so that he does not reveal it to others.[12] In short, all the key parts of *De penitentia* D.6 received treatment by Peter the Chanter, although he always put his own twist on them.

Individual arguments by Gratian also attracted the attention of Peter the Chanter, sometimes to adopt and sometimes to reject. In either case, Gratian's arguments continued to be powerful and intriguing. Peter the Chanter drew on *De penitentia* D.4 in his discussion of the return of sins. He rejected the position of the *Summa sententiarum* and the indecision of Peter Lombard, defending the return of sins, both in terms of penalty and in terms of guilt.[13] The reason why Peter the Chanter took such a strong view is rooted in the reasoning that Gratian himself provided (in *De pen.* D.4 d.p.c.19): subsequent mortal sin kills previous good acts, including the penance for previous sins. The Chanter stated, "And the reason for this point is valid, for that penance was completely put to death on account of subsequent mortal sin; therefore it is just as if [the sinner] had done no penance. He will thus be wholly punished for those sins as they return to him, just as he would deserve punishment from the

[12] Ibid., §133 (ed. Dugauquier, 291.4-6): "Deo enim magis quam sacerdoti fit confessio. Vnde et sacerdos peccata sibi, immo Deo in ipso reuelata, post confessionem quasi ignorare debet, ne alicui per ipsum innotescant."
[13] Ibid., §77 (ed. Dugauquier, 25.1-3): "Sicut autem redeunt peccata priora quantum ad reatum integre, ita etiam redeunt quantum ad integram penam in gehenna infligendam."

start if he had previously died impenitently in them."[14] Unlike Peter Lombard, Peter the Chanter never quoted Gratian, but he mirrored and borrowed Gratian's argumentation, who wrote in concluding his defense of the return of sins, "Saying 'dead works,' Paul signifies prior good works, which had died through subsequent sin, for these [sinners] made their previous good works irrelevant by sinning."[15]

Peter the Chanter did not always follow along with Gratian's reasoning, however, as is his clear from his rejection of Gratian's application of Anselm of Laon's sacramental thought on baptism to penance. While Peter Lombard noted the opinion of Gratian with interest but skepticism and Alexander III tacitly adopted it, Peter the Chanter rejected it completely. He could not accept that a false penitent obtains the fruits of a genuine penance without repeating penance just as a person baptized *ficte* obtains the fruits of baptism through later faith without repeating the baptism. He formulated his argument in terms of *caritas*, and it was partially based on his understanding that at least private penance is not a sacrament. He seems to have been responding to the argument as put forward by Peter Lombard, for he also used the concept of dead works becoming alive from *De penitentia* D.4 that Peter Lombard had applied to Gratian's argument about penitents not repeating the penance they did falsely in *De penitentia* D.3. Peter the Chanter rejected the notion that current love makes up for or makes effective previous penance done without love. Only with Gratian in the

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[14] Ibid. §77 (ed. Dugauquier, 25.6-11): "Et ad hoc ualida ratio est quia ex toto mortificata est illa penitentia, propter sequens mortale; perinde ergo est ac si nullam penitentiam egisset. Integre ergo punietur pro illis peccatis redeuntibus sicut ab initio puniendus esset si in illis decessisset ante impenitens."

[15] *De pen.* D.4 d.p.c.19: "Dicens opera mortua, priora bona significat, que per sequens peccatum erant mortua, quia hi peccando priora bona irrita fecerunt." As Peter Lombard did not draw on this argument by Gratian in his discussion of the return of sins, Peter the Chanter must have known it from Gratian directly. Thus, while it is often difficult to tell whether Peter the Chanter is conscientiously drawing on Gratian, here is proof that he did at times do so.

background does one understand that he was alluding to the argument about those who do penance for one sin while remaining in others and then later come to full faith and sorrow over all their sins; Peter simply described this situation in terms of the possession or not of *caritas*. He said that new-found love is not sufficient for salvation without repetition of the previous, ineffective penance since such sufficiency only occurs in the case of sacraments (clearly excluding penance from this category). He accepted the idea that, in baptism, previous dead works (i.e. a baptism received *ficte*, insincerely and without faith) become alive with the new gaining of love, but he rejected the parallel with penance that Gratian had created drawing on Anselm of Laon.[16] In fact, Peter seems to have rejected any parallel between baptism and penance based on the simple fact that baptism cannot be repeated but penance can and ought to be, both *de iure* and *de facto*.[17] Even though Peter the Chanter disagreed with Gratian, his attention to this argument by the latter set forward in *De penitentia* D.3 shows how intriguing and worthy of note it remained for the theologians at the end of the century, even as it had been for Peter Lombard in the 1150s.

In sum, Peter the Chanter wrote a work of a completely different nature from the earlier theological works of the twelfth century, including *De penitentia*. Amidst all the

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[16] Peter the Chanter, *Summa de sacramentis*, §72 (ed. Dugauquier, 3.13-4.22): "Si quis enim dicat isti, non curandum de preteritis [penitentiis sine caritate], cum sufficere possit ei ad salutem quod modo habet caritatem, respondemus isti non debere sufficere quod salueretur. Immo ei laborandum esse ut prius saluetur…. Preterea. Si quis uelit dicere reuiuiscere propter caritatem sequentem opera prius mortua, dicimus hoc non inueniri nisi in sacramentis, sicut in baptismo ficte accepto qui, post habita caritate, uitalitatem et uigorem assumit."

[17] Ibid. (ed. Dugauquier, 5.32-37): "Forte uelit quis instare huic argumento in baptismo ficte accepto ab aliquo, nam ei non est remissum originale peccatum, ergo iterum baptizandus est. Sed longe hic aliter est: confessio enim iterari potest et debet, et de iure et de facto, baptismus nequaquam." He thus conceived of an argument running in the opposite direction from the one Gratian made: as he argued that a person must repeat penance if the previous penance was done imperfectly, without love, because that penance was not fruitful and has not remitted sin, so someone could have argued that a person who approaches baptism *ficte* should be baptized again, for his original sin was not remitted in that first, insincerely received baptism. But the situations are totally different, since baptism can in no way be repeated while penance can and should be.

differences, however, familiar concepts and concerns from Gratian's treatise appeared. Primary among them were issues raised through Gratian's quoting of *De uera et falsa penitentia*, including the concept of shame in confession as part of satisfaction, confession to laity, to whom one should ordinarily confess, and how to reconcile the command to confess to one's *sacerdos proprius* with the injunction to confess to the best and most skilled confessor available. Amidst these latter issues raised in *De penitentia* D.6, the other key principle of D.6 but not from *De uera et falsa penitentia*, namely the prohibition of the revelation of confessions, continued to attract attention and merit repetition. Other smaller individual arguments by Gratian made their way into Peter the Chanter's work. On the whole, though, the portion of *De penitentia* that exercised the most influence in this practical work was the most practical of the distinctions, D.6. Historically, the entirely different nature of the reception of *De penitentia* by Peter the Chanter than by Peter Lombard and the other sentence writers of the middle of the century was in great measure due to the fact that the schools were developing in Paris and Peter Lombard's text was being accepted as authoritative. Peter the Chanter therefore did not aim to duplicate what had already been recognized as the standard work on theology. He did something different, and so his approach to *De penitentia* and his usage of it was also different.

The Penitential Work of Alan of Lille

A figure alongside of Peter the Chanter in Paris was Alan of Lille (d. 1203), who was also a master of great renown in his time. Alan did not stay in Paris, and indeed his most productive time of writing occurred after he had left. Whether he moved to the south of

France in order to address the heretics in force there or took upon himself the task of refuting their errors once he had relocated there for other reasons, he devoted much of his time and work in Montpellier in the last decades of his life to countering the heretical positions being declared by the Cathars and Waldensians, including their rejection of the standard theology and practice of penance expressed in their denial of the necessity of confession.[18]

Alan of Lille left behind a varied body of work. Jean Longère divided it into doctrinal treatises, including the apologetical *De fide catholica* (post 1185), and pastoral or practical works, including several sermons, the *Ars praedicandi*, and the *Liber Poenitentialis*.[19] Each of these works have something to say about penance. Often echoes from Gratian's *De penitentia* ring clear, although, like Peter the Chanter, Alan was original in his thinking.

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[18] For Alan's biography, cf. the introduction to Alain de Lille, *Liber poenitentialis*, ed. Jean Longère, Analecta mediaevalia Namercensia, 17-18 (Louvain: Nauwelaerts, 1965), 1.20-26. The two-volume set (introduction and edition) is published as one physical volume. As Longère noted in his "Théologie et pastorale de la pénitence chez Alain de Lille," *Cîteaux* 30 (1979): 158, most theologians wrote much about penance, but Alan of Lille managed originality in his motivations and presentation. He seems to have come to a realization of the importance of penitential questions only late in life, in the Midi, through the controversy with the heretics and his pastoral activity.

Helpful comments on understanding the reason behind the production of pastoral works like Alan of Lille's *Liber Poenitentialis*, especially in connection to the historical context of heresy, may be found in Boyle, "The Inter-Conciliar Period 1179-1215 and the Beginnings of Pastoral Manuals," 49-50. A recent volume devoted to various aspects of Alan of Lille's life and works is *Alain de Lille le docteur universel: philosophie, théologie et littérature au XIIe siècle: actes du XIe Colloque international de la Société internationale pour l'étude de la philosophie médiévale, Paris, 23-25 Octobre 2003*, ed. Jean-Luc Solère, Anca Vasiliu, and Alain Galonnier, Rencontres de philosophie médiévale 12 (Turnhout: Brepols, 2005). On the relationship of Alan of Lille to heresy, cf. especially in that volume Mechthild Dreyer, "… rationabiliter infirmare et … rationes quibus fides [innititur] in publicum deducere: Alain de Lille et le conflit avec les adversaires de la foi," 429-42. For an examination of some of Alan's orthodox positions in countering lay preaching, a feature of the Cathar and Waldensian movements, cf. Beverly Mayne Kienzle, "Holiness and Obedience: Denouncement of Twelfth-Century Waldensian Lay Preaching," in *The Devil, Heresy, and Witchcraft in the Middle Ages: Essays in Honor of Jeffrey B. Russell*, ed. Alberto Ferreiro, Cultures, Beliefs and Traditions: Medieval and Early Modern Peoples 6 (Leiden: Brill, 1998), 259-78. The literature on medieval heresy in southern France is immense. I list here two recent, English-language works that may be consulted for additional bibliographical information: John H. Arnold, *Inquisition and Power: Catharism and the Confessing Subject in Medieval Languedoc*, The Middle Ages Series (Philadelphia: University of Pennsylvania Press, 2001); Claire Taylor, *Heresy in Medieval France: Dualism in Aquitaine and the Agenais, 1000-1249*, Studies in History New Series (Suffolk: Boydell, 2005).

[19] Jean Longère, "Théologie et pastorale de la pénitence," 125.

More of *De penitentia* remained in Alan's works than in Peter's *Summa de sacramentis et animae consiliis*, though, for Alan had to counter with *auctoritates* and theological argumentation the doctrinal errors of the heretics. Thus portions of *De penitentia* D.1 particularly come into play for Alan, whereas Peter had left them mostly alone, content with Peter Lombard's treatment. At the same time, Alan's pastoral concerns, which would apply to bringing heretics back to the faith as well as to ministering to the continued faithful, attracted him to the same, more practical material from *De penitentia* as Peter the Chanter, namely the material of D.6. Alan expanded on the qualities and duties of a good confessor-priest, building upon the primarily Pseudo-Augustinian material Gratian provided. He also drew on the other more practical material of the remainder of *De penitentia*. His focus on practical pastoral needs led him to ignore much of *De penitentia* and to search the rest of the *Decretum* for practical canons for usage in a penitential with tariff penances in book two of his *Liber Poenitentialis*. In general, Alan of Lille's work on penance drew upon the foundation provided in *De penitentia*, but it focused on and built upon the most practical sections of the treatise and recognized other parts of the *Decretum* as sometimes more useful for his handling of penance than the theological treatise devoted mostly to issues that were too deep for Alan's concerns.[20] In countering heresy, he had to emphasize the basics and train priests in how to teach those basics and also how to guide sinners of whatever stripe to a true and salutary penance.

[20] Even *De penitentia* D.7 gets ignored. For issues of death-bed repentance, Alan repeated many of the questions and quoted many canons from C.26 qq.6-7 (cf. Book 3 of the *Liber Poenitentialis*). He instructed the priest in how to deal with various situations with penitents at the end of life. He was not concerned with the inner motivations of the sinner who wanted to confess at the end of life, at least not in his pastoral manual for penance.

In *De fide catholica*, Alan of Lille countered the heretical views that penance, like the other sacraments, cannot be repeated and that confession to priests is not necessary at all. Thus the questions that Gratian and others answered in the context of the schools in order to reconcile *auctoritates* and in order to provide theological explanations for current practice, Alan was forced to answer in order to counter real doctrinal dissent in the church. For Gratian, the issue in *De penitentia* was when the remission of sins occurs, prior to or after confession. For Alan, the issue was showing that confession is still necessary even though contrition does remit sins.[21] The questions are very similar and so Alan of Lille found many of the same standard *auctoritates* about contrition and confession of use, but the questions came out of very different venues. Gratian was pursuing a theological truth in a pool of scriptural and patristic material; Alan was reacting to a heresy that had sprung up and had grasped onto the notion of the remission of sins through baptism and through contrition to the point of denying the utility of confession and satisfaction altogether. Alan defended contrition as remittive, but he stressed that point far less than Peter Lombard did. Alan had to emphasize in this work the utility of confession and thus the necessity but not sufficiency of contrition for the salvation of one's soul. One of the *auctoritates* he said the heretics used in order to argue that confessing to God alone is sufficient was the opening two canons from *De*

[21] The Cathars established churches in northern and southern France, the Rheinland, and the Balkans from 1100 to 1170 but only entered Italy from around 1155 on (G. Rottenwöhrer, "Katharer," *Lexikon des Mittelalters* [1995], 1065). The Waldensians became an issue for the church in the second half of the twelfth century, particularly the fourth quarter of it. There is no evidence that Gratian has them in view in *De penitentia* D.1., but certainly Alan takes the material from that distinction to address the heretical viewpoints which he has encountered or heard about.

penitentia D.1. Alan took his version from the corrected one Peter Lombard formulated.[22] (Alan often drew on Gratian through Peter Lombard, but he also did so independently.[23]) In his response, Alan noted about the apparent lack of confession by Peter that confession had perhaps not been instituted yet (taking here Peter Lombard's explanation that had relied in turn on Odo of Lucca) and also that the Bible does not record everything that occurred.[24] Alan used scriptural texts all very common in the discussion on penance and all quoted within the first part of *De penitentia* D.1 to support the importance of contrition for the remission of sins.[25] He argued for the requirement of oral confession utilizing Peter Lombard's concept of the *uotum confitendi*, which he called the *propositum confitendi*. The contrite sinner must have the desire to confess if his sins are to be forgiven him.[26] Alan also, like the Lombard and Peter the Chanter, appealed to the notion of shame as a large part of penance.[27] Thus, while many of the texts about contrition and confession are so commonplace that one cannot determine any specific source for them (as also is the case for

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[22] Alan of Lille, *De fide catholica*, 1.52 (ed. Longère, "Théologie et pastorale de la pénitence," 167). In this article, Longère produces much better editions than those available in the *Patrologia Latina* series of the sections on penance in Alan's writings.

[23] Sometimes the versions of canons or Gratian's words in Alan match most closely the corrected or edited versions from Peter Lombard, and these cases one can be reasonably sure that Alan was taking his text from Peter, not directly out of Gratian. But that Alan does independently use Gratian is clear from the fact that he drew on sections of *De penitentia* that Peter Lombard did not. For example, in his *Liber Poenitentialis* 4.12, Alan quoted from D.1 d.p.c.60, in which Gratian started from the beginning of the world with examples of Adam and Eve and then Cain and so on, attempting to show that confession is necessary for the remission of sins.

[24] Ibid., 1.53 (ed. Longère, 168): "Quod uero dicit se lacrymas Petri legisse, non confessionem uel satisfactionem, per hoc non excludit illa: multa enim facta sunt que scripta non sunt, uel forte nondum facta erat institutio confessionis, que modo est." Cf. Peter Lombard, *Sent.* 4.17.4 and Odo of Lucca, *Summa sententiarum* 6.10 (PL 176:147B).

[25] *De fide catholica*, 1.55 (ed. Longère, 169). Ez. 18:21-22 and Ez. 33:12 (in *De pen.* D.1 d.p.c.32), Joel 2:13 (*De pen.* D.1 c.33), and Psalm 50:19 (*De pen.* D.1 c.3).

[26] Ibid., 1.56 (ed. Longère, 170): "Similiter exigitur oris confessio ad peccati deletionem…. Ad quid ergo exigitur confessio ad peccati remissionem? Ad quod dicimus quod ille qui conteritur habere propositum confitendi tenetur; nisi enim proponat confiteri peccatum, non remittitur ei."

[27] Ibid.: "Maxima enim pars penitentie est erubescentia de confessione."

auctoritates that appear in *De penitentia* D.3 and that Alan used to defend the reiterability of penance), this particular notion of shame, though mentioned by Peter Abelard, undoubtedly became a focus of twelfth-century theology on penance through its inclusion in the excerpt from *De uera et falsa penitentia* in *De penitentia* D.1 (c.88). Gratian's excerpting of that text was the source of the concept's popularization.

Alan of Lille moved from addressing the necessity of contrition along with confession to addressing confession to laity. He reported the Waldensians as saying that confession to a priest was not necessary if a lay person was present; for Alan, as for Gratian and many others, confession to a priest was the norm, and confession to a lay person was only warranted when a priest was unavailable and the situation of the penitent was dire. To defend confession to priests, Alan of Lille quoted *auctoritates* from *De penitentia* D.1 and D.6, most likely out of Peter Lombard's *Sentences*.[28] The text permitting confession to the laity if a priest is unavailable is of course *De uera et falsa penitentia* excerpted by Gratian in *De penitentia* D.6. This text received mention here in the apologetical context of refuting Waldensian erros, but a much larger portion of the text quoted by Gratian in D.6 c.1 made its way into Alan's pastoral *Liber Poenitentialis*.

The *Liber Poenitentialis* has a somewhat complex literary history. Longère identified three versions: long (TL), medium (TM), and short or brief (TB). He believed the medium one was composed first by Alan before 1191 in the late 1180s since it incorporates no texts from the *Compilatio prima*, which was compiled in Pavia by Bernardus Papiensis in 1189-

[28] Ibid., 2.9. The texts come ultimately from *De pen*. D.6 c.1 (Ps.-Aug.), D.1 c.85 (Augustine), D.1 c.49 (Pope Leo I), and D.1 c.89 (Ps.-Aug.).

1191. In the 1190s, Alan added to the work, especially its second book, which consists of a penitential proper, in two stages to create the version TL. This stage incorporated texts from *Compilatio prima*. Most likely a student of Alan abridged the work after his master's death in 1203 to create the short version.[29] Alan drew on Gratian's *Decretum* and *De penitentia* in both of his versions. The number of texts from Gratian's work, many of which are also present in Peter Lombard's work, is very large, prompting Michaud-Quantin to ask whether Alan's penitential should be considered an adaptation of the *Decretum* and, concomitantly, of Book IV of the *Sentences*.[30] Together those works, inclusive of *De penitentia*, provided the foundation and many of the bricks with which Alan created the *Liber Poenitentialis*, and they did so from the start of his work on it, for, with one exception, all the texts from *De penitentia* were already included in version TM. Most of these texts appear in the third and fourth books of the work, the latter of which contains the most parallels with other works by Alan, especially *De fide catholica*.[31] Thus many of the *auctoritates* that Alan quoted in *De fide catholica* from *De penitentia*, especially from D.1 (on contrition and the necessity of confession to a priest), D.3 (on the nature of penance, its reiterability, and the non-reiterability of only solemn penance), and D.6 (on confession to laity) also appear in the fourth book of the *Liber Poenitentialis*.

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[29] On the manuscript tradition and these three versions of the work, cf. Longère's introduction to the critical edition, 1.135, 1.151-159, and Appendix V, 1.261.

[30] Michaud-Quantin, "A propos des premières Summae confessorum," 275. Ohst, *Pflichtbeichte*, 63-85 gave a somewhat detailed account of Alan's *Liber Poenitentialis*. He acknowledged that Alan got some *auctoritates* from Gratian. Other than that, Gratian did not play a major role in his account.

[31] Longère, "Théologie et pastorale de la pénitence," 148. It remains unclear whether *De fide catholica* predates the *Liber Poenitentialis*; it seems possible that the former was only written after the original version (version TM) of the latter was completed.

The fifth distinction of *De penitentia* does not have much of a presence in Alan's other works, but the first book of his *Liber Poenitentialis* can be viewed as an expansion of the lengthy *De uera et falsa penitentia* text quoted as D.5 c.1. Alan instructed the priest in what questions he should ask the penitent in order to understand fully what the sin and who the sinner is. The *De vera et falsa penitentia* text excerpted in *De penitentia* D.6 c.1 tells the priest to ask a variety of questions and refers back to the section in which he has told the penitent all the things he or she should reflect on and grieve over in consideration of the sin, which text makes up *De penitentia* D.5 c.1. Alan picked up on, explained, and expanded upon all the various aspects of a sin that Pseudo-Augustine instructed the penitent to grieve over and the priest to investigate, including things like the place and time of the sin and the age, status, and condition of the sinner. For example, on the issue of age, Alan wrote, "The age, whether the guilty one is old or a boy, is to be investigated. For an old man who has experience with things sins more seriously than a boy who has none."[32] The majority of the first book consists of similar short chapters, giving a fuller picture of the circumstances of sin mentioned in *De uera et falsa penitentia* and handed down through Gratian. Alan thereby provided priests with a step-by-step questioning guide to use in the administration of penance, and he also gave them clues as to how the answers to the questions should affect his determination of the degree of the person's guilt, whether more or less serious.

Where Alan of Lille drew on *De uera et falsa penitentia* as quoted in D.6 c.1 most extensively was in the third book, as he instructed the priests themselves in their duties and

[32] *Liber Poenitentialis*, 1.9 (ed. Longère, 29): "Inquirenda est etiam aetas, utrum reus senex sit, vel puer. Gravius enim peccat senex, qui rerum habet experientiam, quam puer qui nullam."

requirements in administering penance. For three consecutive chapters, Alan quoted directly and exclusively from this text, at times citing it as coming from *De penitentia* D.6. All the content of these chapters come from *De uera et falsa penitentia*. The rubrics for these three chapters are as follows: What should an ecclesiastical judge be like? That a priest ought to know about whatever it is he should be judging. That a priest ought to inquire into the various aspects and circumstances of sins.[33] Only the next chapter contains Alan's own words, as he urged priests not to be lazy and delinquent in their duties of advising their congregations and hearing their confessions. If a priest is detained on legitimate business, a higher prelate should seek out another decent priest to whom he can commit the parishioners to confess their sins and receive penance.[34] These four chapters constituted a small subunit that addressed the character of priests in penance and by what means they were to come to proper decisions in imposing penance. The rest of the book provided plenty of specific guidelines for what to do in specific cases, but here the mental disposition of the priest to his duties and to his parishioners received attention, and the majority of the discussion came straight out of *De uera et falsa penitentia* as quoted by Gratian (and perhaps passed through Peter Lombard).

Alan focused more on the side of the penitent in the fourth book, and so he found the opening sections of the same passage in *De penitentia* D.6 as well as the rest of D.6 of more

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[33] Alan of Lille, *Liber Poenitentialis*, rubrics for 3.46, 3.47, and 3.48: "Qualis debeat esse iudex ecclesiasticus?" "Quod sacerdos debet scire quidquid debet iudicare." "Quod sacerdos debet inquirere varietates et circumstantias peccatorum."

[34] Ibid., 3.49 (ed. Longère, 2.157): "*Quod sacerdos non debet esse piger in consulendo gregi*. Caveat sacerdos ne sit piger in consulendo gregi, ne desidiosus sit in prouidendo peccatori…. Si vero rationabilibus negotiis impeditus fuerit, ut spirituali medicinae intendere non possit; si superior praelatus fuerit, sacerdotem discretum et religiosum quaerat, cui peccatorem committat, cui peccator vulnera detegat et sacerdos rationabilem poenitentiam inungat."

use here. The fourteenth chapter is devoted to the concept, directly out of *De uera et falsa penitentia*, that a penitent should seek out a discrete priest. Alan did not quote the text, but the source of his thoughts are clear, especially since two chapters later, Alan quoted D.6 d.p.c.2, debating how this position (the permission to seek out a good, knowledgeable priest) squares with the injunction that no priest hear the confession of another priest's parishioner. As the source for this debate in Gratian was Pseudo-Augustine, so too was it for Alan. Here Alan supported the idea that a more discreet priest is to be sought out if one knows that his own priest is indiscreet, which echoes the clarification given in *De penitentia* D.6 c.3 (which Alan also quoted shortly thereafter), that one can reject one's *sacerdos proprius* as a confessor if he is ignorant. A penitent, Alan noted, should put himself into the hands of a priest who knows how to discern between sins, medicines, and penances. Alan went beyond this, placing the responsibility of great self-awareness combined with concern for souls under one's care in the hands of the priests themselves. If they know they are not wise, knowledgeable, and discreet, they should send their parishioners to another priest for confession.[35] As noted, after one intervening chapter, Alan proceeded to create chapters out of *De penitentia* D.6 d.p.c.2 (the version formulated by Peter Lombard) and D.6 c.3. Alan focused on the notion of *licentia*, that a parishioner should under normal circumstances receive the permission of his *sacerdos proprius* before confessing to another priest.[36] This

[35] Ibid., 4.14 (ed. Longère, 170-71): "Si autem parochianus sacerdotem suum scit esse indiscretum, vel si licentia ab eo data fuerit, peritiorem consulat, vel prius sacerdoti suo confitens, consequenter ad peritiorem accedat. Discretior enim sacerdos inquirendus est, qui sciat discernere inter peccatum et peccatum, et ineter medicinam et medicinam, et inter poenitentiam et poenitentiam. Sic et sacerdos sciens se discretum esse, debet ad peritiorem recurrere, vel confitentem ad peritiorem mittere."
[36] Cf. *Liber Poenitentialis* 4.14 and 4.18.

notion (under the term *consensus*) appeared already in D.6 c.3. In the course of this fourth book, Alan also repeated the other two main points of *De penitentia* D.6: in cases of necessity, a Christian may confess to a lay person, and priests must keep secret the content of their confessions and, if they do not, are to be deposed.[37] In all, nearly every word of *De penitentia* D.6 reappeared in Alan of Lille's third and fourth books of his *Liber Poenitentialis*.

Longère found the elements mentioned above particularly noteworthy because they emerged in the twenty-first canon (*Omnis utriusque*) of the Fourth Lateran Council in 1215, the canon that prescribed once-yearly confession for all Christians. These elements include the importance in normal circumstances of confessing to one's *sacerdos proprius*, the qualities of discretion and prudence that should be exhibited in a confessor-priest, his responsibilities to inquire into the circumstances of the sinner and the sin, the priest's metaphorical identity as a physician of the soul (a common image from early medieval penitentials that Alan stressed but that was not highlighted in *De penitentia* D.6), the sanctity of what would come to be called the "seal of confession," and the harsh punishment (deposition and life-long penance) for priests who break it.[38] Longère concluded that Alan of

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[37] Ibid., 4.27 (the text parallels the one about lay confession in *De fide catholica* 2.10) and 4.39 (Alan quotes D.6 d.p.c.1 and c.2).

[38] Lateran IV, c.21 (*Constitutiones Concilii quarti Lateranensis una cum Commentariis glossatorum*, ed. Antonio García y García, MIC Ser. A, vol. 2 [Vatican City: Biblioteca Apostolica Vaticano, 1981], 67-68): "Omnis utriusque sexus fidelis, postquam ad annos discretionis peruenerit, omnia sua solus peccata confiteatur fideliter, saltem semel in anno, proprio sacerdoti…. Sacerdos autem sit discretus et cautus, ut more periti medici superinfundat vinum et oleum vulneribus sauciati, diligenter inquirens et peccatoris circumstantias et peccati, per quas prudenter intelligat quale illi debeat prebere consilium et cuiusmodi remedium adhibere, diuersis experimentis utendo ad sanandum egrotum. Caueat autem omnino ne uerbo uel signo aut alio quouis modo prodat aliquatenus peccatorem, set si prudentiori consilio indiguerit, illud absque ulla expressione persone caute requirat, quoniam qui peccatum in paenitentiali iudicio sibi detectum presumpserit reuelare, non solum a

Lille constituted the most powerful influence on *Omnis utriusque*.[39] He may be correct that Alan served as the closest, most direct influence on the canon, but what he failed to acknowledge, despite his accurate source-work in his edition as revealed in his *apparatus fontium*, is that, with the exception of the medical imagery, every element of *Omnis utriusque* that seems to come straight out of Alan of Lille's *Liber Poenitentialis* has its roots in *De penitentia* D.6. That distinction as it developed in stages (remember that only the lengthy c.1 and the reconciling words of Gratian in d.p.c.2 are present in the original treatise) thus stands behind this canon of Lateran IV, giving it all its key aspects with the exception of the first and most famous injunction to yearly penance. In other words, a significant portion of *Omnis utriusque* would not have achieved the form it did if *De penitentia* D.6 had not been composed. And as *Omnis utriusque* was a decree issued by the pope and a council, much of *De penitentia* D.6 became church law long before Gratian's *Decretum* as a whole was promulgated as such by Pope Gregory XIII in 1582. Without a doubt, of all the sections of

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sacerdotali officio deponendum decernimus, uerum etiam ad agendam perpetuam penitentiam in arctum monasterium detrudendum." Although scholars today are not as willing as those of previous generations to view this canon as revolutionary and the most important turning point in the medieval practice of practice, it is undoubtedly still very important. Ohst explained what was new and what was old in the canon. An important aspect of the new was that the faithful were threatened with punishment for failing to confess annually. Thus penal repercussions were added at a time when the church was becoming organized and centralized enough to enforce them. In addition, prior to *Omnis utriusque*, it was assumed that the sinner would go to confession out of his own motivation, being compelled by internal guilt to confess his sins aurally at the time when that guilt overcame him. With *Omnis utriusque*, the sinner was told when to confess (during Lent) and had to do so every year, even if he did not feel guilty about anything. Thus, according to Ohst, the sinner was no longer trusted to be internally motivated to penance but had to have his confession extracted by a priest who would, through his questioning, find out the sins for which the sinner should feel guilty. *Omnis utriusque* for the first time gave a categorical command to confess annually, and this command had the potential of being the sole motivation for going to confession. Cf. Ohst, *Pflichtbeichte*, esp. 33-40. For a general treatment of this canon of Lateran IV and how it fits into the historical developments in penance, cf. Nicole Bériou, "Autour de Latran IV (1215): La naissance de la confession moderne et sa diffusion," in *Pratiques de la confession*, ed. Groupe de la Bussière (Paris, 1983), 73-93.

[39] Longère, "Introduction doctrinale et littéraire," 225-30.

De penitentia, the sixth distinction had the broadest and most powerful influence, and that influence established itself in the realms of pastoral theology and canon law.

Huguccio's *Summa Decretorum*: The First Commentary on *De penitentia*

In the city where Gratian had taught, his successors taught and commented on his great work, but their commentaries never included *De penitentia*, until Huguccio.[40] Huguccio was teaching in Bologna by the late 1170s and worked as the main contributor on the original version of the *Ordinaturus magister*, the oldest gloss-apparatus to the *Decretum*, which was finished around 1180. By the time of his election to the bishopric of Ferrara in 1190, Huguccio was unrivalled in his reputation for canonical expertise. He most likely began composing his *Summa decretorum* in the late 1180s, completing what he could before he began his work as bishop. He died twenty years later in 1210.[41] He wrote his *Summa* in five stages but never finished it, leaving his work on C.23 q.4 c.34-C.26 incomplete. He commented on *De penitentia* in the fourth stage of his work before he began working on

[40] Besides all the figures discussed above in chapter 8, two other masters ca.1180 did not comment on *De penitentia*. Simon of Bisignano taught in Bologna. His *Summa* (ca.1177-79) skipped over C.33 q.3 entirely but included *De consecratione*. The *Summa* as edited by Pier Aimone may be accessed in PDF format at http://www.unifr.ch/cdc/summa_simonis_de.php. Cf. Pennington and Müller, "The Decretistis," 140. Sicard of Cremona studied in Paris and taught in Mainz. He composed a large commentary on the *Decretum*, including *De consecratione*, sometime around 1179-81. Sicard gave no mention of *De penitentia*, acknowledging its presence only in the slightest of ways in his introductory comments on *De consecratione*. There he listed the seven sacraments and where they were treated in the *Decretum*. For *penitentia*, he listed C.33 q.3. I make these assertions with the caveat that Sicard's *Summa* has not been edited, and I have only been able to look at three manuscripts in Munich: München, Bayerische Staatsbibliothek, lat. 4555, lat. 8013, and lat. 11312. It thus may be possible that a separate manuscript tradition does contain some commentary on *De penitentia*. Cf. Weigand, "The Transmontane Decretists," 190.

[41] Wolfgang P. Müller, *Huguccio: The Life, Works, and Thought of a Twelfth-Century Jurist*, Studies in Medieval and Early Modern Canon Law 3 (Washington DC: The Catholic University of America, 1994), 4-5. Pennington and Müller thus date the *Summa decretorum* to ca.1188-1190 ("The Decretistis," 142).

CC.23-26.[42] As Huguccio's commentary on these four *causae* leaves off abruptly after part-way through the fourth question of the first *causa* to be treated, indicating that Huguccio left Bologna in a rush to assume his episcopal duties in Ferrara only shortly after having begun work on this final section of his project, it seems likely that the section on penance was similarly not completed until shortly before Huguccio assumed his episcopal seat in 1190.

Like the earlier Bolognese masters, the length of *De penitentia* contributed to Huguccio's original avoidance of it; in time he found the motivation to tackle the project. In his prologue, he used the same word as his predecessors to describe its great length (it is *prolixius*), and he said that, because it requires a special effort, he had passed over it until the present time.[43] And Huguccio exerted an especial effort. The commentary is complete, innovative, thought-provoking, and sometimes even entertaining. In addition, it stands as a testament to the continued appeal of Gratian's work on penance in the now even more heavily law-oriented Bologna. Despite the daunting and time-consuming task, Huguccio deemed it worthy of his efforts, even prior to other parts of the *Decretum*, and he treated it in great detail, in more detail than any other *magister* anywhere.[44] That a great mind like

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[42] Müller, *Huguccio*, 7; Pennington and Müller, "The Decretistis," 150. Three manuscripts that contain all the stages of composition and thus include Huguccio's commentary on *De penitentia* are Admont, Stiftsbibliothek, 7 (14th c.), *De pen.* DD.1-5 (ends at D.5 c.1 s.v. *fructus*) fols. 473va-500rb (A), Lons-le-Saunier, Archives Dép., 12 F.16 (14th c.), *De pen.* fols. 378vb-405rb (L), and Vatican, Biblioteca Apostolica Vaticana, lat. 2280 (14th c.), *De pen.* fols. 292rb-311ra (V). These three manuscripts have been used in rendering any text of Huguccio's commentary on *De penitentia* here. I do not pretend to have created a critical edition. Sometimes I rely only on one manuscript if the reading is logical and without obvious error. I have consulted one or both of the other two manuscripts when the text from the first manuscript is unclear paleographically and/or in terms of content. For a full listing of manuscripts and their contents, cf. Müller, *Huguccio*, 76-81.

[43] *Summa decretorum*, C.33 q.3 pr. (A 385va): "Hic intitulatur tertia questio in qua prolixius tractatus interseritur de penitentia, qui quia specialem exigit laborem ei ad presens supersedeo."

[44] Huguccio did not always provide a lengthy commentary on every *auctoritas* cited by Gratian or every little section of Gratian's own words, but he did comment in some fashion on everything, including the Roman law and patristic texts later added into *De pen.* D.1 cc.6-30. When he discussed these *auctoritates*, most notably the

Huguccio found so much fodder for contemplation and additional argumentation speaks well of the depth and richness of Gratian's treatise.

Moreover, while Huguccio waited towards the end of his scholarly career to comment on *De penitentia*, he did not treat it as an anomaly, as something that did not fit in the rest of the *Decretum*. Nowhere that I have found did he question why Gratian wrote the treatise or included it in the *Decretum*. In his own comments he treated the treatise as an integral part of the work as a whole, which is clear from his many cross-references in his comments on *De penitentia* to other parts of the *Decretum*. For example, in the midst of his commentary on the lengthy arguments back-and-forth between the proponents of the first and second positions towards the end of D.1, Huguccio made the standard point that penances are arbitrary, that is, imposed according to the judgment or *arbitrium* of the priest who hears the confession. On this point he referenced C.26 q.7.[45] Huguccio thus treated *De penitentia* like the other sections on which he commented, as text that belonged in the *Decretum* and that supported and was supported by the other sections of the work.

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ones from Roman law, he commented on them in their own right, not trying to relate them back to penance. He understood well, though, how these texts function in D.1, noting in introducing them and commenting on the "uotum pro opere reputatur" of D.1 c.5 (L fol. 379ra), "For in evil, someone is condemned for the will alone or a vow just as he is for the vow and the act, and, in order to demonstrate this, [Gratian] brings in the following laws in which he shows that the will alone suffices for condemnation, and these laws are fittingly brought forth for proving the proposed principle, namely that contrition of the heart and the will to do penance suffices for the erasing of sin without oral confession and an act of satisfaction, just as, in evil, the will without an effect suffices for condemnation, which is clearly proven through the following laws. (Nam in malo ita dampnat quis pro sola uoluntate uel uoto sicut pro uoto et opere, et ad hoc ostendendum inducit sequentes leges in quibus ostendet quod sola uoluntas sufficit ad dampnationem, et congrue iste leges referuntur ad principale propositum probandum, scilicet contritio cordis et uoluntas penitendi sufficit ad deletationem peccati sine oris confessione et operis satisfactione, sicut in malo uoluntas sine effectu sufficit ad dampnationem, quod per sequentes leges aperte probatur.)"

[45] *De pen.* D.1 d.p.c.87 (A 484ra). Huguccio referred to "xxvi. q. vii. de hiis penitentibus fit hoc," which seems to indicate several canons in that *questio*, presumably c.3 (first word *De*), c.4 (first word *His*), c.5 (first word *Penitentibus*), and c.8 (first words *Hoc sit*).

In many places in his comments on *De penitentia*, Huguccio agreed whole-heartedly with Gratian's position and argumentation. In the case of the issue at hand in the first distinction, Huguccio favored without any reservation the first position, that sins are remitted through internal contrition alone, a view that sits well with what scholars have termed his voluntarism, his emphasis on the will and intention in all matters of guilt and, in this case, merit.[46] The canonist thus put his full support behind the line of argumentation pursued by Gratian in defense of remission through contrition, including Gratian's discussion of the healing of the lepers, Lazarus' resurrection, the inability of doctors/priests to raise people physically/spiritually from the dead, the identity of God as the life of the soul, the necessity of sinners to have already been raised from the dead (and thus have their sins already remitted) before they can have the ability to confess their sins, etc.

At times, Huguccio suggested that various opinions exist on certain matters but that he found Gratian's position and reasoning valid and solid, as in the case of Gratian's

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[46] The strength of Huguccio's support for the first position is difficult to exaggerate. In his introductory comments on the first distinction, he summarized the second position and then accused it of being vulgar, superficial, and not containing a kernel of truth. He then summarized the first position as he understood it and would support it, namely that sins are remitted through contrition, but this contrition involves an intention to confess and perform satisfaction in accordance with the church's/priest's command. He wrote (A 473va, L 378vb-379ra, V 292rb-292va), "Hec opinio satis est uulgaris et superficialis, nec tangit medullam ueritatis, et ideo causa affirmantibus sentimus dicentes quod per solam cordis contritionem sine oris confessione et operis satisfactione dimittitur adulto et discreto peccatum. Ex quo enim adultus et discretus interius compungitur et conteritur et penitet de peccato et proponit ab aliis abstinere et illud confiteri et de illo satisfacere secundum iudicium ecclesie statim dimittitur ei peccatum illud, etsi numquam postea sequatur oris confessio uel operis satisfactio."

Huguccio's voluntarism or emphasis on the will is especially apparent in his treatment of *De penitentia* D.1 in the frequency with which he appealed to the concept of internal penance/contrition and the distinction between internal and external penance. He addressed many of the *auctoritates* raised by Gratian for the second position (that remission of sins comes only through confession and satisfaction after contrition) by interpreting them in terms of internal penance. For concluding comments on Huguccio's voluntarism and how it relates to the sacraments, including penance, cf. Müller, *Huguccio*, 145-47.

argument in D.2 that Adam possessed *caritas* at his creation.[47] In the third distinction, Huguccio noted that some people say that, when someone does satisfaction for a sin while persisting in another, if they come to confess that second sin, satisfaction should be imposed on both sins (*de utroque imponenda est satisfactio*). Huguccio found Gratian's solution to be more pious and equitable (*sententia Gratiani maiorem continet pietatem et equitatem*).[48] In other words, Huguccio was essentially agreeing with Gratian's application of Anselm of Laon's thoughts on those baptized *ficte* to those who falsely perform penance. Peter Lombard was leery of the argument, Peter the Chanter rejected it, but Huguccio accepted it, at least finding the end result more charitable and fairer, as Alexander III apparently also did. Perhaps Huguccio's voluntarism is on display here as well: he saw no reason for the repetition of an exterior act (satisfaction) if an interior contrition had resulted in the remission of sins over which the sinner had previously not been contrite at the time of the original exterior act. The new interior contrition was sufficient and rendered the previous exterior act effectual, just as Gratian argued.

Oftentimes, Huguccio accepted but modified, clarified, or added nuance to Gratian's positions. Such activity fits the reputation of the ability of Huguccio "to transform complex and disputed issues into coherent and clear-cut doctrine."[49] He did so in legal matters; he also did so in theological ones. Back in the first distinction when he was agreeing with Gratian's

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[47] *Summa decretorum*, *De pen.* D.2 d.p.c.30 (A 487ra): "For his part, Gratian was in the opinion that Adam had love from the beginning of his creation and that he was created with love and other spontaneous [virtues] (i.e. not developed over time). And this opinion is true, and he proves it both effectively and in many ways. (A parte fuit Gratianus in ea opinione quod Adam habuit caritatem a principio sue creationis, et quod creatus fuit cum caritate et aliis gratuitis. Et est opinio uera, et multis modis et efficaciter hoc probat.)"
[48] On *De pen.* D.3 d.p.c.44 (A 495vb).
[49] Pennington and Müller, "The Decretists," 155.

extended argument in favor of the first position, in particular where Gratian lined up sons of God, the temple of the Holy Spirit, love, light – in short, all things good and holy – against all things bad and related to the devil, Huguccio perceived a place for confusion and distortion. What about venial sins? Gratian nowhere in *De penitentia* focused on the distinction between venial and mortal sins and, as explained above in chapter one, wrote *De pentientia* predominantly with mortal sins in mind. But someone could look at Gratian's strong argument in the first distinction about the inability of sin to co-exist with being a son of God or a member of Christ and subsequently fall into despair. Does a little venial sin automatically make one a son of the devil? Huguccio added some clarification that could also be comforting. He distinguished between serving the devil by committing venial sins, thereby pleasing him, and being a slave of the devil. Many good and righteous people commit venial sins, but this does not make them slaves of the devil.[50] Then when addressing 1 John 3:9 ("he who is born of God does not sin," which constitutes *De penitentia* D.1 c.36), Huguccio focused on mortal sins. It is not that those born of God cannot sin mortally but that they cannot sin unto death, that is persevere in sin until death. If they do sin mortally, they repent before death.[51] On Abraham's circumcision Huguccio's comments were rather sparse, but he argued that Gratian was opposing a tacit objection, namely if confession is not necessary for the remission of sins, why is it done? Gratian's answer, according to Huguccio, who quoted

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[50] *Summa*, *De pen.* D.1 d.p.c.35 (A 476vb): "Sed nomine seruitur diabolo per ueniale peccatum, sed multi boni et iusti comittunt uenialia, et hoc placet diabolo et sic uidetur ei seruire. Sic ergo intellige: Nemo etc., id est nemo potest esse simul seruus dei et diaboli. Licet enim qui comittit ueniale seruiat diabolo, id est faciat quod ei placet, non tamen est seruus eius ob hoc."

[51] Ibid., D.1 c.36 (A 476vb): "Qui natus est ex deo, id est qui est a Deo predestinatus ad uitam eternam, non peccat, scilicet peccatum ad mortem, scilicet in quo perseueret usque post mortem. Talis enim et si peccet mortaliter, tamen ante mortem penitet."

from Gratian, was *ad ostensionem penitentie* – the demonstration of penance, that is, interior penance or repentance. After all, interior grief of the heart of one person is hidden from another unless it is made known to him through words or other indications.[52] Without being particularly long-winded, Huguccio managed to fully accept and yet clarify and add nuances to Gratian's argument in defense of the first position in D.1.

Huguccio devoted significant space to clarifying the *De uera et falsa penitentia* excerpt in *De penitentia* D.6. He exhibited a concern that the license given to confess to a layperson and also to choose the best confessor possible would be misinterpreted and abused. Thus, as he introduced the distinction, he emphasized from the start that a penitent should confess to a Catholic priest who is in good standing with the church (literally, "tolerated by the church"), not a schismatic, not an excommunicated priest, not a degraded priest, and not a heretic. Moreover, a penitent should confess to his or her own priest, not some outside priest who has not been given the responsibility to care for his or her soul, unless the *sacerdos proprius* does not know how to bind and loose. That quality, the knowledge of how to bind and loose, provided the bedrock of Huguccio's understanding of a valid confessor-priest (besides belonging to the Catholic church). Echoing Gratian's distinction in D.6 d.p.c.2, Huguccio clarified that a priest who knows how to bind and loose cannot be avoided by his parishioner out of contempt, just because the parishioner does not like him. Huguccio allowed the penitent to confess to others if his own priest was not available, but Huguccio did not immediately admit confession to a layperson. The penitent should first seek out other

[52] Ibid., D.1 d.p.c.37 (A 476vb): "Responsio est ad tacitam obiectionem, que dicit, 'Et ita oris confessio non est necessaria ad dimissionem peccati, quare ergo fit?' Ad ostensionem penitentie interioris. Dolor enim interior cordis alterius est occultus alteri nisi notificetur ei per uerba uel per alia indicia."

clerics, down through the ranks to a subdeacon (although at least a deacon would be preferable), before resorting to lay confession.[53] In his comments on the Pseudo-Augustinian text, he put further limits on lay confession, namely that it can only be done when death is surely imminent. In such cases it is indeed valid, but only in these extreme cases.[54] He also expanded his understanding of the qualities of a valid confessor-priest. The knowledge of binding and loosing stands independent of moral goodness. Yes, a penitent should avoid some priest who has thrown himself into some notorious sin such as fornication or simony, but, besides that, the degree of moral goodness should not be the concern of the penitent. He is not to spend his life searching out the priest who is morally better than all others. The fact that a priest is good (not necessarily better) and suited to his office is sufficient, which means that he knows how to bind and loose, how to distinguish between lepers, and thus how to administer penance.[55] Huguccio argued that (Pseudo-)Augustine did not mean that a

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[53] *Summa, De pen.* D.6 d.a.c.1 (V 310ra): "Cui autem fieri. Hic incipit sexta distinctio in qua tractatur cui uel quali penitens sua peccata debeat confiteri. Debet sacerdoti quia non heretico non scismatico non excommunicato non degradato non deposito, sed catholico ab ecclesia tollerato. Item non extraneo sed suo, scilicet cui commissa est cura anime ipsius, nisi forte suus inscius sit soluere uel ligare. Item quali sacerdoti debet confiteri, scienti soluere et ligare. Quod si suus sacerdos nescit soluere uel ligare, uitandus est dummodo non fiat ex contemptu. Quod postea melius determinabitur. Quod si non possit haberi suus sacerdos, confiteatur alteri. Quod si nullus sacerdos potest haberi, confiteatur clerico, et potius diacono quam subdiacono. Et sic deinceps quod si nullus clericus potest haberi, confiteatur laico. Sed utrum ad hoc teneatur uel non, postea determinabitis. Qualis autem debeat esse sacerdos cui confiteatur ita determinatum est, scilicet sciens soluere et ligare, catholicus, ab ecclesia tolleratus."

[54] Ibid., c.1 (V 310rb, L 404ra): "Socio, etiam laico, de quo minus uidetur quam de clerico, non de presbytero. Nam in tali articulo, et baptismus potest percipi a laico et ei confessio digne ualet fieri… Ecce hic uidetur Augustinus laudare qui confitetur peccata sua laico cum non potest habere copiam sacerdotis. Sed numquid tenetur? Ad hec credo quod sic, nisi uidetur esse penitens in articulo mortis, peccata sua non confitetur cuicumque potest, si sacerdotem habere non potest. Laicus enim, etsi non habet potestatem ligandi uel soluendi uel baptizandi uel reconciliandi, tamen imminente necessitate permitatur ei talia facere."

[55] Ibid. (V 310rb): "Sacerdoti meliori quam potest. Sed quod est quod dicit 'meliori'? Nonne sufficit sacerdoti si est bonus, non quod erit uitandus si potest haberi melior? Dico quod sufficit si est bonus et idoneus ad tale offitium, quamuis non sit melior omnibus aliis…. Debet ergo sacerdos esse bonus, id est, idoneus scire et ligare et soluere et discernere inter leprosa et lepram. Licet enim sit malus nec tolleratur ab ecclesia, non est uitandus in offitio suo, nisi forte iaceret in notorio crimine fornicationis uel simonie."

confessor-priest must be morally superior to all others when he enjoined penitents to seek out the best priest possible. Augustine potentially meant merely that the penitent should seek a priest who knows how to bind and loose with as much effort as possible. Or he was referring to pilgrims who are not near their *sacerdos proprius*. Or he was referring to special cases in which a bishop has given a penitent permission (*licentia*) to seek out a confessor other than the *sacerdos proprius*.[56] Huguccio seemed intent, then, on clearly delimiting and limiting the instances in which confession to a layperson might occur and the understanding of what the injunction to confess to the best priest possible meant. All in all, Huguccio upheld the ecclesiastical hierarchy in ways that could easily be supported from the rest of the *Decretum* but that were lacking in expression and specification within *De penitentia* D.6 itself.

Huguccio did not always stand in agreement with Gratian, and he did not hesitate to make clear when he disagreed. Just as forcefully as he could support what Gratian said and compliment his reasoning, Huguccio could reject what Gratian said and deny the validity of his argumentation. When he introduced the first distinction and then when he commented on Gratian's conclusion that both positions represented possess wise and religious men as supporters, he did not mention Gratian in his derisive comments. In fact, his comments later in his introduction to D.1 revealed that Huguccio believed Gratian's indecision stemmed from pedagogical methodology, not any real doctrinal indecision.[57] Perhaps Huguccio did not

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[56] Ibid. (V 310rb): "Confiteatur quam meliori potest, id est, bono ad quem inueniendum laboret in quantum potest. Uel potest intelligi de peregrinis transeuntibus qui possunt diuertere causa confitendi peccata ad quam sacerdotem uolunt. Eis est consilium ut querant quam meliorem possunt inuenire in illo loco ubi uolunt accipe penitentiam. Similiter potest intelligi et de illo cui suus episcopus dat licentiam accipiendi penitentiam a quocumque suo sacerdote uult."

[57] After he summarized his position and emphasized that oral confession and external satisfaction are still necessary, not for the forgiveness of sins, but for the demonstration that sins have been forgiven and for other

want to insult the master, but more likely his comments are evidence of the theory put forward above in chapter one that Gratian intended to create a debate among his students in which they could practice arguing for and against a particular position and attempt to reconcile *auctoritates*. Whatever the case, Huguccio had no intention of leaving the question open like Gratian did. He called the second position vulgar, superficial, and not touching a speck of truth.[58] When Gratian observed that wise men have supported both positions, Huguccio said that it is a wonder that any wise man supports the second one.[59]

Huguccio also expressed his dissent in the fourth distinction, where he interpreted Gratian correctly as supporting the view that forgiven sins return but made clear that he himself believed that sins do not return in any sense. Passages that suggest such are meant to threaten and frighten sinners, not with the intention of lying but with the intention of instructing them in the good.[60] Huguccio gave several ways of understanding "peccata

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reasons like serving as a warning to other people not to sin, Huguccio commented (on *De pen.* D.1 d.a.c.1; A 473vb, L 379ra, V 292va), "When these things have been diligently inspected and commended to memory, it will be easy to reconcile the authorities introduced on different sides, and note that the master treats this question with sufficient analysis and length in this way. For each side of the question, he introduces authorities, often with alternating successions and often after he has brought in authorities on different sides; he responds now for this side, now for that, solving and alleging; at long last he leaves to the judgment of the reader which side ought to be favored. (His ergo diligenter inspectis et memorie commendatis, facile erit auctoritates hinc inde introductas ad consonantiam reducere, et nota quod magister satis dissolute et prolixe tractat hanc questionem in hunc modum. Pro utraque parte questionis auctoritates alternatis sepe uicibus introducit et sepe auctoritatibus hinc inde inductis, respondet nunc pro hac parte, nunc pro illa, soluens et allegans, tandem cui parti potius sit fauendum lectoris arbitrio reliquit.)" Huguccio's description makes one feel like he is watching a fast-paced tennis match. In his opinion, Gratian intended it all as a pedagogical tool to make his students consider every angle and every counter-argument and in the end, after all has been thoroughly investigated and committed to memory, have the requisite knowledge to reconcile the texts on their own.

[58] Cf. above, n.45.

[59] *Summa*, *De pen.* D.1 d.p.c.89 (A 484vb): "Habet fautores sapientes. Mirum quod umquam sapiens potuit dicere quod peccatum non dimitteretur in cordis contritione ante oris confessione et operis satisfactione."

[60] Ibid., *De pen.* D.4 d.a.c.1 (A 496rb-496va, V 307rb-307va): "Nos uero dicimus peccata dimissa nequaquam redire, nec quoad essentiam nec quoad reatum nec quoad penam, nec etiam pro dimissis aliquem esse puniendum eternaliter, si enim pro dimissis quis puniretur eternaliter, uincula Petri, scilicet, ecclesia nimis grauaretur. Quod ergo dicunt sancti, peccata redire, dicimus quod hoc dicunt comminando et ad terrorem, ut sic

dimissa redeunt." Mostly his interpretations emphasized that the particular sin or punishment for the sin that was already forgiven does not recur, but, if someone does fall back into sin after penance without repenting of that new sin, he will face eternal punishment for that sin. Huguccio also rejected Gratian's application of the distinction between elect and apostate, between those whose sins are forgiven *secundum prescientiam* and those whose sins are forgiven *secundum iustitiam*. The distinction has little value in terms of the discussion of the return of sins. He did not believe even Gratian meant the argument seriously but instead just wanted an opportunity to talk about predestination.[61] While he found this distinction and discussion of predestination irrelevant to the question of the return of sins, he found Gratian's closing argument invalid, even though he did not here give a good explanation of why. Specifically, he rejected Gratian's analogy comparing good works being put to death through guilt and being brought back to life through grace to bad deeds being put to death through grace and being brought back to life through guilt. Why did he reject this analogy? Roughly speaking, Huguccio's brief response can be translated, "On this matter, the cases for the good and the bad are totally different."[62] He gave no further explanation. In any case, Huguccio

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comminationibus suis detereant et arceant homines a peccatis. Nec sic dicendo mentiuntur, non enim hoc dicunt cum intentione fallendi, scilicet ut decipiant, sed ut instruant et in bono homines retineant…. Magister ergo hanc questionem tractaturus, primo inducit auctoritates ad probandum quod non redeant; approbat illam sententiam, scilicet quod peccata dimissa reddeant."

[61] Ibid., D.4 d.p.c.7 (A 496vb): "Eorum uero. Assignat Magister quandam differentiam inter eos qui dicunt peccata dimissa redire. Quidam enim eorum dicunt quod peccata redditura dimittuntur secundum iustitiam et non secundum prescientiam. Alii eorum dicunt quod omnino ex toto dimittuntur. Modicum ualet hec differentia, sed uoluit Gratianus habere occasionem tractandi de prescientia siue predestinatione Dei."

[62] Ibid., D.4 d.p.c.19 (A 498vb): "Licet concedamus bona mortificata per culpam reuiuiscere per gratiam, non tamen concedimus idem esse et in malis, scilicet quod mala mortificata per gratiam reuiuiscant per culpam, in hoc enim articulo aliud in bonis, aliud in malis."

stood on the opposite side of Gratian on whether forgiven sins return to an individual after he falls into additional transgressions.

In at least one place, Huguccio expressed confusion if not befuddlement at Gratian's choice of an *auctoritas*. Given the scholarly debates on the nature of the question of D.1 and its closing, Huguccio's comments are significant. Huguccio could not understand why Gratian cited the text purported to come from Theodore of Canterbury's penitential (D.1 c.90). As noted above in chapter one, the text in fact provides a very unsatisfactory end to the distinction and has puzzled some scholars. It has also tended to play into the view that Gratian's question consisted in whether confession is necessary at all. After all, the original canon emerged in a historical context in which that was the question, and, in its textual tradition, it was employed to point out the theological errors of the Greeks who did not advocate confession to a priest but insisted that contrition alone was necessary.[63] Huguccio first stated that this canon does not pertain to the question at hand and does not suit the purpose for which Gratian introduced it. He stated that the chapter does indeed "seem to determine another question, namely whether it is sufficient to confess to God alone or whether one ought to confess to a priest as well or a companion, if a priest is absent." If so, then it sets up a viewpoint (from the Greeks) in which confession is not viewed as necessary.[64] But Huguccio was puzzled and momentarily pondered the possibility that this was the heart of Gratian's treatment from the start but then rejected this as a possibility since

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[63] Cf. above, chapter 1, n.127.

[64] *De pen.* D.1 c.90 (A 484vb): "In hoc capitulo non dicitur id ad quod Gratianus illud inducit, sed uidetur hoc capitulum aliam determinare questionem, scilicet an sufficiat confiteri peccatum soli deo, an oporteat confiteri et sacerdoti uel socio, si sacerdos deest. Et uidetur dicere Theodorus quod Greci dicunt sufficere peccata soli deo sine sacerdote, tota alia ecclesia dicit peccata primo esse confitenda deo et postea sacerdotibus."

Gratian never laid out that understanding of the question anywhere in his discussion. Moreover, everyone (understand: in the western church) who holds that remission of sins comes through contrition also believes that confession and satisfaction remain necessary:

> In what way did Gratian introduce this chapter? Perhaps Gratian understood the question treated up to this point in this precise way: sins are forgiven in contrition of the heart, because in no way is it afterwards necessary that oral confession or a work of satisfaction follows. And thus it is sufficient according to them that sins are confessed to God alone without a priest. Likewise sins are not forgiven in contrition of the heart without oral confession and an act of satisfaction, and thus, according to these people, it is not sufficient to confess one's sins to God alone, but [one should also] confess them with the mouth to a priest, or to a layperson or other neighbor if a priest is absent. But if Gratian had this understanding, it is baffling that he kept it hidden in this way and did not explain such an understanding anywhere. But we do not find such an understanding in the authority. But all those who say that sins are forgiven in contrition of the heart alone say that it is necessary that the penitent afterwards confess to the church and perform satisfaction according the judgment of the church.[65]

Huguccio was at just as much of a loss as to why Gratian introduced this authority as modern scholars have been. All the same, he knew that Gratian could not have understood the entire discussion in D.1 to ask whether confession was necessary at all or whether one could be contrite and never submit oneself to the judgment of the church. Such an understanding finds no support in the rest of Gratian's discussion; Gratian never gave any indication that such was his understanding of the question. Nor could it have been, since that understanding belonged to the Greeks and not to any western Christian thinker. Huguccio proceeded then to

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[65] Ibid. (A 484vb-484ra): "Qualiter ergo Gratianus inducit hoc capitulum: forte Gratianus intelligit questionem actenus tractatum ita: in contritione cordis dimittuntur peccata, quod nullo modo postea sit necesse ut sequitur oris confessio uel operis satisfactio. Et ita sufficit secundum illos confiteri peccata soli deo sine sacerdote. Item in contritione cordis sine oris confessione et operis satisfactione non dimittuntur peccata, et ita secundum istos non sufficit confiteri peccata soli deo, sed et or[e] confiteri sacerdoti uel laico uel alii proximo si sacerdos deest. Sed si Gratianus sic intellexit, mirum est quod ita latuit et quod talem intellectum non explicuit alicubi. Sed nec talem intellectum in auctoritate inuenimus. Sed omnes qui dicunt peccata in sola cordis contritione dimitti dicunt necesse essse ut postea penitens confiteatur ecclesie et satisfaciat secundum arbitrium ecclesie."

comment on the authority in a way that would be consistent with the framework of the actual question at hand in *De penitentia*. As he stated, the authority "seems" to treat this other question, but, in the end, he did "not find such an understanding in the authority" after all.

Whether he accepted or rejected Gratian's positions and arguments, tweaked them and added clarification, or struggled to comprehend exactly what Gratian was doing and thinking at particular junctions, Huguccio's treatment did not occur in a vacuum. What Huguccio's *Summa decretorum* proves in its section on *De penitentia* is that the body of work on the treatise that had built up in the course of the second half of the twelfth century did not exist in isolated pockets in Italy and France. Huguccio wrote an original commentary on *De penitentia*, and the first true commentary, but he knew full well that others had taught about and written works about penance that had addressed Gratian's treatise. He drew on them and then added to this body of work. Whether he possessed or had read all of the works treating *De penitentia* from the previous half century is not clear, but he was aware of the discussions and many of the clarifications made, by authors both in Bologna and outside of it across the Alps. For instance, his specification that confession to a layperson is a last resort and that a penitent should first seek out some other cleric, preferably a deacon if no priest is available, echoed the modification of the *De uera et falsa penitentia* text from *De penitentia* D.6 in the *Sententie diuinitatis* from the 1140s, which read, "He who cannot confess to a priest may confess to a deacon, because it belongs to a deacon to know about sin. And if he cannot find a deacon, he may confess to a neighbor, for he becomes worthy of mercy out of

his desire for a priest."[66] Huguccio followed the thought of Rufinus in interpreting the fifth distinction of *De penitentia*. Rufinus had interpreted the final seven *auctoritates* (all later additions to the treatise), which had prohibited penitents from engaging in such things as military service or commercial business, as referring to solemn penitents, those penitents who sin particularly openly and grievously and thus are assigned public penance.[67] Huguccio took the same stance. Borrowing language from Rufinus, the *magister* clarified, "In the end [of the distinction] it is shown that he who was or is subject to solemn penance not only ought not to fall back into sin but also ought not turn back to that state or office that cannot be exercised without sin, such as the military."[68] This clarification would have assisted anyone reading through *De penitentia* D.5, for the *additiones* gave no indication that they were directed to a particular type of penitent, and the reader could have become confused thinking that any sinner who comes to penance must refrain from military duties, commercial business, public entertainment, etc.

On the interpretation of Peter's tears but no recorded confession and on defining contrition at least in part as involving the *propositum confitendi*, Huguccio offered the same

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[66] *Sententie diuinitatis* (ed. Geyer, 151.27-152.3): "Augustinus dicit: 'Qui non potest confiteri sacerdoti, confiteatur diacono, quia diaconi est cognoscere de peccato. Si nec diaconem invenire potest, confiteatur proximo. Fit enim dignus venia ex desiderio sacerdotis.'"

[67] Rufinus, *Summa* (ed. Singer, 503): "Si quis vero sollempnem subiit penitentiam, non solum non debet in peccata relabi, sed ad eum statum vel officium reverti interdicitur, quod vix sine culpa exercetur, ut militia et mercatura." Rufinus is here summarizing the fifth distinction and addressing in particular the final seven *auctoritates*. Cf. above, chapter 8.

[68] Huguccio, *Summa decretorum*, *De pen.* D.5 d.a.c.1. (V 309ra, A 499rb): "in fine ostenditur quod qui sollempnem penitentiam subiit uel subit, non solum non debet in peccatum recidere sed etiam ad eum statum uel offitium reuerti non debet quod sine peccato exerceri non potest, ut est militia." Compare the language with Rufinus's statement; Huguccio is drawing directly on his Bolognese predecessor.

opinion as Alan of Lille in his *De fide catholica*. It is unclear who influenced whom.[69] Peter Lombard was the first to incorporate in a systematic way the intention to confess, which he had termed the *uotum confitendi*, into the concept of true, remittive contrition. As noted above, Alan used the term *propositum confitendi*, and Huguccio did as well. In commenting on *De penitentia* D.1 c.38, for example, he glossed the verb "confess" with "by interior contrition, namely in the heart to God; for sin is not forgiven a person of the age of discretion unless he confesses with his heart, that is, recognizes his sin and wants it to be forgiven him and has the intention of confessing (*propositum confitendi*) with his mouth if he is able."[70] Either Huguccio was adopting the concept and modifying the term from Peter Lombard or imitating the term from Alan. Either way, his work was situated in the context of the other work on Gratian's *De penitentia* of the time. The same problem of chronology and borrowing occurs in the case of the reasoning for why the Bible does not mention an oral confession by Peter of his sin of denying Christ. Huguccio and Alan offered the same two reasons. First, they accepted the suggestion of the *Summa sententiarum* handed down through Peter

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[69] As Alan of Lille's *De fide catholica* is dated to 1185-1195 and Huguccio's *Summa* to 1188-1190, the former could have pre- or post-dated the latter. It is possible that Alan received a copy of Huguccio's work from Bologna at the same time as he received a copy of the *Compilatio prima* in 1191 or shortly thereafter – this is a tempting theory, suggesting a mass transportation of legal materials from Bologna to the smaller center for legal study in Montpellier. But it is also possible that Alan's work somehow made its way quickly to Bologna and Huguccio's attention by 1189.

A similarly ambiguous literary relationship exists between the work of Huguccio and Sicard of Cremona. Cf. Wolfgang P. Müller, "Toward the First Iconographical Treatise of the West: Huguccio and Sicard of Cremona," in *Mélanges en l'honneur d'Anne Lefebvre-Teillard*, ed. Bernard d'Alteroche et al. (Paris: Éditions Panthéon-Assas, 2009), 765-94.

[70] Ibid., *De pen.* D.1 c.38 (A 477ra): "Confessus: interiori confessione, scilicet in corde Deo; non enim dimittitur peccatum discreto nisi confiteatur corde, id est recognoscat peccatum suum et uelit sibi dimitti et habeat *propositum confitendi* ore si poterit."

Lombard that confession may not have been instituted yet. Second, they noted that the Bible does not record everything that happened.[71]

Huguccio also took up the notion of the shame of confession and extended the idea of humiliation to the other primarily external act of penance, satisfaction. He considered the production of shame and humiliation as significant reasons for the necessity of external confession and satisfaction in spite of the sufficiency of contrition for the remission of sins. As he stated in his introductory comments on D.1, confession is necessary so that the sinner can show that he is truly repentant, not ashamed to confess his foulness to a priest (recognizing that confessing one's faults is an embarrassing act which one is only willing to undertake if one is truly contrite and repentant), and external satisfaction is necessary for the exercising of humility and righteousness.[72] As others before him, then, Huguccio was attracted to the emphasis on humility and shame at the end of *De penitentia* D.1. And when he came to the end of that distinction, he appropriated Gratian's argument (which was originally penned from the perspective of the second position, the position Huguccio vehemently opposed) for his own. He stated that "this argumentation does not function according to the purposes of Gratian" (in other words, it does not support the second position

[71] Ibid., *De pen.* D.1 c.1 (L 379ra): "Sed per hoc non excludit illa multa facta sunt que scripta non sint; forte confessus est et satisfecit, uel forte nondum facta erat institutio confessionis et satisfactionis que modo est." Compare with Alan of Lille, *De fide catholica* 1.53 (ed. Longère, 168): "Multa enim facta sunt que scripta non sunt, uel forte nondum facta erat institutio confessionis, que modo est."

[72] Ibid., *De pen.* D.1 d.a.c.1 (A 473vb, L 379ra, V 292va): "Oris confessio, scilicet exterior confessio est necessaria, non ut peccatum dimittatur, sed ut homo appareat uere penitens, quod presumitur ex quo non erubescit confiteri turpitudinem suam, et ut sacerdos sciat qualiter in eum claues ecclesie debeat exercere, id est qualiter eum ligare uel soluere debeat. Satisfactio uero exterior similiter est neccesaria, non ut peccatum dimittatur, sed ad humilitatem et iustitiam exercendam et ut satis fiat ecclesie qualem sit."

of D.1) and then recounted again in concise form his position on the general issue at hand.[73] He and Peter Lombard treated the end of d.p.c.87 the same way; they both looked to the notion of humility and embarrassment as supportive of their position on the remission of sin. For them, these notions allowed one to defend contrition as remittive but also provided grounds for the necessity of confession and satisfaction.

In sum, what we have in Huguccio's commentary on *De penitentia* is on the one hand an original work, the first of its kind, a true and complete commentary on every part of *De penitentia*. On the other hand, we have in this work the culmination of the response to and utilization of Gratian's *De penitentia* in the twelfth century. Huguccio drew on key interpretations and clarifications on various aspects of *De penitentia* from previous masters, but, at the same time, he moved far beyond them, possibly also influencing Alan of Lille. No master wrote more about Gratian's treatise; no previous master addressed every point and every argument made by Gratian. His commentary on *De penitentia* requires a detailed study all to itself, but from this brief overview one can at least acknowledge the vastness and courage of Huguccio's efforts. As Huguccio was the first Bolognese master to comment on *De penitentia*, without his efforts Gratian's treatise threatened not to have any extensive commentary on it at all. Shortly after Huguccio became bishop and stopped his canonical scholarship, *Compilatio prima* appeared (1191), and the face of canonical studies in Bologna turned away from Gratian's *Decretum* to emphasize the new decretal legislation, the *ius*

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[73] Ibid., D.1 d.p.c.87 §15 (A 484rb): "Item. Taciturnitas. Hec argumentatio non facit ad propositum Gratiani. Uerum est quod in contritione cordis ante oris confessionem peccatum dimittitur; debet tamen penitens habere uoluntatem confitendi ecclesie, si tempus et facultas affuerit. Alioquin non est uere penitens et non dimittitur ei peccatum."

nouum. As a result, Huguccio earned the stature not only of the greatest canonist of the twelfth century, but of the greatest and final canonist of the *ius uetus*. His work in large measure defined what the legacy of that *ius uetus*, the *Decretum*, would be. In the following century, canonists did not ignore the *Decretum*. The *Glossa ordinaria* reached its penultimate form under Johannes Teutonicus by 1216 and then was expanded by Bartholomeus Brixiensis. Guido of Baysio wrote another commentary on the *Decretum*, his so-called *Rosarium*, completed in 1300. These works drew extensively on Huguccio's commentary on *De penitentia* and conceivably would have been far less thorough in their treatment of C.33 q.3 without Huguccio's work to stand on.[74]

Most canonists after Huguccio, however, devoted the majority of their time to the decretals and the *compilationes* of them culminating in the *Decretales Gregorii noni* or *Liber extra* of 1234. In this period, especially after Lateran IV in 1215 and the establishment of the Dominican order in 1216 and the subsequent granting of the right to hear confessions to members of mendicant orders, and continuing on for the rest of the Middle Ages, penance was in large part the domain of canonists. Penitentials and *summae confessorum* possessed a strongly legal character and were frequently written by canonists (who were often also members of the mendicant orders writing guides for their brothers in their role as

[74] On the formation of the *Glossa ordinaria*, cf. Rudolf Weigand, "The Development of the *Glossa ordinaria* to Gratian's *Decretum*," in *The History of Medieval Canon Law in the Classical Period*, 55-97. Huguccio's comments pervade the section on C.33 q.3 in Guido's *Rosarium*. To give just one example, Guido based his discussion of what it means to be a good priest to whom a penitent should confess on Huguccio's comments on D.6 c.1. He understood it primarily in terms of the mental ability to discern between sins and properly assign penance, thus being capable of exercising his duty to bind and loose. Cf. Guido of Baysio, *Rosarium: seu in decretorum volumen commentaria* (Venice, 1577), 378rb. Guido's *Rosarium* exists in several early printed editions but no modern one.

confessors).[75] Raymond of Peñafort, John of Erfurt, Hostiensis, and Panormitanus composed some of the greatest work on the topic. For them, the study of penance was a constituent part of the study of canon law, and the study of canon law or at least a canonical understanding of penance was crucial for the preparation of confessors in their capacity as judges in the *forum internum*. In a way, Huguccio can be viewed as a bridge between Gratian and the canonists of the thirteenth century and beyond on this front. In his comprehensive *Summa*, he brought to life the study of *De penitentia* in Bologna once more and joined it to the study of the *Decretum*. In doing so, he linked the study of penance to the study of canon law, which no other master in the previous fifty years since Gratian had done. In the next century, as a result of its various historical and legal developments, the study of penance became not so much joined to but rather subsumed under the study of canon law. Huguccio stood in the middle of these developments between Gratian and the canonists of the later Middle Ages.

Conclusion

Shortly before the turn of the century, Gratian's *De penitentia* enjoyed three different receptions in three different intellectual centers of Europe. Peter the Chanter did not quote Gratian directly, but *De penitentia* stood behind the second part of his *Summa de sacramentis et animae consiliis* all the same, in large measure through Peter Lombard's *Sentences*. The *Summa de sacramentis* adopted the general methodology, the investigation of problems through the consideration of concrete cases, of the canonists initiated by Gratian's *secunda*

[75] On these thirteenth-century developments and a consideration of much of relevant primary literature, cf. Winfried Trusen, "Forum internum und gelehrtes Recht im Spätmittelalter: *Summae confessorum* and Traktate als Wegbereiter der Rezeption," ZRG Kan. Abt. 57 (1971): 83-126, and idem, "Zur Bedeutung des Forum internum und externum für die spätmittelalterliche Gesellschaft," ZRG Kan. Abt. 76 (1990): 254-85.

pars of the *Decretum*. Meanwhile it adhered to individual ideas stemming from *De penitentia*. Peter the Chanter's work is an early representation of how *De penitentia* could be received, adapted, and surpassed in the theological schools of Paris through its being handed down in the new standard theology textbook from the pen of Peter Lombard. Alan of Lille became convinced of the necessity of doctrinally pure teaching on penance in the fight against heresy and the care of souls. More than any other person, Gratian provided the bedrock on which Alan could formulate sections on penance in doctrinal tracts and pastoral guides in this context. Through the medium of Peter Lombard's *Sentences* and directly, Alan turned to ideas and texts in Gratian's *De penitentia* and also other sections on penance in the *Decretum*. His work stands as an early example of how *De penitentia* and the *Decretum* as a whole could be drawn upon and expanded upon to aid pastoral and apologetical labors. Huguccio achieved what no other master in Bologna had: he completed a commentary on *De penitentia*. He applied his rigorous methods and sharp mind to each part of Gratian's theological work, and, being an expert in canon law and having commented on almost the entire rest of the *Decretum*, he integrated *De penitentia* into it by employing part of the style and methodology of any medieval gloss or commentary, providing cross-references to other texts in the *Decretum* as support for his interpretation of a particular section of *De penitentia*. Huguccio's work represents how a master in Bologna could analyze and clarify *De penitentia*, give it full justice from a theological point of view, and appreciate its place in the standard textbook of canon law. Whatever the specific case may be, whether it stood in the background of an innovative work of practical theology or inspired tools in the defense of the

faith against the spread of heresy or attracted the attention of the greatest master of canon law of the century, Gratian's *De penitentia* was *the* foundational text on penance in the twelfth century.

Finally, a significant portion of the usage of *De penitentia* in the later twelfth century consisted of quoting or further commenting on the excerpts in it from *De uera et falsa penitentia*. Scholars have rightly claimed that that anonymous work became so influential because it was quoted by Gratian and then also by Peter Lombard.[76] One could also argue, however, that *De penitentia* exerted the degree of influence it did because Gratian chose to excerpt texts from *De uera et falsa penitentia*. Gratian's work was the foundational text of the century on penance, but *De uera et falsa penitentia* provided much of the impetus for making it so. Its compelling and, in some cases, potentially controversial presentation of the shame of confession, of the contemplation over each minute aspect of one's sin, of the careful and sympathetic investigation by the priest into the same, of the potential to confess to a neighbor when all other hope for confession and salvation seems lost, of the necessity that a priest be good and wise, and of the potential and even duty for a penitent to seek out such a priest – the presentation of these matters garnered the attention of virtually every master and author who later addressed issues of penance.

Gratian handed down these texts to his successors, but more than that, he made them digestible. The text about shame being part of the penalty for sin in D.1 was preceded by comments by Gratian himself in which he explained lucidly that no sinner can receive mercy

[76] Scholars recognized early on in the last century the importance of Gratian's inclusion of *De uera et false penitentia* for that treatise's influence. Cf. Schmoll, *Busslehre der Frühscholastik*, 41.

for his sins without humility and a true demonstration of humility. That explanation gave masters from Peter Lombard to Huguccio a theological basis on which to insist on confession as necessary; confession is necessary not just because it is embarrassing – as if God abstractly requires discomfort on the part of his people – but because the willingness to undergo such pain and shame demonstrates the state of mind of a true penitent. Gratian preceded the lengthy excerpt in D.5 with the question of what things are to be considered in penance and the lengthy excerpt in D.6 with the question of to whom one should confess and what kind of person a confessor should be. He thus provided a focused lens or a framework for understanding these massive quotations. Without such a framework, which suited very well and indeed stemmed from the pedagogical style of the schools of asking questions, *De uera et falsa penitentia* would have been far more unwieldy. Gratian reorganized, introduced, and categorized the material in an effective way, and his framework stood behind, for instance, books one and much of books three and four of Alan of Lille's *Liber Poenitentialis*. Gratian also provided a way for understanding the controversial and potentially subversive comment encouraging penitents to seek out the best priest possible. His reconciling argument later in the distinction in which he prohibited the refusal to confess to one's *sacerdos proprius* on the basis of mere personal dislike and in which he rooted the justification for not confessing to one's *sacerdos proprius* in the ignorance of the priest and thus his incapability of carrying out his office of binding and loosing became the foundation on which all future treatment of this issue was based. In brief, while it may be that the particular sections of *De penitentia* that had the most lasting and broadest impact came from another man's pen, that

of the author of *De uera et falsa penitentia*, Gratian was surely responsible for perceiving the depth and strength of that work and for presenting it in a most valuable and accessible way in his *De penitentia*. In other words, he provided an effective vehicle for the popularization of *De uera et falsa penitentia*. In a scholarly world in which everyone was drawing on the best work of his predecessors in the faith and masterpieces were those works that adopted and adapted the former work in the clearest and most compelling way, by these criteria *De penitentia* stood as a masterpiece and exemplified Gratian's title as *magister*, both in the sense of a teacher who effectively communicated with his students and in the sense of a brilliant mind who mastered the literary genres and methods of his day.

CONCLUSION

In the second half of the twelfth century, Gratian's *De penitentia* exercised a wide and varied influence. Its ideas and text made their way into all the intellectual centers of Europe in southern France, Paris, the Rheinland, and England, riding on the back of the most important canonical collection to date. It influenced the theological *sententiae* in the schools of Bologna and Paris, being utilized by Gratian's successors in Bologna, who followed in his footsteps as learned men prolific in canon law as well as theology, and becoming the most important text in the treatment of penance for the greatest theological master of the twelfth century in Paris. *De penitentia* influenced the pastoral realm, coming to the aid of a bishop in England who wrote a penitential manual for his priests and a master in Montpellier who saw the need for a theologically pure guide for priests administering penance in a region threatened by heresy. It served to fight theological error and heresy directly, whether the apologetic effort was directed from England against an old friend in Italy or within southern France against an entire movement. Finally, *De penitentia* retained its presence in the field of canon law, becoming an object of attention in the most significant commentary on Gratian's *Decretum* in the twelfth century and influencing the new law as it proceeded out from the chancery of Pope Alexander III.

This variety of the influence of *De penitentia* resists any neat categorization into the fields of theology and canon law. One cannot simply say that *De penitentia* was influential in the theology of the twelfth century but bore no impact on canon law. The early lecturers on the *Decretum* may have ignored *De penitentia*, but many of these same masters wrote theological *sententiae* in which they did draw upon *De penitentia*. Their thought was

influenced by Gratian's work on penance, even if their *summae* did not directly address it. Huguccio is recognized as the greatest canonist of the twelfth century, and yet his commentary on *De penitentia* (and he also commented on *De consecratione*) is filled with theological richness if it also incorporated several legal concepts and citations. Alan of Lille is known as a theologian; Bartholomew of Exeter was famous in his day for his legal expertise. Both men drew on *De penitentia* to create penitentials for the practical guidance of priests in the administration of penance. Like Bartholomew, Master Vacarius achieved fame as a result of his legal learning, and primarily Roman not canon law, but he wrote theological treatises, and his apologetical *Liber contra* drew on Gratian's contemplations in *De penitentia* on predestination and the relationship of the elect and reprobate to the church on earth. Alan, Bartholomew, Gandulphus, and Peter Lombard combined their utilization of theological sections from *De penitentia* with excerpts from the rest of the *Decretum* relating to penance in a more practical way in the addressing of specific cases. Peter the Chanter wrote a *summa* of practical theology with a section on penance rooted in the theological work of Peter Lombard and Gratian's *De penitentia*, but he incorporated the methodology of the canonists in the usage of casuistry. Everyone seems to have belonged loosely in one camp or the other but also to have been breaking the boundaries between them.

What the reception of *De penitentia* in the second half of the twelfth century proves is that boundaries between canon law and theology in fact did not exist. What did exist was a broad learning and body of knowledge. What I argued about Gratian remained in large part true for the rest of the twelfth century: a bright and gifted intellectual of the twelfth century

was perfectly capable of distinguishing "theology" and "canon law" and perfectly adept at conscientiously writing a work in a genre that belonged to one or another category. Most highly-educated intellectuals of the twelfth century, however, did not consider a division between theology and canon law to mean the restriction of a single person's intellectual endeavors to one or the other field, even though inklings of such a perspective and feeling might have been emerging, as is evident in the *Summa* of Berthold of Metz. In addition, while a genre might belong to theology or canon law, no one conceived of certain ideas or methodologies as being the exclusive domain of one or the other field.

All in all, this study supports the observations made by John Van Engen in the mid-1990s. He noted that much of the scholarship of the twentieth century looked at the "intersection" of or "movement" between the "two spheres" of theology and canon law. As Van Engen perceived, such terminology only makes sense "after the fact, after the establishment of two distinct university faculties and ecclesiastical careers; and it tends…to conceal rather than to disclose the dynamic at work."[1] What was happening was a division of texts, theologians using the Bible, which was interpreted through inherited texts and an increasingly philosophical method, and canonists, becoming lawyers out of practical theologians (what Van Engen called Gratian), working increasingly from the canons in Gratian and the growing body of decretals. Yet, material and substance remained shared to a great degree throughout the Middle Ages. Really one must wait until the mid-thirteenth century for the lines to be more clearly delineated to the degree that the two fields occupied

[1] John Van Engen, "From Practical Theology to Divine Law: The Work and Mind of Medieval Canonists," in *Proceedings of the Ninth International Congress of Medieval Canon Law. Munich, 13-18 July 1992*, ed. Peter Landau and Jörg Müller, MIC Ser. C vol. 10 (Vatican City: Biblioteca Apostolica Vaticana, 1997), 876.

distinct faculties at the universities in which one person could only belong to one or the other. At this point, the fields became rivals, though always close siblings, in the administration of the church.[2] For Van Engen the consummation of this division of fields through the division of texts occurred with the appearance of the *Liber extra* (1234) and when the usage of Peter Lombard's *Sentences* surpassed the Bible as the textbook for the study of theology.[3] These developments lay outside the scope of this study, but Van Engen's observations about the twelfth century pertain.

The broad usage of *De penitentia* should not be conceived in terms of an interface between two separate and rival spheres, theologians taking bits here and canonists taking bits there, members of each group crossing over into an alien field. Rather, the broad usage points to the fact that *De penitentia* constituted a significant part of Gratian's contribution to a unified body of Christian knowledge and scholarship in the twelfth century, and it was respected and accepted as such by the other elite intellectuals who engaged that body of knowledge. That body of learning produced various works of different genres that belonged at times more to the study of Christian legal norms (such as the early *summae* on the *Decretum*) and at others to the study of Christian doctrine (such as the books of *sententiae*) and at still others to a mixture of the two (such as the penitentials of Bartholomew and Alan), but that body was conceived as an integral whole. In short, what Gratian's own work and the reception of *De penitentia* show is that the intellectual enterprise of the twelfth century was a

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[2] Joseph Goering, "The Scholastic Turn," 236, states, "One finds already in the 13th century a sibling rivalry between these two senior university disciplines [i.e. canon law and theology], but by the 15th century there were signs of genuine antagonism and deep mutual distrust."
[3] Van Engen, "From Practical Theology to Divine Law," 877.

holistic one and that any competition and disagreement within that enterprise stemmed from individual persons and individual teachings, not separate sciences. *Scientia* was a unified entity.

In reality, Gratian's entire project was based off of that assumption, not just that the individual opinions of the Fathers or the individual decrees of church councils could be worked into a harmonious whole, but that the entire body of Christian scholarship, norms, and ideas, whether they came from a papal decretal, a conciliar decree, a patristic treatise, or the mouth of God himself in Scripture, formed by its nature a unified and harmonious whole of eternal truth. The education of the twelfth century served as an engagement of and submission to that body of truth and the century's masterpieces emerging from that education served as a further exposition and also contribution to that body of truth. From the broadest perspective, that is how one should understand *De penitentia* and its influence in the context of the intellectual history of the twelfth century, as an absorption of and contribution to Christian *scientia*, in whatever setting such *scientia* might have been applied and in whatever genre it might have emerged and been readapted.

When one considers the more particular influence and legacy of *De penitentia*, one last question deserves to be posed besides the question of the reception of the work by individual authors as studied in the preceding chapters. Medieval scholars are well aware of the development in the late twelfth century and the flourishing in the thirteenth century of a new genre related to penance, the *summae confessorum* and the *summae confessionis*, the manuals designed to assist priests in their pastoral functions in the *cura animarum* as they

heard confessions and imposed penance.[4] The question thus stands: what was the relationship between Gratian's *De penitentia* and these *summae*, early forms and examples of which include Bartholomew of Exeter and Alan of Lille's penitentials? The question is not what bits of *De penitentia* or other parts of the *Decretum* made their way into these works. The answer, at least as relates to Bartholomew and Alan, has already been given. Later medieval penitentials always contained canons that one could locate in Gratian's *Decretum* and were always rooted in large measure in the concerns of *De penitentia* D.6, of the qualities of a priest and how he should administer penance and how he can investigate all the various aspects of a sin in order to formulate the best possible judgment (i.e. determination of guilt and corresponding imposition of satisfaction). The question is broader and deeper. How did the *summae confessorum* relate as a genre structurally to *De penitentia*?

A good way of approaching this question is first to pose the question raised by Leonard Boyle, namely why did *pastoralia*, works meant to assist and guide the priest in his function as pastor, the general genre of which *summae confessorum* were a large part, only emerge in the late twelfth century?[5] Boyle gave three reasons, the first of which is that the church became truly awakened to the identity and particular responsibilities of the parish

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[4] Pierre J. Payer, "Confession and the Study of Sex in the Middle Ages," in *Handbook of Medieval Sexuality*, ed. Vern L. Bullough and James A. Brundage (New York: Garland, 1996), 9, distinguished between the two, defining the *summae confessorum* as more academic works for confessors taking their cue mainly from Raymond of Peñafort's *Summa* (1234) and the *summae confessionis* as more practical, instructional manuals, less technical and comprehensive than the *summae confessorum*. For the sake of simplicity, I will lump the two together under the first term, especially since my comments may be deemed to apply most particularly to that specific category.

[5] Boyle, "The Inter-Conciliar Period 1179-1215 and the Beginnings of Pastoral Manuals," in *Miscellanea Rolando Bandinelli Papa Alessandro III*, ed. Filippo Liotta (Siena: Accademia Senese degli Intronati, 1986), 46, defined *pastoralia* as "a very wide term indeed, which, at its widest, embraces any and every manual, aid or technique, from an episcopal directive to a mnemonic of the seven deadly sins, that would allow a priest the better to understand his office, to instruct his people, and to administer the sacraments, or, indeed, would in turn enable his people the readier to respond to his efforts in their behalf and to deepen their faith and practice."

priest in this time, as is evident at the Third Lateran Council in 1179. Such awareness emerged in the Gregorian reform but only began to be expressed on the page in the years leading up to Lateran III (as Boyle noted, not even Gratian included a section devoted to parish priests specifically). An appreciation of the role of the parish priest led to the desire and need to provide them with manageable texts, not too technical or deep, that could assist them in their office of the *cura animarum*.[6] At this point, one could ask why the previous penitentials of the early medieval period were not deemed sufficient. Why did the church not distribute copies of Book 19 of Burchard of Worms's *Decretum* or Cummean's penitential? Such works would have provided priests with guidance as to what penances to prescribe for what sins, just as they had in the eleventh century and earlier. Boyle answered that these works were not fitted to the rapidly changing socio-economic conditions of the times, including the growth of cities and commerce, and the sins that accompanied them; they were equally unfit for addressing the rising threat of heresy in the form of the Cathars and Waldensians.[7] I think the answer includes these factors but also goes beyond them. It ties into Boyle's second reason for the emergence of *pastoralia*, including *summae confessorum*, in the late twelfth century; this reason also provides a basis on which to analyze the role of Gratian's *De penitentia*.

Boyle understood *pastoralia* as a channel for the knowledge and theology of the church to reach the parochial priest who never had the means or possibly even the intellectual ability to pursue advanced studies in the intellectual centers of the twelfth and then thirteenth

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[6] Ibid., 48-50.
[7] Ibid., 49-50.

centuries. Thus, the learning of the schools, which emerged and advanced dramatically in the twelfth century, particularly in terms of sacramental theology, had to develop and become solidified to a certain extent before it could be passed down through the ranks of the ecclesiastical hierarchy and made accessible to the less-educated parish priests.[8] And as the theology continued to evolve and standardize, a need for new, up-to-date *pastoralia* was consistently present. Boyle drew particular attention to the developments in the theology of penance and the focus on preparing priests for their role as confessors. In the twelfth century, a new emphasis emerged "on the minister of the sacrament and his intellectual preparation, and on the actual confession of sins and contrition of heart rather than on the extent of the penance imposed."[9] Boyle mentioned here *De uera et falsa penitentia*, the school of St

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[8] Ibid., 51-53. Even as he introduced his topic, Boyle connected *pastoralia* to education. They were meant, he said, "to communicate to the pastoral clergy at large the current teaching, whether theological or legal, on the pastoral care in relation to the needs of the times, and on the sacraments, particularly penance, matrimony and the eucharist" (47).

[9] Ibid., 53. Joseph Goering, "The *Summa* of Master Serlo and Thirteenth-Century Penitential Literature," *Mediaeval Studies* 40 (1978): 296 emphasized, "The single most important change distinguishing the new directions in penitential teaching and practice in the twelfth and thirteenth centuries was the gradual shift of emphasis from satisfaction for sins toward a pastoral concern with the penitent's contrition and confession of sins." As scholars like Pierre Payer have asserted, the early medieval penitentials, particularly in their prologues, stressed the necessity of contrition, but there was surely a shift of emphasis, from the external acts of satisfaction to the individual's inner motives and contrition connected to the act of confession. The early medieval penitentials told priests to investigate the circumstances of sins but provided them with great lists of what satisfactions to impose, and these satisfactions were conceived as the "penance." The twelfth century emphasized "penance" more fully as an interior contrition as well as an external act of satisfaction, and the new manuals not only told priests to investigate the circumstances of sins but guided them in how to do so most effectively. Cf. Payer, "The Humanism of the Penitentials and the Continuity of the Penitential Tradition," *Mediaeval Studies* 46 (1984): 340-54. Mary Mansfield correctly criticized Payer for not perceiving that, while the early tradition emphasized contrition, it made no distinction between the soteriological effects of contrition and satisfaction. Only in the theological developments of the twelfth century was there a distinction made by people like Peter Abelard between the effect of contrition (e.g. remission of sins) and the effect of satisfaction (e.g. remission of temporal penalty). Cf. Mansfield, *Humiliation of Sinners*, 35 n.49. Ohst's portrayal backs Mansfield's, for he noted that satisfactory acts still remain in the theology of the twelfth century, but these do not exist for the forgiveness of sins but rather for freeing the sinner from other penal consequences of sins after their forgiveness (*Pflichtbeichte*, 62). Goering, "Master Serlo," 296 emphasized, "The single most important change distinguishing the new directions in penitential teaching and practice in the twelfth and thirteenth

Victor, Abelard, and Peter Lombard, but he referenced Gratian's *De penitentia* only as the package in which most people were introduced to *De uera*. As for the Lombard, he "argued that a priest will not be in a position to impose any adequate satisfaction at all unless he has 'the science of discernment', that is, unless he has sufficient education to understand the nature and the range of sins as a whole, and to weigh the circumstances, merits and needs of each given sinner in respect of each sin of which he or she feels guilty."[10] As discussed in chapter seven above, this emphasis on the necessity of priests to be educated in order to properly carry out their authority to bind and loose in penance expresses not just a viewpoint that Gratian also shared but a viewpoint that determined the composition of *De penitentia* and its inclusion in his textbook for clerics. In short, the great development that Boyle attributed to Peter Lombard originated in or at least received great impetus in the twelfth century from Gratian's *Decretum* and *De penitentia*. Peter Lombard took over the perspective of the Bolognese master whose work on penance he so respected. Peter wrote his textbook, the culmination of years of teaching, based in great measure off of Gratian's textbook. For both, the education of clerics constituted one of their chief goals, and both understood, as Bartholomew of Exeter also did and which the entire tradition of medieval penitentials did, that a priesthood that is ignorant is a priesthood that cannot properly administer penance and care for the souls entrusted to it. Gratian may have worked off of a general understanding of the age, but he put that understanding to work in the greatest book on canon law to date and the most important text on penance in the twelfth century. Gratian

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centuries was the gradual shift of emphasis from satisfaction for sins toward a pastoral concern with the penitent's contrition and confession of sins."

[10] Boyle, "The Inter-Conciliar Period," 53.

thus stood as a driving force at the forefront of this movement in the twelfth century to educate priests and provide them with the tools to carry out their offices, especially the office of the *cura animarum*, expressed most personally in their relationship as confessors to parishioners as penitents.

Beyond a general outlook of the importance of a well-informed priesthood for the *cura animarum*, three developments related to Gratian's *De penitentia*, especially in light of its inclusion in the *Decretum*, explain why the former early medieval penitentials were not deemed sufficient as pastoral manuals in the late twelfth and early thirteenth century. First and most obviously, a theology of penance had developed. The twelfth century was the century of the emergence of systematic theology; prior to the twelfth century, people had demanded and practiced penance, but the reasons behind it stood uninvestigated. Therefore, the early medieval penitentials possessed no or only shallow theological roots. After decades of theological development, the new pastoral manuals could not exist without being based on and reflecting this theology. As argued above, Gratian's *De penitentia* was the foundational text on penitential theology in the twelfth century, and thus, even though later *summae confessorum* might not have copied Gratian's words or arguments verbatim, his presentation of penance, particularly as it was passed through and adapted by Peter Lombard, inevitably stood behind them.

Second, a new methodology had developed, that of the *casus*. Once again, Gratian stood at the head of this development. He used the *casus* as an effective pedagogical tool; through the study of Gratian's *Decretum*, the *casus* became the chief methodology behind the

jurisprudence of the canonists. Men like Peter the Chanter adopted the *casus* as a way to address penance, and then the authors of the *summae confessorum* proper followed suit.[11] And while *De penitentia* did not itself play a role in this development, its placement within the *Decretum* and particularly among the *causae* meant that the consideration of penance by those studying the *Decretum* consistently occurred in the context of examining particular cases, and the reading of *De penitentia* could be combined with the investigation of other parts of the *Decretum*, including certain *causae*, that also dealt with penance. As we have seen, particularly on the issue of death-bed repentance, Gratian's successors moved from *De penitentia* D.7 to his other discussions of penance at the end of life, particularly in C.26 qq.6-7, and considered particular cases of people repenting in times of necessity. It is no wonder that they began to treat all issues of penance in terms of *casus*. As Van Engen noted,

> Later canonists came to approach all of Gratian's canons and all of the decretals as cases, not only those matters relating to procedure, crimes, or marriage but also matters pertaining to the dedication of churches and altars, the orders and ranks within the church, and handling of sacraments. Above all, penance – ambiguously treated by Gratian in the form of *distinctiones* but placed among the *causae* – became a *casus*, indeed a separate court, the internal forum.[12]

Third, a canonical jurisprudence had developed. This jurisprudence was of course based off of the pioneering work of Gratian's *Decretum*. For half a century, until the arrival of Bernard of Pavia's *Compilatio prima* in 1191, the science of canon law developed solely

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[11] Goering, "Master Serlo," 299 explained how the *casus* was well suited to practical education in a rapidly changing social environment: "On the one hand, as an excellent teaching device it was well suited to the practical education needed by a confessor facing a host of unfamiliar problems. On the other hand, the *casus* was vital for the development of moral doctrine in that it confronted the schools and the teaching authorities with new problems being encountered in pastoral experience, problems that demanded further refinements of ecclesiastical teaching."

[12] Van Engen, "From Practical Theology to Divine Law," 882.

out of the study of the *Decretum*. Many of the writers of the *summae confessorum* were canonists, chief among them Raymund of Peñafort, but even if they were not all masters of the church's law, the composition of the *Decretum* and its widespread influence meant that they approached the arena of penance with far more juridically developed notions than the early medieval penitentials. Goering summarized his understanding of the importance of Gratian to the history of penance and the penitential genre this way:

> Most of all Gratian provided scholars with a textbook that could help them to think systematically and to argue juridically about the important issues of Christian law and morality. For confessors and judges in the internal forum, the interest of Gratian's Decretum extended well beyond its treatises De penitentia and De consecratione; all the distinctiones and all the causae were relevant to the judge of souls.[13]

This canonical jurisprudence was intended to inform the courts of the church, and, in fact, the arena of confession shortly became recognized as its own sort of court, a court of conscience, the *forum internum* in distinction from the *forum externum* of the official ecclesiastical courts.[14] As Trusen noted, in the thirteenth century penance was increasingly "juridified" (*verrechtlicht*) or given a legal character and the confessor was very much a judge.[15] In short, everything that was essential to the structure and nature of the *summae confessorum* – the perspective on the necessity of priestly education, a basic theological understanding of penance, the methodology of approaching priestly judgment in the internal forum through the

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[13] Joseph Goering, *"The Internal Forum and the Literature of Penance and Confession," Traditio 59 (2004): 211*.
[14] Trusen, "Forum internum und gelehrtes Recht," 96 identified the two *fora* as two different expressions of one and the same ecclesiastical jurisdiction.
[15] Trusen, "Zur Bedeutung des Forum internum und externum," 262.

examination of cases, and a general juridical way of thinking about sins and solutions in the Christian life – stemmed from Gratian's *Decretum* and *De penitentia*.

The influence of *De penitentia* thus greatly depended on its inclusion within the *Decretum*, but, on the other hand, the *Decretum* would not have exercised as much influence in the penitential realm without *De penitentia*. Gratian's presence in Peter Lombard's *Sentences* and consequently in the theological developments of the coming century would have been far less without *De penitentia*. Moreover, without *De penitentia*, the understanding of the importance of priests being educated in penitential matters for the care of souls would have found far less compelling expression in the *Decretum*. With *De penitentia*, one sees clearly that, when Gratian spoke of clerical education in the *prima pars* and related education to the power to bind and loose, he meant that priests must be educated in matters related to penance so that they can properly bind and loose sinners in what would come to be called the internal forum. Without *De penitentia*, one fails to get the impression that priestly education possesses any particularly meaningful connection to the administration of penance. Thus, the combination of the rest of the *Decretum* along with *De penitentia* in one massive work accounts for the immense influence of Gratian on the later penitential literature. And if one understands the importance of the *summae confessorum* in the life of the late medieval church, then one realizes that the influence of Gratian's work on those *pastoralia* means ultimately an influence of Gratian's work on the religious life of all of Christendom for centuries after his death.

APPENDIX A

THE PROGRESSIVE FORMATION OF *DE PENITENTIA* D.7 CC.2-4

The following paragraphs, texts, and tables attempt to lay out more clearly the progressive development of *De penitentia* D.7 cc.2-4 that was described in part above in chapter five. The text developed in three distinct stages, and, rather than using Friedberg's designation of canons 2, 3, and 4 (which do not match up with the chronological development of the text), I have applied my own alphabetized labels. Stage 1 consists of text [a], Stage 2 of texts [b], [c], and [d], and Stage 3 of text [e]. Gratian can only be affirmed as being responsible for the first stage, although he may have had a hand in Stages 2 and 3 as well.

For the two formal sources mentioned, I rely largely on the research of John Wei ("A Reconsideration"). I do not necessarily agree that the *Collection in Three Books* and the *Tripartita* are the formal sources (although they could be) for what I refer to here as Stage 2 and Stage 3, respectively. Nevertheless, they preserve two divergent traditions of excerpted material from the sermon "Penitentes, penitentes," the material source for this entire section of *De penitentia*, passed down through the Middle Ages. Those two different traditions stand behind the two successive *additiones* to Gratian's original quotation.

Stage 1

Gratian included in his treatise part of the sermon "Penitentes, penitentes." In Friedberg, this section corresponds to the first part and last sentence of D.7 c.2.

Original Treatise (Fd fol. 99rb):

Quamquam de differentibus penitentiam Augustinus scribat,

> [a] "Si quis positus in ultima necessitate sue egritudinis uoluerit accipere penitentiam et accipit et mox reconciliabitur et hinc uadit, fateor uobis non illi negamus quod petit, sed non presumimus quia bene hinc exit. Nam si tunc uis agere penitentiam quando iam peccare non potes, peccata te dimiserunt, non tu illa."

Stage 2

A first *additor* added additional material from the same pseudo-Augustinian sermon. In Friedberg, this section corresponds to D.7 cc.3-4. This *additor*, however, intended to keep the original order of the text as seen in his formal source. He thus intended the original quotation (text [a]) to fit in the middle of the expanded text he provided. He also intended to exclude the portion of text (text [e]) that would be added later by a second *additor*. The probable formal source is a version of the canon similar to that found in the *Collection of Three Books* 3.19.37 (cf. below).

Additio 1 (Fd fol. 162rb):

> Idem
>
> [b] "Qui egerit ueraciter penitentiam et solutus fuerit a ligamento, quo erat obstrictus, et a Christi corpore separatus, et bene post penitentiam uixerit, sicut ante penitentiam uiuere debuit, post reconciliationem quandocumque defunctus fuerit, ad Deum uadit, ad requiem uadit, regno Dei non priuabitur, a populo diaboli separabitur.
>
> "Si quis autem, etc. ([a])."
>
> Et infra:
>
> [c] "Baptizatus ad oram securus hinc exit; <*add.* fidelis bene uiuens securus hinc exit *ed. Friedberg*> agens penitentiam et reconciliatus cum sanus est et postea bene uiuens, securus hinc exit. Agens penitentiam ad ultimum et reconciliatus, si securus hinc exit, ego non sum securus. Unde securus sum, dico et do securitatem; unde securus non sum, penitentiam dare possum, securitatem dare non possum."
>
> Et post pauca ([e]):

> [d] “Sed unde scis, inquit, ne forte Deus dimittat michi? uerum dicis: illud scio; hoc nescio. Nam ideo do tibi penitentiam, quia nescio; nam si scirem nichil tibi prodesse, non <*add.* tibi darem. Si scirem, tibi prodesse, non Fd^{pc}) te ammonerem, non te terrerem. Due sunt res: aut ignoscitur tibi, aut non ignoscitur. Quid horum tibi futurum sit, nescio. Ergo tene certum, et dimitte incertum.”

Stage 3

A second *additor* added one final section from the same sermon. This *additor* inserted material that corresponds approximately to the portion of text omitted by the first *additor* from his formal source between texts [c] and [d]. This *additor* must have been working from a different formal source, however, and did not realize that his *additio* matched up with the “et post pauca” phrase of his predecessor. He copied his text from a formal source in which the portion he copied followed directly upon the text originally excerpted by Gratian (text [a]). He therefore signaled that his text should follow that text and be followed by the texts inserted by the first *additor* (texts [b], [c], and [d]). The text from the second *additor* corresponds to the second half of D.7 c.2 in Friedberg’s edition. Its probable formal source was a version of the sermon similar to that found in *Tripartita* 3.28.2 (cf. below).

This *additor* was likely responsible for cancelling out the final sentence of Gratian’s original excerpt (text [a]), since his text included at its closing the same sentence.

Additio 2 (Fd fol. 162^{r}, right-hand margin)

> [e] “Si securus hinc exierit, ego nescio; penitentiam dare possumus, securitatem autem dare non possumus. Numquid dico: dampnabitur? Sed nec dico: liberabitur. Vis ergo a diabolo <dubio Aa *ed. Friedberg*> liberari? Vis quod incertum est euadere? Age penitentiam, dum sanus es. Si sic agis, dico tibi, quia securus es, quia penitentiam egisti eo tempore, quo peccare potuisti. Si autem uis agere penitentiam, quando peccare iam non potes, peccata te dimiserunt, non tu illa.”

D.7 c.2 in Sg

The Sg scribe copied an abbreviated version of the text as originally excerpted by Gratian (text [a]) plus its second *additio* (text [e]).

Sg (fol. 184a-184b):

> [a] "Si quis positus in ultima necessitate suae egritudinis uoluerit accipere penitentiam et accipit et mox reconciliabitur et hinc uadit, fateor uobis, non illi negamus quod petit, set non presumimus quia bene hinc exit. [e] Si securus hinc exierit, ego nescio. Penitentiam dare possumus, securitatem autem dare non possumus. Numquid dico dampnabitur? Set nec dico liberabitur. Vis ergo a dubio liberari? Vis quod incertum est euadere? Age penitentiam dum sanus es, etc."

Comparison of 3L 3.19.37 with Gratian's Original Excerpt Plus Additio 1

I have determined that the formal source of Gratian's original excerpt remains unknown. Nevertheless, the formal source for the first *additor* must have been something like that preserved in the *Collection in Three Books*. The version there is long and complete enough to contain all the text added by that *additor* (while the version in the *Tripartita*, as seen below, is not), and the version includes the text corresponding to Gratian's original excerpt (text [a]) in the same place that the *additor* understood it to fit. In addition, the incipits and explicits match. I reproduce below the text from 3L next to the flow of text intended by the first *additor* as demonstrated by Fd. The latter text thus includes Gratian's original excerpt (text [a]) in the location designated by the first *additor* in the Fd appendix, in between his texts [b] and [c]. I also include corresponding letters in brackets in the version of the text from 3L so that the overlapping sections of text are easier to identify. The section of the 3L text in smaller type corresponds roughly and in part to the second *additio* and is skipped over by the first *additor* (as indicated by his *et post pauca*). I underline the final

sentence of Gratian's original excerpt because it also appears as such in Fd, cancelled out either by this *additor* (who realized it did not belong where it was now that he added in other text) or by the second *additor* (who himself ended his own excerpt with the same sentence).

3L 3.19.37 (ed. Motta, 222-23)	**Text [a] (Fd 99rb) + Texts [b], [c], and [d] (Fd 162rb)**
Augustinus in sermone de penitentia. [b] Qui egerit ueraciter penitentiam et solutus fuerit a ligamento quo erat obstrictus et a Christi corpore separatus et bene post penitentiam uixerit, sicut ante penitentiam uiuere debuit, post reconciliationem quandocumque defunctus fuerit, ad Deum uadit, ad requiem uadit; regno Dei non priuabitur, a populo diaboli separabitur. [a] Si quis autem positus in ultima necessitate egritudinis sue uoluit accipere penitentiam et accipit et mox reconciliabitur et hinc uadit; fateor uobis: non illi negamus quod petit, sed non presumimus quia bene hinc exit.	*Idem*. [b] Qui egerit ueraciter penitentiam et solutus fuerit a ligamento, quo erat obstrictus, et a Christi corpore separatus, et bene post penitentiam uixerit, sicut ante penitentiam uiuere debuit, post reconciliationem quandocumque defunctus fuerit, ad Deum uadit, ad requiem uadit, regno Dei non priuabitur, a populo diaboli separabitur. [a] Si quis autem, etc. (Si quis positus in ultima necessitate sue egritudinis uoluerit accipere penitentiam et accipit et mox reconciliabitur et hinc uadit, fateor uobis non illi negamus quod petit, sed non presumimus quia bene hinc exit. Nam si tunc uis agere penitentiam quando iam peccare non potes, peccata te dimiserunt, non tu illa.)
[c] Baptizatus ad horam securus hinc exit. Non presumo, non uos fallo: non presumo. Fidelis bene uiuens securus hinc exit. Agens penitentiam et reconciliatus cum sanus est, et postea bene sanus securus exit. Agens penitentiam ad ultimum et reconciliatus si securus hinc exit, ego non sum securus. Vnde securus sum, dico et do securitatem. Vnde non sum securus penitentiam dare possum, securitatem dare non possum. [e] Quod dico attendite. Debeo illud planius exponere, ne me aliquis male intellexisse intelligat. Numquid dico damnabitur? Non dico. Sed dico etiam liberabitur? Non. Et quid dicis michi? Nescio, nescio. Vis te de dubio liberari? Vis quod incertum est euadere? Age penitentia, dum sanus es. Si enim agis ueram penitentiam, dum sanus es, et inuenerit te nouissimus dies, curre ut reconcilieris; si sic agis,	*Et infra*: [c] Baptizatus ad oram securus hinc exit; <*add.* fidelis bene uiuens securus hinc exit *ed. Friedberg*> agens penitentiam et reconciliatus cum sanus est et postea bene uiuens, securus hinc exit. Agens penitentiam ad ultimum et reconciliatus, si securus hinc exit, ego non sum securus. Unde securus sum, dico et do securitatem; unde securus non sum, penitentiam dare possum, securitatem dare non possum. *Et post pauca* ([e]):

securus es. Quare securus es? Quia egisti penitentiam eo tempore quo et peccare potuisti. Si autem tunc uis agere ipsam penitentiam, quando iam peccare non potes, peccata te demiserunt non tu illa. [d] Sed unde scis, inquit, ne forte Deus dimittat michi? Verum dicis. Vnde nescio. Illud scio, hoc nescio. Nam ideo do tibi penitentiam, quia nescio. Nam si scirem nichil tibi prodesse, non tibi darem. Item si scirem tibi non prodesse, non te admonerem, non te terrerem. Due sunt res: aut ignoscitur tibi aut non tibi ignoscitur. Quid horum tibi futurum si nescio. Ergo tene certum et dimitte incertum.	[d] Sed unde scis, inquit, ne forte Deus dimittat michi? uerum dicis: illud scio; hoc nescio. Nam ideo do tibi penitentiam, quia nescio; nam si scirem nichil tibi prodesse, non <*add.* tibi darem. Si scirem, tibi prodesse, non Fd^{pc}) te ammonerem, non te terrerem. Due sunt res: aut ignoscitur tibi, aut non ignoscitur. Quid horum tibi futurum sit, nescio. Ergo tene certum, et dimitte incertum.

Comparison of Tripartita 3.28.2 with Gratian's Original Excerpt Plus Additio 2

Again, while the formal source of Gratian's excerpt (text [a]) remains uncertain, the formal source of the second *additio* (text [e]) must have been something like the version of the sermon handed down and preserved in *Tripartita* 3.28.2 (as well as Ivo's *Decretum* 15.22 and Burchard's *Decretum* 18.12). The second *additor* intended his *additio* to follow directly upon Gratian's original excerpt (minus the cancelled-out final sentence), just as the text corresponding to his *additio* followed directly upon the text corresponding to Gratian's excerpt in his formal source.

Trip. 3.28.2 (ed. Brett, Brasington, and Nowak)	**Text [a] (Fd 99rb) + Texts [e] (Fd 162^{r}, right-hand margin)**
[a] Sane quisquis positus in ultima necessitate egritudinis sue acceperit penitentiam et mox ut reconciliatus fuerit exierit de corpore, fateor uobis non illi	[a] Si quis positus in ultima necessitate sue egritudinis uoluerit accipere penitentiam et accipit et mox reconciliabitur et hinc uadit, fateor uobis non illi negamus quod petit,

negamus quod petit, sed non presumo dicere quia hinc bene exierit.
[e] Si securus hinc exierit, ego nescio. Penitentiam dare possumus, securitatem autem dare non possumus. Numquid dico dampnabitur? Sed nec dico liberabitur. Vis ergo a dubio liberari? Vis quod incertum est euadere? Age penitentiam dum sanus es. Si sic agis, dico tibi quia securus es, quia penitentiam egisti eo tempore quo peccare potuisti. Si autem uis agere penitentiam quando iam peccare non potes, peccata te dimiserunt, non tu peccata.

sed non presumimus quia bene hinc exit.[1]
[e] Si securus hinc exierit, ego nescio; penitentiam dare possumus, securitatem autem dare non possumus. Numquid dico: dampnabitur? Sed nec dico liberabitur. Vis ergo a diabolo[2] liberari? Vis quod incertum est euadere? Age penitentiam, dum sanus es. Si sic agis, dico tibi, quia securus es, quia penitentiam egisti eo tempore, quo peccare potuisti. Si autem uis agere penitentiam, quando peccare iam non potes, peccata te dimiserunt, non tu illa.

[1] *cancell.* Nam si tunc uis agere penitentiam quando iam peccare non potes, peccata te dimiserunt, non tu illa.
[2] dubio Aa *ed. Friedberg*

And so, as stated above in chapter five, *De penitentia* D.7 cc.2-4 developed in three distinct stages and from at least two, most likely three, formal sources. The version of D.7 c.2 that appears in Sg is, as John Wei has argued, an abbreviated version of what appears in the vulgate. What my analysis based on Fd has shown is that the text in Sg emerged after the *second* of two distinct stages of *additiones* to the original text, stages that are preserved in an extent manuscript, namely in the Fd appendix. In other words, this specific example from the Fd appendix proves both that Winroth's "second recension" was not a fixed recension but developed in stages from his "first recension" and that the development is preserved in extant manuscripts. The first *additio* to the pseudo-Augustinian sermon and the second *additio* were added at different times, for they came from two different formal sources, and this fact is demonstrated visually in the Fd appendix, for the first *additio* appears in the main column of it while the second *additio* appears in its margin in a different hand.

APPENDIX B

OVERLAPPING TEXTS BETWEEN PETER LOMBARD, *SENT.* 4.14-22, AND THE *DECRETUM*

The following table lists all the places in Peter Lombard's section on penance in the *Sentences* (4.14-22) in which I have found overlapping texts, whether they be *auctoritates* or Graitan's own words and arguments. Many of these are listed in the footnotes of the critical edition of the *Sentences*, but the following table makes numerous additions to those notes. As shown in chapter 9, Peter did not always directly quote Gratian, and sometimes he greatly altered Gratian's text. The texts listed here, then, may have great differences from Gratian's own words, but I have judged them to be influenced by Gratian and to be reflecting Gratian's words and arguments. For the *auctoritates* as well, Peter's version may differ from Gratian's, sometimes only in length (Peter frequently abbreviated and/or truncated) but sometimes also in some of the words and phrases used. On the whole, the texts come from *De penitentia*, but occasionally texts from elsewhere in the *secunda pars*, from the *prima pars*, and also from *De consecratione* (the *tertia pars*) appear. For the *auctoritates*, I cannot necessarily prove that Peter took each one listed below from Gratian, but they are texts which also appear in Gratian and have a very high likelihood of being taken from his work.

Besides the details, the table is meant to provide the impression of the overwhelming usage of Gratian by Peter Lombard in this section of his *Sentences*. Especially of note are the number of places where Peter drew on Gratian's own words and arguments, indicated according to Friedberg's numbering as a *dictum post canonem* (d.p.c.). The table also provides a picture of how Peter completely re-organized Gratian's material in the

composition of his own unique work and of the breadth of his knowledge of Gratian's *Decretum*, in particular *De penitentia*.

Note: I provide the names of the *auctoritates*, which Peter Lombard often reproduces in his text and the editors highlight, to help facilitate the reader locating the texts in the edition of Peter's work. Unless otherwise noted, when Pseudo-Augustine is mentioned, the work drawn on is *De uera et falsa penitentia*. I have taken the titles of each distinction (originally untitled) from the first chapter of each distinction, which usually provides a broad heading that applies to the whole distinction. These should help the reader grasp the general topic which is being addressed when Peter is quoting whichever section of Gratian's text.

Peter Lombard's *Sentences*	**Gratian's *Decretum***
d.14: De penitentia	
4.14.2	*De pen.* D.3 c.1 (Ambrose)
	De pen. D.3 c.6 (Gregory)
	De pen. D.3 c.11 (Isidore)
	De pen. D.3 c.12 (Augustine)
	De pen. D.3 c.14 (Gregory)
	De pen. D.3 c.2 (Ambrose)
4.14.3	*De pen.* D.3 d.p.c.17
	De pen. D.3 c.18 (Augustine)
	De pen. D.3 c.21 (Pope Pius)
	De pen. D.3 c.4 (Pseudo-Augustine)
	De pen. D.3 d.p.c.4
	De pen. D.3 c.5 (Pseudo-Augustine)
	De pen. D.3 d.p.c.22 §1
4.14.4	*De pen.* D.3 d.p.c.21
	De pen. D.3 d.p.c.49
	De pen. D.3 c.22
4.14.5	*De pen.* D.3 d.p.c.22 §2, d.p.c.31
	De pen. D.3 c.32 (Pseudo-Augustine)
	De pen. D.3 c.33 (Augustine)
	De pen. D.3 c.28 (John Chrysostom)
	De pen. D.3 d.p.c.23, d.p.c.26
	De pen. D.3 c.26

d.15: Quod pluribus irretitus peccatis non potest penitere vere de uno, nisi de omnibus peniteat

4.15.1	*De pen.* D.3 d.p.c.39
	De pen. D.3 d.p.c.42 §1
	De pen. D.3 c.43 (Augustine)
	De pen. D.3 d.p.c.43
4.15.2	*De pen.* D.3 d.p.c.42
4.15.3	*De pen.* D.3 d.p.c.42 §1
	De pen. D.3 d.p.c.43 §1
	De pen. D.3 c.44 (Jerome)
	De pen. D.3 c.40 (Gregory)
	De pen. D.3 c.41 (Ambrose)
	De pen. D.3 d.p.c.41
	De pen. D.3 d.p.c.44
	De pen. D.3 c.3 (Pseudo-Augustine)
4.15.6	*De pen.* D.3 c.21 (Pope Pius)
	De pen. D.3 d.p.c.44
	De pen. D.3 c.45 (Pseudo-Augustine)
	De pen. D.3 c.46 (Jerome)
4.15.7	*De pen.* D.3 d.p.c.48
	De pen. D.3 c.49 (Augustine)
	De pen. D.4 c.15 (Ezekiel 18:24)
	De pen. D.4 c.16 (Gregory)
	De pen. D.3 c.42 (Pseudo-Augustine)
	De pen. D.3 c.10 (Ps.-Aug./not *De uera*)
	De pen. D.5 c.8 (Innocent II/Lateran II)
	De pen. D.3 c.38 (attributed to Jerome)
	C.14 q.6 c.1 (Augustine)

d.16: De tribus quae in penitentia consideranda sunt

4.16.1	*De pen.* D.1 c.40 (John Chrysostom)
	De pen. D.2 c.21 (Augustine)
	De pen. D.1 c.33 (Joel 2:13)
	De pen. D.1 d.p.c.87 §13
4.16.2	*De pen.* D.5 c.1 (Pseudo-Augustine)
4.16.3	*De pen.* D.5 c.6 (Gregory VII)
4.16.4	*De pen.* D.1 c.81 (Augustine)
4.16.6	*De pen.* D.3 c.20 (attr. to Chrysostom by Gratian; corr. to Augustine by Peter)
	De pen. D.1 c.63 (Augustine)

d.17: Tria proponuntur quaerenda,

primum an sine confessione dimittatur peccatum	
4.17.1	*De pen.* D.1 d.p.c.37 §1
	De pen. D.1 c.4 (Psalm 31:5)
	De pen. D.1 c.5 (attr. to Augustine by Gratian; corr. to Cassiodorus by Peter)
	De pen. D.1 c.5 mid (Augustine)
	De pen. D.1 c.3 (Psalm 50:19)
	De pen. D.1 d.p.c.32 (incl. Ezekiel 33:12)
	De pen. D.1 d.p.c.34, d.p.c.35
	De pen. D.1 d.p.c.37 §1 (Isaiah 43:26)
	De pen. D.1 c.38 (Ambrose)
	De pen. D.1 c.39 (Ambrose)
	De pen. D.1 c.41 (John Chrysostom)
	De pen. D.1 c.44 (Augustine)
	De pen. D.1 c.47 (Ambrose)
	De pen. D.1 d.p.c.60 §3 (Augustine)
	De pen. D.1 c.42 (Augustine)
	De pen. D.1 c.66 (Jerome)
4.17.2	*De pen.* D.1 c.1, c.2 (Ambrose; Maximus)
	De pen. D.1 d.p.c.87 §1 (John Chrysostom)
	De pen. D.1 c.31 (Prosper)
	De pen. D.1 c.32 (Prosper)
4.17.3	*De pen.* D.1 c.85 (Augustine)
	De pen. D.1 c.49 (Leo I)
	De pen. D.1 c.88 (Pseudo-Augustine)
	De pen. D.1 c.88 (Leo I)
4.17.4	*De pen.* D.1 c.88, D.6 c.1 (Pseudo-Augustine)
	De pen. D.1 c.87 §1 (John Chrysostom)
	De pen. D.1 d.p.c.87 §1
	De pen. D.1 d.p.c.87 §15
d.18: De remissione sacerdotis	
4.18.2	*De pen.* D.1 c.51 (Ambrose)
4.18.3	*De pen.* C.11 q.3 c.60 (Gregory)
4.18.4	*De pen.* D.1 c.51 (Ambrose)
	De cons. D.4 c.141 (Augustine)
4.18.5	*De pen.* D.1 c.88 (Pseudo-Augustine)
	De cons. D.4 c.41 (Augustine)
4.18.6	*De pen.* D.1 c.88 (Pseudo-Augustine)
4.18.8	*De pen.* D.1 d.p.c.34, c.35, d.p.c.35
d.19: Quando hae claves dantur et quibus	

4.19.4	*De pen.* D.6 c.1 (Pseudo-Augustine)
d.20: De his qui in fine penitent	
4.20.1	*De pen.* D.7 d.a.c.1
	De pen. D.7 c.1 (Leo I)
	De pen. D.7 d.p.c.1
	De pen. D.7 c.2 (Pseudo-Augustine sermon "Penitentes, penitentes")
	De pen. D.7 c.4 (Pseudo-Augustine sermon "Penitentes, penitentes")
	De pen. D.7 d.p.c.4
	De pen. D.7 c.6 (Pseudo-Augustine)
4.20.2	*De pen.* D.7 c.6 §3 (Pseudo-Augustine)
4.20.3	*De pen.* D.1 c.84 (Augustine)
	De pen. D.1 c.86 (Jerome)
4.20.4	C.26 q.7 c.1 (Theodore of Canterbury)
	C.26 q.7 c.2 (Leo I)
4.20.5	C.26 q.6 c.10 (Leo I)
	C.26 q.6 c.12 (Julius)
4.20.6	C.26 q.6 c.14 (Council of Carthage)
	C.26 q.6 c.5 (Aurelius, Council of Carthage)
	C.26 q.6 c.1 (Council of Carthage)
	C.26 q.6 d.p.c.1
	C.26 q.6 c.2 (Council of Carthage)
4.20.7	C.26 q.6 c.11 (Council of Pamiers)
d.21: De peccatis quae post hanc vitam dimittuntur	
4.21.5	*prima pars* D.25 c.4 (Gregory)
4.21.9	*De pen.* D.6 d.p.c.1
	De pen. D.6 c.2 (Gregory I)
	De pen. D.6 d.p.c.2
	De pen. D.6 c.3 (Urban II)
d.22: Si peccata dimissa redeant	
4.22.1	*De pen.* D.4 d.a.c.1
	De pen. D.4 c.1 §1 (Rabanus)
	De pen. D.4 c.2 (Gregory)
	De pen. D.4 c.3 (Augustine)
	De pen. D.4 c.4 (Augustine)
	De pen. D.4 c.5 (Bede)
	De pen. D.4 c.6 (Bede)
	De cons. D.4 c.41 (Augustine)
	De pen. D.4 d.p.c.14

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