May 11, 1984

The Bible and Magister Gratian’s Canon Law

John E Rybolt, DePaul University

Available at: https://works.bepress.com/john_rybolt/60/
INTRODUCTION

The Decretum Gratiani was the principal and foremost work of canon law in the medieval Church. Together with five other canonical collections, it formed what came to be called the Corpus Iuris Canonici, the law of the Catholic Church remaining in force until the twentieth century, when it was superseded by the Codex Iuris Canonici, promulgated in 1917.

Gratian, the author and arranger of the Decretum, or to use its more original title, Concordia Discordantium Canonum, resembled other of his twelfth-century contemporaries in that they were largely collectors and arrangers of previous writings. Indeed, the two other great works of the century, the Glossa Ordinaria to the Bible, and the Sentences of Peter Lombard, are basically collections of earlier work. Gratian's distinction was that he so arranged his sources, such as patristic writings, decrees of popes, bishops, councils and even passages from Scripture on rare occasions, that he was able to deduce principles of law from them, and to solve apparent contradictions occurring in these sources. These solutions are given in the dicta Gratiani, the "sayings of Gratian," probably the only portions of the lengthy text which were written by the Magister himself. These dicta either introduce (dictum ante) or conclude (dictum post) a series of citations. In many cases, Gratian uses biblical citations to draw his conclusion in the dicta. It is his usage of the Scripture in the dicta that this paper examines.

What we know of Gratian himself can be easily recounted: we know only his one name, Gratianus, and that he was born in Italy, but we know neither when nor where. He was a Camaldolese Benedictine monk, taught in Bologna as a "Magister," and died sometime before the Third Council of the Lateran, 1179. But his text became so important that it was copied and printed numerous times, 41 editions printed before 1500, for example. The text of Friedberg (1879, 1881)¹ is the one most commonly used; a new critical edition is long awaited, but it is years from publication.²

Gratian's purpose, it appears, was to do for church law what was being done in Bologna for civil law: to gather the fragments, to systematize and give order to the entire corpus. The result is a text so enormous that researchers have shied away from analyzing its inner workings. Yet Gratian intended it to be a work of pastoral practice, enabling educated clergy to have the intellectual tools (notably dialectical method) as well as the relevant sources, thereby to reach decisions about practice. We can imagine the Magister at work in his lecture hall, surrounded by his students, if we balance attentively the biblical arguments presented. On many occasions his students apparently must have offered biblical passages as warrants for their views. Since these passages often lead to conclusions at variance with Gratian's own, it is his use of the methods...
outlined below which served to arrive at conclusions. Their oral beginning is perhaps preserved in the term dicta rather than scripta, referring to Gratian's own work.

Gratian does not discuss his hermeneutics directly nor should we expect him to be so methodologically self-conscious. Rather, examination of his own words, the dicta, brings his methodology to light. It is this researcher's hope that the analysis outlined here will enable others to recognize the Scripture in its place as the most studied book of the middle ages (in the words of Beryl Smalley) even in such an apparently non-biblical branch of knowledge as church law.

For Gratian, the Scripture is at the heart of his legal sources: "The law of nature is that which is contained in the Law and in the Gospel." This passage opens the first section of his work. Other subsequent passages, particularly Distinction 9, elaborate on this fundamental statement, and draw out implications. He explains, for example, that whatever is contrary to the scripture is contrary also to the natural law. He concludes with the surprisingly strong statement (coming from a lawyer and teacher) that if ecclesiastical and civil enactments are contrary to the natural law (and hence to the Scripture), they are to be abolished. Scripture is the touchstone for authentic law.

**METHODODOLOGY**

This section is divided into five topics: (1) the unity of the word of God; (2) function of scriptural citations in the Decretum; (3) the function assigned to individual passages; (4) the interpretation of individual passages; and (5) individual quotations.

**1) Unity of the word of God**

The overarching principle governing Gratian's use of the Scripture is that the word of God is one, just as God is one. Since God is one, we may conclude that those to whom he chose to reveal himself, namely to Israel, to the people of the New Testament era, and to the Church in our own era, must also be one in the same way. Everything in Gratian's treatment operates from and upholds this concept of the analogical unity of God, his word, and his people. This principle may be seen from his method of citing passages. The Magister often cites either the practice of his time, or the opinion of a church father, a Pope, bishop, or council, and then afterwards joins to it a passage of Scripture. This is more than a mere sprinkling of his work with suitable citations. Rather, the practice or opinion of the Church is what it is because there is scriptural warrant for it. Even the small conjunctions in the text, such as *hinc, unde* (hence) demonstrate the unity of text and practice.

In addition, Gratian regards the two Testaments as analogically one. Even though he admits a distinction or hierarchy in religious writings, both testaments appear equally valid for drawing conclusions. These often serve as examples: "*Quod ergo tantorum exemplis probatur, patet malum non esse*" ("What is proven by the examples of so many is evidently not evil," C. 26 q.2 c.1 Gr.a.) referring to multiple citations from both Old and New Testaments. He himself wrote:

*Illud autem, quod precepta legis servanda dicuntur, que nec evangelicis, nec apostolicis institutis evacuata probantur, verum quidem est.*
But that rule that the precepts of the law must be observed, which are not voided either by the teaching of the Gospel or by the institutions of the Apostles is indeed true. (C.35 q.1 c.un Gr.p.)

After Old and New Testaments, he frequently cites the history of the Church, its authoritative teachers, and even examples from the lives of the Saints.

Besides citation methods, Gratian refers analogically to "Lord" as both the God of the Old Testament and the Jesus of the New. The people, too, are the same--both those referred to in the past as well as in the present.

\textit{Nunc demonstrandum est, quibus rationibus probentur recepiendi et quid contra respondeatur a prelatis. Christus, qui erat pastor pastorum, ovibus suis, de quibus ait: Non sum missus, nisi ad oves que perierunt, domus Israel, etc.}

Now it is to be shown for which reasons [clerics] might be allowed [to accuse their prelates], and what response their prelates might make. Christ, who was the pastor of pastors, spoke to his sheep about them: “I have not been sent except to the lost sheep of the house of Israel.” (C.2 q.7 c.39 Gr.p.)

In other words, Gratian has connected the bishops of his day with the lost sheep of Jesus's day.

Because of his principle of analogical unity, Gratian sees no real need to proceed logically in his argumentation, that is, to follow any temporal or canonical order of biblical books. Neither does he have to examine the context of the passages in question, given that all of them are the one word of the one God. Nevertheless, he often does examine context, as will be mentioned below.

\textbf{(2) Function of the citations in the Decretum}

Gratian uses his biblical citations as either warrants for actions or statements, or as simple literary or historical referents. Gratian, to be sure, speaks of proving, showing, fulfilling, but the passages in question function as warrants. "Simple warrants" are meant to be self-evident to the reader he often piles up examples and concludes: ex quibus omnibus liquido colligitur,(we can clearly understand from all the foregoing.) "Complex warrants," on the other hand, are marked out specifically by Gratian. It is in this connection that he will prove a point:

\textit{Excontra exemplis et auctoritate probatur, post actam penitenciam proprios gradus licite posse administrare, et ad maiores conscendere... Aaronpostconflatum vitulummetiam in summum sacerdotem est consecratus.}

On the other hand it is \textit{proven} by examples and authorities that [clerics] may licitly administer in their own ranks and even rise to higher ones after doing their penance…. Aaron was consecrated as high priest after he had molded the calf. (D.50, c.12, Gr.p.)

In addition, Gratian will identify his audience in some way with the biblical passage under
discussion:

Sed ecclesiastica disciplina spirituali gladio, non materiali criminosos feriri iube: illo videlicet gladio, quo Petrus iubetur mactare et manducare.

But ecclesiastical discipline orders that the guilty be punished with a spiritual and not a material sword, namely, with that sword by which Peter is commanded to slay and to eat. (C.33 q.2 c.5 Gr.p.)

Finally, Gratian uses several methods of discussion to derive normative patterns of action. The most important was the Rule of Priority. That is, if the biblical text mentions one factor event as occurring before another, the priority of the first is presumed to be of some importance, and hence serves as a pattern for action.

Hinc etiam Dominus prius ponit verba sua in ore prophetae, et postea constituit eum super gentes et regna.... Hinc idem salvator noster prius in medio doctorum sedit, audiens illos et interrogans, et postea predicare cepit, quia prius quisque debet discere, et postea predicandi officium usurpare.

Hence too the Lord first placed his words in the mouth of the prophet, and later placed him over nations and over kingdoms.... Hence too our Savior first sat amid the teachers, listening to them and asking them questions; and afterwards he began to preach, since a person must first lead and then take up the office of preaching. (C.36 c.2 Gr.p.)

Gratian in this passage was offering a warrant for having a learned clergy, prepared by study for their preaching task.

(3) Function assigned to individual passages

An examination of the dicta shows that Gratian had three principal types of passages at hand: historical narratives, maxims, and commands/prohibitions. Historical narratives could be cited by him, due to his sense of analogical unity, from any period of the history of God's people. In sermon literature, these are known as exempla. As mentioned above, on numerous occasions, the Magister writes: "Therefore what is proven by the examples of so many is evidently not evil." (C.26 q.2 c.1 Gr.a.) He recommends that his readers or hearers learn from examples:

Ordinandus itaque sacerdos ad memoriam revocet, quomodo Abraham et Loth per hospitalitatis opera Deo placere, et angelos hospitio recipere meruerunt.

Thus a man about to be ordained a priest ought to call to mind how Abraham and Lot pleased God by their works of hospitality; and how they deserved to receive angels as their guests. (D.42 c.1 Gr.a.)

Secondly, he used maxims. These are normally in the present tense (a gnomic or universal usage), describing continuing action, one that is everywhere and always the same. As such, biblical maxims have a universal meaning, usually not restricted in any fashion as to their application. Just two examples: Tamen sepe sinistra principia ad felices perveniunt exitus "yet
very often evil beginnings have a happy outcome;" (C.1 q.1 c.24 Gr.p.) and Si vero cecus ceco lucernae ministret veritatem, neuter tamen ideo magis suam illuminat cecitatem "If a blind man offers real light to another blind man, neither of them illumines his own blindness." (C.1 q.1 c.97 Gr.p.) Both examples are simple assertions or maxims, in present tense. Gratian himself is the author of certain of these maxims (called sententiae by commentators): Non enim loca, sed vita et mores sanctum faciunt sacerdotem "for it is not his station but his life and habits which make a priest holy." (C.40 c.1 Gr.a) Also: Seges,que leprosa manu seritur, munda tamen metitur, ut ex adulterino concubitu pulcra soboles nascitur "A harvest sown by a leprous hand is nevertheless reaped clean; and a beautiful child can be born from an adulterous relationship." (C.1 q.1 c.24 Gr.p.)

Third, his commands or prohibitions are self-evident, taking their moral force directly from the language, as well as from the speaker, generally God, acting often through prophet or psalmist.

(4) Interpretation of individual passages

Interpretation according to the literal sense of a passage, contrary to the opinion of many, was the hallmark of great medieval exegetes. The excessively symbolic interpretation of the immediate pre-reformation period has generated a bias against all medieval exegesis. Yet literal interpretation, with roots in both Jewish and Christian exegesis of the early middle ages, held sway, even in Gratian. To demonstrate this, it is necessary to show that Gratian generally mentioned at least part of the context of individual passages: historical background, intent of author or speaker, and circumstances of time, place, or audience. For example, Item cum David adulterium et homicidium comisisset, missus est a Deo Nathan propheta, ut eum redargueret. Ecce, quod prelati sunt arguendi et reprehendendi a subditis "When David had committed adultery and murder, Nathan the prophet was sent by God to rebuke him. This is the way prelates may be reprehended and rebuked by their subjects.11 (C.2 q.7 c.41 Gr.p.)

On several occasions, of course, non-literal exegesis is open to him, principally an accommodation of the literal meaning to other circumstances. One example will have to suffice here:

Causa vero huius institutionis mundicia fuit sacerdotalis, ut libere cunctis diebus orationi possent vacare. Si enim (ut Apostolus ait) ab uxoribus est cessandum, ut expeditius orationi vacemus, ministris itaque altaris quibus cotidiana necessitas orandi incumbit, numquam coniugali officio vacare permittitur

The reason for this institution [celibacy] was the purity of the priesthood, so that priests might be able to spend time freely every day in prayer. For if, as the Apostle said, we are to withdraw from our wives to spend time more readily in prayer, therefore ministers of the altar who must pray daily are never permitted to live a married life. (D.31 c.1 Gr.p.)

It must be added that Gratian does not seem to follow the possibilities of nonliteral exegesis spelled out in the famous couplet (composed after his period, to be sure):

Littera gesta docet; quid credas allegoria; Moralis quid agas; quo tendas anagogia.
The letter teaches events; allegory, what to believe; Moral, what to do; anagogy, where we are going.

Factually, he followed *littera* in most cases; *allegoria* and *moralis* rarely; *anagogia* not at all. One example here too:

*Legitur enim, quod precepit Dominus filiis Israel, ut spoliarent Egiptios auro et argente, moraliter instruens, ut sive aurum sapientiae, sive argentum eloquentiae apud poetas inveniremus, in usum salutiferae eruditionis vertamus.*

We also read that the Lord commanded the children of Israel to despoil the Egyptians of gold and silver. This is understood morally: if we find the gold of wisdom and the silver of eloquence in the poets, we should turn this into saving teaching. (D.37 c.7 Gr.p.)

Gratian was here allowing some study of secular literature by clerics. All through his nonliteral usages, Gratian set out to make application of what he perceived as implicit in a text of Old or New Testament to an explicit situation.³

(5) Individual Quotations

Gratin's individual citations are nearly equally divided between direct and indirect citations. There exists no apparent reason why one citation is given directly and another indirectly. His direct quotations are nearly always accurate quotations from the Vulgate—but it is nearly impossible to determine which manuscript(s) of the Vulgate he used.

Like many others, Gratian sometimes quoted incorrectly, or at least conflated his citations from various sources. "If the testimony of two men is true, why do you not accept my testimony and that of my Father?" (C.2 q.4 c.l Gr.a.) This text is based on John 8:7 and 8:46. Finally, his indirect citations often summarize a text.

*Singuli vendebant predia sua, etponebant precia eorum ante pedes apostolorum, quorum unus, nomine Ananias, dum partem sibi reservaret, cum uxore sua Sapphira, sententia maledictionis accepta, ante pedes apostoli cecidit mortuus.*

Each one would sell his farm and lay the price at the feet of the Apostles. One of them, Ananias by name, received the sentence of curse and fell dead at the feet of the Apostles since he and his wife, Sapphira, had kept back a part for themselves. (C.l q.2 c.l Gr.a.)

This passage summarizes both Acts 4:34-35 and 5:1-11.

CONCLUSION

What have we learned from this brief review of Gratian's background and methods? It is most important to place Gratian in his context: as a collector and systematizer, and also as an original thinker, working on the basis of previous scholarship (such as Alger de Liege, and the school of Laon.)
Examination of his biblical methodology also places him in the medieval context. He uses his citations in a surprisingly direct and accessible way; he is aware of the bible as a whole, and not just of brief selections (at least in the Vulgate). He was also aware of the exemplary nature of his citations. In addition, he is surprisingly free of contrived accommodations, save where he borrowed from those championed by others, using as his source the Glossa ordinaria to the Bible. His methodological presuppositions of the analogical unity of God, word and people, and his use of the Rule of Priority stand out as key to understanding his procedure.

Gratian's real distinction lies not in his biblical exegesis, but in the great work of practical and pastoral exegesis which he left behind.

In all, Gratian used biblical citations, both direct and indirect, 628 times: 268 from the Old Testament, and 360 from the New. The Old Testament citations were taken principally from the Pentateuch, Kings, and Psalms, although nearly every book was cited (the most notable omission being the minor prophets). The sources for his New Testament citations were principally the four Gospels and Paul. He cited every New Testament work except for the briefer ones: the epistle to Philemon, II Peter, and II John.\(^4\)

His use of the bible as a major methodological tool demonstrates the medieval conviction of the Scripture as central to the theological enterprise, and does not support a sharp distinction between bible and pastoral practice.

**NOTES**


2 Printed editions of the Decretum divide it into three parts. Pars prima (De jure naturae et constitutionis) is divided into 101 *distinctiones*, subdivided into *capitula* or *canones*. Pars secunda is divided into 36 *causae*, divided into numbered *quaestiones*, subdivided into *capitula*/*canones*. A major part of Pars secunda is *De Poenitentia* (Causa 33, quaestio 3). Because of its length, it is further divided into distinctions and chapters. Gratian’s authorship of this part is questioned. Pars tertia (*De Consecratione*) is divided into five *distinctiones*, and *capitula*/*canones*. This part is probably not Gratian's either, since no dicta exist here.

3 Rabbinic exegesis insisted on literal or plain (peshat) exegesis, but this ran alongside the nonliteral or spiritual exegesis typical of both Jews and Christians. Christian exegesis had as its purposes the following: (1) theological writings, (2) sermons, (3) monastic writings for instruction and edification, (4) polemics, and (5) canonical writings.

4 Pentateuch, 120; historical books, 71; wisdom books, 42; prophets, 35. Gospels: 163; Acts and epistles, 180; Catholic epistles, Revelation, 17.