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## **Some critical comments on the rubric of C. 15 q. 1 c. 8 of Gratian's *Decretum*\***

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### **I. Introduction**

In C. 15 q. 1 of his *Decretum*, Gratian discusses the case of a priest who suffered from mental disorder and killed someone<sup>1</sup>. Gratian asks if the priest should be held responsible for his act<sup>2</sup>. The answer is clear enough: the priest should not be held responsible<sup>3</sup>. What is not so clear is the way Gratian reached this conclusion. The present paper discusses this problem by focusing on the rubric of C. 15 q. 1 c. 8, for which there are two important variants in the manuscript tradition. 1

In the following I first ask a question whether the current edition, i.e. the one edited by Emil Friedberg in 1879, is useful for a reader to know Gratian's way of thinking in C. 15 q. 1. It may seem superfluous to ask this question at all, because the weaknesses of the Friedberg edition have been widely known ever since Stephan Kuttner published his 2

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\* The present article is a revised version of the paper „Methodological Problems of Editing Gratian's *Decretum*: The Case of C.15 q. 1 c. 8“ read at the Leeds International Medieval Congress 2005. The Stiftsbibliothek Heiligenkreuz, the Mainz Stadtbibliothek and the Trier Stadtbibliothek have kindly allowed me to consult their manuscripts. I would like to express my gratitude also to Professor Mathias Schmoeckel (Bonn), Dr. Waltraud Kozur (Würzburg) and my mentors and friends at the Leopold Wenger Institut (Munich) for their unfailing supports.

1 EMIL FRIEDBERG, *Decretum Magistri Gratiani*, Leipzig 1879, 744: Clericus quidam crimine carnis lapsus esse perhibetur ante, quam sacerdotalem benedictionem consequeretur. Postquam uero sacerdotium adeptus est, in furorem uersus quendam interfecit.

2 FRIEDBERG, *Decretum* (n. 1), 744 (Qu. I.): Queritur autem, an ea, que mente alienata fiunt, sint inputanda?

3 Cf. FRIEDBERG, *Decretum* (n. 1), 746 (d. p. c. 2), 747 (d. p. c. 3), 749f. (d. p. c. 11 and d. p. c. 13).

article „De Gratiani opere noviter edendo” in 1948<sup>4</sup>. This edition is still used just because a new critical edition is still far out of our reach. However, there is also an argument which calls the very need of a new edition itself into question, the argument that a new „critical” edition, the enormous work involved notwithstanding, would not be much different from the Friedberg edition<sup>5</sup>. Therefore, a reader must first assess the reliability of this edition.

If the Friedberg edition turns out to be unreliable, we lose a practical solution to the textual problems of the *Decretum*, and any attempt to know Gratian’s way of thinking remains precarious, because there are no criteria for choosing manuscripts on which a reader’s interpretation should be based. However, I believe an attempt is still worth making even with a small number of manuscripts chosen more or less arbitrarily, because only through such an attempt will we come to know precisely what kind of difficulties we face<sup>6</sup>.

3

## II. Problems of the Friedberg edition - An illustration

C. 15 q. 1 c. 8 was incorporated into the *Decretum* in the second recension<sup>7</sup> from the pseudo-Ivonian collection *Tripartita B* (Trip. 3. 18. 4)<sup>8</sup>. The text in the Friedberg edition is as follows:

4

(R) Inobedientia uel concupiscentia non habet culpam in corpore non consentientis.

(I) Item Augustinus I. lib. de ciuitate Dei.

*Si concupiscentia uel inobedientia*, que adhuc in membris moribundis habitat, preter nostrae uoluntatis legem quasi lege sua mouetur, si absque culpa est in corpore dormientis, quanto magis *absque culpa est in corpore non consentientis*<sup>9</sup>.

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4 STEPHAN KUTTNER, De Gratiani opere noviter edendo, in: Apollinaris I-4 (1948), 118-128.

5 JACQUELINE RAMBAUD-BUHOT, L’étude des manuscrits du Décret de Gratien conservés en France, in: Studia Gratiana 1 (1953), 121-145, 144f.

6 For textual problems concerning Gratian’s *Decretum*, see REGULA GUJER, Concordia discordantium canonum manuscriptorum? Die Textentwicklung von 18 Handschriften anhand der D.16 des Decretum Gratiani, Köln/Weimar/Wien 2004, 5-28; ENRIQUE DE LEÓN, Observaciones sobre la futura edición del Decreto de Graciano, in: Panta rei. Studi dedicati a Manlio Bellomo 2, Roma 2004, 89-95.

7 Cf. ANDERS WINROTH, The Making of the *Decretum Gratiani*, Cambridge (2000); idem, Recent work on the making of Gratian’s *Decretum*, online in internet, URL: <http://pantheon.yale.edu/~haw6/Recent%20work.pdf> (accessed on 20<sup>th</sup> October 2005).

In this paper I will not discuss the issues concerning the St. Gall manuscript 673 (Sg) and the author(s) of each recension of the *Decretum*.

8 For the formal sources of C. 15 q. 1, see the tables below (IV), which is based on my article „Zur textlichen Grundlage der Imputationslehre Gratians,” in: BMCL 25 (2002-2003), 40-81, 78.

9 FRIEDBERG, *Decretum* (n. 1), 748.

This Chapter provides that a person is without guilt (*absque culpa*) if he/she did not give consent to concupiscence which went out of control, because even a person who is asleep, that is, someone who does not even try to resist concupiscence, is without guilt (*sine culpa*). This text has originally nothing to do with criminal responsibility of a man who killed someone in his insanity. In fact the same text is found in the formal source (*fons formalis*) in the section entitled *De nocturna illusione* (Trip. 3. 18). 5

According to Friedberg's footnote to the last word of the rubric *consentientis*, four of his eight manuscripts (BDEH), including one of his best manuscripts (B), have a variant reading *sentientis*<sup>10</sup>. This means that the other four (ACFG) including the other best manuscript (A) should have *consentientis*. Therefore, there is just as much evidence for *sentientis* as for *consentientis*. The question is how Friedberg made his decision and whether it can be justified. 6

As can be seen from the underlined parts of the text, the rubric is a combination of the first and the last part of the *auctoritas*. It is common for Gratian to formulate his rubrics by using parts of *auctoritates*. Also this particular rubric with the reading *consentientis* seems to represent the *auctoritas* precisely. Even the editors of the official edition of the Catholic Church, the *editio romana* (1582), and the others ever since have chosen *consentientis*. 7

However, the *auctoritas* also says that a person who is asleep is without guilt ([...] *si absque culpa est in corpore dormientis* [...]), so that *sentientis* too reflects the contents of the text, even if it gives a different emphasis. It is also a common practice of Gratian to use rubrics to give different meanings to the texts from the ones they might originally have had. Finally, if one considers Chapters 7<sup>11</sup> and 9<sup>12</sup>, *sentientis* may be regarded as more suitable than *consentientis*, as the following rubrics show (Friedberg's readings are indicated by asterisk. For the manuscripts used and the variant readings of the rubrics see Appendices 1 and 2.): 8

c.7 Veniam habent que ignorantes ebrii committunt\* (= the major tradition) 9

veniam] venia (Fd) Mk

que] quando Cd, qui Cg Fd Hl Md, quem Mz, que u[eni]a Sb(ac)

ignorantes] ignorant[er?] Cd Fd In Md Mm

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10 FRIEDBERG, *Decretum* (n. 1), 748 n.126. For the manuscripts used by Friedberg cf. FRIEDBERG, *Decretum* (n. 1), XCV-CII. Of the eight manuscripts (his A-H) Friedberg regarded two Cologne manuscripts Cod. 127 and 128 (his A and B, in the present paper Ka and Kb) as especially reliable and made them his principal manuscripts.

11 FRIEDBERG, *Decretum* (n. 1), 748: (R) Veniam habent que ignorantes ebrii committunt. (I) Idem in libro de patriarchis. Sane discimus uitandam ebrietatem, per quam crimina cauere non possumus. Nam que sobrii cauemus per ebrietatem ignorantes committimus. §.1. Nesciunt quid loquantur qui nimio uino indulgent, iacent sepulti, ideoque, si qua per unum deliquerint, apud sapientes iudices uenia quidem facta donantur, sed leuitatis dampnantur auctores.

12 FRIEDBERG, *Decretum* (n. 1), 748: (R) Loth non de incestu, sed de ebrietate culpatur. (I) Idem contra Faustum, Lib. II. Inebrietauerunt Loth filiae eius, et se nescienti miscuerunt. Quapropter culpandus est quidem, non tamen quantum ille incestus, sed quantum ebrietas illa meretur.

ebrii] per ebrietatem Cg

committunt] committuntur Pk(ac)

Qui per ebrietatem delinquerit uenia donatur Sa

c.9 Loth non de incestu sed de ebrietate culpatur\* (= the major tradition)

incestu] incestis Aa Me, incestus Hk

sed] et Hk

de ebrietate] ebrietate HI

Loth culpandus est tantum quantum ad ebrietatem Sa

There are many variant readings, and two of the manuscripts clearly show signs of efforts to achieve more precision<sup>13</sup> or succinctness<sup>14</sup>, but the major manuscript tradition agrees with the Friedberg edition. As these rubrics show, Gratian uses these texts to prove that the drunken perpetrator, i.e. *non sentiens*, cannot be held responsible for his/her acts. If one may assume that these Chapters make a coherent argument, it is plausible to opt for *sentientis* in Chapter 8.

10

As is clear from these considerations, there are good grounds for *consentientis* as well as for *sentientis*. Therefore, let us look more closely at the manuscript tradition. The following table is a synopsis of the variant readings<sup>15</sup> (The common abbreviation *l* for *uel* and *lis* is noted only where it should be read *lis* or regarded as its corrupt form):

11

	sentientis	consentientis
Inobedientia concupiscentialis	Aa	
Inobedientia concupiscentia <del>l</del>	Fd(pc), Sb	Fd(ac?)
Concupiscentia <del>l</del> inobedientia		Cg
Inobedientia concupiscentia <del>l</del>	Kb (=B)	
Inobedientia concupiscentia	Bi(pc) Mc(=D) Mk	F
Inobedientia uel concupiscentia	Cd In H Md(=E) Tr(ac)	G Hk HI Mm(=C) Mz Pk Tr(pc)
Inobedientia concupiscentie	Bi(ac)	
Inobedientia et concupiscentia	Ka (=A)	
Inobedientia in concupiscentia	Me	

12

13 Cf. the reading of c. 7 in Cg: *Veniam habent qui ignorantes per ebrietatem committunt.*

14 Cf. the readings of cc. 7, 9 in Sa.

15 Cf. Appendix 2. See also FRIEDBERG, *Decretum* (n. 1), 748 nn. 125 and 126. The readings of FGH in the table are based on these notes.

Chapter 8 has many variant readings, but they are not as many as to suggest its non-Gratian origin<sup>16</sup>. Since Friedberg does not seem to have related the pair of variant readings *sentientis/consentientis* to those of *inobedientia/concupiscentia*, let us focus for the moment on *sentientis/consentientis*: 13

*sentientis*: Aa, Bi, Cd, Md(= E), Fd(pc), In, H, Ka(= A), Kb(= B), Mc(= D), Me, Mk, Sb, Tr(ac)

*consentientis*: Cg, F, Fd(ac?)<sup>17</sup>, G, Hk, Hl, Mm(= C), Mz, Pk, Tr(pc)

As is shown here, the reading of Ka (= Friedberg's A) is *sentientis*. This makes the decision of Friedberg questionable, because *sentientis* now appears in both of his best manuscripts (his A and B. Ka and Kb in the present article). He could remain faithful to his own editorial principles<sup>18</sup> only if he had opted for *sentientis*. It is true that blind reliance on the best manuscripts involves a failure of logic, but if one still regards particular manuscripts as the best manuscripts at all, one should opt for their readings in ambiguous cases, even if it is by no means a logical conclusion. In any case Friedberg's decision cannot be supported by A, and even if the reading of CFG is *consentientis*, it is by no means clear why they should be followed. 14

Did Friedberg then make a wrong decision? The question still remains open, as the decision cannot be made only on a quantitative basis. So I shall now try to assess the Friedberg edition following the standard of his time as well as the editorial framework he himself set. 15

### III. The Lachmann method and Friedberg's editorial framework

What was the standard of his time? The answer traditionally given is the one associated with the name of a 19<sup>th</sup>-century German scholar Carl Lachmann<sup>19</sup>: the so-called 16

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16 The exception is the reading in the manuscript Sa: *In membris adhuc moribundis concupiscentia regnat*. In this manuscript, the other rubrics of C. 15 q. 1, too, deviate considerably from the major tradition. However, it is not clear whether those rubrics are peculiar only to Sa. At c. 1, for example, Cd has a rubric similar to that of Sa: *Que sint peccata nolentium uel nescientium* Cd, *Que sint peccata nolentium* Sa. Also, at c. 4, the rubricator of Sa first erroneously began to write the rubric for c. 9 of this manuscript and then corrected it. Apparently the rubricator was just copying an exemplar in which rubrics had already been altered.

17 As to Fd, it is difficult to determine the text that was first written here. The first five or six letters of the word (*sent*i or [*con*]*sent*i) had become unreadable. The first corrector seems to have written *consenti*; the second then erased *con*. The size of the letters suggests that *consentientis* probably was the initial reading. However, it must be emphasized that I consulted Fd in microfilm, not the manuscript itself.

18 Cf. n. 10 as well as Section III of the present article.

19 For Lachmann and his work see WINFRIED ZIEGLER, *Die „wahre strenghistorische Kritik.“ Leben und Werk Carl Lachmanns und sein Beitrag zur neutestamentlichen Wissenschaft*, Hamburg 2000 (= THEOS Studienreihe Theologische Forschungsergebnisse, Bd. 41).

Lachmann method<sup>20</sup>. The main characteristic of this method consists in establishing the category *recensio* as a procedure independent from *emendatio*. *Recensio* is a procedure in which one combines research on manuscript tradition with textual criticism and reconstructs the archetype without interpreting a text. Establishing a stemma codicum is essential for this procedure. *Emendatio* is a procedure in which one fixes up the archetype and reconstructs the Urtext even with the help of text-internal criteria. This method was the ideal of editing a text at the time Friedberg carried out his editorial work.

In view of this, the weaknesses of his edition are obvious. He used only eight manuscripts found exclusively in German libraries. Accordingly he didn't establish a stemma codicum. However, as the best he could do, he divided his manuscripts into three groups, as are shown in the following table<sup>21</sup>:

17

	sentientis	consentientis
Group 1	A B	C
Group 2	D	F
Group 3	E H	G

As regards the pair *sentientis/consentientis*, the reading *sentientis* is the major tradition in every group, including the best manuscripts of the first and the third group (ABH)<sup>22</sup>. Although the Lachmann method in a strict sense is by no means applicable here, one may still conclude that *sentientis* is the representative reading within the editorial framework of Friedberg. Therefore, he should have opted for *sentientis* to remain faithful to his own editorial principles, unless he had decisive evidence, which he didn't. The weight of evidence for *sentientis* is at least equal to that of *consentientis*.

18

## IV. Difficulties involved in interpreting a living text

The reading *sentientis* therefore seems to be the better reading within the editorial framework of Friedberg's. But once we leave his edition and its editorial framework, the real problem of interpreting Chapter 8 still remains unsolved. That is, the problem of interpreting a living text<sup>23</sup>.

19

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20 The following description of editorial principles associated with Carl Lachmann is based on HORST FUHRMANN, Überlegungen eines Editors, in: Ludwig Hödl, Dieter Wuttke (Hrsg.), Probleme der Edition mittel- und neulateinischer Texte, Boppard 1978, 1-34; SEBASTIANO TIMPANARO, La genesi del metodo del Lachmann, 3rd ed., Padua 1981; GUJER, Concordia (n. 6), 20-28.

21 Cf. FRIEDBERG, Decretum (n. 1), XCVII-XCVIII.

22 Friedberg regarded the manuscript H as the best manuscript of Group 3, although he also thought that EGH as a group represented the worst tradition as to the quality of the text. Cf. FRIEDBERG, Decretum (n. 1), XCVII-XCVIII.

23 For theoretical considerations see the literature cited in n.6. See also MARTIN BRETT, Editions,

As is well known, the Lachmann method presupposes a closed recension in which one manuscript is copied faithfully from another without any contamination from any other manuscripts or sources. In other words, it presupposes that the manuscript tradition and the internal history of a text correspond to each other exactly except for the corruptions caused by chance. For Gratian's *Decretum*, however, one has to deal with an open recension characterized by multiple contaminations even from other sources (e.g. pre-Gratian collections). As a result the manuscript tradition does not yield to a simple classification. Moreover, one cannot presuppose one single starting point. Scholars suspect the existence of several layers in the *Decretum*<sup>24</sup>. Here the manuscript tradition and the internal history of a text do not necessarily correspond to each other. The stemmatic method is not applicable. One must first and foremost analyze the internal history of a text even with the help of text-internal criteria<sup>25</sup>.

20

As to the rubric of c. 8, the variant readings of *inobedientia/concupiscentia* possibly reveal this Chapter's internal history, for which there are two possibilities<sup>26</sup>:

21

The first one is that either *inobedientia concupiscentialis* (Aa Fd Kb Sb) or *concupiscentialis inobedientia* (Cg) was the initial reading, because the formal source (Trip. 3. 18. 4) has the reading *Concupiscentialis inobedientia*<sup>27</sup>. Since in most of the manuscripts the rubric of c.8 begins with *inobedientia*, the reading *inobedientia concupiscentialis* is the more probable of the two, although this does not mean that Cg necessarily represents a later tradition as regards *sentientis/consentientis* as well. The problem of this theory is that there is no Gratian manuscript which has the reading *concupiscentialis* in the *auctoritas* itself. In the Gratian manuscripts I consulted, the *auctoritas* always begins with *Concupiscentia uel inobedientia*. In many manuscripts (Aa Cd Fd Hk Ka Mm Mz Sa Sb Tr), however, the common abbreviation *l* for *uel* and *lis* is used. This indicates that the reading *concupiscentia uel inobedientia* in the *auctoritas* may be a reading caused by a scribal error. If it is in fact the case, the most likely development of the rubric of c. 8 looks as follows:

22

1a) *Inobedientia concupiscentialis* .Aa Fd Sb

23

1b) *Concupiscentia l [= concupiscentialis] inobedientia* Cg

1c) *Inobedientia concupiscentia l [= concupiscentialis] Kb(= B)*

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manuscripts and readers in some pre-Gratian collections, in: Kathleen G. Cushing, Richard F. Gyug (ed.), *Ritual, Text and Law. Studies in medieval canon law and liturgy presented to Roger E. Reynolds*, Ashgate 2004, 205-219.

24 MARY SOMMAR, Gratian's Causa VII and the multiple recension theories, in: *BMCL* 24 (2000), 78-96; JÖRG MÜLLER, *IUS COMMUNE* 28 (2001), 381-387, 384f; JOHN NOEL DILLON, Case statements (themata) and the composition of Gratian's cases, in: *ZRG KA* 92 (2006), 306-339.

25 Cf. FUHRMANN (n. 20), 11-17.

26 For the following discussion concerning *inobedientia/concupiscentia*, I owe a great debt of gratitude to Dr. Titus Lenherr (Zurich) and Dr. Martin Brett (Cambridge) for their comments and suggestions.

27 Dr. Martin Brett generously allowed me to consult his collation of the *Tripartita* manuscripts.



- 2) Inobedientia concupiscentia Bi(pc) Mc(= D) Mk F
- 3) Inobedientia uel concupiscentia Cd Hk Hl In Md(= E) Mm(= C) Mz Pk Tr G H
- 3) Inobedientia et concupiscentia Ka(= A)
- 3) Inobedientia in concupiscentia Me
- 3) Inobedientia concupiscentie Bi(ac)

The second possibility is that the most common reading *Inobedientia uel concupiscentia* was the initial reading. Although there is no *Tripartita* manuscript which has *concupiscentia uel inobedientia*, four manuscripts of Ivo's *Decretum* (9. 123) have this reading<sup>28</sup>. It is therefore possible that Gratian used a *Tripartita* manuscript in which this corrupt form appeared. 24

It is difficult to determine which theory is more likely. In either way, however, they are not decisive for the incidence of the variants *sentientis/consentientis*. One must therefore turn to text internal criteria. 25

The formal sources of the chapters are given in the following tables (Texts 1-6 are the *auctoritates* cited in Gratian's dicta.)<sup>29</sup>: 26

### 1. The first recension 27

Text 1	SN145.8			
Text 2	SN145.4			
Text 3	SN145.6			
Text 4	SN145.9			
Text 5 (=c.3)		SN.106.30		
Text 6				
c.5			Trip.3.26.7	
c.6b			Trip.3.26.6+	3L3.13.11
c.11				3L3.13.10
c.13				3L3.13.13

28 They are MS Cambridge, Corpus Christi College 19, MS London, BL Harley 3090 (a heavily abbreviated text of Ivo's *Decretum*), MS Paris, BN lat.14315 and MS London, BL Royal 11 D vii. Cf. [http://project.knowledgeforge.net/ivo/decretum/ivodec\\_9\\_1p0.pdf](http://project.knowledgeforge.net/ivo/decretum/ivodec_9_1p0.pdf).

29 Cf. GENKA, Zur textlichen Grundlage (n. 8), 78. Texts 1-6 are the *auctoritates* quoted in Gratian's dictum (d. pr. C. 15 q. 1). Text 3 is c. 3 in the Friedberg edition.

## 2. The formal sources of each chapter

28

	1. recension	2. recension
Text 1	SN 145.8	
Text 2	SN 145.4	
Text 3	SN 145.6	
Text 4	SN 145.9	
c.1		Ans.11.137
c.2		Dig.47.10.3
Text 5 = c.3	SN 106.3	
Text 6	unknown	
c.4		Trip.3.16.32
c.5	Trip.3.26.7	
c.6a	Trip.3.26.6 + 3L3.13.11	3L3.13.15
c.6b		
c.7		unknown
c.8		Trip.3.18.4
c.9		Trip.3.19.1
c.10		unknown
c.11	3L3.13.10	
c.12		3LS23.7
c.13	3L3.13.13	

The first table clearly shows how Gratian worked in the first recension. He had two different types of sources. For the dictum he used first a SN type florilegium and then an unknown one, while for the chapters he used first *Tripartita* and then 3L<sup>30</sup>. From each source he selected only a few texts (e.g. 2 out of 9 from Trip. 3. 26) and also changed their arrangements. The second table gives some idea of how Gratian supplied each block of the first recension with additional texts in the second. One may therefore assume that Gratian tried to make some point with these texts. The question is which point he tried to make.

29

As has been shown, Chapters 7 and 9 deal with the drunken perpetrator, that is, with *non sentiens*. It is therefore plausible to interpret Chapter 8 in this sense and choose *sentientis* for its rubric.

30

30 For a description of the way Gratian worked in the first recension cf. TATSUSHI GENKA, *Gratians Umgang mit seinen Quellen in C. 15 q. 1*, in: *Panta rei. Studi in onore di Manlio Bellomo* 2, Roma 2004, 421-443.

However, if one takes Chapters 5<sup>31</sup> and 6b<sup>32</sup> of the first recension into account, a different interpretation becomes possible. Here are the rubrics of cc. 5, 6b: 31

c.5 Culpa non necessitate sed uoluntate reum constringit\* (= the major tradition) 32

non] *om.* Md

reum constringit] constringit reum Me

reum] *om.* Sb(ac)

Reus non constituitur quid [*sic*] nescit quod fecerit Sa

c.6b Reus uoluntate non necessitate constringitur\* (= the major tradition) 33

Reus] Reum Hl

uoluntate] ex uoluntate Mm Pk

constringitur] constringitur Hl

Reus non necessitate sed uoluntate constringitur Cd Cg In Md

Qui per furorem aliquem occidit mori debet Sa

In the rubrics of cc. 5, 6b, whose major manuscript tradition agrees with the Friedberg edition, will (*uoluntas*) and necessity (*necessitas*) are opposed. In the *auctoritates*, outrage caused by mental disorder (*furor*) is named as such a necessity<sup>33</sup>. The will, on the other hand, probably means intention, as is indicated by the first sentence of the Chapter 6b (*Quod possumus non facere, si uolumus, huius electionem mali potius nobis debemus ascribere quam aliis*). If one regards the drunkenness of cc. 7, 9 as yet another necessity as opposed to intention, the reason why the drunken perpetrator cannot be held responsible may not be his/her inability to act, but simply the lack of intention to commit a crime. 34

Now, in Chapter 8 there is a distinction made between one who is asleep and one who does not give consent to concupiscence. This distinction may correspond to the distinction between inability to act and lack of intention to commit a crime. If it is the lack of intention that matters in Chapters 5, 6b, 7 and 9, *consentientis* is plausible for the rubric of Chapter 8. 35

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31 FRIEDBERG, *Decretum* (n. 1), 747: (R) Culpa non necessitate, sed uoluntate reum constringit. Aliquos scimus subito dementes factos ferro, fuste, lapidibus, morsibus, multos nocuisse, quosdam et occidisse, captos autem industria et iudiciis oblatos minime reos factos, eo quod non uoluntate, sed impellente ui nescio qua hec gesserint nescientes. Quodmodo enim reus constituitur qui nescit quod fecerit.

32 FRIEDBERG, *Decretum* (n. 1), 747f.: (R) Reus uoluntate, non necessitate constringitur. (I) Item Ambrosius in Exameron, in tractatu primi diei. Quod possumus non facere, si uolumus, huius electionem mali potius nobis debemus ascribere quam aliis. Ideo etiam in iudiciis istiusmodi uoluntarios reos, non necessitate compulsos, culpa constringit, pena condempnat. Neque enim, si per furorem aliquis innocentem perimat, obnoxius morti est, quin etiam ipsius legis diuinae oraculo, si quis per imprudentiam intulerit necem, accipit inpunitatis spem, refugii facultatem, ut possit euadere [...].

33 FRIEDBERG, *Decretum* (n. 1), 747f.: Aliquos scimus subito dementes [...].; Neque enim, si per furorem aliquis innocentem perimat [...]. See the texts cited in nn.31 and 32.

This interpretation can be supported by Chapter 10<sup>34</sup>, yet another text taken up by Gratian in the second recension. The rubric of c. 10<sup>35</sup> clearly shows that Gratian regards guilt (*culpa*) as dependant exclusively on a perpetrator's will, which should be understood as intention (*propria uoluntate* = of one's own will): 36

c.10 Nemo trahitur ad culpam nisi ductus propria uoluntate\* Aa Cd Fd Hk In (Md) Mk (Mm) Pk Tr 37  
culpam] penam Md  
ductus propria uoluntate] propria uoluntate ductus Mm  
Nemo traditur ad culpam nisi ductus propria uoluntate Bi Cg Hl (Ka) Kb Mc Me Mz Sb  
ductus] ductus est Ka  
Voluntaria commissa sequuntur delicta Sa

## V. Conclusion

One could still argue for *sentientis* on the ground, for example, that Gratian seems to have first chosen texts dealing with specific cases like mental disorder (cc. 5, 6) and drunkenness (cc. 7, 8, 9), and then a text of a more general character (c. 10). It is therefore hard to determine without any ambiguity the reading which must have been at the beginning of the manuscript tradition. As the corrections made in Fd<sup>36</sup> or the variant readings of *inobedientia/concupiscentia* suggest, the very effort of medieval readers and scribes to make better sense out of their text reflects the difficulty involved in interpreting Gratian's way of thinking. 38

However, one could also argue that the two readings *sentientis* and *consentientis* possibly reflect the difficulty Gratian himself faced in interpreting his *auctoritates*. As demonstrated above (IV), the textual variants *sentientis* and *consentientis* have no relationship to the incidence of the variants *inobedientia concupiscentialis* or *inobedientia uel concupiscentia*. It is therefore possible that *sentientis* and *consentientis* are both initial readings. That is, they should be ascribed to Gratian or the correction(s) made by Gratian himself. If it is in fact the case, these two readings are indeed both „originals”, and their very existence vividly reflects Gratian's way of thinking. Accordingly, we can distinguish not only several stages of Gratian's *Decretum*, but several „originals” of a given stage. 39

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34 FRIEDBERG, *Decretum* (n. 1), 748f.: (R) Nemo trahitur ad culpam, nisi ductus propria uoluntate. (I) Item Ambrosius de beata uita. Non est quod cuiquam nostram ascribamus erumpnam, nisi nostrae uoluntati. Nemo nostrum tenetur ad culpam, nisi uoluntate propria deflexerit. Non habent crimen que inferuntur reluctantibus. Voluntaria tantum commissa sequitur delictorum inuidia, quam in alios deriuamus. Voluntarium sibi militem elegit Christus, uoluntarium sibi seruum diabolus actionatur. Neminem iugo seruitutis astrictum possidet, nisi se ei prius peccatorum ere uendiderit.

35 There are two major manuscript traditions. The one is characterized by the reading *trahitur*, the other by *traditur*. The textual variants *trahitur* and *traditur*, however, have no relationship to the incidence of the variants *sentientis* or *consentientis*.

36 See above n. 17.

Whether one should use the term „original” in this context is another problem. The idea behind the term, which may be the last legacy of the Lachmann method, has been criticized as unrealistic and is indeed elusive, but it is only through our pursuit of an „original” that we realize the effort exerted in this connection by medieval scribes and possibly by Gratian as well. The Lachmann method has not lost its ability to guide a reader who wishes to be a critical interpreter. It is, I believe, still our starting point.

40

## **Appendix 1. The manuscripts and the abbreviations used in this article**

Aa = Graz, Benediktiner Stiftsbibliothek Admont 43  
Bi = Biberach, Spitalarchiv Biberach an der Riss 3515  
Cd = Cambridge, Mass. Harvard Law Library 64  
Cg = Cambridge, Gonville and Caius 6/6  
Fd = Firenze, Biblioteca Nazionale Centrale, Conv. Soppr. A 1. 402  
Hk = Heiligenkreuz, Stiftsbibliothek 44  
Hl = Heiligenkreuz, Stiftsbibliothek 43  
In = Innsbruck, Universitätsbibliothek 90  
Ka = Köln, Dombibliothek 127 (Friedberg’s A)  
Kb = Köln, Dombibliothek 128 (Friedberg’s B)  
Mc = München, Bayerische Staatsbibliothek, Clm 4505 (Friedberg’s D)  
Md = München, Bayerische Staatsbibliothek, Clm 10244 (Friedberg’s E)  
Me = München, Bayerische Staatsbibliothek, Clm 13004  
Mk = München, Bayerische Staatsbibliothek, Clm 28161  
Mm = München, Bayerische Staatsbibliothek, Clm 17161 (Friedberg’s C)  
Mz = Mainz, Stadtbibliothek II.204  
Pk = Paris, Bibliothèque Nationale, lat.3890  
Sa = Salzburg, Stiftsbibliothek St. Peter, a.XII.9  
Sb = Salzburg, Stiftsbibliothek St. Peter, a.XI.9  
Sg = St. Gallen, Stiftsbibliothek 673  
Tr = Trier, Stadtbibliothek 906 (1141)  
F = Leipzig, Universitätsbibliothek, Haenel 17  
G = Wolfenbüttel, Landesbibliothek, Helms. 33  
H = Berlin, Staatsbibliothek, Stiftung Preussischer Kulturbesitz, Ms lat. 1  
Ans. = The Collectio canonum of Anselm of Lucca  
Dig. = The Digest of Justinian  
SN = Sic et Non of Peter Abelard  
Trip. = The pseudo-Ivonian Collectio Tripartita  
3L = The Collection in Three Books  
3LS = The texts added to Book 3 in the Collection in Three Books

41

(R) = Rubric

(I) = Inscription

## Appendix 2. The rubrics of C.15 q.1

c.1 42

Non sunt peccata nolentium nisi nescientium X\*

Non sunt peccata nolentium nisi scientium Sb

Nonsunt peccata nolentium sed nescientium Kb

Que sint peccata nolentium uel nescientium Cd

Que sint peccata nolentium Sa

\* X = Aa Bi Cg Fd Hk Hl In Ka Mc Md Me Mk Mm Mz Pk Tr

c.4 43

Non propter culpam sed propter memoriam facti pecus occiditur ad quod mulier accedit X\*

Non propter culpam sed propter memoriam facti pecus occiditur ad quod mulier non accedit Cg

Non propter culpam sed propter memoriam facti pecus occiditur ad quem mulier accedit Hk

Non propter culpam sed propter memoriam facti pecus ceciditur ad quod mulier accedit Pk

Non propter culpam sed propter memoriam facti pecus occiditur ad quod mulier accesserit Aa

Non propter culpam sed etiam memoriam facti pecus occiditur ad quod mulier accesserit Cd

Non propter culpam sed propter memoriam facti pecus occiditur ad quod mulier accessit Sb

Non propter culpam sed propter memoriam facti pecus occiditur quod mulier accissit Md

Non propter culpam sed propter memoriam facti pecus occidetur In

Pecus occiditur ne indignat facti refugit memoriam Sa(ac)

Pecus occiditur ne indignam(?) facti refugit memoriam Sa(pc)

\* X = Bi Fd Hl Ka Kb Mc Me Mk Mm Mz Tr

c.5 44

Culpa non necessitate sed uoluntate reum constringit X\*

Culpa non necessitate sed uoluntate constringit reum Me

Culpa non necessitate sed uoluntate constringit Sb(ac)

Culpa necessitate sed uoluntate reum constringit Md

Culpa non necessitate sed uoluntate reum astringit Mm Pk

Reus non constituitur quid[*sic*] nescit quod fecerit Sa

\* X = Aa Bi Cd Cg Fd Hk Hl In Ka Kb Mc Mk Mz Sb(pc) Tr

c.6 45

Reus uoluntate non necessitate constringitur X\*

Reum uoluntate non necessitate constringitur Hl

Reus ex uoluntate non necessitate constringitur Mm Pk

Reus non necessitate sed uoluntate constringitur Cd Cg In Md

Qui per furorem aliquem occidit mori debet Sa

\* X = Aa Bi Fd Hk Ka Kb Mc Me Mk Mz Sb Tr

c.7

46

Veniam habent que ignorantes ebrii committunt X\*

Venia habent que ignorantes ebrii committunt Mk

Veniam habent quem<sup>37</sup> ignorantes ebrii committunt Mz

Veniam habent que ignorant[er?] ebrii committunt In Mm

Venia[m?] habent qui ignorant[er?] ebrii con committunt Fd

Veniam habent qui ignorant[er?] ebrii committunt Md

Veniam habent qui innocentes(?) ebrii committunt Hl(ac)

Veniam habent qui ignorantes ebrii committunt Hl(pc)

Veniam habeant quando ignorant[er?] ebrii committunt Cd

Veniam habent qui ignorantes per ebrietatem aliqua committunt Cg

Qui per ebrietatem delinquerit uenia donatur Sa

\* X = Aa Bi Hk Ka Kb Mc Me Pk(pc)<sup>38</sup> Sb(pk)<sup>39</sup> Tr

c.8

47

Inobedientia concupiscentialis non habet culpam in corpore non sentientis Aa

Inobedientia concupiscentia non habet culpam in corpore non sentientis Fd(pc) Sb

Inobedientia concupiscentia non habet culpam in corpore non consentientis Fd(ac?)

Concupiscentia inobedientia non habet culpam in corpore non consentientis Cg

Inobedientia concupiscentia non habet culpam in corpore non sentientis Kb

Inobedientia concupiscentia<sup>40</sup> non habet culpam in corpore non sentientis Bi(pc) Mc Mk

Inobedientia non concupiscentia non habet culpam in corpore non sentientis Cd In

Inobedientia<sup>41</sup> uel concupiscentia non habet culpam in<sup>42</sup> corpore non sentientis Md Tr(ac)

Inobedientia<sup>43</sup> non concupiscentia non habet culpam in corpore non consentientis Hk Hl Mm Mz

Inobedientia uel concupiscentia non habet culpam in corpore non consentientis Pk Tr(pc)

Inobedientia concupiscentie non habet culpam in corpore non sentientis Bi(ac)

Inobedientia et concupiscentia non habet culpam in corpore non sentientis Ka

Inobedientia in concupiscentia non habet culpam in corpore non sentientis Me

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37 The reading of Mz(ac) may have been *qui* which was corrected to *que* without removing the abbreviation for *qui*.

38 *Veniam habent que ignorantes ebrii committuntur* Pk(ac) (a scribal error)

39 *Veniam habent que ua ignorantes ebrii committunt* Sb(ac) (a scribal error)

40 *concupiscendtia* Mk (a scribal error)

41 *inobendua* Tr(ac)

42 The word *in* is added between the lines by the rubricator himself.

43 *In obedientia* Hk

In membris adhuc moribundis concupiscentia regnat Sa

c.9

48

Loth non de incestu sed de ebrietate culpatur X\*

Loth non de incestu sed ebrietate culpatur Hl

Loth non de incestis sed de ebrietate culpatur Aa Me

Loth non de incestus et de ebrietate culpatur Hk

Loth culpandus est tantum quantum ad ebrietatem Sa

\* X = Bi Cd Cg Fd In Ka Kb Mc Md Mk Mm Mz Pk Sb Tr

c.10

49

Nemo **trahitur** ad culpam nisi ductus propria uoluntate Aa Cd Fd Hk In Mk Pk Tr

Nemo trahitur ad penam nisi ductus<sup>44</sup> propria uoluntate Md

Nemo trahitur ad culpam nisi propria uoluntate ductus Mm

Nemo **traditur** ad culpam nisi ductus propria uoluntate Bi Cg Hl Kb Mc Me Mz Sb

Nemo traditur ad culpam nisi ductus est propria uoluntate Ka

Voluntaria commissa sequuntur delicta Sa

c.11

50

Minister dei est qui inuitus homicidium facit X\*

Minister dei est qui mutus homicidium facit Sb(ac)

Minister dei est qui inuitus homicidius facit Fd

Minister dei est qui inuitus homicidium faciti Md

Minister dei est qui inuitus facit homicidium Cg

Minister dei est qui inuitus homicidium fecerit Cd Hl Mk Mm Pk

Minister dei est qui inuitus hominem occidit Hk

Ubi abominatio aboletur sanctificatio consecratur Sa

\* X = Aa Bi In Ka Kb Mc Me Mz Sb(pc) Tr

c.12

51

In se reuersus penitentiam agat qui insaniens aliquem occidit<sup>45</sup> Aa Bi Fd Hk Hl Me Mz Pk Sb

In se reuersurus penitentiam agat qui insaniens aliquem occidit Mk

In se reuersus penitentiam agat qui insaniendo aliquem occidit Cd In Md

In se reuersus penitentiam agat qui insaniens aliquem occiderit Cg Kb Mc Mm

In se reuersus penitentiam agat qui insaniens hominem occiderit Ka

In se reuersus penitentiam agat qui insaniens occidit hominem Tr

Per furorem hominem occiderit sanus penitenti[am agat?] Sa

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44 The reading of Md might be *ductis*.

45 The reading of Aa might be *occiderit*.



Innocens est qui non iratus sed propter disciplinam<sup>46</sup> casu aliquem perimit Aa Bi Fd Hl Me Mz

Innocens est qui non iratus sed propter disciplinam aliquem casu perimit Sb

Innocens est qui non iratus sed propter discipline casu aliquem perimit Kb

Innocens est qui non iratus sed propter discipline casvm aliquem perimit Mc

Innocens est qui non<sup>47</sup> iratus sed propter disciplinam casu aliquem punit Tr

Innocens est qui non iratus sed propter dieisciplinam aliquem percutit Cg

Innocens est qui non iratus sed propter disciplinam casu aliquem occiderit Cd In Md Mm

Innocens est qui non iratus sed propter disciplinam casu aliquem occidit Hk Mk Pk

Innocens est qui non iratus sed propter disciplinam aliquem casu occidit Ka

Gratia uoluntatem requirit, lex uero fractus[*sic*] specta[t?] Sa

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46 *dei disciplinam* Fd(pc) (*dei* add. sl.)

47 The word *non* is added between the lines by the rubricator himself.