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THE DYING AND THE DEAD
IN GRATIAN'S *DECRETUM*

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One of the defining tenets of the medieval Christian religion involved the resurrection of the dead on the day of judgment. After the Second Coming of Christ, the souls of the dead would be reunited with their reconstituted bodies, and those found worthy would be led into paradise. But just what form would this reconstituted body take? The church fathers explained that God would reassemble the actual physical remains of the individual—no matter how scattered, decayed, or unrecognizable they might be. God, in his omnipotence, could easily breathe life back into our dust. But many theologians of the later Middle Ages, including such luminaries as Peter Lombard, Albert the Great and Thomas Aquinas, sought the answers to more detailed questions about the resurrected body. Would it be reformed in the image of our youth or of our decrepit dying days? What would be done with extra physical material, such as discarded hair and fingernails? Animals would regurgitate eaten human flesh, but what about the flesh eaten by cannibals—with whose reconstituted body would it be included?

In the context of this discussion, a study of the late medieval attitude toward the dying and the dead could prove illuminating. Was death treated as a goodbye or as an *au revoir*? Were the corpses viewed as polluting, or were they carefully prepared for their resurrection like aging beauties at bedtime, or ultimately handled without concern since the Lord would be able to reassemble them come what may? The actual, practical treatment of corpses could reveal to what extent the musings and rulings of the theologians affected the rest of the population. If the clergy and the lay people involved in burial consistently approached the dying with an attitude of temporary rather than final farewell, and if bodies were han-

dled without much ceremony, then it could certainly be argued that the medieval populace subscribed wholeheartedly to the Christian belief system as formulated by the theologians.

But in truth the mortuary practices and their motivations were much more complicated. The rituals and ceremonies had evolved from a hodge-podge of pre-existing pagan traditions onto which the Christian way had been grafted. The Christian way itself lacked unity, with different authorities giving different interpretations of the will of God. Only in the twelfth century was a method devised by which these authorities could be reconciled. Using what came to be called the scholastic method, a scholar would apply a dialectical approach and certain rules of definition in order to obtain a coherent view of a complicated matter. The Camaldolese monk Gratian was among the first and was certainly the most influential to apply this more scientific method to synthesize the laws of the church. His *Concordia discordantium canonum*, or *Decretum*,² while never given official status, came to be regarded as authoritative; it also revolutionized and stimulated the study and practice of canon law. As the object of many learned commentaries and as a teaching text which helped to form most of the leading legal minds of the Middle Ages, the *Decretum* stood as the cornerstone for a universal system of jurisprudence for the church.

The purpose of this study is to address the problem of theological teaching versus popular conception during the Middle Ages on the subject of death. The methodology will be to examine the twelfth-century attitude toward death, from the last liturgical rites through the survivors' period of mourning, as reflected in the *Decretum*. Gratian synthesized much current practice into the theology of his work—every canon he chose reflected what he, a product of the twelfth century, believed to be important. Each of his *dicta*, his own introductions to the canons, indicated what he thought was right. A study of the legal process of death as he presented it, therefore, will perhaps reveal something about the depths and type of the Christianization of medieval society, as well as giving a basis for understanding the later developments in the attitudes toward death as affected by this influential text. In examining the theological canons on dying and death along with Gratian's *dicta* reconciling these canons to his contemporary world, this study will attempt to illuminate the actual practices in twelfth-century death and burial rites and the stresses inherent therein between the church and society.

Although the *Decretum* is not a liturgical text, some assumptions can be made concerning the final clerical visitation of the dying and the funer-

ary ceremony as practiced in the mid-twelfth century. These rites were meant to prepare a person for death and for the day of judgment, as well as to ease the minds of the survivors. The rituals generally included communion and confession, anointing, and prayers commending the soul to the higher powers. Some questions remain, however, concerning these rites. For example, to what degree were they reserved for the clergy?³ What was the purpose of the anointing with blessed oil? Was it an act of healing, a medicine for the soul to help restore spiritual and physical health? Was it a last rite, symbolizing the separation of the dying from the community? Or was it a remnant of the ancient practice of embalming, with the perfume qualities of the unguent valuable in disguising the corpse's odors during the delay before burial?⁴

The first question Gratian addressed in relation to visitation concerned who would perform the unction service—a bishop or a priest? In *distinctio* 95, Gratian presented two canons arguing that bishops alone should perform baptisms except in rare cases. Gratian agreed with these arguments, then went on to say, “But indeed the blessed oil is permitted to them [priests] to anoint the ill.” He supported this contention with a quote from James 5:13-15; “Is any among you infirm? Let him bring in the priests of the church, who shall pray over him, anointing him with oil, and the prayer of faith will save the sick man.” But are bishops also allowed to anoint the infirm, Gratian wondered?⁵ In answer to this, Gratian provided a section of a letter written in 416 by Pope Innocent I, stating that priests were allowed to give unction “because bishops, busy with other matters, cannot go to all the very sick. Moreover, a bishop can either go on a visitation himself or can appoint a worthy person to go for him, who can bless [the ill] and touch him with the chrism without delay, after the bishop himself will have prepared the chrism.”⁶ Therefore, the *Decretum* shows that while priests could and probably often did give unction when necessary in place of the bishops, the unguent itself could only be prepared by the bishop alone.

Another rite to be performed during a visitation was that of confession and absolution. On this subject Gratian cited a penitential of Theodore, bishop of Canterbury, saying that any penance imposed on a sick person in danger of dying was not expected to be performed, but was only to be noted. If the sick man recovered, however, he was “to observe the penance diligently as it had been imposed by the priest according to canonical authority, lest the door of piety should seem closed to him.” A sick man was not expected to fast or in any other way mortify his weak flesh; if he were to die, the prayers of his friends and the zeal of their alms

on his behalf would alleviate the burden of his penance.⁷

The commendation of the soul, or *commendatio animae*, was a rite of the funerary liturgy which could be performed long after the consignment of the body to the ground. On this subject, Gratian quoted a canon of the third Council of Carthage, of 397, stating that sacraments of the altar must only be performed by fasting men. "Now if a commendation of any dead person, whether bishop or other, is to be done before noon, it will only be done by prayers, if he who is to perform it has already eaten lunch."⁸ A separate canon lists commendations as appropriate occasions for the singing of hymns.⁹ It is clear from these references that the *commendatio* most often included a full mass for the soul, including hymns. If the agent was enjoined from the sacrament of the mass, however, the *commendatio* was confined to prayers for the soul of the deceased.

These authorities do not give many clues as to just who the recipients were, in theory and in practice, of these rites and spiritual services. The final absolution and benediction were most likely granted as universally as possible, since they were such a central precept of Christianity—but they could be and often were granted after death.¹⁰ The sacred unction may have been rarer, if for no other reason than it required an especially prepared oil. A canon regarding the movements of monks and abbots, however, prohibited them from leaving the monastery "to visit the infirm, or to give unction,"¹¹ illustrating that someone in the outside world was receiving it. Commendation masses and prayers were offered for the clergy, especially those in the upper orders, as is implied in a canon quoted above which discusses commendations "whether of a bishop or of another." But by the twelfth century, as shall be discussed below, commendations were easily available in exchange for alms to the church. In general, however, Gratian did not offer many clues as to what percentage of the Christian people were dying with priests at their besides.

The *Decretum* does help clarify, however, the purpose of the anointing of the dying as it was perceived in Gratian's time. Its perfume was not the primary reason for the application of the unguent, although it undoubtedly was often a well-appreciated side effect. The oil itself was not important; the episcopal blessing which had transformed it made it efficacious. But was it efficacious as a medicine or as a preparation for death? Gratian himself quoted a passage from the bible, given above, stating that unction by a priest as well as prayer would cure a sick man. But he also provided a canon reading; "those going on a journey [into death] shall be refreshed... by the sacred unguent of the anointed."¹² Here,

unction acted as a preparation for death, not life. The *Decretum* puts forth both medicinal and separational purposes as the bases for the rite of anointing the infirm—but this confusion probably reflects the contemporary state of belief among all but the most elevated theologians.

Once the liturgical rites had been completed and the subject had died, the next thing to be done was the burial of the earthly remains in the place where they would rest until the day of judgment and resurrection. The choice of interment location certainly fell within the dictates of canon law. Gratian ordered that “married people should be buried in one tomb.”¹³ As support he quoted Jerome, who listed Abraham and Sarah, Isaac and Rebecca, Jacob and Leah, and Adam and Eve as examples of patriarchs buried with their wives, and wrote, “They who were joined into one married couple shall be joined in one tomb because they are one flesh, and whom God joined, man shall not separate.”¹⁴ Gratian also quoted Augustine as saying “Each woman follows her husband in life as in death.”¹⁵ Twelfth-century married women, therefore, had no legal choice as to burial site.

In his own voice, Gratian discussed whether children should be entombed with their parents. He began by listing several examples from the Old and New Testaments where sons and daughters joined their parents in one grave, and concluded from these “that the bodies of the children must be placed in the tombs of the parents... On the other hand,” he continued, “Adam, as you assert, is buried in the city of Hebron. But are all of his children buried there? Such a multitude of human descendants could not possibly fit in such a small tomb.”¹⁶ Not only was the idea of the entire human family being piled together absurd, but Gratian could also find many examples of biblical figures choosing burial away from immediate family members. “It is clear,” Gratian concluded, “that children may be buried in the tombs of their fathers, or they may find hospitality for their bodies elsewhere according to the opportunity of time and place.”¹⁷ While certain matters were defined in the law, burial site (other than for married women) was not one of them, and therefore a matter of choice.

Since burials and offerings for the dead often provided a church with steady income, however, Gratian was quick to discourage abandonment for any but ‘good’ reasons of the church which expected a person’s financial consideration. He quoted a canon prohibiting Christians from choosing by arbitrary whim to be buried in a church other than that where their parents’ remains lay, on danger of imprisonment.¹⁸ But Gratian tempered this opinion by writing, “It is one thing to not follow

the practices of the ancient fathers from an excess of rashness, and another to choose a new tomb for oneself on a reasonable occasion."¹⁹ Gratian had provided an example of just such a reasonable occasion in the hypothetical legal case he presented as a basis for the argument in *causa* 13; "The diocesans of a certain baptismal church, pressured by the damages of wars and compelled by fear of the enemy, transferred their domiciles into another diocese.... They decided to pay tithes to the church into whose diocese they had moved, and they chose tombs there."²⁰ The clerics of the original diocese had brought this case to court, unhappy at the loss of both the tithes and the funeral opportunities. But according to the authority of the Council of Tribur of 895, the hierarchical order of desirability for interment site began with the cathedral, was followed by the enclosed religious community, and ended with the church where the dead man had used to pay his tithes.²¹ Gratian concluded according to this canon that, as cathedral and monastery were not being considered, the refugees discussed in the *causa* were right to choose burial in the church of their new diocese.²²

Once the church had been chosen, it only remained to maneuver the actual tomb site as close to the altar and reliquaries as possible. The relics of saints, who were guaranteed admission into paradise, were thought to protect and intercede for the bodies of those buried in their vicinity.²³ According to a canon of the Council of Varennes quoted by Gratian and often reiterated in other sources, however, bodies could be buried "only in the churchyard, or porch, or in the apse of the church. No one may be buried inside the church or close to the altar, where the body and blood of the Lord are prepared." But only three capitula later, Gratian included a statute of the Council of Mainz of 813 decreeing that "no one shall be buried inside the church, except for bishops, abbots, worthy priests, or faithful laymen." This rule excluded virtually no one except the poor and reflected much more accurately the actual state of medieval affairs, in which the rich and powerful vied for the choice tomb sites.²⁶

But how beneficial was burial within a church or even on its consecrated ground to the souls of the dead? Gratian bowed to the authority of Gregory the Great and St. Augustine on this matter. He cited Gregory twice, saying that "Those whose sins are not dismissed cannot be helped after death by sacred places because heavier sins weigh them down if they have themselves buried in sacred places"²⁷—or in other words, those who died unabsolved would have their burdens increased by committing the additional sin of being buried where they did not belong. But "the dead who are not weighted down by grave sins are ben-

effited by church burial, because those who come to the same sacred place are close to them and look upon their grave, and ponder and offer prayers to the Lord for them.²⁸

But Gratian also brought in the arguments of Augustine, whose views on who would benefit from church burial were more liberal and not based on final absolution:

For there is a mode of life that is neither so good as not to need such helps [as alms and prayers] after death nor so bad as not to gain benefit from them after death. There is, however, a good mode of life that does not need such helps, and, again, one so thoroughly bad that, when such a man departs this life, such helps avail him nothing.... Accordingly, when sacrifices, whether of the altar or of alms, are offered for the baptized dead, they are thank offerings for the very good, propitiation for the not-so-bad, and, as for the very bad—even if they are of no help to the dead—they are at least a sort of consolation to the living.²⁹

Everyone, therefore, should be buried near a place of prayer, in case they fell within the large category of those who would benefit. Augustine felt that alms and prayers should be offered for all, since although those aids would be superfluous to some, others who could benefit would not be passed by. People should be buried near the shrines of saints, not so much because of the saint's own powers, but rather because the number of prayers offered for them would be increased by those visiting the shrines.³⁰ Gratian also provided the dissenting opinion of Jerome, who believed prayer and alms held no benefit for the dead; "When we come before the tribunal of Christ, we cannot ask either Job, Daniel, or Noah for anything, but everyone must carry his own burden."³¹ But Gratian quickly interjected that this judgment applied only to the impenitent and to no others.³²

Note that in the above discussion, in addition to the prayers for the dead which would be increased in proximity to other tombs and to the relics of saints, alms to the church were also listed as helping ensure the welfare of the departed soul. Gratian's sources were agreed on this. Gregory was quoted in a canon with the rubric "The goods of the living can help in the penance of the dead," in which he argued that if someone made an offering on behalf of a deceased Christian, his priest could commemorate the departed and intercede on his behalf.³³ Gregory also wrote that "the souls of the dead can be saved in four ways; the sacrifices of the priests, the prayers of saints, the alms of the living, or the fasts of the relatives." Other matters were unimportant; "the care of the burial,

the condition of the tomb, the pomp of the funeral procession, and so on are for the solace of the living rather than the aid of the dead," although the bodies should not be held in contempt.³⁴ Augustine agreed that "It is good to give a decent burial not as a help to salvation, but as a duty to humanity."³⁵

A mortal could both establish his burial site and leave bequests to the church toward his salvation through his testament, which the *Decretum* considered an inviolable declaration of the deceased's last wishes, to be carried out in every way.³⁶ This right, however, did not apply in the case of slaves, who could not write a testament³⁷—usually in practical as well as legal terms. Gratian presented a letter from Pope Gelasius complaining that a certain clever slave of the church had dared to write a will, binding all his savings from the church. The pope would not permit this presumption. If the slave had already died, his children must return to the church its share. But Gratian then added that the bodies of slaves should be buried according to their final wills, implying that a slave could leave a testament of some sort only insofar as it affected the choice of burial site, not the disposition of goods.³⁹

The free man, however, could dispose of his goods as he wished. But, as Gratian wrote, to the confused testator his will did not seem to be free, but rather limited by patristic dictates,

since according to Augustine the testamentary distribution of goods ought to be made according to the number of sons; as, for instance, if someone has one son, he shall consider Christ another; if he has two, he shall make Christ the third, and so on. And according to Leo, he is ordered to leave half of the goods which are marked for Christ to the church where he received the sacraments of faith. But that [purpose] of Augustine is not of ordering, but of discouraging, lest he who is angry should disinherit his sons and leave everything to Christ.⁴⁰

Gratian then presented the actual text of Augustine's recommendation for the division of the inheritance, which clearly explained its goal as protection for the children rather than profit for the church.⁴¹ Gratian then again wrote in his own words that Augustine's stated share of inheritance to the church was not one which the testator was compelled to pay, but rather prohibited from exceeding.⁴²

From Gratian's emphatic repetition, it is clear that many Christians believed they had to leave a high proportion of their estates to the church. This confusion would have had obvious benefits for the church. The false interpretation of Augustine's recommendation was undoubtedly

propagated by many clergymen who were not as ethical, or at least as well-read, as Gratian. But, although Gratian would not have bequests forced from Christians, he ordered the strictest sorts of protections placed on those bequests which were left voluntarily to the church. Three *capitula* dealt with the penalties to those who interfered with these bequests.⁴³ Any who withheld or even delayed the goods coming to the church would be excommunicated, "cast as infidels from the church," since any who would dishonor the vows of the dead and plunder the needy must be unbelievers in the judgment of God.⁴⁴

Another controversial matter which Gratian attempted to clarify concerned payments charged for burials and for tomb space. The law according to Gratian was clear that, as in the case of bequests, compelling payment for such services was strictly illicit, although gifts offered voluntarily were welcome. One canon listed burial among other things for which requiring payment would constitute simony; these acts (including baptism and communion) were gifts from Christ to be given freely.⁴⁵ Three other canons dealt with this matter, listing various reasons why charging for burial was prohibited. For example, two of the canons offered a precedent from the Book of Genesis, in which Abraham had offered to pay the Hittite Ephron for a cave he owned as a tomb for Sarah. But Ephron refused the money, "lest his advantage seem to come from the cadaver," as the canonists explained. "If therefore a pagan man was so considerate, how much more should we, who are called priests, not do this?"⁴⁶ Another canon reminded the clergy that we all must die and revert to dust, so why sell earth to earth? Also, as was written in Psalm 24:1, "The earth is the Lord's and the fullness thereof," and since the clergy received the land from God for free, they should give it (for this purpose) for free.⁴⁷ Each of the canons on this subject, however, concluded by reminding the reader that they were not prohibited from accepting any gifts given voluntarily for candles, or even for the redemption of the deceased's soul, as these gifts had merit;⁴⁸ "But that something be asked or charged we prohibit altogether, lest (which is truly religious) the church be called venal (which it is not), or lest you seem to be grateful for the deaths of people, if you are zealous to request whatever form of profit from their cadavers."⁴⁹

This last statement was undoubtedly the best reason the church had for prohibiting the acceptance of payment for burial, and probably also reflected well the twelfth-century situation. Fear of eternal damnation and desire for salvation were extremely powerful motivators in the Middle Ages. Gifts and the clerical prayers which they could buy were accepted

as increasing one's chances at paradise. Also, the location of the cadaver within the consecrated grounds was a matter of great concern to those hoping for salvation, and the priests had the last word on who would receive the most advantageous burial sites. Therefore, to those with any means at all, what choice was there but to 'voluntarily' pay the priest for his prayers and considerations? To a large degree, the dead were at the mercy of the priest's goodwill. Unchanging human nature being what it is, many clerics would have nursed this need to the fullest. The resentful bereaved could easily have perceived the church as venal and unbecomingly anticipatory of profitable death. Gratian and other ethical church leaders were undoubtedly shamed by such charges (although not enough to prohibit gifts altogether).

But the parish priest did not hold a monopoly on the profits to be made from the care for the dead. In increasingly tight competition against monasteries and other enclosed religious communities, the parish church was actually at a disadvantage. One priest, busy with various other parochial duties, could only say so many masses a day for the dead. But in a monastery, in which many of the residents were priests, masses could be said virtually without interruption.⁵⁰ Important personages often entered the monasteries before death in order to take fuller advantage of the mortuary rites⁵¹—and also to die as members of the religious orders. The regular clergy were often popularly perceived as holier, which in itself would seem to increase the benefits from being put to rest within their community. The canon cited above which Gratian copied from the Council of Tribur of 895 listed the grounds of the episcopal see as the first place one should choose for burial,⁵² then "a church at which a religious community of religious canons, monks, or nuns live communally," and only then the parish church.⁵³ The secular priest, who cared for the needs of his parishioners throughout their lives, would often lose the final benefits they could bestow to his more specialized monastic rival.

Gratian addressed the concerns of the parish priests in the *Decretum*, but came to the conclusion that the monasteries did have the right to bury the laity. The main argument which the secular clergy had apparently presented against this right was that the regular clergy were cloistered, and therefore should not deal in any way with the outside world. Gratian agreed that monks should not celebrate the offices with the public,⁵⁴ and cited what he thought was a Nicene synod in support; this canon contained the clause "a monk . . . shall not perform burials, except of a fellow monk in his monastery or if by chance a visiting brother should happen to die there."⁵⁵ Gratian also cited two canons from

Popes Eugenius and Calixtus II prohibiting monks from leaving the monastery "for earthly gain" to visit the infirm, give unction, or bury the dead. Gratian interpreted these canons to mean that monks were not allowed to leave monasteries "to celebrate the burials of the dead in chapels, or to come together in the way of clerics to celebrate whatever funeral processions. But if they wish to bury someone like themselves [*semetipsum*] at the monastery, that is not to be prohibited."⁵⁷

But Gratian was not satisfied that monks were limited to burying only *other monks* at the monastery. He published a letter of Pope Gregory's to a certain bishop who had put a stop to the celebrations of masses and burials of the dead at a monastery within his jurisdiction. Gregory admonished the bishop for this inhumanity and ordered him to suspend his prohibitions.⁵⁸ Gratian then included several canons reminding his readers that the final will of the dead was inviolable. From all these he concluded that "It is clear by these authorities that if someone wishes to choose his burial at a monastery, he can freely be buried by the monks. Whence clearly it is concluded that the prohibition of the Nicene synod was made against the perversity of wandering."⁵⁹ In other words, since the real intent of the canon from the putative Nicene synod was to keep monks where they belonged, its specification that only fellow monks be buried in the monastery was superseded by the dying person's legally stated desire to be buried where he chose. Usually personal desires were not granted more weight in canon law than the authoritative dictates of church councils. In this case, however, Gratian had little choice but to use what arguments he could, however weak, to ratify what had been a prevalent practice for centuries. The parish priests lost to the will of the people.

Once the last rites had been completed and the body laid into the ground to await resurrection, the survivors had to begin learning to live in the absence of the deceased. The rituals associated with mourning could often provide some of the props necessary while making this transition. The period of mourning itself marked the boundaries of the official period of transition, during which many things were excused.⁶⁰ Gratian posed a question regarding the different number of days—three, seven, thirty, and forty during which mourning was variously observed; what was the origin of each period?⁶¹ A fragment attributed to the Emperor Theodosius provided examples of several of these mourning periods in use in the Old Testament, and concluded that each period, therefore, had its own authority.⁶²

But how was one to observe whatever mourning period was chosen?

Canon law had no specific answer, just a warning against excessive displays of grief. Cyprian had written that "our brothers, liberated from this earth by a summons from the Lord, must not be mourned, since we know that they have not been sent away, but rather sent ahead as forward scouts and navigators for those left behind."⁶³ John Chrysostom believed that "they who mourn and deplore and lament those who have departed this life do so out of pusillanimity."⁶⁴ A canon from pseudo-Isidore further charged that they who truly believed their loved ones were headed for a better world could not possibly be sad. Although grief among others might be a sort of piety, with Christians it was a sort of sin.⁶⁵ While Gratian agreed that people mourned from desperation of future resurrection, he concluded that, "with piety to influence and humanity to consider, we do not prohibit grieving for the dead; as for example we read pious tears were shed at the funerals of some saints."⁶⁶ So although Gratian was uneasy about the religiosity of mourning, once again he led his followers in a more humane, practical direction than the canons would perhaps have indicated.

The material presented to this point has illuminated the laws, rituals, and strategies of death as they affected the majority of the Christian populace, especially those who were religiously or temporally well-placed. But were the mortuary services which the church provided Christian rights or Christian privileges? Whose actions were offensive enough to cause the Christian community to withhold from them those services which were so important to all who had lived within the medieval Christian tradition? Several categories of outcasts from burial rites can be found within the canons published by Gratian. All who were impenitent were absolutely denied anointment at death, since unction was a sacrament and the impenitent could not partake of any sacrament.⁶⁷ Clerics who died either in battle or in a brawl were not to be commended with masses or prayers — but they were not denied burial.⁶⁸ Suicides were denied commemorative offerings of prayers and were to be buried without psalms being sung.⁶⁹ Thieves and robbers killed in the course of their crimes were also denied prayers on their behalf, but if they were captured alive and confessed, they were allowed to receive communion.⁷⁰ Canon law, however, generously granted all of these sinners at least the rudiments of a Christian interment—the Second Council of Mainz warned clerics to stop denying communion and burial to those who had been hanged on the gallows for their crimes, at least as long as they had confessed and were truly penitent, since they were already paying the highest price for their sins and God does not judge twice on the same matter.⁷¹

All these various criminals were denied some of the aids the church could provide in their journey to the afterlife. But for the most part, canon law was lenient in allowing corporal punishment to suffice partially and in not leaving the souls completely bereft and helpless. Interestingly enough, the only criminal in the *Decretum* who was to be denied absolution and Christian burial was the arsonist, unless he had made restitution.⁷² As for the others, however, the leniency which the church counselled was not often applied. Suicides were usually buried in unconsecrated ground, and the bodies of criminals were burned or were left unburied to rot out in the open.⁷³ In the case of the burial of criminals, the *Decretum* does not generally reflect the practices of the twelfth century. The church, of course, made no attempt to cushion the death experiences of those outside the church—excommunicates were denied burial, and the corpses of infidels were judged actually to pollute graveyards.⁷⁴ But in general, Christian mortuary rites and burials provided all but the most recalcitrant members of the community with the services thought necessary to ease the transition into the afterlife and increase the chances of salvation.

Gratian, at the conclusion of a canon which gave a summary of the procedures and attitudes which should comprise a Christian burial,⁷⁵ wrote, "It is asked whether the dead are aware of the deeds of the living." He answered no, because of Isaiah's contention in chapter 63 verse 16 that "Abraham our father does not know us,"⁷⁶ and also because of the authority of St. Augustine, who had written that the dead do not hear the living.⁷⁷ But as we have seen, the rites of death were of deep concern to those about to die and to those who would survive them. The liturgical rites, prayers for the souls, and advantageous burial sites provided those who could take advantage of them with assurance that everything was being done at the end to help pave the way to paradise. The treatment of the bodies of criminals illustrated that the people believed corporal punishment could continue beyond the grave — that the dead could suffer for what was being done to their bodies by the living. Within the *Decretum* itself, remnants of this same belief are also visible — a canon describing the people who are to be held disgraced (*infames*) for breaking the laws of Christianity lists among them the violators of tombs,⁷⁸ an act which was thought to offend the dead. Gratian made canon law more accessible to society by working out many of its paradoxes and giving new impetus to its development. But he also made canon law more humane, bringing sympathy and understanding of the practical into its often unanchored theological heights. In his presentation of the laws regarding the

dead, Gratian made provisions for the needs of the soul while acknowledging the concerns of the living flesh.

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NOTES

1. For a full and interesting discussion of the resurrected body in late medieval thought, and a comparison with our modern preoccupations with similar subjects, see Caroline Walker Bynum, *Fragmentation and Redemption: Essays on Gender and the Human Body in Medieval Religion* (New York: 1991), especially the chapter titled "Material Continuity, Personal Survival and the Resurrection of the Body: A Scholastic Discussion in Its Medieval and Modern Contexts," 239-97.

2. Volume 1 in Emil Friedberg, ed., *Corpus iuris canonici*, 2 vols. (Leipzig: 1879-81).

3. Philippe Ariès argues that extreme unction was reserved for the clergy; *The Hour of Our Death*, trans. Helen Weaver (Oxford: 1991), 18, 24. He also writes that in general, "the role of the Church in funeral rites was limited" (p. 146). Frederick Paxton, in *Christianizing Death: The Creation of a Ritual Process in Early Medieval Europe* (Ithaca, NY: 1990), however, argues that while only those living in religious communities could take advantage of the full mortuary liturgy, it "was never meant for the clergy alone," and that the laity was increasingly included in the process from the ninth century on (pp. 194-200).

4. In *Christianizing Death*, Paxton theorizes that during early Christian times anointing was most often an act applied to the infirm in the hope of effecting a cure, but in the ninth century, with the Carolingian movement towards the synthesis of various liturgies and dissemination of the new versions, anointing became a rite of separation for the dying soul. For the application of ointment as a sort of embalment in the early Christian church, see Alfred C. Rush, *Death and Burial in Christian Antiquity* (Washington, DC: 1941), 117-25.

5. D. 95 p. c. 1; "Oleo uero sanctificato permittitur eis [presbiteriis] ungere infirmos. Unde Iacobus ait: 'Infirmatur quis in uobis? inducat presbiteros ecclesiae, qui orent super eum ungentes eum oleo, et oratio fidei saluabit infirmum.'"

6. D. 95 c. 3; "quia episcopi occupationibus aliis impediti ad omnes languidos

ire non possunt. Ceterum si episcopus aut potest, aut dignum ducit aliquem a se visitandum, et benedicere, et tangere crismate sine cunctatione potest, cuius est ipsum crisma conficere."

7. C. 26 q. 7 c. 1; "A quo periculo si diuinitus ereptus conualuerit, penitentiæ modum a sacerdote sibi inpositum diligenter obseruet, et ideo secundum auctoritatem canonicam, ne illis ianua pietatis clausa uideatur."

8. De cons. D. 1 c. 49; "Nam si aliquorum promeridiano tempore defunctorum, siue episcoporum siue ceterorum, commendatio facienda est, solis orationibus fiat, si illi, qui faciunt, iam pransi inueniantur."

9. De cons. D. 1 c. 54.

10. Ariès, *Hour of Our Death*, 140-42.

11. C. 13 q. 2 c. 10; "Interdicimus etiam abbatibus et monachis publicas penitencias dare, infirmos uisitare, et unctiones facere, et publicas missas cantare."

12. C. 26 q. 7 c. 1; "orationibus et consolationibus ecclesiasticis, sacra unctione olei inuncti, secundum statuta sanctorum Patrum communionem uiaticii reficiantur."

13. C. 13 q. 2 p. c. 1; "coniugati in uno sepulcro uidentur esse ponendi."

14. C. 13 q. 2 c. 2; "Quos coniunxit unum coniugium coniungat unum sepulcrum, quia una caro sunt, et quos Deus coniunxit homo non separet."

15. C. 13 q. 2 c. 3; "Unaqueque mulier sequatur uirum suum, siue in uita siue in morte."

16. C. 13 q. 2 p. c. 3; "His omnibus exemplis colligitur, quod in sepultura parentum corpora filiorum collocanda sunt.... Econtra Adam, ut asseritis, in ciuitate Arbee tumulatus est. Sed numquid omnes filii eius sepulti sunt ibi? tanta multitudo humani generis tam breui tumulo non tam facile posset includi."

17. C. 13 q. 2 p. c. 3; "Exemplo igitur istorum liquet, quod liberum est filiis sepeliri in sepulcris patrum suorum, et liberum est eis alibi pro locorum et temporum opportunitate corpori suo hospitium inuere."

18. C. 13 q. 2 c. 7. Gratian wrongly attributed this canon to Pope Melchisedes, 311-14 AD.

19. C. 13 q. 2 p. c. 7; "Sed aliud est ex temeritatis superbia usum antiquorum parentum non sequi, atque aliud rationabili occasione nouam sibi sepulturam eligere."

20. C. 13 pr.; "Diocesani cuiusdam baptismalis ecclesiæ, cladibus bellorum pressi, hostili metu compulsi, domicilia sua transtulerunt in aliam diocesim, prædicia tamen antiqua non desierunt colere; ceperunt persolvere decimas illi ecclesiæ, in cuius diocesim transierunt, et apud eam sibi elegerunt sepulturas."

21. C. 13 q. 2 c. 6.

22. C. 13 q. 2 p. c. 6.

23. Ariès, *Hour of Our Death*, 32-33; see also Peter Brown, *The Cult of the Saints* (Chicago: 1981).

24. C. 13 q. 2 c. 15; "Prohibendum est etiam secundum maiorum instituta, ut in ecclesia nullatenus sepeliantur, sed in atrio, aut in porticu, aut in exedris

ecclesiae. Infra ecclesiam uero, aut prope altare, ubi corpus Domini et sanguis conficitur, nullatenus sepeliantur." Friedberg noted that this canon is actually from the Council of Nantes as cited in other canonical collections, but may very well have been repeated in one of the councils of Varennes. Ariès, *Hour of Our Death*, 46, quotes this as the pseudo-Council of Nantes of 900.

25. C. 13 q. 2 c. 18; "Nullus mortuus infra ecclesiam sepeliatur, nisi episcopi, aut abbates, aut digni presbiteri, vel fideles laici."

26. Ariès, *Hour of Our Death*, 45-51.

27. C. 13 q. 2 c. 16; "Quibus peccata dimissa non sunt, a sacris locis post mortem adiuuari non possunt, quia quos peccata grauiora deprimunt, si in sacris locis se sepelire faciunt." Gratian cited the source for this passage as St. Augustine, but the actual source, according to Friedberg, was Pope Gregory.

28. C. 13 q. 2 c. 17; "Cum grauia peccata non deprimunt, tunc prodest mortuis, si in ecclesiis sepeliantur, quia eorum proximi, quociens ad eadem sacra loca ueniunt, suorum quoque sepulturam aspiciunt, recordantur et preces pro eis Domino fundunt."

29. C. 13 q. 2 c. 23; "Est enim quidam uiuendi modus, nec tam bonus, ut non requirat ista post mortem, nec tam malus, ut ei ista post mortem non prosint. Est uero talis in bono, et hec non requirat, et est rursus talis in malo, ut nec his ualeat, cum hec uita transierit, adiuuari.... Cum sacrificia altaris siue quarumcumque elemosinarum pro baptizatis omnibus offeruntur, pro ualde bonis gratiarum actiones sunt, pro non ualde malis propiciationes sunt, pro ualde malis, etiam si nulla sunt adiumenta mortuorum, tamen uiuorum consolationes sunt." Translation by Albert C. Outler in St. Augustine, *Confessions and Enchiridion*, vol. 7 in *The Library of Christian Classics* (London: 1955), 405-6.

30. C. 13 q. 2 c. 19. See also Eugene I. Van Antwerp, "St. Augustine: The Divination of Demons and Care for the Dead," dissertation abstract, Washington, D.C., 1955.

31. C. 13 q. 2 c. 20; "Cum autem ante tribunal Christi uenerimus, nec Iob, nec Daniel, nec Noe rogare posse pro quoquam, sed unumquemque portare onus suum."

32. C. 13 q. 2 p. c. 20.

33. C. 13 q. 2 c. 21; rubr. "In penitencia defunctis bona prosunt uiuentium."

34. C. 13 q. 2 c. 22; "Curatio uero funeris, conditio sepulturae, pompa exequiarum, magis sunt uiuorum solatia quam subsidia mortuorum."

35. C. 13 q. 2 c. 19; "Corpori autem humando quicquid inpenditur non est presidium salutis, sed humanitatis offitium."

36. C. 13 q. 2 c. 4 and C. 16 q. 1 c. 14.

37. C. 13 q. 2 p. c. 4.

38. C. 13 q. 2 c. 5.

39. C. 13 q. 2 p. c. 5.

40. C. 13 q. 2 p. c. 7; "Sed non uidetur libera testatoris uoluntas, cum secundum Augustinum pro numero filiorum debeat fieri testamentaria distributio facultatum, ueluti, si quis habet unum filium, Christum putet alterum; si uero duos,

Christum faciat tertium, et sic per ordinem. Et secundum Leonem quisque medietatem eorum, que Christo testatur, ecclesie iubetur relinquere, apud quam fidei sacramenta suscepit. Sed illud Augustini non est iubentis, sed dehortantis, ne quis iratus filium suum exheredaret, atque totum Christo relinqueret."

41. C. 13 q. 2 c. 8.

42. C. 13 q. 2 p. c. 8.

43. C. 13 q. 2 cc. 9-11.

44. C. 13 q. 2 c. 10; "ut infideles sunt ab ecclesia abiciendi."

45. C. 1 q. 1 c. 105. Gratian thought the canon was from Council of Tribur, 895.

46. C. 13 q. 2 c. 12; "Si ergo tantæ considerationis paganus uir fuit, quanto magis nos, qui sacerdotes dicimur, hoc facere non debemus?" This story is also told in this context in C. 13 q. 2 c. 13. The actual story, from Gen. 23: 8-16, concludes with Ephron valuing his land at 400 shekels of silver and accepting that amount from Abraham in payment for the tomb. Would knowledge of the whole story have affected clerical behavior?

47. C. 13 q. 2 c. 14; "Domini est terra, et plenitudo eius.'... Gratis accepisti a Deo, gratis da pro eo." The church, in turn, refused to pay property tax to any lay figure for lands which it used for burial; see C. 23 q. 8 c. 24.

48. C. 13 q. 2 cc. 12-14.

49. C. 13 q. 2 c. 12; "Peti uero aut aliquid exigi omnino prohibemus, ne (quod ualde irreligiosum est) aut uenalis (quod absit) dicatur ecclesia, aut uos de humanis uideamini mortibus gratulari, si ex eorum cadaueribus studetis querere quolibet modo compendium."

50. Ariès, *Hour of Our Death*, 158-9, reports that in the twelfth century, one mass a day was the norm in the parishes, although three or four were permissible. But from the ninth century, masses were being said continuously at various altars in many of the great monastery churches.

51. See, for example, Paxton, *Christianizing Death*, 194-5.

52. Ariès, *Hour of Our Death*, 73, see this as an attempt by the bishops in attendance at the council to break the monopoly the abbeys and monasteries already held.

53. C. 13 q. 2 c. 6; "Si autem propter temporis uel loci asperitatem hoc difficile uisum fuerit, apud ecclesiam, quo religiosorum canonicorum, uel monachorum, uel sanctimonialium religiosa congregatio communiter degerit, sepeliatur."

54. C. 16 q. 1 pr.

55. C. 16 q. 1 c. 1; "monachus... mortuum non sepeliat, nisi monachum in monasterio secum conmorantem, uel si fortuito quemquam aduentum fratrum ibi mori contigerit." Friedberg says this canon is not found in either the first or second Nicene Council.

56. C. 16 q. 1 c. 8 ("pro lucro terreno") and C. 16 q. 1 c. 10.

57. C. 16 q. 1 p. c. 12; "Auctoritus illa Nicenæ sinodi prohibet monachos de monasteriis exire, et per capellas sepulturas mortuorum celebrare, confluere

uidelicet more clericorum ad cuiuslibet exequias celebrandos. Ceterum si apud monasterium aliquis semetipsum tumulari uoluerit, non est prohibendus."

58. C. 16 q. 1 c. 13.

59. C. 16 q. 1 p. c. 16; "Ecce has auctoritatibus patet, quod, si quis apud monasterium sepulturam sibi eligere uoluerit, libera a monachis potest sepeliri. Unde liquido colligitur, prohibitionem illam Nicenæ sinodi propter improbitatem circumuagantium factam esse."

60. On the subject of traditional expressions of grief, see Ariès, *Hour of Our Death*, 142-5 and 325-7. The dramatic examples he provides of mourning gestures, including howling lamentations, repeated swoonings, and self-inflicted violence to hair and face, seem rather unreliable in their extremity and should be analyzed more critically than he does, as they are taken from chivalric romances and have the ring of *topoi*.

61. C. 13 q. 2 c. 23.

62. C. 13 q. 2 c. 24.

63. C. 13 q. 2 c. 25; "fratres non esse lugendos accensione dominica de seculo liberatos, cum sciamus non amitti, sed premiti, recedentes precedere, ut proficiscentes, ut nauigantes solent."

64. C. 13 q. 2 c. 26; "Lugere autem et deplorare et lamentari eos, qui de hac uita decedunt, ex pusillanimitate contingit."

65. C. 13 q. 2 c. 27. See also C. 13 q. 2 c. 28 from the Fourth Council of Toledo.

66. C. 13 q. 2 p. c. 26; "Pietatis namque affectu et humanitatis intuitu mortuos lugere non prohibemur, sicut nonnullos sanctorum aliorum exequiis piis lacrimas inpendisse legimus."

67. D. 95 c. 3.

68. C. 23 q. 8 c. 4.

69. C. 22 q. 5 c. 12.

70. C. 13 q. 2 c.31, palea.

71. C. 13 q. 2 c. 30.

72. C. 23 q. 1 c. 32.

73. Ariès, *Hour of Our Death*, 44.

74. See De cons. D. 1 cc. 27-28.

75. C. 13 q. 2 c. 28.

76. C. 13 q. 2 p. c. 28; "De mortuis etiam queritur, utrum sciant ea, que his a uiuis geruntur? Ysaïas ex persona populi afflicti ait: 'Abraham pater noster nesciuit.'"

77. C. 13 q. 2 c. 29.

78. C. 6 q. 1 c. 17.