

# **DOCUMENTS ON THE LEGAL AND CONSTITUTIONAL HISTORY OF CONTINENTAL EUROPE**

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- 7. Swiss Code of Civil Procedure (2008))

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## A NOTE ON CITATION FORM AND TRANSLATIONS

Throughout these materials I have used the modern citation form for references to the two great bodies of law that were ultimately called the *Corpus Iuris Civilis* (the body of civil law) and the *Corpus Iuris Canonici* (the body of canon law). The medieval and early modern forms of citation were quite different (and quite confusing).

The *Corpus Iuris Civilis*, as we will learn in one of the first classes, is divided into four parts, the *Institutes*, the *Digest* or *Pandects*, the *Code*, and the *Novels* (called “Authentic” in the medieval and early modern periods). These are, in turn, subdivided and cited as follows:

JI (for “Justinian’s *Institutes* to distinguish them from “GI,” Gaius’ *Institutes*, an earlier work on which Justinian’s was based) followed by book, title, and section number. Just to make things confusing, the first section is not numbered “1” but is called “pr” for *principium*, “the beginning.” Hence, a reference to JI.1.1.1 is a reference to Justinian’s *Institutes*, book 1, title 1 (“Of justice and law”), section 1 (actually the second section), given below on p. I–4. A reference to JI.1.1pr (*ibid.*) is a reference to the first section of the same book and title. The same convention of using ‘pr’ for the first section and beginning the numbering with ‘1’ for the second section is also used for the *Digest*, *Code*, and *Novels*.

References to other parts of the *Corpus Iuris Civilis* follow a similar pattern:

D. or Dig. (= *Digesta*), followed by book, title, fragment, and section numbers (if necessary). D.23.2.1 (below, p. I–16) is an extract from Modestinus’s book of *Rules*, inserted at the beginning of the *Digest* title “On the formation of marriage.” D.23.2.6pr is an extract from Ulpian, *Sabinus* (*ibid.*).

C. or Cod. or CJ (= *Codex*), followed by book, title, constitution, and section numbers (if necessary). C.5.4.1 (below, p. I–26) is a rescript of the emperors Septimius Severus and Caracalla inserted at the beginning of the title “Concerning marriage.”

Nov. (= *Novellae*), followed by novel, part, and section numbers (if necessary). An extract from Nov.178.3 was inserted by the compilers of the Vulgate text of the Code after C.5.4.15 (below, p. I–28).

English translations of all parts of the *Corpus Iuris Civilis* are available. There are many translations of the *Institutes*. The one used in these materials is by J. B. Moyle (Oxford, 1913). The better of the two English translations of the *Digest* is the one done under the editorship of Alan Watson (Philadelphia, 1985). For the *Code* the translation under the editorship of Bruce Frier is by far the best (Cambridge 2018). It is based on the translation of Fred H. Blume, which is available online. The *Novels* have recently been translated by David Miller and Peter Sarris (Cambridge 2018). It is an excellent job, but the translation is from the Greek, which does not always correspond the Latin. Blume also did a translation of the Latin *Novels*, which is available online. S. P. Scott’s *The Civil Law* (Cincinnati, 1932), which translates all of the *Corpus* and much more is available online, but is not recommended.

The *Corpus Iuris Canonici*, we will learn later in the course, is divided into six parts, of which only four need concern us here: Gratian’s *Concordance of Discordant Canons* (also called the *Decreta*, and sometimes, in my view mistakenly the *Decretum*), the *Decretals of Gregory IX*, the *Sext* of Boniface VIII, and the *Clementines* of Clement V.

Citation to Gratian is the most complicated, because the work is divided into two large parts, an initial set of 101 *Distinctiones*, followed by 36 *Causae* (hypothetical cases subdivided into questions) and two smaller ones the *De penitentia* and the *De consecratione*, also divided into *distinctiones*:

D.1 c.1 (distinction followed by canon number) is the basic citation form for any part that is divided into *distinctiones*. Alone it refers to the first 101 distinctions, preceded by “De pen.” or “De cons.,” it refers to the *De penitentia* and *De consecratione*, respectively.

C.1 q.1 c.1 (*causa* number followed by *quaestio* number followed canon number) is the basic citation form for material in the *Causae*.

The canons in Gratian’s work are interspersed with commentary by Gratian himself. Where this commentary is being referred to the letters “d.p.” or “d.a.” (for *dictum post* and *dictum ante*) are inserted before the canon number. Hence, C.27 q.2 d.a. c.1 (below, p. VIII–2) refers to Gratian’s *dictum* before canon 1, of *quaestio* 2, of *Causa* 27.

Citation to the decretal collections in the *Corpus* is easier. All of them are divided into five books, with titles (the same scheme of titles is used in all of them), and decretal numbers. “X” refers to the *Decretals of Gregory IX* (it was originally conceived as being eXtra Gratian’s collection). “VI” refers to the *Sext* (originally conceived as the sixth book of decretals), and “Clem.” refers to the *Clementines*. X 4.16.2 appears below on p. VIII–16. Prior to the X, there were five other collections of decretals (some official, some unofficial), known as the *Compilationes antiquae*. These have a

scheme of books and titles similar to that of the X. Not all the decretals contained in them were included in the X. They are cited by their number followed by “Comp.” followed by book, title and decretal number. Hence, 1 Comp. 4.4.5(7) (below, p. VIII–16) is a reference to *Prima compilatio*, book 1, title 4, chapter 5 (7 in some manuscripts).

There are no English translations of any parts of the *Corpus Iuris Canonici* except for a translation of the first 20 *distinctiones* (with the gloss) by A. Thompson and J. Gordley (Washington, D.C., 1993).