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Abstract:	This paper presents the contents of an online database of the early modern *differentiae iuris civilis et canonici* and an accompanying catalogue (https://zenodo.org/records/13090865). The *differentiae* listed the discrepancies between civil (Roman) law and canon law and often provided insight into how conflicting laws could be reconciled. The paper discusses the relevant literature on the subject, the premises behind the composition of the catalogue and its contents, and selected problems that arose during the creation process.

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Database and catalogue of the early modern *differentiae iuris civilis et canonici*[1]

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1. Introduction

One of the outcomes of our research on the early modern genre of learned legal literature known as *differentiae iuris civilis et canonici* is the catalogue of these works. Although the sources are readily available in digitised form on the Internet, it is a challenge to determine exactly which sources can be properly classified as *differentiae*. For this reason, the working catalogue of sources accompanied us throughout the implementation of the project dedicated specifically to various aspects of *differentiae* literature, which we now wish to share and present. Earlier in our papers, we provided only a link to this working catalogue, which we now consider to be in its final form.

Our objective was to list in the catalogue (and in the accompanying database) all the examples of *differentiae iuris civilis et canonici* (hereinafter: *differentiae*) written and published in the early modern period, i.e. between 1500 and 1800.

The catalogue is an Excel document hyperlinked to the database; the links become active once the file is downloaded and unzipped. They are published together in the Zenodo repository under a DOI.[2] The Excel file contains three spreadsheets: the first one is the main body of our catalogue (hereinafter referred to simply as 'catalogue'); the second one lists the works that were not found but perhaps should be included in the catalogue; and the third one collates some of the works that were examined, but, for various reasons, did not meet the criteria to be listed in the catalogue (see below, 5.4). The database consists of folders named after each author of *differentiae* collated in the catalogue. Each folder contains a file with biographical data excerpted from the Internet, as well as up to four editions of the respective work in PDF format.

In this paper, we describe the contents of the catalogue as well as some of the challenges that arose during its creation. In many instances, we refer to our research outcomes published elsewhere, as the dissemination of the catalogue complements our earlier findings. Finally, we close with some suggestions on how our catalogue could be exploited in future research on *differentiae*.

[1] The authors express their gratitude to all scholars who provided suggestions concerning the catalogue of *differentiae*, particularly to Maria Kola, who drafted the first version of the catalogue using the data provided by Piotr Alexandrowicz.
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The earlier version of the working catalogue of *differentiae* is available for use here: https://bit.ly/differentiaeiuris.
[2] https://zenodo.org/records/13090865.

2. State-of-the-art on early modern differentiae

While the contents of *differentiae* are not analysed in this paper, it is appropriate to provide some references to the literature relevant to this subject. A short overview of the state-of-the-art will serve to expedite future investigations in this area. Prior to our research project, there were few direct accounts of early modern *differentiae*[3], and even the marginal references to these works were scarce.[4] As part of our project, we have produced several papers dedicated to this subject. These papers discuss the methodological premises of *differentiae*,[5] the use of legal pragmatic literature in *differentiae*,[6] the assessment of comparative contract law in *differentiae*,[7] the role of *differentiae* for *ius commune*,[8] *differentiae* as seen through a confessional lens,[9] the presentation of usury in *differentiae*,[10] and *differentiae* accounts of *praescriptio* and *bona fides*.[11] Despite these efforts and our broad approach to the subject, much remains to be investigated. We hope that the catalogue and database presented here may facilitate future research on *differentiae*.

3. Sources relevant to the compilation of the catalogue

The first search for early modern *differentiae* was initially conducted for the purpose of drafting a research proposal dedicated to this subject, and these early findings were later supplemented by new research during the implementation of the funded project.[12] As there are no comprehensive catalogues of early modern legal books, we conducted our queries in all possible directions. The ancient legal bibliographies consulted during our research on *differentiae* were catalogues by Martin Lipenius, Agostino Fontana, and Burkhard Gotthelf Struve. While these proved very useful, they were not always very precise in terms of

[3] O. Stobbe, *Geschichte der deutschen Rechtsquellen*, vol. 2, Braunschweig 1864, 155-157; A. Söllner, 'Zu den Literaturtypen des deutschen usus modernus', *Ius Commune* 2(1969), 185-186; H. Schnitzer, 'Differentienliteratur zum kanonischen Recht. Eine unbekannte Literaturgattung als Beleg zur dialektischen Kraft des kanonischen Rechts in der Privatrechtsentwicklung der Neuzeit', in: *Walter Wilburg. Zum 70. Geburtstag. Festschrift*, Graz 1975, 335-353; U. Wolter, *Ius Canonicum in Iure Civili: Studien zur Rechtsquellenlehre in der neueren Privatrechtsgeschichte*, Köln 1975, 55, 68-69; A. Söllner in: H. Coing (ed.), *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, vol. 2: *Neuere Zeit (1500-1800). Das Zeitalter des gemeinen Rechts, part 1: Wissenschaft*, München 1977, 555; H. Mohnhaupt, 'Die Differentienliteratur als Ausdruck eines methodisches Prinzips früher Rechtsvergleichung', in: B. Duran, L. Mayali (eds.), *Excerptiones iuris: Studies in Honor of André Gouron*, Berkeley 2000, 439-458; G. Dolezalek, 'Differentienliteratur', in: A. Cordes et al. (eds.), *Handwörterbuch zur deutschen Rechtsgeschichte*, vol. 1, Berlin 2008, col. 1059-1061.

[4] This kind of references may be found in more recent papers dedicated to the subject listed in the footnotes below.

[5] Alexandrowicz, Kola, 'Differentiae'.

[6] P. Alexandrowicz, '*Differentiae* on *quarta Trebellianica*: legal practice and the scholarly discourse of *ius commune*, in: M. Vermeer, W. Druwé, M. Mikuła (eds.), *Testamentary Freedom, Ius Commune and Particular Law (c. 1400-1620)*, Leuven 2023, 131-152.

[7] P. Alexandrowicz, 'Early modern comparative contract law', *Comparative Legal History* 12/1(2024), 4-28.

[8] P. Alexandrowicz, 'The early modern *differentiae iuris civilis et canonici* and *ius commune*', *Clio@Themis* 27(2024), 1–20.

[9] P. Alexandrowicz, P. Dziwiński, 'Early modern Catholic and Protestant differentiae iuris civilis et canonici: learned laws and confessional tensions', in: P. Alexandrowicz, S. Di Paolo, D. Smith (eds.), *Legal Norms, Procedures, and Exchanges in the Medieval and Early Modern* ius commune*: Essays from the 16th International Congress of Medieval Canon Law*, Washington (under review).

[10] P. Dziwiński, 'The Purposes of Early Modern *Differentiae* Genre in a Religious Context: A case of a Canonical Ban on Usury', *Tijdschrift voor Rechtsgeschiedenis* (accepted).

[11] P. Alexandrowicz, M. Kola, 'Apples and oranges: Examination of the (dis-)continuity of late medieval and early modern differentiae iuris civilis et canonici', *Historia et ius*, 25(2025), paper no. 8, 1–20.

[12] This process has been described earlier in P. Alexandrowicz, M. Kola, 'Differentiae iuris civilis et canonici. The methodological premises of an early modern German legal genre', *Glossae: European Journal of Legal History* 18(2021), 187, n. 69.

their classification of *differentiae*.[13] These were supplemented by general introductions to the history of canon law[14], as well as queries in various digital and printed databases and catalogues.

In some cases, we also learned about other *differentiae* from references in later works from the same genre. The third and fourth editions of Konrad Rittershausen's collection of differences were edited together with three other examples of *differentiae*, which were listed after the title page and before the contents in *Catalogus opusculorum eorum, quae operi huic accesserunt*.[15] Francesco Guidotti listed six authors of earlier *differentiae*.[16] Matthäeus Joseph Reichel provides the most extensive list of *differentiae* contained in other works from this genre, which encompasses five key medieval treatises together with four early modern ones[17]; however, it appears that he intentionally only included Catholic authors of *differentiae*. In the second edition of *differentiae* by Gottfried Felov, a short *Praefamen* listing other examples of similar works was added.[18] General references to other *differentiae* can also be found in the works of Georg Lauterbeck, Christoph Wegner (in the *Praefatio* by Johann Schilter), and Gallo Cartier.[19]

The catalogue of *differentiae* presented here is the first comprehensive attempt to list all early modern *differentiae,* including relevant metadata.

4. Contents of the catalogue

Each row presents the details of one example of early modern *differentiae*, while each column contains the data we identified as relevant during our research. The columns have been grouped into four segments. First, general data: author, title, place of the first edition, date of the first edition, and publisher of the first edition. Second, the more detailed presentation of contents of the work: size (small – up to 50 pages, medium – between 51 and 150 pages, large – over 150 pages), number of pages in the first edition, a brief description of the work, a short summary of the differences described, and a note on the methodology of the work, as presented in the dedicatory letter, foreword, or introduction. The third segment contains more information on the author: birthplace, lifespan and basic details, as well as the author's confession and an explanation of sources for our knowledge of confession. The final segment includes information on the number of editions, links to up to four different editions of the work, and other relevant notes in the final column. Some columns were added (e.g. size) to make the application of filters to the contents of the database more effective.

Our catalogue contains thirty-six works that we have assigned to the genre of early modern *differentiae* (on the criterion central for such an assignment, see below 5.1). We generally estimate that

[13] Martin Lipenius, *Bibliotheca realis iuridica, omnium materiarum, rerum, et titulorum, in univero universi iuris ambitu occurentium ordine alphabetico sic disposita*, Francofurti ad Moenum 1679, 140-141; Agostino Fontana, *Amphitheatrum legale in quo quilibet operum legalium author habet suam sedem ordine alphabetico collocatam seu Bibliotheca legalis amplissima*, pars 3, Parmae 1688, 229-234; Burkhard Gotthelf Struve, *Bibliotheca iuris selecta secundum ordinem litterarium disposita et ad singulas iuris partes directa*, Ienae 1756, 302-303.

[14] J.F. von Schulte, *Die Geschichte der Quellen und Literatur des Canonischen Rechts von Gratian bis auf die Gegenwart*, vol. 3: *Von der Mitte des 16. Jahrhunderts bis zur Gegenwart*, part 2-3: *Das evangelische Recht, die evangelischen Schriftsteller, die Geschichte der wissenschaftlichen Behandlung, Uebersicht*, Stuttgart 1880, 349; R. von Scherer, *Handbuch des Kirchenrechtes*, vol. 1, part 1, Graz 1898, 124; A. van Hove, *Prolegomena ad Codicem iuris canonici*, Mechliniae-Romae 1945, 569-570.

[15] Konrad Rittershausen, *Differentiarum iuris civilis et canonici seu pontificii libri septem*, Strasbourg, 1668.

[16] Francesco Guidotti, *Consensio et dissensio iuris civilis et canonici*, Patavii 1671, p. 143.

[17] Matthäeus Joseph Reichel, *Dis- et concordantia canonum et legum seu disputatio inauguralis de differentiis inter iura communia, canonicum et civile universum*, Neo-Pragae 1683, 11-12.

[18] Gottfried Felov, *Disputatio iuridica continens differentias iuris civilis et canonici*, Francofurti ad Viadrum 1683, 3.

[19] Georg Lauterbeck, *Differentiarum in iure libri duo*, Basileae 1548, 132; Johann Schilter, *Institutiones iuris canonici ad ecclesiae veteris et hodiernae statum accomodatae*, Argentorati 1688, 304; Gallo Cartier, *Institutiones iurisprudentiae canonico-civilis*, Augustae Vindelicorum 1758, 25.

there were 'approximately forty works of this kind', as it is highly probable that some *differentiae* have not been included in our list (particularly short dissertations). The earliest example in our catalogue is a treatise from 1517 (by Fortún García de Ercilla y Arteaga)[20], and the most recent is the general handbook from 1758 (by Gallo Cartier)[21], though most of these works were produced in the seventeenth century. Over 80% of these works were written by authors from regions under German cultural and legal influence, encompassing not only the German territories proper but also the Low Countries and Switzerland. Fifteen authors were Lutheran, fourteen were Catholic, six were Calvinist, and one work is anonymous (see below 5.3).

Eight of the works collated were large, eight were medium, and the remaining twenty were small. These labels can sometimes be misleading – for example, the work of Justus Christoph Willerding is extensive, but the *differentiae* scattered throughout its contents are very short. *Differentiae* were mostly written for scholarly or intellectual purposes, though in some cases, they were aimed at the legal practitioners or students. About half of the early modern *differentiae* were printed only once, twelve works were published between two and four times, and the rest were published more frequently. The most frequently published *differentiae* were those that were included in larger volumes dedicated to certain general topics, usually handbooks of canon law (see below 5.2).

The fundamental and most relevant observation from our research is that early modern *differentiae* were highly heterogenous. It is almost impossible to find common characteristics applicable to these works, yet we argue that it is possible to group the works together under one specific type of legal genre. For our research, the contents of *differentiae* were more important than the size or number of editions. We struggled to establish a criterion to assess which works were most relevant and to define the *differentia specifica* of this genre (see below 5.1). In other publications from the project mentioned above, we claim that the key element of all the relevant early modern *differentiae* was the methodological approach to the sources of the two bodies of law, which may be described as comparative. In this respect, it is particularly relevant to distinguish the difference between simple *differentiae* (late medieval or early modern), which simply listed the discrepancies with short descriptions and references to relevant sources, and extensive *differentiae* – a couple of early modern works that were more nuanced and applied a consistent methodology to understand the rationales of conflicting norms and explore their reconciliation.

This early modern comparative legal method for listing discrepancies also included descriptions of the rationales behind differing solutions, some general rules of precedence defining which law should prevail in cases of dissonance between canon and civil law, and attempts to reconcile the conflicting norms. This methodological criterion seems to us to be the most relevant characteristic of this early modern legal genre, as it grasps its core objectives and functions. Alas, it proved less useful for our catalogue, in which we aimed to list all the examples of *differentiae*, including the simpler ones – i.e. those that did not apply sophisticated methods and reasoning, but focused on listing discrepancies between the two bodies of law.

5. Selected problems concerning the composition of the catalogue

5.1. Formal and material criterion

An initial key question was most fundamental: which works can be *truly* classified as *differentiae*? The significance of this question becomes immediately apparent when one initiates research on the subject.

[20] Fortún García de Ercilla y Arteaga, *De ultimo fine iuris canonici et civilis, de primo principio et subsequentibus praeceptis, de derivatione et differentiis utriusque*, Bononiae 1517.
[21] Gall Cartier, *Institutiones*.

The legal bibliographies mentioned above were not consistent in listing the works under the heading of *differentiae iuris*, there were no attempts to collate such works in the scholarly literature, and even the authors of *differentiae* only occasionally openly linked their works with other contemporary treatises of the same kind.

Initially, we applied two criteria in our working catalogue of *differentiae*. A formal criterion stipulated that a work that included any form of the word *differentia* (or possibly a synonym) in its title may be counted as an example of *differentiae*. A material criterion examined the contents of the work, namely the collation and description of discrepancies between the two bodies of law. While the material criterion was more relevant, the formal one was also important, as it was a central argument for claiming the taxonomical distinctiveness of the *differentiae* genre. During our research, we shifted our focus entirely to the material criterion. Therefore, for the sake of communicative clarity, we consider a work as *differentiae* when it lists the differences between the institutions of canon law and civil (Roman) law, regardless of whether the specific word *differentia* is used in the title. Finally, over 80% of the works included in our catalogue express the conceptual core of this genre (*differentiae*, *antinomiae*, *controversiae*) in the title.

5.2. Number of editions

Another issue that created some challenges was the number of editions of *differentiae*. As indicated above, the number of editions ranged from one to almost twenty. The most frequently published were the *differentiae* by Henricus Canisius, Giovanni Paolo Lancelotti, Anacletus Reiffenstuel, and Johannes Voet. These were either parts of, or additions to, longer treatises and handbooks, which is why they were printed so often. In these cases, we decided not to count *all* the editions: in the catalogue, for example, we tried to indicate the number of editions published within given timeframes (ca. the first hundred years in each case). For the remaining authors, we attempted to count all the editions of *differentiae*. Up to four editions are provided with links and included in our database as PDF files (except for the most often published works, for which we could not verify the dates of the editions following *editio princeps*).

There were three cases in which we did not manage to find the editions mentioned in the literature or databases. In the case of Johann Peter von Ludewig, WorldCat mentions the third and fourth editions, but we failed to locate them. In the case of Fortún García de Ercilla y Arteaga, we counted four editions mentioned in the literature, but we were unable to find the second one (the first one was digitised upon our request and later added to the digital database). The most intriguing one is the most important example of *differentiae*, i.e. the posthumously published work of Konrad Rittershausen. In the literature, it is regularly mentioned as having four editions, all printed in Strasburg: in 1616, 1618, 1638, and 1668. We have made extensive efforts to find the *editio princeps* in various databases and catalogues, but unfortunately, without success. Still, it is difficult to claim that this edition entered the biographical records by sheer accident or misspelling, so we prefer to leave this point without a clear explanation. Additionally, we did not consult the first edition of Lancelotti's work, but there is no doubt regarding the existence of this edition due to secondary literature.

5.3. Religious affiliations

The main objective of the project was to study *differentiae* in order to identify the inner tensions within *ius commune* in early modern times and to understand how early modern legal novelties were rooted in medieval concepts. To achieve this, we examined the divergences within the genre that could be attributed to the authors' confessional beliefs. The hypothesis was that the *differentiae* written by Catholics or Protestants would reflect the confessional tensions of their era. This would be expressed particularly in

the differences in attitude towards canon law and the achievements of the medieval science of canon law. Such contrasts could serve as a useful touchstone for research on early modern law, to better understand how the dawn of modernity influenced methodological changes in legal science.

The authors' religious affiliations were catalogued, with only sixteen having established affiliations through publicly available biographical information, such as *Allgemeine Deutsche Biographie*, *Neue Deutsche Biographie*, *Dizionario Biografico degli Italiani*, and the *Catholic Encyclopedia*. Each entry was downloaded and categorised under the respective author in the database. In these cases, the label "Bio" was added under the religion category in our Excel file.

For the nineteen writers whose biographical data either lacked details on their confession or had not yet been aggregated, the information sources were examined in the following sequence: First, an analysis was conducted on the treatise under study and the author's other works (if any were found), particularly their introductions (*prefamen*, *proemium*, *praefatio*) and available dedicatory annotations (*nota dedicatoria*) to gather information about the author's personal life or connections (such as promoters, reviewers, thesis committee superiors, or patrons). Second, we conducted research on the author's academic and professional career, as well as their state status, by examining publicly available online court and university records. If these steps did not yield the desired results, we searched for information in chronicles, document collections, and genealogical and historical studies that could provide insight into both personal connections and professional history.

The study was conducted in such a way that the author's denomination could be confidently established based on several simultaneous clues. These clues typically included the confessional affiliation of the author's university or place of work (i.e. the city or country where the author held office or the school where he taught), the denomination of close family members or patrons (especially parents, spouses and children), and the author's explicitly expressed confessional preference. For instance, Gottfried Fehlow studied at a university that was predominantly Lutheran (*Alma Mater Viadrina*, Frankfurt an der Oder) and his supervisor was the Lutheran scholar Samuel Stryk (1640-1710). Additionally, court records from the Mark Landin/Schwedt an Oder region suggest that the author and his family were dependent on the Lutheran line of the Margraves of Brandenburg (Friedrich III Hohenzollern, 1688-1712).

Verifying the author's confession was not always possible, particularly for Jean Bellon and Petrus Zachäus. Bellon's Catholicism was deduced from the time of publication of his works, which coincided with the predominantly Catholic activities of the universities (Avignon and Toulouse) where they were produced. In the case of Zachäus, the presumption was based on two premises. The author's work was reprinted in academic centers with strict Catholic affiliations, specifically in Ingolstadt (1573) and in Freiburg im Breisgau (1574). The circumstances and content of his delivery of the *Elegia Natalem Filii* in Halle in 1563 are of lesser significance, as this speech, which was only neutral in tone, took place during the period of the gradual introduction of the Reformation in the city.

At the same time, it is important to note that we cannot always guarantee the accuracy of our assumptions, as this would require perfect knowledge of the religious history of each author's place of origin and activity. In fact, during the course of interpreting the texts, we have had to revise our original assumptions, as in the case of Johann Jacob Brandmüller. Initially, we assumed he was Catholic, based on the location of his baptism at Albanskirche (Basel), which we identified as a functioning Catholic church in the seventeenth century. However, it should be noted that Catholics did not reintroduce their rite to the city until the eighteenth century. For transparency, we have included the source materials that informed our hypotheses in the folder dedicated to each author for the reader's review.

To conclude, we should also stress that identifying the denomination of the *differentiae* authors was only our secondary objective and not the main focus of our research. In one of our studies, we claim that the confessional tensions between various authors of *differentiae* were of marginal importance, as these works were not written with the aim of addressing theological issues.[22] Still, for obvious reasons, one can discern some specificities rooted in the theological presuppositions of the author of *differentiae*.[23]

5.4. Other similar works and missing differentiae

In our Excel file, two other spreadsheets were added. The first one lists works that were very likely *differentiae*, which we learned about during our research, but were unable to find and examine (three works). The most interesting example is the treatise by Matteo Gribaldi Mofa, as it was listed by Reichel in his list of other *differentiae*. These records require further clarification in the future.

The final spreadsheet lists works which, for various reasons, required examination to determine whether they were *differentiae* or not. These were identified in ancient bibliographies, the literature, and digital databases and catalogues. There are books that include *differentia* in the title but only list differences within civil law, between civil law and local laws (there are many works of this kind and only some were listed here), between the two fora (*forum internum* and *forum externum*); handbooks or introductions to canon law; *loci communes*; and many other original or even exotic works of various nature and length. We have included these in the file for two reasons. First, they document our broad search and the shortcomings of ancient catalogues, which sometimes applied incoherent criteria for listing *differentiae* and included some of these works. Second, they may prove to be useful for future research on *differentiae*, as they occasionally discuss similar issues but apply a different approach.

6. Possible uses of the catalogue in future research

We consider this catalogue as both the outcome of our scholarly project on *differentiae* as well as the starting point for further research on these works. There is a variety of topics that may still be investigated and that may benefit from this catalogue. For instance, one can expand this catalogue by providing the contents of each work, which would facilitate comparative research on points of contention between the two bodies of law (similar to the tables provided by Jean Portemer for medieval *differentiae*)[24]. This would lay the foundation for case studies like the one conducted by our team dedicated to usury, contracts, or *bona fides* and *praescriptio*.

An expanded database organising specific differences by subject matter could then serve as a simple and quick point of reference for all scholars working on early modern Roman and canon law. The advantage of presenting legal topics within *differentiae* is that often this was done in a concise manner, which makes *differentiae* a valuable resource for anyone interested in *utrumque ius* of the early modern period. Such a database would be a powerful tool supplementing research, but its creation would require a considerable amount of time, possibly within the scope of another research project.

Clearly, there is much room for improvement in the biographical information about the authors – for example, searching for more details in this regard and grouping *differentiae* according to specific scholarly centres in Germany. This could also open up the possibility to challenge our preliminary observations on the relevance of confessional tensions within *differentiae*. There is also much to be done regarding the

[22] Alexandrowicz, Dziwiński, 'Early modern'.
[23] Dziwiński, 'The Purposes'.
[24] J. Portemer, *Recherches sur les Differentiae juris civilis et canonici au temps du droit classique de l'Eglise*, Paris 1946, 136-151.

comparison of the *differentiae* we have investigated with the rest of the works compiling differences between, for example, civil law and local laws. Our catalogue can also support this kind of research.

Finally, this catalogue may also deepen scholars' understanding of early modern works in relation to contemporary legal issues. *Differentiae* may be studied, for example, by scholars interested in the comparative legal method, in legal pluralism, or in law and religion studies. Our catalogue may prove useful as a starting point into the legal history of these relevant topics. Similarly, for those working on specific issues such as usury or prescription, *differentiae* may constitute a solid introduction into the matters most fiercely discussed by early modern scholars. This could serve as an introduction into the presentation of modern debates, which sometimes mirror those from earlier centuries.

In general, we hope that our work will provide a foundation for future in-depth research into the content of early modern *differentiae* literature.

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