

**DECISIVE DISSENT: THE ROLE OF LEARNED MEN  
IN DECISION-MAKING PROCESSES OF THE SPANISH  
INQUISITION ACCORDING TO THE RECORDS  
OF THE SO-CALLED CONSULTAS DE FE HELD  
IN THE TRIBUNAL OF CUENCA (1489-1500)\***

SEBASTIAN ROTHE  
Universität Münster

**Resumen:** Los registros de las denominadas consultas de fe ofrecen una visión única de los procesos de toma de decisiones dentro de la Inquisición española. Son de especial interés los pocos casos de disentimiento registrado entre los consultores, que muestran las alternativas en cuestión y el margen de maniobra de los inquisidores para la toma de decisiones.

**Palabras clave:** Consultas de fe, consultores, Inquisición española

**Abstract:** The records of the so-called consultas de fe offer unique insights into the decision-making processes of the Spanish inquisition. Especially the few cases of recorded dissent among the learned men show the alternatives at issue and the inquisitors' scope for decision-making.

**Keywords:** *consultas de fe*, learned men, Spanish Inquisition

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## I. INTRODUCTION

“O the depth of the riches both of the wisdom and knowledge of God! how unsearchable are his judgments, and his ways past finding out! For who hath known the mind of the Lord? or who hath been his counsellor?” (Rm 11:33-34)

With this rhetorical question, the Apostle Paul wants to highlight the limited human cognition of God’s will as well as God’s omniscience as a being which does not need anybody’s counsel. However, this passage is also informative about how to investigate cultures of decision-making. Since it is impossible to investigate the decision-maker’s mind –at least with methods of the humanities–, we have to investigate other significant influences in decision-making processes, such as the role of the counsellors. Or how the German early modern historian Barbara Stollberg-Rilinger puts it: “The inner ‘act of deciding’ is not externally observable, so historians should leave this to psychologists”<sup>1</sup>. This bible passage can also give us a hint about the semantic difficulties which occur when dealing with premodern sources: In the official German ecumenical bible edition, the Greek “krímata” or Latin “iudicia” are translated as “Entscheidungen”, i.e. decisions, whereas Martin Luther translated it more accurately with “gerichte”<sup>2</sup>. Nevertheless, judging can be understood as decision-making<sup>3</sup>.

In this paper, I will focus on the role played by learned men who were called upon by the inquisitors to participate in the so-called *consulta de fe*. Thus, I, on the one hand, want to contribute to our general understanding of the relationship between counseling and decision-making. On the other hand, I will address an aspect of the history of the Spanish inquisition that has been somewhat neglected. This impression is affirmed by Jean-Pierre Dedieu who ascribes a “rôle capital” to the *consultores* and urgently demands a monograph on this topic<sup>4</sup>. Although Dedieu wrote about this need in 1989, as far as I can see, not much work has been done to fill this research gap.

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1 STOLLBERG-RILINGER, Barbara, *Cultures of Decision-Making*, London, 2016, 6. And she continues: “As a historian, I am interested in decision-making as a communicative phenomenon, and primarily (but not exclusively) as a collective action.”

2 *Die Bibel. Altes und Neues Testament*. Einheitsübersetzung, ed. on behalf of the bishops of Germany et al., Stuttgart, 1980: “O Tiefe des Reichthums, der Weisheit und der Erkenntnis Gottes! Wie unergründlich sind seine Entscheidungen, wie unerforschlich seine Wege! Denn wer hat die Gedanken des Herrn erkannt? Oder wer ist sein Ratgeber gewesen?”; *Nestle-Aland. Novum Testamentum Graece*, ed. by Barbara and Kurt ALAND et al., Stuttgart, 27<sup>th</sup> 1993: “Ὁ βάθος πλοῦτους καὶ σοφίας καὶ γνώσεως θεοῦ · ὡς ἀνεξεραύνητα τὰ κρίματα αὐτοῦ καὶ ἀνεξεχνίαστοι αἱ ὁδοὶ αὐτοῦ. τίς γὰρ ἔγνω νοῦν κυρίου; ἢ τίς σύμβουλος αὐτοῦ ἐγένετο”; *Biblia sacra iuxta Vulgatam versionem. Editionem quintam emendatam retractatam praeparavit* Roger GRYSOON, Stuttgart, 2007, S. 1763f.: o altitudo divitiarum et sapientiae et scientiae Dei quam incomprehensibilia sunt iudicia eius et investigabiles viae eius quis enim cognovit sensum Domini aut quis consiliarius eius fuit”; *Martin Luther. Die gantze Heilige Schrift Deusch. Der komplette Originaltext von 1545 in modernem Schriftbild*, ed. by Hans VOLZ et al., München, 1972: “O welch ein tieffe des reichthums / beide der weisheit vnd erkenntnis Gottes / Wie gar vnbegreiflich sind seine gerichte / vnd unerforschlich seine wege. Denn wer hat des HERRN sinn erkand? Oder wer ist sein Ratgeber gewesen?”

3 STOLLBERG-RILINGER, *Decision-Making*, 10 considers the Last Judgment as a “primal scene of decision-making” because it “presents the act of deciding as a court judgment.”

4 DEDIEU, Jean-Pierre, *L'administration de la foi. L'inquisition de Tolède XVIe - XVIIIe siècle*, Madrid, 1989, 137: “Ce groupe est l’un des plus mal connus, en dépit du rôle capital qu’il jouait dans la marche des affaires. Il est urgent de lui consacrer une monographie.”

## II. THEORETICAL CONSIDERATIONS, SOURCES AND APPROACH

In the following, the inquisitorial proceeding is understood as the social and communicative framework which frames social action as decision-making. According to the German sociologist Niklas Luhmann, the function of legal proceedings –like that of any procedure– is to guarantee that a decision is made in the end<sup>5</sup>. In criminal cases, one is either guilty or not guilty. For Luhmann, a court procedure has to fulfill two tasks: On the one hand, the sentence has to be presented as the only right decision which could have been made in order to satisfy public expectations<sup>6</sup>, on the other hand, participants must consider the procedure as an open issue as long as possible to avoid losing interest<sup>7</sup>. Thus, a court procedure consists of many little decision steps<sup>8</sup> which help to construct the common narrative that judges do not decide, but that sentences logically derive from facts and norms.<sup>9</sup>

The main sources of the following study are the records of the tribunal of Cuenca and the general inquisitors' instructions on the proceedings. The tribunal of Cuenca is the one with the highest number of surviving records<sup>10</sup>, so that there is a proper basis of sources which is required for the approach that I follow. This paper will concentrate on the period from 1489 to 1500 which, according to Dimas Pérez Ramírez, will be called the period of the First Inquisition in Cuenca<sup>11</sup>.

There are studies based on the documents from Cuenca concerning the inquisitorial activity in a certain place<sup>12</sup> or concerning all trials of a certain delict<sup>13</sup>, or concerning certain

5 Cf. LUHMANN, Niklas, *Legitimation durch Verfahren*, Neuwied am Rhein et al., 1969, 21; 41.

6 LUHMANN, *Legitimation*, 60 notes that this ideal contradicts the very purpose of a procedure, because if there indeed was only one correct decision, the procedure would be unnecessary; STOLLBERG-RILINGER, *Decision-Making*, 8: "A 'decision without alternatives' is a contradiction in terms, since if a decision followed inevitably from good reasons, this would be a deterministic deduction, an automatism, and not a decision. [...] at the moment of deciding itself, the 'correctness' of the decision is never completely guaranteed."

7 Cf. LUHMANN, *Legitimation*, 116: „Motor des Verfahrens aber ist die Ungewißheit über den Ausgang. Diese Ungewißheit ist die treibende Kraft des Verfahrens, der eigentlich legitimierende Faktor. Sie muß daher während des Verfahrens mit aller Sorgfalt und mit Mitteln des Zeremoniells gepflegt und erhalten werden [...]. Die Spannung muß bis zur Urteilsverkündung wachgehalten werden.“

8 Luhmann calls the procedure a "decision history"; cf. LUHMANN, *Legitimation*, 40: "So läuft das Verfahren ab als eine Entscheidungsgeschichte, in der jede Teilentscheidung einzelner Beteiligter zum Faktum wird, damit den anderen Beteiligten Entscheidungsprämissen setzt und so die gemeinsame Situation strukturiert, aber nicht mechanisch auslöst, was als nächstes zu geschehen hat."

9 Cf. LUHMANN, *Legitimation*, 109.

10 Cf. HENNINGSSEN, Gustav, "The Archives and the Historiography of the Spanish Inquisition", in HENNINGSSEN, Gustav/TEDESCHI, John (eds.), *The Inquisition in Early Modern Europe. Studies on Sources and Methods*, DeKalb, Illinois, 1986, 59: "Its almost 8,000 trial records make it the best preserved tribunal." For the history of the tribunal's archive, which until today has never been moved from the city of Cuenca, cf. CIRAC ESTOPAÑÁN, Sebastián, *Registros de los documentos del Santo Oficio de Cuenca y Sigüenza*, Cuenca et al., 1956, 20 f.

11 Cf. PÉREZ RAMÍREZ, Dimas, *Catálogo del Archivo de la Inquisición de Cuenca*, Madrid, 1982, 23. The period under study in my PhD thesis is the reign of the Catholic Monarchs so that I will also consider the so-called period of the Second Inquisition in Cuenca during the 1510s.

12 Cf. e.g. BLÁZQUEZ MIGUEL, Juan, *La Inquisición en Albacete*, Albacete, 1985; id., *Huete y su tierra. Un enclave inquisitorial conquense*, Huete, 1987; id., *San Clemente y la inquisición de Cuenca*, Cuenca, 1988; ALABAU MONTOYA, José, *Inquisición y frontera. La actuación del tribunal del Santo Oficio en los antiguos arciprestazgos de Requena y vicariato de Utiel (en el obispado de Cuenca)*, Cuenca, 2013; MORENO KOCH, Yolanda, "La comunidad judaizante de Castillo de Garcimuñoz. 1489-1492", *Sefarad*, 37 (1977), 351-372.

13 Cf. e.g. CIRAC ESTOPAÑÁN, Sebastián, *Los procesos de hechicerías en la Inquisición de Castilla la Nueva. Tribunales de Toledo y Cuenca*, Madrid, 1942; CORDENTE MARTÍNEZ, Heliodoro, *Brujería y hechicería en el Obispado de Cuenca*, Cuenca, 1990; SANTANA MOLINA, Manuel, *El delito de blasfemia en el tribunal inquisitorial*

social groups like clerics<sup>14</sup>, family members<sup>15</sup>, *Conversos*<sup>16</sup>, *Moriscos*<sup>17</sup>, foreigners<sup>18</sup>. My approach is a bit different: In my study, recorded dissent among the learned men serves as a starting point for further investigation. The advantages of this approach will be presented in the following.

### III. THE CONSULTA DE FE IN NORMATIVE SOURCES

What were the so-called *consultas de fe*? These meetings were held after the evidence had been heard, but before the sentence was proclaimed<sup>19</sup>. In other words, it was the procedural step which connected the process of decision-making and the decision, and I will argue that this is exactly where we can find the greatest contingency. According to Stollberg-Rilinger “[d]ecisions are by definition contingent, that is, one could always decide otherwise”<sup>20</sup>. Decision-making is constituted by ambiguity and uncertainty. If something is considered as certain, there is no need to make a decision. That the inquisitors also felt insecure concerning their decisions is evident in a unique way in the instructions of 1488, which state:

“[...] que algunos de los Inquisidores no quedan seguros, ni satisfechos quanto a sus conciencias, y por estas causas se dilata la determinación de los dichos procesos, lo cual es contra disposición del Derecho [...]”<sup>21</sup>

Here, a causal connection is made between the inquisitors’ insecurity and the trials’ delay. The reason for that is stated as well: The inquisitors had difficulties to find learned men, i.e. *letrados*, or at least such persons whom they considered trustworthy in order to consult with them<sup>22</sup>.

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*de Cuenca*, Alicante, 2004; SARRIÓN MORA, Adelina, *Sexualidad y confesión. La solicitud ante el Tribunal del Santo Oficio (siglos XVI-XIX)*, Cuenca, 1994.

14 Cf. e.g. CARRETE PARRONDO, Carlos, “La Inquisición y los clérigos judaizantes de Cuenca (1489-1491)”, *Helmantica*, 30 (1979), 51-61; id., “Los clérigos judaizantes de Hueté”, *Anuario de estudios medievales*, 12 (1982), 411-420.

15 Cf. e.g. GARCÍA MORTALLA, Pedro Joaquín, “Criptojudasmo en La Roda. Procesos de la inquisición contra la familia Salas en 1494”, in PRETEL MARÍN, Aurelio (ed.), *II Congreso de Historia de Albacete*, II, Albacete, 2002, 163-179; PARELLO, Vincent, “Los Castillos ante el tribunal de la Inquisición de Cuenca (siglos XV-XVII)”, *Les Cahiers de Framespa*, 18 (2015).

16 Cf. PÉREZ GARCÍA, Juan Carlos, “Los conversos de Cuenca. Inquisición y mesianismo”, in CRUSELLES, José Manuel (ed.), *En el primer siglo de la inquisición española. Fuentes documentales, procedimientos de análisis, experiencias de investigación*, Valencia, 2013, 105-124

17 Cf. GARCÍA-ARENAL, Mercedes, *Inquisición y moriscos. Los procesos del tribunal de Cuenca*, Madrid, 1978.

18 Cf. CARRASCO, Rafael, “Preludio al ‘siglo de los portugueses’. La inquisición de Cuenca y los judaizantes lusitanos en el siglo XVI”, *Hispania*, 47, 166 (1987), 503-559.

19 Cf. FERNÁNDEZ GIMÉNEZ, María del Camino, *La sentencia inquisitorial*, Madrid, 2000, 38; AGUILERA BARCHET, Bruno, “El procedimiento de la Inquisición española”, in ESCANDELL BONET, Bartolomé/PÉREZ VILLANUEVA, Joaquín (eds.), *Historia de la Inquisición en España y América*, Madrid, 1993, II, 334-558, 460.

20 STOLLBERG-RILINGER, *Decision-Making*, 8.

21 JIMÉNEZ MONTESERÍN, Miguel, *Introducción a la inquisición española. Documentos básicos para el estudio del Santo Oficio*, Madrid, 1980, 107. These instructions were not meant to become known to the public, cf. DOMÍNUGUEZ NAFRÍA, Juan Carlos, “Las Instrucciones como fuente del derecho inquisitorial”, in ESCUDERO LÓPEZ, José Antonio (ed.), *Intolerancia e Inquisición*, Madrid, 2005, I, 455-493, 490 f.

22 Cf. JIMÉNEZ MONTESERÍN, *Introducción*, 107: “[...] porque en algunas partes no se pueden haber Letrados, y tanta copia dellos como los Inquisidores querrian y al negocio cumple, para haber de consultar con ellos los dichos

So, the consultation of learned men was regarded as a necessary resource in the decision-making process and seems to have played an important role in the aforementioned turning point in the proceeding from uncertainty to certainty. This corresponds with the way the inquisitorial decision-making process was described in the sentence text where the consultation with learned men can be found as a standard phrase in the transitory passage between the first part, which describes the proceeding, and the second part, which is the proper pronouncement of judgment<sup>23</sup>. Indeed, the consultation of learned men was ordered by the pope as early as the 13<sup>th</sup> century and became a standard part of the process in the following centuries<sup>24</sup>.

Due to the lack of learned men, in 1488 it was agreed upon that in “dubious trials” a transcript of the file should be sent to the *Consejo*, the general inquisitors’ council, where they would decide upon the trial. A trial was considered dubious when the learned men and the inquisitors did not agree on a decision (“*determinacion*”), or if no learned men were to be found in the city or place<sup>25</sup>. Here, we can obviously see an early step towards centralization<sup>26</sup>. But doesn’t this mean that the learned men gained an even more important role now that the inquisitors and learned men had to reach an agreement before a judgement could be rendered? Did not this new responsibility transform the learned men into decision-makers?<sup>27</sup>

Indeed, in some studies on the Spanish inquisition, the *consulta de fe* is considered “[a] Jury [...] who passed the judgement”<sup>28</sup>. But, formally, the decision was ultimately left to the

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procesos, y aunque se hayan o se puedan haber, no de tanta fidelidad y confianza como es menester [...]” The principal reason why they discussed this issue at the inquisitors’ second assembly convoked by the general inquisitor Tomás de Torquemada seems to have been the many complaints about the inquisitors and especially about the trials’ delay sent to pope and king, which threatened the institution’s persistence in its early years; cf. MESEGUER FERNÁNDEZ, Juan, “El periodo fundacional (1478-1517). El hecho”, in ESCANDELL BONET, Bartolomé/PÉREZ VILLANUEVA, Joaquín (eds.), *Historia de la Inquisición en España y América*, Madrid, 1984, I, 281-370, 300.

23 FERNÁNDEZ GIMÉNEZ, *La sentencia*, 151 calls those two parts of the definitive sentence “visto” and “fallo”; cf. e.g. ADC 1/2, fol. 31v: “[...] visto todo lo otro que necesario fue de ver y examinar abido deliberacion e acuerdo de voto y paresçer de muchos letrados ansy teologos como juristas que presentes estuvieron a la vista y examinacion del dicho proceso teniendo a dios ante nuestros ojos. | Fallamos [...]”.

24 Cf. LEVELEUX-TEIXEIRA, Corinne, “Conseiller, aviser, contrôler? Le rôle ambigu du recours à l’expertise dans les procédures inquisitoriales (XIVe siècle)”, in CHARAGEAT, Martine (ed.), *Conseiller les juges au Moyen Âge*, Toulouse, 2014, 25-46. I have to thank Christine CALDWELL AMES for her paper about “Good Counsel: The ‘Consilium Bonorum Virorum’ in Dominican Heresy Inquisitions”, which she gave at the IMC in Leeds 2016 and which encouraged me to continue my studies on the role of learned men in the Spanish Inquisition.

25 Cf. JIMÉNEZ MONTESERÍN, *Introducción*, 108: “Y esto haya lugar y se entienda en los procesos que fueren dudosos en que los Letrados que los ven y los Inquisidores no se conforman en su determinación, o sí en la ciudad o villa donde estuvieren no pudieren haber Letrados para los determinar o tales y tantos cuantos fueren menester.”

26 For the controversy on the origins of the *Consejo de la Suprema Inquisición*, cf. RODRÍGUEZ BESNÉ, José Ramón, *El Consejo de la Suprema Inquisición*, Madrid, 2000, 46-47.

27 Cf. AGUILERA BARCHET, “El procedimiento”, 463: “[...] en la etapa posterior a las Instrucciones de Torquemada la reunión de los asesores inquisitoriales desplaza abiertamente a la sentencia como acto procesal en el que se decide el resultado del procedimiento. A partir de Torquemada se generaliza la práctica de que la declaración de inocencia o culpabilidad del presunto hereje y, en su caso, la pena aplicable no son fijadas por los inquisidores, sino por sus asesores”. JIMÉNEZ MONTESERÍN, *Introducción*, 169: “Otro sí, que los Inquisidores y el Asesor estén juntos y muy conformes en la ejecución de la justicia y buena administración della y finalmente en todo cuanto pertenece e se habrá de hacer en la Inquisición, de manera que ni el Inquisidor sin el Asesor, ni el Asesor sin el Inquisidor, faga cosa alguna, e si lo ficiere, que por el mismo caso sea ninguno.”

28 RAWLINGS, Helen, *The Spanish Inquisition*, Malden, MA, et al., 2006, 157; MURPHY, Cullen, *God’s Jury: The Inquisition and the Making of the Modern World*, Boston et al., 2012.

inquisitors: The sentence is pronounced in the name of the inquisitors, both apostolic and ordinary. This was prescribed in the council of Vienne in 1312 and affirmed by the Catholic Kings and Pope Sixtus IV after a dispute about that very question<sup>29</sup>. Correspondingly, the sentence is signed by the inquisitors only<sup>30</sup>. The term “*determinar*” is not used anywhere in the sentence, the technical term for rendering a judgment is “*fallar*”<sup>31</sup>. The question then becomes: Were the votes of the learned men binding for the inquisitors’ definitive sentence?

Striking is that there was a debate about this very issue already at that time, or more precisely in the 16<sup>th</sup> century. Arnaldo Albertino argued –referring to the *Liber Sextus*– that the inquisitors were bound by the learned men’s council, which he defines more precisely as a majority vote<sup>32</sup>. Juan de Rojas contradicts Arnaldo Albertino *expressis verbis* and argues that the learned men’s votes are consultative and not decisive by referring to a decree of the *Consejo* which states that it is the inquisitors’ jurisdiction and not the counsellors’; furthermore, he emphasizes the argument that in his time the inquisitors were jurists and not theologians<sup>33</sup>. In inquisitorial manuals written and published during the reign of the Catholic Monarchs, this issue is not treated explicitly, they rather discuss if inquisitors always have to take counsel with learned men: Both Gonzalo de Villadiego, who dedicated his manual to Isabella I of Castile, and Miguel Alberto answered in the affirmative<sup>34</sup>. Already one century

29 Cf. MESEGUER FERNÁNDEZ, “El periodo fundacional”, 300.

30 Cf. e.g. ADC 23/425, fol. 24r; in September 1493 there is even only the apostolic inquisitor’s signature to be found; ADC 1/9, fol. 27r.

31 See above note 23; FERNÁNDEZ GIMÉNEZ, “La sentencia”, 157.

32 Cf. ALBERTINUS, Arnaldus, *De Agnoscendis assertionibus catholicis et haereticis [...]*, Salamandra, Venice, 1571 (<http://www.mdz-nbn-resolving.de/urn/resolver.pl?urn=urn:nbn:de:bvb:12-bsb10166875-8>), Quaestio XXVI, no. 15: “[...] concludo ergo, cum in c.fi.§.iubemus.de haere.lib.6 dicatur. quod de consilio peritorum causa haeresis terminetur ad sententiam uel condemnationem, inquisitor debet requirere consilium peritorum & illud sequi”; *ibid.*, no. 13: “[...] intelligant de consilio maioris partis ditorum consultorum, ut si sint tres, profert de consilio duorum, & ipse iudex computabitur in numero consultorum [...]”; LEA, Henry Charles, *Historia de la Inquisición Española*, trans. by Ángel ALCALÁ, Madrid, 1983, II, 576.

33 Cf. ROJAS, Juan de, *De haereticis [...]*, Ziletti, Venice, 1583 (<http://www.mdz-nbn-resolving.de/urn/resolver.pl?urn=urn:nbn:de:bvb:12-bsb11215895-4>), pars I, nn. 409; 417; 422 f.: “nam Inquisitorum est iurisdictione & non Consultorum, & quod illud iam per proceres supremi, generalisque Inquisitionis Senatuum decretum est, vt ipsi Inquisitores, auditis peritorum suffrageis, actorumque, meritis radicibus inspectis, fidei causas melius & certius diffinire valeant: & hoc nostris praesertim temporibus, quando haereticae prauitatis Inquisitores [423] sint iuris periti, & non Theologi, unde merito Consultorum vota & suffragia sunt consultatiua, & non decisua [...]”. That very decree of the *Consejo* is also cited by Simancas who specifies that it was received by the inquisitors of Cordoba; but he also states that in Valladolid the trials used to be sent to the *Consejo* when the majority did not come to an agreement although the inquisitorial judges had; probably, he relies on the aforementioned instructions of Valladolid from 1488; cf. SIMANCAS, Diego, *De catholicis institutionibus [...]*, In Aedibus Populi Romani, Rome, 1575 (<http://www.mdz-nbn-resolving.de/urn/resolver.pl?urn=urn:nbn:de:bvb:12-bsb10168664-7>), tit. XLI, n. 14; LEA, Historia, II, 576.

34 Cf. VILLADIEGO, Gonsalvo de, *Tractatus contra haereticam prauitatem*, Rome, 1483 (<http://daten.digitalerammlungen.de/~db/ausgaben/thumbnaeilseite.html?file=193.174.98.30&id=00063657&seite=5>), Quaestio 15: “inquisitores prefati & episcopus faciant secum convenire uiros sapientes & doctores deum timentes. cum quorum consilio procedere habent ad sententiam ferendam”; ALBERTO, Miguel, *Repertorium perutile de prauitate haereticorum*, Valencia, 1494 (<http://mdc.cbuc.cat/u/?incunableBC=52941>), s.v. inquisitores, fol. 179v: “Que est ratio quare inquisitores nuocant peritos ad examinationem processum quando non restat nisi ferre sententiam et potest responderi quod cum olim inquisitores erant fratres religiosi et in theologia periti tamen iura ignorabant et quia in ordine iudiciario poterant decipi faciliter ex processibus per eos factis vt non absoluerent condemnandos nec condemnarent absolvendos idcirco vt in talibus procedatur semper preuia veritate et iustitia ideo conuenit circa occurrentia in processu communicare consilia peritorum in iure et licet propter obmissum

earlier, Nicolaus Eimerich had regarded the learned men's counsel as an obligatory part of the inquisitorial procedure without distinguishing between consultative and decisive votes<sup>35</sup>.

So, the question whether the learned men's vote was binding or not had not been clarified when in 1515 the general inquisitor and in 1518 the *Consejo* instructed the inquisitors that they were, indeed, not allowed to render a judgement before having consulted with learned men, but that they were not bound by their counsel either<sup>36</sup>. This shows that at least in some tribunals there seem to have been a different practice. Only the instructions of 1561 established certainty by stating that in cases where the inquisitors and the ordinary had the same opinion, they shall execute this, even if the "consultores" held the majority<sup>37</sup>.

#### IV. THE PRACTICE IN THE TRIBUNAL OF CUENCA

What did the inquisitorial practice in the tribunal of Cuenca look like? Regarding the period of the first inquisition in Cuenca, 376 persons were persecuted<sup>38</sup>. In 138 of these cases, the council records have been transmitted<sup>39</sup>, that is in 37% of all

ordinem iudicarium non vitietur processus"; VOSE, Robin, "Introduction to inquisitorial manuals", *Hesburgh Libraries of Notre Dame, Department of Rare Books and Special Collections*. University of Notre Dame, 2010. [[http://www.library.nd.edu/rarebooks/digital\\_projects/inquisition/collections/RBSC-INQ:COLLECTION/essays/RBSC-INQ:ESSAY\\_InquisitorialManuals](http://www.library.nd.edu/rarebooks/digital_projects/inquisition/collections/RBSC-INQ:COLLECTION/essays/RBSC-INQ:ESSAY_InquisitorialManuals)].

35 Eymeric just quotes the canon law, particularly the *Liber Sextus*, without explaining anything further; cf. EYMERICHUS, Nicolaus, *Directorium inquisitorum [...] cum scholiis seu annotationibus eruditissimis D. Francisci PEGNAE*, Rome, 1578 (<http://www.mdz-nbn-resolving.de/urn/resolver.pl?urn=urn:nbn:de:hbz:5:1-26381-p0011-1>), Pars III, Quaestio 78: "Septuagesima octava quaestio est, Vtrum episcopus & inquisitor teneantur procedere ad sententiam vel condemnationem de praedictorum consilio peritorum? Respondimus que sic; vt patet in c. Statuta. § iubemus. de haereticis. lib. 6. vbi dicitur sic: Iubemus. & infra: Siue episcopus siue inquisitores processerint, aliquibus aliis personis prouidis & honestis, iurisque peritis (quas ad hoc vocari, & eis per totum processum, super quo deliberandum est, seriose manifestari ac integraliter explicari, & de ipsorum consilio, ad sententiam vel condemnationem procedi volumus) exprimantur"; for the differences between Nicolaus Eymeric and Bernard Gui regarding that question, cf. AGUILERA BARCHET, "El procedimiento", 461.

36 Cf. AHN, Inquisición, Libro 1231, fol. 97r (olim fol. 104r): "Que no se vote definitivamente sin consejo de letrados aunque puedan los inquisidores dejar de seguir su parecer, deven consultar a otros y dar razon porque no siguen a los primeros = Advertencias del Consejo en Aranda de Duero 15 de abril 1518 = Cardenal Adriano 25 de octubre 1515"; LEA, Historia, II, 576.

37 Cf. JIMÉNEZ MONTESERÍN, *Introducción*, 231 f.: "Pero donde los susodichos [los Inquisidores y Ordinario] estuvieren conformes, aunque los Consultores discrepen y sean mayor número, se ejecute el voto de los Inquisidores y Ordinario [...]" To this very chapter Juan de Rojas refers to when refusing the aforementioned Arnaldo Albertino; cf. ROJAS, *De haereticis*, II, no. 166.

38 Cf. PÉREZ RAMÍREZ, *Catálogo*, S. 40. Not yet included in this number are the persecuted persons only known by loose sheets; cf. PÉREZ RAMÍREZ, Dimas/TRIGUERO CORDENTE, F. Javier, *Papeles sueltos de la inquisición de Cuenca*, Cuenca, 1999. One also has to take into consideration that this number might change when having analysed the council records of the trials from the second inquisition in Cuenca completely, as in some cases they date back to the period of the first inquisition and in doing so, reveal the existence of trials not known before; cf. i.e. ADC 38/636, fol. 82r; 47/744, fol. 11r; 48/749, fol. 7v.

39 This number includes all trials whose records contain one or more councils held either by the tribunal in Cuenca or by the *Consejo* at court; cf. ADC 1/3; 1/9; 1/11; 1/16; 1/20; 2/42; 3/47; 4/66; 4/71; 4/75; 4/76; 4/80; 5/97; 5/106; 7/130; 8/162; 8/163; 8/167; 8/168; 9/171; 9/172; 9/173; 9/181; 9/182; 9/185; 10/200; 10/205; 11/214; 11/217; 11/223; 11/226; 11/227; 11/228; 12/233; 12/235; 12/240; 12/241; 12/242; 12/245; 12/246; 12/254; 13/259; 16/293; 16/300; 17/302; 17/303; 17/306; 18/317; 18/320; 18/324; 19/336; 19/337; 19/341; 19/342; 19/343; 20/355; 20/361; 21/382; 22/389; 23/395; 22/405; 22/409; 23/415; 23/424; 23/425; 23/427; 23/430; 24/436; 24/437; 24/440; 24/441; 24/442; 25/446; 25/457; 26/462; 26/466; 27/474; 27/477; 27/480; 27/481; 28/485; 28/487; 28/488; 28/490; 29/493;

cases<sup>40</sup>. Although there are slight changes in formulations as notaries changed, the records' composition remains the same over the years: it starts with place and date. Then, the participants are named, followed by the votes. In the end, the notary authenticates the record. Usually, these records are marked by the marginal note "votos" or "votos de letrados" and/or by the participants' signatures. Before the year 1496, the signatures were not included; in 1493, even the marginal notes were used very rarely<sup>41</sup>. Here, the term *letrado*, English 'literate', refers to theologians and jurists of both laws<sup>42</sup>, and, in doing so, refers to the Latin *periti* of the aforementioned paragraph in the *Liber Sextus*. Strikingly, the terms *consulta de fe* and *consultores* – so common in the scientific community<sup>43</sup> –, do not appear in the records of Cuenca, nor in those of Ciudad Real and Toledo edited by Haim Beinart<sup>44</sup>. Does the attribution "votos de letrados" indicate that the learned men's votes were considered binding for the inquisitors?

How often did the inquisitors call upon the *letrados*? In nearly every year there is one month which stands out because of the quantity of councils. For example, in 1493 all 22

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29/494; 29/495; 29/496; 29/497; 29/498; 29/499; 29/500; 29/504; 29/506; 30/508; 30/510; 30/511; 30/513; 30/514; 30/516; 30/517; 30/518; 30/519; 30/520; 30/521; 30/523; 30/524; 30/525; 30/526; 30/527; 30/528; 30/531; 30/531 (bis); 30/532; 31/539; 32/549; 32/555; 33/569; 34/581; 34/582; 35/583; 35/587; 35/590; 35/596; 36/597; 36/598; 36/599; 36/600; 36/601; 36/603; 36/604; 36/605; 36/606; 36/607; 36/608; 36/610; 36/611; 36/612. Not included into this number are those trials whose records, although it had been opened in the period of the first inquisition in Cuenca, contain only councils held in the period of the second inquisition in Cuenca; cf. ADC 1/8; 4/63; 5/117; 5/120; 18/328; 21/382; 28/486; 30/509; 33/565.

40 This number changes to 31% when considering only those trials whose records contain at least one council held in Cuenca. In comparison, in nearly 40% of the trials against the *Conversos* from Ciudad Real held in the tribunal of Ciudad Real/Toledo between 1483 to 1516 which were edited by Haim Beinart council records have been transmitted; cf. BEINART, Haim (ed.), *Records of the Trials of the Spanish Inquisition in Ciudad Real*, IV vols., Jerusalem, 1974-1985; *ibid.*, I, no. 1; 2; II, no. 91-101; 105-108; III; no. 109; 113-116. For my preliminary study on experts and councils in the Spanish inquisition, which is based on those trials, cf. ROTHE, Sebastian, "porque en algunas partes no se pueden auer Letrados. Unsichere Inquisitoren und unentbehrliche Gelehrte in Prozessen der spanischen Inquisition während der Regierungszeit der Katholischen Könige", in PFISTER, Ulrich (ed.), *Kulturen des Entscheidens. Institutionen, Ressourcen, Praktiken, Reflexionen*, Göttingen, (to be published in 2018).

41 Cf. e.g. ADC 7/130, fol. 20v; 9/172, fol. 22v; 9/181, fol. 26v.

42 In this way it was understood by EYMERICUS, *Directorium inquisitorum*, quaestio 77.

43 Cf. LEA, Henry Charles, *A History of the Inquisition in Spain*, New York et al., 1906-1907, reprinted New York 1966, II, 265 f.; III, 71 f.; BEINART, *Records*, I, xix; KAMEN, Henry, *The Spanish Inquisition: A Historical Revision*, New Haven et al., 1998, 196; FERNÁNDEZ GIMÉNEZ, *La sentencia*, 38; CHUCHIAK, John F., "Negotiating Penance: Inquisitions, in PARKER, Charles H./STARR-LEBEAU, Gretchen (eds.), *Judging Faith, Punishing Sin: Inquisitions and Consistories in the Early Modern World*, Cambridge, 2017, 215-228, 224. However, AGUILERA BARCHET, "El procedimiento" uses exclusively the terms "asesores" and "junta de revisión"; JIMÉNEZ MONTESERÍN, *Introducción*, 845: "Votos se llaman las opiniones de los Inquisidores y consultores de provincia sobre lo que se debe sentenciar en un proceso".

44 Neither can they be found in the few royal documents regarding the *consulta de fe*. These sources rather strengthen the impression that those meetings were not associated with counsel, but with votes; cf. e.g. AHN, Inquisición, Libro 242, fol. 92r: "en el votar de los processos"; PALACIOS ALCALDE, María, *La legislación inquisitorial (1478-1504)*, Universidad de Córdoba, 1989, 160. I only once came across the noun *consulta*, namely in a source from 1558; AHN, Inquisición, Libro 1035, fol. 58r; LÓPEZ VELA, Roberto, "El calificador en el procedimiento y la organización del Santo Oficio. Inquisición y órdenes religiosas en el siglo VII", in ESCUDERO LÓPEZ, José Antonio (ed.), *Perfiles jurídicos de la inquisición española*, Madrid, 1986, 345-390, 349. Maybe the terms *consulta de fe* and *consultores* came into use in the middle of the 16<sup>th</sup> century as a way to clarify the learned men's competences once and for all when faced with the ongoing controversy mentioned above. Anyway, the instructions of 1561 use the term *consultores*; see above note 37.



councils dated to that year were held in September. In that month, the councils took place a little more than a week starting with Thursday, 19<sup>th</sup> September. On Friday, 20<sup>th</sup> September, councils were held on eight trials<sup>45</sup>. This seems to affirm Henry Charles Lea who, at the sight of the mass of trials, states that there could have been hardly enough time for precise examination in the founding period of the Spanish inquisition<sup>46</sup>. A comparison with the data of the other years reveals striking similarities which can hardly be explained by mere coincidence: In 1495, seventeen councils were held during one week of March, starting with Thursday, 19<sup>th</sup> March; on Friday, 20<sup>th</sup> March the largest number of councils were held. In 1496, eleven councils were held between Thursday, 28<sup>th</sup> July, and Tuesday, 2<sup>nd</sup> August; again, the majority was held on a Friday. For April 1498 seventeen council records have been transmitted, daing to the week from Friday, 20<sup>th</sup>, to Thursday, 26<sup>th</sup> –again with the highest number of meetings held on a Friday. In June 1499, there took place eleven councils from Friday, 21<sup>th</sup>, to Wednesday, 26<sup>th</sup>, but another six from Friday, 7<sup>th</sup> June to Tuesday, 10<sup>th</sup>, thus, calling attention to the possible loss of records in the aforementioned years. Nevertheless, these data show that the consultation with learned men was concentrated to a period of one to two weeks, usually at the end of a month, which probably had practical reasons as the consultants had to be free from other duties. Furthermore, it might have been regarded as particularly efficient to concentrate the revision of trials in order to have a proper basis of comparison. In any case, the time during which the decision had to be made was artificially foreshortened by this procedure, which can be a strategy to guarantee that a decision is made at all<sup>47</sup>. The timing of the *auto de fe* was a factor which could increase the time pressure: In June 1499, the last four cases were determined three days before the *auto de fe*, and, in May 1498, in two cases there were held councils for the second time five days before the *auto de fe*<sup>48</sup>. According to one of the few royal documents concerning the want of learned men, in Barcelona the *letrados* were summoned by the inquisitors two or three times a year<sup>49</sup>. The council records of Cuenca indicate something similar: For the year 1494 there is one council record transmitted from February, and four from July; from August 1495 we know about four councils, for June/July 1497 about three. In this respect, it seems to be more probable that we are missing records of the *consultas* due to a lack of transmission, and not because they did not hold a council on every case<sup>50</sup>.

45 Cf. ADC 9/172, fol. 22v; 10/200, fol. 24v; 10/205, fol. 5v; 12/241, fol. 5r; 12/242, fol. 3v; 12/254, fol. 5v; 16/293, fol. 5v; 32/555, fol. 5r.

46 Cf. LEA, *History*, III, 72.

47 Cf. STOLLBERG-RILINGER, *Decision-Making*, 23.

48 The autos de fe took place on 29<sup>th</sup> June (cf. ADC 30/505, fol. 18r) and on 10<sup>th</sup> May 1498 (cf. ADC 24/436, fol. 21v). The autos de fe which correspond to the aforementioned years and months took place on 18<sup>th</sup> October 1493 (cf. ADC 9/171, fol. 31v), 1<sup>st</sup> May 1495 (cf. ADC 19/333, fol. 13r), 14<sup>th</sup> August 1496 (cf. ADC 20/355, fol. 20v). For considerations regarding the relationship between *consultas de fe* and *autos de fe*, see LEA, *History*, III, 72.

49 Cf. AHN, Inquisición, Libro 243, fol. 3v; PALACIOS ALCALDE, *La legislación*, 275; LEA, *History*, II, 266.

50 When we assume that also in Cuenca they called for learned men at least two times a year, which could be proven by finding out the dates of the *autos de fe* held in Cuenca, we miss all records of the second period for the years 1496, 1497, 1498 and 1499. This fits very well with the relation of 138 to 376 concerning the accused persons upon whose trials council records have been transmitted. Why, however, there are no records dating before September 1493 needs further investigation.

The number of consultants varied between two and five, as it was not standardized by any rule<sup>51</sup>. We know of eighteen persons who acted as consultants during the period of the first inquisition in Cuenca, but only half of them participated regularly, i.e. for more than one period of councils<sup>52</sup>. Tellingly, those two who acted as consultants for the longest time, Alonso Rodríguez Castillo de Ampudia and Juan López de Cigales, were both canons in the church of Cuenca<sup>53</sup>. One should remember that the so-called *consultores* were no official members of the Holy Office due to the fact that they did not receive any salary<sup>54</sup>; this, however, might indicate that they were considered as neutral experts.

But then, what were their qualifications? First of all, they were all, without exception, university graduates. Obviously, an academic degree, as opposed to mere university attendance, was required, thus indicating that the tendency towards a professionalization of public offices during the reign of the Catholic monarchs was also apparent in the inquisition<sup>55</sup>. Among the consultants of the inquisitors of Cuenca, there were ten bachelors, six licentiates, a magistrand and a doctor. Hence, more than half of all consultants of the examined period were bachelors.

The participants' profession is only mentioned in the records of June 1499: Five consultants participated during this month, a theologian and four canonists<sup>56</sup>. Before, only "el bachiller Fray Miguel theologo"<sup>57</sup>, who participated in September and October 1493, was attributed with his profession. This attribution indicates that he was the only theologian among the consultants, so that we can conclude that the other three participants, whose

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51 The number of inquisitors present at the councils also varied between two and three so that the number of all persons present at a council varied between five and seven. The councils held in July 1494, June 1499 and April 1500 were the ones with the lowest number of participants: two consultants and three inquisitors; cf. e.g. ADC 1/16; 11/228; 17/302; 29/493; 30/508. With five consultants and two inquisitors the councils held in September 1493 (together with some of April 1498) had the highest number of participants. There were only two cases where the ordinary inquisitor was not present; cf. ADC 11/223, fol. 6r; ADC 23/427, fol. 9r.

52 These were the consultants who participated regularly, beginning with those who served for the longest time: Alonso Rodríguez Castillo de Ampudia (9/1493-4/1500); Juan López de Cigales (2/1494-3/1500); Pedro Álvarez de Anaya (7/1494-4/1500); Eustaquio Muñoz (7/1496-3/1500); Sancho de Frías (9/1493-8/1495); Fernando de Velasco (7/1496-4/1498); Diego de Salas (9/1493-3/1495). These were the consultants who participated only for one period: Fray Miguel (9-10/1493); Pedro López de Plaza (9-10/1493); Pedro González de Plaza (9-10/1493); Juan Calvete de Pastrana (6/1494); González de Cigales (3/1495); Pedro de la Barja (3/1495); Juan de Aguera (July/August 1496); Miguel de Cuellar (7/1497); Fray Alonso de Amevaron (4/1498); Fernán Yáñez de Sotomayor (6/1499). Alvaro de Yebra, inquisitor of Cordoba, only participated for one day (11<sup>th</sup> July 1494), as he was in the city by chance; cf. ADC 214, fol. 65v.

53 For Alonso Rodríguez Castillo de Ampudia, see e.g. ADC 1/16, fol. 6r: "chantre de avila e canonigo de Cuenca"; DÍAZ IBÁÑEZ, Jorge, *Iglesia, sociedad y poder en Castilla. El obispado de Cuenca en la Edad Media (siglos XII-XV)*, Cuenca, 2003, 149. For Juan López de Cigales, see ADC 217, fol. 12r; DÍAZ IBÁÑEZ, *Iglesia*, 649.

54 Cf. MARTÍNEZ MILLÁN, José, "Structures of Inquisitorial Finance", in ALCALÁ, Angel (ed.), *The Spanish Inquisition and the Inquisitorial Mind*, New York, 1987, 159-176, 166; LEA, *History*, II, 266.

55 Cf. GARCÍA MARÍN, José María, *El oficio público en Castilla durante la baja Edad Media*, Madrid, 1987, 218-224.

56 According to ADC 30/513, fol. 6v Alonso Rodríguez Castillo de Ampudia is called "licenciado en decretos" and Pedro Álvarez de Anaya, Fernán Yáñez de Sotomayor and Eustaquio Muñoz are called "bachilleres en decretos", i. e. canonists; and according to ADC 30/516, fol. 9v Juan López de Cigales was "licenciado en santa theologia".

57 Cf. ADC 9/172, fol. 22v.

professions are not known, were jurists either of canon or civil law<sup>58</sup>. Five consultants were students at the *Colegio Mayor San Bartolomé* in Salamanca, so that –although only Pedro de la Barja is called a “colegial de Salamanca” in the inquisitorial records<sup>59</sup>– we know their profession from non-inquisitorial sources<sup>60</sup>. All in all, although it is possible that another three consultants were theologians<sup>61</sup>, we can conclude that jurists were by far in the majority. Most certainly, this is true when one only considers the seven regular participants among whom the canon Juan López de Cigales is the only theologian. Can we conclude from this observation that the inquisitors were predominantly theologians who needed the help of jurists?<sup>62</sup> There were eight inquisitors who acted in Cuenca during the period of the first inquisition, only five of them took part in the councils<sup>63</sup>, but we only know the professions for two of them: Bartolomé de Gumiel was canonist and Miguel Sánchez de Parraces was theologian<sup>64</sup>. Pedro de Costa, however, who represented as *provisor* the absent bishop, and, in doing so, was the ordinary inquisitor during the whole period of the first inquisition in Cuenca<sup>65</sup>, was doctor in canon law<sup>66</sup>. In any case, the council records affirm the inquisitorial self-description one can find in the sentence text which was meant to be pronounced in public: Theology and law were the two fields of knowledge considered to be necessary

58 Namely, these participants were Diego de Salas, Pedro López de Plaza and Pedro González de Plaza; cf. ADC 9/172, fol. 22v; 10/205, fol. 5v. Sancho de Frías and Alonso Rodríguez Castillo de Ampudia also participated in those councils, but we know their profession from other sources.

59 ADC 11/223, fol. 6r.

60 Cf. RUIZ DE VERGARA Y ÁLAVA, Francisco, *Historia del colegio viejo de S. Bartholomé, Mayor de la celebre Universidad de Salamanca*, Madrid, 21766. According to this source, canonists were Alonso Rodríguez Castillo de Ampudia (ibid., I, no. 155, p. 189), Sancho de Frías (ibid., no. 188, p. 223), Pedro de la Barja (ibid., no. 197, p. 228); Miguel de Cuellar (ibid., no. 220, p. 247); Juan Calvete, however, is called “bachiller jurista” (ibid., no. 253, p. 280). For the rôle of the *Colegio Mayor de San Bartolomé* as the most important educational institution for the Castilian administration elite under the reign of the Catholic monarchs, cf. CARABIAS TORRES, Ana María, “Colegios mayores y letrados: 1406-1516”, in FLÓREZ MIGUEL, Cirilo, et al. (eds.), *La primera escuela de Salamanca (1406-1516)*, Salamanca, 2012, 15-34.

61 That is the case with González de Cigales, canon in the church of Cuenca (cf. ADC 8/163, fol. 6r), Fray Alonso de Amealon “de la orden de santo domingo” (ADC 23/245, fol. 22r), and Alvaro de Yebra, inquisitor of Cordoba (vide supra note 52). In contrast, Doctor Juan de Aguera, Corregidor de Molina, and the bachelor Francisco de Velasco, deputy of the Corregidor of Cuenca, were most probably jurists (cf. ADC 7/130, fol. 22r).

62 For example, the inquisitors who participated in the assembly convoked by Tomás de Torquemada in Sevilla in 1484 worked together with “asesores” who were experts of that field of study the inquisitors were not; cf. JIMÉNEZ MONTESERÍN, *Introducción*, 84; LEA, *History*, II, 266.

63 Inquisitors of Cuenca were Francisco Florez, Arcediano de Trastámara (1489-1490), Bartolomé de Gumiel (1489-1497), Pedro González del Castillo (1491-1493), Miguel Sánchez de Parraces (1493-1496), Juan de Loaysa (1497-1500), Fernando de Villa (1499), Diego Rodríguez de Santisidro (1499), Pedro de Gumiel (1499-1502); cf. SÁNCHEZ GIL, Victor, “El tribunal de la inquisición de Cuenca: Notas para un catálogo de sus miembros (1489-1714)”, *Archivo ibero-americano* 157, 1 (1980), 3-36, 9; PÉREZ RAMÍREZ, *Catálogo*, 39. From these, according to the inquisitorial records, only Bartolomé de Gumiel, Pedro González del Castillo, Miguel Sánchez de Parraces, Juan de Loaysa and Pedro de Gumiel took part in the *consultas de fe*.

64 They were also students at the Colegio Mayor de San Bartholomé; cf. RUIZ DE VERGARA Y ÁLAVA, *Historia*, I, no. 169, p.192; no. 183, p. 221.

65 For the first mention, cf. ADC 1/3, fol. 8r; for the last mention, cf. ADC 30/532, fol. 38r; 25/446, fol. 21r: “inquisidor e provisor”; 29/493, fol. 2r: “inquisidor hordinario”. The Italian Raphael Sansoni Riario, bishop from 1493 to 1517, visited Cuenca not even once; cf. NALLE, Sara T., *God in La Mancha: Religious Reform and the People of Cuenca, 1500-1650*, Baltimore et al., 1992, 11.

66 Cf. DÍAZ IBÁÑEZ, *Iglesia*, 644.

resources for the decision-making process in the Spanish inquisition<sup>67</sup>. However, this does not mean that these fields of knowledge were always represented: At least for July 1496 we can be sure that there was not a single theologian present at the meetings. It is remarkable though, that the formulation normally used in the sentence text in this case was corrected by canceling the words at issue<sup>68</sup>.

There was just one more monk besides Fray Miguel, called Fray Alonso de Amevaron, who, like the former, participated in the councils for only one month<sup>69</sup>. He was the only Dominican to work with the inquisition of Cuenca during the observed period, which might be explained by the fact that there was no Dominican convent in the city of Cuenca until 1523<sup>70</sup>. So, the inquisition of Cuenca was predominantly run by the secular clergy, i. e. by the members of the cathedral chapter of Cuenca, and laymen.

With regard to the lay people, three out of eight held a public office, they were *corregidores*<sup>71</sup>, the highest royal judicial officers in the cities and their territories; they played an important role in the pacification of the Castilian society after decades of civil war and weak monarchy. Their participation does not surprise, as the inquisition itself can be considered as another royal means of urban pacification<sup>72</sup>. One can say without doubt that these royal officeholders were loyal participants<sup>73</sup>, whether they were ordered by the kings or freely called forth by the inquisitors. Anyway, given the aforementioned lack of learned men willing to cooperate with the inquisition, the *corregidores* seemed to be safe candidates for the inquisitors while also representing their royal control. Miguel Angel Ladero Quesada calls them “the crown’s ‘omnicompetent servant[s]’ in the city”<sup>74</sup>.

The *consultas* can be described as communication among those present. That might sound obvious, but the records highlight this aspect with the recurrent expression “*estando juntos en la sala y abdiencia publica de la santa inquisicion de la dicha cibdad*”<sup>75</sup>. From

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67 According to LÓPEZ VELA, “El calificador”, 349 there is a *carta acordada* dating 17<sup>th</sup> July 1518 which clearly distinguishes the two competences required: “Calificadores, teólogos se han de llamar cuando se hubiera de calificar alguna proposición, [...] y para la determinación se han de llamar juristas (los consultores) teniendo de ellos la satisfacción necesaria y que cada uno vote en lo que es su Facultad.” Unfortunately, he does not give the source references.

68 Cf. ADC 22/395, fol. 7v: “avido sobre todo deliberacion e acuerdo con consejo e voto e parescer de muchos letrados asi theologos como juristas e religiosos (sic) que presentes estuvieron a la vista e examinacion del dicho proceso”.

69 Namley in April 1498; cf. ADC 23/425, fol. 22r.

70 Cf. NALLE, *God*, 218.

71 Namely, “el licenciado Sancho de Frías corregidor de la cibdad de Huete” (ADC 9/172, fol. 22v); “el doctor Juan de Aguera corregidor en la villa de Molina” (ADC 18/317, fol. 3v); “el bachiller Francisco de Velasco teniente de corregidor en la dicha cibdad de Cuenca” (ADC 19/337, fol. 49r).

72 Cf. LÓPEZ GÓMEZ, Óscar. “Claves del Sistema de pacificación ciudadana desarrollado por los Reyes Católicos en Toledo (1475-1485)”, *En la España Medieval*, 27 (2004), 165-193, 192.

73 Interestingly, the *corregidor* of Cuenca was never present by himself, but was represented by his *lugarteniente* el bachiller Francisco de Velasco who participated in every council from July 1496 to April 1498. Before him, Sancho de Frías, *corregidor* de Huete, participated regularly from 1493. So, except for July 1494, there was always a *corregidor* present.

74 LADERO QUESADA, Miguel Angel, “Corregidor”, in GERLI, E. Michael (ed.), *Medieval Iberia. An Encyclopedia*, New York, 2003, 264.

75 ADC 1/3, fol. 8r.

other trial documents we know that this hall, where the public hearings were held in, was located in the episcopal palace next to the cathedral of Cuenca<sup>76</sup>. What exactly did they do during their meetings? According to the records, one can distinguish three steps, at least in theory: At first they “viewed” and “examined” all the records of a trial; on this basis they “deliberated” upon the process; and finally they “voted” and “determined” the trial<sup>77</sup>. Indeed, it was already codified in the *Liber Sextus*, that the learned men should be informed, namely integrally about the whole process upon which it is to deliberate<sup>78</sup>. Yet, the *Liber Sextus* does not mention that this deliberation should end with a vote.

We know from a few records from the inquisition in Ciudad Real that the *letrados* examined the records together with the inquisitors during their meetings “by reading everything from the beginning to the end completely”<sup>79</sup>. For Lea it is very plausible that they, indeed, read all the records of a trial, as in the founding period of the Spanish inquisition the records were not as long as later on<sup>80</sup>. In the light of the records from Cuenca, which show that there were days where they sighted and examined eight cases, this seems to be doubtful. Beinart convincingly argues that it was probably the inquisitor who informed the ordinary and the *letrados* about the previous proceedings<sup>81</sup>. In this respect, one has to take into consideration that their communication situation, though all persons present were serving as experts, was not free of hierarchy and domination, which compromises the free balancing of pros and cons implied in the term *deliberación*<sup>82</sup>. Etymologically related to Latin *libra*, it is reminiscent of the scales of justice alluded to in the coat of arms of the Spanish Inquisition by an olive branch and a sword<sup>83</sup>. Although this emblem did not yet exist at the end of the 15<sup>th</sup>

76 Cf. e.g. ADC 5/98, fol. 1v; PÉREZ RAMÍREZ, *Catálogo*, 40.

77 Cf. e.g. ADC 1/3, fol. 8r: “[...] vieron e examinaron este proceso del dicho alonso gil e todos los abtos e meritos del e en conformidad todos los dichos señores dixeron e votaron que su voto e parecer era que el dicho alonso gil fuese relaxado a la justicia e braço seglar e asi lo determinaron e firmaron de sus nombres.” The term “deliberacion” is normally used in the sentence text to describe the inquisitors’ meeting with the learned men; see above note 23.

78 Cf. FRIEDBERG, Aemilius, *Corpus Iuris Canonici*, Leipzig, 1881, II, 1078: “eis per totum processum, super quo deliberandum est, seriose manifestari ac integraliter explicari”.

79 Cf. Beinart, *Records*, I, 30: “[...] vieron el dicho proceso, leyendolo desde el principio fasta el fin todo por entero. E apuntando en el las dudas e platicando e comunicando sobre ellas, auido su consejo e deliberacion, votaron. E cada vno dellos dio su voto [...]”; AGUILERA BARCHET, “El procedimiento”, 461.

80 Cf. LEA, *History*, III, 73.

81 Cf. BEINART, Haim, *Conversos on Trial. The Inquisition in Ciudad Real*, Jerusalem, 1981, 186; GONZÁLEZ DE CALDAS, Victoria, *Judíos o cristianos? El Proceso de Fe. Sancta Inquisitio*, Sevilla, 2000, 327. Indeed, the records did not seem to contain all information considered necessary in a practical sense as we know that the promotor fiscal was ordered to bring the records to the *Consejo* personally in order to explain the proceedings to the learned men of the *Consejo*; cf. JIMÉNEZ MONTESERÍN, *Introducción*, 108.

82 Cf. ALONSO, Martín, *Diccionario Medieval Español. Desde las Glosas Emilianenses y Silenses (s. X) hasta el siglo XV*, Salamanca, 1986, s.v. ‘deliberar’, I, 875: “Considerar atenta y detenidamente el pro y el contra de nuestras decisiones antes de cumplirlas o realizarlas”; NEBRIJA, Elio Antonio de, *Vocabulario español-latino*, Salamanca, 1495? [http://www.cervantesvirtual.com/nd/ark:/59851/bmcmv466], s.v. ‘deliberar’, fol. 37v distinguishes between “deliberar lo venidero” (Latin: “deliberare”) and “deliberar con otros” (Latin: “consultare”) which ALONSO, *ibid.* understands as decision-making: “Decidir una cosa, después de un cuidadoso examen”.

83 Cf. STOLLBERG-RILINGER, *Decision-Making*, 16 distinguishes two types of decision-making, the “dice model” and the “scale model” which “make the contingency of a decision disappear as far as possible such as through rationalistic programmes that claim to generate the ‘only one correct decision’, quasi automatically, in order to avoid the problems of legitimacy that always go along with decision-making”; for the coat of arms, cf. vgl. BETHENCOURT, Francisco, *The Inquisition. A Global History, 1478-1834*, Cambridge, 2009, 107-116.

century, the narrative of decision-making it represents was already present, as in several cases some *letrados* argue for relaxation to the secular arm and others for eternal imprisonment by referring to the “rigor del derecho” or “misericordia” respectively<sup>84</sup>.

This discussion is very hard to grasp, since in the majority of the cases where we know about the council, the result of the voting was recorded as a consensus decision without mentioning the participants’ single votes or argumentation. Very common expressions include: *en conformidad, unanimes e conformes, nemine discrepante*<sup>85</sup>. That is the case in 105 out of 121 recorded votes, i.e. in 87%<sup>86</sup>. More interesting are the remaining cases where either the vote of every single participant is recorded separately or, at least, the votes of those who did not agree with the majority vote<sup>87</sup>.

According to these records, it seems that at the end of the discussion often two alternative options remained. This is evident, for instance, in the example of choosing between mercy or rigour of law<sup>88</sup>. That each participant was generally expected to decide but, at the same time, was able to avoid deciding, can be deduced from votes like the following which seems more like abstaining from voting: In a case against an already defunct *converso*, all voted to exhume his bones, “*excepto el dicho doctor provisor que no se determino en uno ni en otro*”<sup>89</sup>. There were other strategies for not deciding immediately like voting for torture, dispatch of files, or suspension. However, in how far expert knowledge impacted the discussion is not easy to say, as we do not find references to any specific canon of the canon law nor to bible passages, neither in the records nor in the sentences, although there are other more general references to the learned men’s resources<sup>90</sup>.

The records can also give us a hint about the order in which the participants voted: The inquisitors are listed after the *letrados*, and, in addition, the hierarchical order<sup>91</sup> in which

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84 ADC 23/415, fol. 18r; 24/441, fol. 81v.

85 Cf. e.g. ADC 9/181, fol. 26v: “en conformidad”; 10/200, fol. 24v: “unanimes e conformes”; 1/8, fol. 39v: “neminem discrepante”; STOLLBERG-RILINGER, *Decision-Making*, 24: “Unanimity, *unanimitas*, had a high spiritual value, since harmony was a sign of divine inspiration, while disharmony was considered the devil’s work. But unanimity was also desirable for pragmatic reasons, since dissent could hardly be articulated publicly, face to face, without personal loss of honour”; this might explain why in the sentence, which was meant to be pronounced at an *auto de fe*, the consensus between inquisitors and learned men is stressed also in those cases in which dissent is clearly recorded.

86 This number includes all councils held in Cuenca, even the second or third councils of a single case, but not the councils of the *Consejo*.

87 Cf. ADC 1/9; 7/130; 11/223; 11/227; 12/240; 12/241; 12/242; 12/245; 19/336; 23/415; 24/440; 26/462; 28/485; 30/514; 32/549; 35/583.

88 See above note 87. The underlying question is whether the trial has proven that the accused person was a relapsed heretic or not; cf. LEA, *Historia*, II, 609.

89 ADC 12/242, fol. 3v.

90 One council record from September 1493 shows very well what was considered to be the task of the *letrados* and their resources: “viendo e examinando este dicho proceso para votar e determinar en el lo que Dios y sus conçiencias y el derecho les diese a entender” (ADC 12/240, fol. 6v).

91 Apostolic inquisitors are named before the ordinary inquisitors; those with a higher academic degree before those with a lower, clerics before laymen (cf. ADC 1/9, fol. 24r), or, at least, ecclesiastic officeholders before secular officeholders (cf. ADC 11/223, fol. 6r), and finally, officeholders before those without any public office (cf. ADC 23/415, fol. 18r).

the participants are named at the very beginning of each record is respected<sup>92</sup>. The order among those of the same rank seems to have been determined by how long one worked for the inquisition, i.e., by experience. This order reminds one of the instructions of Valdes from 1561, namely that the inquisitors should be the last to speak in order to allow the *consultores* to express their opinions without being influenced by the inquisitors<sup>93</sup>. We cannot derive the real practice from the recorded order, but at least the norm whose implementation the notary had to describe. However, there were exceptions from this norm, as we will see later on.

What can we learn from these cases concerning the main question of this paper: Who decided in inquisitorial trials, the inquisitors or the consultants? A closer look at the councils of September 1493 will help: More than one third of all cases of recorded dissent date back to this month, i.e. six by absolute numbers<sup>94</sup>. Only Fray Miguel, the theologian, never disagreed, which might explain why he was not called to serve as an expert again<sup>95</sup>. Among the dissenters was also the bachelor de Salas who did not hold any public office, so that we cannot see any correlation between dissenting and holding a certain academic degree or dissenting and holding a public office.

But did any of the dissenters assert themselves? Was the voting binding for the inquisitors? To answer these questions, one has to compare the voting with the definitive sentence. In one out of the six cases, the dissenting vote seems to have been carried out. What was the decision about? The records say that all voted unanimously that the accused should be declared as a heretic and, thus, her mortal remains should be exhumed and burned; except for the canon Alonso Rodriguez Castillo de Ampudia who disagreed and voted to send the trial records to the *Consejo*<sup>96</sup>. Admittedly, the *Consejo* declared her as a heretic, but nevertheless, this procedure conforms intimately to the instructions of 1488<sup>97</sup>. Does this mean that all participants had to arrive at a consensus? It does not, as in two other cases, the same canon voted again to send the trial records to the *Consejo*, but these times, his vote was not carried out<sup>98</sup>.

92 Cf. e.g. ADC 12/240, fol. 6v: "E luego los dichos senores licenciado Sancho de Frias y el licenciado Pedro Lopez de la Plaza y el bachiller Fray Miguel y el licenciado del Castillo ynquisidor y don pedro de Acosta provisor dixeron que conformado con el dicho y con los abtos de dicho proceso y con lo que de ellos resulta que votarian y votaron que sea Relaxado el dicho Alfonso Perez. E los dichos licenciado de enpedia y el bachiller diego de salas dixo que su voto fuera que el dicho proceso sea remetido al superior e el dicho bachiller diego de salas dixo que su voto fuera que alfonso perez sea dada carcel perpetua y asy lo determinaron".

93 Cf. JIMÉNEZ MONTESERÍN, *Introducción*, 218 f.

94 Cf. ADC 1/9, fol. 24r; 7/130, fol. 20v; 11/227, fol. 22r; 12/240, fol. 6v; 12/241, fol. 5r; 12/242, fol. 3v.

95 The social recognition as an expert does not only depend on objectivised proofs like a university degree, but needs to be proven over and over again in social interaction; cf. REXROTH, Frank, "Systemvertrauen und Expertenskepsis. Die Utopie vom maßgeschneiderten Wissen in den Kulturen des 12. bis 16. Jahrhunderts", in REICH, Björn/et al. (eds.), *Wissen, maßgeschneidert. Experten und Expertenkulturen im Europa der Vormoderne*, München, 2012, 12-44.

96 Cf. ADC 1/9, fol. 24r.

97 See above note 25.

98 Cf. ADC 11/227, fol. 22r; 12/240, fol. 6v. The latter case differs from the other two in so much as the accused person was still alive. This case contradicts Aguilera Barchet's assertion based on the records edited by Beinart, that in cases where the relaxation to the secular arm was among the alternatives a consensus was needed: Here, two participants dissented, but still, the defendant was sentenced according to the majority's vote and handed over to the *Corregidor* at the next *auto de fe*; cf. ADC 12/240, fol. 7v-8r; AGUILERA BARCHET, "El procedimiento", 464.

Can we conclude that they decided according to the majority vote then? This could be affirmed if we would find a case in which the apostolic and the ordinary inquisitors had the same opinion while the *letrados* had another, and this majority vote would have been pronounced as the definitive sentence<sup>99</sup>. But in the remaining three out of the six aforementioned cases of September 1493 the apostolic inquisitor and the ordinary inquisitor did not agree. In two of these cases the ordinary inquisitor, Pedro de Costa, abstained from voting as mentioned before<sup>100</sup>.

There remains only one case from 1493, in which the inquisitor voted for acquittal while the ordinary agreed with the *letrados* and voted for declaring the accused as a heretic and exhuming and burning his bones<sup>101</sup>. The dissent could not have been bigger<sup>102</sup>. Another participant, de Salas, disagreed with the majority, but did not follow the inquisitor's vote for acquittal; he voted for suspension instead. From the record of a second council on this trial we know that nearly three years later, there was a consensus vote for exhumation<sup>103</sup>. So, indeed, the process had been suspended as de Salas had voted for. But except the ordinary inquisitor, de Costa, all other participants of the second council were new to the case, including the apostolic inquisitor. This case affirms the assumption that sentences could not be proclaimed if the apostolic inquisitor and the ordinary inquisitor disagreed. Furthermore, it reveals suspension as a strategy of saving both parties' faces<sup>104</sup>. It is remarkable, that this is the only case where the voting list does not end with the inquisitors' vote, but with that of a *letrado*<sup>105</sup>.

## V. CONCLUSION

To conclude, the records of the so-called *consultas de fe* offer unique insights into the decision-making processes of the Spanish inquisition. Especially the few cases of recorded dissent among the learned men show the alternatives at issue and the inquisitors' scope for decision-making. They reveal that sentences did not at all derive logically from law and facts as the sentence texts describe, but that there was a decision to be made, and that one also could have decided otherwise. In this respect, the consultation with learned men served as a resource of decision-making at least in two ways: In a pragmatical manner, the consultation helped to minimise the inquisitors' insecurity which becomes apparent in the instructions of 1488. As the indispensable reference to the consensus with learned men in the sentence

99 See above note 37.

100 Cf. ADC 12/241, fol. 5r; 12/242, fol. 3v; see above note 89.

101 Cf. ADC 7/130, fol. 20v.

102 A possible reason might have been that in processes against already defunct persons often sufficient evidence was missing; cf. LEA, *Historia*, II, 585; AGUILERA BARCHET, "El procedimiento", 546 ff.

103 Cf. ADC 7/130, fol. 22r.

104 Cf. STOLLBERG-RILINGER, *Decision-Making*, 8: "Deciding is more troublesome than not deciding; it creates costs, and involves accountability and responsibility. [...] a decision makes dissent visible. The defeated dissenters risk a loss of face."

105 This seems to indicate that the procedure was not as formalized as the records describe it. Maybe those consultations functioned like most early modern political assemblies according to the polling principle; cf. STOLLBERG-RILINGER, *Decision-Making*, S. 25: "[...] that is, those present were asked for their vote in the order of their rank, and no clear distinction was made between expression of opinion and formal vote. Only when an approximate majority opinion or a vague consensus had crystallized from the votes did the head of the assembly record this as the result?"



texts shows –even if dissent is recorded in the trial records– the consultation also served to legitimise the sentence.

Learned men, *letrados*, were called by the inquisitors of Cuenca since 1493 two times a year for one to two weeks corresponding to the *autos de fe*. Most of them were jurists either of canon or civil law, which corresponds to the juridical character of the questions at issue: The question of fault and its legal consequences. There were hardly religious men among the consultants, the majority of whom were secular clerics and laymen from the local ecclesiastical and secular administration of justice.

It could be shown that the consultation with learned men had a long tradition in inquisitorial proceedings, but that the question whether their votes were binding for the inquisitors or not seems to have been arisen in the discourse of inquisitorial manuals only after it had become a problem in the inquisitorial practice of the Spanish tribunals. The records of Cuenca indicate that even in grave cases of life and death decisions a consensus had only to be found between the inquisitors and the ordinary. Thus, the learned men can be considered as consultants and not as decision makers.

How all this impacted the way decisions were made during their meetings is only one of the questions which require further investigation: One cannot only compare the cases of recorded dissent among each other, but also with those of recorded consensus. By comparing councils with the same date and participants, one can eliminate certain factors of influence and ask in how far the question of dissent or consensus corresponded to certain kinds of delicts, the social descent of the accused, the concrete proceeding of each case, i.e. its decision history, et cetera. In doing so, one can contribute to a deeper understanding of the inquisitorial practice of decision-making. Whether dissent among the participants was decisive in the way that it determined the defendant's fate or not, has to be proven by the historian in every single case. In any case, from a heuristic point of view, dissent is decisive.