# The Trial of Faith in the Spanish Inquisition

## Between Law and Repentance

*Jean-Pierre Dedieu and Gunnar W. Knutsen*

**This paper presents** an unexpected finding.[1] The dominant historiographical model of the Iberic inquisitions of 1480–1820, first put forward by Bartolomé Bennassar in 1979, is still based on a statistical approach to the activity of the courts, measured in terms of adjudicated cases.[2] More precisely, it is based on figures produced in the

1. This article was first published in French as "La cause de foi dans l'Inquisition espagnole. Entre droit et repentance," *Annales HSS* 78, no. 1 (2023): 5–33. It is part of the results of the ARQUS University Alliance project "Injecting Legality," carried out by the Université de Lyon, the Universidad de Granada, and the University of Bergen (2020–2021).

2. The Spanish Inquisition (officially known at the time as the Holy Office of the Inquisition) was an ecclesiastical court, under the indirect control of the state, in charge of prosecuting "heretics"—in this case baptized Christians who did not fully accept the teachings of the Catholic Church. Its jurisdiction extended over Spain, Sicily, and Sardinia, along with the Spanish colonies in the Americas and the Philippines. It was overseen by the Council of the Supreme and General Inquisition, or *Suprema*, headed by an inquisitor general, himself a commissioner of the pope. It was represented at the local level by some twenty district tribunals, which, as well as maintaining an extensive day-to-day correspondence, sent the Council regular reports on their activity (the *relaciones de causas*). The archives of most local tribunals have not survived. The few that have been preserved (notably in the inquisitorial districts of Toledo, Cuenca, Mexico, the Canaries, and Zaragoza) still contain thousands of original files, but many have nevertheless been lost. The *relaciones de causas* are the only sources that offer a broader idea of the Inquisition's activity as an institution. See Bartolomé Bennassar, with Catherine Brault-Noble et al., *L'Inquisition espagnole, XVe–XIXe siècle* (Paris: Hachette, 1979).



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1970s and 1980s by Gustav Henningsen, Jaime Contreras, and Jean-Pierre Dedieu from the *relaciones de causas*, the summaries of inquisitorial cases sent by the district tribunals to the Council of the Supreme and General Inquisition (the *Suprema*).[3] Although these scholars used the most advanced computing resources available at the time, these did not allow for a full retrieval and publication in readable form of the material involved. Moreover, the process left aside much relevant information not reported in the *relaciones*. These drawbacks have made it difficult to reassess a venerable but inordinately rigid model. From 2010, Gunnar W. Knutsen began a more extensive compilation of information from archival sources, drawing on a wider range of documents, expanding the coverage to Portugal, and using more up-to-date technology. This enabled an in-depth analysis and a full publication of the source material as a complete data set. The Spanish section of his Early Modern Inquisition Database (EMID[4]), the first to be ready for study, revealed a high number of unexpected trial outcomes, including absolutions from ecclesiastical censures[5] without any serious additional penalties, absolutions *ad cautelam*,[6] reprimands, small fines and minor spiritual penances, "suspended" cases abandoned midway without a definitive verdict, and acquittals from the instance of the accusation. Previous studies had only partially detected this phenomenon, and had not been especially interested in it. For the present authors, however, it posed a number of questions about the nature of the inquisitorial trial and undermined some of the assumptions current in the historiography. While our existing knowledge of the tribunal and its criminal proceedings accounted for the harshest punishments, we were simply unable to understand how and why the inquisitors adjudicated so many light penalties. We were obviously missing something, so we began to look more closely at the descriptions the inquisitors gave of their own activities. By focusing on their own words and following up the texts and authors they referred to as authorities, we gained a new appreciation of the trial itself.

We concluded that the inquisitorial trial of faith can be modeled or conceptualized on not one but two different levels. Underlying the formal judicial proceedings that shaped the chronology of the trial and the organization of the

3. Jaime Contreras and Gustav Henningsen, "Forty-Four Thousand Cases of the Spanish Inquisition (1540–1700): Analysis of a Historical Data Bank," in *The Inquisition in Early Modern Europe: Studies on Sources and Methods*, ed. Gustav Henningsen and John Tedeschi, with Charles Amiel (DeKalb: Northern Illinois University Press, 1986), 100–129; Jean-Pierre Dedieu and René Millar Carvacho, "Entre histoire et mémoire. L'Inquisition à l'époque moderne: dix ans d'historiographie," *Annales HSS* 57, no. 2 (2002): 349–72.

4. At the time of writing, the EMID contains more than 108,000 entries with information on 100,000 trials from Portugal and Spain. Publication of the first version of the database is expected in 2023: https://emid.h.uib.no/.

5. These were punishments imposed *ipso facto* by canon law against heretics, even secret ones: excommunication, suspension from religious orders, and interdict (exclusion from the sacraments, including Christian burial).

6. *Ad cautelam* can be translated as "as a precaution" or "just in case." This phrase has caused considerable confusion, and does not in itself indicate an absolution or acquittal. Rather, it refers to the cautious lifting "as a precaution" of all ecclesiastical censures the defendant might have incurred—though without specifying them.



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documents that reproduced these proceedings was another trial (or process) that followed a less explicit internal logic, seeking to produce not so much a judicial truth as a penitential one. Both of these levels contributed to the formulation of a sentence. What is more, the existence of this penitential level explained various well-known features of the Spanish inquisitorial proceedings that did not match the wider framework of ordinary criminal cases at the time, notably an inordinate interest in the personality of defendants and their behavior during the trials,[7] or the court's insistence on its own leniency in its public communication.

The present study aims to describe this penitential level and to explore some of its implications for our broader understanding of the Spanish Inquisition. This interest in the workings of the Inquisition does not mean that we leave aside an approach based on cases and defendants. On the contrary, our aim is to arrive at a better understanding of such cases and the ordeals undergone by the accused. This article will show that a large number of cases that might look like exceptions to the standard legal proceedings of the court were in fact part of its ordinary and usual practice. Far from reflecting the arbitrariness of individual judges, they were regulated and grounded in a strong theoretical basis, coherent with the principles that in other cases led to the harshest sentences.

## The Formal Inquisitorial Trial of Faith

There is a surprising lack of studies of the inquisitorial trial and the judicial concepts underpinning it, especially considering the vast number of books and articles that discuss the Spanish Inquisition or are based on records of its trials. This can to some degree be explained by the disinterest researchers have demonstrated for the internal workings of the Holy Office itself, focusing instead on the Inquisition as a repressive apparatus or simply treating it as a producer of and repository for information about various cultural and religious phenomena. Legal historians have also tended to shy away from the Holy Office, treating it as an outlier rather than an integral part of the early modern judicial world. A further impediment to the study of the trial itself may well be the fact that the judicial sources are by their very nature technical, difficult, and frequently only available in Latin.

This study draws on a series of manuscript manuals produced by the inquisitors themselves for use in their everyday work and preserved in libraries and archives for the most part in Madrid. These are practical how-to guides, usually written in Spanish and sometimes detailed to the point of giving step-by-step instructions on how to proceed, but with little direct consideration of the fundamental principles underlying the trials. However, they do contain references to other works, principally in Latin, that contain in-depth reflections on these questions. Following these references has given us a better understanding of the philosophical underpinnings

7. Since defendants could in principle be either male or female, this article uses the singular "they." Nevertheless, it should be noted that more than 75 percent of defendants mentioned in the sources compiled for the EMID were male.



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of inquisitorial trials and actions.[8] We have also systematically compared the content of these manuals with dozens of trial proceedings, as well as with several thousand summaries taken from hundreds of *relaciones de causas*. We found that the operations they described strictly matched the information contained in the trial records; that their vocabulary and the concepts they evoked, especially on the penitential side, were the same as those that structured the trials and particularly the concentrated summaries of the *relaciones de causas*; and that the changes they denote over time were reflected in the practical documents. These manuals, then, were not produced out of concern for appearances or formulism, but represent the view the inquisitors themselves took of their work.

## The Different Forms of Trial

Despite much evidence to the contrary, most existing studies still assume that the full, formal inquisitorial trial of faith, the *causa de fé en forma*, was the normal way in which the Inquisition dispatched its business. It is also inferred that the specific features of inquisitional procedure made it essentially harsher than ordinary criminal proceedings and an exception to the judicial practice of the period. Both assumptions are questionable in light of our findings.

The full trial of faith was at the heart of all inquisitorial activity in Spain and throughout the Spanish Empire. Yet although it remained the reference point for all other activities of the Holy Office, it was never the only tool employed by the tribunal. Formal trials of faith were long, highly structured, and resource-hungry affairs, growing ever more so over the centuries of the Inquisition's existence. This made shorter, abbreviated forms of trial increasingly attractive since they were both quicker and more economical.

Abbreviated forms were used in cases where defendants collaborated with the tribunal, frequently, though certainly not always, after a self-denunciation. In these cases there was no need for a thorough evaluation of the degree of the defendant's heresy and no harsh punishment would be inflicted.[9] This allowed the Holy Office to rapidly absolve and incorporate or reintegrate a large number of heretics into the Catholic Church while simultaneously gathering a huge amount of information that could later be used in full and formal trials against a defendant (if their confession proved incomplete) or against their alleged accomplices. As our studies of primary sources made clear, these abbreviated forms simply do not match mainstream historiography's model of the inquisitorial trial.

8. A full list is provided in appendix 2 below.

9. E. William Monter calls these "pro-forma appearances before the Holy Office" when they apply to renegades and converts to Protestantism. This turn of words downplays the significance of these cases and how they represent a continuation of the earlier practice of using abbreviated trials in times of grace—that is, periods in which, by decision of the inquisitor general, one or several local courts abstained from condemning self-denouncing defendants to any penalty imposed through criminal proceedings, limiting themselves to penances imposed on the penitential level. E. William Monter, *Frontiers of Heresy: The Spanish Inquisition from the Basque Lands to Sicily* (Cambridge: Cambridge University Press, 1990), 250.



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Moreover, the use of local rules and regulations governing secular criminal courts was normal in certain cases, such as prosecutions for sodomy in the few districts where the Inquisition had jurisdiction over that offense (Valencia, Barcelona, and Zaragoza).[10] The Holy Office likewise conducted all civil and criminal trials involving its own personnel according to local laws and procedures.[11] It is thus clear that the inquisitors mastered several forms of trial besides the full inquisitorial procedure, which by no means accounted for the whole activity of the court—perhaps not even for the majority of it from a purely quantitative point of view. In fact, as trained jurists who had frequently served on other courts before being named inquisitors, they partook in the same legal culture as every other Spanish *letrado*.[12] This meant that their outlook was predominantly shaped by the *ius commune* they had studied at university, which "informed every act and every opinion of the agents of justice because it penetrated the jurists' reasoning mechanisms and because its language was the vehicle for all ideas."[13] Any attempt to draw a strict separation between inquisitorial and ordinary criminal trials, or between inquisitors and other university-trained judges is therefore bound to fail.

## The Stages of the Formal Trial of Faith

The formal trial of faith was complex, structured, and elaborate. Judges adhered to predefined procedures with little flexibility, and many of the different stages followed on automatically from one to the next. There were, however, pivotal moments when decisions taken by the inquisitors could orient the process along alternative paths, some more favorable for the defendant than others (fig. 1). At a number of points proceedings could also be redirected back to an earlier stage if new information was forthcoming. Below is an outline of the trial and its stages, a more elaborate version of an earlier diagram published by Dedieu.[14]

10. Nevertheless, through the EMID we have been able to see that the Holy Office did in fact prosecute at least fifteen persons for this offense in tribunals other than those that had jurisdiction.

11. Henry Charles Lea found evidence that secrecy (a typical feature of inquisitorial trials) may have been enforced in some such cases, despite this being in direct contravention of the local laws that the tribunal was supposed to follow. Our own research, however, indicates that such trials were not generally conducted in secret. Henry Charles Lea, *A History of the Inquisition of Spain*, 4 vols. (New York: Macmillan, 1906–1907), 2:473.

12. For the inquisitors' backgrounds and education, see Julio Caro Baroja, *El Señor Inquisidor, y otras vidas por oficio* (Madrid: Alianza Editorial, 1968); Kimberly Lynn, *Between Court and Confessional: The Politics of Spanish Inquisitors* (Cambridge: Cambridge University Press, 2013). Note that Lea got it wrong when he claimed that the inquisitors were theologians, something that was only true in the first years of the Spanish Inquisition's existence: Lea, *A History of the Inquisition*.

13. Manlio Bellomo, *The Common Legal Past of Europe: 1000–1800*, trans. Lydia G. Cochrane (Washington: Catholic University of America Press, 1995), 90–91.

14. Jean-Pierre Dedieu, "L'inquisition et le droit. Analyse formelle de la procédure inquisitoriale en cause de foi," *Mélanges de la Casa de Velázquez* 23 (1987): 227–51, here p. 241.



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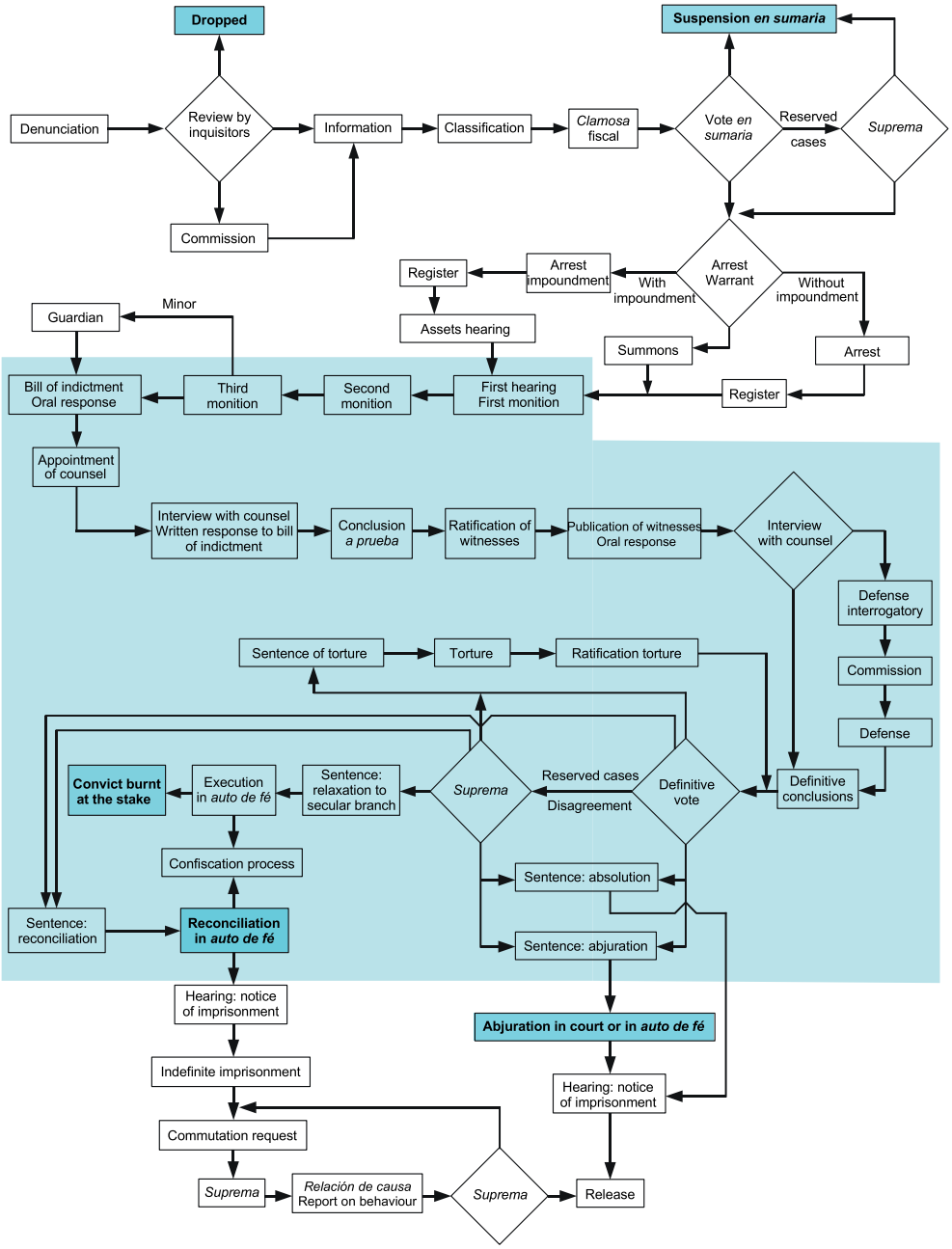
**Figure 1. Formal judicial proceeding of the inquisitorial trial of faith (Spain, early sixteenth century)**




Legend: The blue zone represents *ad libidum* hearings. Inquisitors could detain defendants indefinitely and bring them before the court as often as they wished. This was an effective psychological tool to provoke conversion.

Source: Jean-Pierre Dedieu and Gunnar W. Knutsen.



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Many inquisitorial trials are known to us only through the *relaciones de causas*. These quickly developed from a mere list of completed trials into the type of case summary produced in other Spanish courts and in many other tribunals throughout early modern Europe, where it was common for a single agent (known in Spain as a *relator*) or a small group of judges to gather all the legally relevant information about an alleged crime in a single document, which was then used by a larger group of judges at the same court as a basis for sentencing.[15] In the *relaciones de causas*, local Inquisition tribunals likewise submitted summaries of the judicially significant information from the trials they had undertaken. However, they did so *after* the cases had been closed, not to help inquisitors reach a verdict—preliminary reports were not used in sentencing by the local tribunals, and judges were obliged to examine each piece of evidence personally—but to simultaneously inform their superiors of what they had done and justify their decisions. This meant that these summaries sometimes included information that was not recorded, or remained implicit, in the original file (*proceso*) from which they were extracted, such as the reasons for the final sentence. As in Spanish secular courts, the Spanish Inquisition did not tend to explain the reasons for the sentence chosen, nor specify the laws that formed the basis for the judges' decision.[16] Nevertheless, the vocabulary used in the *relaciones de causas* makes it possible to fill in certain gaps.

These texts have frequently been treated as relatively free summaries of trials written in natural language. But a systematic analysis of the elements and words they contain, in comparison with the stages of the inquisitorial trial outlined above, reveals that they are in fact highly structured documents composed in a controlled language where words had specific and precise technical meanings. This formalization allowed the writer and reader to communicate briefly and unambiguously based on a common technical understanding of what these words and phrases signified. As such, it recalls Manlio Bellomo's astute observation regarding "the terminology of the *ius commune*, which was adopted, respected, or bent to represent functions that differed from the original ones but which was always kept in mind as a fundamental instrument of expression."[17]

15. For Spain, see Johannes-Michael Scholz, "*Relatores* et *magistrados*. De la naissance du juge moderne au XIXe siècle espagnol," in *Les figures de l'administrateur. Institutions, réseaux, pouvoirs en Espagne, en France et au Portugal, XVIe–XIXe siècle*, ed. Robert Descimon, Jean-Frédéric Schaub, and Bernard Vincent (Paris: Éd. de l'EHESS, 1997), 151–64. In France, the judge who handled the actual trial functioned as *rapporteur* for the assembled judges who later passed sentence. See, for example, J. H. Shennan, *The Parlement of Paris* (1968; London: Routledge, 2021).
16. María Paz Alonso Romero, *El proceso penal en Castilla, siglo XIII–XVIII* (Salamanca: Ed. Universidad de Salamanca, 1982), 260–62; Pablo Pérez García, "Perspectivas de análisis del proceso penal en el Antiguo Régimen. El procedimiento ordinario de Valencia Foral (ss XVI y XVII)," *Clío & Crímen: Revista del Centro de historia del crimen de Durango* 10 (2013): 35–82, here p. 77. On the other hand, Nuria Verdet Martínez has shown that Francisco Jerónimo de León, a judge of the secular Valencia Royal Civil High Court, used his own sentences to argue points of judicial doctrine, and hence extensively commented on the reasons for these sentences in print, though not in court. Verdet Martínez, "Francisco Jerónimo de León. Cultura, política y prática administrativa en la Valencia de los Austrias menores" (PhD diss., Universitat de Valencia, 2014), 90–111.
17. Bellomo, *The Common Legal Past of Europe*, 97.



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This common nomenclature meant that the case summaries were immediately legible to a reader trained in the *ius commune*. Yet this is only part of the story. Alongside this legal terminology sat another vocabulary that also formed part of the technical language used in the trials and the *relaciones de causas*. This vocabulary was derived from the ecclesiastical focus on mercy, forgiveness, and penitence. Terms related to conversion, repentance, confession, and emotional behaviors saturate the texts and often leave little room for judicial vocabulary proper. This terminology of repentance, remorse, absolution, and compassion has nevertheless been routinely overlooked or regarded simply as hypocrisy by researchers, who frequently follow Henry Charles Lea's characterization of the inquisitors as "pitiless judges."[18] The words employed to describe defendants' reactions during the trial, their responses to questions, and their confessions have a misleadingly conventional ring to modern, secular ears, but had a different and clearly defined meaning for early modern theologians and churchmen.

To be used properly and simultaneously, these two vocabularies required the inquisitors to take an unusual degree of interest in the person and behavior of the defendants who came before their tribunals. This was because of the exceptional nature of the crime that justified their existence: heresy.

## Heresy: A Multifaceted and Ambiguous Crime

The internal logic of the formal inquisitorial trial of faith was shaped by the unique characteristics of the crime the Holy Office was created to prosecute. We must therefore consider the nature of that offense and the significant difficulties posed by the detection and prosecution of that most elusive of infractions: a thought crime. Indeed, heresy was explicitly considered as such in the inquisitorial literature: Tiberio Deciano stated that "in the case of heresy, even the thought itself is punishable," leaving the judge with the perplexing task not just of reading another's thoughts but of legally proving them criminal.[19]

### The Difficulty of Defining the Offense

Unlike many other crimes, heresy had degrees: one could be more or less "infected by heresy," whereas one could not be just a little bit of a murderer. To further complicate matters, it was a sin as well as a crime, and the Holy Office had to respect procedural and substantial rules derived from both criminal and canon law when conducting heresy trials. In addition to whatever punishment was inflicted for their offense,

18. Lea, *A History of the Inquisition*, 2:482. The phrase is repeated numerous times over the four volumes.

19. Tiberio Deciano, *Tractatus criminalis D. Tiberii Deciani utinensis, comitis, equitisque, ac celeberrimi juris utriusque consulti … duobusque tomis distinctus, omnibusque plane cum in foro, tum in scholis versantibus, non minus necessarius quan utilis …* (Turin: apud haeredem Nicolai Bevilaquae, 1593), vol. 1, lib. 5, chap. 20, "Haeresis specialia," §41, fol. 208v.



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defendants might also be subjected to penance for their sins, and even those not found guilty in the judicial sense could be given penance without being legally punished, a distinction that has frequently confused both contemporaries and historians.

Heresy was also difficult to define because its fundamental principle was the *deliberate* choice of an erroneous belief. The ignorant could not be heretics because they did not know they were wrong, while minors, drunks, and the mentally impaired were unable to make deliberate choices and hence were also not formally heretics. The influential Italian jurist Prospero Farinacci was explicit: he "who errs because of simple-mindedness, believing that the church holds what he believes, does not commit heresy." Yet even this had limits, the most important being that "when pertinacity and impenitence concur in a simpleton, his simple-mindedness does not free him from either the sin or the crime of heresy."[20] The ignorant should be enlightened, and if they stuck to their erroneous beliefs they were no longer free from guilt and therefore deserving of punishment.

Nor could heresy be linked to a particular place or a specific moment in time. It was an interior attribute or state of being that could only be expressed—and thus detected—through actions or speech acts that were witnessed in time and space, but which were at best a reflection of the substance of the offense, not the offense itself. Heresy was thus a transgression like no other. The system of proof studied and mobilized by all early modern jurists, including inquisitors, came from the *ius commune* and was based on the conformity of testimony and evidence concerning situated and temporal actions, with their "concordance" establishing their validity as proof.[21] But how to prove a crime that took place outside space and time? The only way was through confession, which took on an inordinate importance but still did not offer incontrovertible proof because false confessions could be made by those who were not actually heretics. Any action or utterance indicative of heresy was inherently untrustworthy and might be caused by something other than informed choice: fear, confusion, simple-mindedness, ignorance, impaired mental faculties, drunkenness, anger, and so on. Heresy thus became a crime defined by degrees of suspicion rather than actual guilt or its absence. Some suspicion would always remain about those who had been found not guilty, but also about those who had been convicted. No sentence except "relaxation" to the secular arm was ever final, a point repeatedly made in both Tomás de Torquemada's *Instructions* of 1484 and the inquisitorial and judicial literature produced over the centuries of the Holy Office's existence. Torquemada stated that when witnesses testified against those who had already been convicted and reconciled to the Church, "even though they were or have been absolved, one proceeds against them as if they were

20. Prospero Farinacci, *Tractatus de haeresi, in quo per questiones, regulas, ampliationes, limitationes quidquid jure civili et canonico, quidquid Sacris Consiliis, Summorumque Pontificum constitutionibus sancitum et communiter in ea materia receptum, quidquid denique in praxi servandum, brevi methodo illustratur, cum argumentis, summariis et indice locupletissimo*, (Antwerp: apud Ioannem Keerbergium, 1616), Quaestio CLXXIX, §8.

21. Giorgia Alessi Palazzolo, *Prova legale e pena. La crisi del sistema tra evo medio e moderno* (Naples: Jovene, 1979).



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impenitent."[22] Every sentence in a heresy trial, apart from death by fire, involved an absolution of all penalties specified in canon law for heretics. Yet even after the sentence had been pronounced, the defendant was not completely exonerated of their past conduct: Deciano remarked that a "sentence of absolution in heresy trials is never finally adjudged,"[23] since "the punishment for heresy can be increased after the sentence."[24]

Lacking any direct sensory access to the actual crime, the inquisitors were dependent on evidence concerning external manifestations of heresy through words and actions. To help interpret these and to make the public aware of what to report, lists were drawn up and published as "edicts of faith" enumerating anything that might be considered a possible indication of heresy. Denunciations related to these lists launched thousands of inquisitorial trials: in Toledo no less than twenty-six percent of all denouncers referred in some way to edicts of the faith in their statements.[25] Yet, as the inquisitorial manuals make clear, the words and deeds assembled in these edicts did not automatically translate into heresy, a crime based on knowledge and intention. In the words of Farinacci, "he who is ignorant does not consent, and without consent or will one does not commit the crime of heresy."[26]

## A Crime of Variable Intensity

The crime of heresy varied in intensity in the sense that one could be more or less heretical, but also because a person's qualities and activities could make them more or less suspicious to the judges. The extent of this suspicion was affected by three key factors: the circumstances of the actions or utterances that provoked the suspicion, the person of the defendant, and the distance between Catholic doctrine and the indications of possible heresy. We shall examine them one by one.

The circumstances in which the suspicious actions or utterances took place mattered a great deal. Did they occur during everyday life, a theological debate, or a drunken brawl? Casting doubts on Mary's virginity during an alcohol-fueled session at a brothel or during a learned discussion could indicate very different things—and both are attested in cases examined by the Inquisition. Anger and drunkenness were an effective defense during the ancien régime, and humor might also take the sting out of an otherwise heretical statement: one who utters heretical remarks "joking and not in earnest is not a heretic," declared Farinacci. However, "whoever utters heretical words as a joke, by misspeaking or in anger, is not set free without

22. Tomás de Torquemada, "Instructions from Sevilla" [1484], §13, in Miguel Jiménez Monteserín, *Introducción a la Inquisición española. Documentos básicos para el estudio del Santo Oficio* (Madrid: Editora Nacional, 1981), 86–105, and Consejo de Inquisición, *Compilacion de las Instrucciones del Oficio de la Santa Inquisición, hechas por el muy Reverendo Señor Fray Tomás de Torquemada…* (Madrid: Diego Diaz de la Carrera, 1667), fols. 3r–9r.
23. Deciano, *Tractatus criminalis*, vol. 1., lib. 5, cap. 20, "Haeresis specialia," §54, fol. 249v.
24. Ibid., §33, fol. 247r.
25. Jean-Pierre Dedieu, *L'administration de la foi. L'Inquisition de Tolède (XVIe–XVIIIe siècle)* (Madrid: Casa de Velázquez, 1989), 144.
26. Farinacci, *Tractatus de haeresi*, Quaestio CLXXIX – 3, §23.



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penance even if they escape the punishment for heresy."[27] In other words, penance awaited even those who were not punished under the law.

These circumstances mostly decreased the suspicious nature and severity of the offense. But in other cases, the context might increase suspicion. For example, eating a little meat on a forbidden day "does not show internal heresy, because it is usually out of sheer gluttony or desire to enjoy the meat."[28] However, eating the same quantity of meat in the company of known Protestants would create a greater suspicion that the transgression had a religious, that is, heretical, motive. Context could thus both intensify and reduce suspicions of heresy aroused by actions or words.

The second factor was perhaps the most important: the quality of the person of the defendant. This is clearly reflected in interrogations, where the first question posed by inquisitors concerned defendants' ethnicity or culture. Being from a *converso* family—that is, Jews who had converted to Christianity, or their descendants—immediately aroused suspicion. Likewise, in the sixteenth century a French background made one vulnerable to suspicions of Calvinism. Variations of the phrase "since they were French, they were tortured" are not uncommon in the *relaciones de causas*, while after hearing the summary of Antonio Díaz's trial for Judaism at Cuenca in 1622, the *Suprema* remarked that "he should have been tortured, … especially since he was a Portuguese and a beggar."[29] So many Portuguese of Jewish descent had entered Spain at this time that defendants such as Díaz were immediately considered more likely to be Judaizers than those of non-Portuguese origin, and the evidence against them more damning. Of course, being of Spanish Old Christian descent tended to diminish the suspicion of heresy aroused by similar words or actions.

Furthermore, the level and type of religious training, the general standard of education, and the mental capacity of the defendant mattered a great deal. Farinacci was emphatic: "ignorance exonerates the crime of heresy."[30] The reason, explains Antonio Montes de Porres in his summary of Antonino Diana's work, is that the ignorant "unbeliever does not despise the authority of the Church, although he offends God."[31] The *relaciones de causas* report thousands of cases where men and women accused of heretical propositions proved that they were ignorant and often also simple-minded, combining the two to attenuate—though not necessarily nullify—their guilt. As Farinacci made clear, however, this exception did not apply when it came to matters that all Catholics were explicitly obliged to believe, or when ignorance could be easily overcome.[32] At the other end of the scale stood the theologians who were sometimes denounced for statements made during disputations

27. Ibid., Quaestio CLXXIX – 4 §39 and 40.
28. Antonio Montes de Porres, *Suma Diana recopilados en romance todos los onze tomos del R. P. D. Antonino Diana* (Madrid: Melchor Sanchez, 1657), 345.
29. Madrid, Archivo histórico nacional (hereafter "AHN"), Inquisición (hereafter "Inq."), leg. 1931, exp. 15, *relación*, n.d.
30. Farinacci, *Tractatus de haeresi*, Quaestio CLXXIX – 3, §23.
31. Montes de Porres, *Suma Diana*, 344.
32. Farinacci, *Tractatus de haeresi,* Quaestio CLXXIX – 3, §29–33.



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or lectures. These cases were frequently the result of professional rivalries between religious orders, and the assertions that allegedly contradicted Catholic doctrine could be both disputed and obtuse. As jurists, the inquisitors depended on their theological experts, the *calificadores*, to assess the existence and degree of heresy in such allegations, though as members of religious orders the latter were not always neutral in these theological conflicts and their statements to the Holy Office could be contradictory. Sentences in such cases were generally light and the verdict not always a conviction, yet the mere fact of having been tried by the Holy Office could in and of itself destroy a theologian's career.

Another personal characteristic that could inflect or even expunge suspicions of heresy was a defendant's mental health. When the widow María Luisa was tried for heretical propositions in Llerena in 1613, the inquisitors eventually concluded that she was insane, suspended her trial, and "told her to go where she wanted."[33] A fair number of other defendants were hospitalized for mental illness and their cases suspended (or even acquitted[34]), often after making statements that the *calificadores* considered indicative of heresy. Hospitalization did not always go well for defendants: Pedro Ortiz, tried and acquitted in Barcelona in 1578, "was considered insane and admitted to the hospital, where he completely lost his mind."[35] The mentally infirm could not legally be held responsible for their actions in any court, but this was particularly the case with heresy, where the crime itself was the reasoned and willed choice of error over truth. In the words of Porres, "heresy is choosing error."[36] Mental infirmity robbed the accused of the capacity to make such deliberate choices, meaning that they were formally incapable of being heretics.

Finally, the third factor concerned the centrality of the alleged errors in relation to Catholic doctrine. Statements touching central tenets of the faith, such as the virginity of Mary, the sanctity of the saints, or the divinity of Christ, were much more serious than saying that sex between unmarried partners was not a mortal sin, even though this was also in direct contradiction of Catholic doctrine and had been formally condemned since the fifteenth century. If the suspicious statements also accorded with those known to be typical of particular heretical groups, they were considered even more indicative of heresy. The Inquisition manual written by Isidoro de San Vicente in the 1650s gives clear indications on this subject. Members of "infected nations," which he lists as "the English, Scots, Irish, French, and other foreigners neighboring these," hold propositions that "deny the indulgences, the authority of the pope, Purgatory, and other similar subjects." Jews, on the other hand, tended to say that "the Messiah has not come, that Mosaic law is good or better than that of Christ, that Saturday should be a holy day, that the dead should be buried in virgin soil," and so forth. Muslims would claim that "Mohammad was a prophet, that one should observe Ramadan," *etcetera*.[37]

33. AHN, Inq., leg. 1988, exp. 67, *relación*, n.d.
34. See below for the difference between suspension and acquittal.
35. AHN, Inq., lib. 730, *relación*, fols. 315r–v, n.d.
36. Montes de Porres, *Suma Diana*, 344.
37. AHN, Inq., lib. 1245, fols. 68v–69r, n.d.



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Each of these declarations was both contrary to central points of Catholic doctrine and typical of a particular kind of opposition to it. Conversely, statements such as "I renounce God!" or "There is nothing beyond birth and death"[38] were frequent utterances in contemporary Spanish culture. Though proscribed, they did not contain any real indication of theological difference and were not ordinarily taken as signs of heresy in Inquisition trials.

The same way of evaluating suspicion applied to supposedly heretical actions. As seen above, eating meat without a medical prescription on forbidden days was explicitly mentioned in the literature as something that could have other causes than heresy. But failure to remove one's hat before a holy image was considered a tell-tale sign of Protestantism in foreigners (and even in Old Christians at the height of the Protestant scare in Spain), of Judaism in *conversos*, and of Islam in *moriscos*.

Other offenses tried by the Holy Office had a much more tenuous connection to heresy. While bigamists arguably did abuse the sacrament of marriage, nobody seriously entertained the notion that they did so out of a deliberate and informed rejection of Catholic doctrine, and their trials never developed into real heresy trials. Likewise, priests prosecuted for soliciting sexual favors in the confessional were usually assumed to be motivated by sexual gratification rather than theological differences on the sacrament of confession. In trials for witchcraft and superstition, two cases can be distinguished. The Holy Office claimed sole jurisdiction over diabolical witchcraft, since taking the devil as one's god was idolatry and thus formal heresy. Other, more ordinary magical practices were less clearly signs of heresy. Though theologians frequently insisted that they represented an implicit pact with the devil and considered love magic inherently incompatible with the Christian doctrine of free will, in practice the Holy Office rarely treated such rituals as even remotely heretical.

Taken together, these three factors—circumstances, the character of the defendant, and the relation of the offense to Catholic doctrine—could completely change the interpretation of the proven facts of a case. They not only strengthened or attenuated suspicions of heresy, but potentially modulated the legal qualification of certain acts and words as either crimes or sins. They could thus have a significant effect on the perceptions and choices of the inquisitors.

## A Crime Repressed by Multiple Judicial Instances

Even though the Holy Office claimed sole jurisdiction over the crime of heresy, it was also repressed by other judicial instances, notably civil courts. Crucially, it was the criminal laws regulating secular jurisdictions that prescribed the death penalty for heresy, not the Inquisition. Overlapping jurisdictions, in this case, did not generate conflict but cooperation. Secular authorities carried out all physical punishments ordered by the Inquisition. The latter was thus free to claim that it

38. Jean-Pierre Dedieu, "De l'adhésion à la connaissance. Vie religieuse et pastorale catholique," in *L'administration de la foi*, 35–54, §31.



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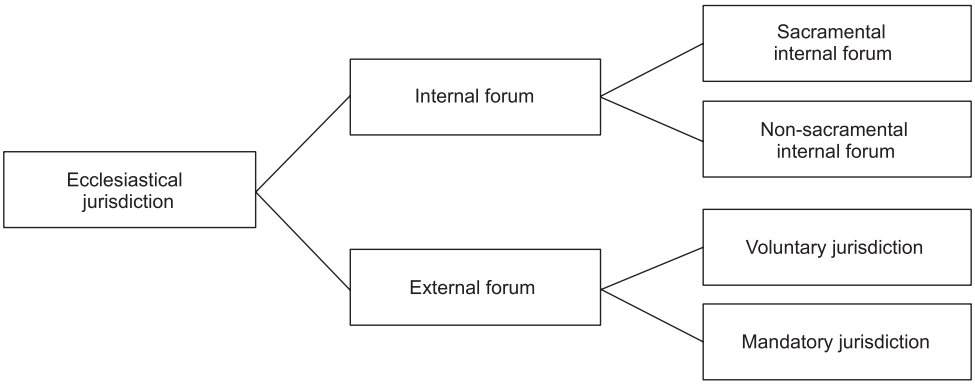
did not kill convicted heretics but simply "relaxed" them to secular courts, which then burned them at the stake according to criminal law. There also existed complementary and sometimes overlapping jurisdiction with civil tribunals over crimes such as witchcraft and bigamy.

Moreover, the Inquisition was one of several ecclesiastical jurisdictions, and was not the only one to have cognizance over certain aspects of heresy. This can be complicated to grasp for those not familiar with the finer points of Catholic thought and organization. Catholic ecclesiastical jurisdiction comprises two domains called, respectively, the internal forum and the external forum. The internal forum is the domain of conscience and deals with the individual Catholic's relationship to God. The external forum, on the other hand, is concerned with matters touching the public and social good of the corporate body of Catholics. The forgiveness of sins is thus a matter for the internal forum, while redress for religious offenses that have harmed the community of believers is dealt with in the external forum. Some offenses fall under both jurisdictions, as was the case with most of those tried by the Spanish Inquisition. Each of the two forums was further divided in two, as shown in the illustration below (fig. 2).

**Figure 2. Ecclesiastical jurisdiction and its division**




Source: Jean-Pierre Dedieu and Gunnar W. Knutsen.

The sacramental internal forum is the forum for sacramental confession and penitence and concerns the remittance of sins by God. It did not fall under the jurisdiction of the Inquisition, which reconciled repentant defendants to the Church but not to God: depending on the degree of heresy, a priest or bishop administered divine pardon once the penitent had been reconciled with the Church via the Inquisition's sentence, and could again approach the sacrament. When it came to the internal forum, the Holy Office was only concerned with the non-sacramental branch, and even then in relatively rare cases—for instance, when inquisitorial courts lifted the ecclesiastical penalties incurred for heresy by members of the clergy.



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## The Three Axes of Inquisitorial Action

These factors created a tension between two levels of inquisitorial activity. One was repressive, and, after the alleged offense had been proven in conformity with all judicial forms, led to the defendant being put to death with the aid of secular justice, and thus to their radical exclusion from civil society as well as the community of believers. Though the Inquisition did not pronounce this civil exclusion itself, a definitive verdict of heresy ratified this process. The other was integrative, ecclesiastic, and focused on reintegrating defendants into the fold of the Catholic Church, pardoning them and restoring them to the civil and religious status from which they had been dispossessed through their heresy.

This second strategy was implemented in three ways. First, by way of the judicial external forum and a legal ritual, with an often-public ceremony of reconciliation and the imposition of a penance that in some cases resembled a criminal punishment in its severity. This process lifted any ecclesiastical censures the defendant might have incurred through heresy and all their civil consequences, and was the Inquisition's most obvious field of action. Second, and this is the point which most concerns us here, in many cases this strategy was brought into play by something very much resembling the voluntary external jurisdiction, when the Inquisition summoned and dispatched without much ado or judicial formality defendants who voluntarily presented themselves, whether or not on their own initiative. Finally, the court could proceed by way of the non-sacramental internal forum, though as we have seen this path was used more rarely. In all cases, once the censures had been lifted, the penitent had to go to a priest, confess, and receive sacramental absolution—a process devoid of civil effect but of great spiritual consequence.

Historiography has clearly emphasized the first, repressive dimension of inquisitorial action while saying little or even nothing about the second, integrative one. This situation is in serious need of redress: all the sources consulted show that both inquisitorial practice and the formal doctrine on which it was based displayed a marked preference for the reintegration rather than the repression of heretics. Two caveats are nevertheless in order. First, this was only the case when inquisitorial practice was free from political interference. It therefore did not apply in moments of crisis such as those seen in fifteenth-century Valencia, during the conflict between the Soto and Riquelme families in mid-sixteenth-century Murcia, or in the Cristo de la Paciencia affair in the 1630s.[39] In all of these episodes, political concerns and external influence were strong enough to derail normal inquisitorial proceedings. Second, in some cases the personal inclinations of

39. Jaime Contreras, *Sotos contra Riquelmes: regidores, inquisidores y criptojudíos* (Madrid: Anaya & Mario Muchnik, 1992); Juan Ignacio Pulido Serrano, *Injurias a Cristo. Religión, política y antijudaísmo en el siglo XVII* (Alcalá de Henares: Universidad de Alcalá, Servicio de publicaciones, 2002); Ricardo García Cárcel, *Herejía y sociedad en el siglo XVI. La Inquisición en Valencia, 1530–1609* (Barcelona: Península, 1980); Ricardo García Cárcel, *Orígines de la Inquisición española. El tribunal de Valencia 1478–1530* (1976; Barcelona: Península, 1985).



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the inquisitors displaced legal reasoning. This was the case, for example, during the Zugurramurdi witchcraft trials in 1609–1614—when Logroño's inquisitors sent half a dozen suspected witches to the stake despite the tribunal's previous reluctance to prosecute this crime—or the crisis provoked by Diego Rodriguez de Lucero in early sixteenth-century Córdoba, where hysteria over what the Inquisition called "complicities" led to a flood of denunciations.[40] These two episodes point to the need to avoid such instability via central control over provincial courts, or at least oversight by the *Suprema*, a crucial long-term trend as the Spanish Inquisition sought to balance the two contradictory tendencies at its core.

In order to reintegrate defendants into the fold of the Catholic Church, pardoned and restored to their previous civil and religious status, two things were required. On the structural level, the Church needed doctrinal and institutional channels that allowed it to welcome repentant heretics with mercy and forgiveness via a clear procedure that did not contravene the principles of its wider organization. On the individual level, convicted heretics had to desire reintegration and accept the conditions placed upon them by the Church. The Holy Office was charged with implementing this mechanism and with ascertaining and encouraging heretics' inclination to be reincorporated into the community of believers. It effectively sifted the defendants, steering individuals whose behavior left no hope for sincere reassimilation towards the repressive line of action, where they would be punished or tortured into submission. Those destined for reintegration, on the other hand, were guided through the institutional framework and assisted with the administrative formalities of their reincorporation into the fold. In all this the Inquisition complied strictly with the judicial forms in operation at the time, slightly adapted to its needs. These forms not only served to advance the judicial process; they also contributed hugely to the penitential dimension of the Inquisition's mission. For instance, allowing the court to keep a prisoner in solitary confinement as long as it pleased meant that exhausted defendants were more likely to confess but also more receptive to conversion.

The formal trial of faith combined all these aspects. Submerged below the repetitive progression of its formal stages were three discrete series of events that came together in the final sentence. These might be called the three axes of inquisitorial action (fig. 3). The first was a judicial trial that focused on external indications of heresy: transgressive behaviors and speech acts that the inquisitors had assembled and communicated to the general population through the reading of edicts. The first axis of action by the inquisitorial tribunal thus consisted of legally proving

40. Gustav Henningsen, *The Witches' Advocate: Basque Witchcraft and the Spanish Inquisition, 1609–1614* (Reno: University of Nevada Press, 1980). The Lucero affair still warrants a fuller study. See John Edwards, "Trial of an Inquisitor: The Dismissal of Diego Rodríguez Lucero, Inquisitor of Córdoba, in 1508," *Journal of Ecclesiastical History* 37, no. 2 (1986): 240–57; Ana Cristina Cuadro García, "Acción inquisitorial contra los judaizantes en Córdoba y crisis eclesiástica (1482–1508)," *Revista de historia moderna* 21 (2003): 11–28; John Edwards, *The Inquisitors: The Story of the Grand Inquisitors of the Spanish Inquisition* (Stroud: Tempus, 2007), 41–55; Lea, *A History of the Inquisition*, 1:189–211.



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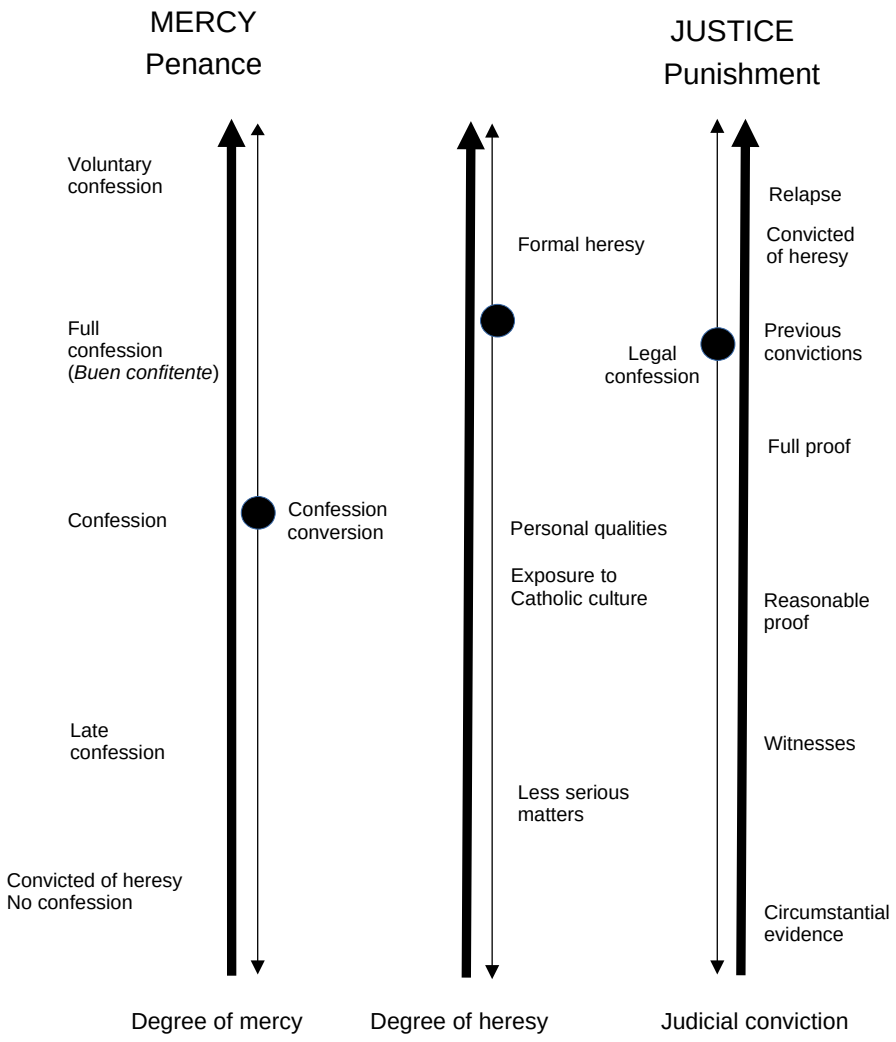
that the defendant had in fact committed the acts of which they were accused. Since these were observable actions that could be situated in time and space, the ordinary system of judicial proof was completely applicable. The culmination of this process came when a defendant confessed the reality of these indications of heresy, or when they were shown to be judicially insufficient for a conviction.

**Figure 3. The three axes of the inquisitorial trial of faith**




Source: Jean-Pierre Dedieu and Gunnar W. Knutsen.



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The second process consisted of measuring the degree of the defendant's heresy. For this, it was necessary to establish whether the acts with which they were being reproached had been voluntary and continuous and whether they touched on the central tenets of doctrine all Catholics were obliged to believe. It also had to be determined whether the defendant knew what these implied, was aware they were opposing the Catholic Church, and if they even knew the basics of Catholic doctrine. This meant a careful reconstruction of the context surrounding the facts and an exceptionally penetrating interrogation of the accused in order to ascertain their previous exposure to Catholic doctrine and culture.[41] The outcome could result in a verdict of formal heresy, or practically annul the offense by demonstrating that the conditions mentioned above did not apply. This was the case, for instance, for sailors and soldiers from Protestant lands who had never encountered Catholicism in their home countries and voluntarily sought to convert to the Catholic faith.[42]

A third process, the most important of all, was tied to the defendant's acceptance of conversion. To reach this goal, the inquisitors sought to elicit signs of repentance and submission. The touchstone for this was, naturally enough, a confession held over long sessions in the courtroom, during which the defendants expressed and externalized in their own words their interior state of mind.

Confession is a polysemous word. In judicial terms it means acknowledging the facts of a crime, and this is what the inquisitors sought in the first axis of inquisitorial action discussed above. What they sought in the third axis was a confession of the defendant's intentions, that is, of the heretical state of mind that lay behind the indications of heresy gathered as evidence against them. Such a confession would be the first step towards repentance and a request for forgiveness and reintegration into the Catholic Church—in other words, a conversion. It could happen at any moment of the trial, with defendants confessing their heretical intention and pleading for pardon and mercy even at the last moment or after a sentence of relaxation had been pronounced. Nevertheless, the earlier they did so, the better it was for them. Psychological harassment through confinement in secret jails and mental intimidation during the hearings helped soften even hardened minds. Nevertheless, the inquisitors did not accept this confession at face value. The defendant had to demonstrate that their change of heart was genuine

41. The first audience of the formal trial of faith, from 1540 on, was usually devoted to a detailed interrogatory of the defendant concerning their life story and their knowledge of Christian doctrine and prayers. Fernando de Valdes's *Instructions* of 1560 made this interrogatory compulsory. See Jean-Pierre Dedieu, "'Christianisation' en Nouvelle Castille. Catéchisme, communion, messe et confirmation dans l'archevêché de Tolède, 1540–1650," *Mélanges de la Casa de Velázquez* 15 (1979): 261–94.

42. Gunnar W. Knutsen, "Religious Life in Seventeenth Century Norway Seen through the Eyes of the Spanish Inquisition," *Arv: Nordic Yearbook of Folklore* 61 (2005): 7–23; Knutsen, "El Santo Oficio de la Inquisición en Barcelona y soldados protestantes en el ejército de Cataluña," *Estudis. Revista de historia moderna* 34 (2008): 173–88; Pauline Croft, "Englishmen and the Spanish Inquisition 1558–1625," *English Historical Review* 87, no. 343 (1972): 249–68; Werner Thomas, *Los protestantes y la Inquisición en España en tiempos de Reforma y Contrareforma* (Leuven: Leuven University Press, 2001).



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and truthful. This was evaluated by reference to a set of more or less intense external manifestations of contrition and desire for reintegration, established in formal inquisitorial doctrine as set down in the published Latin treatises (listed in appendix 2). Prominent among these were tears and sorrowful expressions of regret that made their way into the *relaciones de causas* but rarely find an echo in the pages of history books. What may strike a modern reader as a melodramatic show of emotion was to contemporaries a sign of genuine religious contrition and fervor, and thus highly convincing. It is true that pardon was not granted systematically. Some defendants did not qualify for reintegration, either because they refused it or because they had already been reconciled and later relapsed.[43] However, in this third axis of action the inquisitors could show clemency, and often did. What we observe here is a religious and not a judicial logic, in which conversion was more important than punishment.

## The Sentence

The inquisitorial sentence was the result of what was observed along the three axes outlined above. In keeping with the dual judicial and religious nature of the trial, convicts could be sentenced to both punishment and penitence. While formally distinct and frequently different, these two forms of sanction could also overlap, so that fines, for example, could be imposed as either one or the other. In practice, distinguishing between punishment and penitence demands a judicial competence that both contemporaries and later historians often lacked. The gravity of the sentence followed a logic that weighed up both the severity of the offense and the religious state of mind of the convict. These criteria changed over time, as punishments became lighter and penances more severe. When San Vicente was writing his inquisitorial manual in the 1650s, he qualified the sentencing for practically every offense he included with remarks such as "the great benevolence of these times," "earlier the rigor of law was upheld more stringently," or "these days the rigor of law is not practiced."[44] Finally, in addition to the judicial punishment and the religious penance, the sentence contained a crucial third element that concerned the defendant's affiliation with the Catholic Church: Were they considered part of the Church or not? Had they ever left it? And, if so, did they want to be reintegrated? The outcome of the trial itself would contain the answers to these questions.

43. Formally, all such cases should have been relaxed, and the doctrine is explicit on this point. Nevertheless, in our work on the EMID we have found several cases where defendants were reconciled more than once. For example, Ana Súarez was reconciled in Cartagena de Indias for witchcraft in 1634 and again in 1650. In 1636 she was acquitted of the offense of breaking her banishment after the conviction of 1634. AHN, Inq., lib. 1020, *relaciones*, fols. 313r–359r and 453r–485r, n.d., and lib. 1021, *relaciones*, fols. 157r–230v and 235r–269v, n.d.

44. AHN, Inq., lib. 1245, fols. 68r and 70r.



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If, during the process, the external indications of heresy had been "destroyed" (that is, shown to lack legal evidentiary value), or if the necessary conditions for heresy were not reached, the inquisitors abandoned the case. They did so by discontinuing their activities and suspending the trial, by acquitting the defendant of the instance of the accusation, or by sentencing them to a minor penance—but not a judicial punishment.[45] If, on the other hand, heresy was judicially demonstrated but centered on minor issues and the heretical intention was doubtful, the defendant was convicted and sentenced to abjure their crimes *de levi*, along with both punishment and penance. It is important to note that while *de levi* signified a light suspicion of heresy, the punishment could be severe, including public whipping, banishment, and galley service. For example, in 1724 Andrés García de Soria, alias don Manuel López de Toro, was convicted of bigamy in Murcia and sentenced to abjure *de levi*, two hundred strokes of the whip, and eight years of banishment, the first five to be served as a galley slave.[46] In cases where heresy was not fully judicially proven, but concerned serious issues such as apostasy to Islam, Judaism, or Protestantism, and where the defendant had shown a desire to live as a Catholic, the sentence would be abjuration *de vehementi*—signifying strong suspicion—coupled with severe punishment and penitence.

Both of these classes of sentence entailed a conviction that did not imply that the defendant had ever actually stepped outside the fold of the Catholic Church, even though their speech or behavior had given rise to legitimate suspicions of heresy. However, some of those who came before the tribunal of the Holy Office were found to be more than simply suspected of heresy: they were officially declared to have been legally outside the Catholic community and thus to be formal heretics. In such cases, where heresy was as far as possible legally proven and concerned serious matters, if the defendant made a full confession, then sincerely repented and asked for forgiveness and reintegration into the Catholic Church, the sentence would usually be for reconciliation, confiscation of property, imprisonment, and various forms of penance. While in religious terms this was a more serious offense and involved a conviction for heresy, the actual punishment could be less severe than for those sentenced to abjure the suspicion of heresy. If, on the other hand, the heresy was legally proven and concerned serious matters, but the defendant did not convincingly confess and repent, or if they had relapsed into heresy, the sentence would entail confiscation of property and relaxation to the secular branch, where the convicted heretic would be burned alive.

In cases of proven heresy, then, the way to avoid this ultimate punishment was to seek the route of mercy. This meant making a convincing confession and pleading for forgiveness in conjunction with a show of remorse and repentance.

45. Defendants who proved in court that the evidence given against them was false, rather than simply insufficient, were acquitted and the case against them closed definitively.
46. AHN, Inq., leg. 2853, *relación*, "Memoria de los reos que salieron en el auto particular de fe que el Santo Oficio de la Inquisición de la ciudad y reino de Murcia celebró el día treinta de noviembre de 1724 en la iglesia del convento de San Francisco de dicha ciudad," n.d.



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It was not an easy line to walk, and while the inquisitors stressed that defendants should make their confessions and plead for reintegration of their own free will[47]—a central tenet in the Christian drama of salvation—in practice the methods used to wring out these confessions were coercive, if not always physically violent.

## Formal Variation, Underlying Continuity

The inquisitors were perfectly aware of the existence of the three axes described above. This finding has various important implications. First, it establishes a continuity between the formal trial of faith and the multiple abbreviated procedures that were also at the Inquisition's disposal. An abbreviated trial of faith preserved the basic tenets of the full trial but made it possible to skip a number of steps. When, in the first half of the sixteenth century, the inquisitors of Toledo performed visitations of their district, traveling from place to place and holding audiences in taverns and city halls, they received a large number of self-denunciations for relatively minor offenses such as blasphemy or the violation of inquisitorial prohibitions by descendants of convicted heretics. They normally dispatched these cases in a matter of hours: confession, a short interrogatory regarding the circumstances, from time to time a brief account of the defendant's life story, and, as a conclusion, a fine and some light spiritual penance.[48] A similar process is described in a circular issued by the Council of the Inquisition (*carta acordada*) to the district tribunals in the early seventeenth century:

> *If some foreigner comes and denounces himself for having been a Lutheran or member of any other sect, let him be asked what errors he believed in, to what sect he belonged and in what region, with whom he spoke of it, in what country, if he had or received any particular knowledge of our Holy Catholic Faith, whether he was educated in the same, when, and by whom. … Send instructions to the port commissaries [agents of the Inquisition in the main ports of the kingdom] allowing them to receive such confessions, and if [the person's] declarations make clear that they have been educated in our Holy Catholic Faith, to reconcile them to the Church, without confiscation or [the obligation to wear] penitential dress; those who never have been taught the faith should be absolved* ad cautelam.[49]

For a long time, it was not clear to us how the inquisitors combined such heterogeneous practices. But now a fuller reading of the sources has revealed the continuity

47. On the importance of free will in matters of faith, see Isabelle Poutrin, "La conversion des musulmans de Valence (1521–1525) et la doctrine de l'Église sur les baptêmes forcés," *Revue historique* 648, no. 4 (2008): 819–55.
48. Dedieu, *L'administration de la foi*, 74–95.
49. Madrid, Biblioteca nacional de España (BNE), MSS/5760, Anonymous, "Manual práctico para inteligencia y prompto despacho de causas y expedientes que regularmente suelen ocurrir en el Santo Oficio de la Inquisición," n.d. [late seventeenth century?], p. 331.



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between the different procedures, it is evident that the abbreviated trial of faith is a full trial stripped of its criminal wrapping. A self-denunciation that in fact looked very much like a confession in the sacramental sense of the term, an offense perceived as relatively minor, and an obvious lack of education or of any desire to willfully harm the Catholic Church frequently made it unnecessary to deploy the full paraphernalia of the formal procedure to establish the facts. The inquisitor could concentrate on the spiritual care of the defendant, who was treated as a penitent rather than an offender. He did not even need to act as a judge himself, much less assemble *consultores* (experts) and the bishop's representative to pass a definitive sentence, as was the case in a full formal trial. Instead, he could commission any cleric to do the job.

Second, our findings raise the question of chronology and thus of the plasticity of the inquisitorial procedure over time. The research presented here is based on material dating from the mid-sixteenth to the late eighteenth century. Even within this relatively short period, which excludes the first seventy years of the Holy Office's activity in Spain—not to mention the entirety of the European Middle Ages—we observed that the penitential aspects of such trials were increasingly foregrounded to the detriment of their criminal-legal dimension. Is this increased emphasis on penitence a hard fact or a bias introduced by the sources? It is not easy to measure such an evolution objectively. What is certain is that over time the inquisitors recorded the details of their activity in an increasingly precise manner. Penitentially oriented cases tended to be less formal than criminally driven ones. Since they generated less paperwork, they generally have a smaller footprint in the archives, which in turn means that they are underrepresented—or even invisible—in more succinct accounts. To further complicate matters, most of the records of the *Suprema* prior to 1561 have been lost. A careful study of every kind of early surviving source would be necessary to trace the origins of this twofold system.

This leads on to the third implication of our findings. It seems clear that this duality—the tension between penitence and punishment, justice and mercy—was present in the inquisitorial universe from the very beginning, and probably even predated the Holy Office as a strategy against heresy. In the Spanish case, Stefania Pastore has detected the presence of both visons of the law from at least the mid-fifteenth century, when the creation of such a court in Castile was only just beginning to be envisioned. She accurately interprets their coexistence as a jurisdictional debate between episcopal and inquisitorial instances, but also as a confrontation between the virtues of mercy and justice, split between different jurisdictions.[50] Was this really the case, or had they by then already merged within a single trial procedure, as they undoubtedly had half a century later? Was this duality inherent to the workings of the Inquisition, or an accident due to specific circumstances of the Inquisition in Spain? Recent research suggests

50. Stefania Pastore, *Il vangelo e la spada. L'inquisizione di Castiglia e i suoi critici (1460–1598)* (Rome: Ed. di storia e letteratura, 2003), especially pp. 63–75, 99, and 208–14.



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that an intimate connection existed from the outset. In particular, the process of repentance and formal judicial proceedings appear to have been closely related in the apparatus of the Apostolic Penitentiary as early as the thirteenth century, at the very moment when that institution was elaborating the basic concept of legal guilt as distinct from sin—a distinction that would shape the entirety of Christian legal theory.[51]

A fourth implication of our findings concerns the ambivalence of inquisitional proceedings. In its very architecture, the trial of faith was in fact two conflicting elements merged into a single structure. Their coexistence made it an unstable edifice that could easily sway to one side or the other, towards justice or mercy, depending on the inquisitor's choices. Anyone who has even perfunctorily read the file of a trial of faith or a few letters from the Council of the Inquisition to a provincial tribunal will be familiar with the formula that inquisitors repeated before every defendant who appeared in court: "If they confess the truth, their trial will proceed as swiftly and mercifully as possible; if not justice will be done."[52] Repeated *ad infinitum*, this phrase powerfully highlights a fundamental feature of the inquisitorial procedure. It left open two options and let the judge decide which of them to use, whether by his own choice or in response to external pressure. A great many episodes in the history of the Inquisition make sense when read with this duality in mind. It explains, for instance, the spectacular reversals of legal decisions already evoked above as products of particular circumstances: in the early seventeenth-century case of the Basque witch trials, when in a few months the work of the inquisitor Alonso de Salazar y Frías overturned the jurisprudence of the Logrõno court,[53] or during the anti-*converso* frenzy that swept through Murcia in the mid-sixteenth century.[54] In this unstable structure, political interventions such as those that marked the Cristo de la Paciencia affair in 1630s Madrid could tip the balance one way or the other, with very different results for the defendants.[55] A full assessment of the role of the penitentiary dimension, its variations in intensity, its privileged subjects, its evolutions over time, and the reasons for these variations, would enhance our understanding of how early modern Spain constructed a feeling of Spanish identity centered on religion. It would also require a full revisiting of the history of the Spanish Inquisition and, for this reason, must be left for another occasion.

A final and more general implication of our research concerns the extension of such a dual model. Was the Spanish Inquisition the only institution in which explicit principles (in this case, justice) and implicit ones (such as mercy)

51. Arnaud Fossier, *Le bureau des âmes. Écritures et pratiques administratives de la Pénitencerie apostolique, XIIIe–XIVe siècle* (Rome: École française de Rome, 2018), 618. See also Ninon Dubourg's review of this volume in *Annales HSS* 78, no. 1 (2023): 159–61, https://doi.org/10.1017/ahss.2023.50.

52. Pablo García, *Orden que comunmente se guarda en el Santo Oficio de la Inquisición acerca de procesar en las causas qu'en el se tratan…* (Valencia: Antonio Bordazar, 1737), 14.

53. Henningsen, *The Witches' Advocate*.

54. Contreras, *Sotos contra Riquelmes*.

55. Pulido Serrano, *Injurias a Cristo*.



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were at once inseparable and a source of structural conflict? That the Holy Office stood, from an institutional point of view, midway between the civil and religious spheres may offer one explanation for this dichotomy. Yet although this ambiguous situation must have made the rift more visible, it alone does not account for it. We know of at least one other institution that unquestionably displayed the same dual character: the Spanish inquests into "purity of blood" (*limpieza de sangre*). These inquests were supposed to prove that the ancestors of the "pretender" under investigation had been noble or at least honorable persons for at least three generations, free from any trace of heresy transmitted by blood from Jewish or Muslim ancestors. Officially, they were heavily structured by legal frameworks, which became increasingly rigorous over time and sought to guarantee their probity. Witnesses, proof, and legal formalities were strictly defined by the most exacting dispositions of *ius commune*, and the necessity of excluding "impurities" constantly affirmed. A number of studies have nevertheless shown that many such inquiries strongly distorted the facts—and that the actors themselves were well aware of this.[56] Beneath the formal, legal layer and judicial vocabulary, the real purpose of the inquests was quite different. They were an evaluation of the social acceptability of candidates for the group to whose membership they aspired, and their ancestry mattered less than their present social position and their relations with existing members of the group.[57] We suggest that a careful analysis of many other institutions, and not only judicial ones, would produce similar results. Social facts are complex objects. The law provides tools to handle them, but it is not the law alone that shapes them.

*Jean-Pierre Dedieu*
*CNRS/ENS Lyon/IAO*
jean-pierre.dedieu@ens-lyon.fr

*Gunnar W. Knutsen*
*University of Bergen*
gunnar.knutsen@uib.no

56. Jean-Pierre Dedieu, "La información de limpieza de sangre," in *Los grandes procesos de la historia de España*, ed. Santiago Muñoz Machado (Barcelona: Crítica, 2002), 193–208. This duality produced a tension resolved in some cases through integration and in other cases the closure of the group, as demonstrated in Jean-Frédéric Schaub and Silvia Sebastiani in *Race et histoire dans les sociétés occidentales (XVe–XVIIIe siècle)* (Paris: Albin Michel, 2021). Everything depended on the circumstances.
57. Dedieu, "La información de limpieza de sangre," 193–208.



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## Appendix 1. Manuals written by and for inquisitors used in this article

Anonymous. "Práctica de las inquisiciones del Santo Oficio - Las cosas que se han de observar de praticar en las inquisiciones, con algunos casos particulares y extraordinarios que me parecen dignos de notar por exemplares para cuando suceda caso semejante." Madrid, Biblioteca nacional de España (BNE), MSS/831, c. 1640.

Anonymous. "Las cosas que se han de observar se practican en las inquisiciones con algunos casos particulares y extraordinarios que me parecen dignos de notar por ejemplares cuando suceda caso semejante." BNE, MSS/8660, c. 1640.

Anonymous. "Manual del Santo Oficio de la Inquisición: formularios y mementos." XII + 146 fol., BNE, MSS/6210, c. 1650.

Anonymous. "Manual práctico para inteligencia y prompto despacho de causas y expedientes que regularmente suelen ocurrir en el Santo Oficio de la Inquisición." BNE, MSS/5760, undated [late seventeenth century?].

Anonymous. "Formularios, resoluciones y procedimientos seguidos en el Tribunal de la Santa Inquisición." BNE, MSS/798 undated [seventeenth century].

Anonymous. "Instrucción para ser fiscal del Santo Oficio y lo que conviene para este fin es lo siguiente, que va aplicado por número," c. 1655. Published in Isabel Martínez Navas, "Un manual para Fiscales del Santo Oficio," *Revista de la Inquisición. Intolerancia y derechos humanos* 24 (2020): 11-35.

San Vicente, Isidoro de. "Estos son los manuscritos del Señor San Vicente …" Madrid, Archivo histórico nacional (AHN), Inquisición, lib. 1245, c. 1650.

## Appendix 2. Treatises cited by inquisitors in the works mentioned in Appendix 1

Anonymous. *Repertorium inquisitorum pravitatis hereticae. In quo omnia, quae ad heresum cognitionem ac Sancti Inquisitionis forum pertinent, continentur. Correctionibus et annotationibus prestantisimorum jurisconsultorum Quintilinai Mandosii, ac Petri Vendrameni decoratum et auctum*. Venice: apud Damianum Zenarum, 1575.

Anonymous. *Compilación de las instrucciones del Oficio de la Santa Inquisición, hechas por el muy Reverendo Señor Fray Tomás de Torquemada, prior del monasterio de Santa Cruz de Segovia, primero inquisidor general de los reinos y señoríos de España e por los otros reverendissimos señores inquisidores generales que depués sucedieron, cerca de la orden que se ha de tener en el ejercicio del Santo Oficio; donde van puestas sucesivamente por su parte todas las instrucciones que tocan a los inquisidores, e de otra parte las que tocan a cada uno de los oficiales y ministros del Santo Oficio; las cuales se compilaron en la manera que dicha es, por mandado del illustrisimo y revenrendisimo señor don Alonso Manrique, cardenal de los Doce apóstoles, arzobispo de Sevilla, inquisidor general de España. Impresas de nuevo por mandado del Excelentisimo Señor don Juan Everardo Nitardo, de la Compañía de Jesus, inquisidor general en los reinos y señoríos de Su Majestad, y de su Consejo de Estado y de la Junta de govierno, confesor de la Reina nuestra señora doña María de Austria*. Madrid: por Diego Diaz de la Carrera, impressor del Reyno, 1667.



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Argüello, Gaspar Isidro. *Instrucciones del Santo Oficio de la Inquisición, sumariamente, antiguas y nuevas. Puestas por abecedario por Gaspar Isidro de Argüello, oficial del Consejo*. Madrid: Imprenta Real, 1630.

Castro, Alfonso. *Fratris Alfonsi a Castro, zamorensis, Ordinis minorum, regularis observantiae provinciae Sancti Jacobi: De justa haeriticorum punitione libri tres, nunc recens accurate recogniti*. Venice: ad Signum Spei, 1549.

Deciano, Tiberio. *Tractatus criminalis D. Tiberii Deciani utinensis, comitis, equitisque, ac celeberrimi juris utiusque consulti … duobusque tomis distinctus, omnibusque plane cum in foro, tum in scholis versantibus, non minus necessarius quam utilis …*, 2 vols. Turin: apud haeredem Nicolai Bevilaquae, 1593.

Diana, Antonino. *R. P. D. Antonini Diana Panormitani, clerici regularis coram S.D.N. Alexandro VII episcoporum examinador, et Sancti Officii in regno Siciliae consultoris, Practicae resolutiones lectissimorum casuum editio ultima, partes omnes XII complectens, iterum atque iterum cum auctore collata, ac plurimis locis aucta, decretisque quibusdam Alexandri VII locupletata*. Zaragoza: apud haeredes Didaci Dormer, 1675.

Farinacci, Prospero. *Prosperi Farinacii jurisconsulti romani Tractatus de haeresi, in quo per questiones, regulas, ampliationes, limitationes quidquid jure civili et canonico, quidquid Sacris Consiliis, Summorumque Pontificum constitutionibus sancitum et communiter in ea materia receptum, quidquid denique in praxi servandum, brevi methodo illustratur, cum argumentis, summariis et indice locupletissimo*. Antwerp: apud Joannem Keebergium, 1616.

Rojas, Juan de. S*ingularia juris in favorem fidei, haeresisque detestatione. Tractatus de Haereticis cum quinquaginta analyticis assertionibus et privilegiis inquisitorum. Authore Johannis a Rojas, utriusque juris licentiato, nunc inquisitore haereticae pravitatis Valentino* … Estella: Andiano de Amberes, 1566.

Rojas, Juan de. *Singularia juris in favorem fidei, haeresisque detestationem. Tractatus de Haereticis cum quinquaginta analyticis assertionibus et privilegiis inquisitorum. Authore Johannis a Rojas, utriusque juris licentiato, nunc inquisitore haereticae pravitatis Valentino. Cum annotationibus Francisci Pegnae, sacrae theologiae et juris utriusque doctoris. Adjectis quaestionibus XXV, coram judicibus fisci Sanctae inquisitionis controverti solitis, authore Gabriele a Quemada, judici fisci inquisitionis toletanae* … Venice: apud Franciscu Zilettum, 1583.

Salelles, Sebastián. *De Materiis tribunalium Sancti Inquisitionis seu de regulis multiplicibus pro formando quovis eorum ministro, praesertim consultore, praemissis XIII prolegomenis de origine et progressu dictorum tribunalium. Opus tum eorumdem et quorumlibet tribunalium judicibus ac ministris tum moralis theologiae et jurisperitiae professoribus valde utile. Auctore R. P. Sebastiano Salelles, de Societate Jesu, Hispano ex Regno Valentiae, S. T. P. et tribunalis matritensis per annos quadraginta assiduo consultore*. Rome: ex typographia Io. Petri Collinii, 1651.



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