The Church, the Councils, & Reform

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The Legacy of the Fifteenth Century

Edited by Gerald Christianson, Thomas M. Izbicki, and Christopher M. Bellitto

TO OUR TEACHERS,

Bernard McGinn

Brian Tierney

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That which we have heard and known,
And what our forebears have told us,
  We will not hide from their children.
                      —Psalm 78:3

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PREFACE

One could say that this book is a *Festschrift,* but not for a person. Rather, it is a celebration of a book—a special book on a special occasion, the fiftieth anniversary of the groundbreaking and highly influential *Foundations of the Conciliar Theory* by Brian Tierney (1955).

Thus, while the topic of our volume has exceptional relevance to current issues in church and society, it has a personal significance as well. Our authors were asked to consider the contributions of the "Tierney generation" to the significant but controversial period of the reform councils that rose to prominence when the Council of Constance healed the Great Schism (1378–1417), during which the papacy was divided among two and then three obediences, and came to a climax when the Council of Trent initiated sweeping reforms within a church divided by the Reformation. The specific issue that these authors address is how the crisis of the schism and the conciliar movement that followed caused theologians, jurists, and humanists to rethink accepted concepts of church government, and to balance the need for reform with the need to preserve order in the visible institution and reaffirm its legitimacy.

Typical of those who faced this issue were two theologians who, among others, figure prominently in these pages: Nicholas of Cusa and Aeneas Sylvius Piccolomini (Pope Pius II). Both men at first embraced the Council of Basel. Cusanus even prepared (according to Tierney) that "most mature" of all conciliar theories, the *Catholic Concordance,* in which he attempted to balance consent with hierarchy and connect both of these with wide-ranging reform. Yet both Nicholas and Aeneas abandoned Basel and had to rethink concepts of church, councils, and authority, while still preserving their dedication to renewal. The essays in this volume assess the contributions of these and other figures in this

conflict-ridden but remarkable period, which witnessed the restoration of papal authority and the long-needed reform of institutional and devotional Christianity. This late medieval period ushered in an early modern—and then a modern—church and papacy that had to negotiate many changed contexts dealing with reform, constitutional government, councils, and ecclesiology.

Unlike many other volumes of this nature, this book does not represent the collected papers of a conference. Rather, the book and a conference were planned and grew together. Essays on the topic were invited with the intention that they and others that would not be included in the volume would be presented either as lectures or as written communications, and then sharpened by discussion among a variety of international scholars in the field. Held in Gettysburg, Pennsylvania, on October 8–10, 2004, the conference theme was apparent in its title: "Reform and Obedience: The Authority of Church, Council, and Pope from the Great Schism to the Council of Trent." The meeting was part of a series sponsored jointly by the American Cusanus Society and the International Seminar on Pre-Reformation Theology of Gettysburg Lutheran Seminary.

Founded by H. Lawrence Bond and led by Morimichi Watanabe, its president for many years, the American Cusanus Society celebrated its twenty-fifth anniversary in 2008. The purpose of its younger sibling, the International Seminar, is to bring scholars from around the world to engage in research, discussion, and publication that will make a significant contribution to our knowledge of the late Middle Ages, the Renaissance, and the coming of the Reformation, with special reference to the life and works of Nicholas of Cusa. As a means to provide context for, and more intense discussion of, issues raised by Cusanus research, the seminar began holding biennial conferences in 1986. Primary emphasis is given to working sessions in which scholars can discuss a selected text or texts, often in a fresh translation, and to providing a platform for younger scholars. In addition, the conference offers one or more general lectures by established scholars for the benefit of the community. It is hoped that these lectures and discussions will promote Protestant-Catholic, and even interreligious, dialogue.

Ten of these conferences have taken place since 1986. Scholars have come from Finland, Sweden, Canada, Germany, Italy, the Netherlands, Belgium, France, Poland, and Japan in addition to the United States. With one exception, the conferences have been held in the ambient setting of historic Gettysburg. The exception was the eighth conference, held at the Catholic University of America in 2001, to celebrate the sixth centenary of Cusanus's birth. Out of this conference came *Cusanus: The Legacy of Learned Ignorance,* edited by Peter Casarella, and published by CUA Press in 2006.

Among the other publications related to the Gettysburg conferences and supported by the American Cusanus Society are *Nicholas of Cusa on Inter-religious Harmony,* edited by James Biechler and H. Lawrence Bond (1990); *Nicholas of Cusa in Search of God and Wisdom,* edited by Gerald Christianson and Thomas M. Izbicki (1991); *Humanity and Divinity in Renaissance and Reformation,* edited by John W. O'Malley, Thomas M. Izbicki, and Gerald Christianson (1993); *Nicholas of Cusa on Christ and the Church,* edited by Gerald Christianson and Thomas M. Izbicki (1996); F. Edward Cranz, *Nicholas of Cusa and the Renaissance,* edited by Thomas M. Izbicki and Gerald Christianson (2000); Morimichi Watanabe, *Concord and Reform,* edited by Thomas M. Izbicki and Gerald Christianson (2001); *Nicholas of Cusa and His Age: Intellect and Spirituality,* edited by Thomas M. Izbicki and Christopher M. Bellitto (2002); and *Introducing Nicholas of Cusa: A Guide to a Renaissance Man,* edited by Christopher M. Bellitto, Thomas M. Izbicki, and Gerald Christianson (2004).

We are indebted to the distinguished scholars whose contributions anchor significant parts of this volume, but insofar as it succeeds in its goal to introduce a number of younger scholars along with these veterans, the book will confirm our hope that the vein discovered by Brian Tierney and mined by the "Tierney generation" is not played out, and that the dialogue between the conciliar movement and contemporary issues in church and society will have a long and vigorous life.

ABBREVIATIONS

AHC   *Annuarium historiae conciliorum*

AHP   *Archivum historiae pontificiae*

CB   Johannes Haller ed., *Concilium Basliense: Studien und Quellen zur Geschichte des Concils von Basel,* 8 vols. (Basel: R. Reich, 1896–1936; Nendeln/Liechtenstein: Kraus, 1971).

CCCM   *Corpus christianorum continuatio medievalis* (Turnhout: Brepols, 1971–).

CH   *Church History*

COD   Giuseppe Alberigo, ed., *Conciliorum oecumenicorum decreta,* 3rd ed. (Bologna: Istituto per le scienze religiose, 1973).

DBI   *Dizionario biografico degli italiani,* 68 vols. (Rome: Istituto della Enciclopedia italiana, 1960–).

DRA   *Deutsche Reichstagsakten,* 22 vols. (Munich: Historische Kommission bei der Bayerischen Akademie der Wissenschaften, 1867–1973).

Du Pin   Louis Ellies Du Pin, *Joannis Gersonii doctoris theologi et cancellarii parisiensis opera omnia,* 5 vols. (Antwerp: Sumptibus societatis, 1706; Hildesheim: Olms, 1987).

Finke   Heinrich Finke, *Acta concilii Constanciensis,* 4 vols. (Münster: Regensbergsche Buchhandlung, 1896–1928).

Hardt   Hermann von der Hardt, *Magnum oecumenicum Constantiense concilium de universali ecclesiæ reformatione, unione, et fide,* 6 vols. (Frankfurt: In officina Christiani Genschius, 1697).

Mansi Giovanni Domenico Mansi, *Sacrorum conciliorum nova et amplissima collectio,* 54 vols. (Paris: H. Welter, 1901–27; Graz: Akademische Druck- u. Verlagsanstalt, 1960).

MCG František Palacký, *Monumenta conciliorum generalium seculi decimi quinti,* 4 vols. in 8 (Vienna: Typis C.R. Officinae typographicae aulae et status, 1857–1935).

MFCG *Mitteilungen und Forschungsbeiträge des Cusanus-Gesellschaft*

NC *Nicolai de Cusa opera omnia iussu et auctoritate Academiae Litterarum Heidelbergensis* (Hamburg: Meiner, 1932–) = h. Works are cited by book, chapter, and section number; h by volume and page. For example, *De coniecturis* I, 1, #5 (h III, 7–8) refers to *De coniecturis,* book 1, chapter 1, section 5 (in the Heidelberg edition, volume 3, pages 7–8)

OC Jean Gerson, *Oeuvres complètes,* ed. Palémon Glorieux, 10 vols. (Paris: Desclée, 1960–73).

PG Jacques-Paul Migne, *Patrologiae cursus completus . . . Series Graeca*, 161 vols. (Paris: J.-P. Migne, 1857–66) [commonly called *Patrologia Graeca*].

RQ *Renaissance Quarterly*

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11

The Electoral Systems of Nicholas of Cusa in the *Catholic Concordance* and Beyond

✑ GÜNTER HÄGELE AND
FRIEDRICH PUKELSHEIM

Electoral systems form a recurrent theme throughout the writings of Nicholas of Cusa. They are admittedly just a side theme within his broad scope of interests, yet they appear in his first major work, the *Catholic Concordance* (*De concordantia catholica*), as well as in later publications written when he was traveling in Germany as a papal legate in 1451–52. Surprisingly, the electoral systems designed by Cusanus have only recently been rediscovered in political science literature, where the Cusan system is known under the name of Borda.

In this chapter we review Cusanus's writings on electoral systems.[1] First we describe his proposed system for the election of the king appearing in the *Catholic Concordance*. Next we argue that the *Concordance* system abounds with novel ideas to such an extent that it undoubtedly deserves an independent standing beside the electoral systems of Ramon Llull. Our discussion then turns to the clerical electoral systems

1. We build on Günter Hägele and Friedrich Pukelsheim, "Die Wahlsysteme des Nikolaus von Kues," in *Bayerische Akademie der Wissenschaften, Mathematisch-Naturwissenschaftliche Klasse, Sitzungsberichte Jahrgang 2001–2003* (Munich, 2004), 1–47; Hägele and Pukelsheim, "Das Königswahlsystem der Concordantia Catholica," MFCG 29 (2005): 81–94 [Akten des Internationalen Symposiums über "Das Mathematikverständnis des Nikolaus von Kues—mathematische, naturwissenschaftliche und philosophisch-theologische Dimensionen," 8.–10. Dezember 2003, Schwäbisches Tagungs- und Bildungszentrum Kloster Irsee].

that Cusanus mentions in his later writings. Finally, we relate the electoral systems of Cusanus and Llull to those of Jean Charles de Borda (1733–99) and the Marquis de Condorcet (1743–94).

The Electoral System in the *Catholic Concordance* (*De concordantia catholica*)

Cusanus authored his first major work, the *Catholic Concordance,* while he was an incorporated member of the Council of Basel in 1433–34.[2] He was thirty-three years old, serving as a lawyer to the archbishop of Trier. The first two books of the *Concordantia catholica* treat ecclesiology and the theory of councils. The two books were originally intended to stand on their own, to be published under the title *Libellus de ecclesiastica concordantia.* When news spread in Basel that Emperor Sigismund was about to visit the council—in fact, he arrived on October 11, 1433—Cusanus hastened to add a third book dealing with the reform of the empire.[3] He rearranged some of the contents of the *Libellus* and added new material to create the *Concordantia catholica.* Cusanus's use of the term *concordantia* reaches beyond the traditional concordance of established authorities.[4] It indicates a view peculiar to Cusanus: a convergence in harmony that respects individual differences.[5]

Already the *Libellus* text featured an electoral system, intended for the elections of clerical officeholders. This first draft was then extended to include a system for the election of the king of the Romans, which formed chapter 37 of book 3 (#535–41 [h XIV, 448–50]) of the *Catholic Concordance.* The work was edited in 1968 as volume 14 of the *Opera omnia;* the issue with book 3 appeared in 1959.[6]

When Cusanus authored the *Catholic Concordance* in 1433, he had not witnessed any elections of the king of the Romans. The last election had taken place on July 21, 1411, when Cusanus was ten years old; and the next election would not take place until March 18, 1438.[7] Hence Cusanus drew on what he had read (III,

2. Citations are from *De concordantia catholica,* ed. Gerhard Kallen, in *Nicolai de Cusa opera omnia iussu et auctoritate Academiae Litterarum Heidelbergensis* (Hamburg, 1964), vol. 14 of NC.

3. Roger Bauer, "Sacrum imperium et imperium germanicum chez Nicolas de Cues," *Archives d'histoire doctrinale et littéraire du Moyen Âge* 21 (1954): 207–40; Bernhard Töpfer, "Die Reichsreformvorschläge des Nikolaus von Kues," *Zeitschrift für Geschichtswissenschaft* 13 (1965): 617–37.

4. Franz Gillmann, "Wann kam das Wort *concordantia* auf?" *Archiv für katholisches Kirchenrecht* 112 (1932): 482–87.

5. Hans Gerhard Senger, "Allumfassende Eintracht," in Senger, *Ludus Sapientiae: Studien zum Werk und zur Wirkungsgeschichte des Nikolaus von Kues* (Leiden: Brill, 2002), 19–42.

6. Morimichi Watanabe, "The Origins of Modern Cusanus Research in Germany and the Establishment of the Heidelberg *Opera omnia,*" in *Nicholas of Cusa in Search of God and Wisdom,* ed. Gerald Christianson and Thomas M. Izbicki (Leiden: Brill, 1991), 17–42.

7. Silvinus Müller, "Die Königswahlen und Königskrönungen," in *Krönungen. Könige in Aachen—Geschichte und Mythos. Katalog der Ausstellung,* ed. Mario Kramp, 2 vols. (Mainz: P. von Zagern, 2000), 1:915–18.

36, #533 [h XIV, 447]): that former elections were dominated by absurd intrigue, that electors primarily secured their individual advantages, and that the fate of the empire was neglected. Cusanus wanted to incite the Council of Basel to set a strict rule (*regula*) to secure elections that were proper and pure (*puritas electionis*).

During the thirteenth century the group of electors of the king of the Romans had narrowed down to a well-defined electoral college, the college of prince electors.[8] The term *collegium* is the appropriate legal term for such a closed group of electors.[9] There were three cleric electors, the archbishops of Mainz, Trier, and Cologne, and four lay electors, the king of Bohemia, the Count Palatine, the Duke of Saxon, and the Margrave of Brandenburg. The privileges of the college of prince electors were sanctioned in the *Golden Bull* of 1356.[10] In the course of time, the electoral vote acquired a somewhat more objective role, with the elector functioning as a representative of his *Kurfürstentum* rather than exercising electoral power as an individual.[11]

Chapter 37 (*Capitulum XXXVII*)

Cusanus presents his new electoral system in chapter 37 of the *Catholic Concordance.* He starts out with some preparatory arrangements that are directed toward the electors (*sacri imperii electores*).[12] In our translation, we occasionally smooth the text to enhance the transparency of the exposition.[13]

Sacri imperii electores, dum ad electionem procedere volunt futuri imperatoris, die statuto cum omni humilitate et devotione maxima ad divina conveniant spoliantes se omni peccato, ut in medio eorum sit Christus dominus et invocata gratia sancti spiritus. Post introductionem devotam	The electors of the holy empire, when they wish to proceed to the election of the future emperor, should assemble on an appointed day in all humility and with the utmost devotion to the service of God and free themselves from all sin, so that Christ the Lord may be in their midst and they

8. Armin Wolf, *Die Entstehung des Kurfürstenkollegs, 1198–1298—Zur 700-jährigen Wiederkehr der ersten Vereinigung der sieben Kurfürste* (Idstein: Schulz-Kirchner, 2000).

9. Peter Landau, "Was war um 1300 ein Kollegium?" in *Königliche Tochterstämme, Königswähler und Kurfürsten,* ed. Armin Wolf (Frankfurt: Vittorio Klostermann, 2002), 485–95.

10. Ernst Schubert, "Königswahl und Königtum im spätmittelalterlichen Reich," *Zeitschrift für historische Forschung* 4 (1977): 257–338, at 289.

11. Ibid., 283; Helmut Assing, "Der Aufstieg der askanischen Markgrafen von Brandenburg in den Kurfürstenrang," in Wolf, *Königliche Tochterstämme,* 357.

12. Gerd Kleinheyer, *Die kaiserlichen Wahlkapitulationen: Geschichte, Wesen und Funktion* (Karlsruhe: Müller, 1968), 3.

13. See also *Nicholas of Cusa: The Catholic Concordance,* trans. Paul E. Sigmund (Cambridge: Cambridge University Press, 1995), 303–5; Iain McLean and John London, "The Borda and Condorcet Principles: Three Medieval Applications," *Social Choice and Welfare* 7 (1990): 99–108; Iain McLean and John London, "Ramon Lull and the Theory of Voting," *Studia Lulliana* 32 (1992): 21–37; Iain McLean and A. Bernard Urken, *Classics of Social Choice* (Ann Arbor: University of Michigan Press, 1995), 77–78.

agendae rei tractent de pluribus, qui ad imperium dispositione extrinseca et intrinseca tantae maiestatis digni esse possint. Et ad hoc, ut absque omni timore, liberrime et secretissime ipsa electio celebretur, praestitis iuramentis supra altare domini de eligendo iusto liberae conscientiae iudicio meliorem. (III, 37, #535 [h XIV, 448])

may receive the grace of the Holy Spirit. After a solemn introduction into the electoral business they should decide on the list of the candidates who, because of their outward or inner qualities, may be worthy of so majestic an office. So that the election may be carried out without fear and in complete freedom and secrecy, they swear oaths at the altar of the Lord that they will elect the best man in the just judgment of a free conscience.

Ballot Design

An idea peculiar to Cusanus is that every elector places the candidates into a rank order by using paper ballots (*cedulae*). The easy availability of paper was an achievement of the fifteenth century. In fact, paper ballots were used also in municipal guild and council elections.[14]

Faciant per unum notarium nomina omnium, de quibus tractarunt, in cedulas praecise aequales redigi, et semper unum nomen in una cedula tantum, et in fine illius nominis distincte signetur numerus per 1, 2, 3, quousque perveniatur ad numerum personarum, de quibus in tractatu mentio facta fuit, quod digni reputarentur. Puta sunt decem comperti per Alemanniam, qui digni visi sunt, inter quos communi iudicio dignior eligi debet. Ponatur itaque in una cedula nomen unius tantum, et sub illo nomine vel in eius latere numerus ab uno usque decem, et dentur cuilibet electori decem cedulae decem nominum. (III, 37, #535–36 [h XIV, 448–49])

The names of all those on the list of candidates are put down by a notary on identical ballots, with only one name on each ballot. Next to each name the numbers 1, 2, 3 are written, up to as many as there are persons that have been decided upon to be worthy as candidates. For example, if ten candidates have been found in Germany who appear worthy and from among them the one most worthy is to be chosen by common judgment, then each ballot bears the name of just one candidate and the numbers 1 to 10 under or next to the name. Every elector receives ten ballots with the ten names.

A professional scribe (*notarius*) prepares the ballots so that they all come out identically. Each ballot carries the name of just a single candidate, followed by the rank scores: 1 to 10. Thus the number of ballots depends on the number of

14. Jörg Rogge, "Ir freye wale zu haben—Möglichkeiten, Probleme und Grenzen der politischen Partizipation in Augsburg zur Zeit der Zunftverfassung (1368–1548)," in *Stadtregiment und Bürgerfreiheit—Handlungsspielräume in deutschen und italienischen Städten des Späten Mittelalters und der Frühen Neuzeit,* ed. Ulrich Schreiner and Ulrich Meier (Göttingen: Vandenhoeck & Ruprecht, 1994), 244–77, 250, 255.

candidates. In order to circumvent an undetermined variable, Cusanus illustrates the system with an example of ten candidates. Then, every elector receives ten ballots, one for each candidate. Cusanus gives no indication why the case with ten candidates makes a typical example. It would seem to us that so many candidates would have been an extreme exception. For the period 919–1806, Wolf counts fifty-five kings and antikings and 118 further candidates; this would point to about three candidates per election, not ten.[15] Since a formal procedure to identify candidates did not exist, and since at times somebody may have viewed himself as a candidate while his contemporaries did not, exact numbers are not available. But even in a contested election like the one of 1292, there were no more than seven candidates.[16]

Ranking Rule

In municipal elections, the electors dictated the name of their favorite candidate to one and the same scribe, who then wrote the name down on a ballot paper.[17] However, Cusanus is more secretive; every elector is to fill in the ballot by himself or, when illiterate, by someone whom he trusts (*secretarius*). The novel idea of Cusanus's system is that the electors assign rank scores to the candidates, beginning with the one who is least qualified, and leaving as the last name the one who, in the eyes of the elector, is qualified best.

Acceptis itaque cedulis per electores trahat quisque ad partem solus et secrete cum secretario, si litteras ignorat, et positis ante se omnibus decem cedulis legat cuiuslibet nomen. Et tunc in dei nomine secundum suam conscientiam ponderet, quis inter illos omnes minus idoneus exsistat, et signet cum puncto incausti supra primum numerum simplicem longum punctum et post hoc iudicet, quis post illum minus idoneus, et signet secundum numerum cum puncto longo simplici et sic continue, quousque veniet ad optimum suo iudicio, et ibi signabit decimum nu-

When the ballots have been handed out, each elector should go aside alone, or secretly with his secretary if he cannot read and write, place all ten ballots before him, and consider the name on every ballot. In the name of God he should ponder, directed by his conscience, who among all candidates is least qualified, and place a simple long mark in ink above the number 1. Thereafter he should decide who is next least suitable, and mark the number 2 with a simple long overline. Thus he continues until he arrives at the best, in his judgment, and there he will mark the

15. Armin Wolf, "Königskandidatur und Königsverwandtschaft—Hermann von Schwaben als Prüfstein für das Prinzip der freien Wahl," *Deutsches Archiv für Erforschung des Mittelalters* 47 (1991): 45–117, at 45.

16. Armin Wolf, *König für einen Tag: Konrad von Teck: Gewählt, ermordet(?) und vergessen* (Kirchheim unter Teck: Gottlieb und Osswald, 1993), 78.

17. Rogge, "Ir freye wale," 250, 255.

merum aut illum numerum, qui numero personarum correspondebit. (III, 37, #536–37 [h XIV, 448–49])

number 10, or generally the number corresponding to the number of candidates.

Since it is up to the elector to mark the scores, there would appear to be no necessity to prescribe the sequence in which the electors are to proceed. Cusanus evidently feels differently. The electors are instructed to first identify the weakest candidate and mark his ballot with the lowest score, 1. Then they should identify the second-weakest candidate, find the ballot with his name among the remaining nine ballot papers, and mark the second-lowest rank score, 2. In this way every elector proceeds through the rank scores of 3, 4, 5, 6, 7, 8, and 9, always singling out the weakest among the remaining candidates. The negative selection strategy makes the elector look forward to the end of the process, since the one who is last is the one who is best, whence the elector delights in marking on the last ballot the highest score, 10. Cusanus wants the electors to carry out the marking in such a way that they put a neat and proper overline above the particular number they wish to mark.

In order to ensure secrecy, Cusanus has the electors retreat when marking the ballots, but one wonders where to. The seven top noblemen of the empire presumably would have claimed certain standards on what they felt appropriate, and the illiterate members among them would have needed even more space to be able to take a secretary and consult with him in secrecy. If all this takes place in a single room, the electors can watch each other sorting out the candidates and marking the rank scores. We would consider it quite a challenge to organize the rule as it stands, but Cusanus provides no further detail.

Voting Devices

Dealing with such details indicates that Cusanus is anxious to secure a truly secret vote. Even the size of the overline ink stroke with which the electors are to mark the rank scores on the ballots are a concern. He recommends that the electors discuss its form and agree on a uniform style. His instructions that the electors are given the same ink and identical pens would seem to us quite practical. Secrecy would save the electors from candidate pressure, and the atmosphere governing the election would be peace, not fear.

Et est bonum, quod de eodem incausto et per aequales pennas et aequalia simplicia longa aut brevia puncta, secundum quod concordabunt, signent, ne cuiusquam

It is a good idea for the electors to use the same ink, identical pens, and the same simple marks—long or short, whichever is agreed upon—so that individual hand-

signatura prae ceteris notari possit ad hoc, ut libertas maior in electoribus et pax inter omnes conservetur. (III, 37, #538 [h XIV, 449])

writings cannot be identified. This preserves maximum freedom for the electors and peace among all.

Vote Totaling

Cusanus's concern to protect the voters from external pressure surfaces again when the ballots are evaluated. The person who is called upon to read out the ballots is the priest who celebrated the Mass opening the electoral proceedings. Perhaps Cusanus drew on the experience with secret ballots in clerical elections. There, a few officials (*scrutatores*) were installed, who interviewed the other electors as to what their vote was. The electoral rules demanded that the scrutatores publicized only the final total and kept the individual votes secret. Cusanus may have trusted that the priest would guarantee secrecy and refrain from giving an indication whether, despite all other precautions, he was able to identify the handwriting on one ballot or another.

Factis itaque illis signaturis deferat in manu cedulas suas quisque ex electoribus, et proiciat unusquisque suas manu propria in saccum vacuum in medio electorum pendentem. Quibus in sacco positis advocetur sacerdos, qui missam celebravit, et quidam computista habens tabulam, in qua secundum ordinem sint illa nomina, ponamus decem, eligendo-rum. Et sedens in medio electorum sacerdos extrahat de sacco seriatim, ut manibus occurrunt, cedulas et legat nomen et numerum signatum. Computista vero in latere illius nominis signet numerum, et ita fiat de omnibus. Quibus expletis colligat per additionem computista numeros cuiuslibet nominis. Et ille erit tunc imperator, qui maiorem numerum habuit. (III, 37, #539 [h XIV, 449])

When the marks have been made, every elector should bring his ballots forward and throw them with his own hand into an empty sack hanging in the midst of the electors. When all ballots have been deposited in the sack, the priest who has celebrated the Mass should be called, as well as a teller with a tablet on which the names of the candidates are listed; in the example there were ten. Sitting among the electors, the priest should take the ballots out of the sack in the order in which they come to hand. He then reads out the name and the number marked, and the teller writes the number next to this name onto his tablet. When all ballots are recorded, the teller should add up the numbers next to each name. The candidate who has the highest total shall be king.

The process of counting the votes starts by collecting all ballots into a sack. With a remarkable love of detail Cusanus insists that, in the beginning, the sack must be empty (*saccus vacuus*). In fact, this instruction has persisted through the

centuries. Even today a polling station is opened only after the members of the electoral committee have convinced themselves that all urns are empty. In 1472, the Augsburg furrier Georg Merz tried otherwise and, early on, smuggled sixteen ballots into the urn—in his favor, of course. However, he had not reckoned with his alert fellow furriers, who noted the surplus when it came to counting the ballots. Merz was expelled from the city of Augsburg and fled to Bavaria.[18]

With ten candidates and ten ballots properly filled in, every voter marks the ranks 1 up to 10 once each, and thus commands a total of $1 + 2 + \ldots + 10 = 55$ scoring points. Cusanus seems confident that the electors will follow suit. He does not take precautions that an elector, deciding for himself that every candidate is the best, marks the maximum rank scores 10 on each ballot, and thus almost doubles his total rank score to achieve a weight of 100. The clever man could honestly assure any winner that he voted for him to become king.

While Cusanus takes pains to accommodate illiterate electors, the possibility of a mistake in numbering goes unattended. If an elector miscounts and erroneously marks the rank score 1 twice, for example, he will come to an early end with rank score 9, rather than reaching the optimum score of 10.

Whereas the job of producing the ballots is assigned to a professional scribe, Cusanus calls for someone who professionally deals with arithmetic (*computista*) in order to evaluate the scores. The term *computista* may indicate an expert who does calendar calculations.[19] In the fifteenth century, such experts had overcome the use of Roman numbers, instead relying on Arabic *chiffre* and the decimal system. Since each of the seven electors has 55 rank scores to assign, the computista deals with a total of $7 \times 55 = 385$ score points.

Captatio benevolentiae

After having described his electoral system (*eligendi modus*), Cusanus took a few lines to advertise its merits. Perhaps he was concerned that the system may appear too complicated to his audience. He explicitly tells the reader (*credas*) that he himself had been able to compose the system only with great effort.

Et secumdum illam practicam infinitis fraudibus obviatur, et etiam nulla practica sinistra locum habere posset, nec poterit excogitari sanctior, iustior, honestior et liberior eligendi modus, secundum quem	By following this procedure countless frauds are avoided and nothing sinister can happen. It would not be possible to devise a more righteous, just, honest, and free method of election in which, if the

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18. Ibid., 260.
19. Arno Borst, *Computus—Zeit und Zahl in der Geschichte Europas* (Berlin: Wagenbach, 1999).

impossibile erit, si secundum conscientiam eligunt, quin ille praeficiatur, qui ex omnium iudicio simul collecto melior iudicatur. Et non poterit alius modus securior, immo ex quo illa infallibilis sententia haberi posset, inveniri, quoniam omnes comparationes omnium personarum et omnes mixturae et syllogismi per unumquemque ex electoribus factibiles in hoc modo includuntur, quem ego non absque magno studio etiam non potui invenire. Et credas, quod perfectior inveniri nequit. (III, 37, #540 [h XIV, 450])

electors vote according to their consciences, the winner is the one who is judged best by the collective verdict of all. It is not possible to discover a method that leads to so infallible a decision more safely. Indeed, all sorts of comparison among all candidates and all confrontations and arguments likely to be made by every elector are included in this system, which I was able to compose with great effort only. You may well believe that no more perfect method can be found.

It is not entirely clear which words Cusanus uses when he refers to his achievements. We have translated the end of the penultimate sentence as follows:

. . . which I was able to compose with great effort only.

However, Kallen points out that the various manuscripts which underlie the edition provide three variants of the pertinent clause (h XIV, 450n9):[20]

(1) . . . quem ego non absque magno studio etiam non potui invenire.
(2) . . . quem ego absque magno studio etiam non potui invenire.
(3) . . . quem ego non absque magno studio etiam vix potui invenire.

The three variants differ only by nuances, not to be overemphasized through a translation. Kallen prefers variant (1), Honecker relies on (2), and we tend to (3).[21]

The clause has always been a challenge. Kallen quotes a marginal note indicating the understanding of a reader of a former time: "He says that he composed this electoral system after intensive studies only" (*Hunc modum eligendi cum magno studio dicit se invenisse*).

An Amendment (*cautela*)

The final paragraph adds an amendment (*cautela*) concerning the case that a candidate may come from among the lay electors. The *Golden Bull* explicitly admitted the possibility of self-elections. However, that one of the electors posed

20. Gerhard Kallen, *Cusanus Studien VIII: Die handschriftliche Überlieferung der Concordantia catholica des Nikolaus von Kues,* Sitzungsberichte der Heidelberger Akademie der Wissenschaften, Philosophisch-historische Klasse, Jahrgang 1963, Zweite Abhandlung (Heidelberg: Carl Winter Verlag, 1963).

21. Martin Honecker, "Ramon Lulls Wahlvorschlag Grundlage des Kaiserwahlplanes bei Nikolaus von Cues?" *Historisches Jahrbuch der Görresgesellschaft* 57 (1937): 563–74, at 570.

as a candidate was more of a rule than an exception. Cusanus stipulates that the elector-candidate should receive all ballots except the one with his own name.

Verum, ne quis ex electoribus propria affectione decipiatur, habeatur ista cautela, quod, si est aliquis aut plures, qui ex laicis communi tractatu inter eligendos conscripti sunt, cedula proprii nominis eidem non detur, sed aliae omnes, illa dempta, ut tollatur occasio suspicionis, qua se ipsum optimum omnium aestimare posset maiorem numerum nominis sui signando. Hoc solum dempto regula praescripta in omnibus servetur, et habebitur electio, cui melior non poterit inveniri. (III, 37, #541 [h XIV, 450])

Finally, the following precaution should be taken so that no elector can be perverted by self-interest. If, by the initial common decision, one (or more) of the lay electors has been listed as a candidate, the ballot with his own name should not be handed out to him. With this sole exception, he receives all other ballots. This would avoid an occasion for suspicion that he might adjudge himself the best of all by marking the highest number next to his own name. With this single exception the prescribed procedure should be followed completely. This will result in an election better than any other that could be conceived.

Unfortunately, the cautela may have fatal consequences. Let us assume that Count Ruprecht of Palatine is considered the best of ten candidates uniformly among all members of the electoral college. Since he does not receive a ballot with his own name on it, the only ballots with his name are those handed out to his six fellow electors. The final tally will show a total of 6 x 10 = 60 scoring points for Ruprecht. Let us also assume that all seven electors are in complete agreement as to who is the second-best candidate. Fortunately for the second-best, he receives nine score points from every elector, including Ruprecht, and hence ends up with a total of 7 x 9 = 63. Ruprecht is out and the winner is the second-best!

Other instances are conceivable that exhibit the weakness of the final cautela. The elector-candidate receives only nine ballots, but they all bear the rank scores from 1 up to 10 for him to mark. Which one is he to leave out? Without a 10, his total rank score reduces from 55 to 45. Or should he leave out the 1, to drop from 55 to only 54? In any case, the difference as compared to the otherwise possible overall total of 385 points reveals what he decided to do.

If the ballots for the elector-candidate were to show the rank scores from 1 up to 9 only, then his ballots would be identifiable. And if he had only one competitor—that is, there are just two candidates rather than a flock of ten—then, being deprived of his own ballot, the elector-candidate receives only the ballot with the name of his competitor, and he has no choice at all. In the sequel, we consider the electoral system that Cusanus designed without the final cautela.

An Appreciation of the *Concordance* System
Kallen's Note *Quod Nicolaus*

In an attempt to evaluate the electoral system of Cusanus we right away stumbled over the irritating note *Quod Nicolaus* with which the editor, Gerhard Kallen, annotated the first paragraph (#535) of chapter 37:

Quod Nicolaus *absque magno studio* invenire non potuisse dicit ex RAYMUNDI LULLI De arte electionis tractatu exscriptum esse M. Honecker, Ramon Luls Wahlvorschlag Grundlage des Kaiserwahlplans bei Nikolaus von Cues? Hist. Jahrb. 57 (1937) p. 563 sqq. edocuit. Ipsum Lulli tractatum De arte electionis idem autor e cod. Cusano 83 fol. 47–48 edidit (M. Honecker, Span. Forsch. der Görresgesellschaft 6 [1937] p. 308 sqq.) (h XIV, 448).	What Cusanus claims to have been able to compose with great effort only, is exscribed from Ramon Llull's tract *De arte electionis,* as pointed out by Honecker.[22] The author edited Llull's tract from Cod. Cus. 83 fol. 47–48.[23]

We have translated Kallen's *exscriptum esse* somewhat literally by the neologism "is exscribed." The interpretation of this passage determines the degree of confusion that comes with it: Does "exscribed" mean that the electoral system proposed by Cusanus "is taken from" Llull's *Ars electionis?*[24] We have come to the conclusion that this suspicion is unfounded.

Our initial reaction was different, directing us to Llull as a much earlier source on electoral systems. In fact, our inquiry into Llull's writings on electoral systems turned into quite an exciting project. It so happened that we rediscovered Llull's tract *Artificium electionis personarum,* which was considered lost. This new source contains valuable information beyond the other two Llull tracts on electoral systems that have come down to us. Having dealt with Llull's electoral systems elsewhere,[25] we focus here on Cusanus's contributions to the subject.

22. Honecker, "Ramon Lulls Wahlvorschlag."
23. Martin Honecker, "Lullus-Handschriften aus dem Besitz des Kardinals Nikolaus von Cues—Nebst einer Beschreibung der Lullus-Texte in Trier und einem Anhang über den wiederaufgefundenen Traktat *De arte electionis," Spanische Forschungen der Görresgesellschaft* 6 (1937): 252–309.
24. As in Sigmund, *The Catholic Concordance,* 305.
25. Günter Hägele and Friedrich Pukelsheim, "The Electoral Writings of Ramon Llull," *Studia Lulliana* 41 (2001): 3–38; Mathias Drton, Günter Hägele, Dominik Haneberg, Friedrich Pukelsheim, and Wolfgang Reif, "Ramon Llulls Traktate zu Wahlverfahren: Ziele und Realisierung einer Internet-Edition," in *Mediaevistik und Neue Medien,* ed. Klaus van Eickels, Ruth Weichselbaumer, and Ingrid Bennewitz (Ostfildern: Thorbecke, 2004), 131–140; Mathias Drton, Günter Hägele, Dominik Haneberg, Friedrich Pukelsheim, and Wolfgang Reif, "A Rediscovered Llull Tract and the Augsburg Web Edition of Llull's Electoral Writings," *Le médiéviste et l'ordinateur* 43

Cusanus aims for a secret vote in order to save the electors from social pressure and corruption. His system builds on the use of written ballots that each elector has to fill in himself. The system forces the electors to compare every candidate against every competitor and to differentiate between them by using consecutive rank scores. The candidate whose final score total is the highest is the winner.

Llull, in his tract *Ars electionis,* describes an open vote in that the social control to which electors are then exposed shields them from intrigue and corruption. Rather than using a written ballot, the electors are interviewed as to what their vote is. The system builds on a tournament of paired comparisons of candidates. The winner of a paired comparison proceeds to the next round; the loser is out. The final round produces the overall winner of the election. This rule is biased in favor of the candidates who enter into the process at a later stage.

The differences between the electoral systems of Cusanus and Llull are so substantial that we find Kallen's note that Cusanus exscribed his system from Llull poorly worded. Kallen relied on the authority of Martin Honecker, who compared the electoral systems of Cusanus and Llull with words that we find misleading or, at least, inviting misinterpretation.[26] However, after scrutinizing Honecker's text, we have to admit that he never explicitly claimed that the two systems are identical. He mentioned some aspects that the two systems have in common and he advanced persuasive evidence that Cusanus knew of the Llull tract. But he also emphasized that the step from Llull to Cusanus is a noticeable one. At no point did he formulate a phrase to the effect that Cusanus "exscribed" his system from Llull. Moreover, Honecker chose a title for his paper ending in a prominent question mark. Morimichi Watanabe put the record straight: "For an attempt to indicate a link between Nicholas's proposal and another electoral method proposed by Ramon Lull, see Martin Honecker."[27]

Right at the beginning of his paper Honecker referred to Kallen.[28] Conversely, Honecker's and Llull's names are suspiciously absent from Kallen's papers.[29]

(2004). We have prepared an electronic edition of Llull's writings on electoral systems that is displayed on the Internet at www.uni-augsburg.de/llull.

26. Honecker, "Ramon Lulls Wahlvorschlag," 569–74; Hägele and Pukelsheim, "The Electoral Writings," 30–32.

27. Morimichi Watanabe, *The Political Ideas of Nicholas of Cusa, with Special Reference to His "De concordantia catholica"* (Geneva: Droz, 1963), 141.

28. Honecker, "Ramon Lulls Wahlvorschlag," 563.

29. Gerhard Kallen, *Nikolaus von Cues als politischer Erzieher,* Wissenschaft und Zeitgeist 5 (Leipzig: Felix Meiner Verlag, 1937); Kallen, "Der Reichsgedanke in der Reformschrift *De concordantia catholica* des Nikolaus von Cues," *Neue Heidelberger Jahrbücher, Neue Folge, Jahrbuch 1940* (1940): 59–76; Kallen, "Die politische Theorie im philosophischen System des Nikolaus von Cues," *Historische Zeitschrift* 165 (1942): 246–77, reprinted in Kallen, *Probleme der Rechtsordnung in Geschichte und Theorie—Zehn ausgewählte Aufsätze* (Cologne: Böhlau, 1965), 141–71.

Instead, Kallen proclaims that Cusanus was not blinded by Roman thinking,[30] that Cusanus emphasized the ancient Germanic view that an emperor be elected by unanimity,[31] and that the political theory of Cusanus could unfold only *im deutschen Volk.*[32] We do not know how far Kallen's writings bowed to the Zeitgeist,[33] but Honecker resisted political pressure when necessary.[34]

Erhard-Wolfram Platzeck complained that in former times Cusanus experts did not properly acknowledge Llull.[35] He expressed his hopes that this might change, and his hopes have come true.[36] Following the stylistic rule that the main message is found in the main clause and that the subordinate clause contains subordinate information, then, when analyzing the note *Quod Nicolaus,* we should focus on the main clause: *Honecker edocuit; idem autor edidit.* The main message is that it is Kallen's turn, after twenty-two years, to acknowledge Honecker's contributions to the subject, while Kallen's supplementary remarks on Honecker's contributions come out somewhat ill conceived.

Llull's *Ars electionis*

We believe that Cusanus did not need a historic precursor to be concerned about electoral systems. After all, a disputed election was his reason for being in Basel. Cusanus was acting as a lawyer to Count Ulrich von Manderscheid who, in 1430, lost the election to become bishop of Trier but nevertheless claimed a victory.[37] As submissions to Rome requesting an intervention had not proved successful, Cusanus traveled to Basel to present the Manderscheid case to the council. While his work the *Catholic Concordance* constitutes a general exposition of the relations between the papal Curia and general councils, it nevertheless also contains various arguments that Cusanus built into the legal case he fought for.[38] The chain from the schism of Trier via a drafted electoral system for clerical pur-

30. Kallen, *Nikolaus von Cues als politischer Erzieher,* 4.   31. Kallen, "Der Reichsgedanke," 64.

32. Kallen, "Die politische Theorie," 266.

33. Ursula Lewald, "Gerhard Kallen, 1884–1973," *Rheinische Vierteljahresblätter* 37 (1973): XIII–XVI.

34. Max Müller, "Martin Honecker zum Gedächtnis," *Philosophisches Jahrbuch* 74 (1966–67): 228–31, at 230.

35. Erhard-Wolfram Platzeck, "Lullsche Gedanken bei Nikolaus von Kues," *Trierer Theologische Zeitschrift* 62 (1953): 357–64.

36. Charles H. Lohr, "Ramón Lull und Nikolaus von Kues: Zu einem Strukturvergleich ihres Denkens," *Theologie und Philosophie* 56 (1981): 218–31, at 228.

37. Erich Meuthen, *Das Trierer Schisma von 1430 auf dem Basler Konzil—Zur Lebensgeschichte des Nikolaus von Kues* (Münster: Aschendorff, 1964); Morimichi Watanabe, "The Episcopal Election of 1430 in Trier and Nicholas of Cusa," CH 39 (1970): 299–316, reprinted in Watanabe, *Concord and Reform: Nicholas of Cusa and Legal and Political Thought in the Fifteenth Century,* ed. Thomas M. Izbicki and Gerald Christianson (Aldershot, U.K.: Ashgate, 2001), 81–101.

38. Werner Krämer, "Rezension zu Kallen, Gerhard: *Nicolai de Cusa Opera omnia* XIV 1–4: *De concordantia catholica,*" *Historische Zeitschrift* 209 (1969): 143–50, at 145; Erich Meuthen, *Nikolaus von Kues, 1401–1464: Skizze einer Biographie. Siebte Auflage* (Münster: Aschendorff, 1992), 40.

poses in the *Libellus* to the final electoral system in the *Catholic Concordance* would seem to us to be so densely interwoven into Cusanus's vita that he did not need any external stimulus to contemplate the use and misuse of electoral systems.

Nonetheless, Honecker's research provides conclusive evidence that Cusanus knew Llull's *Ars electionis.* Honecker conjectured that it was Cusanus himself who copied the tract.[39] Later, Haubst found out that Cusanus indeed visited Paris in 1428.[40] In any case, there is ample evidence that Cusanus was fascinated by Llull's philosophy and occasionally used some of Llull's vocabulary.[41]

Remarkably, though, there is no indication that Cusanus made any serious attempt to understand Llull's combinatorial schemes. But without the combinatorial tools that are so characteristic of Llull's arguments it is impossible to understand Llull's electoral systems. We believe that Cusanus, while knowing Llull's tract *Ars electionis,* may not have investigated Llull's electoral system in detail, and we substantiate our belief as follows.

Cusanus worked through many of the excerpts that he copied in Paris in 1428 by writing annotations or corrections into the margins. However, the copy of the *Ars electionis* is free from any such comments. Quite the contrary, writing errors, erasures, and doublings would suggest to us that the writer did not instantly understand the material or that he was suffering from lack of concentration.

An error that occurs four times is particularly worth mentioning. When the text refers to Llull's combinatorial symbols, a lone letter "c" is written as a long "s." Honecker took this as an indication that the text from which the copy was prepared was written in the Catalan language; we have followed up on this hypothesis elsewhere.[42] Motivated by Wolf, [43] we meanwhile believe that a palaeographic explanation is more likely. Harald Drös from the Inschriftenkommission of the Heidelberg Academy of Sciences drew our attention to the fact that in strict textura the lowercase letters c and s, in the form of a whip-s, are almost identical in their geometry, and differ only in that the whip-s has a longer upstroke.[44] Ferdinand Dominguez from the Raimundus-Lullus-Institut, Freiburg im Breisgau,

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39. Honecker, "Lullus-Handschriften," 291, 306.

40. Rudolf Haubst: "Der junge Cusanus war im Jahre 1428 zu Handschriften-Studien in Paris," MFCG 14 (1980): 198–205.

41. Platzeck, "Lullsche Gedanken bei Nikolaus von Kues"; Eusebio Colomer, *Nikolaus von Kues und Raimund Llull: Aus Handschriften der Kueser Bibliothek* (Berlin: De Gruyter, 1961); Ulli Roth, *Die Exzerptensammlung aus Schriften des Raimundus Lullus im Codex Cusanus 83* (Heidelberg: Carl Winter Verlag, 1999).

42. Honecker, "Lullus-Handschriften," 308; Hägele and Pukelsheim, "The Electoral Writings," 32.

43. Wolf, "Königskandidatur und Königsverwandtschaft," 78.

44. Die Mitarbeiter der Inschriftenkommissionen der Akademien der Wissenschaften in Berlin, Düsseldorf, Göttingen, Heidelberg, Leipzig, Mainz, München und der Österreichischen Akademie der Wissenschaften in Wien, *Deutsche Inschriften: Terminologie zur Schriftbeschreibung* (Wiesbaden: Reichert, 1999), 52, 61.

pointed out to us that the library of the Chartreuse of Vauvert may have contained books manufactured by professional calligraphers.

The error could therefore be explained this way: the tract was copied from a text that was written in strict textura and the copier, working mechanically rather than tracing the meaning, misread the lowercase letter c to be a whip-s. The most pronounced error in the Cod. Cus. copy is *eccencia* which, however, is instantly noted by the copier and corrected into *ecclesia.* Indeed, the visual appearance of the two words in strict textura is strikingly similar.

If we follow up on the paleographic hypothesis, then the replacement of "c" by "s" would indicate a definite lack of understanding. Nowhere in Llull's voluminous production does the letter make an appearance in one of the combinatorial alphabets. Our conclusion would suggest that Cusanus—be it as a writer or as a reader—did not really think through Llull's combinatorial ways of argument. But then, having achieved only a vague understanding of the electoral system from the *Ars electionis,* Cusanus could not have really built on it when he composed his own system in the *Catholic Concordance.* Still, the Llull tract may have spurred Cusanus to devise a system of his own. When Cusanus took on the Manderscheid case, the motivation to design a novel electoral system acquired a renewed momentum and materialized first in draft form in the *Libellus* and then in final form in the *Catholic Concordance.*

In our discussion so far, we have concentrated on the operational details of Cusanus's electoral system. It would be of interest to explore whether the ideas underlying his system run parallel with his philosophical work. The scoring method calls for relative comparisons rather than absolute qualities. The rank score for each candidate could be taken as measurements of the type that are recorded in experiments with scales.[45] The essential instruction to first single out the least suitable candidate, then the second-least suitable candidate and so on, make the elector rise from the bad to the good. The ascent to the better conforms with the Neoplatonic step model of human intellectual growth.[46] The number 10, which Cusanus chooses as an example, is the subject of many philosophical remarks that, almost thirty years later, Cusanus builds into his discourse on *The Game of Spheres* (*De ludo globi*).[47]

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45. Fritz Nagel, *Nicolaus Cusanus und die Entstehung der exakten Wissenschaften* (Münster: Aschendorff, 1984), 84.

46. Anke Eisenkopf, "Mensch, Bewegung und Zeit im Globusspiel des Nikolaus von Kues," *Litterae Cusanae* 3 (2003): 49–60, at 53.

47. Nicolaus Cusanus, *Gespräch über das Globusspiel,* ed. Gerda von Bredow (Hamburg: Felix Meiner Verlag, 1999), 83–125. English translation in *Nicholas de Cusa, "De ludo globi": The Game of Spheres,* trans. and intro. Pauline Moffitt Watts (New York: Abaris, 1986).

Other Decision Systems in the *Catholic Concordance*

In chapter 38 of the *Catholic Concordance,* Cusanus included some brief remarks on other voting systems. In the first system, all options are listed on every ballot (III, 38, #546 [h XIV, 451–52]). The voter is encouraged to proceed by positive selection, in that the decision he favors is left untouched while all other alternatives are crossed out with a thick stroke (*linea grossa*) (III, 38, #547 [h XIV, 452]). Again, all ballots are collected in a sack and then evaluated. The proposal with the maximum number of votes is the one accepted. This is a system relying on simple majority. Furthermore, secrecy is to be observed so that the voter is not subject to any pressure. Finally, Cusanus mentions the Venetian voting system (III, 38, #550 [h XIV, 453]), still with the goal to select one proposal out of many. The voter takes a small ball into his closed fist and puts the fist first in a black box, then in a white box. If he is in support of the proposal he drops the ball in the white box, otherwise, into the black box.[48]

Electoral Systems for Clerical Officeholders
Review of the *Libellus* System

The electoral systems that Cusanus mentioned later in his life are meant to be used for elections of church officials. They very much resemble the system for the election of the king in the *Catholic Concordance,* in particular through the draft form in the *Libellus.* We briefly return to some of the peculiarities of the electoral system in the *Libellus.* The opening sentence deserves mentioning:

In electionibus ad hoc laboratur, ut plurimorum iudicio melior perficiatur, et ad finem huius variae formae sunt inventae (II, 33, #245a [h XIV, 280]).

Elections serve the purpose that majority rule is used to put the best into power, and to this end various rules have been invented.

Cusanus pointed to various other systems that have been invented but, unfortunately, he does not give any details about which systems he refers to. More important, he stressed that the purpose of a voting system is to express the opinion of the majority. However, the system for electing the king, as well as the clerical systems that we turn to below, are scoring methods; the "majority" thus is not composed by the number of electors supporting a particular candidate, but by their qualified judgment as expressed through rank scores. In Cusanus's eyes,

48. Marji Lines, "Approval Voting and Strategy Analysis: A Venetian Example," *Theory and Decision* 20 (1986): 155–72.

majority does not mean naked *numerositas,* but involves the judgment of a limited number of qualified electors.[49]

In the *Libellus* system, the clerical electors receive a single paper ballot carrying the names of all candidates, similar to the decision system of chapter 38 of the *Concordantia catholica.* Again the electors proceed by negative selection, in that they are instructed to mark a clearly visible dot (*unum punctum satis visibilem*) next to the name of the least suitable candidate. The second-least suitable candidate is marked with two dots, and so forth. We are reminded of Llull, who recommends in his tract *Artificium electionis personarum*[50] that *unus punctus* be used to mark a victory in one of the various paired comparisons. It is unlikely that Cusanus knew of this other Llull tract, but already the Roman people proceeded in this way.[51]

In the system for the election of the king, Cusanus neglected the possibility of ties. For the clerical *Libellus* system, he did consider ties and proposed to choose the more senior among the tied candidates. This tie-breaking rule is compatible with canonic law. Perhaps Cusanus imagined that clerical candidates are all equally virtuous, whence the occurrence of ties is more likely.

The troublesome *cautela* that we criticized above is absent from the *Libellus* system. We have no clue why Cusanus based the system of the election of the king on a bundle of ballots, one for each candidate's name, while in the *Libellus* system (as in the Salzburg Avisament and the Hildesheim Edict systems) he uses a single ballot showing all names.

The Salzburg Avisament

Erich Meuthen discovered that in 1451, eighteen years after the publication of the *Catholic Concordance* during the Council of Basel, Cusanus again pondered electoral systems, during his journey through Germany in his function as a papal legate.[52] A first written version of his thought is the avisament that is kept in Salzburg.[53] The somewhat unusual purpose of the electoral system in the Salzburg Avisament is to elect a successor for a clerical office that is not yet vacant.[54]

In this system ties are no longer broken by seniority.[55] Instead, among all tied candidates, the one from the chapter is to be preferred over the one from the diocese, and anyone from the diocese is to be preferred over the one from the church

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49. Erich Meuthen, "Modi electionis: Entwürfe des Cusanus zu Wahlverfahren," in *Staat und Parteien: Festschrift für Rudolf Morsey zum 65. Geburtstag,* ed. Karl D. Bracher, Paul Mikat, Konrad Repgen, Martin Schumacher, and Hans-Peter Schwarz (Berlin: Duncker & Humblot, 1992), 3–11, at 6.

50. Hägele and Pukelsheim, "The Electoral Writings," 23.

51. E. Stuart Staveley, *Greek and Roman Voting and Elections* (London: Thames & Hudson, 1972), 158, 175.

52. Meuthen, "Modi electionis," 3–11.   53. AC 1, 3a, no. 1001.

54. Meuthen, "Modi electionis," 8.   55. AC 1, 3a, no. 1001, l.49–52.

province. Only when a tie occurs among two members of the chapter (or of the diocese, or of the church province) does the senior win. But, as Cusanus hastened to add, ties will never occur, or only very rarely.

The filled-in ballots are locked away until the officeholder dies. As soon as the vacancy materializes, they are evaluated. The successor is the one who receives the maximum vote total. If the winner is no longer alive, the runner-up is to proceed to office. This is the only place where Cusanus made use of the fact that his electoral systems not only identify the one candidate who is best, but the aggregated scores provide a ranking of all the candidates, from the least suitable up to the best. In a system such as that for the election of the king, the resulting global preference profile is much more than is needed, since only a single winner is sought. However, a preference profile may be put to good use in something like the Salzburg Avisament system, in which the ballots are collected at some convenient occasion while the evaluation of the ballots is postponed to a future point in time.

Since a considerable time span may elapse between filling in the ballots and evaluating them, Cusanus takes precautions to safeguard against corruption of the electorate. We would also propose to take into consideration that, when ballots are evaluated, an elector may have died, been excommunicated, or otherwise have disappeared from the electoral college. Cusanus proposed a rule that is akin to what nowadays goes under the term of absentee vote. The electors are supposed to sign their ballots with their signatures in a way that permits them to preserve a secret ballot.[56]

Cusanus's rule merges three different aspects: social control as an argument in favor of an open election, as proposed in Llull's *Ars electionis;* election officials such as scrutatores, who keep the voters' decisions secret; and the wiser-part principle, such that the weight of a ballot depends on the worthiness of the voter.

The principle of the sounder part (*senior pars*) of the electorate calls for an upper-level person or upper-level body having the authority to reject an electoral decision, if need be.[57] Such interventions were common also in secular elections, and served to stabilize society. For example, the Augsburg carpenter Marx Neu-

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56. Ibid., l.39–45.
57. Bernhard Schimmelpfennig, "Das Prinzip der *senior pars* bei Bischofswahlen im Mittelalter," *Concilium* 16 (1980): 473–77; Bernhard Schimmelpfennig, "Papst- und Bischofswahlen seit dem 12. Jahrhundert," in *Wahlen und Wählen im Mittelalter,* ed. Reinhard Schneider and Harald Zimmermann (Sigmaringen: Thorbecke, 1990), 173–95; Klaus Schreiner, "Wahl, Amtsantritt und Amtsenthebung von Bischöfen: Rituelle Handlungsmuster, rechtlich normierte Verfahren, traditionsgestützte Gewohnheiten," in *Vormoderne politische Verfahren,* ed. Barbara Stollberg-Rilinger (Berlin: Duncker & Humblot, 2001), 73–117, at 94; Hägele and Pukelsheim, "The Electoral Writings," 29.

müller, after having been elected to the city council in 1502, was instantly sent home since his political views did not conform with those of the majority.[58]

Generally, a citizen was a member of a guild and there he had the right to vote; the guilds provided a kind of districting of the total electorate based on social or economic indicators.[59] The guild elected a Council of Twelve, which then elected the Grosse Rat, which finally elected the Kleine Rat. Thus, a candidate had to pass through a sequence of elections before he was elected a member of the Kleine Rat. These sequential elections secured a high degree of continuity for the hierarchical structure of medieval society.[60]

The wiser-part principle, as a higher-level corrective of lower-level decisions, loses its meaning when the election takes place on the highest level itself. Hence, the wiser-part principle does not form part of Cusanus's system for the college of prince electors,[61] nor does it apply to the election of the pope through the college of cardinals. This still leaves the possibility that among the members of the electoral college, one elector would claim a greater weight for his vote than he is willing to concede to the votes of the others. Formally this does not apply to the college of prince electors, as the wording in the *Golden Bull* leaves no doubt that the electors were considered equal as far as the voting procedure was concerned.[62] Whether this principle was carried through in practice, we do not know; the secrecy provisions emphasized so much by Cusanus would have provided a procedural aid to implement equality of the votes. As for papal elections, it took a couple of centuries before the votes of all cardinals were considered equal.[63]

The Hildesheim Edict

Meuthen conjectures that, shortly after the Salzburg Avisament, Cusanus authored the edict that today is kept in Hildesheim.[64] In the electoral system that is sketched in the Hildesheim Edict, Cusanus favored a positive selection strategy. He did not seem to be concerned that, while a negative selection strategy keeps the elector anxious to proceed to the better and end with the best, the positive selection

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58. Rogge, "Ir freye wale," 263.

59. Peter Geffcken, "Zünfte," in *Augsburger Stadtlexikon,* ed. Günther Grünsteudel, Günter Hägele, and Rudolf Frankenberger (Augsburg: Perlach, 1998), 949–50.

60. Rogge, "Ir freye wale," 275.

61. Watanabe, *The Political Ideas of Nicholas of Cusa,* 156.

62. Johannes Helmrath, "Rangstreite auf Generalkonzilien des 15. Jahrhunderts als Verfahren," in *Vormoderne politische Verfahren,* ed. Barbara Stollberg-Rilinger (Berlin: Duncker & Humblot, 2001), 139–73, at 153.

63. Horst Fuhrmann, *Einladung ins Mittelalter* (Munich: Beck, 1987), 135–50; Josep M. Colomer and Iain McLean, "Electing Popes: Approval Balloting and Qualified-Majority Rule," *Journal of Interdisciplinary History* 29 (1998): 1–22, at 8.

64. Meuthen, "Modi electionis," 9; AC 1, 3a, no. 1002.

strategy could produce a premature decline of attention, in that the elector may lose interest in identifying the candidates who rank third, fourth, or even lower.

There are other differences to the system for the election of the king, in that each paper ballot now contains the names of all candidates. The electors receive the paper ballot on the eve of the election day, so that overnight they may contemplate their decision. Cusanus even suggested that they use the night to consult with other people on the candidates' qualifications. When the electors reconvene on election day, they drop their ballots into an empty sack at the entry of the chapter hall. The instructions for the municipal elections in Augsburg were similar, in that the electors, after having had the ballots filled in by a scribe in a side room, dropped them into an urn upon returning to the convention hall.[65]

In the Hildesheim system, the electors are asked to indicate the rank scores by a particular number of dots next to the candidate's name. The evaluation of the ballots is carried out by a scribe (*scriba*) with his abacus tablet (*tabula calculatoria*). He writes down the names of the candidates and places as many calculus stones or pennies (*calculus sive numerales denarios*) next to it as are shown by the number of dots marked.[66] Since, with ten candidates, each elector has fifty-five rank scores at his disposal, with twenty electors the scribe would have to allocate 1,100 stones on his board. If he manages them successfully, all he needs to do at the very end is to count the number of stones for each candidate. The computista in the system for the election of the king needed to have more advanced skills, in having to add numbers rather than to count stones.

Borda and Condorcet

In conclusion, we find that Cusanus can justifiably claim originality of his system for the election of the king, the most striking new idea being the assignment of rank scores to each candidate. Llull's system is a different one, based on a tournament of pair-wise comparisons.

Strangely, though, the political science and social choice literature has largely ignored the contributions of Cusanus and Llull, instead attributing their electoral systems to Borda and Condorcet. There is no indication that Borda exscribed his electoral system from Cusanus or Condorcet from Llull. And, admittedly, Borda and Condorcet, who lived and died during the French Revolution, are closer to today's researchers than such medieval figures as Cusanus, let alone Llull.[67]

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65. Rogge, "Ir freye wale," 255. 66. AC 1, 3a, no. 1002, l.36–39.

67. It is only in recent years that the medieval roots of a formal approach to electoral systems are increasingly acknowledged: McLean and London, "The Borda and Condorcet Principles"; McLean and London, "Ra-

Thus, the topic of electoral systems has caught the attention of authors of a very diverse provenance: the German philosopher and church politician Cusanus, the French technocrat Borda, and the Catalan poet and religious writer Llull, as well as the French encyclopedist Condorcet. While the rich history of the subject is mirrored only insufficiently by naming the electoral systems after Borda and Condorcet, we may view these misnomers as just another instance of Stigler's Law of Eponymy: "No scientific discovery is named after its original discoverer."[68] The author names the law after himself only to modestly indicate that he did not discover it. In the same vein it may be preferable to let the political science literature speak of the *Borda system* and the *Condorcet system,* in order to leave sufficient space for Cusanus and Llull to be acknowledged as the true discoverers.

mon Lull"; Meuthen, "Modi electionis"; Dan Simon Felsenthal and Moshé Machover, "After Two Centuries, Should Condorcet's Voting Procedure Be Implemented?" *Behavioral Science* 37 (1992): 250–74; McLean and Urken, *Classics;* Josep M. Colomer, *Political Institutions—Democracy and Social Choice* (New York: Oxford University Press, 2001).

68. Stephen M. Stigler, "Stigler's Law of Eponymy," in *Science and Social Structure: A Festschrift for Robert K. Merton* (New York: New York Academy of Science, 1980), 147–57.