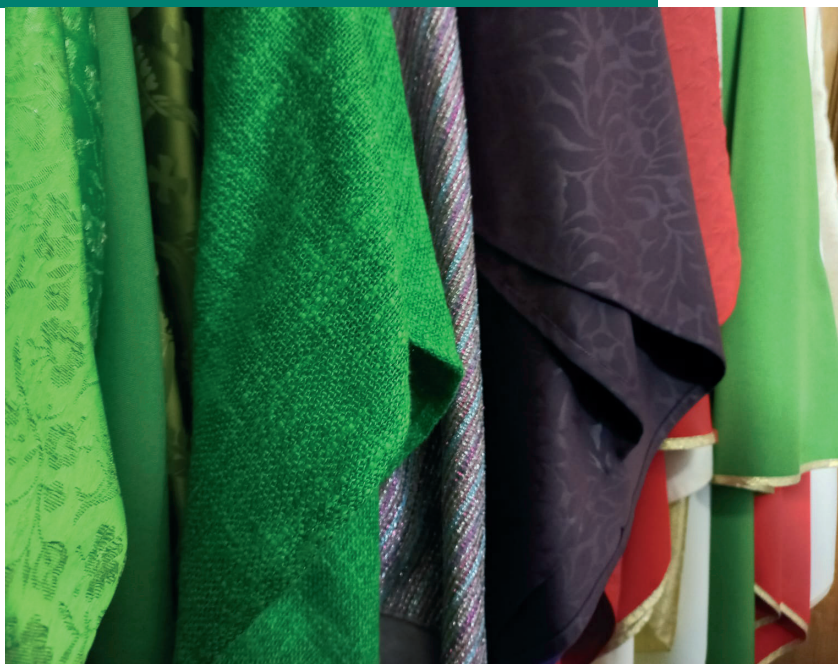
GLOBAL PERSPECTIVES
ON LEGAL HISTORY 23

ANNA CLARA LEHMANN MARTINS

The Fabric of the Ordinary

The Council of Trent and the Governance of the Catholic Church in the Empire of Brazil (1840–1889)



GLOBAL PERSPECTIVES ON LEGAL HISTORY 23

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The Council of Trent and the Governance of the Catholic Church in the Empire of Brazil (1840–1889)

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Preface

This is the first of several volumes in the *Global Perspectives on Legal History* series that are aimed at publishing the results of research conducted at the Max Planck Institute for Legal History and Legal Theory on the history of the Congregation of the Council between the modern and contemporary eras. This research began in 2014 in the Research Group *Governance of the Universal Church after the Council of Trent. Papal Administrative Concepts and Practices as Exemplified by the Congregation of the Council between the Early Modern Period and the Present* and then, in 2021, converged into the work of the Research Group *Normative Knowledge in the Praxis of the Congregation of the Council. The Production of Normative Categories and Models for the Post-Tridentine World.*

Under the guidance of Prof. Dr. Benedetta Albani and in continuous intellectual dialogue with the Institute – in particular with the Department *Historical Regimes of Normativity*, directed by Prof. Dr. Thomas Duve – the Research Group investigates the development of governance structures of global breadth within the Catholic Church by examining the activities of a unique institution, the Congregation of the Council, between the mid-sixteenth century and the first quarter of the twentieth century. The Congregation of the Council was established by Pius IV in 1564 as the first permanent congregation of cardinals after the Council of Trent. Its responsibilities were further defined and expanded by Sixtus V in 1588. It was entrusted with implementing the Council of Trent and its provisions *in universo christiano orbe* and was furthermore given specific competencies related to normative production, maintaining relations with local churches, and gathering information on a global scale. Within a few years, it also assumed responsibility for coordinating the *visitationes ad limina* and approving the decrees of the provincial councils. Additionally, the Congregation of the Council held extensive jurisdictional powers and authority over the granting of papal graces. It had the power of authentic interpretation of the decrees of the Council of Trent in the name of the Pope and to adapt them to local conditions. To carry out these responsibilities, the Congregation required a constant flow of information about all aspects of early mod-

ern Catholicism. Given its exclusive authority over interpreting the decrees of the Council of Trent, the Congregation of the Council occupied a prominent position in the Roman network of Congregations and was regularly consulted by other bodies of the Roman Curia.

Despite the long tradition of studies on the Roman Curia, the Congregation of the Council has received relatively little attention from scholars. Research has traditionally focused on isolated aspects, often in a formalistic manner and without adequate engagement with primary sources. Some researchers have indeed made use of the dicastery's rich archival records, but primarily from a local history perspective rather than analyzing the Congregation itself. The Research Group has instead sought to develop original intellectual questions and an innovative methodological approach that examines the dicastery in an integrated manner. By bringing together expertise from different disciplines – such as history, legal history, archival science and digital humanities – the group aims to deepen the understanding of the Congregation's functioning and global influence. As part of this work, it is developing a new perspective on the Congregation of the Council. Firstly, by considering this dicastery as part of an organic administrative whole – the Roman Curia – and, above all, as an organ of global reach that influenced ecclesiastical institutions all over the world, both directly and indirectly. Secondly, by analyzing the interaction between the Congregation of the Council and a wide range of actors, both within and outside the Holy See, which also facilitates a fuller understanding of the richness of post-Tridentine canon law. This approach, finally, offers the possibility of capturing the modulations of the Council of Trent via the decisions of the Congregation of the Council in the *longue durée*, thus bringing forward the strong dialectic relationship between general norms and individual cases in canon law. This is done by analyzing how the Congregation of the Council used – and even created – normative categories that described the spaces, actors and legal issues of the Catholic world, tracing the patterns of procedures and decisions that were sedimented in the development of the dicastery's task of governing the Catholic Church, and appreciating the Congregation's production of normative knowledge and its influence at a global scale. Indeed, studying the Congregation of the Council provides a lens through which to appreciate the richness and complexity of post-Tridentine canon law. While there was a centralization of authority, this did not lead to rigid standardization in the interpretation and application of laws. Instead,

there was room for adaptation, innovation, and, most importantly, the translation of canon law to accommodate local needs and practices.

From a methodological perspective, the Research Group considers it essential to approach the study of the Congregation of the Council from both local and Roman dimensions. This requires the use and comparison of sources from both local and papal archives to avoid an imbalance of either central or peripheral dynamics. Furthermore, by drawing on legal-historical, diplomatic, and palaeographical expertise developed by the Research Group, the research offers insights into the intricate workings of an administrative body and the structural patterns underlying its functioning. Thanks to the group's efforts in organizing and describing the archives of the Congregation of the Council, which are now preserved in the Vatican Apostolic Archive, the works to be published in this series have been able to utilize previously unpublished or unexplored sources. It is hoped that these methodological reflections and contributions to the study of the Congregation of the Council will inspire further research on this and other dicasteries and, more broadly, enhance our understanding of the complex system of Congregations and other bodies that have characterized the Roman Curia from the early modern period to the present day.

This series presents individual and collective works developed in various ways within the framework of the aforementioned Research Group.

Benedetta Albani
Frankfurt am Main, December 2024

Contents

To my grandfather, Pompílio Ribeiro Martins Junior,
whom I know via the books he cherished
and the travels he only dreamed of.

To my father, Marcos Antonio Pinto Martins,
and to my mother, Mariza Eliani Carbolin Martins.

Acknowledgements / Agradecimentos

This part is written in Portuguese because the heart speaks better in its mother tongue. Este livro corresponde à tese de doutorado que defendi em 8 de julho de 2021 na Universidade Federal de Minas Gerais (Direito), Belo Horizonte, Brasil, em co-tutela com a Westfälische Wilhelms-Universität Münster (História Moderna e Contemporânea), Münster, Alemanha, finalizando meu período como doutoranda do Max Planck Research Group "Governance of the Universal Church After the Council of Trent: Papal Administrative Concepts and Practices as Exemplified by the Congregation of the Council between the Early Modern Period and the Present", no Max Planck Institute for Legal History and Legal Theory (mpilhlt), Frankfurt am Main, Alemanha.

Suas páginas foram escritas em dias longos – longos não porque enfadonhos, mas porque diferentes e preciosos. O peso desses dias era palpável como um pano carregado de bordados, lantejoulas e rendas. Um vestido de festa – só que cotidiano. O tempo, com seu sorriso de Hermes, apresentou-me novos espaços, novas fontes, novas lentes, novas pessoas e novos desafios. Experimentei a vida em uma grande capital. Logo mais: a vida a duas paradas de metrô do resto do mundo, tendo de me virar em até cinco idiomas em um único dia. Viajei como nunca – no espaço, atrás de fontes, e no tempo, ao lê-las. Minha casa era uma sobreposição de lembrança e realidade: abarcava cidades separadas por quilômetros, quando não oceanos, mantendo-se fiel ao *leitmotiv* da cama repleta de livros. Houve quem interpretasse esse período como um privilégio; outros como uma temeridade. Eu o li como uma aventura, quase um romance de capa e espada. Agora que ele terminou, o tempo se encarregará de aparar as arestas, deixando em segundo plano as incertezas, as angústias e os céus cinzentos. Na memória restará o mais importante: o maravilhamento, diamante de todos os dias. E também tudo que aprendi – que certamente não se resume a este livro. De toda forma, ele é prova, ainda que imperfeita, de que esses dias, repletos de graça, foram reais. Resta-me agradecer.

Agradeço, antes de tudo, a meu grande "triunvirato" (ou "*governance system*") de orientadores: Ricardo Sontag, Olaf Blaschke e Benedetta Albani. cada um, à sua maneira, apostou em minha proposta do início ao fim, fez-se

constantemente presente e atuou em favor deste trabalho através de sugestões, comentários, críticas, discussões, desafios, oportunidades e outras (muitas) formas de apoio. Posso dizer com segurança que a contribuição dos três transcende este livro. Sua generosidade foi decisiva para minha formação como pesquisadora, como professora e como pessoa. A Ricardo Sontag agradeço, ademais, a orientação quando fui sua estagiária de docência, bem como a possibilidade de participar do amplo leque de atividades do *Studium Iuris* – Grupo de Pesquisa em História da Cultura Jurídica (UFMG/CNPq). Também sou especialmente grata por nossas reuniões de pesquisa, por sua leitura detalhada de (quase) todo material escrito que produzi nesse período e pelos incontáveis momentos de apoio, voltados ao presente e ao futuro. A Olaf Blaschke agradeço sobretudo a confiança (um verdadeiro salto de fé, eu diria!) e a disponibilidade para orientar este trabalho em regime de co-tutela, tarefa desafiadora tanto nas formalidades quanto na execução. Agradeço ainda sua recepção extremamente gentil e solícita em Münster, bem como seu zelo pela minha investigação e pelo meu percurso doutoral em geral. A Benedetta Albani agradeço, enfim, a oportunidade de fazer parte de seu grupo de pesquisa no mpilhlt, o Max Planck Research Group "Governance of the Universal Church after the Council of Trent". Aí me vi imersa em um universo de novas fontes e perspectivas, em que fui instada a cultivar novas habilidades – e também a perder antigos medos. Foi um período singular em minha vida – em que, a partir do seu "sim", construí um mundo (o livro!) e também, pouco a pouco, a mim mesma, naquilo que quis e quero ser. Agradeço ainda todo o cuidado que teve comigo, profissional e pessoal, ao longo dessa jornada, sempre "preparando o terreno" para máximo proveito meu e de meus colegas. Espero ter correspondido a tamanha dedicação. Muito obrigada!

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Abbreviated reference	Full reference
AAV, Arch. Nunz. Brasile, Busta 32, Fasc. 142, Doc. 3, f. 4r	Città del Vaticano, Archivio Apostolico Vaticano, Archivio della Nunziatura Apostolica in Brasile, Busta 32, Fascicolo 142, Documento 3, f. 4r
AAV, Congr. Concilio, Libri Decret., 228, 1885, p. 237	Città del Vaticano, Archivio Apostolico Vaticano, Congregazione del Concilio, Libri Decretorum, 228, 1885, p. 237
AAV, Congr. Concilio, Positiones, "Die 12 7.mbris 1874, Lit. R ad V, p. Giannelli Secret."	Città del Vaticano, Archivio Apostolico Vaticano, Congregazione del Concilio, Positiones, "Die 12 Septembris 1874, Litteris R ad V, Petrus Giannelli Secretarius"
AAV, Congr. Concilio, Protocolli, 1851	Città del Vaticano, Archivio Apostolico Vaticano, Congregazione del Concilio, Protocolli, 1851
AAV, Congr. Concilio, Relat. Dioec., *596* (Olinden.), f. 161r	Città del Vaticano, Archivio Apostolico Vaticano, Congregazione del Concilio, Relationes Dioecesium, *596* (Olindensis), f. 161r
AN, Conselho de Estado, Caixa 553, Pacote 4, Doc. 54, ff. 5v–6r	Brasil, Arquivo Nacional (Rio de Janeiro), Fundo Conselho de Estado, Caixa 553, Pacote 4, Documento 54, ff. 5v–6r
ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 260, Fasc. 18, ff. 49r–50r	Città del Vaticano, Archivio Storico della Segreteria di Stato – Sezione per i Rapporti con gli Stati, Congregazione degli Affari Ecclesiastici Straordinari, Leone XIII, Brasile II, Positio 260, Fascicolo 18, ff. 49r–50r

1 Examples.

Printed sources:

Abbreviated reference	Full reference
CMA, I	Mendes de Almeida, Candido (1866), Direito Civil Ecclesiastico Brazileiro Antigo e Moderno em suas relações com o Direito Canonico ou Collecção completa chronologicamente disposta desde a primeira dynastia portugueza até o presente, comprehendendo, além do Sacrosanto Concilio de Trento, Concordatas, Bullas e Breves; Leis, Alvarás e Decretos; Provisões, Assentos e Decisões; tanto do Governo como da antiga Mesa da Consciencia e Ordens, e da Relação Metropolitana do Imperio; relativas ao direito publico da Igreja, à sua jurisdicção, e disciplina; à administração temporal das Cathedraes e Parochias, às Corporações Religiosas, aos Seminarios, Confrarias, Cabidos, Missões, etc., etc. a que se addiccionão notas historicas e explicativas indicando a legislação actualmente em vigor, e que hoje constitue a jurisprudencia civil ecclesiastica do Brasil, tomo primeiro, primeira parte, Rio de Janeiro: B. L. Garnier
EGF, I	Fontoura, Ezechias Galvão da (1887a), Lições de Direito Ecclesiastico, volume I, São Paulo: Jorge Seckler & Comp.
EGF, II	Fontoura, Ezechias Galvão da (1887b), Lições de Direito Ecclesiastico, volume II, São Paulo: Jorge Seckler & Comp.
EGF, III	Fontoura, Ezechias Galvão da (1887c), Lições de Direito Ecclesiastico, volume III, São Paulo: Jorge Seckler & Comp.
JVT1	Vilella de Castro Tavares, Jeronymo (1853), Compendio de Direito Ecclesiastico para uso das Academias Juridicas do Imperio, 1. ed., Recife: Ricardo de Freitas
JVT2	Vilella de Castro Tavares, Jeronymo (1862), Compendio de Direito Publico Ecclesiastico para uso das Faculdades de Direito do Imperio, 2. ed., Recife: Guimarães & Oliveira
MRA, I	Monte Rodrigues d'Araujo, D. Manoel (1857), Elementos de Direito Ecclesiastico Publico e Particular em relação à disciplina geral da Igreja e com applicação aos usos da Igreja do Brasil, tomo I: Das Pessoas Ecclesiasticas, Rio de Janeiro: Antonio Gonçalves Guimarães & C.a
MRA, II	Monte Rodrigues d'Araujo, D. Manoel (1858),Elementos de Direito Ecclesiastico Publico e Particular em relação à disciplina geral da Igreja e com applicação aos usos da Igreja do Brasil, tomo II: Das Cousas Ecclesiasticas, Rio de Janeiro: Antonio Gonçalves Guimarães & C.a

MRA, III	Monte Rodrigues d'Araujo, D. Manoel (1859),Elementos de Direito Ecclesiastico Publico e Particular em relação à disciplina geral da Igreja e com applicação aos usos da Igreja do Brasil, tomo III: Dos Juizos Ecclesiasticos, Rio de Janeiro: Antonio Gonçalves Guimarães & C.a
MI (Br), Rel. 1868 (1869), p. 38[2]	Ministério do Império (Brasil), Ministro Paulino José Soares de Souza, Relatório do ano de 1868 apresentado à Assembleia Geral Legislativa na 1. Sessão da 14. Legislatura (1869), Rio de Janeiro: Typographia Nacional, p. 38
MJ (Br), Rel. 1851 (1852), pp. 27–35[3]	Ministério da Justiça (Brasil), Ministro Euzebio de Queiroz Coitinho Mattoso Camara, Relatório do ano de 1851 apresentado à Assembleia Geral Legislativa na 4. Sessão da 8. Legislatura (1852), Rio de Janeiro: Typographia Nacional, pp. 27–35

2 Example.
3 Example.

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Penelope said cautiously, "Well, stranger, [...] I miss Odysseus; my heart is melting. The suitors want to push me into marriage, but I spin schemes. Some god first prompted me to set my weaving in the hall and work a long fine cloth. [...] By day I wove the web, and in the night by torchlight, I unwove it. I tricked them for three years; long hours went by and days and months [...]."

Homer (2017 [ca. 800 BCE]), The Odyssey, Translated by Emily Wilson, New York, Book 19, Lines 124, 137–141, 148–151.

– Permettez-moi de m'agenouiller devant vous, sire, bien respectueusement. Nous nous embrasserons le jour où tous deux nous aurons au front, vous la couronne, moi la tiare.
– Embrassez-moi aujourd'hui même, et soyez plus que grand, plus qu'habile, plus que sublime génie: soyez bon pour moi, soyez mon père.
Aramis faillit s'attendrir en l'écoutant parler. Il crut sentir dans son coeur un mouvement jusqu'alors inconnu; mais cette impression s'effaça bien vite.
– Son père! pensa-t-il. Oui, Saint-Père.

Alexandre Dumas père (1997b [1847–1850]), Le Vicomte de Bragelonne, v. III, Paris, 370.

Les jours passent, passent... Qu'ils sont vides! J'arrive encore à bout de ma besogne quotidienne, mais je remets sans cesse au lendemain l'exécution du petit programme que me suis tracé. Défaut de méthode, évidemment. Et que de temps je passe sur les routes! Mon annexe la plus proche est à trois bons kilomètres, l'autre à cinq. Ma bicyclette ne me rend que peu de services, car je ne puis monter les côtes, à jeun surtout, sans d'horribles maux d'estomac. Cette paroisse si petite sur la carte!... Quand je pense que telle classe de vingt ou trente élèves, d'âge et de condition semblables, soumis à la même discipline, entraînes aux mêmes études, n'est connue du maître qu'au cours du second trimestre – et encore!... Il me semble que ma vie, toutes les forces de ma vie vont se perdre dans le sable.

Georges Bernanos (1961 [1936]), Journal d'un curé de campagne, in: Œuvres romanesques suivies de Dialogues des Carmélites, Bibliothèque de la Pléiade, Paris, 1053.

Introduction

Between 1849 and 1850, Alexandre Dumas *père* published the final section of his novel *Le Vicomte de Bragelonne* in the newspaper *Le Siècle*. This section, which would later be known as *The Man in the Iron Mask*, narrates the surreptitious attempt of former musketeer Aramis to replace King Louis XIV with his twin brother, who is imprisoned in the Bastille. Although set in 1660, the novel allows us to glimpse issues of Church and state that were pressing in the 19th century.

First of all, it must be noted that in *The Man in the Iron Mask*, Aramis was not only an ex-soldier; he was a *priest* – and a high-ranking one: Bishop of Vannes and Superior General of the Society of Jesus. To provide a believable background for Aramis's conspiratorial efforts and miraculous getaways, Dumas relied on the "Jesuit myth",[1] largely fostered at his time by the struggles of this religious order – which was immediately subject to Rome – with partisans of Catholic Gallicanism as well as with anticlerical liberals. Moreover, Aramis's ambitions behind this substitution aim at more than "sharing the throne" with the French monarch in the manner of a Richelieu: Aramis wishes to become pope. In fact, in several passages of the novel, as if anticipating his goal, he is placed (by himself or others, always in an ambiguous key) in a vicarious relationship with God, as his instrument, as "an angel of the human destiny".[2] And, when requesting support for his election from Louis XIV's twin, he shrewdly avoids clientelistic *topoi* from the *Ancien Régime*. Aramis imagines himself as a pontiff "without alliances or prejudices" who would not engage in religious persecutions or skirmishes between royal families. He has his sight set on *the universe*, on governing the souls of the Catholic orb.[3]

1 For more on how politicians and intellectuals of 19th-century France diffused the belief that the Society of Jesus was a threat to the political and social order, attributing to this religious order a conspiratorial behaviour, which in turn was attached to its close relationship with Rome, see Cubitt (1993).

2 Dumas père (1997a [1847–1850]) 480.

3 Dumas père (1997b [1847–1850]) 368–369.

From a cynical point of view (which betrays Dumas's anticlericalism), Aramis is an incarnation of the 19th-century conception of the Catholic Church: a universal institution with the Roman pontiff at its centre, and with an intricate network of power which – via the ultramontane bishops and the Jesuits – was like a capillary system reaching even the furthest and smallest realities. This posed a threat to national sovereignty, which in the book is represented by the "original" Louis XIV. The substitution plot may thus be read as an allegory on the problem of authority; more precisely, as an allegory on 19th-century conflicts between the ultramontane Church and liberal states: whereas the pope and his followers urged secular powers to remain faithful to the standards of a Catholic universe – with the pope at its vortex, as the ultimate interpreter of what was just and good, in religion as well as in politics – liberal states grew more and more resistant to this view, seeking, in the name of national sovereignty, to gain control over the Church or to separate from it. From a liberal, anticlerical perspective, the pope and his army of ultramontanists (as well as Jesuits, "foreigners", "conspirators" etc.) could try, just like Aramis, to subvert politics and history – but they were bound to fail. Nation states were rising like the sun of modernity, as attested by the multiple political convulsions of the mid-19th century (including those that would eventually strip the papacy of its temporal power).

The historiography on the relations between Church and state in the 19th century is certainly more nuanced than the feuilletons of French Romanticism and anticlerical discourse in general.[4] Ultramontanism cannot be reduced to a vehicle for power. It was a political, intellectual, and religious movement that placed the pope's authority and the Church's autonomy above secular powers and – with much passion and sometimes even fury – against secularist ideologies. And, most importantly, it was a project of ecclesiastical reform, at the same time transnational and Rome-centred, global and local, involving clergymen and laymen from low and high social classes.[5]

4 Also, one should not forget that the events of the 19th century comprise only a small parcel of the historical relationship between the Holy See and secular powers. The literature on this long-standing subject, focusing on the Middle Ages and the early modern period, is quite abundant.

5 On 19th-century ultramontanism and its transnational developments, see Von Arx (1998), Santirocchi (2010, 2015b), Blaschke (2017), O'Malley (2018), Ramiro Junior (2019), Ramón Solans (2019a, 2019b, 2020).

With regard to the Apostolic See, seeds of ultramontanism were already present in Pope Gregory XVI's encyclical letter *Mirari Vos* (1832), directed against liberalism and religious indifferentism. But the movement achieved the Holy See's full endorsement with Pope Pius IX: starting with the encyclical letter *Quanta Cura* (1864) and its famous annex, the *Syllabus of Errors* of the contemporary period – which condemned a series of modern political and philosophical positions –[6] and culminating in the First Vatican Council (1869–1870), which recognised the pontiff's primacy of jurisdiction and the infallibility of his *magisterium*.[7] These centralising doctrinal and political changes emerged alongside administrative shifts. With the incorporation of the Papal States into the Kingdom of Italy, the Holy See intensified its activities of universal reach. Its communication with and participation in the life of churches and religious institutes from all over the world increased, via the activity of diplomatic dicasteries and also of the Congregation of *Propaganda Fide*, as desired by Pope Leo XIII.[8] The College of Cardinals itself became more international, with an increasing number of members from outside Italy.[9] The local felt part of the universal as never before. And centralising principles became more and more diffused.

But this does not mean that ultramontanism was a movement of passive locals who simply complied with orders coming from Rome. Historiography has shown that local actors (bishops, religious men and women, lay persons, in particular via the press) took the initiative of spreading and concretising ultramontane principles (or, at least, what they supposed these principles were), sometimes even going against the directives of Rome, at other times encouraging the Holy See to change its policy.[10] Ultramontanism flourished, thus, in both di-rections, top-down and bottom-up. And it was ultimately a successful movement. Many aspects of the Church's life, from discipline to devotion, were reshaped by its standards, remaining so until the Second Vatican Council.

6 For more on how the *Syllabus* was composed and its repercussion, see Martina (2009) 253–273.

7 On the First Vatican Council, see O'Malley (2018) and Aubert (1964). On the doctrine of papal infallibility during the 19th century, see Pottmeyer (1975).

8 On the administrative changes of the Roman Curia after the loss of the Papal States, see Jankowiak (2007b).

9 See Regoli (2009).

10 See Clark (2003) 12, and Santirocchi (2010) 31–32.

Yet, in a way similar to adventure novels, the historiography on 19th-century relations between Church and state tends to focus on political conflict, that is, on the "cultural wars" between Catholics (ultramontanists, in particular) and liberals.[11] The period is largely read under the key of polarisation, of dispute on the place and meaning of Catholic religion (and clergymen) in the public sphere. These readings are usually based on diplomatic exchanges between civil governments and the Holy See, on internal political debates about the secularisation of previously religion-related matters (e. g. marriage, education), and on the ideological struggles carried out by various groups in the print media (books, newspapers, magazines etc.). We grasp the very flavour of tension and isolation in small details, like the fact that ultramontanists in Italy were labeled (by contemporaries and present-day historians) as *intransigenti*.[12] But this focus on political conflict is hardly exclusive to the historiography centred on European nations, or in

11 I am well aware that the "culture wars" may be depicted with other terms (Catholicism *versus* anticlericalism, anti-Catholicism etc.), and with other struggling opposites, especially if we consider nations where Catholicism coexisted with Protestantism in equal terms. Nevertheless, historiography often focuses on the conflict between the Catholic Church and liberal states due to Catholicism's long-standing pervasiveness in the public space, as well as the "spectacular", multi-level way in which the Catholic Church reacted to projects of secularisation, entailing acts of the Roman Curia and many other actors, with different degrees of articulation among themselves, as stated by Borutta (2013) 46.

12 See, for instance, the portrayal of Catholic "intransigence" made by Boutry (2006) 40: "L'*intransigeance* touche en effet au plus profond du dispositif intellectuel, mental et affectif des catholiques du XIX[e] siècle. Essentiellement, elle se dèfinit par le refus de toute *transaction* sur les principes, c'est-à-dire de tout recul, de toute concession, de tout accommodement, de tout compromis, de toute compromission qui mettrait en péril la conservation et la tradition […] de la foi, des dogmes et de la discipline catholiques; elle est ainsi, à la fois et inséparablement, défensive et offensive, affirmation et condamnation, et parfois même, d'un seul mouvement, provocation et agression. […] Le pape, l'Église catholique se doivent, dans cette conception militante […] ne rien accorder, ne rien céder au temps qui prétend modifier l'enseignement de l'Église au nom des valeurs nées de la modernité même: mais conserver, défendre et transmettre intact le 'dépôt de la foi', le *depositum fidei* de l'argumentation tridentine et post-tridentine, objet de tous les soins et de toutes les inquiétudes d'une Église qui se sent assaillie de toutes parts dans sa foi. Aussi l'*intransigeance* n'est-elle pas, dans son quadruple refus de la Réforme, des Lumières, de la Révolution et de l'État libéral, seulement un mot d'ordre: elle est encore une forme de sensibilité à l'histoire et au present. Elle peut être, elle est assurément souvent, crispation, raidissement, fermeture parfois."

Europe as a whole.[13] Studies on the Brazilian Church that emphasise this trait are also abundant.

The Empire of Brazil had its share of "cultural wars" during the reign of D. Pedro II (1840–1889). Though liberal, the civil government was not anti-Catholic, anticlerical, or prone to fully fledged secularisation. It rather tended towards what one may call "liberal jurisdictionalism". Since the independence (1822), Church and state relations unfolded in a hybrid zone between the rights of patronage of the Portuguese *Ancien Régime* and the liberal aspirations of a constitutional monarchy. Past was mingled with present. The Political Constitution of 1824, while promoting freedom of belief and domestic worship, established that Catholicism was the official religion of the Brazilian Empire, and that the emperor, in an echo of the ancient rights of Portuguese rulers, was responsible for the presentation of bishops and the provision of ecclesiastical benefices. But state authorities also operated according to a jurisdictionalist mindset, when combining unilateral measures with liberal justifications. *Placet*, appeal to the Crown, suppression of ecclesiastical immunities, suppression of the Tribunal of the Nunciature, the submitting of priests to norms of secular administration, all these measures were backed by the liberal arguments of defense of national sovereignty and universality of secular law, besides the older argument of the majestic right of inspection of the Church. As priests and, above all, bishops got more acquainted with the principles of ultramontanism (via travels to Italy and France, contacts with internuncios and other agents from the Roman Curia, circulation of books and magazines etc.), they started to contest some of the stances of the Brazilian state towards the Church.

In general, Brazilian historiography tends to emphasise the polarisation between jurisdictionalists and ultramontanists, as if the two groups had fully incompatible projects.[14] The jurisdictionalist project – which may be also interpreted as a state project – would be directed towards the consolidation

13 The historiography on "culture wars" in Europe is quite vast. Recent accounts emphasise their transnational character, as in Clark/Kaiser (eds.) (2003) and Borutta (2013). For nation-focused approaches, see, for instance, Gross (2004) and Borutta (2012). For a traditional overview of Europe and the world, see Aubert (1971).

14 The depiction of polarising, clear-cut perspectives, and the focus on the conflicting aspects of Church and state relations are distinctive features of the social history of the Brazilian Church conceived by historians such as João Fagundes Hauck, Hugo Fragoso, and Riolando Azzi between the 1980s and 1990s. The argument of the polarisation of Church

of a *national* Church, which would stand in close alliance with the state, operating within the possibilities and limits defined by national (and partially liberal) legislation. The ultramontane project, in its turn, led by the episcopate, would aim at bringing the Brazilian Church in line with the standards of the *Roman*, *universal* (and, to some the only authentic) Church. Though still loyal to the monarchy, bishops would have placed obedience to the Apostolic See (and to the pope, in particular) in the highest regard, developing an attitude of resistance towards state unilateralism.[15] The rift between the projects is mainly portrayed as political. Legal aspects appear at most as illustrative of the political turmoil. The state is often depicted as focused on its own rights and its own normative production, almost oblivious to the dynamics of canon law, with a few important exceptions.[16] And the ultramontane project is often related to the idea of a *Tridentine* Church. The Council of Trent emerges as an important reference for the reformist plans of the romanised clergy, but it is presented as a synonym of the 19th-

projects during the Second Reign (1840–1889), with a preference for the "Roman" model, can be observed in excerpts like this: "A Igreja, como instituição, torna-se neste período histórico mais 'católica romana' e menos 'nacional'. Todo o movimento de reforma levado avante pelo nosso episcopado no Segundo Império tinha como premissa a vinculação e 'sujeição' à Sede Romana. Por outro lado, o movimento de independência da Igreja em face do Estado visava afirmar que éramos 'católicos romanos' e não 'católicos do Conselho de Estado' […]", in Hauck / Fragoso / Beozzo / Van der Grijp / Brod (1980) 143–144.

15 Sergio Buarque de Holanda, for instance, speaks of "an attitude of latent revolt [on the part of the clergy] against the [secular] administrations", in Holanda (1995 [1936]) 118.

16 Santirocchi (2015b) 340–384, for example, provides a detailed analysis of the negotiations among the Holy See, Brazilian bishops, and secular authorities on the regulation of mixed marriage and civil marriage. Souza (2014), in turn, while analysing articles and case law from the law journal *O Direito*, demonstrates that Brazilian lay jurists used canon law to address issues of marriage and family during the empire and even afterwards, proving how intertwined the two legal realms were in spite of state-driven secularising efforts. Obeid (2013) occasionally registers references to canon law when examining cases presented to the Brazilian Council of State, mostly involving private law, and civil and political rights; his aim, however, is to track the intent of secularisation behind the councillors' positions. Nogueira (2018) offers an innovative analysis of some of the Council of State's cases regarding the administration of the Church (more precisely, religious orders, the ecclesiastical division of territory, the payment of the *congrua*, and the provision and collation of benefices); her perspective, however, is not that of legal history, meaning that the handling of canon law by the councillors is an aspect that still awaits a more systematised, in-depth approach.

century clerical desire for orthodoxy, hierarchy, and sanctity.[17] In the end, the literature provides more an account on Tridentinism (that is, on the attitude of resistance and isolation of clerical circles in relation to the larger world, "in the name of Trent"[18]) than an account on the actual uses of the provisions of the Council of Trent.

The apex of this "ardent combativeness" between jurisdictionalist state and ultramontane Church would have been reached during the Religious Question of the 1870s, when two ultramontane bishops were judged and sentenced by the Supreme Court of Justice for obstructing an act of the executive branch.[19] In more detail: complying with a pontifical bull that had not received the civil government's *placet*, the prelates of Olinda and Belém do Pará imposed interdictions on confraternities that comprised Freemasons. Soon afterwards, the confraternities appealed to the Crown against the punishment, and won the case. The bishops refused to lift the censures as demanded by the secular power, and ended up being imprisoned, after a long and heavily improvised trial.

Some studies build a genuine teleology of the Religious Question, as if it had been the milestone to definitively separate the "servant Church" from the "authentic Church" (which would persist until present times).[20] Other studies, recognising the relevance of the event, regard it as the product of specific circumstances.[21] In other words, within the broader set of tensions

17 Historiography often merges the Council of Trent, or concepts like "Tridentine Church", "Tridentine thinking", and "episcopate according to the spirit of Trent", with the ultramontane agenda, without further detail on *how* the Council of Trent was concretely employed by ultramontane bishops. Examples of this merging between "Tridentine" and "ultramontane" can be seen in Hauck / Fragoso / Beozzo / Van der Grijp / Brod (1980) 183–186, and Azzi (1992) 57–75, 108.

18 The definition is from Alberigo (2006) 30.

19 "It was a time of ardent combativeness […], of great and firm distinctions", a phrase by Nilo Pereira in his study on the Religious Question: Pereira (1986) 129 (my translation). Hauck et al. regard the Religious Question as the Brazilian expression of the broader dispute between the Catholic Church and the "liberal world", as in Hauck / Fragoso / Beozzo / Van der Grijp / Brod (1980) 186.

20 We see this "teleological approach" in Pereira (1986). Hauck et al. adopt a similar reasoning (referring to the Religious Question as the "logical climax of the reform of the Church in Brazil", as the result of "a long fight for independence"), but avoid to take sides. See Hauck / Fragoso / Beozzo / Van der Grijp / Brod (1980) 191.

21 See Santirocchi (2015b) 420–453, and Ramos Vieira (2016) 349–415.

between ecclesiastical and secular authorities during the Second Reign, these authors portray the Religious Question as a singularity rather than a necessary development; moreover, they relativise the "heroic figures" of the arrested prelates, revealing that they did not enjoy the full approval of the Holy See, for instance.[22]

The case generated enough scandal so as to reach the pages of foreign newspapers. In fact, the Religious Question is one of the few events that historiography – both recent and remote – portrays with a clearly transnational aspect. And this not only because of the international press. Most accounts of the Religious Question offer a depiction of the active role of the Holy See in the affair. It starts with the brief *Quamquam dolores* (1872), which had encouraged the Brazilian episcopate to fight against Freemasonry; it includes the failed diplomatic negotiations between the Baron of Penedo, the Secretariat of State of the Holy See, and the Congregation for Extraordinary Ecclesiastical Affairs, during the bishops' trials and arrest; and it closes with the Bishop of Olinda in the pope's arms, after the prelates' amnesty.[23] Most of the literature mentions the Holy See with similar depth only in the case of the ill-fated Bull *Praeclara Portugalliae*. Thus – and this is especially true for more remote historiography – the extraordinary character of the Religious Question may foster the belief in the exceptionality of Roman participation in the life of the Brazilian Church. Recent politico-religious historiography, however, has been striving to spare the reader from this mistake, pointing out the regular participation of the Apostolic See in Brazilian ecclesiastical matters, by means of agents and dicasteries of diplomatic activity, such as the internuncios, the Secretariat of State, and the Congregation for Ecclesiastical Extraordinary Affairs.[24] The emphasis by the literature on polarisation and political conflict, however, persists.

My proposal with this book is to approach Church and state relations in Brazil taking as starting point not ideological polarisation, but *administrative*

22 Before the Bishop of Olinda was convicted, the Congregation for Extraordinary Ecclesiastical Affairs had decided that the Secretary of State would send a letter expressing disapproval of his behaviour towards the lay confraternities to the prelate, according to Santirocchi (2015b) 443.

23 See, for instance, Pereira (1986), Guerra (1952), and Dornas Filho (1938).

24 This is precisely the case of the works by Dilermando Ramos Vieira and Ítalo Domingos Santirocchi.

governance. My focus shifts from politics to law. I consider that the legal discourse possesses qualities of its own, a relative autonomy,[25] elements which are capable of reframing the political discourse that surrounds ecclesiastical affairs in the Second Reign. Political intrigue certainly has a greater literary quality than the – prosaic, repetitive, ordinary, if not hermetic – legal matters that usually underlie the administration of the Church. Not by chance, throughout *Le Vicomte de Bragelonne*, we never catch Aramis concerned with the examinations for benefices of the diocese of Vannes, with the disciplinary faults of the clergy under his care, or even with his own obligation of residence (in fact, for the sake of political intrigue, he seems quite at ease with taking indefinite absences from Vannes). But the analysis of administrative problems has the advantage of presenting a broader and more concrete view of the relations between ecclesiastical and secular institutions. It reveals that the daily life of the Church, especially within a patronage system, could not be based only on conflict, intransigence, or isolation; that would run the risk of paralysing the functioning of the whole institution. Administrative problems obliged ecclesiastical and secular authorities from different levels to interact. And these interactions opened up the possibility of not only expressing resistance or dissatisfaction, but of finding common objectives, seeking standards, and negotiating solutions. Administrative problems also show that the interaction between the Holy See and the local clergy was not exceptional, nor was it restricted to political matters. By means of the permanent congregations (i. e. collegiate bodies of cardinals, endowed with specific administrative functions), the Apostolic See received information and participated in the ordinary routine of the dioceses of the Catholic world – and this with increasing regularity throughout the 19th century. The Brazilian bishop, in short, shared the task of governing his diocese with other local actors (the cathedral chapter, the vicar general, the vicars forane, the parish priests etc.), with state bureaucrats in Rio de Janeiro, and with cardinals and the pope in Rome. In this multi-level network, the very perception of the Church's reach shifted according to the problems and solutions at stake, as well as to the agents' intentions. The local

25 In saying so, I am deeply inspired by the writings of: Paolo Grossi, on law as a "dimension of civilisation", António Manuel Hespanha, on the "autonomy of law", and Bruno Latour, on law as a "mode of existence". See Grossi (2005), Hespanha (2012), Latour (2002), and Latour (2012).

Church was, at the same time, the national Church and the universal Church.

For this reason, rather than employing the word "government" – which evokes a single, central authority, the apex of a verticalised system – I use the term "governance".[26] It refers to a system of multiple jurisdictions, organised according to different hierarchies and degrees of autonomy; each level of governance has a variety of normative resources, legal and extra-legal, and all converge around a common object – *in casu*, ecclesiastical administration. These jurisdictions have different ranges – *local*, in the case of bishops, vicars capitular, cathedral chapters, parish priests etc.; *national*, in the case of the central administration of the Empire of Brazil; *global*, in the case of the permanent congregations of the Holy See. Methodologically, the concept of governance does not imply observing these levels statically and separately, but examining their interactions in the face of concrete problems. Governance *is* interaction. It is by means of interactions that actors mobilise normative resources to bring about solutions and thus move forward the institutional life of the Church.

With this book, I aim at diving into this complex, intertwined institutional life, so as to verify the new elements that it can bring to the interpretation of 19th-century Brazilian Church and state relations. I have, thus, three basic research questions. First, a question to set the field of analysis: which were the problems of ecclesiastical administration that circulated among the local, national, and global levels of governance of the 19th-century Brazilian Church? Second: how was law handled in the interactions among levels of governance so as to solve these problems? And, finally: how may the polarisation between ultramontanists and jurisdictionalists be reinterpreted in the light of legal analysis?

The first question refers to the so-called "mixed matters", that is, *materiae mixtae*, matters of ecclesiastical administration that were under the shared

26 My main references on governance are Stoker (1998), Zürn (2010), Rhodes (2012), and Schneider (2012). Whereas I was attentive to the singularities of Church and state relations during the 19th century (e. g. the struggles about authority, sovereignty etc.), studies on pluralism of jurisdictions (or "polycentric monarchies") in the early modern period helped me to conceive how different (and not strictly hierarchical) jurisdictions addressed an object they had in common (i. e. ecclesiastical administration). See, for instance, the approaches of Benton / Ross (2013), Cardim / Herzog / Ibáñez / Sabatini (2012) 4, Hespanha (1994).

responsibility of the secular power and the clergy. To identify them, it is not enough to resort to concepts offered by the doctrine of the period. The notions of mixed matter are hardly uniform, and there is always the risk of inaccuracy. A foreign quotation in a Brazilian handbook, for instance, may represent more an exercise of the author's own erudition than a faithful representation of Brazilian reality. It is necessary, thus, to investigate how problems circulated in the dimension of praxis, that is, in the flows of petitions and decisions between actors and institutions.

The large number of institutions involved in the governance of the Church compelled me to set some limits. I chose as references two organs that received local administrative demands associated with the rights of patronage and its derivations (or deviations) from 19th-century Brazil: a state institution and a dicastery of the Holy See. Furthermore, I considered relevant that the activity of these two bodies was deeply rooted in law, i. e. that these organs had as their main purpose to interpret normative resources applicable to the Church and to offer solutions to concrete problems. This criterion certainly does not neutralise the political tensions of the period, but it allows them to be perceived in a more situated way, that is, as an element that had its own place in the field of praxis, alongside other relevant factors. Finally, my choice was guided by pragmatic reasons: the two institutions could provide me with a significant and, at the same time, manageable amount of sources.

The two institutions I refer to are the Brazilian Council of State, which, in my study, represents the national level of governance, and the Holy See's Congregation of the Council, which figures as the global level.

The Council of State functioned as superior administrative court and imperial advisory board.[27] The councillors were elected by the emperor from among the political elites and higher administrative ranks. The monarch – as well as the many ecclesiastical and secular petitioners, whose requests he forwarded – relied on this organ for opinions on the correct interpretation of the law in force in Brazil. As the law in force included canon law, as well as secular laws applied to the Church, the Council of State had many occasions to decide on matters of *padroado*, or royal patronage, and ecclesiastical

27 On the Brazilian Council of State, see Rodrigues (1978), Carvalho (2003 [1980, 1988]), Vieira Martins (2006, 2007), and Lima Lopes (2010).

administration. In spite of their merely consultative value, the opinions of the Council of State were held in high regard by jurists, judges, and bureaucrats, serving as "precedents" for the councillors themselves and as "guidelines" for other authorities.

The sources I used were the full text consultations on ecclesiastical affairs, whose originals are located in the Council of State's fonds *(Fundo Conselho de Estado)*, in the Brazilian National Archive, Rio de Janeiro. To obtain an overview of the totality of cases, I resorted to the directory *(fichário)* of the fonds. I also relied on the three-volume compilation of opinions on ecclesiastical affairs commissioned by Paulino José Soares de Sousa Filho as Minister of the Empire and published in 1869–1870. I further consulted the collection of minutes of the Council of State's plenary meetings, organised by José Honório Rodrigues in the 1970s. To help contextualise the decisions of the organ, I resorted mainly to the annual reports of the Ministry of the Empire and the Ministry of Justice.

The Congregation of the Council, in its turn, was an organ of the Apostolic See, more precisely, a permanent congregation of universal reach, composed of cardinals appointed by the pope.[28] Since the mid-16th century, its major function was to watch over the interpretation and execution of the disciplinary decrees of the Council of Trent in the Catholic world. These decrees concerned key aspects of ecclesiastical administration, such as the obligation of residence, the examinations for benefices, the management of seminaries etc. Besides possessing the power to authentically interpret them, the dicastery[29] also had the competence to offer the corresponding dispensations and faculties, to decide on contentious causes, and to control the reception of the Tridentinum via provincial councils and diocesan synods, among other functions. Due to the practical relevance of the decisions of the Congregation of the Council, many of them were listed in official and

28 On the Congregation of the Council, see Parayre (1897), Varsányi (1964), Stangarone (1964), Del Re (1998) 161–173, and Albani (2009).

29 For the purposes of this book, I use "dicastery" as a synonym for "congregation of cardinals", even though this term carries other meanings in ecclesiastical as well as secular contexts. It is worth mentioning that, since the publication of the Apostolic Constitution *Praedicate Evangelium* (19 March 2022) by Pope Francis, "dicastery" has become the official denomination of the former congregations of cardinals. Thus, one of the successors of the Congregation of the Council – the Congregation for the Clergy – is presently known as the Dicastery for the Clergy.

unofficial compilations, and also appended in editions of the Council of Trent and in books of canon law.

For this book, I consulted the dossiers of cases (the *positiones*), the books of decrees (the *Libri decretorum*), the finding aids *(Protocolli*, *Rubricelle)*, and some diocesan reports *(relationes dioecesium)*. All these documents are in the archive of the Congregation of the Council, in the Vatican Apostolic Archive, Vatican City. During the composition of this study, the access and, most importantly, the comprehension of these sources was enabled by my participation as an active member of the Max Planck Research Group "Governance of the Universal Church After the Council of Trent: Papal Administrative Concepts and Practices as Exemplified by the Congregation of the Council between the Early Modern Period and the Present", led by Benedetta Albani, and located in the Max Planck Institute for Legal History and Legal Theory, Frankfurt am Main. In fact, with this book, I hope to demonstrate that these sources – many of them previously entirely unknown – were part of the backbone of the Church's legal routine; their contents allow one to grasp not only a variety of problems and concerns of ecclesiastical administration, but also a wide range of entanglements among the Congregation of the Council, other Roman dicasteries, secular powers, and local actors.

Additionally, I examined documents from the Apostolic Internunciature in Brazil,[30] housed in the Vatican Apostolic Archive, and sources from the Congregation for Extraordinary Ecclesiastical Affairs,[31] stored in the Histor-

30 The Apostolic Internuncio is a diplomatic representative of the Holy See in a foreign nation, comparable to a minister plenipotentiary. Though inferior in rank to the Apostolic Nuncio, the internuncio holds equivalent powers when serving in a country devoid of Apostolic Nunciature, as was the case of 19th-century Brazil, where the Tribunal of the Nunciature had been suppressed by the Decree of 27 August 1830. For more, see De Marchi (2006), Kiemen (1971), Coleman (1950), and Accioly (1949).

31 The Congregation for Extraordinary Ecclesiastical Affairs has its origin in the *Congregatio super Negotiis Ecclesiasticis regni Galliarum*, created by Pope Pius VI as a consultative organ to aid the Holy See with the problems posed by the French Revolution. Under Pope Pius VII, this dicastery evolved to a permanent congregation of universal scope, under the control of the Secretary of State, and retaining its consultative character. Thus, from 1814 onwards, the Congregation for Extraordinary Ecclesiastical Affairs was in charge of the negotiation of concordats between the Holy See and national states, the negotiation of legal norms issued by national states on ecclesiastical matters, and the ordinary administration of territories under "extraordinary" religious and political conditions (e. g. Iberian

ical Archive of the Secretariat of State – Section for Relations with States. These documents served to contextualise the Brazilian cases presented to the Congregation of the Council. On some occasions, the consultation of these sources was also useful for placing the dicastery within the broader perspective of the functioning of the Roman Curia, with concurrent dicasteries, organs that forwarded requests to Council, or that drew petitions from Council to themselves etc. Any translations from these and other sources, as well as from the literature, are mine unless otherwise indicated.

This book comprises three chapters. In Chapter 1, by exploring Brazilian manuals of ecclesiastical law, I provide an overview of how relations between Church and state in Brazil were regarded by jurists. The chapter introduces the reader to the legal problems, norms, and arguments that formed the repertoire of legal actors in the realm of ecclesiastical affairs in the 19th century. I address the following issues: the concepts of ecclesiastical law, the relations of independence and subordination between Church and state, the royal patronage of churches, and the Council of Trent. This overview allows the reader to appreciate the variety of theoretical positions behind the labels of ultramontanist and jurisdictionalist, in preparation for an in-depth investigation of the realm of praxis in subsequent chapters, when we trace how these problems, norms, and arguments were set in motion, animating the system of governance as a whole.

As I said above, several lines of interrogation guided my research. The first, regarding the administrative problems that circulated among the three levels of governance of the Brazilian Church, is addressed in Chapter 2. There I outline the evolution over time of all the petitions and decisions I collected. I propose a categorisation of the cases by theme, based on the competences of the organs, the content of the petitions and decisions, and the intention of achieving comparable and interwoven sets of data. This resulted in a group of common matters, which I call *strong* mixed matters (given their verification in practice). It is by analysing the cases concerning these matters that I address the subsequent questions.

Chapter 3 engages with the question of how law was handled in the governance system that I chose to observe. In order to answer that, I rely

America, until this task passed to *Propaganda Fide*, in 1908), among other matters. For more on this congregation, see Pásztor (1968), Del Re (1998) 428–434, Pettinaroli (2010), and Regoli (2015).

on two methodological strategies. The first is to select a normative corpus that will function as my observation point. This step is necessary because the Brazilian ecclesiastical administration developed within a jungle (or rather a rainforest) of norms. To place my focus on *one* normative set allows me to perceive more clearly how agents behaved in this universe: which comparisons and connections were established, which norms were discarded, which were privileged, based on which criteria etc. The choice may seem difficult. After all, the administrators had at their disposal norms of canon law, universal and particular, remote and recent; also secular norms directed at the Church which originated in the Portuguese *Ancien Régime* and in the Brazilian Empire; and, surely, local customs and idiosyncrasies. Overarching, systematic normative *corpora* – such as a *codex* of canon law, or even a concordat between Brazil and the Holy See – would only emerge in the 20th century. Meanwhile, doctrine and praxis played indispensable roles in guiding actors and institutions amidst the normative forest. Yet, undeniably, there were norms that were more relevant, and more recurrent than others, depending on the subject.

As hinted at before, even three hundred years after its promulgation, the disciplinary part of the Council of Trent was still an inescapable reference of universal canon law for matters of ecclesiastical administration. I chose it as my observation point due to its enduring strength and pervasiveness.[32] From the perspective of the Apostolic See, as we may well guess, this normative corpus had its authority renewed by the casuistry of the Congregation of the Council and by supervening pontifical norms. But its prominence can also be observed at the local level. In Colonial Brazil, the Tridentinum was present "in spirit",[33] and also in norm, by means of the First Constitutions of the Archbishopric of Bahia (1707), the result of the first diocesan synod performed in Brazilian territory (and, for almost two centuries, the only one). Moreover, Tridentine dispositions served as the basis for many statutes of cathedral chapters and seminaries. They were employed in 19th-century diocesan regulations for disciplinary reform, such as the "Regulations to the

32 On the Council of Trent in the 19th century, see Astorri (1996), Wolf (2016), and Fantappiè (2019b) 27–35.

33 Here I recall the concept of "Tridentine spirit" coined by Bruno Feitler when addressing how the Council of Trent was used in Colonial Brazil. It means care for pastoral effectiveness, even to the detriment of formal procedure, as in Feitler (2014).

Clergy" *(Regulamento ao Clero)* of 22 August 1852, by the Bishop of São Paulo. They were also a constant reference in Brazilian manuals of ecclesiastical law. And, as we shall see, the civil government as well as the Council of State itself offered interpretations of the Council of Trent when addressing the administrative problems of the Church. In other words, I will demonstrate that the Tridentinum is a normative corpus that allows an analysis which *connects* all three levels of governance of the Church. It was a common reference in the praxis of agents at global, national, and local levels, its presence or absence being significant, and all the more so its interpretation, reinterpretation etc. Besides, taking this corpus as point of observation also allows me to establish a more precise limit between the concrete uses of the Council of Trent and the ideology of Tridentinism, that is, the concept of an isolated clergy, necessarily resistant to the institutions of the outside world. I hope, in fact, to demonstrate that some of the roles that the Tridentinum assumed in practice went precisely in the opposite direction of clerical isolation.

But an investigation of how the Council of Trent was handled in the governance of the Brazilian Church requires a further methodological step. The analysis would become fragmented and of little quality if it simply listed the different roles that adhered to the provisions of the Council of Trent on a case-by-case basis. Besides a vocabulary to express the variety of interpretations of the Tridentinum, more general categories are needed in order to express how these specific normative uses were related to broader conceptions of the legal universe, and also how the levels of governance saw themselves and each other. I call these general categories *normative conventions*. While establishing them, I rely on the recent developments of the *économie des conventions* and pragmatic sociology.[34] These approaches view conventions as culturally established resources for interpreting and evaluating objects that serve the purpose of coordinating actors around common goods. Thus, when I say "normative conventions", I am referring to interpretative frameworks that emerge in the forging of legal solutions. As such, they are not part of law – at least not in the way that canons, decrees, laws, and other normative acts are. Normative conventions are located on a deeper level – the level of "law in the making" – which is why it is more accurate to speak

34 See Boltanski / Thévenot (2006), Reynaud / Richebé (2007), Diaz-Bone (2012, 2017), Thévenot (2012), and Bessy (2012, 2015), and Diaz-Bone (2017).

of *multinormativity* rather than of legal pluralism.[35] In the case of ecclesiastical administration, these conventions reveal the actors' thoughts on how the law applicable to the Church should be organised, and, most importantly, how different jurisdictions should approach this universe. These conventions are shaped by political factors (the tension between ultramontanists and jurisdictionalists, for instance), but also by previous, concrete experiences, by trauma (e. g. the Religious Question), by concrete needs, by pragmatism, by factors that only make sense in the realm of law (e. g. the need for decisions to rely on "solid tradition" and avoid "sudden innovation"), and, sure enough, by interaction. Normative conventions provide a suitable bridge between the specificity of the case and the broader governance system. They portray the governance system as dynamic, thinking about itself in the act of yielding solutions.

Chapter 3 is also the *locus* where I address the third research question, on how a legally oriented perspective may provide new elements to the interpretation of the relationship between ultramontanists and jurisdictionalists in 19th-century Brazil. By means of the analysis of cases, I hope to challenge the totalising and sometimes homogenising character of this relationship, which is frequently painted in the colours of tension, conflict, and isolation. Approaching this from a perspective of governance and normative conventions enables the observation that, just as political conflict could affect legal solutions (or even lead to their absence), its influence was limited by other factors, some of which were closely related to how law as a "mode of existence" unfolded. In short, I aim to show that conflict had a place in the governance system and, by spotting it, we can glimpse where it was not. The analysis is also relevant for revealing how actors who were aligned to the same ideology were capable of adopting different opinions and courses of action, sometimes even in disharmony among themselves.

The chapters are followed by a Conclusion, in which I present a reflection on the book's main findings. In general terms, I outline the idea that the tension between ultramontanists and jurisdictionalists formed part of the governance system – but it did so as a rather precarious element, a trigger that often activated mechanisms of control of normative novelties, and the recalling of common objectives and concrete needs. Moreover, my results

35 See Duve (2017).

point to the variety of legal positions that could be adopted by both Church and state actors – and, in particular, by agents considered "ultramontanists" or "jurisdictionalists", an aspect that encourages a reappraisal of these labels, so as to comprise this heterogeneity of legal perspectives. Finally, the Council of Trent reveals itself as an efficient point of observation of the governance system, as it pervades discourses on the three levels and assumes varied roles, in conflict as well as in cooperation.

Annexes 1–4 comprise tables displaying the data used mainly in the analysis of Chapter 2. Annexes 1 and 3 present the total of cases of Brazilian ecclesiastical affairs from 1840–1889 collected in the archive of the Congregation of the Council and the fonds of the Brazilian Council of State, respectively. Annexes 2 (Congregation of the Council) and 4 (Council of State) present the cases that I classified as strong mixed matter. These cases, in particular those that displayed the stronger interactions among the levels of governance and that possessed most analytical potential regarding the uses of the Council of Trent, are at the basis of the thematic studies conducted in Chapter 3. Information on how I collected and interpreted the data present in the annexes is provided in Chapter 2.

Chapter 1
Exploring the Repertoire of the Culture of Ecclesiastical Law in Brazil during the 19th Century

Governing the Brazilian Church[1] during the 19th century was a task that involved several institutions, within and outside of the empire. The co-existence of patronage rights of the emperor, along with jurisdictionalist measures[2] from the times of Portuguese colonisation, as well as constitutional

1 I use the term "Brazilian Church" to denote all the ecclesiastical institutions located in Brazil during the empire. Due to my research object and the sources that I chose to examine, the dioceses and their bishops appear in the forefront of this picture of the Church. However, I want to stress that the term should be understood as a dynamic, relational concept. That is, in my view, the Brazilian Church *lives through* the interactions with normative value established among different levels of governance (local ecclesiastical actors, state bureaucrats, and the Holy See) that allow it to keep pursuing its objectives.

2 I prefer to employ the term "jurisdictionalism", due to the strong ideological charge impregnated in the word "regalism", repeatedly used in historiography with the meaning of *intervention* and even *abuse* of the state regarding the Church, as remarked by Di Stefano (2017). Jurisdictionalism is a politico-religious position underlying certain practices of absolutist monarchies in religious matters, particularly during the 18th century. This position generally stresses the autonomy of the national clergy over Rome; it also invests secular sovereigns with a series of rights over ecclesiastical institutions located in their territories; such rights do not find legitimacy in pontifical concessions, but in the quality of the monarch as such, which is why they are often called "majestic rights". These rights could refer to a wide range of subjects: ecclesiastical benefices, the distribution of competences between royal and ecclesiastical jurisdictions, matrimonial legislation, regulation of education, etc. Furthermore, jurisdictionalism comprised the secular power's control over the Holy See's activity in national territory, by means of mechanisms such as the *placet* (or *exequatur*). Jurisdictionalism was manifested in different ways and had different denominations, depending on the place and period of incidence and also on the context of the issuer. Among the main jurisdictionalist currents are: Spanish Bourbon regalism, Gallicanism (which refers primarily to 17th-century France; but this nomenclature was extended to other temporal and geographical circumscriptions), Febronianism (in Trier, at the end of the 18th century), Pombalism (in Portugal, during the reign of D. José I, with the Marquis of Pombal as Secretary of State), Josephinism (Austria under Joseph II), Jansenism (in a political, anti-Roman sense, not necessarily related to the dog-

and legislative novelties from independent Brazil, meant that the ecclesiastical administration was subjected to some degree of governance by all three branches of the state, the executive in particular. Governance at the national level was complemented, at a more far-reaching level, by that of the Holy See, which to this end employed – among other organs – the Roman congregations. These possessed a vast spectrum of administrative, legislative and judiciary competences over the Catholic world. Thus, the Brazilian Church was governed via a series of processes led by ecclesiastical and secular authorities, at local, national, and global levels.

The objective of following the entirety of processes at play, as well as the relationships among them, even in a rigorously limited, clearly defined space and historical period, would demand a volume of data collection and analysis that by far exceeds the limits of this study. For this reason, I chose to approach the governance of the Brazilian Church by focusing on the intersection of the activities of two specific institutions, one from the empire – the Council of State – and one Roman congregation – the Congregation of the Council. As will be discussed later, this choice was motivated by the central place that administrative ecclesiastical law occupied in the work of these institutions. Juxtaposing sources from the Brazilian state and from the Holy See is particularly fruitful as it allows us to catch a glimpse of the matters of ecclesiastical administration that moved ecclesiastical and secular authorities to act in a complementary manner, the so-called mixed matters. Sure enough, one may also perceive the matters that corresponded to each institution's exclusive competences. And, if we observe the conflicts and unilateral interventions, it becomes possible to grasp more concretely how blurred the boundaries between the secular and ecclesiastical jurisdictions were at the time.

Even though petitions and decisions comprise the main set of sources that I rely upon to observe the governance of the Church, a preliminary step must be taken, that is: to situate Church and state relations within the landscape of the legal culture of 19th-century Brazil. When I speak of *legal*

matic struggles led by Cornelius Jansenius and his followers in the 17th century) etc. It should be noted that denominations such as Pombalism and Josephinism also stand for broader reforms led by secular rulers in the fields of public administration, education, agriculture etc. For more on jurisdictionalism, in particular the French and Iberian iterations, see Basdevant-Gaudemet (2017).

culture, I refer to the fact that the petitions and decisions I examine belong to a discursive arena typical of law – and, more precisely, of ecclesiastical law as a specialised knowledge, employed by jurists and canonists with some degree of professionalisation.[3] My task in this chapter is to outline the repertoire[4] of legal culture that informed the administrative relations between Church and state at the time, shedding light on the main controversies, arguments and references used by legal actors.

As material for this preliminary study, I consulted the handbooks, or manuals, of ecclesiastical law produced by Brazilian jurists – ecclesiastics

3 As for the concept of legal culture I employ here, I share the point of view of Cappellini / Costa / Fioravanti / Sordi (2012), which is representative of the *Scuola Fiorentina* of legal history: "La 'cultura giuridica' (in senso stretto) è la rappresentazione *more iuridico* che un ceto professionale offre di una determinata società; è la visione dell'ordine e delle sue più minute articolazioni; l'illustrazione e la discussione dei suoi valori fondanti; la messa a punto delle strategie di conservazione o di trasformazione degli assetti esistenti. La cultura giuridica (il diritto 'riflesso' nel sapere specialistico dei giuristi) appare dunque un momento importante del discorso pubblico nel quale una determinata società si esprime e si riconosce."

4 I borrow the notion of *repertoire* from Charles Tilly: "The word *repertoire* identifies a limited set of routines that are learned, shared, and acted out through a relatively deliberate process of choice. Repertoires are learned cultural creations, but they do not descend from abstract philosophy or take shape as a result of political propaganda; they emerge from struggle. […]", as in Tilly (1993) 264. Ann Swidler also uses this concept, equating repertoire with culture: "A culture is not a unified system that pushes action in a consistent direction. Rather, it is more like a 'tool kit' or repertoire […] from which actors select differing pieces for constructing lines of action. Both individuals and groups know how to do different kinds of things in different circumstances", as in Swidler (1986) 277. Tilly notes that a cultural repertoire has limits, but it still allows a wide margin for manoeuvring, as if it were the set of improvisations at the disposal of a jazz ensemble: "By analogy with a jazz musician's improvisations or the impromptu skits of a troupe of strolling players (rather than, say, the more confining written music interpreted by a string quartet), people in a given place and time learn to carry out a limited number of alternative collective-action routines, adapting each one to the immediate circumstances and to the reactions of antagonists, authorities, allies, observers, objects of their action, and other people somehow involved in the struggle", as in Tilly (1993) 265. The concept of repertoire has already been employed in Brazilian historiography by Angela Alonso, when analysing how Brazilian intellectuals from the "Generation of 1870" politically employed arguments and concepts coming from foreign theories. See Alonso (2002). Even though Tilly uses the term to address forms of collective popular action in the context of Great Britain between 1750 and 1830, and Alonso does so primarily considering the political arena of 19th-century Brazil, "repertoire" seems an appropriate concept to express the different roles and combinations of ideas in the realms of theory and practice of ecclesiastical law during the Second Reign.

and laymen – of the empire. Certainly, a range of other texts could have contributed to my analysis, from parliamentary records to monographs and law journals. My preference for manuals is due to the central role that this doctrinal genre played in legal teaching and practice in 19th-century Brazil. These books were part of the curriculum of law faculties and seminaries; furthermore, they served as support for the solutions of the imperial bureaucracy when deciding on specific cases, and all these handbooks were cited in opinions of the Council of State. Such sources allow us to see just how permeable the borders between theory and practice of law were at the time, especially if we consider that the jurists who wrote them were not exclusively dedicated to the academia, but also to politics, religion, administration, etc.[5]

One aspect that contributes to giving colour and depth to the contextualisation I wish to achieve is that the manuals here analysed have a marked transnational character. They reveal that an understanding of the relations between Church and state in Brazil necessarily involves comparison, albeit in a very broad sense, with other legal cultures.[6] The handbooks' authors sought to take advantage not only of national references or of the Portuguese "heritage" (which, by itself, was not restricted by the kingdom's borders, as the 18th-century Portuguese jurisdictionalism incorporated French and Aus-

5 For more on this overlapping of intellectual and political functions of Brazilian bachelors in the 19th century, see Adorno (1988), who argues that the overlapping was engendered at the expense of the quality of legal education. An interesting criticism of this study is found in Fonseca (2006), who claims that the overlapping was actually an intrinsic part of the Brazilian legal culture of the 19th century.

6 Regarding comparison in a broad sense, I am adopting Heikki Pihlajamäki's more "liberal" point of view, that is, to place the object of research in an international context, as law was (and is) an international phenomenon: "The comparative legal historian can take a national or regional legal institution as his concern, exactly as a traditional legal historian working within the boundaries of a national legal system would. However, and this is a major difference to the traditional method, the comparative legal historian would always position the research object in an international context. Without this context, the comparative legal historian would feel at risk of losing something essential in trying to answer his or her research questions. The reason why the comparative legal historian would feel this way is that law is an international phenomenon. Not only do legal institutions transfer from one country to another, but the mechanisms through which they change or remain the same are often similar in different countries. Comparative contexts, therefore, can turn out to be true treasure-houses of explanations." Pihlajamäki (2015) 69–70.

trian ideas). They also used more recent constructions, sometimes considered more "scientific", coming from other parts of Europe, in particular from Germany and Italy. These books are, thus, privileged objects for the analysis of operations of cultural translation in the sphere of canonical and ecclesiastical administrative law.[7]

Moreover, these manuals were a vehicle for Brazilian jurists to position themselves on issues that shook Europe during the pontificate of Pius IX (1846–1878), such as papal infallibility, the Holy See's scope of action in Catholic territories, and the general role of religion in the public sphere. By means of these books, the "culture wars", with their tension between the national and the universal perspective of ecclesiastical affairs, took on wider dimensions than the European borders.[8]

Considering these factors, and seeking to include this transnational flavour in my outline of the legal repertoire circulating in Brazil, I examine how the following topics were addressed: ecclesiastical law, Church and state relations, Church patronage *(padroado)*, and the Council of Trent. In doing so, I hope to offer a reasonable contextualisation of the data and discussion of the main sources of this work.

The material analysed in this section is not restricted to handbooks of ecclesiastical law and related literature; however, I want to emphasise that these handbooks and their transnational character were immensely helpful in clarifying how and in what context the multi-level governance of the Church operated. More than that, these manuals were, in their own right, participating in the governance system. They did so as references of authority for petitions and decisions, but also – and this is my point – as objects controlled by different instances of the governance system itself. I am referring to the Council of State, at the state level, and to the Congregation of the

7 I adopt the term "cultural translation" from the perspective of legal studies, that is, as a process in which knowledge, values and practices of a given culture are transferred to another, giving rise to non-linear transformations and to the emergence of new legal constructions. See Foljanty (2015).

8 On the European "culture wars", see Clark/Kaiser (eds.) (2003). On the transnational nature of Catholicism in the 19th century, encompassing the development of global practices and organisations among ecclesiastics and laymen, with the purpose of reforming society according to the principles of the Catholic Church, see Viaene (2012). More recent analyses of Christianity (and other religions) as a global phenomenon during the long and troubled 19th century are found in Blaschke/Ramón Solans (Hg.) (2019).

Council and the Congregation of the Index, at the level of the Holy See. These organs became acquainted with these works and, to a varying extent, valued them according to their normative horizons. Keeping this in mind, my analysis follows a double direction: it deals with the manuals as objects inserted in global processes of circulation of knowledge, adapting ideas and appropriating foreign authors in their own way, and also as objects of control, of the inspection activities by entities of national and global range. In other words, when I analyse these books, I consider not only how they portray subjects relevant for the governance system, but how the governance system itself perceived these portraits.

1.1 The rise of Brazilian handbooks on ecclesiastical law

The second half of the 19th century witnessed the publication of the first handbooks of ecclesiastical law written by Brazilian jurists and clerics. This literary genre is characterised by proposing, in a synthetic and systematic way, a vision of the whole of a legal discipline. They do not display a large, exhaustive analytical corpus (which is the case of treatises and commentary on legislation), or the typical depth of monographic studies. Rather, the handbook, or manual, is a compact, "manageable" *(manuseável)* book, defined by a a pedagogically effective synthesis; after all, it is aimed at teaching, in universities or seminaries.[9] In fewer than 35 years, three Brazilian publications of this kind became available in the market, excluding the re-editions.

The pioneer among these was the *Compendio de Direito Ecclesiastico*, by jurist Jeronymo Vilella de Castro Tavares.[10] The first edition was published in

9 The history of legal books is an expanding field. Francophone authors, in particular, have recently offered many interesting contributions to the history of manuals, treatises and other legal books of the 19th and 20th centuries. See, for instance: Halpérin (2003), for a general overview; Chambost (ed.) (2014), focused on legal handbooks; and Hakim / Guerlain (eds.) (2019), on popular legal literature. For the early modern period, Hespanha (2008) provided a thought-provoking essay on the relationship between intellectual transformations and changes in the format of legal books.

10 Jeronymo Vilella de Castro Tavares (1815–1869) was born in Recife, Pernambuco. He graduated at the Faculty of Law of Olinda, and was nominated substitute professor of the institution in 1844. After the transference of the faculty to Recife, in 1855, Vilella Tavares became full professor. In addition to his academic career and his work as a lawyer, Vilella Tavares was also a representative of the province of Pernambuco in the Chamber of

1853,[11] after Vilella Tavares's two-year tenure as professor of ecclesiastical law at the Faculty of Law of Olinda. Two other editions followed in 1862 and 1883, with the significant title change to *Compendio de Direito Publico Ecclesiastico*. The work was primarily intended for academic instruction. This is evident not only from the title, which was accompanied by the expression "to be used in the legal academies of the empire", but also from the words of Vilella Tavares himself in the preface to the first edition. There, he reports that he composed the handbook after noticing, while teaching, the shortcomings of the *Institutiones Juris Ecclesiastici* of Austrian canonist Franz Xaver Gmeiner.[12] Gmeiner's work, which supported a strong intervention of the

Deputies in the late 1840s. After the dissolution of the legislature in 1848, Vilella Tavares joined the liberals in the *Praieira* Revolution, in his home province. With the defeat of the rebels, he was sentenced to life imprisonment in 1849, obtaining the imperial pardon at the end of 1851. Among his writings, besides the *Compendio*, which had three editions (1853, 1862, and 1882; the latter is a posthumous edition, which faithfully reproduces the 1862 version), Vilella Tavares achieved public recognition with an open letter addressed to D. Romualdo Seixas, then Archbishop of S. Salvador da Bahia, in the beginning of the 1850s. In the letter, the jurist raises the question on whether parish priests can be prosecuted and punished by the secular power for violating mixed obligations and state laws, defending the idea that clergymen should be treated as "public servants". In 1852, the text was published along with the answer from the archbishop. For more on Vilella Tavares, see Blake (1895) 311–312.

11 One could object that *Instituições Canonico-Patrias* (1822), by the academic Francisco Soares Maris (born in Pernambuco and a graduate of Coimbra), would be the pioneer of the genre, as it preceded Vilella Tavares' *Compendio* by more than 30 years. It should be noted, however, that only the first of six books achieved a printed edition (according to Blake (1895) 126). Though written for the formation of the clergy in the Seminary of Olinda, in terms of form and content, Maris's work seems less a handbook on law and more a book on the ecclesiastical history of Pernambuco, with the citation and sometimes reproduction of Portuguese and Roman norms from the *Ancien Régime*. Vilella Tavares, in the second edition of his *Compendio* (1862), points out that he is acquainted with Maris's *Instituições*, but he does not believe the book overshadows his own. According to Vilella Tavares, Maris's work does not have an "elementary form" (that is, a pedagogical structure, suitable for faculty teaching), its doctrine is outdated, and it ultimately is an incomplete project. For the purposes of this book, Maris's *Instituições* shall not be considered in the analysis, on the grounds that it is a work whose elaboration precedes the conformation of the legal system of imperial Brazil; moreover, it has little relevance for the governance of the Brazilian Church in practical and theoretical terms.

12 Franz Xaver Gmeiner (1752–1822) was born in Studenitz, Styria, Austria. His academic career was centred in the University of Graz, where he obtained his doctorate in philosophy and theology, and where, in 1787, he occupied the chair of Church history. In 1776, he became a priest. The *Allgemeine Deutsche Biographie* defines his position on Church and

state over the Church, in line with the Josephinism of the second half of the 18th century, was still in vogue in the two law faculties of the empire, Olinda / Recife and São Paulo, during the 1850s, most probably in Latin. The teaching of ecclesiastical law seemed to follow the tradition that emerged from the project undertaken in 1825 by the Viscount of Cachoeira to draft regulations for legal courses. This project, following the pedagogical model of the University of Coimbra from the first half of the 19th century,[13] suggested the use of Gmeiner's handbook in the teaching of "universal ecclesiastical public law".[14] Vilella Tavares states that the *Institutiones* of the Austrian jurist adopted doctrines and methods which were outdated, out of

state relations as typical of Austrian jurisdictionalism, i. e. Josephinism: "Er [Gmeiner] vertritt den josephinischen Standpunkt, vindicirt dem Staate das volle Recht der Oberaufsicht über die Kirche und vertheidigt insbesondere die Entstehung der päpstlichen Machtvollkommenheit durch die pseudoisidorischen Decretalen", as in Schulte (1879) 264. In spite of its lack of originality, the *Institutiones Juris Ecclesiastici, ad Principia Juris Naturae et Civitatis Methodo Scientifica Adornatae et Germaniae Accomodatae*, initially published in 1782, is the most successful work of the Austrian jurist, having reached an international audience. Like his German counterparts, Gmeiner makes reference to principles of natural law and to the internal division of canon law into public and private; a supporter of jurisdictionalism, he praises the systematic method and pursues forms of exposition that are different from the "legal order", that is, diverse from the traditional division of matters according to the titles of the decretals of the *Corpus iuris canonici*; see Fantappiè (2008) 80. *Institutiones* was condemned by a decree of the Congregation of the Index, dated 8 June 1847.

13 Merêa refers to Gmeiner's *Institutiones* as the traditional textbook for legal teaching in Coimbra, both before and after the unification of the Faculties of Civil Law and Canon Law, in 1836, as in Merêa (1961) 160. The *Biographisches Lexikon des Kaiserthums Oesterreich* remarks that more than one hundred copies of this manual were sent to Coimbra in 1807, as in Wurzbach (1859) 233. For more on the history of legal teaching in Portugal, see Merêa (2005).

14 I am referring to the "Projeto de regulamento ou estatuto para o Curso Juridico pelo Decreto de 9 de Janeiro de 1825, organizado pelo Conselheiro de Estado Visconde da Cachoeira, e mandado observar provisoriamente nos Cursos Juridicos de S. Paulo e Olinda". Cachoeira thought that Gmeiner's book should be complemented by other texts for the teaching of the so-called national ecclesiastical public law: "Para ensinar esta materia [direito público eclesiástico] ha o compendio de Gmeinero sobre o direito publico ecclesiastico universal, que se póde ajudar das doutrinas de muitos outros sabios dessa mesma ordem, como Fleury, Bohemero, e outros; e para o direito publico ecclesiastico nacional servirá o capitulo inscripto – *De Jure principis circa sacra* – que vem no direito publico de Paschoal José de Mello, acrescentando o Professor o mais que achar espalhado nas ordenações e leis, que depois tem sido promulgadas", as in Collecção das Leis do Império do Brazil de 1827 (1878) 24.

pace in relation to the "advances and progress of science" and the "heights upon which Italy and Germany, mainly, have placed ecclesiastical law".[15] The author was probably referring to Roman canonistics from the end of the 18th century (Giovanni Devoti) and to the canonical strand of the German Historical School (Ferdinand Walter, George Phillips), both critical of Enlightenment jusnaturalism and jurisdictionalism. Vilella Tavares's proposal was to combine in the *Compendio* "the doctrine of the more orthodox and respected authors" and "the good parts of Gmeiner", adding notes regarding the application of general rules to the Church in Brazil, considering its specific legislation.

The result is a peculiar arrangement of, at first, seemingly contradictory references. Canonists sympathetic to Rome, and even ultramontanists,[16] are cited in parts of the book related to universal ecclesiastical law, while national legal particularities are supported by citations from old champions of regalism. Though Vilella Tavares emphasises his admiration for the Historical School many times, he does not follow Walter's or Philipps's *avant-garde* ideas on the organisation of matters.[17] In the first edition, despite refusing

15 JVT1, s/p. By praising the German legal doctrine, Vilella Tavares anticipated by several decades the Germanophile tendency of other members of the Faculty of Law of Recife, such as Tobias Barreto, admirer of Rudolf von Jhering. For more on the exchanges between the Brazilian and German legal culture by the end of the 19th century, from the perspective of other branches of law, more precisely criminal law, see Espíndola de Sena/Sontag (2019).

16 Ultramontanism is a politico-religious perspective that emerged with the Restoration and developed throughout the 19th century. It defended the view that the Catholic Church, as an institution, was autonomous from the state, both conceived as perfect societies in mutual cooperation. From this point of view, ecclesiastical law was more excellent than civil law, given its higher objectives. The most delicate point was that the Roman pontiff was said to be the supreme judge of spiritual and also temporal matters from a universal perspective. In other words, the pope was deemed capable of legitimately censoring temporal governments in the event of disrespect for divine and ecclesiastical law. Ultramontanism found support from the Vatican especially during the pontificate of Pius IX, having gained popularity among many clerics and laymen throughout the Catholic world. The influence of this movement could be particularly felt during the First Vatican Council. At the same time, ultramontanism came into friction both with governments reminiscent of jurisdictionalism and its defenders, and with supporters of secularism. For more, see Von Arx (1998), Santirocchi (2010, 2015b), Blaschke (2017), O'Malley (2018), Ramiro Junior (2019), Ramón Solans (2019a, 2019b and 2020).

17 During the 19th century, there were three basic types of scheme according to which a book of canon/ecclesiastical law could be organised. There is the so-called "legal order",

that the division between public and private was applicable to the legal context of the Church (a premise that goes back to Savigny), Vilella Tavares structures the *Compendio* based on the order of chapters employed by Gmeiner in the tome of the *Institutiones* dedicated precisely to ecclesiastical public law. Thus, even if involuntarily, he adopts the traditional format of the institutions (the tripartition "persons-things-actions" of Roman law) and the division between *jus ecclesiasticum publicum* and *privatum*, making the first part of the two classifications ("persons" and "ecclesiastical public law") converge in the architecture of the *Compendio* (which is a single volume).[18]

the most traditional of all, which follows the sequence of titles of the medieval Decretals. There is the system of the institutions, which goes back to the rupture introduced by Perugino canonist Giovan Paolo Lancellotti in his *Institutiones iuris canonici* (1563), organised according to the tripartition "persons-things-actions" of Justinian's *Institutiones*; for more on this rupture, see Sinisi (2009). And there are the new schemes, which reject the older ones for their limitations and artificiality. Among the novelties, the systems proposed by Ferdinand Walter and George Phillips, both related to the German Historical School, stand out. Walter's scheme merges Romanticism and Enlightenment tendencies. The German jurist starts from the conception of the Church as a vertical organic unit, converging in the figure of the pontiff. He seeks the "roots" of ecclesiastical law in history. At the same time, he wishes to expose this legal structure in a way that makes sense for contemporary times, employing the same categories of constitution and administration of the state in the representation of the constitution and administration of the Church. In this sense, Walter divides his *Lehrbuch des Kirchenrechts aller christlichen Confessionen* into the following parts: general principles, sources of Church law, Church constitution, Church administration, Church offices, Church property, life in the Church, and the influence of the Church on secular law. The handbook provides much comparative information, covering the ecclesiastical law of the Eastern and Protestant Churches. Phillips, for his part, draws on theology to deduce the system best suited to the "nature" of the Church's legal order. His *Lehrbuch des Kirchenrechts* is organised around a Christological conception of the ecclesial body and, consequently, of canon law. The three major branches into which the manual is divided refer to the attributes of Christ as king, doctor and pontiff. Each attribute corresponds to a power with which the Church is invested, to an aspect of ecclesiastical law in its "nature": government *(jurisdictio)*, teaching *(magisterium)*, and priesthood *(ordo*, *ministerium)*. I emphasise that these structuring schemes of canon/ecclesiastical law were not static. Debates then in vogue could lead to changes in the shape of these systems, as was the case with the dichotomy between *ius publicum* and *ius privatum* introduced by the Würzburg School, which was often combined with the scheme of the institutions. For more on the history of the systems of organisation of the discipline, see Erdő (1999) and Fantappiè (2008).

18 A contemporary of Vilella Tavares and his rival in the publishing market, D. Manoel do Monte Rodrigues d'Araujo, does not mention the *Compendio* among the supporters of the methodology of the institutions. He rather classifies it as an imitation of the new methods

The *Compendio*, as Sacramento Blake affirmed, was well received in the ecclesiastical and academic *milieus*: "it had a second edition […], it was praised by the Bishop Count of Irajá and by others in Brazil and Portugal, as well as by some professors of the University of Coimbra, and received an award from the government, that ordered it to be adopted in the two law faculties of the empire".[19] But its status as official textbook of ecclesiastical law in the Brazilian academy was achieved only with difficulty. Before this could happen, the *Compendio* had to be evaluated by the Council of State twice, in 1856 and 1862.[20] As we will discuss later, the severe opinion of the Marquis of Olinda in the first consultation was decisive for several modifications between the first and the second edition.

of Phillips and Walter with regard to the division of ecclesiastical science, the organisation of subjects, and the use of terminology, as in MRA, I, 43–44. It is possible that Monte thus qualified it in good faith. After all, Vilella Tavares cited the German Historical School extensively; moreover, his exposition in the *Compendio* did not comprise all the branches of the typical tripartition of the institutions. However, it is also possible that Monte classified the *Compendio*'s method as new in order to distinguish and distance Vilella Tavares's work from his own, which was explicitly organised according to the "persons-things-actions" division. In any case, Fantappiè counts Vilella Tavares's *Compendio* among the manuals of the genre of the institutions, as in Fantappiè (2008) 331.

19 Blake (1895) 311.

20 The Council of State played the role of examiner of legal books because the Statutes of the Law Faculties of the Empire *(Estatutos das Faculdades de Direito do Império)* conditioned the granting of privileges to the authors of manuals for classroom use on the approval of the civil government. As a consultative body to the head of government (under the terms of the Law n. 234 of 23 November 1841), the Council of State had the task of giving a preliminary evaluation of these books. In the Statutes regulated by the Decree n. 1.386 of 28 April 1854, the most recent at the time of the consultation on the first edition of Vilella Tavares's *Compendio*, Article 72 declares that grants would be given to the approved authors. The function of these grants, one may well assume, was to compensate publication expenses: "Terão direito a premios os Lentes ou quaesquer pessoas que compuzerem compendios ou obras para uso das aulas, e os que melhor traduzirem os publicados em lingua estrangeira, depois de terem sido ouvidas sobre elles as Congregações e de serem approvados pelo Governo", as in Decreto n. 1.386 de 28 de abril de 1854 (Brasil) (1854). The immediately preceding Statutes, regulated by the Decree n. 1.134 of 30 March 1853, established that the first printing would run at the expense of the public coffers, and that the approved manual would enjoy a period of ten years of exclusive use in the faculties' respective chair. This is the content of Article 283: "Aos Lentes que compuzerem compendios, que sejam adoptados para uso das aulas (art. 112), se concederá a primeira impressão gratuita, sendo esta feita pelos cofres publicos, e além disso o privilegio exclusivo por dez annos, para a concessão destas vantagens a Congregação representará ao Governo, e este resolverá. O privilegio não inhibe a adopção e venda de melhores compendios, que por

By the end of the 1850s, a new Brazilian handbook of ecclesiastical law came to compete with that of Vilella Taveres: *Elementos de Direito Ecclesiastico Publico e Particular*, in three volumes, written by D. Manoel do Monte Rodrigues d'Araujo, then Bishop of Rio de Janeiro.[21] At the time, Monte was already quite notorious for his *Compendio de Theologia Moral*, with a first edition from 1837. *Theologia* was primarily written to be used in the Seminary of Olinda, but it soon spread to other ecclesiastical institutions in the country and even abroad. It is, in fact, Monte's most successful book: it has a total of six editions, three in Brazil and three in Portugal,[22] besides a fine review in the Catholic journal *The Dublin Review*.[23] Its fame can be

ventura apparecerem", as in Decreto n. 1.134 de 30 de março de 1853 (Brasil) (1853). When making his report on the evaluation of the *Compendio* in 1856, the Marquis of Olinda, then head of the Section for Imperial Affairs of the Council of State, makes reference to this privilege of exclusivity, implying that, even if not cited in the most recent legislation, it subsisted.

21 D. Manoel do Monte Rodrigues d'Araujo (1796–1863) was born in Pernambuco. After his ordination as a secular priest, Monte taught theology at the Episcopal Seminary of Olinda, having also studied at the local law faculty. During the transition from the First to the Second Reign, he fit perfectly into the social group of the so-called "priest-politicians" (see Souza (2010)). He represented the province of Pernambuco in the Chamber of Deputies (1834–1837, 1838–1841) and later exercised a mandate for Rio de Janeiro (1845–1847). He was nominated Bishop of Rio de Janeiro in 1839. Throughout his life, he collected a series of national and Roman titles (e. g. Domestic Prelate of His Holiness and Assistant to the Pontifical Throne, Major Chaplain and Adviser to the Emperor, Count of Irajá), as well as affiliations with prestigious institutions (e. g. Academy of Sciences and Arts of Rome, Brazilian Historical and Geographical Institute). In addition to having written the *Compendio de Theologia Moral* and *Elementos de Direito Ecclesiastico Publico e Particular*, he published a collection of pastoral letters. For more on Monte, see Blake (1900) 164–167.

22 Blake (1900) 164–165.

23 Monte's *Theologia* was reviewed in the eighth edition of The Dublin Review (1840), in the section "Summary Review of South American Spanish and Portuguese Ecclesiastical Literature". According to the reviewer, "[t]his is an excellent Compendio of moral theology, sufficiently short to be a practical class-book, but at the same time to contain all that is essential to a correct knowledge of the principles of Catholic morality. The author has always kept in view the laws of the country, and the peculiar privileges or customs of the Brazilian Church", as in The Dublin Review (1840) 556. The review points out how a manual of the type was lacking in the English context, emphasising the usefulness of such material for following how national laws produced changes on the general norms: "The modifications which all decisions undergo, when they come in contact with points of law, from the laws of each country, make it almost necessary for every nation to have its own moral course, especially adapted to its own legislative enactments. In England this want

explained by the complete, systematic and compact treatment given to the subject in a publication in Portuguese. It is fair to assume that Monte wanted to repeat this success with *Elementos*, a work that shares with *Theologia* the pedagogical format (especially the dual approach of the contents, between universal and national), some references and even themes (marriage, patronage, etc.), observed from a legal perspective.

Monte's *Elementos* is organised in three volumes, dedicated to ecclesiastical persons, things and actions, respectively. In the first book, the bishop explains why he chose the traditional system of the institutions in the distribution of matters. Monte says that such scheme would allow him to explain the contents in a "natural order and with no violence", relying on the example of canonists like "Fleury, Schramm, Selvagio, Cavallario, Devoti, Lequeux and van Espen".[24] Monte's heterodoxy in the simple act of listing his models, mixing traditional references from Rome (Devoti) and books condemned by the Congregation of the Index (Lequeux, van Espen), is already an anticipation of the syncretism that characterises *Elementos*. Like Vilella Tavares, Monte cites an ideologically varied group of authors.

This diversity of authorities and arguments resulted in a troubled reception. On 1 June 1869, the Congregation of the Index[25] issued a decree add-

must necessarily be felt; questions we know constantly arise, from the character of our commercial and public institutions, for which a resolution will not be found in works composed for other times and countries; and much perplexity consequently results to those who are called upon to decide them without any guide", as in The Dublin Review (1840) 556.

24 MRA, I, 42–43.

25 Established in 1571 by Pope Pius V, the Congregation of the Index was the dicastery of the Roman Curia responsible for the examination of publications under suspicion of heterodoxy. After several phases of deliberation and with the pope's approval, the congregation was able to register the works judged inappropriate in the official list of prohibited books (*Index librorum prohibitorum*), which was regularly updated by the same dicastery. Condemned titles had their circulation and reading forbidden to Catholics, under penalty of excommunication. The Index also had the power to grant reading licenses. As for the procedure, once a complaint had come to the attention of the congregation, the secretary of the Index performed a first triage and, if necessary, forwarded the material to the consultants, for evaluation. Most of them were experts in Catholic doctrine and canon law. By means of written reports and a preparatory meeting, the consultants gave their opinion on whether it was necessary to prohibit the work and on what terms (for example: whether or not the author would be given the chance to correct the text). If the answer was in favour of prohibition, a deliberation of the cardinals in congregation followed. If the consensus to prohibit the work persisted, the case was referred to the pope for a final decision. For more on the

ing *Elementos* to the list of prohibited books.[26] *Theologia* was condemned on the same day.[27] Both works received a formal opinion from canonist Settimio Maria Vecchiotti, at the time a consultant for the Index and author of the famous *Institutiones canonicae, ex operibus Joannis cardinalis Soglia*, widely spread in Rome and the Iberian territories. Before and even after being condemned, *Theologia* and *Elementos* were evaluated by several Lusophone ecclesiastical authorities at the request of the Holy See. The opinions of all those consulted converged in the sense of criticising Monte for his tendency, at certain moments, to extend the prerogatives of civil power beyond what was appropriate according to the Roman mentality at the time. For example, the mentions of the *placet* (that is, the control exercised by the Brazilian government over pontifical disciplinary documents to be enforced in the national territory; in Portuguese: *beneplácito*) and of the prerogative of the civil power to propose direct impediments to marriage met vehement disapproval. Certain historical depictions, such as the passages on gallican liberties, were also questioned. Monte did not live to take advantage of the clause *donec corrigatur* added to the decree of the Congregation of the Index, which gave him the possibility of correcting his texts. And it seems that others did not do so in his name, considering that there were no further editions of *Theologia* and *Elementos* after 1869.

The last systematic and pedagogical work on ecclesiastical law in the empire was *Lições de Direito Ecclesiastico*, by Ezechias Galvão da Fontoura.[28] It was aimed at the teaching of the subject in seminaries, more specifically in the episcopal seminary of São Paulo, where Fontoura was a professor. This was, in fact, the first time that a book of the genre was published outside the intellectual circuit of Olinda. The work came to light in 1887, two years before the abolition of Church patronage along with the proclamation of the republic.

activity of the Congregation of the Index during the 19th century, see Del Re (1998) 325–328, Wolf (Hg.) (2005–2007), and Palazzolo (2012).

26 Wolf (Hg.) (2005) 502.

27 Wolf (Hg.) (2005) 502–503.

28 Ezechias Galvão da Fontoura (1842–1929) was born in Itu, São Paulo. Ordained a priest in 1865, he held the position of canon of the diocese of São Paulo for most of his life, among other minor positions. He taught Latin, geography, history, theology, morality, and canon law at the Seminary of São Paulo, where he occupied the chair of ecclesiastical law. In addition to *Lições*, he published controversial books such as *Questões Religiosas* and *A Egreja e a Liberdade*. For more on Fontoura, see Freitas Junior (1929) 392–393.

Lições comprises three volumes and one hundred lessons. The author did not explain the method adopted in the division of volumes, but it is possible to understand that Fontoura followed, to a reasonable extent, the division of the institutions. The first volume deals with ecclesiastical law in general (definition, sources, etc.) and with the central authorities of the Church (the pope, ecumenical councils, Roman congregations); the second is dedicated to local authorities such as the bishop and the parish priest; and the third volume deals with things (patrimony, in particular) and ecclesiastical actions (in terms of judicial procedure).

The primarily pedagogical purpose of this manual, to the detriment of more scientific intentions, can be clearly seen by the lack of rigour in the citation of authorities. The absence of footnotes and bibliographical references is a typical feature of the 19th-century literature of vulgarisation of canon law, particularly in the French ultramontane environment.[29] Fontoura shares this trait. There are no footnotes in *Lições*. But he does not follow every trend of popular literature. Fontoura mentions some books and cites many elements of canonical legislation: canons, constitutions, decrees, etc. Unlike Vilella Tavares or Monte, he does not present his references in a uniform manner. Fontoura uses archaic forms of citation to address the *Liber Extra*. He almost never cites other works of ecclesiastical law, but simply states the names of the authors, or uses vague expressions such as "according to a great canonist". Due to these variations, *Lições* can be defined as being halfway between a book of vulgarisation and an academic handbook. Fontoura's approach makes it difficult to grasp the repertoire upon which the book is based. However, as will be demonstrated later, by

29 As Cyrille Dounot points out, the attempt to bring canon law closer to the lay public in 19th-century France can be seen in the publication of introductory manuals and dictionaries, with greater success on the part of the latter – and with a clear effort of the ultramontane clergy behind the genre. In the case of introductory manuals, one of them in particular – the *Cours élémentaire de droit canonique* (1865) by Abbé Goyhenèche – gathers features that make it similar to Fontoura's *Lições*, in particular the absence of footnotes and bibliography: "En moins de 300 pages au format in-8°, le cours de l'abbé Goyhenèche constitue ainsi le seul exemple, à destination du clergé, d'une telle vulgarisation. Divisé en livres, chapitres, articles et paragraphes, sans notes de bas de page ni bibliographie, sans aucun renvoi à des ouvrages savants, il présente le droit canonique à nu, sans citer les canons, les constitutions ou les décrets qui fixent la règle de droit dont il parle", as in Dounot (2019) 1–2. It should be noted, however, that Fontoura's book does not display all these characteristics.

observing certain positions and emphases in the discourse (and phenomena such as uncredited quotations), one can perceive that *Lições* has distinctly ultramontane shades. A greater weight is given to papal authority in the general principles of the discipline, for example, and the references to decrees of Roman congregations are particularly abundant. In fact, it is due to these mentions that the manual ended up in the hands of the higher actors that put the machinery of the governance of the Church to work.

Even though the councillors of state did not have enough time to incorporate *Lições* into their repertoire of references, they became aware of this handbook by means of a concrete case. A controversy over the non-habilitation of a candidate for an ecclesiastical dignity, which I address in Chapter 3.1, contrasts the actions of a former vicar general of the diocese of São Paulo and the decisions of the Congregation of the Council as they appeared in Fontoura's manual. The case gives rise to doubt on the part of the Bishop of São Paulo to the Roman dicastery, whose consultant, among other things, assesses how *Lições* cites decrees of the congregation. Unlike the others, Fontoura's handbook introduces a new level of debate on the Council of Trent: whether the decisions interpreting it should be applied in an orthodox or rather a heterodox manner.

In addition to the handbooks of Vilella Tavares, Monte, and Fontoura, one other work has to be mentioned: the *Direito Civil Ecclesiastico Brazileiro Antigo e Moderno em suas relações com o Direito Canonico*, by the jurist Candido Mendes de Almeida.[30] This book, published in two volumes (in 1866

30 Candido Mendes de Almeida (1818–1881) was born in Brejo, Maranhão. A graduate from the Faculty of Law of Olinda, he divided his life among politics, academic research, and private practice (as a lawyer). Mendes de Almeida represented Maranhão several times in the Chamber of Deputies of the empire, and also in the Senate. He was a man of great erudition, especially in law and history, and published important reference works on different branches of law, with a profusion of contextual and critical comments. Among his works are: *Direito Civil Ecclesiastico Brazileiro Antigo e Moderno em suas relações com o Direito Canonico* (1866–1873), a compilation upon which I will comment later; *O Codigo Filippino* (1870–1878), an annotated version of the *Ordenações Filipinas*, a Portuguese normative corpus from the colonial period – and, during the Brazilian Empire, the main reference for private law; *Auxiliar Juridico* (1869), a complementary text to the *Ordenações Filipinas*, containing fragments of doctrine and case law from before the independence, making it a useful set of sources for legal practice; *Princípios de direito mercantil e leis de marinha* (1874), a commented version of the work by José da Silva Lisboa, the Viscount of Cairu, expanded with contemporary Portuguese and Brazilian legislation; and *Arestos do*

and 1873), has a different format to those I have described so far. It is a collection of ecclesiastical civil legislation – that is, legislation produced by secular authorities with the aim of regulating Church affairs – accompanied by documents of canon law "in close relationship with the Brazilian Church". In other words, Mendes de Almeida seeks to compose a complete picture of the legal expression of the relations between Church and state in Brazil from 1500 to (his) present time. He follows the path of similar recent compilations by ultramontane French canonists, namely Michel André and Gilbert Champeaux.[31] The Brazilian author saw the undertaking as greatly useful: he observed that the teaching of ecclesiastical civil law in Brazil was either confused with canon law or simply absent from the country's law faculties and seminaries.[32] An ardent partisan of ultramontanism, Mendes de Almeida considered it fundamental to fill this gap, so as to create critical

Supremo Tribunal de Justiça (1880), a posthumous compilation of case law. Mendes de Almeida also had several speeches and sporadic writings published in newspapers and magazines. In the area of geography, he became known for his *Atlas do Imperio do Brazil* (1868), in which he charted the country based on its administrative, ecclesiastical, electoral, and judicial borders. From a politico-religious point of view, Candido Mendes de Almeida was a renowned ultramontanist, with a decidedly transnational flair: his writings contained fresh references from Rome (Taparelli d'Azeglio, Camillo Tarquini, etc.), and his *Direito Civil Ecclesiastico* even reached the hands of Pope Pius IX, meeting the pontiff's approval. Finally, Mendes de Almeida gained particular notoriety when he advocated, along with Zacarias de Goes and Vasconcellos, in favour of the Bishops of Olinda and Belém do Pará before the Supreme Court of Justice, in the course of the trial that was at the apex of the Religious Question of the 1870s. For more on Mendes de Almeida, see Blake (1893) 35–40, Villaça (2006), and Santirocchi (2014).

31 For more on French treatises and handbooks on ecclesiastical civil law, see Rodriguez Blanco (2008).

32 "Outr'ora esse Direito [Civil Eclesiástico] era conhecido pela designação de *Publico Ecclesiastico Nacional*, ou simplesmente *Ecclesiastico Nacional*, e assim o vemos qualificado em obras de authores conterraneos e estranhos, mas a nosso ver sem solido fundamento; visto como essas designações, ou não comprehendião no seu ambito todo o horisonte explorado pelo Legislador Temporal em assumptos attingentes à Igreja; ou não manifestavão de um modo claro e definido a materia de que devião ser a expressão; confundindo o Direito puramente Ecclesiastico peculiar ao Paiz, com o oriundo da Legislação Temporal. Ora, he deste direito e do seu estudo que se trata nesta obra. Até o presente esse estudo não se tem feito nas nossas Faculdades Juridicas, que contão uma cadeira de Direito Ecclesiastico Universal, ou propriamente Canonico, e tão pouco nos nossos Seminarios Episcopaes; de modo que o estudo de nossa Legislação Civil Ecclesiastica he quasi um mysterio, tanto para o Jurista que deixa os bancos das Faculdades de Direito, como para o Presbytero que tem completado seus estudos Ecclesiasticos", as in CMA, I, iii–iv.

awareness of the abusive measures to which the Brazilian state submitted the Church.[33] In structural terms, the *Direito Civil Ecclesiastico* is incomplete. The project originally foresaw a total of four volumes, but only two were published. The first covers concordats between the Holy See and the Portuguese Crown, and ecclesiastical and civil legislation regarding patronage *(padroado)*. The second volume contains the Council of Trent in Latin and in Portuguese, accompanied by the laws that controlled its admission into the Portuguese Empire; it also includes the Provincial Council of Lisbon of 1574, the Bull *Auctorem Fidei* (1794) of Pope Pius VI, and some rescripts from Rome. In spite of its incompleteness, Mendes de Almeida's *Direito Civil Ecclesiastico* is not a mere compilation of laws. The legislative collection seems rather an opportunity – and a support – for the extensive legal-historical prologue (424 pages!) with which the author begins the first volume. In this text, Mendes de Almeida crafts a detailed narrative on Church and state relations within the chronological and spatial arc between the Portuguese *Ancien Régime* and Brazilian constitutionalism. Strong reproaches are addressed against legal ideas and practices that, in the author's opinion, limited ecclesiastical liberty. I chose to add this book to my analysis precisely because of its critical approach, which addresses not only state organs and their practices, but also educational institutions and their references. In several passages from the prologue, Mendes de Almeida disapproves the syncretism of Vilella Tavares's *Compendio* and Monte's *Elementos*, claiming that it hides ambiguities and contradictions. Due to this critical attitude, even though *Direito Civil Ecclesiastico* does not have the format of a legal handbook, it will be taken into account in the outline of the repertoire of legal culture of the time.

In view of their functionality and wide reach, these four sources – the handbooks by Vilella Tavares, Monte, and Fountoura, as well as the compilation by Mendes de Almeida – are privileged windows for observing how Church and state relations were conceived and how the Council of Trent

33 "E ninguem dirá que semelhante estudo não tenha sua importancia e utilidade pratica. Sem esses conhecimentos não he possivel aquilatar a situação imposta à Igreja Catholica no Imperio; situação que deverá ser defendida ou contrariada, conforme forem ou não offendidos os seus Canones. Ora, consentir por um reprovado mutismo que o Poder Temporal possa à seu talante redusir pela sua Legislação a Igreja a posição inferior aquella à que tem jus, he ser complice de um arbitrio, repugnante à verdade e à razão, aos interesses e à garantia da propria liberdade religiosa", as in CMA, I, iv.

was inserted into this multilevel and multi-problematic scenario. My purpose in the following pages is to sketch a broad portrait of these two aspects as they appeared in the discourse of Brazilian canonists, based on the following topics: ecclesiastical law, relations between Church and state, patronage, and the Council of Trent.

1.2 Ecclesiastical law as a mystery. Fluctuations of a concept between canon law and civil law on Church affairs

Seemingly simple issues may offer significant clues about the conception of Church and state relations of a given historical period. One such issue is the concept of ecclesiastical law,[34] a notion that is usually addressed in the first chapter of legal handbooks. Its characterisation varies from book to book, sometimes even from one edition to another, quickly convincing the reader that the concept is simple only in appearence. These changes depend on the references used, and also on the critical reception a work is given. Mendes de Almeida states that: "the study of our Civil and Ecclesiastical legislation is almost a mystery […]".[35] It could be said that the same is true for the concept of ecclesiastical law in Brazilian handbooks: a mystery, given the multiple possibilities of characterisation.

Vilella Tavares offers a clear example of the fluctuations of meaning of this branch of law. The first edition of his *Compendio* provides the following definition of ecclesiastical law:

> Ecclesiastical law is – the complex of laws that the pastors of the Church have made, on different occasions, to maintain the order, the decency of divine worship, and the purity of customs among the faithful. The decrees of popes and councils that concern the discipline of the Church; the maxims of the Church Fathers, and the customs that acquired force of law, all this forms the object of ecclesiastical law, which was almost unknown in the first three centuries of the Church because of the persecution that the faithful suffered, and [which] due to the lack of knowledge and development of its relations with the civil state and eternal happiness began to be taken into consideration [only] in the time of Emperor Constantine, who strove

34 On how the understanding of this discipline changed over time, mainly in European context, see Hera (1964) and, more recently, Fantappiè (2008). For an overview of these changes in Europe and Chile, see Salinas Araneda (2000).

35 CMA, I, iv.

> very hard to protect the Christian religion, and to fortify the faith, which was disdained by the heresiarchs.[36]

Although verbose, this fragment contains interesting elements. Ecclesiastical law concerns the "pastors of the Church". It is not clear who they are, if only ecclesiastics, what kind of ecclesiastics etc. In his opinion on the *Compendio* to the Section for Imperial Affairs of the Council of State, in 1856 the Marquis of Olinda[37] complains precisely about this lack of specification.[38] He reports that, in canon law, the word "pastor" ordinarily refers to the pontiff and the bishops. In other parts of the *Compendio*, Olinda continues, Vilella Tavares calls parish priests "pastors". Would they be included in the category of "legislators of the Church"? Beyond Olinda's criticism, it is not possible to affirm with certainty what is the position of secular rulers regarding the production of ecclesiastical law. The list of norms that comprised the

36 JVT1, 1–2.

37 Pedro de Araújo Lima (1793–1870), the Marquis of Olinda, was a major figure in the political arena of the Brazilian Empire. Born in Sirinhaém, Pernambuco, he descended from a wealthy and traditional family of landowners. As usual with the young men raised in this milieu, he went to study at the University of Coimbra, having received the degrees of bachelor, licentiate and doctor of canons. This explains his remarkable resourcefulness in matters of ecclesiastical administration. His political career was long and varied. Between 1821 and 1822, he represented Pernambuco as deputy in the Cortes of Lisbon. In the early years of independent Brazil, Araújo Lima was a member of the Constituent Assembly of 1823, and part of the temporary Chambers from 1826 to 1837. He held the regency of the country between 1837 and 1840, providing support for the creation of the *Colégio Pedro II* and the Brazilian Historical and Geographical Institute. During the Second Reign, Araújo Lima served four times as President of the Council of Ministers, a position similar to that of Prime Minister: 1848–1849, 1857–1858, 1862–1864, and 1865–1866. He simultaneously filled the functions of Minister of Foreign Affairs, in the first term, and Minister for Imperial Affairs, in the subsequent terms. Moreover, he was made councillor of state in 1842, keeping this position until his death. Founder of the Conservative Party in 1831, the Marquis of Olinda shifted to the liberals in the 1860s; nevertheless, he remained attached to several conservative concerns, resisting, for instance, the abolition of slavery and the reform of the electoral system. In any case, due to his balanced temperament and the relevance of the positions he held, Araújo Lima eventually developed modes of action often considered above partisan interests. Overall, the historiography considers him a thoughtful, conciliatory, stabilising character, prudent and willing to negotiate – traits that showed when he addressed controversies regarding the Catholic Church. For more on the Marquis of Olinda, see Blake (1902) 16–17, and Costa Porto (1985 [1976]).

38 Consulta de 31 de maio de 1856, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 56, f. 7r.

object of the discipline invites us to think of a field ruled exclusively by clerical authorities (the pope, the councils, the Church Fathers, etc.). However, when referring to "relations with the civil state" and to Constantine as defender of the faith, Vilella Tavares implies a mixed area.

This idea gains ground when the author draws the distinction between ecclesiastical law and other concepts, such as sacred law, pontifical law, and canon law. According to Vilella Tavares, these supposedly synonymous terms would not constitute ecclesiastical law as a whole. What defines this branch would not be the holy character of the laws of the Church, nor the fact that some of them required being sanctioned by the pope in order to take effect. Canon law, in its turn, is depicted as a more restricted field, which would comprise only the norms produced by higher ecclesiastical authorities, excluding secular legislation:

> As for the expression – canon law – we understand that it was shaped by usage as the special term for ecclesiastical provisions, issued either by the pope or by the councils, as opposed to the legislative provisions of the secular power, designated under the name of law [lei]. The expression – canon law – could be used to determine the synthesis of the rules that constitute ecclesiastical law; but its meaning is too restricted by use to the decretals of popes, the decrees of councils, and even more particularly to the collections that contain them.[39]

One observes, then, that according to Vilella Tavares ecclesiastical law contains canon law, but is not limited to it. The wider reach of the former is due, as I suggested previously, to the relations between the Church and secular powers. The author states this plainly: "ecclesiastical law is distinct from canon law; because the former is the complex of ecclesiastical laws, referring in some cases and in some points to certain civil institutions, while the latter has no reference to them."[40] According to Salinas Araneda, the inclusion of state rules in the corpus of ecclesiastical law is a feature of the *Kirchenrecht* of the German Historical School.[41] Not by chance, Vilella Tavares refers to Phillips in this section.

Vilella Tavares's admiration for the Historical School is also palpable when he applies the internal / external division to ecclesiastical law, instead of the traditional public / private classification (used by Gmeiner, and com-

39 JVT1, 3–4.
40 JVT1, 4.
41 See Salinas Araneda (2000) 87–113.

mon among alumni of the University of Coimbra). Vilella Tavares mentions Phillips to explain that the internal sphere referred to the interactions of the members of the Church among themselves and with their "chiefs", while the external sphere comprised the relations the Church cultivated with the state, and also with the "numerous dissident confessions, [which were] politically authorised".[42] In a footnote, the jurist recalled that Savigny, among others, denied that the public / private division, typical of the civil sphere, could be applied to ecclesiastical law.[43] He clarifies this point with a paragraph inspired by Phillips:[44]

> In the Church, there is not one branch of law that regulates the relations of its members [private ecclesiastical law], and another that rules and governs it considering it as a whole [public ecclesiastical law]. The vast mission of the Church does not suffer that its law be divided, as it is in civil society, into public and private; because it is destined to penetrate with its light and warmth the most intimate relations of men, it regulates and orders them with the full expansion of its authority, teaching, sanctifying and governing, without caring about what is called in civil life – public or private law.[45]

Vilella Tavares's boldness resulted in a harsh reprimand from the Marquis of Olinda when the *Compendio* was being evaluated by the Council of State. An

42 JVT1, 10–11.

43 The unique and independent status of ecclesiastical law vis-à-vis the public / private division, proper to secular law, appears in Savigny's *System des heutigen Römischen Rechts*, as can be seen in the following passage: "Eine andere Bewandniß hat es mit dem Kirchenrecht. Vom rein weltlichen Standpunkt aus erscheint die Kirche wie jede andere Gesellschaft, und so wie andere Corporationen theils im Staatsrecht, theils im Privatrecht, ihre abhängige, untergeordnete Stellung erhalten, könnte man eine solche auch der Kirche anweisen wollen. Ihre, das innerste Wesen des Menschen beherrschende, Wichtigkeit läßt jedoch diese Behandlung nicht zu. In verschiedenen Zeiten der Weltgeschichte hat daher die Kirche und das Kirchenrecht eine sehr verschiedene Stellung gegen den Staat angenommen. Bey den Römern war das jus sacrum ein Stück des Staatsrechts, und der Staatsgewalt untergeordnet. Die weltumfassende Natur des Christenthums schließt diese rein nationelle Behandlung aus. Im Mittelalter versuchte die Kirche, die Staaten selbst sich unterzuordnen und zu beherrschen. Wir können die verschiedenen christlichen Kirchen nur betrachten als neben dem Staate, aber in mannichfaltiger und inniger Berührung mit demselben, stehend. Daher ist uns das Kirchenrecht ein für sich bestehendes Rechtsgebiet, das weder dem öffentlichen noch dem Privatrecht untergeordnet werden darf", as in Savigny (1840) 27–28.

44 Phillips (1855) 19. I rely on the French edition because it is the one that Vilella Tavares cites.

45 JVT1, 11.

alumnus from Coimbra, Olinda was fiercely in favour of the use of the public / private division in Church affairs. For the councillor, this was not an artificial classification, a transfer of typically civil concepts to the ecclesiastical context. The public / private division, according to Olinda, would emanate from the very relations of the members of a given society, whether civil or ecclesiastical, and also from the specificity of the laws regulating these interactions.[46] The councillor also argues that this classification, besides facilitating the teaching of law due to its systematic character, was endorsed by recent Brazilian legislation. As to the latter aspect, Olinda recalls the Law of 11 August 1827, which had created the law faculties of the Brazilian Empire, and the related statutes of 1831 and 1853, all of which referred to the discipline as "public ecclesiastical law". Although the statute in force at the time of Olinda's opinion (Decree n. 1.386 of 28 April 1854) had brought new nomenclature, "ecclesiastical law", the councillor sustained that the legislator's intention was not to break with the classification of the previous statutes. According to Olinda, the "general belief" ("*convicção geral*"), the common practice of lecturers at the Brazilian law faculties supported the understanding that the object of the chair of ecclesiastical law was ecclesi-

46 This is the definition of the Marquis of Olinda for public and private law: "Quando se trata do Direito pelo qual se rege um povo, costumão os jurisconsultos fazer uma grande divisão de materias, distinguindo entre as leis que estabelecem a forma de governo, isto é, que regulão a instituição das autoridades a quem incumbe a governança do Estado, determinão seus poderes e faculdades, e fixão as relações entre as mesmas autoridades, e entre estas e o todo da communidade; e entre as que dizem respeito aos particulares, ou considerados só por si, ou com relação assim aos outros particulares, como à mesma communidade. Ao complexo dos que são relativos ao primeiro objecto dão elles o nome de Direito Publico; e ao que se refere ao segundo, denominão – Privado, ou Particular. Esta distincção é fundada na natureza das materias, e se deduz da diversidade, aliás necessaria, da situação em que se achão entre si os membros da sociedade segundo a cathegoria de governantes, ou de governados, ou segundo as relações que elles mantém entre si na mesma cathegoria", as in Consulta de 31 de maio de 1856, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 56, ff. 3v–4r. Regarding the universal nature of the division, inherent to all kinds of society, particularly to the Church, see: "[e] como a Igreja, debaixo da consideração que se acaba de fazer, está constituída nas mesmas circumstancias que as sociedades civis, pois que da natureza destas não é que dimana aquella divisão, mas sim das relações em que se achão entre si os membros que as compoem, bem como da especialidade das leis que regulão essas relações; e todas essas relações, como todas essas leis que dellas se originão, subsistem igualmente no regimen da Igreja: não há razão par que não seja applicada a mesma doutrina ao Direito porque se ella governa", as in Consulta de 31 de maio de 1856, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 56, f. 4r.

astical public law.[47] At most, it could be said that the legislator wanted to unite ecclesiastical public law and national ecclesiastical law into a single discipline. Anyhow, the public / private division remained valid.

Furthermore, the Marquis of Olinda explicitly rejects the internal / external classification because he sees it as incomplete, as failing to contemplate the full extent of ecclesiastical law. On one hand, says Olinda, it ignored the laws governing the individual actions of the members of the Church (which belonged to private ecclesiastical law); on the other, it excluded the norms guiding the government of the Church, such as the powers of the ecclesiastical hierarchy (part of what was called ecclesiastical public law).[48]

The disagreement between the two jurists can be explained by the generational gap between their references. The councillor, using the public law-oriented language of 18th-century Coimbra, clashes with the more organicist, 19th-century proposal raised by the canonist. When Olinda complains about the absence of the "governing" aspect of the Church, he is separating the ecclesiastical hierarchy (responsible for the government – the "public" dimension) and the faithful (the "private" dimension), a distinction absent from the perspective of the Historical School, which Vilella Tavares follows. Relying on Phillips, the canonist from Pernambuco rejects this separation, exposing the organic, continuous link that existed between man, in his most varied relations, and the ordering powers that the Church possessed. Such powers, mirroring those of Christ, would be teaching, sanctification and government – and through them the Church would order the multiple relationships of men. This conception shows that government, as exercised by the ecclesiastical hierarchy, was not an end in itself, nor a separate sphere from the rest of the Church; it was a dimension in intimate and permanent relationship with the faithful under the capital objective of the *salus aeterna animarum*. Beyond this system, there were only the state and the other confessions, both with different objectives, and requiring another type of law to interact with the Catholic Church: external law.

Another clash of perspectives between the Marquis of Olinda and Vilella Tavares occurs precisely because of the topic of the relations of the Church

47 Consulta de 31 de maio de 1856, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 56, f. 5r.

48 Consulta de 31 de maio de 1856, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 56, ff. 5v–6r.

with other confessions. According to the councillor, the Catholic Church would have nothing to do with other religions. This reasoning was in line with the Brazilian legal order, in particular with the Imperial Constitution, which recognised in Catholicism the only religion authorised to adopt the external, institutional form of a temple, the other confessions being restricted to the domestic, private sphere.[49] This differed from the pluriconfessional context in which the theories of the Historical School had originally flourished – Germany – where the gradual secularisation from the beginning of the 19th century onwards entailed, in theory, less unequal relations between the dominant confessions, as well as the emergence of a legal branch focused on the interactions between these confessions and the state, the so-called *Staatskirchenrecht*.

In addition to the generational gap driving apart the two jurists that I am analysing, there are also certain contradictions in Vilella Tavares's terminology, which Olinda does not fail to point out. According to the councillor, despite the rejection of the public / private division, the canonist from Pernambuco repeatedly uses "the language of publicists", admitting the following expressions: "monarchical government" of the Church, ecclesiastical "sovereignty", "sovereign and majestic powers" of the pope etc. These terminological uses, another evidence of the syncretism of Vilella Tavares's legal repertoire, consolidate Olinda's argument regarding the general consensus that the public / private division enjoyed in ecclesiastical matters.

The criticism had an impact. In spite of the admiration he nurtured for the canonists of the Historical School, Vilella Tavares ended up expressly adhering to the public / private classification in the second edition of his handbook, as can be seen in the very title of the work: *Compendio de Direito Publico Ecclesiastico*. This change also appears in his definition of the object of ecclesiastical law, when he adopts the distinction in the terms of the Marquis of Olinda.[50] In a

49 The terms of the Constitution of the Empire are the following: "Art. 5. A Religião Catholica Apostolica Romana continuará a ser a Religião do Imperio. Todas as outras Religiões serão permitidas com seu culto domestico, ou particular em casas para isso destinadas, sem fórma alguma exterior do Templo", as in Constituição Política do Império do Brazil de 25 de março de 1824 (1824).

50 "Com relação ao objecto, em que se occupa, e sobre o qual extende a sua acção, o direito ecclesiastico divide-se em publico e privado. Chama-se direito publico ecclesiastico aquelle, que regula e fixa a constituição e jerarchia da egrega; direito ecclesiastico privado o, que regular os deveres e interesses de cada fiel em particular", as in JVT2, 6.

note at the end of the paragraph, however, he remarks that, for some jurists (ultramontanes Thomas-Marie-Joseph Gousset, Michel André, and Gilbert de Champeaux, besides Phillips), it was "of little importance" whether ecclesiastical law should be divided into public and private. Even so, Olinda's victory becomes clear in the final sentence, when Vilella Tavares recognises the pedagogical merit of the division, as it "distinguishes and simplifies" the matters. Despite some regrets, Vilella Tavares also scored a victory, because with these and other modifications the *Compendio de Direito Público Ecclesiastico* was approved by the Council of State in 1862 as the official handbook of the discipline in the law faculties of the Brazilian Empire.[51]

The second edition of the *Compendio*, better structured and shorter than the first, describes the concept in a more synthetic fashion: "Ecclesiastical law is the complex of laws by which the Church of Jesus Christ is ruled and governed."[52] It is very likely that this modification was influenced by the opinion of the Marquis of Olinda, who had criticised the author for not including the government of the Church in the list of ends of ecclesiastical law.[53]

Changes of this nature can also be related to a change of references. In the second edition of the *Compendio*, Vilella Tavares discusses the difference between ecclesiastical law and theology, stating that the former does not discuss theological truths, rather dealing with divine worship and the discipline of the Church, in addition to the determination of ecclesiastical rights and offices; this branch, therefore, would be especially dedicated to the external forum.[54] When he makes this distinction, to the surprise of those who compare the two editions, Vilella Tavares approaches ecclesiastical law as a synonym for canon law or sacred law. In doing so, he cites Cardinal Gousset, from France, and Cardinal Giovanni Soglia, from Italy, both canonists from a more traditional scientific perspective, which equated ecclesiastical law and canon law. These references are absent in the first edition.

51 Consulta de 22 de setembro de 1862, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 532, Pacote 1, Doc. 14.

52 JVT2, 1.

53 Consulta de 31 de maio de 1856, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 56, f. 8r.

54 JVT2, 1.

Monte follows the same traditional perspective in *Elementos*, explaining each designation at length. When he does so, however, he does not cite any authority.

> We define Ecclesiastical Law *[direito eclesiástico]* as the complex of ecclesiastical laws *[leis eclesiásticas]*. Ecclesiastical Laws are the ordinances that the Ecclesiastical Rulers establish, so that by conforming to them the members of the Church may obtain eternal happiness. Ecclesiastical Law *[direito eclesiástico]* is also called Sacred Law; because besides addressing its origin […] which are the Ecclesiastical Rulers, i.e., the Pontiff and the Bishops, it deals with sacred persons and things; [Ecclesiastical Law is called] also Canon Law, because the Church adopted as more modest the word – Canon, which means rule, to designate her laws; and [Ecclesiastical Law is called] Pontifical Law, because the Pontiffs are the first and highest in power among the Rulers of the Church, and their laws form the largest part of the complex of ecclesiastical laws.[55]

Like the second edition of the *Compendio*, *Elementos* separates ecclesiastical law, dogmatic theology and morality.[56] The exposition, however, is more systematic and succinct. Monte declares that ecclesiastical law is in charge of religion in its "accidental form", that is, *discipline*. It is complementary to dogmatic theology and morality, which are concerned with faith and customs, the "substantial form" of religion. Monte also accepts the division between public and private ecclesiastical law, differentiating the branches according to the persons involved: "Ecclesiastical Law is either Public, if the laws concern the public state of the Church and its regimen, i.e., the people who govern it; or Private, if they concern the people who are governed."[57]

As for Fontoura's *Lições*, the concept of ecclesiastical law seems to always revolve around authority, more precisely pontifical authority. The first definition of Fontoura uses the expression "authority of the Church":

> Ecclesiastical law itself is nothing but the positive laws given by the authority of the Church. However, the Church does not only provide positive laws; […] [it] also declares, promulgates, pursues […] natural laws, [and] positive divine laws; which thus declared are considered ecclesiastical as well.[58]

It is interesting to note the double role given to the Church regarding ecclesiastical laws: on one hand, there is a creative function – the Church produces positive laws – on the other, there is a declaratory function – the

55 MRA, I, 1–2.
56 MRA, I, 2.
57 MRA, I, 4.
58 EGF, I, 5.

Church recognises laws it did not create. A few pages later, as he addresses synonyms for ecclesiastical law, Fontoura gives similar functions to the pontiff. The author endorses the traditional position of equating ecclesiastical law with canon, sacred, divine, and pontifical law. The declaratory, or deductive, prerogative of the pope appears in the characterisation of divine law:

> [Ecclesiastical law] is also called divine law. Even though there is a radical distinction between ecclesiastical and divine law, this name has been given to it; because, besides the merely ecclesiastical determinations, there are, in ecclesiastical law, conclusions drawn from the principles of divine law, which are confirmed *[firmadas]* by the authority of the Supreme Pontiff, as Vicar of Jesus Christ on earth.[59]

Both Vilella Tavares and Monte affirm that divine law is different from ecclesiastical law, the latter being essentially human. Although Monte, for example, notes that the principles of revelation (positive divine law) and natural reason (natural divine law) "enter" (in the sense of fitting in) ecclesiastical law,[60] he does not mention pontifical authority as a mediator between the two spheres, human and divine, by means of declarations. Fontoura's tone is quite different in this regard. He places the pope at the centre of the architecture of ecclesiastical law. The pontiff embodies the task of *iurisdictio*, of speaking the law. This becomes quite evident when Fontoura equates ecclesiastical law with pontifical law, linking the validity of regulations to the will of the pope: "Finally, one calls it [ecclesiastical law] *pontifical law*, because ecclesiastical law is instituted, collected or approved by the Supreme Pontiffs for the good government of the universal Church; from their will and authority comes the strength of these regulations and of this [branch of] law."[61] In other words, pontifical authority is the element that permeates the entire corpus of ecclesiastical law of universal validity. When addressing ecclesiastical law as pontifical law, Monte employs a different tone. In *Elementos*, the pope's authority refers to "the major part of the complex of ecclesiastical laws", not to the whole corpus. Monte associates the term "pontifical law" only with the laws created by the pope, only with the product of his own legislative work; he does not take into consideration the norms simply approved by the pontiff (e. g. general councils, compila-

59 EGF, I, 5.
60 MRA, I, 3.
61 EGF, I, 32.

tions of canons etc.) or declared by him, all of which were included in Fontoura's concept. This is a subtle but significant distinction.

Pontifical authority characterises ecclesiastical law in later passages of *Lições*, such as when Fontoura offers both a restricted and a broader definition of the legal field – equivalent to universal and particular ecclesiastical law, respectively. The first definition, restricted and universal, concerned "the complex of laws […] confirmed *[firmadas]* by the authority of the pope, […] [and] by which the faithful are directed to the proper end of the Church".[62] Delving deeper into the concept, Fontoura suggests that "to confirm" ("*firmar*") would be a different (and broader) term than "to constitute" or "to approve", reaffirming the declaratory (and also interpretative) authority of the pontiff.[63] In other words, the author reinforced the idea that every law of universal validity in the Church was, to a greater or lesser extent, "confirmed" by the pope's authority. This trait is absent, at least in such strong colours, from the expositions of previous Brazilian canonists. Fontoura also points out that pontifical authority in its relationship with ecclesiastical law is not arbitrary will. It is necessarily linked to the specific purpose of ecclesiastical law, that is, the *salus aeterna animarum*, "the spiritual good and the eternal happiness of the faithful". Thus, norms with other ends, even if sanctioned by the pope, would not belong to the corpus of ecclesiastical law: "The very laws emanating from the authority of the Supreme Pontiff as temporal King do not constitute the object of canon law. Though the legislating person is the same, the source of authority is different."[64] Therefore, ecclesiastical law in a restricted and universal sense would cover the following types of norms:

> 1. The pontifical decrees; 2. The decrees of the ecumenical councils; 3. The decrees of particular councils approved by the Holy See, and which have passed into the general legislation of the Church; 4. Certain civil laws which, also confirmed by the spiritual authority of the Supreme Pontiffs, have entered into the Code of Canon Law [sic]; 5. Legitimate customs, endowed with the precise qualities necessary to possess the force of ecclesiastical laws; 6. Many laws imposed by natural law and positive divine law. These laws by themselves are not part of ecclesiastical law; they must also be prescribed by this law; 7. Local or diocesan laws are part of

62 EGF, I, 33.
63 EGF, I, 33.
64 EGF, I, 33.

> ecclesiastical law when they are also confirmed by the authority of the Sovereign Pontiff.[65]

The inclusion of civil laws here is quite telling. Like most norms in this set, they needed the pope's confirmation to be considered valid. What is interesting is that, from Fontoura's perspective, such confirmation was the only door through which civil laws of any kind could enter the Church's normative complex. They were not comprised among the norms that, according to Fontoura's broader definition of ecclesiastical law,[66] could be valid even if they did not pass through the hands of the pontiff. When saying this, he referred solely to the norms produced by ecclesiastical authorities of lower rank, whose validity was confined to the limits of these authorities' jurisdiction.[67] Thus, we see that norms unilaterally crafted by secular authorities, be they local or national, would never enjoy validity as part of ecclesiastical law, even if they produced effects in the administration of local churches.

Fontoura's emphasis on pontifical authority can be explained by the references hidden behind these fragments. A quick look at the first pages of the *Tractatus De Principiis Juris Canonici*, by French canonist Dominique Bouix,[68] reveals that Fontoura translated and transferred entire passages of this work to *Lições*. Bouix was one of the main representatives of French ultramontanism in the mid-19th century. Laurent Kondratuk claims that the group led by Bouix in the editing of the *Revue des sciences ecclésiastiques* exercised a sort of hegemony over French canon law between 1850 and 1880.[69] At the time, they attacked the already lukewarm Gallicanism from the post-revolutionary period, in defense of the prerogatives of the pontifical authority over the universal Church. In particular, they supported the superiority of the pope over the council, the normative force of the decrees of Roman congregations, the papal prerogative of nominating bishops, etc., and deemed illegit-

65 EGF, I, 34.

66 "*Complexio legum a quocumque potestatem legislativam ecclesiasticam possidente, in bonum spirituale fidelium firmatarum*", as in EGF, I, 34.

67 Among these norms and their respective reach, Fontoura lists: "the laws of the legates of the Apostolic See in the circumscription of their legation; the laws of the provincial synods in their respective provinces; the episcopal laws in the dioceses; the laws of regular prelates and general chapters for their orders; finally, all the statutes given by those who have ecclesiastical jurisdiction, for the spiritual welfare of their subjects." EGF I, 34–35.

68 On Bouix, see Moulinet (1997), Jankowiak (2007a), and Kondratuk (2009).

69 Kondratuk (2009) 257.

imate the mechanisms of state control over the Church, such as the *placet* on pontifical documents. These debates were not limited to France. In fact, in Europe and overseas, the polemics on Church and state relations throughout the 19th century revolved, in great measure, around the topic of authority.[70] Not by chance, the encyclical letter *Quanta Cura* (1864) and the *Syllabus* that accompanied it were important milestones in affirming the pope's universal supremacy against national particularisms, both ecclesiastical (e. g. the liberal clergy, the conciliarist clergy etc.) and secular (the jurisdictionalist, liberal and / or secularist sovereigns). A few years later, the First Vatican Council consolidated this position, providing definitions to papal primacy and infallibility, as seen in the Constitution *Pastor Aeternus*.[71] At the same time, not only in Europe, but also in Latin America, and particularly in Brazil, there was a growing adhesion of high-ranking ecclesiastics (e. g. bishops) to ultramontane ideas. The Bishop of São Paulo during the 1880s, D. Lino Deodato Rodrigues de Carvalho, belonged to this group. It is not surprising, thus, that Fontoura used a canonist like Bouix for the composition of *Lições*.

By copying entire fragments of the French author, Fontoura reveals his position, and some of his emphases – as well as some of the absences – in the text become more understandable. The public / private dichotomy, for exam-

70 On the prominence of the issue of authority in ecclesiological debate throughout the 19th century, Congar says: "Le XIX^{e} siècle sera celui des démocraties, des révolutions sociales et de la critique. […] Dorénavant, les croyants sont mêles à un monde affranchi de l'autorité qui appartient à la Révélation positive, et ce monde est extraordinairement actif, il ne cesse de produire hypothèses, critiques, mises en question et théories aberrantes par rapport aux normes de la foi. C'est pouquoi la vieille conviction chrétienne, que l'homme a besoin, pour son salut, d'être dirigé par des commandements et une autorité, s'exprime partout au XIX^{e} siècle. […] Dans ce cadre géneéral d'affirmation de l'autorité de l'Eglise comme nécessaire à la religion, les thèses ultramontaines attribuant cette autorité *au pape* gagnent assez rapidement du terrain", as in Congar (1960) 100–103. On the relationship between ultramontanism and centralisation of authority, see O'Malley (2018) 61: "Ultramontanes did not agree on every particular. Nonetheless, the basic orientation of the movement was constant: the exaltation of papal authority over political and episcopal authority and the exaltation of a central authority over local authority."

71 On the impact of the definitions of *Pastor Aeternus* for the Church, and on the constitution's compatibility with ultramontanism, see O'Malley (2018) 226: "The definition qua definition gave papal primacy and infallibility a new prominence, a new dignity, and a new, solemn vindication. It thereby intensified their impact and thus profoundly affected how the church thought of itself and how it functioned. Traditional though the doctrines might have been, their definition changed something and changed it to a considerable degree. It made the church more ultramontane."

ple, is absent in Fontoura's definitions of ecclesiastical law. This can be explained by Bouix's preference for a more organic method of exposition, derived from the very nature of the object, and not from public law categories (it should be noted that he was a reader of Walter and Phillips).[72] Moreover, Fontoura's strategy of "translating and copying", ultimately composing a "patchwork" of implicit quotes, was employed by other ultramontane jurists of the 19th century (Phillips, Bouix himself, etc.), and can be observed even in books related to other branches of law.[73]

However, ultramontanism in Brazilian canonistics reached other forms of expression. In contrast to Fontoura's manual – which borders on popular legal literature – there was the historical, critical approach of Candido Mendes de Almeida in the long prologue to his compilation *Direito Civil Ecclesiastico*. Unlike the other Brazilian authors, he supports a fundamental difference between canon law (which fellow canonists equate or include under the denomination of ecclesiastical law) and ecclesiastical civil law. The latter is conceived as an autonomous branch, whose object were the norms elaborated by secular authorities with the purpose of regulating ecclesiastical affairs in national territories.

Mendes de Almeida expresses his regrets that the law faculties of the Brazilian Empire neglected the teaching of ecclesiastical civil law, as well as the instruction on the part of canon law that was specific to the Brazilian Church. Even the *iura circa sacra* were not properly contemplated.[74] Mendes de Almeida considers that the country's academies limited themselves to the teaching of universal canon law, mostly – and, even so, from a perspective that was invariably tainted by jurisdictionalist theories (Gallicanism, Jansenism, etc.), which had remained an underlying principle for the discipline since the Enlightenment at Coimbra.[75] The jurist regrets that bishops did

72 For more on Bouix's method, see Fantappiè (2008) 283.

73 Regarding the use of this strategy for the composition of Brazilian handbooks on international law in the 19th century, see Silva Junior (2018).

74 CMA, I, xv.

75 On the presence of heterodox ideas in the teaching of canon law in Portugal, in particular after the reform enforced by the Statutes of the University of Coimbra in 1772, Mendes de Almeida says: "A França era o nosso modelo; e nossos reformadores pela mór parte sectarios decididos das doutrinas jansenico-gallicanas, não podião achar defeito naquillo qu precisamente constituia o primor das suas idéas. A estes motivos accrescia a consideração de que o estudo de Direito Canonico, bem como o da Theologia, havião sobremodo decahido em

not supervise the faculties' chairs and so failed to avoid the diffusion of heterodox ideas.[76] He also disapproves of how handbooks as well as teaching mixed morsels of ecclesiastical civil law into canon law, all under the vague label "ecclesiastical law".[77] But, most of all, he complains about the incompleteness and the lack of practical use of what was taught at faculties and seminaries.[78]

By promoting the study and the critique of temporal laws on Church affairs as an autonomous field, Mendes de Almeida intended to fill a gap that he deemed not only a major obstacle to improving the education of clergy and jurists but also a threat to the autonomy of the Church itself. The retrieval of older normative sources, going back to the genesis of Portuguese patronage and to the reception of the Council of Trent in early modern Portugal, serves to create a contrast with Pombaline and, later on, Brazilian jurisdictional regimes, which are considered as isolated periods of heterodoxy. Isolated and, for that very reason, reversible. Mendes de Almeida establishes the premise that presenting the secular legislation concerning the Church in a clear-cut way, paying attention to its changes throughout history, is a fundamental step for perceiving and criticising the abusive measures enforced by contemporary states.[79] Hence his insistence on a discipli-

Coimbra depois da celebre reforma de 1772", as in CMA, I, xxviii. And also: "[o]s novos Estatutos impunhão aos Professores a obrigação de ensinar aos alumnos juristas as maximas do absolutismo o mais servil, e repugnante a razão; e aos Canonistas doutrinas tão pouco Catholicas que qualquer Protestante podia admitti-las sem difficuldade. […] Não se tratava somente de fortalecer o *Regalismo* ou o *Gallicanismo* do Governo, visava-se mais longe. Para planta-lo com segurança, radica-lo profundamente na consciencia nacional ia de envolta a heresia de Jansenio, que não deixava aproximar-se de Roma. Calvinismo mitigado, com apparencias do mais austero Catholicismo, a doutrina do Bispo de Ypres era uma ponte suave para desprender de sua Fé um povo ingenuo. Tal era o systema Jansenico-Gallicano que se cultivou em Portugal com grande fervor, imperando o Marquez de Pombal", as in CMA, I, xxxix–xl. For more on the reform of the University of Coimbra under the Marquis of Pombal, see Cruzeiro (1988) and Costa / Marcos (1999).

76 "E o mais singular he, que aquelle ensino [de direito eclesiástico universal] dado em nome do Estado, em assumpto tão interessante à Religião privilegiada do paiz, nem ao menos he fiscalizado pelo Prelado Diocesano, para que não seja contaminado de doutrinas heterodoxas, ou scismaticas", as in CMA, I, xvi.

77 CMA, I, iii–iv.

78 CMA, I, xv–xvi.

79 Mendes de Almeida asks: "How, by the simple knowledge of the elements of Canon Law, can the Jurist know and discriminate what is legitimate and what is irregular in the

nary division previously unknown to Brazilian handbooks of ecclesiastical law.

Mendes de Almeida stresses that the Brazilian chairs of canonistics focused on universal rather than national ecclesiastical law. The handbooks adopted as basis for teaching, however, tell a different story. The *Compendio* of Vilella Tavares, for example, embraces both the universal and the national dimensions, and this appears straight away in how the content is presented in the book's pages: whereas the ecclesiastical law valid for the entire Catholic orb occupies the main text, the particular discipline of the Brazilian Church is treated in the footnotes.[80] Monte's *Elementos* employs the same strategy, but sometimes brings particular information in the main text as well.[81]

Even so, Mendes de Almeida's criticism of the vagueness and confusion of ecclesiastical law as taught in Brazil is useful inasmuch as it allows us to consider the risks behind the perspectives present in other authors. These more traditional perspectives placed canon law as equal to ecclesiastical law and, at the same time, addressed the relationship between Church and state. The problem with doing this was that the limits of the state's role were left open, as was the extent of the Church's autonomy. The lack of differentiation reflects a scenario in which the state not only had more liberty to legislate on the Church, but felt more at ease to provide interpretations on canon law, as will be seen in the praxis of the Council of State. The problems triggered by – and the criticisms of – this lack of delimitation will appear more clearly in the next section, in the explanation of how canonists conceived the relations between Church and state. For now, what can be concluded is that in 19th-century Brazil the handbooks generally displayed a broad conception of ecclesiastical law, including in it both canon law and the civil law regarding the Church. Ultramontanism, in turn, via Mendes de Almeida, appears as one of the driving forces stimulating the separation of these two spheres,

Temporal Legislation concerning matters of the Church? How to distinguish the perfect right from the invasion and arbitrariness?", as in CMA, I, xxvii. Mendes de Almeida's compilation was crafted precisely to answer this last question.

80 A remarkable example of this strategy of exposition is found when Vilella Tavares approaches the appointment of bishops and the creation of new dioceses, in JVT1, 130–131.

81 This blending appears when Monte discusses the ecclesiastical examinations *(concursos)* for vacant benefices. See MRA, II, 471–472.

contributing to the idea of a branch of civil law for ecclesiastical matters, in other words, the ecclesiastical law of the state.

	Vilella Tavares (1. ed.)	Vilella Tavares (2. ed.)	Monte	Fontoura	Mendes de Almeida
Main legal field approached	Ecclesiastical law	Ecclesiastical public law	Public and particular ecclesiastical law	Ecclesiastical law	Ecclesiastical civil law
Relation between the main legal field approached and canon law	Ecclesiastical law = Canon law	Ecclesiastical law = Canon law	Ecclesiastical law = Canon law	Ecclesiastical law = Canon law	Ecclesiastical law ≠ Canon law
Areas covered by the main legal field approached	Church; Church and state relations	Church; Church and state relations	Church; Church and state relations	Church; Church and state relations	Church and state relations

Table 1. Conclusions of the analysis of Brazilian handbooks of ecclesiastical law regarding the status of this discipline

1.3 Independent and in harmony: on what terms? Disputes on the fair relationship between Church and state. The thorny issue of the *placet*

The Church and the state are autonomous societies with distinct purposes. The former aims at a spiritual objective, the *salus aeterna animarum*, and the latter at the temporal peace via political unity. This was a commonplace in handbooks of ecclesiastical law from Brazil (and possibly from other places too). However, the nature of relations between these spheres and, above all, their limits were open to discussion – and therefore likely to raise controversy. Depending on how the authors handled categories such as "spiritual", "temporal", "internal", "external", "independence", "dependence", "autonomy" etc., different arrangements could emerge. Silence and vagueness are also relevant. They can conceal the intention to please different audiences, or the need to prevent possible institutional retaliations. The issue was quite deli-

cate, for royal patronage as adopted in Brazil implied an intimate relationship between ecclesiastical and state institutions, by means of a series of norms and practices. Moreover, as the 19th century passed by, the divergences regarding the terms of this relationship became increasingly passionate, following the global tension among groups who held different views on state sovereignty and Church liberty.

Pope Pius IX, for example, finding himself besieged by secular powers not only on the level of ideas, declared in the *Syllabus* of 1864 that a just relationship between Church and state was incompatible with a secular government exercising direct or indirect powers over sacred things. Thus, in the proposition XLI,[82] he censured mechanisms familiar to the Brazilian constitutional framework, such as the *placet* and the appeal to the Crown. Brazilian statesmen like José Antonio Pimenta Bueno, the Marquis of São Vicente,[83]

82 "[Elenco] dei principali errori dell'età nostra, che son notati nelle Allocuzioni Concistoriali, nelle Encicliche e in altre Lettere Apostoliche del SS. Signor Nostro Papa Pio IX: […] XLI. Al potere civile, anche esercitato dal signore infedele, compete la potestà indiretta negativa sopra le cose sacre; perciò gli appartiene non solo il diritto del cosidetto exequatur, ma anche il diritto del cosidetto appello per abuso", in Enciclica Quanta Cura (1864).

83 José Antonio Pimenta Bueno (1803–1878), the Marquis of São Vicente, was a major statesman and, according to Ferreira Filho (1977), the main constitutional lawyer of the Brazilian Empire. Born in Santos, São Paulo, he was adopted by a modest physician and his wife. After graduating at the Faculty of Law of São Paulo, he developed a political trajectory closely intertwined with administrative and legal affairs. He was: deputy of the Provincial Legislative Assembly of São Paulo (1834), elected with the support of Martim Francisco Ribeiro de Andrada, a politician relevant both to the Brazilian independence and the ascension of D. Pedro II to the throne; President of the Province of Mato Grosso (1835–1837), appointed by Regent Feijó; trial judge in the region of Paraná (1842); judge of the court of appeal *(tribunal da relação)* of Maranhão (1844) and the court of appeal of the Court (1847); minister plenipotentiary in Asunción, Paraguay (1844–1847); member of the Chamber of Deputies (1845–1847); Minister of Foreign Affairs (1848), under Manuel Alves Branco; Minister of Justice (1848) under José Carlos Pereira de Almeida Torres, the second Viscount of Macaé; President of the Province of Rio Grande do Sul (1850), after shifting from the Liberal to the Conservative Party; senator (1852–1878); and President of the Council of Ministers (1870–1871), as well as Minister of Foreign Affairs. Pimenta Bueno became councillor of state in 1859. While a strong supporter of the monarchy, the Marquis of São Vicente played a relevant role in the abolition of slavery in Brazil, authoring several drafts that served as basis for the Law of the Free Womb of 1871. His most famous work is a treatise on constitutional law: *Direito publico brazileiro e analyse da Constituição do Imperio* (1857). But the Marquis of São Vicente also composed: *Apontamentos sobre as formalidades do processo civil* (1850), *Apontamentos sobre o processo criminal brazileiro* (1857), *Direito internacional privado e applicação de seus principios com*

in his book *Considerações relativas ao Beneplácito, e ao Recurso à Coroa em materias de culto* (1873), legitimised the use of the *placet* not only by resorting to the argument of safeguarding national sovereignty, but also by pointing out the interest that the Brazilian Church itself had in the execution of the measure. According to Pimenta Bueno, the Roman Curia, being unaware of the political circumstances of the country, could establish disciplinary provisions inconvenient "even for the Church".[84] For this reason, he urged the country's bishops to remember "not to serve men too much" (more precisely, the Roman Curia) and "God too little", remaining faithful, thus, to the obligation of requesting the *placet*. The political argumentation is mixed with the religious: the duty to obey religious precepts was placed side by side with the duty to obey temporal laws, and the commitment to charity was equated with the commitment to avoid public disturbance. In the end, the control over norms coming from the Holy See was set in a scenario of primacy of divine precepts and welfare of both Church and state.

These examples make clear that what some saw as abuse and an obstacle to ecclesiastical liberty, others considered as defense and protection on the part of the state towards the Church. Aware of the variety of perspectives in play, this section is dedicated to sketching the responses of Brazilian canonists to the thorny – and indeed revealing – task of establishing the terms of the relationship between Church and state, as well as its limits.

Vilella Tavares, for example, in the first edition of the *Compendio*, begins to discuss this issue in the second book, chapter one: "On the government of the Church, its limits, and independence from the civil government; the government of the Church is extended to people and things." The first sections consolidate the idea of an independent Church, based on quotes from the Bible,[85] from the Church Fathers,[86] and even from famous ecclesiastics of the French *Ancien Régime*, such as Jacques Bénigne Bossuet and François de Salignac de La Mothe-Fénelon.[87] Vilella Tavares characterises the

referencia às leis particulares do Brazil (1863), and *Considerações relativas ao beneplacito e recurso à corôa em materia de culto* (1873), his major work on jurisdictionalist legal institutions. For more on Pimenta Bueno, see Blake (1898) 303–304, Salgado (1973), Ferreira Filho (1977), and Arquivo Nacional (Brasil) (2018).

84 Pimenta Bueno (1873) 27.

85 JVT1, 105.

86 JVT1, 102.

87 JVT1, 103.

ecclesiastical government as "sovereign", without "direct dependance",[88] rather in "mutual and reciprocal" independence from the government of civil society.[89] The actions of the ecclesiastical government would be limited by its purpose, "happiness internal [to the Church]", in other words, "the perfection of souls and their salvation".[90] Such purpose would demand activity in both the internal and external fora.[91]

A few pages later, in § 67, Vilella Tavares synthetises the discussion on the independence between Church and state as follows:

> […] one sees that the government of the Church and of the state have no direct dependence on each other, or rather that, [regarding] the independence of these powers, administration and government are reduced to guaranteeing the liberty of the Church towards the state, and vice versa, in all acts that refer to the achievement of their respective ends; in other words, this independence means that the Church should not meddle in temporal things, nor the state in spiritual ones. Invested with the government of souls, and with the management of the interests of the future life, the Church has nothing to do in the affairs of monarchies and republics, nor in the temporal interests of the whole world. It is to address these affairs, and protect its interests, that the temporal power was instituted, and its mission on earth is so appropriate to this end that, within this order of things, it exercises it in a sovereign manner, and becomes independent of the Church, respecting nevertheless the divine precepts, and not setting itself in opposition to them.[92]

This is a faithful translation of a fragment from George Phillips's handbook on ecclesiastical law, more precisely the second volume of the French edition (entitled: *Du Droit Ecclésiastique dans ses principes généraux*), a work quoted by Vilella Tavares just after this paragraph. Phillips places this fragment in the section on the government of human society by the spiritual power and by the temporal power, more precisely in the last paragraph (§ CIX), on the independence between the two powers; to say so may seem trivial, but it is an important step to understand the selective reading the Brazilian jurist made of the German canonist.

Vilella Tavares repeats the translation procedure in the next paragraphs (§ 68, § 69), when he softens the separation between Church and state in view of the duty of both entities to "embrace one another", "to render mutual

88 JVT1, 99.
89 JVT1, 98.
90 JVT1, 96.
91 JVT1, 97.
92 JVT1, 106.

aid and support for the performance of their important functions".[93] In the case of the Church, its support to the state is manifested in the fulfillment of civil duties, in the cultivation of "a perfect patriotism" (in Phillips: "*un patriotisme bien entendu*"); in the case of the state, its support to the Church lies in the unconditional acceptance of the faith taught by the Church (that is, the acceptance of "all that the Church […] commands one to believe").[94] On this occasion, Vilella Tavares resorts to a fragment that, in Phillips, comes before the one about independence; it is in the first paragraph of the section on the government of human society, addressing the divine origin and the necessity of the two powers (§ CV). The Brazilian jurist does not acknowledge the German canonist as his source.

Vilella Tavares also compares the relationship – indeed, the "union", the "indirect dependence" – between the civil and ecclesiastical powers to the mystical duality of Jesus Christ, both priest and king, God and man.[95] This dependence does not destroy the sovereignty of each entity; on the contrary, it strengthens, distinguishes, and perpetuates sovereignty.[96] In this scenario, it is the ecclesiastical power's task to pray for blessings on behalf of the state and its rulers, for the peace among peoples and the glory of the sovereign.[97] The state, in turn, must employ moral and material weapons in defense of priestly dignity and ecclesiastical interests, cooperating, moreover, with the "moralising" mission of the Church. Spiritual and temporal power complement each other by using different instruments: the secular government uses the "sword of law" to punish "malefactors and disturbers of the social order", while the priest is "judge of consciences", alternating his tools between the "severity of canon law" and the "docility of a motherly tenderness".[98] This way of conceiving the mutual dependence between civil and ecclesiastical powers, in some aspects, seems to be very close to Protestant logics.[99] This is suggested by the approximation between the spiritual sphere and the inter-

93 JVT1, 106.
94 JVT1, 107.
95 JVT1, 107.
96 JVT1, 107–108.
97 JVT1, 108.
98 JVT1, 108.
99 With the term "Protestant logics" I am referring to relational arrangements that, present in the writings of Luther, Calvin, Grotius etc., portray the Church as concerned with the non-visible, that is, with faith and morality, whereas the secular power is the entity that,

nal forum (via the figure of a "praying", "moralising" Church, focused on the consciences) and between the temporal sphere and the external forum (via images referring to the state's monopoly of law, such as the "sword of law" and "moral and material weapons"), an approximation that in Calvin and Grotius, for example, turns into equivalence. However, this is again a translation of an excerpt from Phillips, this time expressly indicated by Vilella Tavares. More precisely, it is a fragment of the second paragraph of the section on the government of human society, regarding the need of agreement between the two powers (§ CVI).

Observing the order of presentation of themes in Vilella Tavares and Phillips, as well as the uses that the former made of the latter, one can see that the expositions of the two authors are organised in reversed order. The Brazilian jurist describes the relations between Church and state first in terms of independence and then in terms of mutual assistance. The German canonist does the opposite. After a prolegomenon on the divine origin and necessity of spiritual and temporal powers (§ CV), Phillips first addresses the need of agreement between them (§ CVI) and then the obligation of mutual assistance (§ CVII). Only after he finishes these topics, he progressively separates the two powers in his analysis, discussing the distinction (§ CVIII) and independence between them (§ CIX). And the differentiation deepens. In the following sections, on the precise delimitation of the spiritual and temporal spheres and, above all, the prominence of one over the other, the abyss between the positions of Phillips and Vilella Tavares becomes clear.

For example, regarding prominence, the German canonist favours the Church's indirect action over the secular power. Phillips sees as legitimate the pope's initiative, as head of the Church, to censure acts of the civil government that harm moral rules; in his eyes, the pontiff is authorised

ideally guided by religious morality, holds the monopoly of legal interference over the visible, even over the external form of religious worship. The association between ecclesiastical and internal, and between secular and external is present, for example, in Calvin, who articulates the two powers in an organic, symbiotic relationship, as can be seen from the explanation of Prodi (2005) 257: "Calvino abre em Genebra um novo caminho […] o caminho de uma colaboração orgânica, no plano de igualdade, entre a estrutura eclesiástica e a civil; o magistrado público é encarregado de manter a disciplina externa, mas não pode intervir nas questões internas de fé e da Igreja, enquanto esta última assume o papel de conselheira moral do Estado, exprime os sentimentos da comunidade […] e, de certo modo, dita os princípios da convivência social, aos quais os magistrados devem se ater em sua atividade concreta."

even to condemn the temporal powers with the "weapons at the Church's disposal". Such actions, compatible with the differentiation of spheres and with the independence of the secular power, would be justified by the need to preserve the harmony between men and divine law, a normative level on which the Church had the last word). Phillips points out that, although the Church had never taken a dogmatic position on this issue, the most accepted opinion (above all, one may suppose, among ultramontanists such as himself) was that of the subordination of secular power to ecclesiastical power in the case of transgression of divine law.[100]

Vilella Tavares would hardly accept this position. He actually says the opposite in the third book of the *Compendio*, which addresses the rights of the emperor with regard to the Church. In this part, the Brazilian jurist affirms the existence of the *iura circa sacra*, that is, the rights of the secular power in religious matters, derived from the very relationship between Church and state.[101] As criteria to recognise these "objects of simple intuition", Vilella Tavares lists the following: the "supreme inspection", so that the Church does not become "harmful" to the state; the "supreme tutelage" that the secular power owes to the same Church; and the obligation to protect the faith.[102] The author concludes by declaring that the *iura circa sacra* are majestic, that is, inherent to the monarch as such.[103]

Vilella Tavares then discusses these rights in detail. At this stage, the prerogatives of the royal patronage are blended with markedly unilateral state measures, justified by ideas reminiscent of the Enlightenment. I am referring, for example, to the right of the sovereign, by means of the provincial legislative assemblies, to issue rules on the admission of religious vows[104] – and even to limit the number of citizens authorised to enter the

100 Phillips (1855 [1845]) 449.

101 "[…] pois sendo a egreja e o estado uma sociedade, tanto este, como aquella, tem o seu fim particular, e nos meios, pelos quaes se póde obter o fim de ambos, ha uma certa relação mais ou menos proxima, mais ou menos intima, que deve ser comprehendida, apreciada e devidamente regulada pela soberania de ambos os poderes. Esta relação para os imperantes civis cria certos direitos, e são justamente estes direitos os que se chamam – *jura circa sacra*", as in JVT1, 260.

102 JVT1, 260–261.

103 JVT1, 261.

104 Vilella Tavares relies on Article 10, § 10. of Law n. 16 of 12 August 1834, known as the *Ato Adicional*. This law changed some constitutional provisions, giving more authonomy to the provinces. See Lei n. 16 de 12 de agosto de 1834 (Brasil) (1834).

regular clergy. This would serve, according to the liberal rhetoric of Vilella Tavares, to avoid "evils" such as the reduction of "people applied to the industry" and the excessive growth of religious orders, which could be problematic: to sustain these bodies, either an increasing amount of property would elude the state's grasp, or the state would face increasing expenses such as donations, alms etc. to keep these orders active.[105]

Vilella Tavares also discusses institutions such as the *placet* and the appeal to the Crown, recalling their link with legal norms from medieval times and from the Portuguese *Ancien Régime*, as well as from Brazilian constitutionalism.[106]

105 JVT1, 266.

106 JVT1, 269, 272. Regarding the regulations on the *placet* in Portugal during the Middle Ages and the *Ancien Régime*, Vilella Tavares cites the following, as in JVT1, 269:
– Concordat *(Concórdia)* between the King D. Pedro I (also known as "Pedro Cru") and the clergy of his kingdom, in 1360, Article 32 ("Que manda que se não publiquem Letras do Papa");
– Concordat of King D. João I and the clergy of his kingdom, celebrated in Santarém, in 1427, Article 87 ("Sobre as Letras de Roma");
– Extravagante of 18 December 1516;
– Law of 3 October 1578;
– Decree of 5 July 1728 ("Fazendas de Roma, ou de terras do Papa foram proibidas");
– Decree of 4 August 1760 ("*Desnaturalizados do Reino* podem ser os vassalos portugueses que continuassem a servir cargos do Papa, ou de seus domínios, ou da Cúria Romana. E os que de lá mandassem vir Bulas, Breves, ou para lá mandassem dinheiro por qualquer modo");
– Law of 7 September 1760;
– Law of 6 May 1765 ("Bulas de Roma não se podem admitir no Reino sem o Beneplácito Régio, ouvido o Procurador da Coroa");
– Law of 28 August 1767 ("Bula *Animarum saluti* foi proibida");
– Law of 2 April 1768 ("Bula da Ceia. Foi proibida a sua introdução no Reino; e a quem se mandavam entregar os exemplares dela");
– Royal Charter *(Carta Régia)* of 30 April 1768 ("Carta de Lei por que Vossa Majestade há por bem declarar por obreptícios, sediciosos, dolosos, perturbativos da paz e sossego público e ofensivos da liberdade e independência do real trono […] os exemplares impressos de umas letras, que em forma de Breve se haviam publicado na Cúria Romana […] Título: Sanctissimi Domini Nostri Clementis Papae XIII […] Jurisdictioni Ecclesiasticae");
– Provision *(Provisão)* of 12 October 1793 ("Dá-se como derrogada a Carta Régia de 23 de agosto de 1770 sobre o Beneplácito dos Rescriptos em negócios entre particulares").
Regarding the Empire of Brazil, Vilella Tavares cites Article 102, § 14. of the Imperial Constitution: "The Emperor is the Head of the Executive Power, and exercises it by means of his Ministers of State. His main attributions are: […] To grant or deny the *placet* to the Decrees of Councils, and Apostolic Letters, and any other Ecclesiastical Constitutions that are not opposed to the Constitution; and preceding the approval of the [General Legislative] Assembly, if they contain a general provision".

Regarding the *placet*,[107] the author sees no contradiction in defending, on one hand, the independence of the Church to interpret and enforce canonical legislation[108] and, on the other, the right of the secular power to prior inspection of disciplinary and even dogmatic pontifical documents, legitimised by the need to protect the state.[109] Phillips, however, while discussing the limits between the spiritual and temporal spheres, explicitly and vehemently attacks the state mechanisms of control over the ecclesiastical

107 Studies focused specifically on the *placet* are still scarce. See, for example, on the *placet* in Ibero-American context: Sánchez Bella (1987), Morales Payán (2005), and Albani (2012). On the *placet* in the Kingdom of Sardinia: De Giudici (2008) and Lupano (2015). On the *placet* in Belgium: Willaert (1954).

108 "A autoridade que faz a lei é a mesma que deve interpretá-la, é a mesma que deve velar na observância e cumprimento dela. […] Repugna […] a todos os princípios, à própria essência das leis, ou sejam civis ou eclesiásticas, que a sua execução e subsistência dependam de alguma outra autoridade que não seja a mesma donde dimanam. Como, pois, outra alguma que não seja o sacerdócio pode conhecer das regras deste, dos seus ofícios, das suas reformas, do abuso ou da infração dos cânones? Só à Igreja compete interpretar os cânones por ela feitos; só a ela compete executá-los, porque os cânones da Igreja dizem respeito aos objetos que estão sob sua jurisdição, e versam sobre coisas espirituais, ou sobre meios tendentes à consecução do fim espiritual, com o que a sociedade civil nada tem, e nada entende", as in JVT1, 100–101. It is noteworthy that in this fragment, Vilella Tavares cites one of his few Latin American references, the *Ensayo sobre la Supremacia del Papa* (1831), by José Ignacio Moreno, a thelogian from Guayaquil (located in present-day Ecuador). For more on Moreno, a monarchist theologian and, at the same time, one of the founders of independent Peru, and a solitary apologist of Joseph de Maistre and ultramontanism, see Rivera (2013).

109 On the *placet* for disciplinary issues: "Jesus Cristo deu à sua Igreja o direito de publicar determinações mudáveis ou disciplinares, mas de modo que essas determinações não sejam nocivas ao Estado. Ora, o imperante civil é quem está no caso de conhecer quais as determinações da Igreja que podem ofender a sociedade civil: logo, ao imperante civil compete também o direito de examinar as bulas eclesiásticas antes da sua promulgação. Donde se segue que a promulgação da lei pontifícia, feita somente em Roma, não basta para obrigar aos outros Estados católicos. Examinada a lei eclesiástica, e não contendo ela coisa alguma nociva ao Estado, o imperante presta-lhe o *plácito* ou, como querem outros, o *visto* ou o *cumpra-se*, pelo qual permite a sua publicação e execução", as in JVT1, 268–269. On the *placet* for dogmatic issues: "Os dogmas e as doutrinas essenciais à religião não podem certamente contradizer o fim do Estado, e por isso parece desnecessário o *plácito régio* às determinações imutáveis da Igreja. Mas como pode acontecer que o legislador eclesiástico insira na bula dogmática alguma disposição nociva ao Estado, ou oposta aos direitos majestáticos do soberano, é claro, que as mesmas bulas dogmáticas também estão sujeitas ao exame do imperante civil", as in JVT1, 270.

body.[110] Precisely for this difference, Candido Mendes de Almeida, in *Direito Civil Ecclesiastico*, criticises Vilella Tavares for claiming to be supported by the authority of all jurists who write on the subject.[111] Clearly, ultramontane writers, such as Phillips and Walter, did not share his approval of the *placet*.[112]

110 Phillips claims the *placet* is illegitimate even for documents of disciplinary content. He explains his point of view by means of a fascinating mental experiment on what things would be like if an ecclesiastical *placet* existed, that is, if the Church had to issue a *placet* for every norm created by the state: "pour ce qui est du *placet*, il n'est pas douteux que l'Église n'eût un grand intérêt à connaître d'avance quels principes l'État veut prendre pour base dans toutes ses dispositions législatives touchant les objets spirituels. Il serait donc très-naturel que le chef de cette Église, puissance immédiatement établie de Dieu, exigeât de l'État qu'il ne portât aucune loi applicable à ses sujets, à elle, sans avoir préalablement obtenu son adhésion; et de cette manière, une fois placé sur le terrain d'un contrôle réciproque des deux puissances, en face du *placitum regium*, viendrait se placer le *placitum ecclesiasticum*, et certes, nous pouvons le dire, sur une base beaucoup plus solide …", as in Phillips (1855 [1845]) 412. The German canonist then makes it clear that any *placet*, whether of the Church in relation to the state or vice versa, is absurd, since there must be harmony between these entities, that is, they must act in a coordinated way for the government of the world, with no room for mutual control. As an alternative, Phillips proposes that each party should try to persuade the other, or formally ask the other to revoke problematic legal provisions. These are his words: "Mais le point de départ de ce système est complétement faux; l'Église et l'État ne sont point institués pour se contrôler mutuellement, mais pour gouverner le monde de concert dans l'amour, la confiance et la paix. L'Église ne revendique point le droit de *placet*; seulement, lorsque dans sa conviction une loi de l'État peut être préjudiciable aux intérèts spirituels des fidèles, sans se permettre de s'élever de prime abord contre sa publication et de la déclarer nulle et non avenue, elle s'adresse par la voie de la persuasion à l'autorité séculière et la prie de révoquer cette loi funeste. Pourquoi, dans un cas analogue, cette conduite ne tracerait-elle pas celle du pouvoir temporel?", as in Phillips (1855 [1845]) 412–413.

111 JVT1, 269.

112 Criticising Vilella Tavares, Mendes de Almeida says: "Que se partilhe a opinião do *placet* admitimos, bem que entristeça ver um católico, filho obediente da Igreja, sustentá-la e propagá-la em cadeira estipendiada com impostos cobrados de população católica; mas o que excede a nossa compreensão, e as raias de uma lícita tolerância, é que se pretenda justificar semelhante doutrina (e neste século!) como tendo a seu favour a autoridade de *todos* os escritores que tratam do assunto! […] Uns [autores] combatendo, outros justificando o *placet* demonstravam a inexistência de uniformidade do pensamento nesta matéria", as in CMA, I, ccccxiii–ccccxiv. Mendes de Almeida mentions Phillips and Walter as authors opposing the *placet* (and the appeal to the Crown) due to incompatibility with "the true principles of divine law".

Not by chance, as he discusses such matters, Vilella Tavares sets aside contemporary German canonistics[113] and turns to jurisdictionalist references from past centuries to support his arguments. When he discusses the *iura circa sacra* for the first time, the Brazilian jurist cites Gmeiner's *Institutiones*, a classic in the Faculty of Law of Coimbra between the 18th and 19th centuries. But this is just one example. Throughout the third book of the *Compendio*, he mentions many scholars favourable, to a greater or lesser extent, to a strong involvement of the secular power in the administration of ecclesiastical institutions. Among them are Belgian canonist Zeger Bernhard Van Espen, Austrian jurist Paul Joseph von Riegger, Portuguese jurist Pascoal José de Melo Freire, and even Protestant theorists like Hugo Grotius, Samuel von Pufendorf and Emer de Vattel.

Thus, when Vilella Tavares declares in the preface to the first edition that he wanted to gather "the doctrine of the most orthodox and authorised authors", he refers to a specific intellectual choice, compatible with a specific image of the Church: a Church supported both by the Portuguese jurisdictionalist tradition and by the re-interpretation of this tradition in the light of the agenda of liberal constitutionalism. Such an image of the Church was no longer defensible from the point of view of canonists that Vilella Tavares considered avant-garde (Walter and Phillips, to mention two). This is the great challenge that guides the writing of the Brazilian author: to accommodate the scientific vanguard, increasingly inclined to ultramontane universalism, with a scenario still structured by norms and logics of the previous generation, whose jurisdictionalism could easily be transposed to the nationalist, pro-sovereignty environment of contemporary liberal thought. Such a challenge could only be concretely answered at the cost of cuts, adaptations, omissions, changes in order, and an extremely interesting, if problematic, syncretic result.

I say problematic because syncretism can turn into contradiction. Although the blending of references and points of view makes it possible to reach a wider audience, it also increases the vulnerability of the work to criticism. The Marquis de Olinda, for example, while opining at the Council

113 There is one exception: a citation of Ferdinand Walter, more precisely of the French edition of his handbook on ecclesiastical law. Walter is cited when Vilella Tavares addresses the right of the secular power to institute episcopal conferences and to stimulate the opening of local councils due to dissidence of faith in its territory.

of State on the first edition of the *Compendio*, gives an unfavourable assessment of the changes of discourse when Vilella Tavares sets the limits of the ecclesiastical power. Olinda refers to Vilella Tavares's "confusion" when he discusses the use of material means by the Church to fullfil its ends. According to the marquis, while some passages of the *Compendio* stress that ecclesiastical institutions need material means to develop their mission, other passages restrict the resources at the Church's disposal to those "solely spiritual".[114] In the first case, Vilella Tavares quotes Phillips,[115] while in the second the Brazilian jurist returns to the jurisdictionalist rhetoric, deeming the use of non-spiritual resources by the Church an "abuse against the temporal power" or, at most, the fruit of a "concession" of that same power.[116]

The second edition of the *Compendio* corrects some of these contradictions. For example, the author chooses not to require that things typical of the temporal power be of a material or external nature, discarding statements to the contrary and affirming that what separates the two powers is to be found in the destiny of each thing, whether material or immaterial. But the syncretism of sources and, above all, the coexistence of positions in tension with one another remain. This becomes apparent in the paragraphs concerning the independence and mutual assistance between Church and state (§ 37 and § 38). Vilella Tavares repeats a shortened version of the narrative present in the first edition, though with an important change. He includes a footnote describing four possible relational arrangements between Church and state according to French (Protestant) historian and politician François Guizot.[117] The last of these – the one that stands for the independence between the entities and even a certain superiority for the Church – is regarded as truthful: "Neither can the Church dominate the temporal power, nor can the supremacy of the state over the Church be tolerated; instead it seems that, in the chronological and hierarchical order, there is superiority of faith over reason, of grace over free will, of Providence

114 Consulta de 31 de maio de 1856, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 56, ff. 9r–10v.

115 JVT1, 111.

116 JVT1, 58.

117 Though a Protestant, Guizot cultivated a good relationship with the Catholic Church, and even with Rome, a trait that was reflected not only in his studies of history, but also in his performance as a statesman. Not by chance he is described by present-day historiography as "un protestant paradoxal", according to Theis (2009).

over human freedom, of the Church over the state, in one word, of God over man."[118] Vilella Tavares refers the reader interested in more detail to Phillips, and also to Juan Donoso Cortés, a famous Catholic writer and Spanish counter-revolutionary of the first half of the 19th century, more specifically to his letters to Cardinal Raffaelle Fornari, in which Donoso Cortés condemns different species of regalism and their corresponding legal instruments (among them the *placet*). Significantly – and perhaps frustrating the expectations of the reader devoted to ultramontanism – in the following paragraph, Vilella Tavares begins to talk about the *placet*. In contrast to the first edition – and, most probably, following Monte's *Elementos*, which is cited – Vilella Tavares deems admissible and necessary only the limited *placet*, that is, the secular control over the execution "of the laws of the Church or its determinations in mixed matters, in the temporal part […] because of the civil effects", discarding the analysis of documents related to dogmatic or purely spiritual matters.[119] However, in the footnote, one can find a new twist: "notwithstanding what has been said, one should respect what is agreed or legislated in our and other countries, in matters of this order", and then Vilella Tavares cites the Imperial Constitution (Article 102, § 14.), the Criminal Code (Article 81), and the *Ato Adicional* (Article 10, § 10.), which impose a far-reaching version of the *placet*.[120] In the last part of the book, when Vilella Tavares discusses the rights of the civil ruler over the Church (similarly, if not identically, to the third book of the first edition), the author refers to the limits of the *placet* as outlined in the preceding pages, reiterating that it applies only to laws on mixed matters and only with regard

118 JVT2, 48. The other relational arrangements are the following: (i) the Church subordinates the state from a purely moral point of view; (ii) the Church exists within the state, and the latter is in charge of all the governing aspects that have an external dimension (territory, war, taxes etc.), including the form of religious institutions; and (iii) the Church is within the state, but both entities are entirely free from the other's influence.

119 JVT2, 49.

120 Article 81 of the Criminal Code of the Empire: "To resort to a Foreign Authority, residing inside or outside the Empire, without legitimate permission, for the granting of spiritual graces, distinctions or privileges in the Ecclesiastical Hierarchy, or for the authorisation of any religious act. Penalties – Imprisonment for three to nine months"; see Lei de 16 de dezembro de 1830 (Brasil) (1830). Article 10, § 10. of the *Ato Adicional*: "It is of competence of the [Provincial Legislative] Assemblies to legislate: […] On houses of public relief, convents, and any kind of political and religious associations"; see Lei n. 16 de 12 de agosto de 1834 (Brasil) (1834).

to their temporal – as opposed to spiritual – dimension.[121] Then again, in the successive paragraph Vilella Tavares retains the possibility to subject dogmatic bulls to state control, if the ecclesiastical legislator inserted in the document "some disposition that was harmful or in opposition to the majestic rights of the sovereign".[122]

In short, Vilella Tavares demonstrates how relative the seemingly strict dichotomy between jurisdictionalists and ultramontanists can be. The *Compendio*, in its variety of sources and perspectives, is a "patchwork book" that conveys both admiration for vanguardist theories, favourable to a universal, organic (and, ultimately, ultramontane) vision of the Church, and fidelity to the legal framework of the empire – which was mostly jurisdictionalist and statist. In the second edition, this tension is followed by attempts to introduce more moderate jurisdictionalist positions (such as the limited *placet*), on one hand, and new ultramontane references on the other. The result is not entirely consistent. The intertextual richness of the work also indicates a pragmatic methodology, as the author did not see books with different positions as fatally incompatible, but as available sources from which to gather ideas, to extract "what is good". His criteria comprise both the objective of producing a reasonably original overview of ecclesiastical law, based on traditional and recent sources, and the inescapable necessity of remaining within the limits of the law valid in Brazil. After all, Vilella Tavares wanted his text to be used at the law faculties of the Brazilian Empire. This methodological pragmatism, in essence, is close to the procedure of Phillips himself, and also of Ferdinand Walter, who within their (increasingly ultramontane) dominant narratives employed authors considered jurisdictionalists (e. g. Van Espen and Riegger) to collect information on ecclesiastical history. Focusing on Vilella Tavares, it can be said that the *Compendio* sees the relationship between Church and state from a predominantly jurisdictionalist perspective. But, challenging easy dichotomies, he does so by using authors with varied, even ultramontane, positions. In other words, his jurisdictionalism is sustained, at least partially, by fragments of predominantly ultramontane narratives. Although the result is harmonious at certain moments, the tension between fragments sometimes becomes too visible, giving the impression of artificiality and, ultimately, contradiction.

121 JVT2, 214.
122 JVT2, 215.

Monte's *Elementos* shares certain similarities with the *Compendio* of Vilella Tavares (especially the second edition) regarding the approach to the relations between Church and state. This can be seen not only in the syncretism of sources – which, for Monte, is characterised by the use of old authors, classics (especially French) from the 16th to 18th centuries.[123] Like Vilella Tavares, the Bishop of Rio de Janeiro holds that the Church is independent and sovereign in relation to the state, being able, in its own right, to propagate the faith and establish its own discipline.[124] The independence between Church and state is also demonstrated by the differences in ends and means of one society and the other: the Church retains the task of "saving men" (in the sense of the *salus aeterna animarum*) by employing "spiritual means"; the state, in turn, is responsible for the "happiness of this life" via "temporal means".[125]

Unlike the hesitant Vilella Tavares of the first edition of the *Compendio*, Monte stresses that spiritual matters, that is, those proper to the Church, involve not only internal, but external acts. Expressly wishing to distance himself from Protestants and regalists, the bishop explains: if the state had exclusive competence over external acts, the power of the Church would be voided for lack of object, as ecclesiastical discipline, sacraments, and faith itself, to a greater or lesser extent, had external form.[126] In view of this, Monte concludes, the factor to determine whether a matter fell under the competence of the Church or of the state was finality,[127] i. e. the ends or ultimate aim pursued by the respective society, an opinion shared by Vilella Tavares in the *Compendio* of 1862.

These ends, though different, were correlated and coordinated,[128] as the societies themselves, which "touch one another, help each other".[129] This

123 Noticing this trait, Mendes de Almeida remarks that such sources (and he lists: Pedro de Marca, Van Espen, and Bossuet) belong to Monte's youth, to his first studies, as in CMA, I, ccccxiii.

124 "A Igreja é uma sociedade perfeita, não subordinada a outra no seu gênero. Por direito próprio, que o seu fundador conferiu-lhe, a Igreja ensina a fé e os costumes, e julga soberana e infalivelmente as questões sobrevindas a respeito. Por direito também próprio, soberano e independente dos Príncipes, ela estatui a sua Disciplina, exercendo a este respeito os poderes legislativo e executivo", as in MRA, I, 74.

125 MRA, I, 74.

126 MRA, I, 80.

127 MRA, I, 81.

128 MRA, I, 75.

129 MRA, I, 80.

harmonious autonomy also implied a double duty of obedience for Catholic citizens. They could not be exempted from respecting both the Church and the state, according to their respective competences, in line with the biblical precept of: "Render unto Caesar the things that are Caesar's, and unto God the things that are God's."[130]

Monte dedicates several paragraphs to discussing the role of secular power regarding the Church. Recalling the Roman emperors who embraced the Christian faith, the Bishop of Rio de Janeiro endorses the personification of secular power as an "advocate" or "defender" of the Church, in the sense of assisting it in its mission by means of temporal legislation. For him, it would also be possible for the secular power to intervene in Church matters when there was an agreement or consensus "at least tacit" between "princes and pastors".[131] Monte suggests caution before characterising the secular power as the "protector" of the Church, since such word could bring the wrong idea of submission, of asymmetry, of the protector's right to regulate the conduct of the protected one.[132] Furthermore, recalling a term attributed to Roman Emperor Constantine, Monte rejects the theory that civil rulers would be "external bishops", at least in the sense that such title would confer on secular authorities a regulatory power over ecclesiastical discipline.[133] To contest such use, the Bishop of Rio de Janeiro uses a fragment of *De l'Autorité des Deux Puissances*, published by the French priest Jean Pey (also known as Abbot Pey) around 1780. This work, on one hand, favours the absolutist monarchy, the episcopate, and the papacy in their respective jurisdictions; on the other, it resists jurisdictionalist and Enlightenment political theories then in vogue in Europe.[134] In the passage selected by Monte, Pey affirms

130 "Cumpre notar-se, que provando-se a soberania e a independência da Igreja a respeito do Estado, não se quer dizer que a Igreja, *i.e.*, que os seus ministros, por mais elevada que seja a sua hierarquia, ou que os fieis como tais não devam estar sujeitos e obedecer ao Estado em todas as coisas temporais, que são as da sua competência; […] O mesmo deve-se dizer do Estado a respeito da Igreja; porque, apesar de aquele independente desta, todos os cidadãos, ainda os de uma ordem mais elevada, incluídos os mesmos príncipes, devem à Igreja sujeição e obediência filial nas coisas espirituais. Em suma, tudo isto não é senão um desenvolvimento da máxima do Evangelho: *Reddite quae sunt Caesaris, Caesari; quae sunt Dei, Deo*", as in MRA, I, 77.

131 MRA, I, 63.

132 MRA, I, 89.

133 MRA, I, 65.

134 There is little information in literature about Jean Pey (1720–1789). Stefaan Marteel, discussing the intellectual origins of the Belgian Revolution (1830–1831), offers some

that the civil ruler as "external bishop" would have to act precisely outside the Church, enforcing laws and orders coming from the institution, without interfering in the ecclesiastical government; in fact, the secular ruler would not be allowed to "enter the holy place except as part of the flock".[135] Monte adds that within the scope of the princes' actions would be defending the Church against external enemies and heresy,[136] assisting the implementation of episcopal laws, and supporting reform to prevent internal abuse, always respecting the liberty of the ecclesiastical sphere.[137]

He also rejects the jurisdictionalist opinion that "the Church is within the state", which subordinates the former to the latter. Relying on Pey, Monte declares that the Church is not part of the state, neither its dependent; it is not a private society, but a society of a different order.[138] Such dependence, if it existed, would call into question the unity of the Church's faith, the "purity of its customs", the uniformity and stability of its discipline; it would imply, in other words, the adoption of the system of national Churches of the Protestant Reformation.[139] He concludes that it would be more correct

information about the critical fortune of *De l'Autorité des Deux Puissances*. The book was sponsored by Giuseppe Garampi, who, at the time of the first edition (1780), was the Apostolic Nuncio in Austria, having previously been prefect of the Vatican Secret Archives (1751–1772). Garampi, according to Marteel (2018) 131–132, "[…] was supervising the ultramontane counter-offensive against reform-Catholicism and the rationalist ideas of the Enlightenment in general". By means of Garampi's influence, *De l'Autorité* was intended to be published not only in France, but on an international scale. As the book was censored in French territory due to pressure from the *parlements*, it was eventually published in Liège, Belgium (in 1780, 1788, and 1790). Distributed in the Netherlands and in France, *De l'Autorité* became the "[political, legal] handbook of ultramontane Catholics" as early as the 18th century, and remained so even after the French Revolution. In fact, its success in the Netherlands increased when Pey, fleeing from the revolutionaries, moved to Belgian territory. In France, *De l'Autorité* earned the fame of a "successful expression of absolutist thinking", as Pey defended both the absolute authority of the king and the sovereign power of the episcopate, going against Rousseau's social contract and the radical Gallican ecclesiology, according to Van Kley (1996) 317. Marteel adds that "the exaltation of the king's powers was still accompanied by the idea that the monarch could be restrained by divine law and in relation to the spiritual power of the church", which explains the book's success in ultramontane circles.

135 MRA, I, 65–66.

136 MRA, I, 89.

137 MRA, I, 90.

138 MRA, I, 77–78.

139 MRA, I, 78.

to say that the state entered into the Church, recalling Constantine's conversion.[140]

How, then, can we explain the great volume of civil laws governing ecclesiastical issues throughout history? Monte hastens to clarify that this does not harm the division of competences, as such division is "in the nature of things" and that "facts do not generate law" (that is: the disrespect of competences in the real world does not change the legal limits between the two spheres). He adds that civil legislation in ecclesiastical matters is explained not necessarily by conflict and confusion between Church and state, but by the great friendship between them

> […] because the Church and the state, as distinct and independent as they are, unite and mutually assist each other; the respective Powers are friends; and this friendship and union is what makes it seem, as Bossuet observes, that they usurp each other's functions, like friends who use each other's goods, as if they were their own.[141]

Monte illustrates his exposition with historical examples that show the harmony between the secular legislator and a receiving Church, emphasising the previous request or later acceptance of the norms by the episcopate or even the collaboration of bishops in drafting secular laws.[142] Further on, in a footnote, there is another reference to Pey, concerning the types of civil law in ecclesiastical matters; it is noteworthy that Monte endorses the passage that suggests that, even if laws are "in principle" contrary to the Church's welfare, they can be adopted by it in practice, "for the sake of peace".[143]

To finish the discussion on how Monte defines the relations between Church and state in *Elementos*, we must address the issue of prominence. There are no emphatic declarations about which power is superior to the other, whether ecclesiastical or secular. I must then rely on certain historical comments and Monte's position on controversial institutes such as the *placet* and the appeal to the Crown. For now, I will focus only on the historical comments. The Bishop of Rio de Janeiro seems to associate the theory of subordination of the state to the Church with the medieval period.[144] He

140 MRA, I, 78–79.
141 MRA, I, 83.
142 MRA, I, 83.
143 MRA, I, 84.
144 It is worth mentioning that in the most recent (political, religious, and legal) historiography on the Middle Ages and early modern times, the use of terms such as "state" and "Church" is the object of exhaustive problematisation, in view of the uncertainty as to the

does so in a way that is sympathetic to the pope's actions, demonstrating a historical sensibility that does not reproduce the jurisdictionalist and Enlightenment standards still in vogue, but rather censures them. This is seen when, bringing up the idea of the usurpation of the civil power by the ecclesiastical power (more specifically, by the pontifical power) in the Middle Ages, Monte deems this "a false point of view to evaluate people and things of past centuries, [that is,] to take them according to the opinion, laws, usages and customs of the century in which one is".[145] And he completes offering a vision of the Middle Ages, in his words, "as criticism demands", free of anachronisms: the system of medieval vassalage, of precarious balance between kings and feudal lords, relied on the presence of a superior judge, the pope, "such was, in the Middle Ages, the Public Law of Europe".[146] In this scenario, "the supreme judicial authority of the pope was a necessary element of the feudal constitution, and the cornerstone of the social structure in these past ages."[147] In saying so, Monte refers to a book review published in the first volume of *L'Université Catholique*, a French ultramontane journal of the first half of the 19th century, dedicated to religious, philosophical, scientific and literary varieties.[148]

appropriateness of such words to express concepts from periods further back in time. Such debates aim at preventing the diffusion of reductionisms – after all, "Church" and "Ecclesia" are terms that have important semantic variations, synchronically and diachronically. Such discussions also seek to avoid anachronisms, for the concepts of "state" and "Church", when referring to autonomous, coherently organised, all-encompassing institutions, are a very recent construction, tied to patterns of thought of the 19th and 20th centuries. For a critique of the historiographical uses of "state", with the suggestion of other expressions and / or concepts for scenarios prior to the French Revolution, see, for example: for the Middle Ages: Grossi (1995); for the Portuguese *Ancien Régime*: Hespanha (1984, 1994). For a critique of the historiographical uses of "Church", drawing attention to the variations of the concept in different contexts, see, for example: for the Middle Ages: De Jong (2003, 2009, and 2011), Miatello (2014, 2015); for the 18th and 19th centuries: Di Stefano (2012) and Gómez Revuelta (2019). In fact, proof of the conceptual plasticity of "Church" lies in the fact that Monte himself gives different meanings to the term throughout *Elementos*: sometimes he sees the Church as the communion of the faithful, other times as the ecclesiastical hierarchy, sometimes as the Holy See, other times as the pope, etc.

145 MRA, I, 85.

146 MRA, I, 86.

147 MRA, I, 86.

148 It is a review of the book *Life and Pontificate of Gregory VII*, by R. Gresley, published in London, in 1832. The ultramontane tendency of this journal is confirmed when, on the

After establishing that the subordination of the state to the Church was proper to the Middle Ages, Monte explains that "Protestants and regalists" (both, it should be stressed, groups that the bishop sought to distance himself from) insisted on the narrative of the deposition of medieval kings by popes. According to the bishop, they saw such events as a persuasive reason to justify that secular rulers adopt mechanisms of control of the Church, such as the *placet*.[149] With fine perspicacity, Monte concludes that the medieval arrangement of Church and state relations and the reorganisation proposed by jurisdictionalists during modern times are informed by mirrored doctrines:

> But the opponents [Protestants and regalists] did not see that they adopted the same doctrine which they had condemned in the ancient theologians and canonists; because these [ancient theologians and canonists] justified the so-called enterprises of the Popes [to discipline] the temporal power of Kings by the old theory of the indirect power of the Church over the state; whereas the royal *placet* is the precise application of a new theory of the indirect power of the state over the Church. It will be well to note this, which at least proves the coherence of the innovators [Protestants and regalists].[150]

It is noteworthy that Monte refers to the theory of the indirect power of the Church over the state as *old, ancient, medieval*, that is, as a historically located idea. In doing so, he seems to disregard that at the time, this doctrine was gaining prestige in Rome and in groups where ultramontane ideas circulated. In his commentary, the Bishop of Rio de Janeiro avoids taking a position on the current state of the problem of prominence. Yet, this omission would not escape his critics.

One of these critics was a canonist and consultant to the Congregation of the Index, Settimio Maria Vecchiotti, whose opinion, as I have already mentioned, informed the condemnation of *Elementos* by the dicastery in 1869.[151]

first page of the review, the editor informs the readers that, with a series of analyses and translations, *L'Université Catholique* seeks to bring to their knowledge the main collections published for the defense of religion in Italy, Germany, England, and America, as in L'Université Catholique (1836) 250.

149 MRA, I, 86.

150 MRA, I, 86.

151 At the beginning of his opinion on Monte's work, Vecchiotti is keen to clarify the limits of his activity as a consultant, a valuable piece of information to better understand the *modus procedendi* of the Congregation of the Index. The canonist stresses that his evaluation is restricted to the quality of the doctrine: "Il mio compito è limitato a vedere, se la

One of the first flaws that Vecchiotti observes in the Brazilian handbook is its silence about the point where the action of civil and ecclesiastical powers begins, as opposed to the many mentions about when such powers end.[152] Vecchiotti refers to Monte's recurrent observations on the different finalities of Church and state.[153] But what about the beginnings? Vecchiotti explains that the point of origin lies in natural law and divine law. The relationship with these elements is what defines the capacity of both Church and state to act and command. And there is no margin of choice. The fair relationship, according to Vecchiotti, can be only one: the temporal sovereign is obliged to observe the divine and natural precepts in the exercise of his rights; the spiritual sovereign, in turn, has the duty of examining the actions of the secular authority, with legitimate powers to reform these actions when they infringe natural or divine law. This is the principle suitable for determining the boundaries between the spiritual and secular powers. In Vecchiotti's view, the absence of such principle in Monte makes the work defective and even dangerous, given that it risked leaning towards regalism.[154]

dottrina, che è insegnata in questo manuale di giure ecclesiastico su tanti argomenti, è la vera, la sana, la buona. Ogni altra discussione è estranea, e dirò pure frastranea allo scopo che mi sono, per debito del mio officio, prefisso. Non si tratta qui nè di rivista, nè di critica sul merito scientifico dell'opera", as in Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 22v.

152 "Dico dunque dapprima esser grave mancamento, che siasi ne' citati luoghi passato sotto silenzio il limite, da cui comincia l'azione della potestà ecclesiastica e civile, mentre si cerca con ogni studio di determinare il limite, in cui cessa l'azione d'entrambe. Questa reticenza costituisce un gran vuoto e può portare a sinistre interpretazioni ed anche ad opinioni temerarie, false ed erronee", as in Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 22v.

153 Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 23r.

154 "Le due potestà sono nell'ordine proprio somme e sovrane, ma non sono assolute nel senso, che non trovino nel diritto naturale, e nella legge eterna, e divina positiva un limite, dal quale prendano le mosse per agire e comandare. Il Sovrano temporale è astretto ad osservare i precetti divini e naturali nell'esercizio de' suoi diritti; ed al Sovrano spirituale spetta esaminare le azioni di quello, e riformarle, se peccano contro la legge naturale e divina. Da questo principio partendo, si può arrivare solo a determinare i limiti

Vecchiotti is also not satisfied with the section in which Monte addresses the duty of obedience that Catholic citizens have towards the Church and the state. According to the *consultore*, Monte does not address the relevant exceptional cases when it was necessary to obey "God rather than men" (Vecchiotti himself does not specify which cases are these). He also notes that Monte's discourse lacks any hint of the priority that Catholic citizens had to give to the Church in their attitude of obedience: "Obedience to men has its limits. One must be more obedient to God, and to the Church, than to the civil power."[155]

Vecchiotti's critical observations revolve around the major issue of prominence, more precisely, the theory that the state was legitimately subordinated to the Church. Vecchiotti supported this theory, following the sympathy of the Holy See for ultramontane ideas. The consultant posits that Monte's theses of harmony and union between the powers would make little sense if they were not accompanied by a hierarchical theory to explain that the bond of subordination between Church and state was present in the very nature of the institutions and was, at the same time, the product of divine intention. The submission of the secular to the spiritual power, according to Vecchiotti, belonged to natural and divine law, and was, therefore, a necessary, inescapable arrangement without which the two entities would lose their harmony. Within this framework, Church and state relations would even include the possibility of the ecclesiastical power to decide legitimately on temporal matters, provided spiritual matters were involved as well, and that such intervention intended to safeguard the Church's fulfilment of its

delle due potestà, ed a stabilire, il che è di somma importanza, dove cessa l'impero della Chiesa, e dove comincia quello del Principe, dove finisce il diritto canonico, e dove comincia il diritto civile, dove finisce la cura o sollecitudine dell'ultimo fine, e dove comincia quella del fine temporale, d'onde discende, che l'opera di cui si parla non solo è difettosa nel senso, che non somministra l'idea esatta delle due potestà, e della loro competenza, ma inoltre è pericolosa, perchè inclina facilmente verso quella parte che conduce al regalismo, accordando più allo Stato che alla Chiesa e restringendo a questa il diritto di occuparsi i cose puramente spirituali, su di che convengono tutti i politici, e i regalisti", as in Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 23r.

155 Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 23r–v.

finality against abuses and omissions of the secular power. That was the order of things. This was, in the eyes of Vecchiotti, the starting point missed by the Brazilian author.[156]

Monte's ambiguous positioning – between the moderate and the evasive – regarding prominence can also be observed in his approach to the *placet*. The Bishop of Rio de Janeiro considers that this institution assumes both an old[157] and a modern form; the latter would be divided into two categories,

156 The fragment where the reasoning developed in this paragraph appears is this: "In fatti mentre si sostiene, e con ragione, che fra la Chiesa e lo Stato deve esservi armonia, e unione, onde tutto proceda regolarmente, si preterisce del tutto la teoria della subordinazione del potere civile al potere ecclesiastico. Ora, sopprimendosi questo principio certo ed inconcusso presso tutti i Cattolici, le tesi sulla armonia e sull'unione fra i due poteri, e tutte le altre sopra enunziate restano quasi prive di senso, giacchè la concordia e la pace non sono che la permanenza dell'ordine, e l'ordine non può aversi, se le cose non si dispongono secondo l'esigenza della loro scambievole relazione. I due poteri non possono stare in altra relazione fra loro, se non se in quella, che nasce dalla loro natura, e dall'intendimento divino; relazione, che non può essere che nella vera subordinazione. […] A che serve il dire, che dal fine si può trarre la distinzione delle due potestà, a che serve, che il potere civile conduce al fine temporale, come l'ecclesiastico al fine soprannaturale, se poi non si afferma esplicitamente, che il fine civile è di natura sua subordinato al fine religioso? Questo principio costituisce il punto di partenza, d'onde scende che il potere ecclesiastico, senza invadere i diritti del potere laico, può prendere decisioni su cose temporali, che toccano in qualche modo le spirituali, e che si riferiscono al fine ultimo", as in Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 23v. For more on how the ecclesiastical power is able to affect temporal matters, see: "Il potere ecclesiastico entra di diritto proprio nelle cose temporali per riguardo alla coscienza, ed alla felicità eterna. Il temporale viene *in obbliquo*, direbbero gli scolastici, lo spirituale viene in *recto*; il temporale viene di conseguenza, lo spirituale viene d'intenzione diretta. Bellarmino de Rom. Pont. l. 3, c. 7, spiega in poche parole la ragione per la quale la potestà civile è subordinata nelle cose temporali alla potestà ecclesiastica, *quatenus abusio aut negligentia christianorum regum possent impedire finem spiritualem, in quem Papa habet universam regere Ecclesiam.* Il Principe allora sconfina fuori de' suoi limiti, ed attacca e invade i diritti della Chiesa", as in Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 24r.

157 Monte sees as legitimate the *placet* "according to the ancient usage" ("*segundo o uso antigo*), which has a rather broad meaning for him, going back to the times of the conversion of Roman emperors and, according to his perspective, to the times of the balanced role of the secular ruler as advocate and defender of the Church, as in MRA, I, 94.

the unlimited and the limited *placet*. In referring to the unlimited *placet*, Monte departs from the jurisdictional concept of Van Espen's *Tractatus de promulgatione legum ecclesiasticarum* (1712): "[the *placet*] are the letters by which the Prince allows the publication and execution of the bulls or rescripts that are brought from the Roman Curia into his dominions."[158] In other words, the unlimited *placet* is the prior control of the secular power over a wide spectrum of normative documents issued by the Holy See, provided that they are intended to have local effects. Monte points out that, from Van Espen's perspective (which, as we will see, differs from Monte's own), the *placet* belongs to the rights *circa sacra* of the temporal sovereign; it relates to the *jus cavendi*, the right of the prince to take measures of caution regarding persons, goods, and, above all, norms that come from outside his domains, seeking to avoid "inconvenience to the Republic entrusted to him".[159] The argument of state protection bears a striking resemblance to Vilella Tavares's discourse in the first edition of the *Compendio*. In a brief historical digression, Monte affirms that the unlimited *placet* would have been the product of "Protestant doctrines", recalling the systems of secular government endowed with spiritual functions that emerged after the Reformation, as well as the spiritual supremacy exercised by the Anglican monarchs.[160] *Placet* in such contexts would function as a means of government.

Seeking once more to distance himself from both Protestants and regalists, Monte rejects the unlimited *placet* in favour of the limited. According to the bishop, the origin of this institution would be in the Great Schism of the West, in the 14th century, when more than one person was recognised, by different parties, as the Roman pontiff. This phenomenon of antipopes forced secular monarchs to establish a mechanism for verifying the origin of apostolic letters before their publication and execution. In doing so, they sought to ascertain whether or not these letters were legitimate (i.e. from the pope considered legitimate by a given monarch). Monte emphasises that the content of the documents was not at stake. Moreover, the examination was limited to private constitutions and rescripts granted to individuals, especially in matters such as benefices and prebends. Even after the Council of Constance (1414–1418), which put an end to the era of having more than

158 MRA, I, 94–95.
159 MRA, I, 94–95.
160 MRA, I, 96–97.

one pope, the limited *placet* persisted. However, it had never been intended to control general constitutions or dogmatic documents.[161]

Confirming his preference for the limited *placet*, Monte then lists its characteristics. It would not comprise the conciliar and pontifical decrees about faith,[162] despite jurisdictionalist opinions such as that of Van Espen, who defended the possibility of secular interference on the "external form" in which a dogma was expressed.[163] Nor would the limited *placet* cover the decrees, conciliar and pontifical, of general discipline.[164] The bishop justifies these restrictions with the argument of independence between powers, recalling the Church's autonomy to legislate on its own discipline, and to oblige and punish the faithful in the external forum, in accordance with its own normative dispositions.

Faced with the jurisdictionalist objection that disciplinary decrees could be at odds with public utility and tranquility, Monte replies that the "pre-

161 MRA, I, 95.

162 MRA, I, 97.

163 MRA, I, 98.

164 MRA, I, 99. Monte says this relying on the authority of French bishop and theologian Jacques Bénigne Bossuet, who, in his opinion, "is not suspicious in matters of regalism". This observation is quite interesting, considering that recent historiography commonly considers Bossuet as one of the main representatives of the French variant of jurisdictionalism, Gallicanism. See Martimort (1953), Régent-Susini (2009), and Martina (2013). Monte seems to consider writers of diverse geographical provenance as regalists, such as Riegger and Gmeiner, from Austria; Van Espen, from Belgium; and Domenico Cavallari, from Naples; in addition to Pedro de Marca who, like Bossuet, was French. Monte's benevolent stance towards Gallicanism does not go unnoticed by Vecchiotti, who criticises the emphasis the Brazilian author places on the famous Declaration of the Liberties of the Gallican Church (1682), written by Bossuet, approved by an assembly of the clergy and, soon after, by King Louis XIV himself. The Declaration defended: "l'indipendenza assoluta del sovrano nelle questioni temporali, la superiorità del concilio sul papa secondo i decreti di Costanza, […] l'infallibilità del papa condizionata dall'assenso dell'episcopato, l'inviolabilità delle antiche e venerande consuetudini della Chiesa gallicana", according to Martina (2013) 263. Supporters of ultramontanism commonly interpreted the Declaration of 1682 as a moment of distancing between the French clergy and the Holy See. In this sense, according to Vecchiotti, Monte was wrong to omit that Pope Alexander VIII had annulled the Declaration almost a decade later, by means of the Bull *Inter multiplices*. The consultant added that, instead of giving prominence to the Declaration, Monte should have included events that, taking place in the same century, demonstrated how the pontiff and the Church of France drew closer to each other, as in Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto

ventive right" is unfair towards a "friendly power" (going back to the discourse of harmony between Church and state), and that injustice is intensified by non-reciprocity.[165] The way for the secular power to legitimately withhold the effects of pontifical documents would be, in his view, dialogue – sending a complaint to the Holy See, as states did among themselves, according to the *ius gentium*.[166] Monte also refuted the argument that unlimited *placet* in disciplinary matters would prevent the execution of false bulls; he claimed that the falsification of these documents no longer took place, especially concerning general constitutions.[167] And, confronted with the hypothesis that, without the *placet*, it would not be possible to effect public and forensic execution of disciplinary decrees, the Bishop of Rio de Janeiro rhetorically asked: "Is it possible that the laws of the Church cannot pass without being laws of the state, or without that forensic execution that one wants to give them?"[168] For Monte, ecclesiastical laws did not need to be executed by the state, since the Church had its own jurisdiction and its own public mechanisms to enforce canonical legislation. The text echoes once again the theme of independence between powers.

In the picture composed by Monte, the state *placet* would serve only for "the execution of laws in mixed matters, in their temporal part, […] or for the civil effects of such laws".[169] This is as far as general norms are concerned. As for particular norms, the *placet* seems to cover a greater number of documents, as can be concluded from a footnote which quotes Lequeux, a canonist of Gallican tendency: "We do not establish any principle that restricts the royal *placet* on what regards private constitutions or rescripts in favour of parties", with the exception of "hidden cases" or cases of "mere conscience", as the briefs of the Apostolic Penitentiary. This is the outline of the *placet* in limited form.

Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 24v.

165 MRA, I, 100.

166 Monte equates the Church (in particular, the Holy See) to a state, with the use of *ius gentium* by analogy, as follows: "porque a Igreja é soberana e independente como é o Estado, e pelo Direito natural das Gentes, um Estado não tem que entender a respeito das leis de outro Estado, salvo por via de reclamação contra aquilo em que uma lei pode afetar aos direitos ou aos interesses do Estado reclamante", as in MRA, I, 104.

167 MRA, I, 105.

168 MRA, I, 101.

169 MRA, I, 100.

However, Monte concludes his treatment of the matter by emphasising that there is a schism between theory and practice in his discourse. He states that until the time of his writing the discussion had been "general", not aiming at any specific country. In fact, in the preface to *Elementos*, the bishop makes it clear that his exposition is of *iuris instituendo* (of a law to be created; of a law that, in fact, does not exist), not of *iuris instituto* (regarding existing law).[170] There remains a rather timid request, encouraging a meeting between theory and practice, with a view to reforming the latter: "But those whom this concerns, that they meditate well on the importance of such a right [of *placet*], and on the limits that should be placed on it, in order to avoid the abuse of the state invading the jurisdiction of the Church, so that they may remedy this evil […]."[171]

The dissonance between theory and practice reaches an uncomfortable level when Monte mentions the *placet* as applied in Brazil. He seems to do it only as a *pro forma* duty, given the distance between the limited *placet* model and the normative reality of Brazil (and even of other countries at the time). I intentionally use the word "dissonance" here: in approaching the Brazilian context, Monte's discourse becomes less fluid and loses the detailed and sometimes critical tone of the previous pages. In its place, a monotonous, laconic, and merely descriptive discourse emerges. He cites Article 102, § 14. of the Imperial Constitution, which regulates the *placet*, and Article 81 of the Criminal Code, which punishes those that resort to the Holy See without permission from the civil government. In addition to the control of pontifical legislation, he mentions other types of state authorisations in ecclesiastical matters, based on the laws and administrative regulations of the country. This is the case of the secular *placet* for the admission of candidates to sacred orders, derived from ministerial ordinances which Monte does not mention. He also recalls that the establishment of the number of candidates to religious orders is a responsibility of the provincial legislative assemblies, after petition from the prelates, according to ministerial orders and the jurisdictionalist interpretation of the *Ato Adicional*, Article 10, § 10.[172] Vilella Tavares also addresses these situations, but does not include them in the section on the *placet*.

170 MRA, I, xvii.
171 MRA, I, 106.
172 MRA, I, 106–107.

Monte's exposition on the royal *placet* was also assessed by Vecchiotti in his opinion for the Congregation of the Index. The consultant describes the discourse step by step, covering the defense of the limited *placet*, the rejection of the unlimited one, the observation about *iuris instituendo* and *instituto*, and the remissions to the Brazilian legislation. Vecchiotti reacted negatively to all this: "All these propositions cannot be accepted, because they ultimately deny the bishops the right to promulgate apostolic letters without state authorisation."[173] And he refers the reader to proposition 28 of the *Syllabus* of 1864 – which his own opinion mirrors faithfuly.[174]

Monte's position on this topic was also criticised in Brazil, by Candido Mendes de Almeida. In his extensive prologue to *Direito Civil Ecclesiastico*, the jurist states that in order to defend the *placet* for particular norms, Monte did not only resort to an author condemned by the Index (Lequeux), but seemed to ignore that the Holy See had rejected this type of secular control in 1486, with Pope Innocent VIII's Bull *Olim*, and that furthermore King John II of Portugal himself had revoked this *placet* in 1487.[175] But the feature of Monte's exposition that most seems to have upset Mendes de Almeida is his silence. The silence about the pontifical bulls issued between the 17th and 18th centuries against the model of limited *placet* favoured by the Bishop of Rio de Janeiro.[176] And the silence in the presentation of the Brazilian legislation, without the inclusion "of the slightest protest and reflection".[177] Mendes de Almeida raises two hypotheses to explain Monte's lack of words: either cowardice[178] or opportun-

173 Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 25r.

174 "XXVIII. Ai Vescovi, senza il permesso del Governo, non è lecito neanche promulgare le Lettere apostoliche", as in Enciclica Quanta Cura (1864).

175 CMA, I, ccccxi.

176 CMA, I, ccccxii.

177 Mendes de Almeida adds that a concern to remain strictly legal would not justify Monte's lack of comment: "Recorre ao silêncio, silêncio reprovador sem dúvida, que nem ao bispo, nem ao escritor cabia, visto que mesmo pela legislação civil as análises razoáveis da Constituição e das Leis são permitidas", as in CMA, I, ccccxii–ccccxiii.

178 When he becomes exasperated with the treatment of the *placet* as an issue of *jure constituendo*, Mendes de Almeida raises the hypothesis of cowardice on the part of the Bishop of Rio de Janeiro. Criticising the lack of mention of specific decisions by the Holy See against the *placet*, he concludes: "[Isso] indica, se não ignorância, medo impróprio de um pastor, encarregado de levar a bons e saudáveis pastos as suas ovelhas", as in CMA, I, ccccxii.

ism.[179] Vecchiotti is more complacent in his overall assessment of *Elementos*, considering both the good aspects and those that would be the result of a lack of "civil courage":

> Moreover, the spirit in which it [the book *Elementos*] is written and its general inclination are not bad, there is order and clarity in it; many subjects are treated with precision and exactitude, the work can also be corrected, and the author is a clergyman, a bishop, who for many years occupied the Episcopal See of Rio de Janeiro, and who perhaps more from pusillanimity, or rather lack of civil courage, than from conviction and principle has shown himself favourable to the pretensions of the [civil] government, even inclined to extend its prerogatives beyond the borders assigned to it.[180]

As is usually the case in times of polarisation, the criticism coming from ultramontane canonists sheds light on the jurisdictionalism of *Elementos*. But, leaving aside the strong stances of ultramontanists, it is undeniable that – whether by ignorance, cowardice, or prudence – Monte displays a much more moderate position than Vilella Tavares. Like the jurist from Pernambuco, Monte uses a syncretic bibliography. Unlike him, however, the bishop displays an effort of (at least textually) distancing himself from those he calls "regalists and Protestants" and, above all, he proposes softer solutions for the state apparatus in its relationship with the Church. His jurisdictionalism appears in certain choices, in certain emphases: the sympathy for Gallican authors; the defense of the *placet*, even if limited; the admissibility of state intervention in ecclesiastical matters, as long as this happens with the consensus or acceptance of the clergy. Monte's ideological position is also perceived from a structural perspective: after all, his solutions, though moderate, are shaped within a predominantly jurisdictionalist framework. And

179 Mendes de Almeida suggests that Monte's attitude could be considered opportunistic, recalling the precarious loyalty that the bishop sought to maintain simultaneously with the Church (especially the Holy See) and the state: "[s]e não devemos atribuir à ignorância, como justificar o seu silêncio? Parece que não era somente medo do poder que dispõe da força, havia outro pensamento. O espírito deste prelado era talhado para cortejar simultaneamente aos dois poderes. A Santa Sé contestando o *placet* ilimitado, ao governo dando aberta a um *placet* limitado. Dar conhecimento das bulas da Santa Sé [bulas entre séculos XVII e XVIII, citadas na mesma nota] era condenar-se a si próprio. Com um pastor desta tempera, nunca a Igreja conquistaria a sua liberdade e independência nos países em que fosse oprimida", as in CMA, I, ccccxii.

180 Osservazioni intorno all'opera intitolata "Elementos de Direito Ecclesiastico", del defunto Vescovo di Rio de Janeiro, Monte, e dell'opera "Compendio di Theologia Moral" (1869–1870), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 153, Fasc. 184, f. 26v.

there are Monte's silences, his ambiguity, and his refusal to take sides on certain occasions. Such factors, in the end, signal conformity, a tacit acceptance of the institutional status quo of the empire, which was mostly jurisdictionalist.

These remarks should not, however, overshadow the originality of Monte's moderate attitude. His attempt to distance himself from "regalists and Protestants" highlights the essentially relational character of any classification. Finally, this analysis invites us to nuance the dichotomy between jurisdictionalists and ultramontanists – not only due to the syncretism of ideas and references, but also in view of how authors that are ideologically close can provide quite different accounts on the same subjects.

The comparison between older and more recent manuals allows us to chronologically follow a relevant transition in the Brazilian culture in ecclesiastical law: from the hegemony of jurisdictionalism to the hegemony of ultramontanism. As we have seen, the predominance of a given perspective does not imply that contentious issues will be developed in the same way by all authors. Could the same be said about ultramontane handbooks, which praised orthodoxy and, consequently, uniformity? Fontoura's *Lições* is a good example both of the transition I mentioned (after all, it is the first predominantly ultramontane handbook) and of creative solutions, especially if compared to the writings of another ultramontanist, Candido Mendes de Almeida.

Like the Brazilian canonists who preceded him, Fontoura conceives the Church as a "complete and independent" society, with its own finality and the means to achieve it.[181] But when referring to the relations between Church and state, he has different concerns. Instead of fearing the interference of one institution over the other, as occurs when the jurisdictionalist stance prevails, Fontoura is concerned with absolute independence, that is, with the trends of secularisation[182] and anticlericalism which had become popular in Brazil since the 1870s.[183] Fontoura follows the criticism consoli-

181 EGF, I, 91.

182 On secularisation as a historicised narrative, developed during the "culture wars" of the 19th century, with an agenda comprising the political and legal separation between state and Church, the concept of religion as an aspect of private life, the "disenchantment of the world", etc., in its multiple forms of expression and relations with religious perspectives, see Borutta (2010).

183 I am referring to the Brazilian "Generation of 1870", a politico-intellectual movement formed by republican liberals, new liberals, positivists, federalists, etc. Among the move-

dated by Pope Pius IX in the *Syllabus* of 1864, recalling the centrality of the divine element in society and emphasising the need for subordination between institutions. Fontoura states:

> While the means for each of these societies to achieve their ends are diverse, there must nevertheless be some subordination of one to the other. The separation of powers does not mean absolute independence. The complete secularisation of civil power is the negation of the divine origin of power. To give social power any other primary origin than God is to degrade human nature by subjecting it unduly to a fellow human being. To secularise power is to destroy it […] The ideal of revolution, of contemporary radicalism, is the completely secularised society, living independently of God.[184]

The subordination that Fontoura mentions, following his predominantly ultramontane narrative, is that of the state to the Church. The canonist explains its exact terms by proposing three hypothetical arrangements. He dismisses the hypothesis that the Church enjoyed direct power over matters of state;[185] after all, that would make the distinction between spiritual and temporal power disappear.[186] He supports the Church's indirect power but discards the hypothesis that it should be exercised via spiritual acts only, since this would imply the "destruction of the fullness of power" of the pope.[187] The option favoured by Fontoura is that the Church, in exercising its indirect power over the state, was able to employ spiritual as well as temporal means. His reasoning is similar to that of Vecchiotti in his opinion on Monte's work, with more prominence for the pontiff as a supervisor of secular power:

> They are two distinct powers, but the temporal power cannot fail to be subordinate, even if indirectly, to the spiritual power, which is superior. To achieve this subjection, the Church, represented by the Sovereign Pontiff, can use even temporal means; the constant tradition of the Church confirms this assertion. The Roman Pontiff has used temporal means to call Christian kings to the fulfillment of their duties. This opinion is in conformity with theological reason. Indeed, kings are

ment's shared concerns were the secularisation of science, politics, and state institutions. For more on the "Generation of 1870", see Alonso (2002). Regarding the movement's jurists, including their defense of more "modern", "scientific", and "secularised" conceptions of law, to the detriment of conceptions associated to religion, see Lima Lopes (2014).

184 EGF, I, 141–142.

185 EGF, I, 143.

186 EGF, I, 145.

187 EGF, I, 146.

> subjects in relation to the Roman Pontiff and, as such, they must fulfill the obligations inherent to their state, and if they fail to do so, they must be subject to the temporal and spiritual penalties decreed by the representative of the One to whom all power in heaven and on earth has been given.[188]

Like Vecchiotti, Fontoura sees a natural and necessary link between the influence of the spiritual power on the temporal power and the conservation of order and harmony in society.[189] The Brazilian canonist combines this perspective with civilising discourses that are also employed by other ultramontanists (such as, e. g., a positive view of the Middle Ages due to the central role of the papacy, the conception of the history of the papacy as "the history of true civilisation", etc.).

Mendes de Almeida, in the introduction to *Direito Civil Ecclesiastico*, offers a similar outline of the relations between ecclesiastical and secular powers. He approaches the themes of autonomy, independence, and superiority of the Church over the state[190] and also suggests that subordination is linked to a natural harmony in legislation: "And if the Church […] is the kingdom of God on earth, this homogeneity of views, feelings, and aspirations must always be the desideratum of the two legislations, spiritual and temporal; in particular, the second [should be] subordinated to the first, as its natural corollary or derivation."[191] Reacting to the jurisdictionalist conception of a "purely spiritual" Church, present in the 1772 Statutes of the University of Coimbra, Mendes de Almeida defends the legitimacy of the Church adopting material means to achieve its goals.[192] To do so, he relies on the writings of Luigi Taparelli d'Azeglio (1793–1862), a Torinese Jesuit who had modernised Tomist scholastics during the *Risorgimento*.[193] But, beyond the as-

188 EGF, I, 145.
189 EGF, I, 143.
190 CMA, I, xlii.
191 CMA, I, x.
192 CMA, I, ccxi–ccxiii.
193 Giovanni Vian points out that, in face of the diffusion of anticlerical ideas during the first half of the 19th century in Italy, and the increasingly intense reactions of Pope Pius IX, Taparelli incorporated into his Tomist writings ideas from intransigent Catholicism (the "Italian variant" of ultramontanism) and antiliberalism. Even before the revolutions of 1848, Taparelli made reference to counter-revolutionary authors in his texts (e. g. Joseph De Maistre and Louis de Bonald). Nevertheless, it is noteworthy that even he did not escape a certain syncretism of references: in the excerpt highlighted by Mendes de Almeida, Taparelli favourably cites Gian Domenico Romagnosi, a liberal jurist and Freemason. Taparelli uses Romagnosi to claim that any social government, whether in the context of

pects addressed by Fontoura in his approach to the relations between Church and state, Mendes de Almeida emphasises that the clergy has the obligation to resist abusive temporal laws, and could even prescribe the faithful to do the same.[194] The author's stance corresponds with a more combative (and historicist) ultramontanism, compatible with the objectives of dismantling jurisdictionalist conceptions and awakening the conscience of the still timid Brazilian clergy of the 1860s.[195]

Like Fontoura, Mendes de Almeida is concerned with the secularisation of the state, but, unlike the canonist from São Paulo, he establishes an arc of historical continuity between this phenomenon and the transformations of jurisdictionalism after the Protestant Reformation. The subordination of the spiritual authority to the secular power, implemented by many jurisdictionalist regimes over time, would have resulted in the victory of rationalism, as well as in the complete independence of the state in relation to the Church and to God. In short, all these events were part of a long-term movement of "preponderance of matter over spirit" and, thus, of "inversion of all order".[196] It may seem paradoxical that a religious state would turn into a state without religion or even an anti-religious state. But such reasoning is

the state or the Church, has four basic elements: its ultimate end, its particular end as an association, the physical means to achieve its ends, and the physiological means to direct the will of the governed in the use of the physical means. Governing thus emerges as the art of setting in motion physiological means obliging the governed to make use of physical means for the attainment of certain ends. In short, it means that government necessarily involves physical aspects, even if the ends to be achieved are spiritual, as in the case of the Church, according to CMA, I, ccxi–ccxiii. For more on Taparelli, see Vian (2013).

194 CMA, I, xlii.

195 An excerpt that demonstrates this combative stance, calling for the deconstruction of Brazilian institutional jurisdictionalism, is the following: "[O] que é, pois, conveniente e indispensável para todo o católico é a *emancipação da Igreja no Brasil*, e para obter-se este *desideratum* devem eclesiásticos e seculares sob a direção do episcopado empregar todos os esforços legítimos, pois o interesse é comum. É mister preparar os espíritos por meio de uma discussão franca, leal e decidida na imprensa e na tribuna, para arrastar o governo, pela voz da opinião pública, a entender-se sinceramente com a Santa Sé, de modo a poder-se organizar a Igreja do Brasil", as in CMA, I, ccccxv.

196 "[…] a doutrina da primazia do poder temporal sobre o espiritual ecoou com doçura ao ouvido dos monarcas católicos [da primeira modernidade]. Não arcaram logo com afoiteza contra a Igreja, por meio de seus legistas; mas com o valioso emprego ora da hipocrisia, ora da força, conseguiram a *secularização do Estado*, a sua total independência da Igreja, e sobre ela primando. […] A preeminência do espírito sobre a matéria, ninguém ousaria hoje contestá-lo. Eis o fundamento da primazia do poder espiritual sobre o temporal. Esta doutrina foi aceita e reconhecida na sociedade cristã até a Reforma Protestante. O galica-

compatible with the historicist perspective of Mendes de Almeida, which operates by combating ideas and practices that do not fit into the framework of the author's ultramontane positions. The emphasis on the continuity between jurisdictionalism and secularism can also be explained by certain features of the Brazilian political and cultural scenario by the time *Direito Civil Ecclesiastico* was published. During the 1860s, the Brazilian state had significant impact on the ecclesiastical administration;[197] at the same time, ideas on secularisation were beginning to emerge in the country's intellectual circles. Fontoura, in contrast, sees secularisation as a typically contemporary problem. He associates it with the exhaustion of the jurisdictionalist model of the empire, as well as with the strengthening of discourses on the separation between Church and state, typical traits of the 1880s. In spite of the fact that both works have predominantly ultramontane narratives, the period of more than twenty years that separates them becomes apparent.

Regarding the *placet*, Mendes de Almeida confirms the combative stance I have already pointed out. He considers the *placet* to general, dogmatic and disciplinary norms to be a recent creation; in the case of Portugal, a product of Pombalism. He proves this with a long historical digression, in which he shows that the *placet* dates back to the ancient *Concordia* established between King D. Pedro I of Portugal ("Pedro Cru") and his clergy, in 1360 or 1361.[198] Mendes de Almeida suggests that this institution only allowed the control of particular norms of grace and justice.[199] According to the jurist, in order to justify the general control established by the Pombalist regime over documents issued by the Holy See via the Law of 6 May 1765,[200] the Marquis of

nismo criou a doutrina dos dois poderes iguais e independentes. O racionalismo, a *completa secularização* do Estado […]", as in CMA, I, cclxxxviii–cclxxxix.

197 This is evidenced by the publication of a compilation of decisions by the Council of State on ecclesiastical affairs in 1869. Not all the listed decisions can be classified as strictly jurisdictionalist; in fact, one of the objectives of this book is precisely to demonstrate that decisions, whether from the Brazilian government or the Holy See, are more complex than the dichotomy "state jurisdictionalism versus Church ultramontanism". However, the diffusion of such publication proves the symbolic and concrete force that the Council of State (and, consequently, the empire) enjoyed in the administrative daily life of the Church. From an ultramontane perspective, such strength could be interpreted as a disturbance, as jurisdictionalist interference.

198 CMA, I, ccclxlviii.

199 CMA, I, ccccxi.

200 According to the Law of 6 May 1765, bulls, briefs, and rescripts coming from Rome without the royal *placet* would be considered null and void, and those who used or kept

Pombal minimised the revocation by King D. João II, in 1487, of the *Concordia* of Pedro Cru.[201] Pombal further supported the legitimacy of his own legislation by invoking the *Alvará* of 1495, also of King D. João II, which detailed the "aid of the secular arm" to the local ecclesiastical jurisdiction.[202] These norms had made their way to the *Ordenações Filipinas*, Book 2, Title 8, Paragraphs 1, 2, 3, and 4. According to Mendes de Almeida, however, the *Alvará* of 1495 did not necessarily imply the return of Pedro Cru's *placet*.[203] Nor did it establish a *placet* to general laws: "if [the *Alvará* of 1495] was an indirect impediment to the [immediate] execution of apostolic letters in matters of grace and justice, it was not a clear and general prohibition for all bulls and briefs, the examination [by secular authorities] falling only on those rescripts that needed the secular arm."[204] Defending the existence of a very limited and intermittent *placet* before Pombal, Mendes de Almeida cites 17th-century jurists who considered that the *placet* had been abandoned or did not count as a majestic right.[205] In conclusion, Mendes de Almeida affirms that the *placet* as implemented by Pombal did not have "immemorial roots". It was rather an isolated and recent political creation, contrary to remote and contemporary pontifical legislation, and associated with a misguided historical discourse:

> The ancient *placet* had nothing to do with dogmatic and disciplinary matters, but only with those of grace and justice, in which private individuals intervened. Pombal embraced everything in 1765 [Law of 6 May 1765], by means of two scandalous falsehoods, the immemorial custom of the kingdom, and the broadness of the examination [, which would comprise] all sorts of apostolic letters.[206]

Mendes de Almeida regards the *placet* established by the Constitution of the Empire of Brazil as unlimited and, thus, a continuation of the Pombaline policies of state control over ecclesiastical institutions. It is no surprise, then, that he displays strong opposition to it:

these documents, or transmitted their content, would be subjected to the penalty of confiscation of property. See: Collecção dos Negocios de Roma no Reinado de El-Rey Dom José I (1874 [1755–1760]), 213–215.

201 CMA, I, cccci–ccccii.

202 CMA, I, ccccii.

203 CMA, I, ccccii.

204 CMA, I, cccciii.

205 CMA, I, cccciv–ccccv.

206 CMA, I, ccccvii.

> A provision such as that of § 14 of Article 102 is a Procrustean bed for Religion, and can only bear bitter fruit. A bad government clinging to it [the provision] can open an era of bad days for the nation. Alas, the modern *placet*, created only to dishonour the Church, rendering it suspicious for the faithful, does not have venerable antiquity in its favour. It dates from the absolute regime, and was one of the monuments left by Pombal.[207]

Mendes de Almeida also offers an important (though certainly biased) clue to the practical application of the *placet* during the empire. He states that the *placet*, "besides being an odious pretension […] today is of complete ineffectiveness", as pontifical documents were published in the country – and the rules they contained were obeyed – despite the civil government.[208] Among the books analysed in this section, only *Direito Civil Ecclesiastico* offers this information.

Fontoura presents a different discourse, in certain aspects reminiscent of Monte's *Elementos*. Like the Bishop of Rio de Janeiro, he makes a historical digression when addressing the limited *placet*, associating it with the crisis of papal authority during the Great Schism of the West. But Fontoura suggests that this type of *placet* was confined to the "abnormal times" of the 14th century. He acknowledges that, at most, after the Council of Constance the pope authorised the use of the *placet* for documents addressed to private individuals (especially indulgences), in order to avoid the greater risk of falsification.[209] In any case, Fontoura flatly rejects the unlimited *placet*, deeming it the fruit of the "religious revolution of the 16th century" (he refers to the rise of Protestantism),[210] and an institution opposed by the First Vatican Council.[211]

Considering this framework, how is the *placet* of the Brazilian Empire interpreted by Fontoura? As we have seen, Mendes de Almeida considers the constitutional *placet* to be unlimited and therefore unacceptable. In contrast, Fontoura believes that if one combined two constitutional provisions – Article 102, § 14., on the *placet*, and Article 5, which addresses Catholicism as the state religion – one might come to the conclusion that "[t]he Brazilian

207 CMA, I, ccclxlvii.
208 CMA, I, ccclxlvi.
209 EGF, II, 61–62.
210 EGF, II, 62.
211 EGF, II, 64.

placet is not the *placet* that this religion [Catholicism] condems from the start, but the *placet* that may be admitted."[212]

It might seem that, just like Monte, Fontoura is defending the limited *placet*. However, one must consider that thirty years had passed between *Elementos* and *Lições*, and that by the 1880s the canon from São Paulo had changed the terms of the question. Unlike the Brazilian canonists that preceded him, Fontoura does not see the *placet* as a state mechanism for controlling the effects of ecclesiastical norms. He perceives it rather as a state instrument to transform an ecclesiastical law into a civil law.[213] It is implied that, with the transformation, secular agents gain control over the effects of the norm made civil, not touching the effects of the ecclesiastical norm.

Fontoura's understanding of the *placet* is innovative because it neatly differentiates norms and jurisdictions. This is the arrangement that comes closest to reconciling a constitutional apparatus of jurisdictionalist tone with the autonomy between Church and state, a reconciliation that was requested as much by secularists as by ultramontanists in the late 19th century. Actually, the idea of autonomy with an emphasis on the differentiation of norms and jurisdictions is a typical product not only of secularist positions, but also of ultramontane views. It is as if the conflict of perspectives resulted in the absorption, albeit unconscious, of certain common premises – as if secularism and ultramontanism ended up influencing each other.[214] Within

212 EGF, II, 64–65.

213 EGF, II, 65.

214 In saying so, I recall the writings of Olaf Blaschke, who observes, along with the emergence of secularising discourses and practices during the 19th century, the establishment of forces and processes of "re-Christianisation" *(Rechristianisierung)* and "confessionalisation" *(Konfessionalisierung)*. This would allow the period to be interpreted as a "second age of confessionalisation", beyond the commonplace of the "age of secularization". In this interpretation, re-Christianisation (or ultramontanism, from a Catholic perspective) and secularisation are conflicting poles in coexistence, with periods of greater or lesser visibility, and ultimately mutually dependent: "Säkularisierung, Entkirchlichung und Konfessionalisierung bedingten sich auch im 19. Jahrhundert gegenseitig. Für beide Epochen wird zunehmend die Koexistenz beider Prozesse hervorgehoben. […] Drei große Säkularisierungswellen glaubt Hartmut Lehmann erkennen zu können: von 1789 bis 1815, von 1848 bis 1878 und schließlich vom Weltkrieg bis 1945, die jeweils Reaktionen provozierten. Die drei frömmigkeitsgeschichtlichen Auswirkungen zeigten sich genau in den Zwischenzeiten, zunächst von 1815 bis 1848, dann von 1878 bis 1914 und die letzte nach 1945, die inzwischen von einer neuen Säkularisierungphase abgelöst wurde. Insgesamt aber überschnitten und beeinflußten sich Säkularisierung und Rechristianisierung", as in Blaschke (2000) 60–61.

this framework, the greater autonomy came to jeopardise only the jurisdictionalist dispositions of the Criminal Code (e. g. Article 81). After all, the delimitation of norms and jurisdictions proposed by Fontoura implied that clerics could publish norms of the Holy See immediately and independently, without state control (since these were ecclesiastical norms) and, thus, without penal sanctions by the state.[215]

The possibility for the state to disagree with the Church in mixed matters (for example when the secular power refused to receive an ecclesiastical law as a civil one, thus preventing the civil effects intended by the Church from taking place) is not addressed. However, to dispel any notion that this might constitute a valid position, it is sufficient to recall another basic idea which, alongside autonomy of legislation and jurisdiction, guides the relations between Church and state for Fontoura. I refer to the subordination that the state owes to the Church, a typically ultramontane proposition, which, within this mentality, expresses the only possibility of harmony between these spheres. In this scenario, it would be virtually impossible for Church and state to defend conflicting positions in mixed matters.

Concluding this section, we may say that there are chronological and even generational transitions in the conception of Church and state relations. The second half of the 19th century witnesses the peak and decline of jurisdictionalism as a legal mentality. Jurists of the 1850s, like Vilella Tavares and Monte, embody the transition from a radical jurisdictionalism (of defense of the *iura circa sacra* and of unrestricted *placet*) to a moderate jurisdictionalism (of limited state control over the Church).

Mendes de Almeida, by the end of the 1860s, represents a decisive change, not only due to the fierce criticism he voices against the jurisdictionalism of jurists and that of the empire in general, but due to his depiction of the subordination of the state to the Church as a necessary element for the harmony between state and ecclesiastical institutions. Most importantly, Mendes de Almeida has the merit of having introduced this argument, under a positive light, within the repertoire of Brazilian culture of ecclesi-

215 "Os Bispos, por conseguinte, publicando em suas dioceses as Letras Apostólicas, não incorrem em crime de desobediência às autoridades legitimamente constituídas em seu país; pelo contrário, incorreriam nesse crime e estariam sujeitos às penas canônicas, se não tivessem a precisa coragem para obedecerem Àquele que foi constituído Chefe e Supremo Legislador da Egreja universal", as in EGF, II, 65.

astical law. He is the first mediator between ultramontanism and the Brazilian legal doctrine. His passionate battle against jurisdictionalism, however, results in a narrative still very dependent on this "enemy".

Fontoura, who, like Mendes de Almeida, supported ultramontanism, is clearly from a different generation of canonists. His repertoire, at least in the discussion on the relations between Church and state, has different elements to those of his predecessors. Although he still sustains that the *placet* is an outdated element of jurisdictionalism, Fontoura changes how the institution was usually conceived, marking the transition from combative ultramontanism to conciliatory ultramontanism. His emphasis on the differentiation of laws and jurisdictions reacts to another phenomenon, which leads him to adopt the terminology of another arena of discussion: the one where secularists were present, advocating a clear separation between Church and state. One may say, in fact, that Fontoura's position is reminiscent of Mendes de Almeida's – not when the latter addresses the *placet*, but when he separates canon law from ecclesiastical civil law. Yet, unlike Mendes de Almeida, Fontoura's main "enemy" is not the jurisdictionalism of the 1860s, but the secularism growing in the midst of the crisis of the empire in the 1880s.

We can therefore see that neither predominantly jurisdictionalist responses nor those that were predominantly ultramontane followed fixed patterns. There were singularities, there were creative solutions. The dichotomy between jurisdictionalists and ultramontanists cannot be understood via puristic, static models. The jurists' discourses on the relations between Church and state were developed in the midst of generational and relational changes, and were based on specific circumstances and interpretations.

	Vilella Tavares (1. ed.)	Vilella Tavares (2. ed.)	Monte	Fontoura	Mendes de Almeida
Relation between Church and state in ideal terms	Direct independence, and harmony. Mutual, indirect dependence	Direct independence, and harmony. Mutual, indirect dependence	Independence, and harmony	The Church subordinates the state	The Chuch subordinates the state
The *placet* in ideal terms	Unlimited	Limited	Limited	Limited	None
Brazilian *placet* in reality	Unlimited	Unlimited	Unlimited	Limited	Unlimited
Opinion on the Brazilian *placet* in reality	Respectable	Respectable	Respectable	Respectable	Objectionable

Table 2. Conclusions of the analysis of Brazilian handbooks of ecclesiastical law regarding the relations between Church and state, and the *placet*

1.4 The Brazilian *padroado*: a pontifical concession or a constitutional right?

Examining how the royal *padroado* – that is, the rights of patronage that allowed the secular ruler to participate in major affairs of ecclesiastical administration, in particular the nomination of bishops and the provision of benefices – is portrayed in legal manuals is a relevant step in order to gain a more precise understanding of how the relations between Church and state were conceived in Brazil. First, it is necessary to recall that the patronage of churches was a long-standing institution with global pervasiveness. The extensive historiography on the rights of patronage of Spanish and Portuguese monarchs over the New World should not blind us to the diffusion of this model of Church governance in other places and times.[216] The practice that individuals – clergy or laymen, private individuals or authorities – endowed benefices and received, in return, the privilege of appointing

216 On the Spanish royal *patronato* in early modern times, see Fernández Terricabras (2018), Arvizu (1996), Hera (1992), Leturia (1959), and Egaña (1958). On the Portuguese *padroado* see Xavier/Olival (2018), Pizzorusso (2012), Guimarães Sá (2010), and Paiva (2006).

the priests who would hold them originated in medieval Europe, and was common in Catholic territories during the early modern period.[217] The 19th century, with its characteristic waves of liberalism and secularisation, forced a readjustment of the patronage prerogatives reserved for royal and / or governmental authorities, a process that took shape by means of bulls, concordats, and even unilateral acts of the secular power.[218] Patronage remained on the agenda of negotiations between civil governments, local authorities, and the Holy See until its extinction via the institutional separation between Church and state, which in most cases took place between the end of the 19th and the beginning of the 20th century.

The *padroado* of the Empire of Brazil dates back to the privileges granted by the Holy See to Portugal from the 15th century onwards, which were intended to promote evangelisation in the territories discovered during the kingdom's expansionist voyages.[219] Until the mid-16th century, the Portuguese Crown shared with the Military Order of Christ[220] the right to present vacant benefices in overseas domains. In the Portuguese arrangement, the king appointed bishops (the *royal padroado*), and the order was in charge of providing the other benefices, such as canonries and parishes (the *padroado of the Order of Christ*).

This arrangement did not exactly represent a fierce competition between the two poles. The King of Portugal was at the head of the Order of Christ as of 1495. A few years later, the Bull *Praeclara charissimi* (1551) attached the Grand Mastership of this order (as well as of those of Avis and Santiago) to the Portuguese Crown in perpetuity and on a hereditary basis, making the rights of patronage of all overseas possessions coincide in the person of the king as the royal sovereign *and* as Grand Master. Later events, such as the formation and dissolution of the Iberian Union (1580–1640), and also the

217 On the development of Church patronage in the Low Middle Ages, see Landau (1975) and Devailly (1990). Regarding Church patronage during the early modern period in non-Iberian territories, see, for instance, Gazzaniga (2013), Naymo (2013), Rosa (1995), Greco (1986), and Normand (1977).

218 On Church patronage in the 19th century, see, for example, Müller (1991), Martínez de Codes (1992), Martínez (2013), Santirocchi (2015b), Wolf (2017) 101–106, Basdevant-Gaudemet (2019), Enríquez (2019), Cortés Guerrero (2020), and Ayrolo (2021).

219 My narrative on the Portuguese *padroado* is largely based on Paiva (2006) and Xavier / Olival (2018).

220 On the Portuguese military orders, see Olival (2004, 2018).

creation and strengthening of the (Roman) Congregation of *Propaganda Fide* (1622), caused some instability in patronage practices and gave rise to certain overlaps of competence – and even frictions – with the Holy See.[221] At the beginning of the 18th century, good relations were re-established, as can be seen from a concession made by Pope Benedict XIV to the Portuguese king that extended his prerogative of appointing the clergy to the archdiocese of Braga.[222] This peaceful scenario, however, was short-lived.

The reign of King D. José I (1750–1777) inaugurated a period of strong tutelage of the Crown over the clergy, a phenomenon that literature regards as the "statisation" or "de-universalisation" of the Portuguese Church.[223] This new policy resulted from the appointment of Sebastião José de Carvalho e Melo, the Marquis of Pombal, as Secretary of State. Familiar with political Jansenism and Austrian Josephinism, Pombal unilaterally implemented a series of modifications in the religious life and ecclesiastical geography of the kingdom.[224] The changes commonly remembered are the expulsion of the Jesuits in 1759 and the reform of the Inquisition between the 1760s and 1770s. But the Pombaline agenda was also characterised by: the appointment of bishops aligned with institutional jurisdictionalism, the establishing of other dioceses, the increasing of the scope of the royal *placet*, the legitimisation of appeals to the civil jurisdiction against ecclesiastics, and the consolidation of jurisdictionalist ideas via institutions of education (e.g. the University of Coimbra, after the reform of its statutes in 1772) and censorship (e. g. the Royal Censorial Board *[Real Mesa Censória]*). By fostering a national (and asymmetrical) alliance between the altar and the throne – to the point that jurists encouraged bishops to exercise functions reserved for the pontiff – Pombal aimed to weaken the role of the Holy See in Portuguese ecclesiastical and temporal affairs. Not by chance, the 1760s witnessed the rupture of diplomatic relations between the Apostolic See and Portugal. With this manoeuvre, Pombal aimed not only to undermine pontifical influence over the kingdom, but also to influence Rome's agenda himself, forcing the pope, with the support of other enlightened rulers, to suppress the Society of Jesus.

221 Pizzorusso (2012).

222 This concession was made via the Bull *In supremo apostolatus solio* of 11 December 1740.

223 "De-universalisation" *(desuniversalização)*, according to Santirocchi (2015a); "statisation" *(estatização)*, according to Silva Dias (1982).

224 See Sales Souza (2005, 2011).

Despite the frictions between secular and ecclesiastical jurisdictions – frictions that were felt even in Colonial Brazil – the Portuguese *padroado* under Pombal did not lose its status of a concession from the Holy See. This point was never under discussion in institutional circles. Moreover, peace with Rome was settled still during Pombal's rule, in August 1770. The reign of D. Maria I (1777–1816), while keeping a jurisdictionalist tone, did not alter this state of affairs.

This quick sketch of the history of the Portuguese *padroado* is meant to highlight the continuities and ruptures of the Brazilian *padroado* in relation to this model. The *padroado* that emerged after the independence is a hybrid, an institution resulting from a crossing of uncertainty and creativity, typical of the transition between the Portuguese *Ancien Régime* and the age of liberalism. In the exercise of patronage rights, the civil government took advantage of control mechanisms from Pombaline times, such as the universal *placet*, applicable to any pontifical document; and it also created new ways of establishing relations with the Church, via the suppression of immunities and the adoption of patterns of modern secular administration to address the clergy.

Beyond this, the question that would remain open throughout the empire regarded which source gave validity and legitimacy to the *padroado* in Brazil. This question is not exclusively Brazilian; it was a controversial matter also for the young republics of Iberian America.[225] In Brazil, two possible answers stood out. On one hand, continuity: the Brazilian *padroado* would be an extension of its Portuguese counterpart and, therefore, a pontifical concession; that is, the source of validity and legitimacy would be an act of the Apostolic See. On the other hand, rupture: the Brazilian *padroado* would be a constitutionally established right, based on the sovereignty of the emperor. This discourse gives a liberal tone to the idea, already present in the 18th century, that there were majestic rights over the Church; it introduces the patronal prerogatives in the list of these rights. And it defends that the *padroado* was created *ex nihilo*, independently of the Holy See, and attached to the terms of the Imperial Constitution, which were: that Catholicism was the official religion of Brazil (Article 5),[226] and that the emperor had the

225 See, for instance, Cortés Guerrero (2014) 99–122, and Enríquez (2014) 21–45.

226 Private worship (i.e. worship without the exterior form of a temple) was guaranteed to other religions, in line with the ideas of religious liberty of the time.

power to appoint bishops and provide ecclesiastical benefices as head of the executive branch (Article 102, II).

The importance of following the development of these answers in different authors is not merely theoretical. These lines of reasoning served as arguments for secular authorities (among them, the Council of State) to justify decisions in ecclesiastical matters. In other words, these answers were sometimes placed at the foundation of acts of governance of the Church.

The question about the source of the Brazilian *padroado* first arose with vehemence in the session of 16 October 1827 of the Chamber of Deputies, when the Commission of the Constitution and the Ecclesiastical Commission opined against granting the *placet* to the Bull *Praeclara Portugalliae*. Issued on 13 May 1827 by Pope Leo XII, the bull extended to D. Pedro I, then Emperor of Brazil, the rights and privileges previously granted to Portuguese monarchs as royal patrons and Grand Masters of the Order of Christ.[227] Among these prerogatives, the presentation of candidates to the episcopate and to other benefices, as well as the endowment of these benefices, were expressly mentioned. The pontiff also urged the Brazilian patron to comply with Session 24, *De reformatione*, of the Council of Trent, which addressed, among other things, the provision of benefices.

Although the bull answered to a request from D. Pedro I himself,[228] the Chamber of Deputies reacted quite negatively to the document. According to the commissions, the general content of the bull was manifestly offensive to the Constitution of the Empire, and based on a false cause. The deputies declared that, because of the historical association of the Order of Christ with the war against the "enemies of the faith" in Portuguese expansionist campaigns,[229] the bull clashed with liberal provisions of the Imperial Constitution, such as the tolerance of the domestic worship of other religions (Article 5), and the prohibition of persecution on religious grounds (Article 179, § 5.).

227 Bullarii Romani (1855) 56–60.

228 In 8 August 1826, Emperor D. Pedro I, via plenipotentiary Francisco Correia Vidigal, asked the Holy See to grant him the patronage rights that had previously belonged to the kings of Portugal with regard to Brazilian ecclesiastical benefices, according to Santirocchi (2015b) 85.

229 The Order of Christ was instrumental for the Portuguese military enterprises against Muslim peoples in North Africa between the 15th and 16th centuries, according to Olival (2005).

Furthermore, the commissions assumed that the Order of Christ had never acted as patron in Brazil. They argued that those who had founded, built, and endowed Brazilian churches had been the Portuguese monarchs – and they had done so as kings, not as grand masters. Whether well or ill intentioned, the deputies were mistaken: with the exception of the bishoprics, all the other ecclesiastical benefices in Brazil were administered by the King of Portugal as head of the Order of Christ. Yet, while defending this twisted point of view, it is noteworthy that the deputies invoked the same normative body as Pope Leo XII: the Council of Trent. The emphasis then was on the provisions about patronage (Session 14, *De reformatione*, Canon 12, and Session 25, *De reformatione*, Chapter 9). This fact is a first clue that Trent had sufficiently plasticity to be adapted to the tone of quite different narratives.

But the commissions did not want to leave any flank open to Rome. And to that end, it was not enough to deny the participation of the Order of Christ in the history of the *padroado* in Brazil. It was necessary to break more thoroughly with the Portuguese model. Therefore, the deputies postulated that the prerogatives of the Brazilian patronage were "inherent to the emperor's sovereignty". They would have been contemplated in the act of acclamation of the people which had acknowledged such sovereignty. Proof of this was that these prerogatives were fixed in the Imperial Constitution – as seen in Article 102. There was no need of a pontifical concession, or even of historical continuity, since there was the constitutional text – this is the great divide between the Portuguese and the Brazilian *padroado*.

This point of view was not unanimous. D. Marcos Antonio de Sousa, Bishop of Maranhão and dissenting vote in the Ecclesiastical Commission, argued that the right of presentation typical of the *padroado* was not intrinsic to sovereignty, nor was it a majestic right. In the prelate's view, the Bull *Praeclara Portugalliae* was issued to declare privileges and rights that already existed and had been granted by previous pontiffs. In his eyes, with the Imperial Constitution the Brazilian nation had only obliged itself to contribute to the preservation of these rights (via, e. g., the building of churches, the financial support for priests and seminaries, etc.), without having created or recognised them as inherent to the monarch. Moreover, it seemed unfair to him that one should claim that the bull went against the Imperial Constitution, since – besides its primarily declaratory character – the *Praeclara Portugalliae* did not seek to promote war or religious persecution; what it did

was to value the instruction and propagation of the Catholic faith in Brazil, operations which were and would continue to be carried out by non-violent means, such as catechesis.

Despite the favourable votes, the bull was not approved by the Chamber of Deputies. The Holy See only became aware of this fact decades later, in 1856, in the midst of (frustrated) negotiations for a concordat with the country.[230] But this rejection was not sufficient to build consensus on the nature of Brazilian patronage among jurists, nor among bureaucrats. Let us now concentrate on the former.

Vilella Tavares proves that antagonistic ideas about the source of the *padroado* could inhabit not only the same country but also the pages of the same book. In the first edition of the *Compendio*, this jurist begins by stating that the right of presentation that the emperor possessed in relation to parishes, besides being comprised in the Constitution of the Empire, derived from the patronage that the monarch exercised "according to the concessions and concordats that exist in this regard".[231] A few pages further on, the discourse in favour of the pontifical concession gives way to a discourse in favour of sovereignty: Vilella Tavares associates the right of presentation to the monarch "not only as Grand Master of the Order of Christ, but as sovereign of the empire".[232] The "not only" denotes a hesitation that the following sentence quickly dissipates. Relying on the Imperial Constitution and on resolutions of the executive branch, Vilella Tavares justifies the right of presentation in the "breadth of imperial powers" as well as in the "inalienable [power of] inspection [of the temporal sovereign over the Church]" and expressly dismisses the relevance of pontifical delegations concerning the Order of Christ. He ends with a sentence that echoes the deputies of 1827: "the soil and the churches of Brazil never belonged to the [military] orders".

This coexistence of contradictory arguments does not escape the Marquis of Olinda in his criticism of the manual.[233] Because of this, in the second edition of the *Compendio*, we see a more uniform discourse, which grounds

230 Santirocchi (2015b) 390–391.

231 JVT1, 218.

232 JVT1, 268.

233 Consulta de 31 de maio de 1856, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 56, f. 14r–14v.

the *padroado* only in Brazilian sovereignty and legislation. The provision of parish priests, for example, is portrayed as a right derived from the Imperial Constitution,[234] and exercised by the emperor as sovereign of Brazil.[235]

The emphasis of Vilella Tavares on these two elements – civil law and sovereignty – makes his next step understandable: to declare that the priests of the empire were public servants. A description of his approach to patronage would not be complete without this aspect. In the first edition of the *Compendio*, this issue appears when Vilella Tavares addresses the clerics' obligation to reside in the diocese and/or parish where they held a benefice. The jurist states that residence was not only an ecclesiastical duty, but also a civil obligation. And he justifies this statement precisely by using the argument that bishops and parish priests had the status of public servants on Brazilian soil.[236]

Vilella Tavares defended the notion that priests were public servants based on civil laws and *avisos*, especially on Article 10, § 7. of the Law n. 16 of 12 August 1834, known as the *Ato Adicional*. The jurist performs veritable interpretative gymnastics on this provision. According to the article, the provincial legislative assemblies were empowered to legislate on the creation and suppression of municipal and provincial public offices, as well as on the respective salaries. Paragraph 7 listed the offices that fell outside the legislative competence of the provinces; among them was the bishop (in addition to servants of the central administration who had tasks at the provincial level, such as presidents of province, officials of finance, navy, and army, among others).[237] Vilella Tavares interprets the exclusion of the prelates as relative, not absolute. In other words, he infers that prelates were general servants (regulated by the General Legislative Assembly and the executive

234 JVT2, 167.

235 JVT2, 214.

236 JVT1, 166, 217.

237 The original article reads thus: "Art. 10. Compete ás mesmas Assembléas [Legislativas Provinciais] legislar: […] § 7º Sobre a creação e suppressão dos empregos municipaes e provinciaes, e estabelecimento dos seus ordenados. São empregos municipaes e provinciaes todos os que existirem nos municipios e provincial, á excepção dos que dizem respeito á administração, arrecadação, e contabilidade da Fazenda Nacional; á administração da guerra e marinha, e dos correios geraes; dos cargos de Presidente de Provincia, Bispo, Commandante Superior da Guarda Nacional, membro das Relações e tribunaes superiores, e empregados das Faculdades de Medicina, Cursos Juridicos e Academias, em conformidade da doutrina do § 2º deste artigo", as in Lei n. 16 de 12 de agosto de 1834 (Brasil) (1834).

branch), and that parish priests and other beneficiaries were provincial servants. The *avisos* of 4 June 1832 and 23 August 1843 contributed to this interpretation, as they expressly characterised parish priests and cathedral canons as public servants.

The consequences of this reasoning were harsh: clerics suddenly found themselves subject not only to ecclesiastical penalties, but also to the secular penalties reserved for public servants. For example, if a bishop was absent from his residence without a leave from the secular power, Vilella Tavares endorsed the solution of the *aviso* of 23 August 1843 (which referred to cathedral canons), i. e. that the bishop should be punished according to the Article 157 of the Criminal Code, which stipulated a suspension of one to three years for abandonment of public office.

Regarding priests as public servants was compatible with – and even exacerbated the idea of – a national *padroado*, grounded on temporal sovereignty and the Imperial Constitution. Classifying the clergy as such was compatible with many state initiatives of rearranging the ecclesiastical and secular jurisdictions. These initiatives, unfolding between the end of the 1820s and the 1860s, enabled the participation of the temporal power in areas of clerical life upon which it did not traditionally act. The civil control over the obligation of residence is a good example. But there are others, such as the general prohibition of sending requests to the Holy See without prior authorisation from the civil government, even if aiming to obtain spiritual grace; this was the content of Article 81 of the Criminal Code of the Empire (1830). The universal dimension of the Church was thus pushed into a secondary position.

But the state's intention to broaden its scope of regulation and inspection was not justified by a crude thirst for power. The rationale for these new relations between Church and state combined elements from the canonical tradition, the rhetoric of majestic rights, and the praxis of modern liberal administration. The civil duty of ecclesiastical residence clearly mirrored the canonical obligation consolidated by the Council of Trent; at the same time, it found legitimacy in the monarch's "immemorial" rights of inspection over the Church, and also in the novel right of the state to supervise the services paid by the National Treasury. Whether the bishops and other beneficiaries would be convinced by this interpretation is another story.

The connection between the priest, the public servant, and the national Church was far from being an original proposition of Vilella Tavares, or even

of Brazilian legal culture. This line of thought is in tune with the phenomenon of "*fonctionnarisation*" of the clergy, which initiated in revolutionary France with the *Constitution civile du clergé* (1790), and subsisted with the Concordat of 1801, signed between Pope Pius VII and Napoleon Bonaparte, and with the Organic Articles of 1802.[238] The convergence between the figures of the priest and the public servant, promoted by the expression "minister of worship" (*ministre du culte*),[239] occurred *pari passu* to the massive nationalisation of ecclesiastical goods during the French Revolution. Deprived of autonomous means of subsistence, the French clergy came to depend on the public coffers to receive the *congrua*.[240] In other words, the "proprietary clergy" became the "salaried clergy". Qualifying bishops and parish priests as ministers of worship allowed the civil government to place them under closer surveillance and even to use them as an instrument for policing. That is, in return for the right to *congrua*, the state imposed on priests a series of obligations concerning their instruction, performance, and residence. It was a new level of jurisdictionalism, bureaucratized and nationalistic, seeking to create a body of ministers of worship that was primarily loyal to the nation. Not by accident, Napoleon required all persons with clerical careers to be French nationals,[241] to take an oath before civil authorities, and to denounce any attempt of rebellion against the state.[242] It is also quite significant that among the few titles still allowed to bishops was that of "*Citoyen*" ("Citizen").[243] Although some of these measures were not particularly effective, there is no doubt that,

238 On this very troubled period of French ecclesiastical history, see Maire (2019), Girollet (2010), and Dean (2004).

239 I say "convergence" because literature does not bring sufficient data to support the equivalence between the minister of worship and a public servant. The *fonctionnarisation* is more a historiographical than a historical concept. For more, see Basdevant-Gaudemet (2019).

240 The term *congrua* means "convenient" in Latin; for centuries it was used to address a priest's "convenient" remuneration, his "salary", usually corresponding to the revenues of the benefice he was attached to (this applied, of course, only until the rejection of the beneficial system by the Second Vatican Council).

241 If they were foreigners, they would need express permission from the government to act in the country, as seen in Article 32 of the *Articles Organiques de la Convention du 26 Messidor an IX*, Bulletin des Lois de la République Française (1802–1803) 21.

242 Articles 6 and 7 of the Concordat of 1801 between Pope Pius VII and the French Government, as in Lora (a cura di) (2003) 6–7.

243 Article 12 of the *Articles Organiques de la Convention du 26 Messidor an IX*, Bulletin des Lois de la République Française (1802–1803) 19.

at least on the level of discourse, the French Church was immersed in the administrative ethos of the national state.

Similar attempts to "functionalise" the Catholic clergy are observed on both sides of the Atlantic during the 19th century, more precisely in countries seeking to combine legal institutions from early modern times (e. g. patronage, majestic rights, etc.) with the administrative structure of a liberal state.[244] In Brazil, even though the priests were subsidised by the National Treasury, there was no detailed, minimally systematic legislation that clearly set out the rights and duties of the clergy vis-à-vis the state. There were no laws similar to the Organic Articles of France, nor a concordat with the Holy See. Jurists were left with a collection of sparse norms (fragments of the Constitution of the Empire, provisions of ordinary laws, decrees, *avisos*, etc.), which were like small pieces of coloured glass. Depending on the theoretical and practical background of the interpreter, they could be arranged in quite different mosaics. There was no general consensus, neither in doctrine nor in praxis.

Vilella Tavares himself was one of the protagonists of the debates that derived from this lack of consensus. A year before the first edition of the *Compendio*, in a series of public letters, the jurist argued with D. Romualdo Antonio de Seixas,[245] Archbishop of Salvador da Bahia, about the status of

244 Historians observed the *fonctionnarisation* of the clergy both in countries that adopted enlightened despotism in the late 18th century and in those that were founded on liberal constitutionalism in the 19th century. It must be remembered, however, that the functionalisation operated under the latter was more radical in comparison with that under the former, and may have involved a systematic nationalisation of Church property, the abolition of tithes, the restriction of ecclesiastical jurisdiction, the suppression of clerical privileges, and legal discourses that equated, or at least approximated, priests and officials of the civil administration in terms of status. Among the examples of functionalisation of the clergy under enlightened despotism, there is Austria under Joseph II (see Pranzl (2008), Goujard (2004), and Beringer (2002)), and Portugal under the Marquis of Pombal (see Paiva (2006) 171–213). Experiences of ecclesiastical functionalisation in the context of 19th-century constitutionalism are observed in liberal Spain (see Alonso García (2009), García Ruiz (2013), and Cañas de Pablos (2016)), in Portugal under *vintismo* and *cartismo* (see Faria (1987), Sardica (2002), and Duque Vieira (2002)) and in independent Argentina (see Di Stefano (2006, 2015) and Ayrolo (2012)), among other nations.

245 D. Romualdo Antonio de Seixas (1787–1860), Archbishop of Salvador da Bahia, was one of the major bishops – and political figures – of the Brazilian Empire. Born in Cametá, Pará, he was educated at the Seminary of Belém do Pará, with the support of his uncle, the priest (and later bishop) Romualdo de Sousa Coelho. Due to his sharp intellect, Seixas was sent to study at the Congregation of the Oratory of Saint Philip Neri in Lisbon,

the national parish priest as public servant. Vilella Tavares invoked three arguments in favour of functionalisation: (1) the parish priest was appointed by the emperor; (2) he received his *congrua* from the National Treasury; and (3) he was subject to the inspection by public authorities in the performance of all his duties, civil and ecclesiastical.[246] Vilella Tavares's discourse was filled with references to the Imperial Constitution and national legislation. D. Romualdo Seixas, in turn, argued that Vilella Tavares's reasoning endangered the liberties of the Church.[247] The prelate had already manifested, in the first half of the 19th century, a distinctive slant towards ultramontane ideas, proving that he was a transitional figure between the traditional "priests-politicians" and the new reform-oriented bishops. D. Romualdo

which was considered to be a diffuser of the principles of the Catholic Enlightenment, as opposed to the Jesuits. Back in Brazil, he devoted himself to teaching Latin, Rhetoric, and Philosophy at the Seminary of Belém do Pará. He also played several institutional roles in the diocese: he was parish priest of Cametá, archdeacon, vicar general, and, eventually, vicar capitular of Belém do Pará. For a long period his ecclesiastical career ran in parallel with his political trajectory. Before the Brazilian independence, Seixas twice held the position of president of the *junta provisória* of Pará (1821, 1823), the main administrative authority of the province; he was also appointed councillor of state in Lisbon, but never took office. After the independence, Seixas was elected member of the Chamber of Deputies for three terms (1826–1829, 1834–1837, and 1838–1841). He was appointed Archbishop of Salvador da Bahia by D. Pedro I in 1826, and confirmed by Pope Leo XII in 1827. After a dispute with D. Manoel do Monte Rodrigues d'Araújo, he celebrated the coronation of D. Pedro II in 1841. During his episcopate, Seixas strove to reform the ecclesiastical court of appeal and the Seminary of Salvador da Bahia. Known for his erudition, he produced a wide range of pastoral, legal, and political texts, edited in six volumes still during his lifetime. Overall, the literature considers Seixas as a precursor of ultramontanism, given that, in a mostly jurisdictionalist environment, he tirelessly defended the rights of the Church and the implementation of the Council of Trent, besides never hesitating to criticise unilateral state measures, according to Santirocchi (2015b) 107. His jurisdictionalist education and political ambition, typical traits of the ecclesiastical authorities of his generation (see, e. g., Monte Rodrigues d'Araújo), prevent classifying him as a proper ultramontanist, a label reserved for the later generation, distant from politics, and often educated in ultramontane institutions. In any case, Seixas consecrated – and was a supportive figure to – important ultramontane bishops, like D. Antonio de Macedo Costa and D. Sebastião Dias Laranjeira. For more on D. Romualdo Seixas and his context, see Peixoto d'Alencar (1864) 73–81, Blake (1902) 154–159, Mücke (2008), and Silva dos Santos (2014).

246 Carta do Doutor Jeronimo Vilella de Castro Tavares (1852–1853) 12–13.

247 D. Romualdo Seixas counters the three arguments of Vilella Tavares in Carta do Doutor Jeronimo Vilella de Castro Tavares (1852–1853) 156–174.

Seixas maintained that it was more appropriate to call the parish priest an ecclesiastical servant, that is, a servant of the Church, and to treat him as such. The archbishop believed that the priest's ties to the secular power were secondary in defining his status. The presentation by the patron would never have any effect without the collation from the ecclesiastical authority. The civil functions, or the civil effects of ecclesiastical functions, did not represent the most relevant part of the parish priest's *métier*. It was true that the *congrua* of the clergy came from the National Treasury, but this arrangement was, in fact, the result of a pontifical concession.[248] Moreover, in D. Romualdo Seixas's opinion, instead of focusing on the monarch's right of inspection, secular jurists would do better to bring to the fore the emperor's right / duty to protect the autonomy of the Church and its legal order.

But one did not have to lean towards ultramontanism to disagree with Vilella Tavares. The Marquis of Olinda, a moderate jurisdictionalist, in the multiple times he occupied higher government positions, was instrumental in consolidating among his peers the idea that the priest was not a public servant but only shared some of his traits (obligations, in particular).[249] In the report on the *Compendio*, though not expressing his opinion directly, the marquis stressed that certain excerpts of Vilella Tavares's book were not in harmony with his defense of the priest's status as a public servant. In this, Olinda was referring precisely to the parts on the independence of the Church to interpret and execute its own laws. The marquis also speculated

248 To explain why D. Romualdo Seixas associates the *congrua* with a pontifical concession, a brief digression is necessary. The funding of the clergy in Brazilian territory passed by the hands (and coffers) of the secular power as of the beginning of the overseas *padroado*. In his monograph on ecclesiastical tithes, Oscar de Oliveira shows that Portuguese kings collected tithes in Portuguese America as of the second half of the 16th century, authorised by their status as Grand Masters of the Order of Christ. Oliveira explains that, although no pontifical document had expressly granted the collecting of tithes to the Order of Christ, such concession was implicit in the bulls conferring patronage rights to the order, in view of its duty of endowing benefices. The connection between secular coffers and the *congruae* also goes back to the bulls that had created dioceses in Colonial Brazil; these documents sometimes associated the endowment of benefices with royal revenues (i. e. personal income of the monarch), which would supplement the tithes or replace them, in case of need. D. Romualdo Seixas refers to the *congrua* as a pontifical concession because he has the tithes (and its historical relationship with patronage) in mind. For more, see Oliveira (1964) 51–54, and Lima (2014).

249 See Chapter 3.3.

that, if a student compared the manual's perspective with the political reality of the country, he would not be able to explain why a priest did not interrupt the exercise of his ecclesiastical functions upon assuming office in the General Legislative Assembly, as Article 32 of the Imperial Constitution required of all public servants. With this move, Olinda subtly hinted at his opinion on the point.

However, the reprimands of the Council of State did not to dissuade Vilella Tavares from his opinion. In the second edition of the *Compendio*, he simply added that, "for better or for worse" (that is: despite any objection), bishops and parish priests were considered public servants in Brazil.[250]

Other authors of handbooks on ecclesiastical law did not endorse this idea. In the *Elementos* of D. Manoel do Monte, it does not even appear. This absence is explained not only by the fact that the author was a bishop (it might not be politically convenient for him to bear the label of "public servant", especially if he wanted to maintain good relations with the Apostolic See); Monte wrote his manual based mostly on references from early modern times. When he described the *padroado*, for example, he relied on the Frenchman Louis de Thomassin and the Portuguese Bento Cardoso Osório, both of whom were sympathetic to 17th-century jurisdictionalism.

Monte offers a general description of ecclesiastical and secular patronage, with a few mentions of a Brazilian royal *padroado*.[251] His concept of patronage can be summarised as the right of presentation achieved via the endowment of a church. Significantly, when Monte says this, he emphasises the relationship of dependency between the patron and the bishop. As we already know, the patron's right of presentation did not give rise to concrete results unless the bishop operated the collation of the presented candidate; but Monte adds that even to acquire the right of patronage, whether by founding, building, or endowing a church, the interested party needed to be authorised by the prelate. At the time *Elementos* was published, this reasoning could serve for public oratories,[252] but not for benefices under the emperor's patronage.

It is true that Monte includes the pontifical concession among the forms of acquisition of patronage, but he does not associate it with the Brazilian

250 JVT2, 126, 167.

251 MRA, II, 446–452.

252 To establish a private oratory, an indult from the Holy See was necessary, according to EGF, II, 71.

padroado. He never addresses patronage as a constitutional right, nor does he connect it to national sovereignty, and he remains silent about how the country's *padroado* was acquired. This omission, as well as Monte's more sober, descriptive tone, can be read as a diplomatic option, aimed at disturbing neither jurisdictionalists nor ultramontanists.

The approach to *padroado* in Fontoura's *Lições* is quite different. Fontoura mixed doctrinal description with historical recapitulation, and such intertwining is not gratuitous. Citing Roman bulls and even case law from the *Tribunal da Relação de Lisboa*, he sought to demonstrate that in Portugal and Brazil the rights of patronage had always been a grace offered by the pope to monarchs and military orders in recognition of services rendered to the Church, that is, a pontifical concession.[253] To conceive the *padroado* as a majestic right, he said, was a typical misunderstanding of jurisdictionalists, influenced by Protestants and Jansenists.[254] And such misunderstandings had serious consequences. According to Fontoura, the confusion between the two powers, with the transformation of the Church into "a section of the state", produced social disorder and would ultimately destroy ecclesiastical autonomy.[255] One can notice in passages such as these the distinctly ultramontane colours of his discourse, which are also revealed when Fontoura describes the bulls recently granted to the Brazilian emperors. For example, the author deems the Bull *Praeclara Portugalliae* (1827) to be fully in force; he does not even mention that this document was not approved by the parliament.[256] In fact, when addressing the topic of patronage, Fontoura turns to the *placet* with a tone of repudiation, especially in view of the way it was applied to the bull of erection of the diocese of Diamantina, in 1854. The civil decree approving the document included the correction that the emperor's patronage was independent of pontifical concession. This was a demonstration of "pure regalism", wrote an exasperated Fontoura.[257]

Decades earlier, Mendes de Almeida, in his prologue to *Direito Civil Eclesiástico*, had also criticised politicians and jurists with a jurisdictionalist view of the *padroado*. His use of historical sources may have inspired Fon-

253 EGF, II, 160.
254 EGF, II, 151.
255 EGF, II, 151, 152, 160.
256 EGF, II, 157.
257 EGF, II, 159.

toura. But there are relevant differences between the two jurists. In favouring the conception of patronage as a pontifical concession, Fontoura treated it as a reality in Brazil, a reality that lacked the recognition of the secular power, but that did not need it in order to exist. Mendes de Almeida shared the same conception of patronage, but did not deem it in force in Brazil, precisely because of the choices of the secular power. Mendes de Almeida is also more analytical: he uses historical sources more intensively, sometimes quoting entire pages of documents; and he aims to reflect on legal problems, rather than simply describing doctrine. In other words, Mendes de Almeida attacks jurisdictionalist stances of the Brazilian institutional *milieu* not only by using prescriptive language (that is, defending the liberty of the Church, the patronage as concession, etc.), but by analytically demonstrating how incoherent jurisdictionalist positions were.

Mendes de Almeida's main contribution in this sense was to show that unlike Portugal, which had remained faithful to the idea of *padroado* as concession even under 18th-century jurisdictionalism, Brazil established the unusual figure of the "forced patronage" *(padroado à força)*. He meant that the Brazilian *padroado* was unilaterally created by the secular power and incorporated into the political constitution.[258] In view of this, Mendes de Almeida saw no incompatibility between, on one hand, the *ex nihilo* establishment of the framework of relations between Church and state and, on the other, the equally arbitrary conception of the priest as a public servant. He considered Vilella Tavares to be in harmony with the modern Brazilian legislation,[259] in perfect harmony – with laws "originating from injustice and illegitimacy", and which completely disregarded the legal order of the Church.

The problem, according to Mendes de Almeida, was precisely the coexistence between forced patronage and canon law. According to canon law, the *padroado* necessarily resulted from a concession of the spiritual authority; it was neither possible for the "nation" to delegate this right, nor could the Crown possess it *a priori*.[260] When the General Legislative Assembly denied this premise in 1827, relying exclusively on the "constitutional patronage", it placed the country in a very precarious institutional relationship with the Apostolic See. Not by chance, Mendes de Almeida claimed that, from the

258 CMA, I, cclxxii.
259 CMA, I, cccxliii.
260 CMA, I, cclxx–cclxxiv.

point of view of canon law, the Brazilian *padroado* did not exist, and the provision of benefices upon presentation by the patron continued to come about only due to the "tolerance and kindness" of the pope.[261]

Other incompatibilities that Mendes de Almeida observed between the patronage according to canon law and the forced patronage concerned its titularity. The Imperial Constitution placed the right of presentation in the hands of the emperor as head of the executive branch, not as a "Catholic patron", "Son of the Church". This meant that patronage rights could only be delegated to officers of the executive, and that the directions of patronage could eventually be placed in the hands of non-Catholics, which represented a serious risk to the Church.[262]

The contrast between Mendes de Almeida and Fontoura in their treatment of patronage allows us to see, once again, the different expressions that ultramontanism could acquire in the pen of each jurist. Mendes de Almeida had a more analytical approach, and a more pessimistic tone; in his eyes, the Brazilian state had managed to create a "monster", the *padroado à força*, which was the same as no *padroado* at all. Fontoura, more optimistic, believed that the patronage installed by the pontifical bull of 1827 was in force despite eventual failures of the temporal power to recognise it. To explain this difference between the conclusions, it is useful to recall the institutional context of these two jurists: one of them was a layman, a senator, and the other a priest, a canon *(cônego)*. Moreover, the purpose of each book was quite different. Fontoura's work was intended to introduce seminarians to canon law – more precisely to canon law as deeply rooted in the perspective of the universal Church. It is natural, therefore, that the author represented the sources of the Holy See as documents whose authority the state and its law had to accept as superior. Mendes de Almeida's compilation, in turn, aimed at criticising recent ecclesiastical civil law, and intended to reach priests, secular bureaucrats, and jurists. In order to convince his readers of the defects of the state's perspective on *padroado*, the author chose to paint a picture of the ultimate consequences of this point of view, employing the strongest colours to show how, in the end, the Brazilian *padroado* reduced itself to nothing. These are different strategies – but both were embraced by ultramontanism.

261 CMA, I, cclxxx.
262 CMA, I, cclxxxi.

Differences can also be traced between authors of jurisdictionalist stamp; after all, not all of them agreed that priests were public servants. Monte diplomatically ignores the subject, and does not opine on the status of the Brazilian *padroado*. Vilella Tavares, in the first edition of his handbook, hesitates between *padroado* as concession and *padroado* as constitutional right, deciding for the latter in the subsequent edition. He keeps emphasising, nevertheless, the equivalence between priests and public servants, regardless of the criticism from jurisdictionalist colleagues.

The lack of consensus in theory was mirrored by a strategic use of definitions in practice. We shall see in Chapter 3 that, in practical cases, the concept of patronage remained open, and was tailored by the actors according to their needs, their intentions, and not always in a strictly coherent manner. The same can be said of the idea of the priest as public servant. In the end, these arguments were cards up the sleeve of the agents in their striving for solutions in the system of governance.

	Vilella Tavares (1. ed.)	Vilella Tavares (2. ed.)	Monte	Fontoura	Mendes de Almeida
Brazilian *padroado* in ideal terms	Pontifical concession and constitutional right	Constitutional right	Not found	Pontifical concession	Pontifical concession
Brazilian *padroado* in reality	Pontifical concession and constitutional right	Constitutional right	Not found	Pontifical concession, regardless of jurisdictionalist acts	Constitutional right, *padroado à força*
Opinion on priests as public servants	Compatible with the Brazilian *padroado* in reality	Compatible with the Brazilian *padroado* in reality	Not found	Not found	Compatible with the Brazilian *padroado* in reality, but objectionable

Table 3. Conclusions of the analysis of Brazilian handbooks of ecclesiastical law regarding the Brazilian *padroado*

1.5 Between past and present: the Council of Trent as a persistent and multifaced normative reference

Addressing the role of the Council of Trent in the governance of the Brazilian Church of the 19th century is a challenging task in view of the considerable leaps – both spatial and temporal – that must be taken into account in the analysis of sources. From the perspective of time, it should be remembered that the Tridentinum is a surprisingly durable normative body, on the one hand, and constantly changing, on the other. Its canons and chapters were developed in 25 sessions between 1545 and 1563.[263] And they remained in force until the coming of the *Codex Iuris Canonici* in 1917.

The Council of Trent is often associated with the Counter-Reformation. The term "Counter-Reformation" goes back to a historiographical tradition that emerged in the 1770s, and that regarded the changes undergone by the Catholic Church between the 16th and 17th centuries as a *reaction* to the spreading of Protestantism across European territory. This tradition was consolidated during the 19th century by Protestant historians who studied the Holy Roman Empire (among them Leopold von Ranke).[264] Even though it is employed to this day by specialised literature (and by school textbooks) to address the transformations of the Catholic Church during the early modern period, the term "Counter-Reformation" has had its meaning reinvented.[265] It no longer stands just for a reaction, but for the Catholic Church's *action*, to its initiative to reform itself, within (according to some authors) an "age of confessionalisation".[266]

The interpretation of the Tridentinum as part of a reaction to Protestantism is consistent with some of the most famous results of the council, such as

263 On the origin and development of the Council of Trent, see Jedin (1949–1975). Shorter introductions may be found in Prosperi (2001) and O'Malley (2013).

264 For a history of the concept of "Counter-Reformation", see Elkan (1914). An example of its use in 19th-century historiography can be found in Ranke (1852).

265 See Iserloh (1967), Evennett (1968), and Delumeau (1971).

266 The contribution of Wolfgang Reinhard to recent historiography should be highlighted. Instead of considering the Protestant Reformation and the Catholic Counter-Reformation as rigidly separated, he adopted the concept of the "age of confessionalisation", which encompasses both movements. With this term, he refers to the systematic effort of the Churches to protect and promote their respective identities, by means of formulations of orthodoxy and disciplinary mechanisms, elements which would prepare the foundations of the modern secular state. See Reinhard (1977, 1981, and 1989).

the doctrine on justification and the doctrine on the sacraments of ordination and marriage. Undoubtedly, these sections were composed, to a great extent, in response to Protestant theses. But the Council of Trent was also an expression of the impulses arising from within the Catholic Church, in parallel with – and even before – Martin Luther's attacks. These impulses concerned the disciplinary reform of ecclesiastical institutions and hierarchy. The cure of souls, for instance, had to undergo a thorough reorganisation. So did the Roman Curia (though its reform would not be the object of the Council of Trent). In order to portray the changes that the Church went through following the Council of Trent – in a way that emphasised their autonomy, variety, and wide scope – historians of the mid-20th century coined terms such as "Catholic reform",[267] "Catholic renewal",[268] "Early Modern Catholicism",[269] "Catholic Tridentinism",[270] and "Tridentine paradigm".[271] As alternatives to "Counter-Reformation", these terms were more effective to depict the pervasiveness of the Church's transformations across European and non-European territories, as well as the simultaneously local and global character of these changes.

At the centre of the normative framework of the Catholic Reform, the Council of Trent had pastoral effectiveness as its main objective. Hence the concern for a reorganisation of the cure of souls: it was a matter of conceiving the ecclesiastical benefice not so much as a source of income, but as a sacred office. It is on the basis of this principle that several priest-centred measures were established, such as the obligation of personal residence for benefice holders; the prohibition for one individual to hold multiple benefices; the ordinary's obligation to select, by means of knowledge and moral examinations, the most suitable person for a benefice, etc. All these measures convey the idea that priority was given to pastoral care, to the *salus aeterna animarum* of the faithful.

The Tridentinum placed the bishop in charge of coordinating this reform.[272] He was its protagonist. On his hands were, among many other

267 Jedin (1946) and Prodi (1964).
268 Po-Chia Hsia (1998).
269 O'Malley (2000).
270 Ditchfield (2013).
271 Prodi (2011).
272 "Indeed, the Council made it clear that the prime responsibility for reforming the church lay with its bishops, who alone possessed the authority needed for such an immense task.

obligations and prerogatives: the duty of residing in his diocese – and the power of controlling the residence of canons and parish priests; the duty of regularly visiting his diocese's parishes; the duty of watching over the education of the local clergy, fostering and administering the diocese's seminaries; the power of curbing disciplinary abuses using judicial and extrajudicial means; the duty of periodically rendering account of his government to the pope, by means of the *ad limina* visit; and the power as well as the duty to organise provincial councils and diocesan synods. With the aid of these instruments, the bishops were called to become role models to the other priests and, at the same time, guide the process of shaping a "professional clergy".[273]

The implementation of the decrees of the Council of Trent unfolded over a very long period. Until the *Codex Iuris Canonici* of 1917, the Tridentinum remained the main general normative reference in matters of ecclesiastical discipline. The calculus is simple: more than 350 years in force. It would be naïve, however, to think that the Council of Trent as elaborated by the Council Fathers was the same Council of Trent used by Brazilian ecclesiastics

This was all the more inescapable in that most of the proposed instruments of reform (provincial councils, synods, visitations, seminaries and so on) were either traditional or clearly lay within the jurisdiction of the bishops. As if to underline the point, where ordinary episcopal jurisdiction seemed insufficient for a particular task, Trent empowered bishops to act as delegates of the papacy, the purpose of which was to help them override the privileges and exemptions of chapters or religious orders within their dioceses rather than to gratuitously affirm papal supremacy, as has often been claimed. Indeed, the list of duties laid upon bishops by the Council was such a comprehensive one that it is clear that the strengthening of the episcopate in every respect, as the nodal point of reform, may be regarded as the corner stone of the counter-reformation Church. Thus even if Trent failed in the end to fully define quite what a bishop *was*, it was much less inhibited in declaring what he should *do*, and for all its shortcomings the Council did much to ensure that the Counter-Reformation church would be an episcopal church as much as a clerical one", as in Bergin (1999) 37. See also Jedin (1966).

273 According to Po-Chia Hsia, in addition to ecclesiastical discipline, the "professionalisation of the clergy" was associated with the unification of liturgical practices. This implied the use of canonically approved texts, such as the Roman catechism, the Roman breviary, and the Roman missal. Considering both aspects – disciplinary and liturgical – the author characterises the "professional clergy" as "more capable of resisting the infiltration of lay practices in sacramental life, better qualified to correct lay superstitions by teaching right doctrine and, on the whole, capable of guarding the holy from the profane and dispensing salvation to the laity", as in Po-Chia Hsia (1998) 121. See also Fantappiè (2013) 61–76.

and jurists in the 19th century. The text may have remained the same, but the uses and the interpretations were dynamic, changing according to multiple factors, in different directions. O'Malley explains these variations in this beautiful fragment, in which he emphasises the mediating role that different agents and institutions play in the interpretation – and even fabrication – of meanings of the Tridentinum:

> Its enactments [of the Council of Trent] surely did not pass pure into the church or into the world at large. They were mediated by the minds, hearts, ambitions, and fears of the human beings responsible for making them operative – popes, other rulers great and small, bishops, preachers, theologians, even painters and their patrons, and many others besides. The myths, misunderstandings, and misinformation about what the council actually enacted proliferated. They have enjoyed a long afterlife, and many are alive and well today, even in the sacred groves of academe. "Trent" thus took on a life of its own. It derived its authority from the growing prestige the council enjoyed. Although it included the council, it also included the postcouncil phenomena […]. It thus blurred the line between what the council actually legislated and intended and what happened afterward. We should not be surprised. […] Myths are inevitable, especially for a happening as complex and controversial as the Council of Trent.[274]

O'Malley highlights the separation between what the Council of Trent actually addressed and later readings, even "mythological" ones, that were attached to it over time.[275] Among them is the reading of the Holy See. Soon after the conclusion of the sessions, the pontiff sought to secure for himself the monopoly on the interpretation of the conciliar decrees. This movement of centralisation of the Apostolic See began with the Bull *Benedictus Deus* (1564) of Pope Pius IV, which ratified the council's dispositions and, at the same time, established that the pontiff had the exclusive prerogative of authentically interpreting the Tridentine norms. It was therefore forbidden for unauthorised parties to publish the conciliar acts as well as any kind of interpretation on the decrees of the Council of Trent (commentaries, glosses, annotations etc.), under penalty of excommunication.

Centralisation also appears in the restructuring of the Roman Curia into specialised collegiate organs, the congregations. Gradually, the pontifical monopoly over the authentic interpretation of the Council of Trent was delegated to one of these bodies. The starting point was 2 August 1564,

274 O'Malley (2013) 275.
275 See Emich (2015).

when, by means of the *motu proprio Alias Nos*, Pius IV instituted the cardinal commission *Sacra Congregatio super executione et observantia sacri Concilii Tridentini et aliarum reformationum*. This organ was entitled to issue, on demand and in consultative fashion, clarifications on the conciliar decrees. The final decisions remained in the hands of the pontiff. Later, Pope Pius V granted to this dicastery the faculty of interpreting some of the Tridentine dispositions in cases of minor gravity; more serious controversies continued to be forwarded to the pontiff. Finally, by means of the Bull *Immensa Aeterni Dei* (1588), Pope Sixtus V entrusted this organ with the exclusive power to interpret all disciplinary decrees of the Council of Trent, confirming the Sacred Congregation of the Council in the framework of the permanent congregations of cardinals.

Besides its interpretative function, the Congregation of the Council was invested with other means of *translating* the Council of Trent into the Catholic world. Over the centuries – and with some fluctuations – the congregation was responsible for maintaining the discipline of the ecclesiastical hierarchy within the Tridentine model, by granting dispensations and faculties; by controlling the residence of the episcopate; by analysing the diocesan reports accompanying the *ad limina* visits; and by overseeing the content of provincial councils and diocesan synods, that is, the local adaptations of Tridentine regulations. The decrees of the Congregation of the Council in response to questions and requests from ecclesiastics and laymen around the globe accumulated over time, giving rise to a rich tradition of case law on the Council of Trent, made available via private and official compilations.[276] This tradition, which began in the 16th century, would reach the Brazilian handbooks of ecclesiastical law of the 19th century.[277] I shall approach the activity of the Congregation of the Council in greater detail in Chapter 2.1. At this moment, I just wish to emphasise the dicastery's relevance in the shaping of a conception of the Council of Trent *after Trent*, a conception which seeks to balance, on one hand, local diversity and, on the other, a minimum of uniformity in the use of conciliar dispositions.

In addition to the decrees of the Congregation of the Council, the interpretation of the Tridentinum was transformed by other norms, created within and without the borders of the Holy See. I refer, for example, to

276 See Sinisi (2020) and Bosch Carrera (2002).
277 See Albani / Lehmann Martins (2020).

the pontifical documents that gave greater precision and operability to conciliary dispositions, such as the encyclical letter *Cum Illud* (1742) of Pope Benedict XIV, which aimed at ecclesiastical examinations. But then, there were also the local efforts of "receiving" the Council of Trent. From the closing of the council onwards, many initiatives, ecclesiastical and secular, were set in motion in order to implement the Tridentine dispositions in specific realities.[278] These efforts had to cope with different forms of local resistance and openness; moreover, the extent of the Holy See's information and intervention on the subject varied from full to none. Among these initiatives were "norms of reception" established by secular authorities, and also provincial councils,[279] diocesan synods, diocesan regulations, among and several other strategies led by the episcopate.

Regarding the reception of the Council of Trent in Portugal during the early modern period, the historiography tends to highlight two movements that follow opposite directions. On one side, there was the prompt acceptance of the conciliar decrees by Cardinal-Infante D. Henrique, regent of Portugal at the time of the council's conclusion. There was also the innovative edict of 19 March 1569 of King D. Sebastião, which, with unprecedented fidelity to the Tridentinum, acknowledged that ecclesiastical judges had a broad and autonomous jurisdiction over clerics and even laymen, thus wiping out the control commonly exercised by secular judges over ecclesiastical procedures until then.[280] On the other side, there were instances of resistance, difficulties, and, in broader terms, the non-immediate application of the reformist directives of the Council of Trent to the dioceses of the kingdom. This was due to several factors, such as the resilience of local customs, lack of resources, and the frictions and re-accommodations between the

278 The literature on the local interpretations and uses of the Council of Trent is quite vast. On the subject, an interesting and recently edited book, which encompasses different geographical regions (including Ibero-America and Asia) and varied perspectives (the genesis and the narratives on the Council of Trent, its relation with the Jesuits, the Protestants, the Inquisition etc.), is Catto / Prosperi (eds.) (2017). Other relevant recent contributions in the field may be found in Walter / Wassilowsky (Hg.) (2016) and François / Soen (eds.) (2018). A dossier recently organised by Benedetta Albani focuses on the tension between local and global dimensions regarding Tridentine marriage. See Albani (2019).

279 For general accounts on post-Tridentine provincial councils, see Caiazza (1992, 1995), Zarri (2003), and Regoli (2008).

280 For more on this edict, see Caetano (1965). For a recent comparative account, which considers the procedure of other absolutist monarchies, see Fernández Terricabras (2018).

episcopate and other Portuguese authorities, in view, for example, of the rights of patronage.[281] The resisting authorities could be ecclesiastical (military orders, cathedral chapters, etc.) or secular (civil judges, the monarch, etc.). Among the re-adjustments was precisely the revision of the abovementioned edict of 1569 which King D. Sebastião undertook in 1578, seeking to strike a balance between the claims of the episcopate and those of secular judges. This revision, which acknowledged the legitimacy of secular control over the ecclesiastical trials involving lay people, would be perpetuated via its inclusion in the last great compilation of Portuguese royal law, the *Ordenações Filipinas* (1595).[282] These two movements – of acceptance and rejection of the Council of Trent – can be found even during the Iberian Union (1580–1640), an interval at the end of which, according to José Pedro Paiva, the Tridentine reform reached a significant level of triumph in many respects. This is the case, for example, of the fulfillment of the duty of residence by the clergy with benefices.[283] In another text, on pastoral visitations, Paiva characterises these mechanisms as decisive for the implementation of the Tridentine reform in Portuguese dioceses between the 17th and 18th centuries, despite the ascension of Pombalism, and the consequent increase of restrictions over the episcopal jurisdiction at the end of this period.[284] Thus, the reception of the Council of Trent in Portugal is simple only in appearance. And there are still many historiographical gaps.[285]

281 For more on the presence of the Council of Trent in Portugal during the early modern period, from the dual perspective of reception and resistance to the conciliar decrees, see: Caetano (1965) and Polónia Silva (1990), on the reception of the Tridentinum while the council was in its second phase; Palomo (2006), Paiva (2010, 2014), for a historiographical overview.

282 See Caetano (1965) and Fernández Terricabras (2018) 239–240.

283 "En algunos aspectos considerados por los padres de Trento esenciales para la reforma disciplinar del clero, como la residencia, la no acumulación de beneficios o el control episcopal sobre la admisión a las órdenes, los avances fueron significativos. En relación con el primero de ellos, el problema quedó practicamente resuelto durante el siglo XVII. Los resultados de las visitas pastorales lo confirman. El hecho de que las faltas detectadas fuesen puntuales y se institucionalizase la petición de licencias a los prelados para hacer viable la ausencia temporal de la parroquia, muestra cómo la residencia en el beneficio había enraizado en el medio eclesiástico y cómo, a su vez, los obispos habían ido aumentando su capacidad de vigilancia sobre el clero diocesano", as in Paiva (2010) 19–20.

284 Paiva (2000a).

285 On the historiographical gaps in the field, see the assessments of Costa (2009) and Paiva (2014).

The gap concerning the uses of the Tridentinum in overseas territories – and particularly in Portuguese America – is beginning to be filled. Even though part of the historiography argues that a consistent, systematic employment of Tridentine dispositions was achieved from the 18th century onwards in Colonial Brazil – especially with the First Constitutions of the Archbishopric of Bahia of 1707 –[286] some studies indicate that the council was observed in Brazilian lands even earlier. These works suggest that assessing the impact of the Council of Trent on Portuguese America involves looking at interactions beyond the diocesan level and asking questions other than whether the council's rules were followed to the letter.

Evergton Sales Souza points out the shortcomings of "legalistic" questions when he recalls, on one hand, the irregularity of the implementation of the Council of Trent in Europe and, on the other, the "atrophy" of the organisation of ecclesiastical territory in early modern Brazil.[287] The diocese of Bahia was the first and only one in the colony between 1551 and 1676, a factor that, along with low demographic numbers and economic impoverishment, initially hindered the full accomplishment of certain conciliar dispositions (pastoral visitation, seminaries, etc.). In view of these difficulties, the author seeks evidence for the formation of a "Tridentine Christendom" in the relations that the bishops maintained with other actors responsible for ecclesiastical governance, such as the Crown, the Holy See, and the missionary orders. Such relations would have increased the space for episcopal action and power, if one considers the regulating *alvarás* and the bulls of faculties issued, respectively, by the monarch and by the Apostolic See. As for the religious orders, their work is interpreted as complementary to that of the bishops in the "religious framing" of the faithful, especially when taking into account the shortage of secular priests and the concern that both segments, diocesan and missionary, had about the "economy of sacraments" in Brazilian lands. Summing up, these two elements, the strengthening of the bishops' scope of action and the focus on sacramental care, indicate conformity with Tridentine directives, according to Sales Souza.

286 See, for instance, Azzi (2005) and Lage (2011). Nevertheless, Lana Lage considers that the "principles" that guided the Tridentine reform were already present at the beginning of the colonisation, by means of the Jesuits, whose order, according to the author, embodied the "Tridentine spirit" even before the first sessions of the Council of Trent.

287 Sales Souza (2014) 177–178.

Bruno Feitler agrees that the presence of the Council of Trent in Colonial Brazil must be assessed beyond the idea of a "legalistic" or, in his words, "mechanical and complete" reception. The author uses examples taken from the correspondence of ecclesiastics and laymen with the Portuguese Crown during the 17th century to throw light on administrative practices which, even though escaping the exact terms of the council, were in consonance with what he calls the "reformist spirit" or "Tridentine ideal". Such is the case with the bishop's task of selecting candidates for the provision of benefices: he did so according to procedures that, authorised by the Crown, deviated from the words of the council, but the Tridentine goal of searching for the most suitable candidates was, nevertheless, respected.[288]

Whether one agrees or not with these new approaches, which seem to privilege the malleable and teleological dimension of canon law,[289] there is little room for dispute about the relevance of the First Constitutions of the Archbishopric of Bahia (1707), a normative corpus that was, in fact, a translation of the Council of Trent for the Brazilian colonial context.[290] The

288 Feitler notes that, in 1671 and 1683, the bishops of Bahia received permission from the prince regent to select candidates for benefices without organising examinations, in contradiction with the Council of Trent, Session 24, *De reformatione*, Canon 18, which demanded examinations. The author interprets it as a case in which the non-application of the Tridentine norm is nevertheless in harmony with the "spirit" of the council, as bishops sought the best candidates available in terms of instruction, suitability, and social origin: "[…] o não respeito do que era preconizado por Trento (os exames feitos por ao menos três examinadores), tinha os mesmos objectivos que a regra tridentina: prover dignidades, vigararias e outros benefícios, sob o encargo da consciência do prelado, para a boa execução do cerimonial catedralício e a administração dos sacramentos aos fiéis. Ou seja, a não aplicação da norma tridentina a respeito do provimento de cargos eclesiásticos não implicava necessariamente a não observação dos ideais tridentinos quanto ao fim dessa mesma norma: o provimento de candidatos, quando não perfeitos, ao menos os melhores possíveis no plano da sua formação, capacidade e origem social", as in Feitler (2014) 169.

289 See Grossi (2003).

290 José Pedro Paiva offers the following concept for diocesan constitutions: "um instrumento jurídico-pastoral formado pelas leis, decretos ou disposições que serviam para regulamentar a vida de uma diocese. […] o conjunto de disposições de direito, posturas disciplinares, orientações litúrgicas e doutrinais – fundadas no direito canónico, na tradição da Igreja e em práticas consuetudinárias locais – e que eram impostas pelos prelados sobre eclesiásticos e leigos. Podiam ser sinodais, se resultavam de acordos obtidos em sínodo, ou extra-sinodais, se nasciam de uma determinação oriunda da autoridade do bispo", as in Paiva (2000b) 9. For more contextual details regarding the First Constitutions of the Archbishopric of Bahia, see Feitler / Sales Souza (2010).

translation I mention is in the cultural sense.[291] The Constitutions are not a simple repetition of the Tridentine decrees, but an interpretation of these dispositions in the light of local particularities, possibilities and needs. Moreover, they take into consideration the ecclesiastical normative framework which, after Trent, was already part of the legal culture of the Portuguese Empire. The Constitutions are, to a major extent, the product of the efforts of D. Sebastião Monteiro da Vide, Archbishop of Salvador da Bahia at the beginning of the 18th century, who was responsible for crafting the document and gathering the clergy in a diocesan synod[292] to approve it, in 1707. This event constitutes a response – late and unique in the context of Portuguese America – to the exhortation of the Council of Trent for the periodic holding of provincial councils and diocesan synods, as seen in Session 24, *De reformatione*, Canon 2. According to Feitler and Sales Souza, with his efforts in favour of the Constitutions, Monteiro da Vide manifested a double intention: to strengthen the implementation of Tridentine dispositions in the Archbishopric of Bahia and, at the same time, to exalt the figure of the archbishop as an example of catholicity.[293] But this was not an original plan. His predecessors had encouraged similar projects, and even the lay population expressed interest in a regulation of this kind, which would give greater stability to ecclesiastical justice.[294]

Regarding structure, the Constitutions of Bahia are divided into five books, a disposition which bears some resemblance to the Decretals of Pope Gregory IX. The first book has the sacraments as its main theme; furthermore, it also comprises norms regarding the profession of faith, the obligation of teaching the Christian doctrine, and the duties of worship and of fighting against heresy. The second book is devoted to the sacrifice of the mass, the days of obligation, the duty of fasting, and the forms of support of the clergy and the churches (tithes, first fruits, oblations, offerings, etc.). The third book, in turn, has the priest as its protagonist: it focuses on his obligations, qualities, and methods of election; the same section also outlines the form of processions. Ecclesiastical immunities and the special

291 On cultural translation in the context of law, see Foljanty (2015).

292 Monteiro da Vide's initial idea was a provincial council. But, due to the difficulties of communication and travel of the suffragans, as well as the vacancies of some sees, a diocesan synod was eventually organised.

293 Feitler/Sales Souza (2010) 32.

294 Feitler/Sales Souza (2010) 37–38.

status of ecclesiastical spaces are the main subjects of the fourth book, which also contains regulations on testaments, burials, confraternities, and almsgiving. The last book, perhaps the closest to the outline of the Decretals, is about offences and penalties that fall under episcopal jurisdiction, with some procedural provisions.[295] In terms of length, the complete document comprises a little more than 1310 numbered paragraphs. Monteiro da Vide also attached to it the *Regimento do Auditório Eclesiástico*, a set of particular regulations for each officer and minister of ecclesiastical courts.

The Constitutions of Bahia have a strong intertextual dimension. They contain numerous references to other laws and to legal doctrine. In addition to the Council of Trent, the document cites excerpts from the *Liber Extra*, norms of general and provincial councils, pontifical decrees, provisions of the *Ordenações Filipinas*, opinions of important early modern canonists (among them, Agostinho Barbosa, Juan de Solórzano Pereira, and Giovanni Battista De Luca), and biblical passages. Feitler and Sales Souza claim that a distinctive feature of the Constitutions of Bahia is precisely their harmonisation with similar documents from the Portuguese scenario.[296] The ecclesiastical constitutions of Lisbon, Guarda, Porto, Braga, and Lamego are among the most cited in the document.[297] But Sebastião da Vide's complex collage left room for original substantial elements, as the Constitutions addressed issues typical of Portuguese America, such as the overseas patronage, the evangelisation of African slaves, and their religious practices.[298]

Literature reports that the Constitutions of Bahia had at least four editions (before the 21st century), from the following years: 1719 (Lisbon), 1720 (Coimbra), 1765 (Lisbon), and 1853 (São Paulo).[299] The edition published in the Empire of Brazil was organised by Ildefonso Xavier Ferreira, canon precentor of the diocese of São Paulo. As can be seen in the prologue

295 Feitler and Sales Souza counted 1312 paragraphs, while the 1853 edition of the Constitutions counted 1318. See Feitler/Sales Souza (2010) 59.

296 "Com efeito, Sebastião Monteiro da Vide, ao organizá-las [as Constituições da Bahia], não pretendia inovar nem quanto à forma nem quanto ao conteúdo geral dos seus textos, mas, sim, colá-las ao máximo às disposições do Concílio Tridentino e à já então larga tradição do gênero em Portugal. Assim, as constituições baianas destacam-se menos por suas especificidades do que por sua conformidade com suas congêneres", as in Feitler/Sales Souza (2010) 57.

297 Feitler/Sales Souza (2010) 63.

298 Feitler/Sales Souza (2010) 72.

299 See Neves (2011).

of the work, the priest intended to supersede the abridged version of the Constitutions in vogue since 1847, the *Doctrina da Constituição Synodal do Arcebispado da Bahia, Reduzida a um Tratado*, composed by Joaquim Cajueiro de Campos, a canon from Bahia; Campos' version preserved only the text of the titles, disregarding the already abolished parts and the references cited by Monteiro da Vide throughout the entire document. Xavier Ferreira, with the 1853 edition, sought to present the complete Constitutions of Bahia, retrieving the citations and even the parts not in force, without losing sight of the need to update this corpus in light of the normative structure of independent Brazil, in particular the 1824 Constitution of the Empire. To this end, he used the strategy of marking the abrogated parts with a cross, and the derogated fragments with an asterisk. This operation of pointing out the provisions in force and not in force, besides revealing a dose of post-independence ufanism on the part of Xavier Ferreira, was guided by a typically regalist perspective, of submission of the Church to the empire in anything that was not spiritual.[300] Thus, using the Brazilian secular legislation as ultimate criterion, Xavier Ferreira shows that entire passages of the Constitutions of Bahia, referring, e. g., to ecclesiastical immunities and jurisdiction, had lost their legal value, retaining only historical relevance.

Despite the novelty represented by the 1853 edition, the Constitutions of Bahia did not enjoy a consistent presence in Brazilian manuals of ecclesiastical law. Vilella Tavares, for example, in the first edition of the *Compendio*, cites the document only twice. Monte is more generous, following his taste for traditional references. In the *Elementos*, he relies on the Constitutions to address a variety of topics, such as episcopal jurisdiction, sacraments (the Eucharist, marriage), feasts, images of saints, the right of asylum in churches, tombs, and procedure in canon law. The most radical – and negative – attitude is that of Fontoura, who characterises the Constitutions as a chaotic normative corpus, of little use for everyday practice. Fontoura acknowledges the erudition of Monteiro da Vide in the crafting of the document, calling it

300 Xavier Ferreira's jurisdictionalism is evident in the prologue to the Constitutions of Bahia: "É inquestionavel, que as Leis disciplinares da Igreja se mudão, e se accommodão às circunstancias do tempo, e que a Igreja, embora seja um Imperio distincto, e separado pelo que pertence ao espiritual dos fieis, com tudo está subordinada ao Imperio Civil. A Fórma de Governo, as Leis patrias, os diversos Codigos, adoptados por uma Nação Catholica, tem collocado a Igreja na indeclinavel necessidade de modificar sua antiga disciplina", as in Monteiro da Vide (1853 [1707]) v.

"a monument of wisdom". But he nevertheless regards the Constitutions as outdated, "almost useless" in relation to national ecclesiastical law.[301] Removing from them what was already determined by universal canon law, he claims that the rest was "true chaos, something even shameful to a civilised nation, educated in the elevated and sublime principles of Christianity".[302] Thus, though Fontoura praises Xavier Ferreira for his efforts of "updating" the Constitutions, he considers it a fruitless work. His solution pointed in another direction: a new corpus of reference was necessary. This is why Fontoura ends his exposition with a passionate plea for a provincial council to take place in the empire, enabling the elaboration of a discipline adapted to the contemporary (and not yet perfectly contemplated) needs of the Brazilian Church. In short, in the eyes of this late 19th-century canonist, the Constitutions of Bahia had already lost their power as a cultural translation of the Council of Trent: "The discipline of the Church is not invariable; circumstances of time and place modify it. On this point we can say: we have nothing that is Brazilian, nothing properly national; we export everything from abroad."[303]

Mendes de Almeida, in turn, looks at the Constitutions of Bahia from a primarily historical point of view, emphasising the conflict between the secular and the ecclesiastical powers at the time of their elaboration. More precisely, Mendes de Almeida opposes King D. João V to Archbishop D. Sebastião Monteiro da Vide.[304] He calls the former an "extreme imitator of Louis XIV"; as for the latter, besides pointing out that he was a Jesuit, Mendes de Almeida characterises Monteiro da Vide as someone who "pertinaciously played the match [against the secular power]", displaying "the necessary prudence and sagacity". The novel by Alexandre Dumas with which I opened this book immediately comes to mind. And it encourages reflection on the features that ultramontane and anticlerical discourses had in common. I am certainly not referring to the central theses, but to the structure of these discourses, to the "larger than life" nature of the "characters" involved and, above all, to the emphasis on dualistic conflict. In approaching the genesis of the First Constitutions of the Archbishopric of Bahia, Mendes de Almeida makes those

301 EGF, I, 59.
302 EGF, I, 60.
303 EGF, I, 60.
304 CMA, I, ccclxxx–ccclxxxi.

involved representatives of a wider dispute between the Catholic Reform, on one side, and the abusive secular power, the "domineering Caesar", on the other. And, as in Dumas, this dispute unfolds as if it were a struggle against destiny, against the relentless course of history: after all, Monteiro da Vide "contradicted his time" (we see once more the theme of the bishop / Jesuit as a subvertor of history, but here it is in favour of the Church, not for the sake of his own ambitions, like Aramis); the dispute anticipated the "reign of the beast of which the Apocalypse speaks", an allusion to the government of the Marquis of Pombal. Mendes de Almeida leaves unanswered the question of why D. Sebastião was forced to reduce the provincial council to a diocesan synod, but he leans heavily on the hypothesis of the secular power's influence over the suffragan bishops. The past ends up being used as a lesson for the present: Mendes de Almeida exhorts the Brazilian episcopate to promote new provincial councils and diocesan synods as a way to reestablish discipline, contribute to the renewal of faith, and the regeneration of the clergy.[305] The author does not criticise the contents of the Constitutions of Bahia as outdated. In the end, his appeal is the same as Fontoura's, his fellow ultramontanist, but focused on the exemplarity of Monteiro da Vide's initiative.

Compared to the Constitutions of Bahia, the Council of Trent had a much more varied appropriation in the Brazilian manuals of ecclesiastical law of the 19th century. However, before detailing how the Tridentinum is presented in this genre, it is relevant to point out how political, institutional, and legal historiography has portrayed the uses of the Council of Trent for this period.

Brazilian historiography commonly emphasises the link between the Council of Trent and the ultramontane clergy, in particular the bishops and their "main auxiliaries", the Lazarists and Capuchins.[306] Depicted as less important for the state, the Tridentinum is presented as a set of "principles" that guided the episcopate in their plans for the disciplinary and pastoral reform of the Church.[307] Some authors even claim that the Council of Trent only found its full implementation in the 19th century.[308] However, it must

305 CMA, I, ccclxli.
306 Hauck / Fragoso / Beozzo / Van der Grijp / Brod (1980) 184.
307 Hauck / Fragoso / Beozzo / Van der Grijp / Brod (1980) 78.
308 Lage (2011).

be acknowledged that, in many of these studies, the "programme" of the Council of Trent is confused with the ultramontane agenda. The "Tridentine ecclesial model" is described as based on "holiness", "catholicity", and "*romanidade*" (i. e. attachment to Rome, to the Holy See). "Catholicity" and "*romanidade*" seem, in fact, intertwined, as they imply the recognition of the "supremacy of the spiritual power over temporal powers", with the "Roman Pontiff […] as the figure who hovered above the political heads of the nations".[309] These were typical ultramontane attributes. Furthermore, the reform inspired by the Council of Trent in the 19th century is described as mainly concentrating on the objectives of education of priests (e.g. in seminaries), evangelisation of the people, and, significantly, closer relations between the local clergy and the Holy See.[310] All these descriptions are eventually completed with the theme of polarisation: the "Tridentine Church" is opposed to the "National Church", to the "Catholics of the Council of State", and even to royal patronage.[311] No one details how the dispositions of the Council of Trent were employed in the daily administrative life of the dioceses. Trent, in short, appears more as a vehicle for an ideology (and an ideology that occasionally appears in exaggerated shades) than a normative set of rules with practical utility.

European historiography brings an interesting nuance to the connection between the Council of Trent and 19th-century ultramontanism. Hubert Wolf, for example, suggests a historical rupture that is difficult to find in the historiography on the Brazilian Empire. More precisely, he does not blend the Council of Trent and the ultramontane agenda from the beginning; rather, he shows that the originally episcopal and horizontal council of the 16th century was reinterpreted three hundred years later through a centralist and verticalised lens.[312] In other words, Wolf claims that the Council of Trent was instrumentalised and reimagined by ultramontane agents in favour of reformist projects, in a way that was analogous to the traditions invented for the sake of the great national narratives. O'Malley's account of the myths built around Trent comes to mind. Wolf proves his

309 Azzi (1992) 108.
310 Hauck/Fragoso/Beozzo/Van der Grijp/Brod (1980) 185.
311 Hauck/Fragoso/Beozzo/Van der Grijp/Brod (1980) 143, 191.
312 Wolf (2016 and 2020).

point by contrasting perspectives from the early modern period and from the Restoration on seminaries, the role of bishops, and ecclesiology. In his view, the episcopate, for instance, had shifted from the figure of the "self-conscious bishop in his own right […] behaving independently and critically towards Rome" to a "chief administrator [on behalf of] the pope", a "servant of the pontiff" *(Papstknecht)*. This process of "historical reinvention", according to Wolf, fits well into the situation of crisis and instability experienced by the ecclesiastical *milieu*, and in particular by the Holy See, during the 19th century. Moreover, it is a process facilitated by the fact that the acts of the Council of Trent remained inaccessible until 1881, the year when the Vatican Secret Archive was opened for scientific investigation.

Giuseppe Alberigo also defends the interpretation of historical rupture.[313] He argues that by rejecting, in the name of Trent, any institutional renewal as a risk, weakness, or concession, the intransigent clergy went precisely against the conviction of 16th-century Conciliar Fathers that Catholicism would only survive by renewing itself. Wolf and Alberigo also have similar approaches regarding ecclesiology, contrasting the non-centralist Church of the historical Council of Trent with the 19th-century, pope-centred "Tridentine Church". In the end, both authors are more interested in "Tridentinism", i. e. in the Council of Trent as a political instrument, as a "political myth", rather than in the Council of Trent as actually applied in concrete legal contexts.

The few scholars who have studied the use of the Council of Trent in the 19th century from a legal perspective interpret it in light of the paradigm shift that prepares the *Codex iuris canonici* of 1917.[314] The transition I refer to is analogous to the one that takes place in the realm of secular law. It is the movement away from early modern normative pluralism and towards the legislative unification provided by the 19th-century codes. In the case of the Catholic Church, this process bears fruit only at the beginning of the 20th century, after much study and discussion – and, even so, the result is a code that is quite peculiar in comparison with secular ones.[315] In this transition, the Council of Trent spent its last decades as only one among several transnational legal subsystems (e. g. *Corpus Iuris Canonici*, *derecho indiano*, etc.)

313 Alberigo (1998) 236–237.
314 Fantappiè (2019).
315 Fantappiè (2008).

related to the governance of the Church. But even with the advent of the 1917 *Codex*, the Council of Trent found new forms of permanence – or rather: the council became the object of yet another cultural translation; it was adapted to the new format of legislation, being statistically the most relevant source of the *Codex*.[316] Many of the canons in the Pio-Benedictine code were carved from conciliar decrees – and others more were inspired by interpretations emanating from the Congregation of the Council. Trent is thus portrayed as a set of norms that throughout the 19th century oscillated between the sunset of legal pluralism and the urgency of systematisation, of unification of the Catholic Church's legal sources. Leaving aside for a moment that the demands for a *Codex* were pressing and its very production was imminent, I will focus on the Council of Trent in a pluralistic setting, as a normative corpus relevant for different institutions and agents, and quite plastic, that is, given to various uses and transformations. By doing so, I hope to go beyond the idea, predominant in politico-religious historiography, of the Council of Trent as an object of exclusive attention of the clergy and / or of ultramontanists.

A quick perusal of the Brazilian handbooks of ecclesiastical law makes it possible to grasp the relevance of the Tridentinum for the administration of the Church. These books portray the Council of Trent from two basic perspectives, historical and practical, that is, as a normative corpus from the past *and* of the present. No author intertwines both perspectives as clearly as Mendes de Almeida. As most of his colleagues, he places the Tridentinum in the evolution of canon law as *ius novissimum*.[317] But he provides a more concrete background for his historical assessment of the council; he goes back to the Iberian past. He characterises the reception of the Tridentinum in Portugal as one of the "fullest" and "most spontaneous" of its time, recalling the prompt adherence of bishops, theologians, and of the secular power itself to the conciliary decrees, and mentioning the holding of several provincial councils in the succeeding decades.[318] He blames the Marquis of Pombal and "his Jansenists" for spreading the idea that the reception had

316 Astorri (1996) 575.

317 CMA, I, cxxxix. See also Vilella Tavares (JVT2, 5–6) and Monte (MRA, I, 3). Fontoura is the only author who regards the Council of Trent as part of the *ius novum*, the *ius novissimum* being constituted of "posterior edicts".

318 CMA, I, ccclxviii–ccclxix.

been the result of a Jesuit conspiracy, and thus invalid.[319] It is indeed by depicting ideological conflict that Mendes de Almeida succeeds at connecting the Council of Trent from the past with the Council of Trent of his present. According to the author, the "Catholic reform" driven by the Tridentinum often experienced the hatred of "all sorts of enemies of the Church", from the Jansenists of 18th-century Portugal to the regalists of 19th-century Brazil.[320] In other words, Mendes de Almeida entangles history and practice by relying on the continuity of tension, even though the "enemies of the Church" may differ in the type and intensity of their assaults. As with historical exposition, whenever the author addresses practical present-day issues, conflict is the major key. For instance, the *Alvará das Faculdades*, an 18th-century Portuguese secular law regulating ecclesiastical examinations in 19th-century Brazil, is deemed incompatible with canon law; its enforcement is regarded as an offence to the Council of Trent.[321] The overall emphasis on conflict and discrepancy becomes understandable if we recall not only that Mendes de Almeida was a fierce ultramontanist, but also that, with his prologue, he aimed at providing historical instruments for the clergy to become aware of (and stand against) the abuses of present-day secular power towards the Church.

In the second volume of his compilation, Mendes de Almeida reproduces the translation of the Tridentinum into Portuguese, made by bookseller João Baptista Reycend, in 1781.[322] Even so, the practical pervasiveness of the Council of Trent is more clearly seen in the other authors discussed above, who wrote comprehensive handbooks. All of them bear witness to how the Tridentinum shaped many topics of ecclesiastical administration – and administration of the clergy in particular. In the *Compendio* by Vilella Tavares, for example, the Council of Trent is the most recurrently cited normative corpus (62 citations, in JVT1), the second place belonging to the Imperial Constitution (21 citations). Conciliary dispositions were employed to address subjects such as the prerogatives and duties of bishops, canons *(cônegos)*, and parish priests, besides the details surrounding the discipline of the regular and secular clergy, and the sacraments of ordination and the Eucharist.

319 CMA, I, ccclxxi.
320 CMA, I, ccclxxii.
321 CMA, I, cccxxvi. See also Chapter 3.1.
322 See Mendes de Almeida (1873) 527 ss.

Similar uses of the Council of Trent can be observed in Monte's *Elementos* and Fontoura's *Lições*. Monte cites Tridentine decrees also when describing other sacraments (especially marriage), the organisation of seminaries, and the unfolding of ecclesiastical law suits and extrajudicial procedures. Most of Fontoura's citations of the council, in turn, are focused on the figure of the bishop (i. e. the rights, obligations, and prohibitions concerning his office). Besides citing the Tridentinum directly, Monte and Fontoura reproduce decisions from the Congregation of the Council, among other dicasteries. The two jurists also expose, to some degree, how the Roman congregations worked, what their competences were, and, in Fontoura's case, what the legal value *(vis legis)* of the dicasteries' decisions was.[323] It is worth remarking that the books themselves went beyond merely describing the universal dimension of the Church's administration – they were concretely seized by the cardinals whose work they portrayed. *Elementos* was examined (and eventually condemned) by the Congregation of the Index, and a *consultore* of the Congregation of the Council noticed that *Lições* attributed to the dicastery decrees that did not represent its actual decisions.[324]

Vilella Tavares, in turn, was much less concerned about addressing the Council of Trent from the perspective of the Holy See. He only mentioned the Congregation of the Council in a footnote in *Compendio*'s second edition,[325] and his general portrayal of the Roman congregations is meagre. Moreover, his leaning towards jurisdictionalism is clear when he claims that the monarch had power to control the enforcement of Tridentine dispositions by means of special laws.[326]

Yet, regardless of ideological preferences, one cannot deny that Brazilian jurists knew how valuable the Council of Trent was to the administration of the Catholic Church in the 19th century. Its usefulness and pervasiveness can be felt in a striking way when we see Monte's description of the Tridentinum. He provides the usual historical details: the date of the council's opening, the date of its confirmation, the pontificates involved, and the number of sessions. But the Bishop of Rio de Janeiro refuses to further elaborate on

323 See Albani/Lehmann Martins (2020).

324 For more on the involvement of Fontoura's *Lições* in a case presented before the Congregation of the Council, see Acta Sanctae Sedis XXII (1889–1890) 513–529.

325 JVT2, 5–6.

326 JVT1, 269.

the content of the council's decrees, for he acknowledges that these norms not only permeate the whole book, but are diffused among the people:

> We do not offer a broader notion of the decrees on customs, or of the disciplinary part of this Council [of Trent], because it is precisely with this part that we are concerned, and we will speak about it in every step of these *Elementos*, in order to make it known as the last general discipline [of the Church]; besides, the collection of the Tridentine Council is in everyone's hands.[327]

With the long journey unfolded in this chapter, we have established a reasonable contextual basis to approach the governance of the Brazilian Church in practice. We analysed several topics that were central to the culture of ecclesiastical law in the 19th century – namely, ecclesiastical law as a discipline, Church and state relations, and Church patronage. We observed that the authors' repertoire of arguments and references was varied, part of the broader circulation of ideas between Brazil and Europe. Labels such as "ultramontanist" and "jurisdictionalist" helped us to interpret the authors' discourses, but the repertoire's variety makes us realise the limits of these labels. Or rather: it makes us aware that behind the unity represented in the words "ultramontanism" and "jurisdictionalism" there is a wide diversity of legal points of view. With regard to the Council of Trent, we verified that, regardless of ideologies, it was considered a key normative corpus for the ecclesiastical administration. Paradoxically, the First Constitutions of the Archbishopric of Bahia, a set of more recent and specific norms, did not enjoy as much approval or pervasiveness in the doctrine. The universal character of the Tridentinum appeared to make it timeless, a feature that also served as a shield, whereas the First Constitutions – especially by the end of the 19th century – seemed old-fashioned, too much attached to the colonial past. If the Council of Trent, as Monte says, was in everyone's hands, it is time to see how it was used in praxis, a task for the following chapters.

327 MRA, I, 36.

Chapter 2
Mixed Matters from the Perspective of Governance. Analysis of Petition and Decision Flows

The maintenance of *padroado* after the independence of Brazil (1822) implied that many issues which belonged to the very core of the Church's organisation remained of mixed nature or began to be treated as such. "Mixed nature" refers to ecclesiastical matters that were under the shared responsibility of the secular power (in the case of Brazil, the emperor via the civil government) and the clergy. Less controversial examples of mixed matters were the provision of benefices and the erection of dioceses. For other topics, in particular those involving the discipline of the clergy, it was much harder to determine the role of each authority. Brazilian jurists sympathetic to jurisdictionalism often relied on broad concepts of mixed matter and avoided exhaustive lists. Monte Rodrigues d'Araujo, for instance, while offering a general concept and examples borrowed from the French Abbot Pey, revealed the uncertainty that hung over which matters were actually mixed:

> […] mixed objects […] are those that have a spiritual part which refers to a supernatural end; and a temporal part which refers to a natural end. […] thus described, the mixed object will be at the same time within the competence of one and the other Power, each one according to the matter and the end that concerns it. About this there can be no doubt; there can be some doubt only in the enumeration of mixed objects […] as is the case with Disciplinary objects in general […]. Pey reduces the mixed matters to Religious Orders, Ecclesiastical Benefices, Matrimonies, Alms, Feasts and Pilgrimages. For this author, the purely spiritual matters are Doctrine, the Sacraments, Discipline and the Assemblies of Religion; although in regard to the latter or to the Councils he also acknowledges the competence of the Civil Power, and therefore should have considered them as mixed matters.[1]

This scenario becomes even more complex due to the coexistence of multiple norms, different frameworks of interpretation, and many interpreters. In other words, mixed matters operated within a context of multinormativity and multiple jurisdictions. To understand how these matters were addressed in practice, one has to embrace these two aspects. I focus on multinorma-

1 MRA, I, 82.

tivity in Chapter 3. The present chapter goes further into the aspect of multiple jurisdictions, for which I will use the term "governance". Besides describing the institutions that I comprise in my analysis – an organ of state, the Brazilian Council of State, and an organ of the Holy See, the Congregation of the Council – I categorise and compare the flows of petitions and decisions that were established between local petitioners and each of these bodies. At the end of this process, I propose a set of "strong mixed matters", that is, a group of themes that were common to the requests directed to the Council of State and to the Congregation of the Council. I call them "strong" because their mixed character emerges in, and is verified by, the praxis of a complex, interdependent system (that is, I am not relying on the unilateral point of view of one institution or one group of actors).

Before beginning this analysis, I must say a few words regarding my concept of governance and the choice of the institutions included in this concept. Although the term "governance" is part of a well-known tradition of debates in the fields of political science and international relations,[2] I employ it insofar as it allows me to depict the historical interplay of multiple norms, agents, and jurisdictions around a common object.[3] More precisely, I use the term "governance" to address a system of multiple jurisdictions, organised according to different hierarchies and degrees of autonomy;[4] each level of governance has a variety of normative resources, legal and extra-legal; and all levels converge around ecclesiastical administration as their common object.

"Government" and "administration" are words usually employed to describe the organisation of a specific institution, the state, in particular as

2 See Finkelstein (1995), Stoker (1998), Hooghe/Marks (2003), Levi-Faur/David (ed.) (2012), Schuppert (2012), and Zürn (2018).

3 "Governance refers to the entirety of regulations – that is, the processes by which norms, rules, and programs are monitored, enforced and adapted, as well as the structures in which they work – put forward with reference to solving a specific problem or providing a common good", as in Zürn (2010) 80.

4 While I was attentive to the singularities of Church and state relations during the 19th century (e. g. the struggles about authority, sovereignty, etc.), studies on pluralism of jurisdictions (or "polycentric monarchies") in the early modern period helped me to conceive how different (and not strictly hierarchical) jurisdictions addressed an object they had in common (i. e. ecclesiastical administration). See, for instance, the approaches of Benton/Ross (2013), Cardim/Herzog/Ibáñez/Sabatini (2012) 4, and Hespanha (1994).

it was conceived from the 19th century onwards, that is, attached to efficiency, certainty, and similar notions.[5] Governance emerges as a more useful term because it implies a wider, multi-level organising framework; a framework that embraces a dose of uncertainty, of open-endedness, that drives actors from different institutional levels to interact, to devise strategies, and occasionally to come up with non-linear solutions. The concept of governance as I use it here includes the state's jurisdiction, but it relativises the state's all-encompassing approach to law (i. e. the state's monopoly over law) and its view of the Church as a national issue.

The jurisdictions that constitute the governance of the Catholic Church have different ranges: *local*, in the case of bishops, vicars capitular, cathedral chapters, parish priests etc.; *national*, in the case of the central administration of the Empire of Brazil; *global*, in the case of the permanent congregations of the Holy See. And the actors behind these jurisdictions have shifting views on the Church, depending on their objectives – in a way that the Church is simultaneously local, national, and global.

Methodologically, my concept of governance does not imply observing these levels statically and separately, but examining their interactions in the face of concrete problems. Governance *is* interaction.[6] It was by means of interactions that actors communicated problems and mobilised resources to bring about solutions. One may well presume that law involves an *interpretative* kind of governance, as actors interpret norms when they seek solutions, relying on their vast repertoires of traditions, arguments, and referen-

5 The intimate connection between "administration" and "state" is largely fostered in view of the development of administrative law during the 19th century. According to Sabino Cassese, "[s]ia i sistemi amministrativi che il diritto amministrativo si sono affermati nel contesto specifico dello Stato-nazione", as in Cassese / Schiera / Bogdandy (2013) 17. Besides, it is worth remembering that the link between the modern state and the unfolding of a rational, bureaucratic administration has a classical reference in Max Weber. To this kind of administration, Max Weber attached characteristics such as precision, speed, clarity, reputation, continuity, discretion, unity, and calculability of results, as in Weber (2018 [1921–1922]) 57–59. All these attributes could be equally applied to the monist conception of (secular) law from the 19th century, which was also deeply embedded in the nation state model. For more on the history of administrative law, see Mannori / Sordi (2001). The connection between "government" and "state" is a point of particular recurrence in political science. See, for example, Levi (1998).

6 See Stoker (1998) 22.

ces.[7] But governance also possesses a *creative* aspect: when a solution emerges, the actors are "producing" order,[8] that is, they are creating a norm that not only regulates a singular case but that may be invoked afterwards in the face of similar problems. In short, the concept of governance that I employ refers to an interactive, interpretative, and creative system of multiple jurisdictions.

The institutions that "embody" my governance system are the Brazilian Council of State and the Holy See's Congregation of the Council. These two organs received local administrative demands associated with the rights of patronage and its derivations (or deviations) from 19th-century Brazil. In other words, they were called upon to decide on mixed matters – and mixed matters that were grave enough so as to prompt / require petitioners to interact with authorities beyond the local jurisdiction. What remains for us is to discover which matters these were and how they were treated.

Furthermore, I considered relevant that the activity of these two bodies was deeply rooted in law, i. e. the main purpose of these organs was to interpret normative resources applicable to the Church and to offer solutions to concrete problems. And they had in the Council of Trent a common normative resource, as I intend to show in Chapter 3. Applying law as a criterion certainly does not neutralise the political tensions of the period, but it allows them to be perceived in a more situated way, that is, as an element that had its own place in the field of praxis, alongside other relevant factors. In spite of their differences of *modus procedendi*, the two organs provided reoccurring and exemplary solutions. Regarding the latter, over time both the Congregation of the Council and the Council of State built up collections of case law which became the object of publication and interest on the part of local actors. In other words, these organs were not only part of the governance system; they helped shaping it by means of their normative production.

7 On governance from an interpretative perspective, see Rhodes (2012).

8 "The broadest meaning of governance is the production of social order, collective goods or problem-solving through purposeful political and social intervention, either by authoritative decisions (hierarchical governance) or by the establishment of self-governing arrangements", as in Schneider (2012) 131.

Including one organ from the state and another from the Holy See in the analysis allows us to arrive at an understanding of how mixed matters were handled within a scenario that is more faithful to the organic structure of the Church – this is already implied in the use of governance as a concept. But, besides this, analysing the activity of the two organs permits us to inquire to which extent administrative petitioning was related to political allegiance. Did the petitioning practices of the Brazilian clergy reflect the ideological shift, observed in handbooks of ecclesiastical law, from jurisdictionalism to ultramontanism?

Finally, my choice was guided by pragmatic reasons: the two institutions could provide me with a significant and, at the same time, manageable number of sources.

2.1 The global level of governance of the Church: the Congregation of the Council

Addressing the roles of Congregation of the Council implies situating it in the broader context of the Roman Curia and the congregations of cardinals. For this reason, it seems appropriate to embark on a brief historical digression on the permanent congregations of cardinals, organs that were created and consolidated throughout the 16th century. They marked the beginning of a new era in the governance of the Catholic Church, characterised by the centralisation and specialisation of the pontifical government. Previously, in order to address administrative and judicial affairs, the Roman Curia comprised the College of Cardinals (i. e. the assembly of cardinals holding the prerogative of electing the pope), the Consistory (i. e. the assembly of cardinals in charge of advising the pope), and curial institutions such as tribunals, offices, and temporary congregations (i. e. adhoc collegiate organs entrusted with examining particular issues). Several factors converged to lead to the formation of the permanent congregations of cardinals in the early modern period: apart from the threat posed by the Protestant Reformation, the Roman Curia itself was aware that it needed to undergo structural changes in order to master the challenges of the time. Catholic nations were expanding and, with them, the demands made by secular and ecclesiastical powers to the Holy See. Moreover, after the Council of Trent, Pope Pius IV asserted the pontiff's role as ultimate interpreter and first guarantor of the implementation of the Tridentine dispositions in the Catholic world. A single,

non-specialised body (the Consistory) was not capable of managing all the affairs that were prompted by these innovations. Thus, by means of the Bull *Immensa Aeterni Dei* (1588), Pope Sixtus V organised the Roman Curia in multiple long-lasting collegiate bodies, each endowed with specific competences, and arranged in sufficiently stable and reasonably flexible structures. These bodies were the permanent congregations of cardinals.

The *Immensa Aeterni Dei* specified the activity of 15 congregations. In some cases, the bull simply acknowledged a de facto situation that had begun in 1542, when the Congregation of the Holy Office was founded. Other dicasteries were established *ex novo*. Some congregations were made responsible for the ecclesiastical government on a global scale, others for the management of the temporal affairs of the Papal States. This arrangement was consistent with the varied duties of the Roman Curia, which was in charge of the diocese of Rome, the Papal States, and the Universal Church. Among the congregations that aimed to govern the Catholic world, and included in the *Immensa Aeterni Dei*, were: the Congregation of the Holy Office, given the task of safeguarding the doctrine of faith and morals; the Congregation of the Index, entrusted with censuring books, as well as listing publications condemned by the Apostolic See; the Congregation of the Council, in charge of interpreting and executing the disciplinary decrees of the Council of Trent; and the Congregation of Rites, responsible for the procedures of canonisation, as well as for monitoring and regulating liturgical worship and ceremonial aspects. Other dicasteries were soon added to this catalogue. The Congregation of Bishops and Regulars, entrusted with matters concerning these two groups, was created in 1601. And the Congregation of *Propaganda Fide*, in charge of coordinating the evangelisation of non-Catholic populations, emerged in 1622.

Overall, while fostering the professionalisation, specialisation and regularity of the procedures of the Roman Curia, governing through congregations broadened Rome's horizon of information and the reach of its control. It also improved the participation of the Holy See in the administration of local ecclesiastical institutions, some of them situated in the remotest parts of the world. The model was a decisive contribution to the strengthening of the Apostolic See as a central authority, and one that was successfully carried through to modern times. Although they underwent repeated changes of competence and procedure, apart from several attempts at reform in general the permanent congregations of cardinals preserved their strong features

into the 19th century, and are still key institutions of the present-day Roman Curia.[9]

Like the Holy Office, the Congregation of the Council was created *before* the *Immensa Aeterni Dei*. The dicastery came into being in rudimentary form on 2 August 1564, by means of the *motu proprio Alias nos* by Pope Pius IV. In line with the Bull *Benedictus Deus* (1564), according to which the power to interpret and implement the Council of Trent was placed in the hands of the Roman pontiff, the *motu proprio* instituted a cardinal commission named *Sacra Congregatio super executione et observantia sacri Concilii Tridentini et aliarum reformationum*. The mission of this organ was to issue, upon request and in consultative fashion, clarifications on the Tridentine decrees. Final decisions remained with the pope. Later, Pope Pius V granted the dicastery the faculty to interpret some of the dispositions of the Council of Trent, in less serious cases. Strong controversies were still referred to the pontiff. Finally, by means of the Bull *Immensa Aeterni Dei* (1588), Pope Sixtus V entrusted the organ with the exclusive power of authentically interpreting all the disciplinary decrees of the Tridentinum. The Sacred Congregation of the Council was confirmed as part of the group of permanent congregations of cardinals in charge of the Catholic world.

Besides this interpretative role, manifested in its power to issue general and particular decrees interpreting Tridentine dispositions and the related

9 The historiography on the Roman Curia is vast and varied. The studies on the congregations of cardinals, however, are quite recent compared to those on other, much more explored organs (e. g. the Secretariat of State). So far, research on the permanent congregations has been characterised by focusing on some dicasteries to the detriment of others. There are many works on the Holy Office, the Index, and *Propaganda Fide*, while other dicasteries remain almost unknown. Historiography has also favoured the perspectives of the history of institutions and of prosopography, usually limiting itself to the study of one congregation at a time, not giving attention to the functioning of these organs as a whole, as a system of government. Only recently researchers have begun to highlight the unequivocal bonds among congregations, and also between them and other institutions, thus paving the way for studying the relationship of permanent congregations and secular powers. For a historical overview of the Roman Curia and the congregations of cardinals, see Del Re (1998), Rosa (2013), Palazzini (1990), and Jankowiak (2013). For the context of the 19th and 20th centuries, see Jankowiak (2007b). On the reforms of the Roman Curia throughout time, see Stickler (1990), Jankowiak (2013), Fattori (2014), and Galavotti (2014). On the participation of the Holy See in the governance of the Church in Ibero-American territories, by means of specific congregations of cardinals, see Albani (2009), Broggio (2009), and Albani / Pizzorusso (2017).

pontifical legislation, the Congregation of the Council had other competences, which varied over time.[10] I believe that it may be useful to recall the classification of Varsányi, who divides the functions of this dicastery in legislative, executive, and judicial.[11] Without having legislative power in the strict sense (that is, without autonomy *to create* canonical legislation), the Congregation of the Council carried out activities close to legislating. I have already mentioned the main one: interpretation. But there was also another: the power to dispense, that is, to exempt a particular case from the strict observance of the law.

The gracious jurisdiction of the Congregation of the Council – which comprised not only dispensing, but also permitting and granting – was gradually developed after the Bull *Immensa Aeterni Dei*, and the list of prerogatives was renewed and revised with each pontificate. In a monograph on the dicastery, Parayre claims that, by the end of the 19th century, the Congregation of the Council possessed at least 52 competences related to gracious matters.[12] Among the many privileges, faculties, pardons, and dispensations that could be granted by the dicastery, were: the permission to transfer, reduce or absolve of the onera of mass; the dispensation from the obligation of parish priests to celebrate the mass *pro populo*; the authorisation in favour of the bishop to elect examiners and judges, in view of the impossibility of organising a diocesan synod; the extension of the deadline for receiving the sacred orders; the dispensation from residence beyond the period stipulated by the Tridentinum; the authorisation in favour of the bishop to make the *ad limina* visit by proxy; the extension of the deadline for the presentation of the diocesan *relatio* to the Holy See, etc. As one may observe, these matters were directly related to the formation and discipline of the clergy. An important detail is that the Congregation of the Council

10 Even with the abrogation of the Council of Trent due to the enactment of the *Codex Iuris Canonici* (1917), the Congregation of the Council survives to this day in the Dicastery for the Clergy, responsible for the formation and discipline of clergymen, and the Dicastery for Legislative Texts, responsible for the authentic interpretation of the universal laws of the Church, including the *Codex Iuris Canonici* (1983).

11 Varsányi (1964). He adds to these the "coactive" function, which I do not mention separately because I understand that it is included in the executive and judicial competences of the Congregation of the Council.

12 Parayre (1897) 121–134.

did not have exclusivity over its gracious activities; it shared such competences with the Secretariat of the Briefs *(Segreteria dei Brevi)* and the Apostolic Datary *(Dataria Apostolica)*.

If one follows the division of competences proposed by Varsányi, the executive functions of the Congregation of the Council revolved around the major objective of enforcing the disciplinary part of the Council of Trent in the Catholic world. The dicastery did this, for example, by resolving doubts; monitoring the creation and exercise of ecclesiastical offices, including the convalidation of examinations and elections; authorising the alienation of Church property; administering disciplinary punishments etc. From these examples, one can see how difficult it is to neatly separate the executive competences of the Congregation of the Council from its other functions. The connections with the interpretative and gracious competences are evident. Moreover, the executive powers of the dicastery are present in the activities of control that made the congregation famous: the analysis of the diocesan *relationes* that accompanied the *ad limina* visits; and the supervision of the contents of provincial councils and diocesan synods, that is, the local adaptations of the Council of Trent.

The judicial power of the dicastery, in turn, is seen in the resolution of contentious cases on matrimony, benefices and ecclesiastical discipline. The Congregation of the Council was responsible for deciding on cases related to the interpretation of Session 24, *Reformatione matrimonii*, of the Council of Trent, except when matters of exclusive competence of the Congregation of the Holy Office (mixed marriage, for example) were at stake. In the mid-18th century, Pope Benedict XIV established that the Congregation of the Council was capable of addressing causes of nullity of marriage, thus placing the dicastery in a position of concurrence with the Tribunal of the Roman Rota. This arrangement was paused between 1870 and 1908, when the pope put severe limitations on the activities of the Rota, and the jurisdiction of the Congregation of the Council came to prevail. Furthermore, in its judicial functions, the dicastery handled disputes on the union and separation of benefices, on the violation of the duty of residence on the part of bishops, and on disciplinary measures applied by the episcopate (for example the suspension *ex informata conscientia*). It could also decide on the validity of professions of faith and elections of vicar capitular, matters which also fell within the competences of the Congregation of Bishops and Regulars. Thus, in its judicial functions, the Congregation of the Council was one among

several options of jurisdiction that petitioners could choose. However, once the petitioner had resorted to the dicastery, the case could not be submitted to another congregation.

Over time, the competences of the Congregation of the Council changed: in addition to its concurrence with existing dicasteries, accessory congregations with fewer members (many of who were also members of the Congregation of the Council itself) took over some of its functions. I am referring to the Congregation on the Residence of Bishops, established by Pope Urban VIII, in 1636; the Congregation on the State of Churches, created by Pope Benedict XIV in 1740 and nicknamed "*Concilietto*", whose purpose was to examine the *relationes* sent by bishops regarding the state of their dioceses; and the Congregation for the Recognition of Provincial Councils, founded by Pope Pius IX in 1849. Nonetheless, the Congregation of the Council retained exclusive competence over some topics, especially the interpretation of Tridentine decrees,[13] and by the end of the 19th century it even absorbed the functions of an entire dicastery, the Congregation of Ecclesiastical Immunity.[14]

According to Parayre's detailed account of the organisational structure of the Congregation of the Council in the 1800s,[15] it was composed of a prefect, twenty-eight cardinals, a secretary, an undersecretary, an auditor, a protocolist, an archivist, some *minutanti*, twenty-five consultants, and several

13 The jurisdiction of the Congregation of the Council in matters of interpretation took precedence even over the special jurisdiction of the Congregation of *Propaganda Fide*, which concerned the territories where the "missionary Church" predominated (the Americas in colonial times, for example). It is also noteworthy that marriage cases, even the ones coming from territories of mission, could be forwarded to the Congregation of the Council.

14 The Congregation of Ecclesiastical Immunity took care of the privileges enjoyed by ecclesiastical persons and sacred places vis-à-vis the secular jurisdiction (e. g. the right to special forum, the right to asylum, the exemption from secular taxes, etc.). From the 19th century onwards, with the adherence of liberal premises to modern secular law, ecclesiastical immunities were (often unilaterally) suppressed or transformed within national legal systems, facts that led to the decline of the dicastery. The explosion in numbers of concordats shifted the negotiation of immunities to the Secretariat of State and the Congregation for Extraordinary Ecclesiastical Affairs. In 1879, in an attempt of saving the Congregation of Ecclesiastical Immunity, Pope Leo XIII united it provisionally with the Congregation of the Council. This union lasted until the suppression of the dicastery, in 1908. For more, see Del Re (1998) 373–375.

15 Parayre (1897) 97.

young priests belonging to the congregation's *studio*.[16] Further individuals that carried out functions in the Roman Curia were involved in the dicastery's activities: advocates *(avvocati)*, procurators *(procuratori)*, and, in marriage cases, the defender of the bond *(difensore del vincolo*, *defensor matrimonii)*.[17] The cardinals usually assembled roughly once a month to deliberate on the cases presented, in a total of eight to ten meetings a year. Decisions in plenary were reached by majority vote, with one vote per cardinal present, including the prefect. Despite the large number of cardinals in this dicastery, the deliberative meetings were usually attended by only six to twelve members of the Sacred College.[18]

The Congregation of the Council, both in plenary meetings and other situations, relied fundamentally on two officers for its proper functioning: the prefect and, above all, the secretary. Although the prefect was the figure of highest authority – after all, he was responsible for signing all the decisions of the dicastery – it was the secretary to whom a series of complex (and essential) administrative tasks fell. Among these were: preparing dossiers and minutes for the plenary; creating despatches that requested, for instance, clarification from petitioners and third parties; organising the meetings and recording the minutes; communicating with the pontiff, so as to obtain his approval for some of the decisions; sending the dicastery's decrees to

16 The *studio* of the Congregation of the Council was a formative space for young priests who, having received a doctorate in canon law and/or civil law, sought professional experience in the administrative ranks of the Roman Curia. It comprised a four-year "apprenticeship" that allowed the "apprentices" to take exams in order to act as advocates or procurators before the Roman congregations. The activities of the *studio* encompassed the discussion and the elaboration of collegiate solutions to the actual cases presented to the Congregation of the Council; that is, the group of "apprentices" simulated the deliberative work of the dicastery. Although the decisions of the *studio* had no influence over the votes of cardinals, some canonists point out that the solutions often coincided. For more on the Congregation of the Council's *studio*, see Parayre (1897) 100–101, and Romita (1964).

17 The defender of the bond represented the ecclesiastical prosecution in matrimonial matters.

18 The number of plenary meetings of the Congregation of the Council and the number of cardinals who actively participated of them were determined by the analysis of the records of the dicastery's *Libri Decretorum*. I focused on the books from 1840 to 1889. The presence of at least three cardinals resident in Rome was enough to make a deliberative assembly valid, according to Parayre (1897) 90.

their recipients, etc.[19] Not by chance, memorable canonists who belonged to the Congregation of the Council held the position of secretary. I recall, for example, Prospero Fagnani (1588–1678), as well as Prospero Lambertini (1675–1758) before his ascension as Pope Benedict XIV. The works of these two canonists are evidence of their intense level of involvement with the praxis of the Congregation of the Council.

When a petition from anywhere in the Catholic world was received, the Congregation of the Council had four procedural routes. Which procedure was chosen depended on the nature of the problem, the discretion of the congregation, and the will of the petitioners.[20] It could also be changed in the course of the process, if necessary. The simplest procedure was the decision by the *congresso*. The *congresso* was formed by the dicastery's prefect, the secretary, the undersecretary, and the auditor.[21] Besides preparing the most important cases for the plenary meeting, this group was able to rule directly on issues in relation to which the Congregation of the Council had consolidated case law; moreover, these matters should not require hearing or judicial decision, and should belong to gracious jurisdiction.[22] If a given petition could not be resolved by the *congresso* due to its degree of complexity, it would be sent to the plenary for deliberation.

This then opened up two possible procedures: *sumaria precum* and *in folio*, in order of increasing formality. The *sumaria precum* model did not involve advocates, procurators, or prosecution. The work of cardinals was simplified: the secretary read the draft, listed the requests, and the cardinals answered *affirmative* or *negative*. The range of topics covered was vast, but usually concentrated on the sphere of gracious jurisdiction.[23]

19 Parayre (1897) 93–96.

20 Varsányi (1964) 132.

21 The *congresso* was created by 19th-century Cardinal Prefect Prospero Caterini. It was implemented in 1865, substituting the model of a commission of four cardinals proposed by Pope Gregory XIII in the 16th century, according to Parayre (1897) 92.

22 Parayre (1897) 176.

23 Parayre lists the topics treated as causes *sumaria precum* in the second half of the 19th century. Among these were: sacerdotal and episcopal ordination, sacred patrimony, irregularities and impediments for ordination, ecclesiastical discipline (obligation of residence, clerical attire, secular affairs, *emendatio* of the clergy), masses, seminaries, pious oblations, *monte di pietà*, benefices, cathedral chapter, parishes, sacred places, and sacraments. The author focuses on the issues of reduction of legacies and masses, election of vicar capitular, and irregularity of ordination on grounds of homicide. For more, see Parayre (1897) 181–182.

The more formal procedure *in folio* was, in its turn, subdivided in two: *non servato iuris ordine* and *servato iuris ordine*. The former was created more recently – in 1836 – and was less costly. It was characterised by the non-intervention of advocates or procurators. Unlike in the quicker *summaria precum*, however, the parties were defended *ex officio* by the secretary and the auditor of the Congregation of the Council; furthermore, the preparation of the case for appreciation by the collegium often included collecting the opinion of consultants and information from local superiors (bishops, nuncios, etc.). The procedure *non servato iuris ordine* was reserved for some administrative causes (gracious and contentious) and some judicial causes. It was the route commonly employed in cases of doubt about the interpretation of the Council of Trent, matrimonial nullity, and appeals against extrajudicial acts of the bishop (against, for example, suspensions *ex informata conscientia*).

Finally, the *servato iuris ordine* was the most rigid procedure employed by the Congregation of the Council. It had its own set of regulations, the most recent of which (within the temporal framework of this study) dated back to 1847. The *servato iuris ordine* was used for contentious cases and was similar in form to the summary proceedings of civil courts. Due to its complexity, it required the presence of procurators, preferrably advocates. The procedure unfolded in three phases: the introduction – comprising the reception of the *libellus* by the dicastery, the secretary's task of collecting the local ordinary's opinion on the issue, and the summoning of the parties for a hearing *(audientia)*, when plaintiff and defendant would be called to agree on the object of the cause *(concordantia dubii)*; the phase of debates *(allegationes)* – when the parties would expose their reasons, making way for the secretary to compose a dossier that served to prepare the cardinal-members for the plenary meeting; and, finally, the plenary meeting itself, with the deliberation and pronouncement of the sentence.[24] After a decision, it was still possible to request a new hearing, so as to change the final outcome. If not granted, the interested party could file an extraordinary appeal to the pontiff, without suspensive effects on the congregation's decision.[25]

One may thus notice that a higher degree of formality was associated with the contentious jurisdiction, especially in the judicial sphere, while less

24 Parayre (1897) 219–239.
25 Bosch Carrera (2002) 44.

complex procedures were used in the gracious jurisdiction and administrative litigation.

I have one more word on the decisions of the Congregation of the Council. The decrees of the dicastery, that is, the final answers to doubts and requests from ecclesiastics and laymen around the globe, accumulated over time, giving rise to a rich tradition of case law on the Council of Trent. In administrative terms, since the late 16th century, the congregation registered its final decisions in books called *Libri Decretorum* ("books of decrees"), which were available only to the dicastery's personnel. During the 19th century, the *Libri Decretorum* were issued annually, with a (usually quite large) section for gracious causes decided by the *congresso*, and another section for decisions of the plenary. As the use of decrees by the Congregation of the Council in local administration and ecclesiastical courts grew, the Holy See felt stimulated to publish the *Thesaurus Resolutionum*. Issued as of the beginning of the 18th century, this 168-volume series was the first official publication of the most relevant decrees by the Congregation of the Council. With it, the Apostolic See also aimed at avoiding inaccuracies and falsifications in private compilations. The decisions selected for the *Thesaurus* volumes belonged for the most part to *in folio* causes and covered the period from 1700 to 1910. In 1865, another official vehicle for the dissemination of decrees joined the *Thesaurus*: the *Acta Sanctae Sedis*, with a selection of summaries of the most significant decisions (not only by the Congregation of the Council, but also from other dicasteries). In addition to the official publications, one could find this type of norms in doctrinal works and also in private compilations, many of which were put into circulation during the 19th century.[26]

The dissemination of the decisions of the Congregation of the Council was accompanied by intense doctrinal debate on the force of law *(vis legis)* of these decrees. From the 16th to the 19th century, influential European jurists and canonists, such as Prospero Fagnani, Agostinho Barbosa, Giovanni Battista De Luca, Anaklet Reiffenstuel, Zeger-Bernard Van Espen, Franz Xavier Schmalzgrueber, Prospero Lambertini, Thomas-Marie-Joseph Gousset, and Dominique-Marie Bouix, far from regarding it as a "yes or no" question, contributed to delineate a typology of decrees by the Congregation of the

26 On the 19th-century "imitators" of the *Thesaurus*, see Bosch Carrera (2002) 57–67.

Council, attributing different legal effects to each type. In the 19th century, it was already consensual in European handbooks of ecclesiastical law that *comprehensive* declarations of the Congregation of the Council – that is, declarations interpreting the Council of Trent in an explanatory, clarifying sense – had immediate force of law, whereas *extensive* declarations – that is, those modifying the terms of the Tridentinum, or going beyond it – needed prior approval from the pontiff.[27]

By different paths, the case law of the Congregation of the Council reached Brazil. It could be found both in Brazilian handbooks of ecclesiastical law[28] and in the administrative praxis of the imperial dioceses. In this section, I focus on the latter, taking into consideration the Brazilian petitions addressed to the Holy See and the decisions of the Congregation of the Council addressed at Brazil.

Consulting the congregation's *Rubricelle* and *Protocolli*, that is, the finding aids that keep track of the petitions received and processed by the dicastery, and comparing these data with those present in the *Libri Decretorum*, I found a total of 106 petitions coming from Brazil between 1840 and 1889.[29] These requests were followed by 79 resolutions, that is, final decisions. They are also known as decrees. Searching for them in the *Libri Decretorum* and the *Protocolli*, I could perceive that resolutions were either positive final decisions

27 Parayre (1897) 303, Bouix (1859) 301.

28 For an analysis on how Roman congregations (including the Congregation of the Council) were addressed and cited in 19th-century Brazilian handbooks of ecclesiastical law, see Albani / Lehmann Martins (2020).

29 My corpus of sources covers all the petitions that, regardless of the outcome, originated a protocol number registered in the books of *Rubricelle* and *Protocolli* of the Congregation of the Council between 1847 and 1889. These books are finding aids from the Vatican Apostolic Archive. As a rule, each petition corresponded to a dossier in the series of *positiones*. I also counted petitions that, absent from *Rubricelle* and *Protocolli*, gave rise to a decision registered in the *Libri Decretorum*. This was the case for ten petitions. In such cases, the year of the petition was considered as the year of the decision. I did not include in my corpus the eleven petitions that I found about *ad limina* visits and related matters (absolution due to delay, request for longer term, etc.). Although such cases were listed in the *Protocolli* of the Congregation of the Council, their processing was the responsibility of an accessory organ, the Congregation on the State of Churches; therefore, the ordinary *modus procedendi* of the Congregation of the Council did not apply. This is evident from the fact that the decisions corresponding to the *ad limina* visits were not acknowledged as resolutions in the *Protocolli*, nor were they included in the *Libri Decretorum*. Regarding cases presented between 1840 and 1847, I examined the corresponding finding aid, the *Parva Regesta*, and found no entry related to Brazil.

elaborated by the *congresso* and approved by the pope (as informed by the expression *Ex audientia Sanctissimi* that opens each decree), or final decisions given by the plenum of the congregation (according to the *sumaria precum* and the *in folio* procedures), positive or not.[30] From now onwards, when addressing the Congregation of the Council, I shall use resolutions and decisions as synonyms, unless otherwise specified.

The 1840s were a period of silence between Brazil and the Congregation of the Council. The first petition of the Second Reign dates from 1851. It was a request for a sacerdotal ordination to be performed outside the candidate's diocese of origin *and* without the authorisation (via dimissorial letter) of the bishop.[31] Curiously, the petitioner was a representative of the empire: the diplomat Luís Moutinho de Lima Álvares e Silva, whose time as extraordinary envoy and minister plenipotentiary in Rome was then coming to an end.[32] He wrote on behalf of his son, Francisco de Assis. Surely a person in Moutinho's position was sufficiently acquainted with the competences and *modus procedendi* of the Roman Curia. It was, moreover, a personal request, not a mission of state. In any case, it is still surprising. In the early 1850s, neither Vilella Tavares nor Monte had published their handbooks of jurisdictionalist tendency, nor did the Brazilian clergy put forward requests to the Congregation of the Council particularly frequently. Nevertheless, a representative of the Brazilian state was already petitioning for grace before the dicastery – a fact that begs the difficult, if not impossible, task of answering the question: did the state authorise it?[33]

Chart 1 shows that the flow of Brazilian petitions to the Congregation of the Council is intermittent in the 1850s, with a yearly average of 0.4 peti-

30 I included all the *risoluzioni* found in the *Protocolli* and in the *Libri Decretorum* between 1847 and 1889. In two cases, one single petition originated two resolutions.

31 Numero d'ordine: 9718, Diocesi: Rio Janeiro, Nome e cognome del postulante: Luigi Mouttinho Ministro del Brasile circa il figlio Francesco d'Assisi, Oggetto: Ordinazione a quocumque senza dimissorie, in: AAV, Congr. Concilio, Protocolli, 1851.

32 For more biographical information on Moutinho, see Blake (1899) 441.

33 Article 81 of the Criminal Code of Imperial Brazil punished anyone who submitted a request to a foreign authority – including the Holy See – without the *placet* from the civil government. The verification of whether Moutinho had asked for such permission is hampered by the fact that the Brazilian National Archive does not have a unified record of the imperial *placets* related to ecclesiastical subjects. The archive's ecclesiastical fonds contains some of these documents, but the series is incomplete. Its sources, moreover, come from auctions, donations, etc., not accurately reflecting the functioning of the section of the Ministry for Imperial Affairs responsible for the procedure.

tions. Gradually, the requests gained greater volume. In the 1860s, they reached an average of 2.0 per year, and in the 1870s, 2.7. The decisive period is between 1880 and 1889, when the number of requests grew sharply. The average is relatively high (5.5), and, unlike previous intervals, there is not a year passing without Brazilian petitions arriving to the Congregation of the Council. This increase should be examined in greater depth. However, it can already be noted that during the Second Reign Brazil built a closer and more regular relationship, from the administrative point of view, with the Congregation of the Council. In other words, although not necessarily in a conscious, premeditated way, the petitioners increasingly instigated participation by the dicastery in the governance of the Brazilian Church.

The Congregation of the Council issued resolutions for a good number of cases, in the same year the petitions were filed or shortly afterwards.[34] This can be observed in the flow of decisions, also featured in Chart 1, which at times exactly coincides with, and other times closely resembles, the dynamics of petitions. The average numbers of decisions per decade are as follows: 0.4 (1850–1859), 1.8 (1860–1869), 1.9 (1870–1879), and 3.8 (1880–1889). The more modest increase of decisions compared to the number of petitions is due to a simple reason: a case could give way to different outcomes, a final decision being only one of the alternatives. Among the other possibilities were: any other final decision issued by the *congresso* that was not positive (i. e. negative decision, delaying decision, a decision deeming the request

34 It is useful to recall who the prefects of the Congregation of the Council during this period were: Angelo Mai (1851–1853), Anton Maria Cagiano de Azevedo (1853–1860), Prospero Caterini (1860–1881), Lorenzo Nina (1881–1885), and Luigi Serafini (1885–1893). Particular attention should be given to Caterini, considering his long period in charge. He was a distinguished lawyer and canonist, with a close relationship with Pope Pius IX. Between 1852 and 1864, he presided over the commissions in charge of drafting the Apostolic Constitution *Ineffabilis Deus* (1854), on the Immaculate Conception, and the *Syllabus errorum* (1864). Caterini also played a central role in the organisation of the First Vatican Coucil. He was a member of the council's directive commission; moreover, he led the preparatory commission on ecclesiastical discipline, which focused on matters of competence of the Congregation of the Council, such as matrimony, seminaries, appointment of parish priests, episcopal judicial powers etc. Within the College of Cardinals, Caterini was a major supporter of ultramontanism, sometimes displaying views even more radical than those of Pope Pius IX. He was openly against liberalism, the unification of the Italian peninsula, and any attempt of compromise with the new Kingdom of Italy regarding religious matters. For more on Caterini, see Malgeri (1979). For more on the prefects of the Congregation of the Council, see Del Re (1964).

irrelevant etc.); termination of the case due to duplicate petitions; suspension of the case due to lack of information and vote from the local ordinary (bishop or vicar capitular) or from other actors; remittal of the petition to another dicastery due to its competence etc. It is worth noting, however, that resolutions comprised the majority of the results.

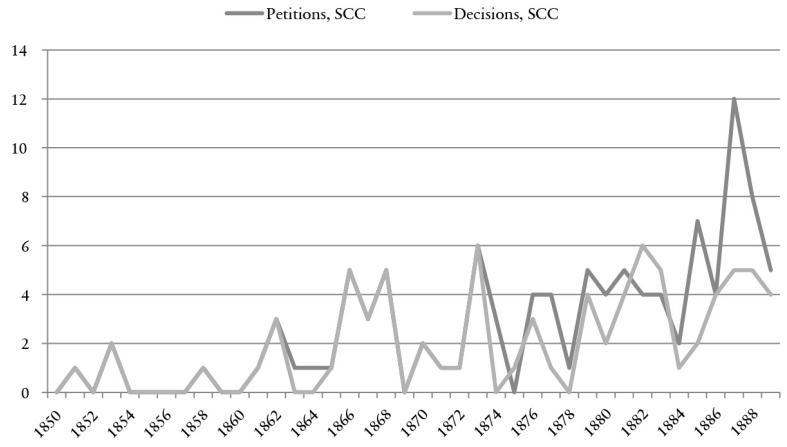


Chart 1. Brazilian petitions to the Congregation of the Council (SCC) and the corresponding resolutions from the dicastery per year (1850–1889). The flow of decisions overlaps with the flow of petitions when they coincide numerically.

The 1880s again stand out: for every year of this decade there is at least one decision directed at Brazil. Yet, the clear difference between the line of decisions and that of petitions between 1885 and 1888 can be explained by at least two factors. The first is the *relatio dioecesium* of the diocese of Olinda, from 1884, which contained six requests formulated by the bishop, all registered with different protocols, as if they were individual petitions. Of these, only one received a resolution; the others were either discontinued due to lack of detail, or were sent to other dicasteries. The second factor is the emergence of petitions from the Italian clergy aiming to regularise their situation as migrants in Brazil. On several occasions, the lack of formal endorsement (information, consent), especially on the part of the Brazilian ordinaries who received these foreigners, prevented the cases from going forward with the Congregation of the Council.

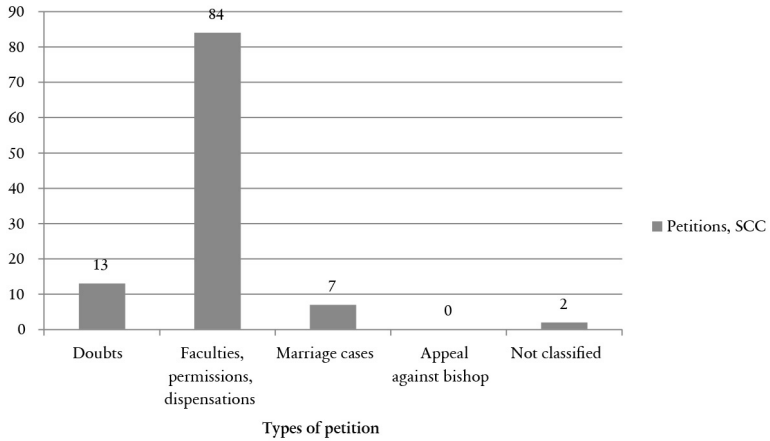


Chart 2. Brazilian petitions to the Congregation of the Council (SCC) (1850–1889) by type.

To understand how the Congregation of the Council acted upon the Brazilian ecclesiastical administration, it is necessary to observe which demands were directed to the dicastery. Chart 2 displays the Brazilian petitions received by the congregation by type. Comparing the corpus of requests with the competences and *modus procedendi* of the dicastery, I organised the petitions into the following categories: doubts, that is, questions of ecclesiastical administration involving the interpretation of the Council of Trent and related norms; faculties, permissions, and dispensations, i. e. requests regarding administrative matters of gracious jurisdiction; marriage cases; and appeals against the bishop (or local ordinary), i. e. appeals from lower hierarchical levels against administrative acts of the episcopate, such as disciplinary punishments. The predominance of gracious causes is striking, indicating that most Brazilian petitions went through simplified procedures, without reaching the plenary discussions. The success rate of these requests was also high: of the 84 petitions, 71 (84.52 %) ended up in a resolution. Although they are relatively less complex, their volume points to the local intention of normalising the presence of the Holy See in daily diocesan administration, in contrast to the view of Rome as a distant, exceptional instance, concerned only with cases of gravity.

Requests containing doubts reached a more modest rate of success. Of thirteen, only two (15.38%) received a resolution. The others were either discontinued due to lack of cooperation from the parties, or were sent to other dicasteries, or received negative answers not issued by the plenum, not characterising a final decision. It is noteworthy that, in at least two cases, the Congregation of the Council refrained from delivering judgement over general, abstract matters. This occurred for the first time in 1887, when the Bishop of São Paulo sent a question regarding the procedure for declaring nullity of marriage. A little more than two weeks after receiving it, the dicastery answered: "*Non expedire et recurrendum esse iis singulis casibus*", meaning that the question would not be taken into consideration, and that the matter should be submitted to the dicastery by means of concrete cases.[35] This response was most likely issued by the *congresso*, as it was not registered in the *Protocolli* as a resolution, nor it is present in the *Libri Decretorum*. The second time the Congregation of the Council was confronted with a similar query was in mid-1888, when the Bishop of São Paulo asked whether the absence of a formal requirement set by a pontifical constitution would entail the absolute nullity of ecclesiastical examinations to cathedral prebends. In contrast to the first case, the doubt went to the plenary according to the procedure *in folio*, accompanied by the practical and theoretical opinion of a consultant. The congregation offered an answer in 1889, more than one year after the beginning of the procedure. It was a resolution: "*Non esse interloquendum*". With this expression, the dicastery meant that it would not declare anything on the point.[36] The case was deemed so relevant that it was published in the edition of 1889–90 of the *Acta Sanctae Sedis*. There, a footnote detailed the content of the resolution: the Congregation of the Council at the time was not used to respond to generic and abstract doubts; its task was to solve particular questions and practical cases by means of the application of the constituted law.[37]

35 Numero d'ordine: 4048, Diocesi: São Paulo, Nome e cognome del postulante: Vescovo, Oggetto: Circa la procedura per dichiarare la nullità dei matrimoni, in: AAV, Congr. Concilio, Protocolli, 1887.

36 Numero d'ordine: 3281, Diocesi: São Paulo, Nome e cognome del postulante: Vescovo, Oggetto: Circa il concorso ad beneficia, in: AAV, Congr. Concilio, Protocolli, 1888.

37 Acta Sanctae Sedis XXII (1889–1890) 34: "Quum quaestio iam sublata esset per sanationem R. Pontificis, manebat tantum quaestio theoretica; cui responsum dare noluit S. C. C. quae nunc non solet respondere in forma generica et abstracta, sed resolvit quaestiones particulares et casus practicos applicando ius constitutum".

As one may easily observe, both in 1887 and 1889, the Congregation of the Council confirmed its preference for concrete problems, a trait attributed to the dicastery by recent literature.[38] However, the resolution of 1889, especially with the explanatory footnote in the *Acta Sanctae Sedis*, seems to indicate something more. The note places the interpretative and the executive activity of the Congregation of the Council on opposite sides. It can be argued that the dicastery's abstention would involve only part of its interpretative competences – the part concerning general matters. But the emphasis of the note on the application of the law fosters the hypothesis that, at the end of the 19th century, the congregation was seeing the twilight of its interpretative functions. Admittedly, such hypothesis would require the analysis of a more extensive corpus of documents in order to be adequately proven, but it is nonetheless useful to point out such a clue.

Lastly, Chart 2 displays a surprising absence. No appeals against acts of Brazilian bishops were found during the period under investigation, not a single appeal against disciplinary measures (e. g. suspension from office and benefice) applied to priests. This data reveals a certain tendency of forum shopping by the Brazilian clergy, considering that both the Council of State and the Congregation of the Council, even though they did not recognise each other as such, were suitable instances to challenge disciplinary action from the episcopate. Naturally, there was a slight difference in the analysis performed by each instance: whereas the Council of State, prompted by an appeal to the Crown,[39] decided on episcopal acts that had allegedly exceeded ecclesiastical jurisdiction, i. e. that had supposedly gone beyond a bishop's disciplinary power, the Congregation of the Council focused on the suitability of the disciplinary measure applied, verifying, for instance, whether it was supported by false or weak evidence. In short, the Holy See decided on the merits of a suspension *ex informata conscientia*, while the state did not. In spite of this subtlety, one may well suppose that it easily faded away in face of the appellant's primary purpose of removing an act that harmed him. Among the factors that may explain the lack of interest of the suspended clergy in appealing to the Congregation of the Council, one may hypothesise igno-

38 Bosch Carrera (2002) 37.

39 The appeal to the Crown was regulated by the Decree n. 1.911 of 28 March 1857. This regulation emerged after the Council of State issued an unfavourable opinion to the appeal of the priest Francisco de Paula Toledo against the suspension *ex informata conscientia* imposed by the Bishop of São Paulo, in 1856.

rance regarding this form of appeal (even though it appeared in legal books of wide circulation, such as Monte's *Elementos*), and pragmatic and / or ideological reasons, like the (sincere or instrumental) confidence in the state's jurisdictionalism, which associated the clergy with a body of public servants and the new disciplinary policies of the episcopate with foreign, Roman ultramontanism. If ideological reasons prevailed, one may say that, with a few exceptions, the hopes of suspended clergy relied more on jurisdictionalism than the state itself (in the same way that, at times, the ultramontanism displayed by the Brazilian episcopate was more intense than that of Rome). But this is an analysis to be detailed in a chapter of its own.

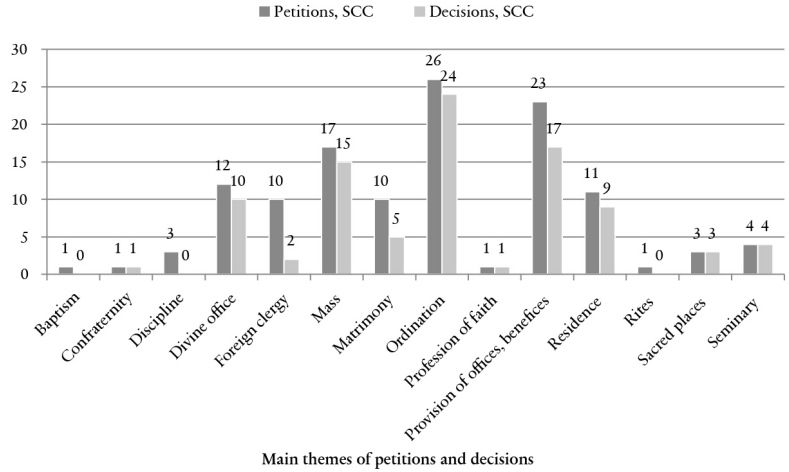


Chart 3. Brazilian petitions to the Congregation of the Council (SCC) and the corresponding decisions (i. e. resolutions) from the dicastery (1850–1889) according to theme.[40]

Chart 3 approaches the main themes covered by Brazilian petitions and the corresponding resolutions from the Congregation of the Council. The outlining of themes is an interpretative construction based on (i) the competences of the dicastery as described by literature, and (ii) the analysis of records *(Protocolli*, *Rubricelle)* and full content of petitions and decisions

40 One petition and one resolution can belong to more than one category. In some isolated occasions, one single petition originated two resolutions.

(*Liber Decretorum*, and, in some cases, *Positiones* and *Relationes dioecesium*). I sought to draw categories that, faithful to the practice of the dicastery, were sufficiently broad to allow dialogue with the data from the Brazilian Council of State.[41] In my comments on the results, I will focus on matters of ecclesiastical administration. I intend to use this opportunity to specify the issues comprised in each category, approaching the expressions present in the sources and also clarifying the terms of my own interpretation.

Cases related to "ordination (of priests)" form the largest thematic category. They constitute 24.52 % of petitions and 30.37 % of resolutions. This theme comprises matters of gracious jurisdiction, such as dispensations from age requirements,[42] and title or sacred patrimony.[43] It also includes: dispensations from dimissorial letters (for candidates who, wishing to be ordained in a place other than the diocese of origin, did not have formal authorisation from the bishop);[44] and dispensations *extra tempora*, which refer to the possibility of receiving sacred orders in calendar periods other than those established by the Council of Trent.[45]

The second largest category covers provision of offices and benefices, concerning the assignment of ecclesiastical positions. It comprises 21.69 % of petitions and 21.51 % of resolutions. The offices encompassed are those of free appointment by the bishop (vicar general, examiner, judge), elective offices (vicar capitular), and offices subject to presentation by the secular patron (parish priest). Petitioners resorted to the Congregation of the Coun-

41 In other words, my method combines an inductive approach (i. e. themes emerge from data, from archival sources) with a deductive approach (i. e. themes modelled after the template of competences from literature). My research objectives (which require a degree of comparability between the activity of the Congregation of the Council and the Council of State) operated as final criteria in the shaping of themes. While doing so, I was inspired by works written by social scientists on qualitative analysis: Ryan / Bernard (2003) and Fereday / Muir-Cochrane (2006).

42 For instance: Numero d'ordine: 1333, Diocesi: Marianna, Nome e cognome del postulante: Cotta Stefano, Oggetto: Dispensa d'età ed extra tempora, in: AAV, Congr. Concilio, Protocolli, 1871.

43 Numero d'ordine: 1974, Diocesi: Olinda, Nome e cognome del postulante: de Lima e Sá Giuseppe Alfonso, Oggetto: Circa il S. Patrimonio Sacro, in: AAV, Congr. Concilio, Protocolli, 1879.

44 Numero d'ordine: 448, Diocesi: S. Salvatore di Baja, Nome e cognome del postulante: Rio de Contes Tiberio, Oggetto: Dimissorie, in: AAV, Congr. Concilio, Protocolli, 1861.

45 Numero d'ordine: 2715, Diocesi: Baja in Brasile, Nome e cognome del postulante: Rio de Contes Tiberio, Oggetto: Extra tempora, in: AAV, Congr. Concilio, Protocolli, 1862.

cil in order to rectify procedural aspects, related to the form of elections (as far as it depended on the clergy), or personal aspects, related to defects of status of the elected. The majority of cases concerned procedure. There were occasions, for example, when ordinaries asked for faculties to appoint examiners and/or judges as if they had been elected in a diocesan synod.[46] At other times, minoritarian canons questioned the validity of a vicar capitular's election.[47] With regard to the provision of parishes, some candidates requested the convalidation of examinations that had not followed Tridentine requirements,[48] and one bishop asked whether written exams could be held in vernacular.[49] On the other side, one case focused on personal aspects was that of an ordinary who requested dispensation from a defect related to his birth (illegitimacy), on behalf of his recently appointed vicar general.[50] In general, this category is highly significant for my study, for the provision of offices and benefices in Brazil was undoubtedly a matter of mixed nature. In other words, there are strong chances of a dialogue between the cases from the Congregation of the Council in this category and sources collected in the fonds of the Brazilian Council of State. One could object that the correspondence will not be perfect. To this I would reply that, although the category covers situations that unfolded independently of the state, its hybridity is useful for revealing the uniqueness and amplitude of the clergy's perspective on the assignment of positions.

Ranking third in this chart, the category "mass" refers to the obligation of priests to celebrate it, appearing in 16.03 % of petitions, and 18.98 % of resolutions. This category comprises the gracious decisions of the Holy See regarding the economy of masses: the granting of remission, reduction, and/or transfer of masses,[51] and the concession of the faculty of celebrat-

46 Numero d'ordine: 756, Diocesi: S. Pedro do Rio Grande do Sul, Nome e cognome del postulante: Vescovo, Oggetto: Esaminatori, in: AAV, Congr. Concilio, Protocolli, 1873.

47 Numero d'ordine: 2498, Diocesi: SS.mo Salvatore in Brasilia, Nome e cognome del postulante: Il Capitolo Metropolitano, Oggetto: Circa l'elezione del Vicario Capitolare, in: AAV, Congr. Concilio, Protocolli, 1874.

48 Numero d'ordine: 1383, Diocesi: Olinda, Nome e cognome del postulante: Vieira Francesco, Oggetto: Sanatoria, in: AAV, Congr. Concilio, Protocolli, 1880.

49 Numero d'ordine: 4300, Diocesi: Olinda, Nome e cognome del postulante: Vescovo, Oggetto: Circa l'esame nei concorsi alle parrocchie, in: AAV, Congr. Concilio, Protocolli, 1887.

50 Numero d'ordine: 5317, Diocesi: São Paulo, Nome e cognome del postulante: Vescovo, Oggetto: Circa il Vic. G.le, in: AAV, Congr. Concilio, Protocolli, 1886.

51 Numero d'ordine: 878, Diocesi: Olinda, Nome e cognome del postulante: Vescovo, Oggetto: Trasferire, in: AAV, Congr. Concilio, Protocolli, 1868. And: Numero d'ordine: 879,

ing.[52] Some petitions in this category contained doubts about the festive dates when to offer a *missa pro populo*.[53]

The categories "residence" (10.37 % of petitions, 11.39 % of resolutions) and "divine office" (11.32 % of petitions, 12.65 % of resolutions) reach similar numbers. Whereas "residence" refers to the duty of ecclesiastical beneficiaries to reside in the location of their benefices (e. g. the bishop in his diocese, the parish priest in his parish etc.), "divine office" concerns the clergy's obligation of reciting prayers according to the canonical hours. Most of the cases found relate to the cathedral chapter – and at least five times the two obligations appear together. These cases comprise bishops' requests for faculties to dispense canons and cathedral beneficiaries from choir *and* residence,[54] the petition of a cleric for exemption from choir *and* residence,[55] a vicar capitular's request for faculties to dispense from residence *in* choir,[56] and a bishop's petition for the prorogation of the faculty to discharge the cathedral choir from the residence law *(prorogationem facultatis exonerandi chorales cathedralis a lege residentiae)*.[57] The last two cases in particular support the interpretation that the obligation of canons to publicly recite the divine office was, to some extent, attached to the obligation of residence.[58] The cases pertaining solely to one or other category approach, on the side of "divine office", bishops' requests for faculties to dispense from choir,[59] and

Diocesi: Olinda, Nome e cognome del postulante: Vescovo, Oggetto: Assolvere ridurre, in: AAV, Congr. Concilio, Protocolli, 1868.

52 Numero d'ordine: 13833, Diocesi: Rio Janeiro, Nome e cognome del postulante: Fernandez Pincherio Gioacchino Gaetano, Oggetto: Facoltà di celebrare, in: AAV, Congr. Concilio, Protocolli, 1853.

53 Numero d'ordine: 2912, Diocesi: S. Sebastiano di Rio Gianerio, Nome e cognome del postulante: Vescovo, Oggetto: Se i Parrochi siano tenuti celebrare pro populo nel giorno 26 Luglio, in: AAV, Congr. Concilio, Protocolli, 1877.

54 Numero d'ordine: 1519, Diocesi: São Luis do Maranhão, Nome e cognome del postulante: Vescovo, Oggetto: Circa la residenza dei Can.ci, in: AAV, Congr. Concilio, Protocolli, 1889.

55 Mariannen – Cotta Stephanus petit exemptionem a choro et residentia ut visitare possit loca sancta, in: AAV, Congr. Concilio, Libri Decret., 231, 1888, p. 416.

56 Numero d'ordine: 1157, Diocesi: Olinda, Nome e cognome del postulante: Vicario Capitolare, Oggetto: Circa la residenza in coro, in: AAV, Congr. Concilio, Protocolli, 1880.

57 Numero d'ordine: 3279, Diocesi: São Luis do Maranhão, Nome e cognome del postulante: Vescovo, Oggetto: Circa la residenza dei Canonici, in: AAV, Congr. Concilio, Protocolli, 1886.

58 Monte argues that the obligation of residence was a *consequence* of the obligation of reciting the divine office, in MRA, II, 287.

59 Numero d'ordine: 2677, Diocesi: S. Paolo del Brasile, Nome e cognome del postulante: Vescovo, Oggetto: Circa l'Officiatura corale, in: AAV, Congr. Concilio, Protocolli, 1876.

clerics' petition to anticipate canonical hours;[60] on the side of "residence", bishops' solicitations of faculties to dispense from residence,[61] and clerics' requests for leave of absence.[62] Overall, the petitions encompass issues of gracious jurisdiction and doubts.

"Foreign clergy", in its turn, displays a significant imbalance between petitions (9.43 %) and resolutions (2.53 %). There are intersections between this category and the provision of offices and benefices, mass, and residence; but most of the cases under "foreign clergy" are about migration (6.60 % of petitions, 1.26 % of resolutions). Migration, as addressed by the Congregation of the Council, was a legal construction in between a leave of absence (related to the obligation of residence) and excardination / incardination. In other words, while regulating the permissions to migrate, the dicastery kept travelling priests bound both to the diocese of origin and the diocese of reception.

The requests collected concern Italian clerics who, having migrated to Brazil, wished to regularise their situation (being thus able to lawfully act as priests in the country),[63] or to extend their time in Brazilian dioceses.[64] Most petitions are from 1887 onwards, an aspect that suggests that tackling migratory affairs was a more recent competence of the Congregation of the Council. The period more or less coincides with the waves of mass migration from Italy and Germany to Brazil, as well as with the Holy See's

And: Numero d'ordine: 4888, Diocesi: Marianna, Nome e cognome del postulante: Vescovo, Oggetto: Dispensare dal canto corale, in: AAV, Congr. Concilio, Protocolli, 1881.

60 Numero d'ordine: 3535, Diocesi: S. Luis do Maranhão, Nome e cognome del postulante: Rios Doroteo, Oggetto: Anticipazione di ore canoniche, in: AAV, Congr. Concilio, Protocolli, 1882. And: Numero d'ordine: 2851, Diocesi: S. Luis do Maranhão, Nome e cognome del postulante: Giose' de Lima Alvaro, Oggetto: Anticipazione di ore canoniche, in: AAV, Congr. Concilio, Protocolli, 1883.

61 Numero d'ordine: 3105, Diocesi: S. Paolo nel Brasile, Nome e cognome del postulante: Vescovo, Oggetto: Circa la residenza, in: AAV, Congr. Concilio, Protocolli, 1876. And: Numero d'ordine: 897, Diocesi: S. Luis do Maranhão, Nome e cognome del postulante: Vescovo, Oggetto: Circa la residenza dei canonici, in: AAV, Congr. Concilio, Protocolli, 1883.

62 Numero d'ordine: 4300, Diocesi: Olinda, Nome e cognome del postulante: De Rego Francesco, Oggetto: Indulto d'assenza, in: AAV, Congr. Concilio, Protocolli, 1884.

63 Numero d'ordine: 5535, Diocesi: Nusco e S. Paolo del Brasile, Nome e cognome del postulante: Fusco Gennaro, Oggetto: Emigrare, in: AAV, Congr. Concilio, Protocolli, 1888.

64 Numero d'ordine: 3858, Diocesi: Capaccio Vallo e Marianna, Nome e cognome del postulante: Mantone Giovanfelice, Oggetto: Facoltà di restare in America, in: AAV, Congr. Concilio, Protocolli, 1889.

change of policy towards migrant clergymen. After receiving several local complaints about the behaviour of clerics coming from southern Italy, Pope Leo XIII decided to apply stricter criteria for Italian priests wanting to cross the Atlantic. Thus, in a circular letter of 1886, the Congregation of the Council declared that bishops from the *Mezzogiorno* region were forbidden to grant discessorial letters for migratory purposes, at least concerning travels to the Americas.[65] In 1887, an exception was made for clerics who possessed a petition from the ordinary of the receiving diocese, and the consent from the ordinary of the diocese of origin. Moreover, before departing, candidates had to submit themselves to knowledge exams under the care of *Propaganda Fide*.[66] Such changes resulted in greater control also over the clerics who were already in Brazil, as shown by the cases entrusted to the Congregation of the Council. It is worth noticing that, in at least five cases, the requests for regularisation or prorogation of license did not progress beyond the stage of collecting information and consent from the bishops of the dioceses of origin and / or reception. This suggests that the imbalance between the number of petitions and resolutions in "foreign clergy" may be a consequence of the lack of familiarity (of migrants, ordinaries etc.) with the procedure then in force.

Four cases relate to "seminary", the ecclesiastical institution responsible for the basic formation of the clergy. Requests refer to episcopal faculties,[67] the reduction of seminary masses,[68] the transferring of a seminary's location,[69] and the concession of a seminary's administration to the Lazarists.[70]

65 Circolare della Congregazione del Concilio del 3 febbraio 1886 ai Vescovi dell'Italia meridionale sui mali, scandali che causano gli italiani, laici e preti, specialmente delle provincie meridionali, che si recano nelle regioni delle Americhe. Si propongono dei rimedi (1886), in: ASRS, AA.EE.SS., Leone XIII, Stati Ecclesiastici II, Positio 1066, Fasc. 342, ff. 28r–28f.

66 Circolare ai Vescovi d'Italia con cui si comunica la decisione del S. Padre di non permettere ai Sacerdoti Italiani di recarsi nell'America del Sud se non dietro regolare richiesta fattane da quegli Ordinari (1887), in: ASRS, AA.EE.SS., Leone XIII, Italia II, Positio 390, Fasc. 136, f. 2r–v.

67 Marianen Ep.us circa Seminarium, in: AAV, Congr. Concilio, Libri Decret., 196, 1853, f. 190r.

68 Numero d'ordine: 515, Diocesi: Marianna, Nome e cognome del postulante: Vicario Capitolare, Oggetto: Riduz.e Messa pel Seminario, in: AAV, Congr. Concilio, Protocolli, 1877.

69 Numero d'ordine: 3672, Diocesi: Olinda, Nome e cognome del postulante: Vescovo, Oggetto: Postulato circa la traslazione della cattedrale e del seminario, in: AAV, Congr. Concilio, Protocolli, 1885.

70 Numero d'ordine: 2762, Diocesi: Salvador da Bahia, Nome e cognome del postulante: Arcivescovo, Oggetto: Circa i seminarii, in: AAV, Congr. Concilio, Protocolli, 1888.

All these solicitations were successful. The small number of requests may be connected to the more immediate material problems that bishops and vicar capitulars had to deal with in order to keep seminaries functioning or even to build them from scratch, as observed in letters exchanged with the Apostolic Internuncio in Brazil.[71] One word is due to the last petition in the list above, which was from the Archbishop of S. Salvador de Bahia, in 1888. It illustrates a wider movement of approximation between the diocesan government and foreign religious congregations, with the objective of reforming diocesan seminaries and, thus, raising clerics in accordance to Roman standards. This was an administrative phenomenon present in other Brazilian dioceses, such as Mariana, São Paulo, Fortaleza, and Diamantina. And it certainly played a key role in the spreading of ultramontane ideas.[72]

"Discipline" is a category that is closely connected to the *vita et honestate clericorum* as present in the Council of Trent (Session 22, *De reformatione*, Canon 1). It encompasses cases related to the clergy's behaviour and physical appearance. None of the three petitions to the Congregation of the Council had a resolution as its outcome. This was, in part, because of the irrelevance of the request, as in the case of the clergyman who asked to be allowed to wear his beard long.[73] The other two petitions are doubts posed by the Bishop of Olinda in the *relatio dioecesium* of 1884. Whereas his question on the extent of his disciplining authority over religious orders was transferred to the Congregation of Bishops and Regulars,[74] his doubt on how to tackle concubinage among the secular clergy was reduced to a draft *(minutam)*, but not decided by the plenum of the Congregation of the Council.[75] In general, the scarcity of petitions on discipline is most likely related to local solutions, exchange of advice with more "political" dicasteries (the

71 See, for example: Letter of 16 June 1860 from D. Romualdo Seixas, Archbishop of Salvador da Bahia, to Mariano Falcinelli, Apostolic Internuncio in Brazil, on the endowment of seminaries, in: AAV, Arch. Nunz. Brasile, Busta 32, Fasc. 143, Doc. 35, ff. 87r–88r.

72 See, for instance, Oliveira (2015) and Santirocchi (2017).

73 Numero d'ordine: 84, Diocesi: Belém do Pará, Nome e cognome del postulante: De Medeiros Emmanuele, Oggetto: Facoltà di portare la barba lunga, in: AAV, Congr. Concilio, Protocolli, 1864.

74 Numero d'ordine: 3669, Diocesi: Olinda, Nome e cognome del postulante: Vescovo, Oggetto: Postulato circa i regolari, in: AAV, Congr. Concilio, Protocolli, 1885.

75 Numero d'ordine: 3670, Diocesi: Olinda, Nome e cognome del postulante: Vescovo, Oggetto: Postulato circa la vita e l'onesta dei chierici, in: AAV, Congr. Concilio, Protocolli, 1885.

Secretariat of State, the Congregation for Extraordinary Ecclesiastical Affairs) and agents (the Apostolic Internuncio), and different practices of forum shopping (as pointed out earlier, in the case of suspensions *ex informata conscientia*).

Minor categories worth mentioning are "sacred places" and "confraternity". While encompassing topics such as the preparation of a chapel for the celebration of masses,[76] the creation of an oratory,[77] and the transferring of a cathedral and a seminary,[78] the first category displays the relevance of the Congregation of the Council in the organization of both private and public spaces. The second category refers to the associations of the faithful, strong social organizations that aimed at the promotion of piety and charity among the laity. Dating back to colonial times, confraternities remained popular in Brazil throughout the 19th century. With the coming of bishops more in harmony with ultramontane standards, these groups underwent a (sometimes tense) process of reshaping their composition and practices of devotion.[79] It is yet to be investigated whether this process brought changes to the relationship between Brazilian lay associations and the Holy See. Within the limits of my study, I could find only one petition from a confraternity to the Congregation of the Council: a request for exemption of dependency on the local parish priest, without prejudice to parochial rights.[80] It is one of the few examples of petitions that were concerned with the delimitation of powers.

In fact, if I engage in a further exercise of classification, by using "delimitation" (of powers, faculties, jurisdiction) as a transversal category, no more than three cases will receive this label. Besides the request from the confraternity, there are the bishop's doubt on the extent of his disciplining authority over religious orders already mentioned above, and a cathedral chapter's

76 S. Salvatoris in Brasilia. Justinianus De-Almeida Pires petit ut asservari in sua Capella SS. Euch.ae Sacramentum, in: AAV, Congr. Concilio, Libri Decret., 205, 1862, pp. 395–396.

77 Numero d'ordine: 139, Diocesi: Olinda, Nome e cognome del postulante: Do Rego Maia Francesco, Oggetto: Orat. privato, in: AAV, Congr. Concilio, Protocolli, 1889.

78 Numero d'ordine: 3672, Diocesi: Olinda, Nome e cognome del postulante: Vescovo, Oggetto: Postulato circa la traslazione della cattedrale e del seminario, in: AAV, Congr. Concilio, Protocolli, 1885.

79 See, for instance, Tavares (2007) and Gomes (2009).

80 Numero d'ordine: 1621, Diocesi: S. Sebastiani Fluminis Januarii, Nome e cognome del postulante: Sodales sub titulo S. Luciae V. et M., Oggetto: Exemptionem a dependentia Parochi Loci, in: AAV, Congr. Concilio, Protocolli, 1872.

question on whether the vicar capitular or the chapter itself could dispense canons from choir in residence during *sede vacante*.[81] The number of cases is quite small, which contrasts with how contemporary books addressed decisions from Roman congregations. In a recent article, Benedetta Albani and I analysed how Roman dicasteries were represented in 19th-century Brazilian handbooks on ecclesiastical law; we found that the largest number of decisions cited referred to the delimitation of powers, faculties, functions, or jurisdiction.[82] We concluded that, in these books, the Holy See emerged as a strong reference for defining the limits of the activity of agents involved in diocesan and parish administration. Yet, in practice, the concern for delimitation is not as urgent. As mentioned before, it seems that Brazilian petitioners aimed not at posing complex, groundbreaking questions, or at rearranging local roles, but at including the Congregation of the Council into the ordinary rhythm of everyday administration. And they did so mostly through ordinary, gracious requests.

In order to observe which of the issues addressed in this section could be recognised, in practice, as of mixed nature, I will now turn to the results from the Brazilian Council of State.

2.2 The national level of governance of the Church: the Council of State

According to 19th-century Brazilian jurist José Antonio Pimenta Bueno, the Council of State aimed at aiding the government and the national administration.[83] It functioned mainly as superior administrative court and imperial advisory board, responsible, among other things, for an authoritative (though not authentic) interpretation of all the laws enforced in Brazil. Not by chance, Pimenta Bueno attributed to this institution the role of stabilising and standardising the country's administration, conserving the empire's "traditions" in spite of the unavoidable changes of ministerial officers.[84]

81 Numero d'ordine: 3110, Diocesi: Olinda, Nome e cognome del postulante: Capitolo della Catedrale, Oggetto: Quesito, in: AAV, Congr. Concilio, Protocolli, 1879.

82 Albani / Lehmann Martins (2020) 52–53.

83 Pimenta Bueno (1857) 285.

84 "[O Conselho de Estado] faz-se indispensável para a existência de uma marcha estável, homogênea, para unidade de vistas e de sistema. É o corpo permanente, ligado por seus precedentes e princípios, que conserva as tradições, as confidencias do poder, a perpetuidade das ideias; é portanto quem pode neutralizar os inconvenientes resultantes da passagem muitas vezes rápida, da instabilidade dos ministros, depositários móveis da autoridade que tem vistas e

Historiography takes a very similar view of this, emphasising the Council of State's conciliatory and politically centralising character,[85] not only in the field of secular administration, but also of ecclesiastical affairs.[86] Among legal historians, the council's interpretative activity has been highlighted as a milestone for 19th-century Brazilian legal culture, even though the institution's opinions were not legally binding.[87]

I focus on the activities of the third Council of State, in office between 1842 and 1889. During this period, the organ was no longer ruled by the Constitution of the Empire, but by the Law n. 234 of 23 November 1841, and the Decree n. 124 of 5 February 1842 *(Regimento provisório do Conselho de Estado)*. The first Council of State (1822–1823) emerged before the independence of Brazil. By gathering some of the *Procuradores-Gerais* of the provinces, it guaranteed the participation of local elites in the organisation of the (future) Brazilian constitutional order. The essentially political functions of this Council of State, while safeguarding the country's unity and stability after the independence, contributed to the weakening of parliamentary bodies (and, thus, to the weakening of the representation of actual local interests).[88] The second Council of State (1823–1834) was created soon after the dissolution of the Constituent Assembly, which confirmed the political and centralising role of the institution. Its primary objective then was to elaborate the Constitution of the Empire. Later on, its activities revolved around the emperor's role as moderating power,[89] and most of this council's

pretenções administrativas, às vezes não só diferentes, mas até opostas", as in Pimenta Bueno (1857) 286.

85 Rodrigues (1978), Carvalho (2003 [1980, 1988]), Vieira Martins (2006, 2007).

86 Nogueira (2018).

87 Lima Lopes (2010).

88 See the analysis by Guandalini Junior (2016) 164–168.

89 Moderating power refers to the role of the monarch as arbiter of the political system, as a neutral power that would strive for a balance between the legislative and executive branches, its primary guideline being the best interest of the state. This concept dates back to the French Restoration, more precisely to the writings of the liberal political thinker Benjamin Constant. Although Constant's arguments aimed at distancing the monarch from activities that belonged to the executive branch, his ideas came to be used in a rather original fashion in Brazil, having strengthened the power of the emperor (who simultaneously played the roles of moderating power and chief of the executive branch) and increased political and administrative centralisation. According to Article 101 of the Constitution of the Empire of Brazil (1824), the emperor exercised the moderating power by appointing the senators, sanctioning the decrees and resolutions of the General Legislative Assembly, appointing and dismissing the ministers of state, suspending the magistrates,

debates concerned pardon concessions, commutations, or amnesty; sanctioning the General Legislative Assembly's resolutions; and suspension of magistrates.[90] Even its incursions into the field of the executive branch were more political than administrative, having repeatedly touched upon issues of international relations.[91] Such centralising political behaviour was interrupted, however, by the coming of the Regency (1831–1840), a period that witnessed the flourishing of liberal, decentralising political ideas, alongside the rising of local rebellions and reformist initiatives. Among the latter, the most famous was the so-called *Ato Adicional* of 1834 (Law n. 16 of 12 August 1834), an act that revised some dispositions of the Constitution of the Empire in the direction of providing more autonomy to the provinces. The *Ato Adicional* created, for instance, the provincial legislative assemblies, which, in the field of Church affairs, held powers to legislate on the division of local ecclesiastical territory (that is, the erection and suppression of parishes), and approve the statutes of local brotherhoods. But, in accordance with its decentralising objectives, the *Ato Adicional* also terminated the second Council of State. The institution would only be re-established after the crowning of the new emperor, D. Pedro II, in a scenario where ideas on political and administrative centralisation were allowed some of their former hegemony (a period known as *regresso conservador*). This third Council of State then enjoyed times of relative stability, remaining active until the end of the empire.

The interpretative activity of the Council of State comprised a rather wide range of matters, for the organ was obliged to provide opinion on any issue, any doubt, submitted by the emperor (Article 7, Law n. 234 of 23 November 1841). Pimenta Bueno listed some specific occasions when, according to the legislation, the Council of State had to be heard: when the emperor wished to exercise any of the attributions of the moderating power; when war, peace, or negotiations were to be established with foreign countries; on regulations issued by the executive branch for the proper implementation of laws, as well as on proposals that the executive should present to the General Legislative Assembly; on any matters of internal administration; on quasi-dispute issues

forgiving and moderating penalties imposed by sentence, granting amnesty etc. It is noteworthy that the Brazilian monarch's prerogatives regarding ecclesiastical administration were attached to his role as chief of the executive branch. For more on the moderating power in the context of the Empire of Brazil, see Lynch (2005).

90 Guandalini Junior (2016) 168–179.

91 Guandalini Junior (2016) 178.

(assuntos de natureza quase contenciosa), including conflicts between administrative authorities, between these and the judicial branch, and cases of abuse of power by ecclesiastical authorities; on matters of administrative dispute *(negócios de justiça administrativa contenciosa)*. Even though this list offers a fairly broad field of action, the Council of State's *regimento provisório* came to add more possibilities of intervention in the actions of the legislative branch, by means of the examination of provincial laws and (national) draft laws and the suggestion of legislation to be elaborated.

As already indicated, the Council of State's opinions did not possess the force of law. The emperor had to issue a corresponding resolution for them to be binding. According to Lima Lopes's recent study, focused on the activity of the Council of State's Section of Justice, positive resolutions were granted on most occasions.[92] Given the weight of the council's opinions, modern legal historians diverge on the character of this organ's interpretation of law. Some claim that it was a strong *doctrinal* interpretation, related to concrete cases; it was, in particular, a valuable resource for the judicial branch, which had no interpretative support from the Superior Court of Justice[93] and, at the same time, had to deal with a wide variety of laws, old and new, and new regulations emanating almost daily from the executive branch.[94] Other historians, at least in some cases, point to a disguised *authentic interpretation*, in an attempt from the executive branch to assume functions of the legislative.[95] Regardless of a definitive answer, there is consensus on the fact that the opinions of the Council of State possessed a palpable institutional weight.

While combining "traditional and modern", or "legal and flexible" elements,[96] the council's decisions were sufficiently influential so as to justify, for instance, the publication of case compilations. Around the end of the

92 Lima Lopes (2010) 173.

93 The Brazilian Supreme Court of Justice had, at the time, only the function of reviewing lower-level judicial decisions *(recurso de revista)* on grounds of "manifest nullity" *(nulidade manifesta)* or "notorious injustice" *(injustiça notória)*. If a review was conceded, the cause would go back to the next lower instance for a new decision, but, even so, the deciding court was not obliged to follow the Supreme Court's mind. For this reason, Imperial jurists often viewed the Supreme Court as a tribunal that was unable to establish a tradition of case law *(jurisprudência)*.

94 See Lima Lopes (2010).

95 See Lobo (2018).

96 See, respectively, Vieira Martins (2006) 214, and Lima Lopes (2010) 349.

1860s, Minister of the Empire Paulino José Soares de Sousa Filho ordered the collection and publication of the most relevant opinions issued by the Council of State on ecclesiastical affairs.[97] The final product was a set of three volumes, comprising 74 cases divided into thematic sections, each section opening with a condensed version of the "doctrine" contained in the opinions. Curiously, some of the cases compiled did not present the corresponding imperial resolution, which supports the hypothesis that the Council of State's decisions had, so to speak, factual strength.

Pimenta Bueno's account furthermore shows that, besides being the emperor's advisory board, the Council of State was in charge of solving administrative disputes, or quasi-disputes. Like the opinions of this organ, the solutions had a consultative character. In the field of ecclesiastical law, this function came to the fore in particular when the Council of State had to decide on appeals to the Crown *(recurso à Coroa)*. Based on claim practices from the Portuguese *Ancien Régime* – later remodeled by the Decree n. 1.911 of 28 March 1857 –, the appeal to the Crown aimed at stopping abuse committed by ecclesiastical and secular authorities when overstepping their respective jurisdiction. Provincial presidents had powers to decide on such cases on a provisional basis, but only the Council of State had competence to take cognisance of them. Though official discourse regarded it as a mechanism of protection for both state and Church, the *recurso à Coroa* was the object of a fair amount of controversy during the Second Reign. The last regulation on the subject, the Decree of 1857, issued after the Council of State had decided on a plea from São Paulo,[98] elicited mixed feelings among ultramontanists: while some saw in it a sign of cooperation between state bureaucrats and bishops,[99] others accused the empire of interfering in the jurisdiction of the Church.[100]

97 For an analysis of this compilation in particular, see Nogueira (2018).

98 Consulta de 2 de janeiro de 1856, Seção de Justiça; Consulta de 19 de junho de 1856, Conselho de Estado Pleno, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 66.

99 D. Antonio Joaquim de Melo, the bishop involved in the leading case from São Paulo – and a figure openly sympathetic to ultramontanism –, expressed his "cordial gratitude" to the author of the Decree of 1857 (Minister of Justice José Tomás Nabuco de Araújo) in a letter of 6 April 1857. The bishop emphasised that the novel normative set was a "great good", as in Nabuco (1897) 324–325.

100 Candido Mendes de Almeida, for example, deemed the appeal to the Crown an "arbitrary and anarchical" mechanism, akin to Brazil's "anachronical" *placet*, and "forcible" *padroado*, as in CMA, I, xxix. Some pages further on, Mendes de Almeida insisted on the "absurdity"

Nevertheless, the appeal to the Crown was not the only matter touching upon ecclesiastical affairs that could be the object of deliberation by the Council of State. As Pimenta Bueno pointed out, the monarch was encouraged to hear the organ's opinion on any issue concerning internal administration. The *padroado* rights enjoyed by the emperor as chief of the executive branch were the foundation for the consensus that ecclesiastical administration, in matters concerning the participation of secular authorities, belonged to the empire's administrative framework. In fact, legal scholars described ecclesiastical law as a "powerful" or "natural auxiliary" of administrative law.[101] This does not mean that ecclesiastical administration was treated in the same manner as secular administration. The clergy, for instance, had a special status compared to the standard public servant (even though some regalist sectors might have argued otherwise). It was well known that Church affairs, as they involved canon and civil law, required a different, non-linear approach on the part of deciding authorities. But the singularity of ecclesiastical administration hardly prevented the Council of State from approaching it numerous times. So much so that, as stated in older historiography, Catholicism in the Empire of Brazil could be divided into Roman Catholicism and the "Catholicism of the Council of State".[102]

Before addressing the opinions issued on matters playing out in this field, it seems useful to offer some words on the Council of State's composition and procedure. The organ comprised 12 ordinary members besides the emperor. It had four sections (Empire *[Império]*, Justice and Foreigners *[Justiça e Estrangeiros]*, Treasury *[Fazenda]*, and War and Navy *[Guerra e Marinha]*), with three councillors assigned to each of these. There were also 12 extraordinary members and ten lawyers who were habilitated to act before the organ. State councillors were appointed *pro vita* by the emperor, provided they fulfilled the personal requirements listed in the constitution for becoming a senator.[103] They were also required to swear an oath to

of the mechanism, as the limits between the two powers were by then well defined. To defend the appeal to the Crown was to contradict the independence between state and Church: after all, how could one power be the judge of the other? As in CMA, I, ccclxiv.

101 See, respectively, Ribas (1866) 29–30, and Rubino de Oliveira (1884) 17.

102 Hauck/Beozzo/Van der Grijp/Brod (1980) 143.

103 According to Article 45 of the Constitution of the Empire, in order to become a senator, one had to be: a Brazilian citizen, with full exercise of his political rights; at least forty years old; "a person of knowledge, abilities, and virtues", preferably someone who had already performed services to the country; and someone who possessed an annual income

protect the official religion and secular institutions.[104] They were not subject to a strict regime of incompatibility, that is, councillors could hold most public positions[105] without losing their prerogative of engaging in the council's activities or at least their status of councillor. In fact, by the end of the empire, the majority of state councillors were senators.[106] Overall, the Council of State comprised among its members men from the country's political and economic elites. Several leaders of the two major monarchical parties (liberals and conservatives) were appointed, and most of the organ's members had previous experience in the country's administration and/or political representation. While some scholars hold that the councillors' performance was generally "bent" in favour of "the system",[107] others emphasise the councillors' loyalty to the interests of their political, regional, and familial networks,[108] aspects that are by no means contradictory, in view of the conciliatory role played by the institution.[109] In the field of ecclesiastical affairs, this political conservatism would mean sympathy towards institutional jurisdictionalism, an assertion that shall be tested in my analysis of sources.

In terms of procedure, the Council of State operated in plenary and sectional meetings. The plenum required the participation of at least seven ordinary councillors in order to take place. It was reserved for particularly controversial matters, being held in the presence of the emperor, and presided by the president of the Council of Ministers.[110] A meeting of the Plenary

of 800,000 *réis*, due to goods, industry, or commerce, as in Constituição Política do Império do Brazil (1824).

104 Article 141 required that, before taking office, the councillors of state swore "an oath into the hands of the Emperor, [promising] to maintain the Roman Catholic Apostolic Religion, to observe the Constitution and the Laws, to be loyal to the Emperor, and to advise him according to their conscience, considering only the welfare of the Nation", as in Constituição Política do Império do Brazil (1824).

105 With the exception of the office of minister of the Supreme Court of Justice, according to Lima Lopes (2010) 145.

106 Lima Lopes (2010) 144.

107 Carvalho (2003 [1980, 1988]) 363.

108 That is the main point of Vieira Martins (2006).

109 Vieira Martins (2006) 214.

110 The position of president of the Council of Ministers was similar to that of a prime minister; it was created by the Decree n. 523 of 20 July 1847. From this date onwards, instead of appointing all the ministers of the executive branch, as stipulated by the Article 101 of the Constitution of the Empire, the monarch would nominate only the president of the Council of Ministers, from the party that had obtained majority in parliamentary elections. The nominated would then organise his own cabinet, his choice of secretaries

Council was the exception. The bulk of the Council of State's activities unfolded within the four sections: Empire, Justice and Foreigners, Treasury, and War and Navy. Ecclesiastical affairs were initially subsumed under Justice; at the beginning of the 1860s, they migrated to Empire.[111] After authorisation by the emperor, cases arrived at the council by means of dispatches *(avisos)* from the secretaries of state.[112] The ministers, in parallel to commanding whole sectors of the empire's administration, were also in charge of organising the deliberative agenda of the council's sections, based on the petitions received, the anomalies found in ordinary operations, etc. The secretaries also presided over the sectional reunions, with no right to vote. Each case had one councillor assigned as its rapporteur. Before offering their opinion, councillors could ask for further information from any person, as well as request the technical opinion from other state authorities (e. g. the prosecutor of the Crown, officials from the state departments etc.). Once the date of the reunion arrived, the rapporteur would present his vote and the councillors would choose whether to follow it or not. The opinion of the section (or plenum) was decided by majority vote, minority positions being included in the reunion's minutes. With the results from the Council of State in his hands, the emperor had complete freedom to decide on the subsequent course of action. He was not obliged to agree with the majority opinion and issue the corresponding resolution and decree, but this occurred most times. There were a few occasions where he favoured minority positions, and some where he issued no resolution at all. In general, one may say that the emperor's mind was quite in harmony with his advisory board, to the point of it being appropriate to call the latter "the head of the government".[113]

depending on the imperial approval (and, informally, on the confidence of the Chamber of Deputies). This scheme aimed at providing more uniformity and stability to the government, being often called "inverted parliamentarism". The term stresses that the emperor, and not the legislative, as is usual in parliamentary systems, retained power to appoint and dismiss the "prime minister".

111 This change occurred with the reorganisation of the Secretariat of the Empire, operated by the Decree n. 2.749 of 16 February 1861.

112 *Avisos* were orders sent by the secretaries of state to certain authorities and private persons; these documents carried the signature of secretaries, but were made on behalf of the monarch, according to Ribas (1866) 206. On the interpretative (and political) role of the *avisos*, in particular during the Regency, see Coelho (2016).

113 Carvalho (2003 [1980, 1988]) 355.

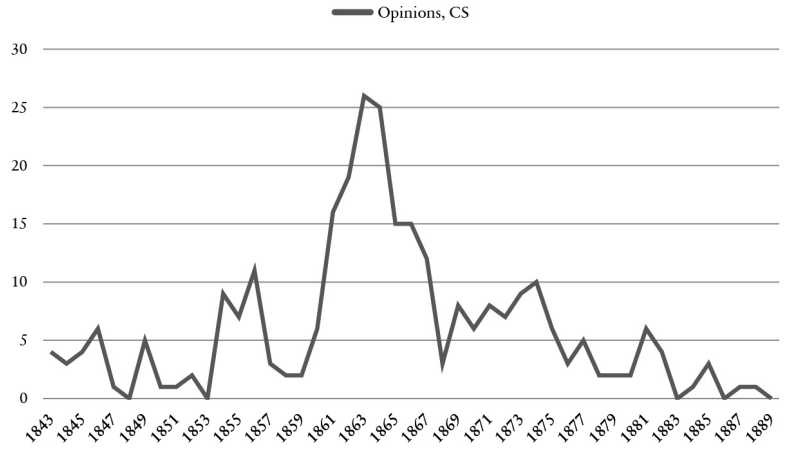


Chart 4. Opinions on ecclesiastical matters issued by the Brazilian Council of State (CS) per year (1843–1889).

The third Council of State, in its sectional and plenary meetings, issued at least 282 opinions on ecclesiastical matters.[114] With the means per decade (1843–1849: 3.28; 1850–1859: 3.80; 1860–1869: 14.50; 1870–1879: 5.80; 1880–1889: 1.80), in addition to the evolution shown by Chart 4, what is first perceived is an unstable growth (marked, in fact, by phases of sudden decline) of opinions issued between the 1840s and 1850s. The 1860s, in turn, witnessed an extraordinary increase of activity of the Council of State in ecclesiastical matters, with a peak of 26 opinions in 1863. The average amount of decisions reached in this decade would prove to be unmatched, as subsequent periods present much lower numbers. The end of the 1880s, in fact, comprises years with zero or only one decision on ecclesiastical affairs.

How to explain the increase of opinions during the 1860s? The literature on the Council of State offers some possibilities. Nogueira, who analysed the 1869–1870's case compilation on ecclesiastical matters, associates the inten-

114 I rely primarily on the directory *(fichário)* of the fonds of the Council of State in the Brazilian National Archive, the official compilation of ecclesiastical cases of 1869–1870 *(Consultas do Conselho de Estado sobre Negócios Eclesiásticos)*, and José Honório Rodrigues' collection of the minutes of the Council of State's plenary meetings. In case of data divergence between printed and manuscript sources, the information presented in the latter prevailed.

sification of the Council of State's activity with the instability of the ruling cabinets, which, along most of the decade, did not reach two years in office.[115] Such instability derived from the crisis of the Duke of Caxias's government and the sudden reorganisation of the Conservative Party in the early 1860s, which resulted in the rise to power of the Progressive League *(Liga Progressista)*, formed by dissident conservatives and some liberals. Due to the frequent divergences between the government and the Chamber of Deputies, neither the Progressive League, nor the Liberal Party, which succeeded the League in 1864, were able to form lasting cabinets. Such an achievement would have to wait for the return of the Conservative Party to office, in 1868.[116] Nogueira's point is that during this period, political instability would have led to administrative instability, which, in its turn, would have triggered the increasing appeal of institutions (at least theoretically) detached from the disputes between political parties. In more concrete terms, she claims that many issues that were usually solved by the secretariats shifted to being remitted to the Council of State on grounds of the latter's more stable, "neutral" character (it aided, after all, the "neutral" moderating power), an element that warrented the legitimacy of its decisions. This perspective, which is certainly valid, can be complemented by another, more focused on the circumstances of the ecclesiastical milieu.

Consulting the reports issued by the Secretariat of State for Imperial Affairs (also known as *Ministério do Império*) during the 1860s, one finds that two of the government's major concerns in the ecclesiastical field were the unrestrained multiplication of parishes (a phenomenon provoked by the provincial legislative assemblies, which, competent to legislate on the division of ecclesiastical territory in local level, were using this prerogative to further electoral and personal purposes)[117] and the lack of examinations to select parish priests.[118] This last aspect, apparently formal, covered a substantial problem: the shortage of priests in the country. Such circumstances forced diocesan ordinaries to delay examinations, or to hold them without complying with

115 Nogueira (2018) 59.

116 For more on the political dynamics of the Brazilian Empire, with particular attention to the Second Reign's governmental instability and the relationship between ruling cabinets and the Chamber of Deputies, see Ferraz (2017) 63–91.

117 MI (Br), Rel. 1862 (1863), p. 20; MI (Br), Rel. 1865 (1866), p. 10; MI (Br), Rel. 1868 (1869), p. 38.

118 MI (Br), Rel. 1862 (1863), p. 20; MI (Br), Rel. 1864-2A (1864), p. 21.

certain legislative requirements, such as the selection of three candidates per benefice (as set forth in the *Alvará das Faculdades*), or the proposal of intellectually and morally suitable candidates (as put by *Faculdades* and the Council of Trent). In response to this situation, other questions came into play, such as the possibility of assigning foreign priests to vacant parishes, even if on a temporary basis. Concessions of this kind were mostly the exception in earlier periods. However, after the Council of State's positive opinion in a plenum on 4 May 1862, such concessions started appearing regularly in ministerial reports, at least until the beginning of the 1870s.[119] The acceptance of a new possibility required further clarification on how it should operate. It is no surprise, then, that six (of seven; see Chart 6) of the Council of State's opinions on the theme "foreign clergy" came about between 1861 and 1867, the interval when the organ's activity reached its highest volume. In the same period, 55.5 % of the decisions on the theme "provision of offices and benefices" were issued, confirming the crisis surrounding ecclesiastical examinations and proposals, as well as the need of seeking alternatives.

Other factors that seem to have contributed to the Council of State's peak of opinions was the poverty that afflicted the diocesan seminaries, and the dissatisfaction of bishops with the Decree n. 3.973 of 22 April 1863, an attempt by the government to unify the state-subsidised seminary chairs and the form of nomination, administration, and dismissal of lecturers. By establishing administrative standards, the government hoped to reduce the discretion of secular powers over the economy of seminaries and, thus, to shorten the time a lecturer had to wait to receive his salary or his leave of absence.[120] In other words, it was a matter of administrative efficiency. But bishops – in particular those congenial to ultramontanism – interpreted the decree as an attack on their autonomy. Some of their protests appeared in the ministerial report of 1863, along with the government's response.[121] The troubled relationship of financial dependence between Church and state

119 MI (Br), Rel. 1862 (1863), p. 20; MI (Br), Rel. 1863 (1863a), p. 11; MI (Br), Rel. 1864-2A (1864), p. 22; MI (Br), Rel. 1864-3A (1865), p. 13; MI (Br), Rel. 1865 (1866), p. 10; MI (Br), Rel. 1866 (1867), p. 11; MI (Br), Rel. 1867 (1868), p. 16; MI (Br), Rel. 1869 (1870), p. 100; MI (Br), Rel. 1870 (1871), p. 20; MI (Br), Rel. 1871 (1872), p. 83; MI (Br), Rel. 1872-1A (1872a), p. 23.

120 Such were the reasons posed by the Marquis of Olinda, then president of the Council of Ministers, in his replies to the complaints of bishops. See Annex D of MI (Br), Rel. 1863 (1863a), p. 7.

121 Annex D of MI (Br), Rel. 1863 (1863a), pp. 1–29.

became more and more apparent during this period, and the Council of State's activity reflects this quite clearly. At least 65 % of its opinions on the theme "seminary" were issued between 1861 and 1867. Among these, several responded to lecturers' petitions for salary, and bishops' requests of exemption from the terms of the 1863 decree.

It is perhaps easier to explain why the flow of opinions from the Council of State declined irreversibly after the 1860s. This is a trend observable not only in the field of ecclesiastical affairs, but in the overall activity of the organ. Even the reconfiguration of the board of councillors became more difficult, with several candidates having refused invitations. Vieira Martins associates this decline with the ageing of the monarchy, as well as the emergence of new interpretations of political representation and the emperor's personal power in Brazil.[122] In this regard, the intellectual and political movement known as "the Generation of 1870", comprising republicans, new liberals, federalists, scientific positivists and others, was instrumental in disseminating a critical perspective on the institutions that served the process of political and administrative centralisation in the empire. Among the institutions criticised was the Council of State. Such reinterpretations would have been crucial to the loss of influence of the organ's decisions and, ultimately, to its exhaustion.

A look at the ecclesiastical scenario allows one to add other factors to this decline. The 1870s witnessed the consolidation of ultramontanism among the Brazilian high-ranking clergy. It rode the tide of international events, such as Pope Pius IX's string of encyclical letters and other documents condemning liberalism, secularism, and Freemasonry in the 1860s, and the First Vatican Council, between 1869 and 1870. This generational shift can be observed in the activity of the Council of State itself, which, after the 1860s, solved only one case that had the *placet* as its central theme (and this case refers precisely to the Religious Question).[123] This indicates that, similarly to the Council of State, jurisdictional mechanisms were also deteriorating, being still employed only by older ecclesiastical sectors, or by lay segments politically interested in confrontations with the ultramontane clergy. The Religious Question, initiated in the Council of State by means

122 Vieira Martins (2006) 206–208.

123 The *placet* may have appeared as a secondary element in more opinions. The criterion of classification was either the description in the directory of the fonds of the Council of State in the Brazilian National Archive, or the doctrinal summary of the 1869–1870 compilation.

of an appeal to the Crown, drove the incompatibility of views between bishops and state officials to a high level of discomfort. The trauma caused by this event, combined with the fear (or resentment) that clerics held for the mechanisms that the state employed to participate in the ecclesiastical administration, led the clergy to gradually avoid applying to the state jurisdiction for the resolution of their internal problems. They strove to create, as far as possible, parallel administrative practices.

Decade	Petitions Congregation of the Council (%)	Requests Council of State (%)
1840–1849	0	23 (8,15 %)
1850–1859	4 (3,77 %)	38 (13,47 %)
1860–1869	20 (18,86 %)	145 (51,41 %)
1870–1879	27 (25,47 %)	58 (20,56 %)
1880–1889	55 (51,88 %)	18 (6,38 %)
	Total: 106	Total: 282

Table 4. Comparison between requests to the Council of State and petitions to the Congregation of the Council, in absolute numbers and percentages, per decade (1840–1889)

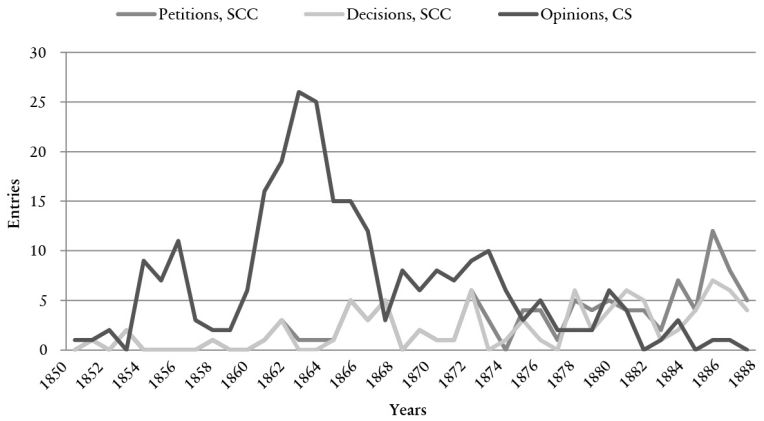


Chart 5. An overview of the Brazilian petitions to the Congregation of the Council (SCC) and the corresponding resolutions, along with the opinions issued by the Brazilian Council of State (CS) on ecclesiastical matters (1850–1889), per year.

The intensification of petitions to the Holy See, as verified in the analysis of the sources of the Congregation of the Council, is an indication of this change in the dynamics of governance. The contrast in the evolution of the two institutions' activity can be seen in Table 1 and Chart 5. Certainly the clergy, when turning to the Holy See, did not have in mind a point-by-point substitute for the Council of State, because the latter operated according to administrative logics different from those of Rome. Rather, the clergy's turning to the Holy See was part of a deeper transformation, a shift of perspective regarding the Church and its relationship with the state. With various shades in between, priests transited from a jurisdictionalist view, largely based on the idea that the ecclesiastical body should exercise its autonomy within the state while being strongly supported by it, to an ultramontanist view, which claimed that local Churches, while belonging to the universal (Roman) Church, were entitled to an administrative autonomy that transcended national borders (and interests).

The categorisation by theme of the cases examined by the Council of State reveals that the organ provided opinions on a broad variety of ecclesiastical matters during the Second Reign (see Chart 6), which explains the criticism it received from clerics more sympathetic to ultramontanism,[124] and even from Apostolic Internuncios.[125] It can be said that the Council of

124 An example of criticism directed at the wide-ranging performance of the Council of State is found in the memorial sent by D. Antonio de Macedo Costa, Bishop of Belém do Pará, to the emperor on 28 July 1863, when he complained about the state's decree on seminaries: "Parecem não ser mais os Bispos do Brasil que funcionários públicos, sujeitos ao Conselho de Estado, que à imitação da célebre Mesa de Consciência e Ordens, decide em última instância as questões mais graves do direito canônico e da administração eclesiástica, apenas dignando-se às vezes consultar os Prelados como meros informantes. A catequese, a residência dos Párocos, o noviciado dos conventos, a administração das igrejas deles, os estatutos das Catedrais e dos Seminários, a organização que se deve dar a estes últimos estabelecimentos, e até os nomes que lhes competem, as condições que se devem exigir para admissão às ordens, tudo isto julga o Governo ser de sua alçada, sobre tudo isto se crê com direito de decidir, decretar e legislar […]." See Annex D of MI (Br), Rel. 1863 (1863a), p. 16.

125 On 8 January 1857, Archbishop Vincenzo Massoni, Apostolic Internuncio in Brazil, wrote to Cardinal Giacomo Antonelli, Secretary of State, reporting on the refusal of the Bishop of Mariana to concede collation to a canon just presented by the emperor, on grounds of the candidate's immoral behaviour (the so-called "Roussin affair", after the canon's surname). The case was presented before the Council of State, which was called to opine on whether such refusal was legally possible within the Brazilian *padroado* system. Massoni clearly interprets the participation of the Council of State in the affair as invasive in relation to bishops' rights; he says: "Nel momento, in cui scrivo, la enunciata questione è d'innanzi al Consiglio di Stato, il quale si arroga, come sempre, il diritto di pronunziare

State took advantage of, or rather mirrored, the open texture that the concept of mixed matter possessed in the doctrine, in addition to finding support in flexible narratives on the monarch's *iura circa sacra*. The observation that the state considered certain ecclesiastical affairs as under its competence leads me to ask in what form it participated in these matters, and what the practical concerns of the secular administration were. In her analysis of the compilation of cases of 1869–1870, Nogueira primarily identifies concerns with financial aspects and with "disputes" of jurisdiction in the state's actions,[126] a conclusion which I only partially agree with. Some arguments put forward by the councillors in their opinions, as well as some positions present in both ecclesiastical and secular administrative doctrine, have led me to extrapolate other major objectives in the Council of State's activity.

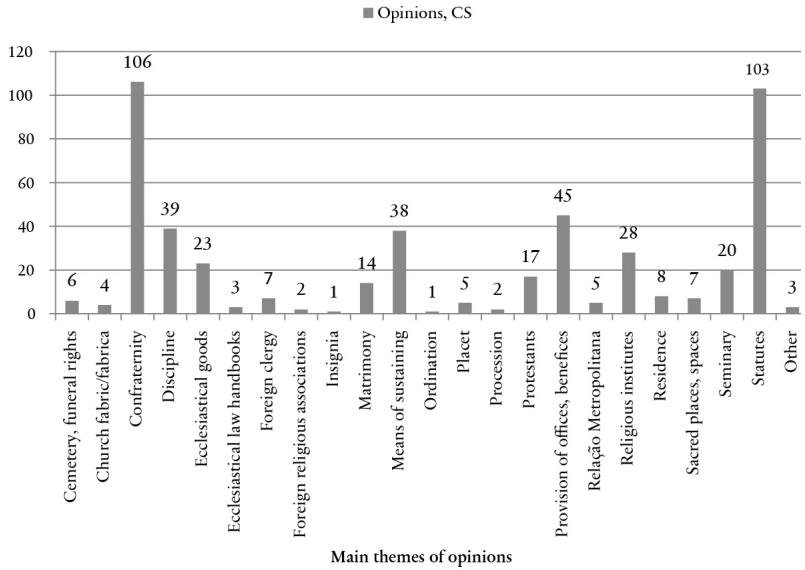


Chart 6. Opinions issued by the Brazilian Council of State (CS) (1843–1889) according to theme.

in materie del tutto estranee alla propria competenza." See Questioni fra il Governo Brasiliano ed il Vescovo di Marianna in materia beneficiaria (1857), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 123, Fasc. 176, f. 4r.

126 Addressing the themes of ecclesiastical administration covered by the Council of State, Nogueira says: "A maior parte dessas temáticas envolveu questões financeiras, ou seja, as

Regardless of their position towards jurisdictionalism or ultramontanism, Brazilian jurists from the field of ecclesiastical law generally agreed on the right / duty of the monarch to preserve and propagate the Catholic religion – and on his role, to a greater or lesser extent, as supporter / defender of the Church, by means of the administrative network of the executive branch. It was the emperor's task to support the Church in the development of its mission, respecting and enforcing its laws as well as proposing, on his part, legislation to protect it, and enabling citizens to fulfill their religious duties, which were deemed the most important duties on the scale of social value, as noted by Vilella Tavares.[127] Curiously, authors engaged with (secular) administrative law sustained similar opinions. Antonio Joaquim Ribas, recognising the prominence of the people's religious obligations, stated that "one of the most important rights of those administrated [is] to obtain from the [secular] administration, as far as such depends on it, the proper means for the fulfillment of these [religious] duties."[128] José Rubino de Oliveira, in turn, pointed out that the (secular) administration needed to have knowledge on ecclesiastical public law (equivalent to canon law plus ecclesiastical civil law, as seen in Chapter 1) in order to enforce the prescriptions of this legal branch.[129]

It seems quite clear that the exercise of the emperor's rights / duties did not involve only financial operations or delimitation of jurisdiction, although these aspects had their relevance and the authors do mention them.[130] The monarch, it should be remembered, was the patron of the Brazilian Church. In this role, promoting religion and assisting the Church certainly included ensuring the subsistence of the clergy in national territory, a 19th-century update to the ancient duty of endowing churches. This obligation is reflected

despesas de custeio do Estado no que se referia à administração eclesiástica. Entretanto, envolviam também certas disputas de jurisdição entre administração pública e religiosa, assim como a relação entre o Direito Canônico e o Direito Público Eclesiástico." This last aspect of the relationship between the two legal branches seems to go hand in hand with the issue of the disputes of jurisdiction, which is why I do not emphasise it in the text. See Nogueira (2018) 106.

127 JVT1, 253, 257, 258.

128 Ribas (1866) 29–30.

129 Rubino de Oliveira (1884) 17.

130 Regarding jurists specialised in (secular) administrative law, in the same excerpts cited, Ribas refers to the task of the administration to defend society from "possible invasions" of the ecclesiastical authority, and Oliveira mentions the need to distinguish between things belonging to civil and ecclesiastical orders, so as to avoid "reciprocal invasions".

in the large number of opinions of the Council of State on "means of sustaining" (13.47 % [38]), that is, on the clergy's income (*congrua*, pension etc.). But the *padroado* also implied (and was best symbolised by) the prerogative of appointing priests for benefices. Vacant benefices should be promptly filled; after all, the lack of bishops and parish priests was detrimental to the fulfillment of the citizens' religious duties. The diligence of the emperor, and also of the secular administration, in filling vacancies reached a high level of boldness when it embraced the foreign clergy (2.48 % [7]), a manoeuvre which relativised the nationalist mindset that characterised the empire's beginnings. Regarding the right of presentation itself, it should be noted that the monarch was not allowed to arbitrarily present any priest to a benefice; he had to present the best candidate. This explains why the secular administration paid attention (not only to finances, not only to jurisdictional disputes, but) to the validity of ecclesiastical examinations *(concursos)*, that is, to the norms and practices adopted in the elaboration of proposals *(propostas)*. Lay bureaucrats were also concerned with the validity of elections for vicar capitular, even though the emperor did not have direct participation in the appointing to this office. In both cases, at least for the major part of its period of activity, the Council of State decided on the interpretation and enforcement of both canonical and state legislation, including the Council of Trent and its derivations. The number of the organ's opinions grew to considerable proportions: under the category "provision of offices and benefices" were 15.95 % (45) of the Council's decisions, a higher figure than that under "means of sustaining".

The participation of the state, by means of the presidents of province *(presidentes de província)*, in the control of the clergy's obligation of residence (corresponding to 2.83 % [8] of the opinions of the Council of State) involved financial concerns; after all, the *congrua* corresponded to priests who had effectively exercised their functions, residence being a minimum proof of this exercise. This is why the Marquis of Olinda defended the civil government's right of "inspecting the effectiveness of the service rewarded by the public coffers". This right existed alongside another, also claimed by the secular administration: the right to information. More precisely, the civil government believed it had a legitimate right to be informed about the absences of bishops, canons, and parish priests, in view of the civil functions (e. g. administrative assistance in civil elections) and the ecclesiastical functions with civil effects (e. g. marriage) performed by priests. Some members of the Council of State even connected these prerogatives of control to the status of public

servants that the clergy presumably held. Not by chance, some bishops, especially those in favour of ultramontanism, resisted these measures, considering it a matter of jurisdictional dispute. From the point of view of the state, however, the secular control over ecclesiastical residence was an administrative necessity.[131] The same can be said about seminaries (7.09 % [20] of the opinions), an area where, once again, secular standards of administrative efficiency were in tension with ultramontane ideas about episcopal autonomy.

"Discipline" (13.82 % [39]), in turn, is a category that raises the issue of delimitation of jurisdiction between secular and ecclesiastical authorities. With this term I mean the administrative control that the Council of State exercised over acts performed by clergymen and perceived by third parties as abusive, be these acts extrajudicial or even judicial (in a few cases of matrimony). In other words, I have in mind the state's attempt to discipline the clergy while responding to appeals to the Crown, complaints, representations etc.[132] Most of these appeals were directed against traditional disciplinary mechanisms from canon law, like suspension of orders, suspension of office and benefice, or interdictions of confraternities and individuals. I believe that, from the perspective of the state, this category is an arena of delimitation, not necessarily of dispute, for the discussions that took place in the Council of State did not always result in denying the authority of the high clergy (bishops, vicars capitular). That is, not all cases had the same outcome as the Religious Question, when interdictions (a type of disciplinary measure) issued by two bishops ended up being considered illegal as a result of requests from the interdicted confraternities. Actually, when it decided on appeals to the Crown, the Council of State left interdictions and suspensions *ex informata conscientia* untouched in most instances. Furthermore, it should be noted that, in one of the first reports to the Holy See concerning the Decree n. 1.911 of 28 March 1857 (on the appeal to the Crown), the Apostolic Internuncio celebrated the regulation, interpreting it as safeguarding the episcopal rights to discipline the clergy.[133] It is beyond doubt, however, that

131 Annex G of MI (Br), Rel. 1863 (1863a), pp. 2–3.

132 I do not take into account the few complaints of the clergy against acts of lay people (private individuals).

133 In a letter of 30 April 1857, the Apostolic Internuncio in Brazil, Vincenzo Massoni, offered to Cardinal Giacomo Antonelli, then Secretary of State, information on the new regulation of the Brazilian appeal to the Crown, employing quite optimistic terms: "In virtù di questa importante disposizione [Article 2, §§ 1. and 2. of the Decree 1.911 of 28 March 1857] il

the decree consolidated the state's ability to issue opinions on the (extra-judicial and judicial) disciplinary power of the Church: it allowed councillors to offer criticism where they could not force change. As time passed, the regulation came to be regarded as an offense, an invasion of jurisdiction, by many clerics and laymen, in particular those with ultramontane inclinations. In fact, the evolution of petitions under this category runs in parallel with the rise of ultramontanism in Brazil, in a way that many appeals to the Crown can be interpreted as a movement of resistance to the disciplinary reform led by the ultramontane clergy. Whether the state then proved the petitioners' narratives right is quite another question.

The category "sacred places, spaces" (2.48 % [7]), referring to changes in ecclesiastical geography (erection / suppression of parishes, change of episcopal see etc.), comprises this concern of the state to define limits of jurisdiction. In the case of the creation of parishes, a certain imbalance in favour of the secular power is evident. According to the Council of State, since the *Ato Adicional* of 1834, the provincial legislative assemblies were responsible for creating parishes – a task to be exercised in exclusive fashion. For the ecclesiastical authorities, the councillors proposed a merely consultative role, that is, they would have no power to decide. It was at the discretion of the assembly to request the opinion of bishops. The absence of this consultation would not render the act of creation of the parish null and void. Should the local ordinary be discontented, he could take his complaint to the president of the province, who might then not approve the corresponding bill. As a last resort, the bishop could appeal to the emperor, who might refuse to present parish priests to the newly created benefice, thus exercising his right of inspection.[134]

This point of view, quite harmful to the episcopal authority, was supported by the doctrine. Monte, in his *Elementos*, for example, performs veritable argumentative acrobatics to expose the mixed character of the

Gioseffismo introdotto nel Brasile del Marchese di Pombal di ben triste celebrità, e che ha posto in queste regioni si profonde radici, ha ricevuto, non v'ha dubbio, un gran colpo, avendo ridonato ai Vescovi nelle loro Diocesi, ed ai Superiori regolari nelle religiose Communità, la parte più importante ed efficace dei sacri diritti dell'autorità disciplinare." See Diverse notizie del Brasile comunicate da Mons. Vincenzo Massoni, Internunzio Ap.o, sui seguenti argomenti: […] Decreto imperiale sui ricorsi degli Ecclesiastici alla Corona contro le misure corregionali dei loro superiori […], in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 127, Fasc. 176, ff. 109r–110r.

134 Consulta de 26 de janeiro de 1844, Seção de Justiça, in: AN, Conselho de Estado, Caixa 508, Pacote 2, Doc. 62.

issue.[135] He argues that there was "equality" between the bishop and the legislative branch in the erection of parishes: the latter would "initiate" the act, by issuing a provincial law, and the former would "finish" it, by consenting to the act and lending it force of canonical law. But such equality seemed feasible only when both parts were in agreement. Monte acknowledged that bishops did not have a power of veto over secular laws, and he expressed his hope that, "for the sake of peace", ordinaries would make an effort not to come into conflict with the legislative branch on the subject. Besides, Monte admits that, in the realm of facts, the prelates usually just accepted and executed provincial laws.

The Council of State, however, recognised a more prominent role for the ecclesiastical authority in the creation and modification of dioceses. In fact, the balance hung in favour of the Holy See, which retained the power of creation in exclusive fashion, while the emperor (once he was authorised to do so by the General Legislative Assembly) had the competence to present to Rome the utility of the erection or modification of a diocese. This understanding arrived intact in the 1880s, when the Bishop of Olinda, D. José da Silva Barros, asked D. Pedro II to transfer the episcopal see to the city of Recife. The Council of State did not hesitate to indicate the need for the Holy See to intervene in the matter. With this example, I suggest that the delimitation of powers that state authorities carried out with regard to the Church did not obey linear logics and was not necessarily unfavourable to the latter.

Some words are due on the category "ordination", so common in the cases presented to the Congregation of the Council, and so rare in those forwarded to the Council of State. Only one case, from the beginning of the Second Reign, can be classified as such. It concerned the legality of acts performed by the Provincial Legislative Assembly of Paraíba in 1844, when it enacted a law allowing the ordination of all locals who proved to be habilitated by the seminary of Olinda.[136] The president of the province refused to sanction the law, referring the case to the emperor. The Council of State then decided that the Provincial Legislative Assembly lacked the power to legislate on the subject, arguing that the number of habilitations was subject to the emperor's discretion. It is worth noting that, in their

135 MRA, I, 228–232.

136 Consulta de 26 de janeiro de 1844, Seção de Justiça, in: AN, Conselho de Estado, Caixa 508, Pacote 2, Doc. 61.

discourse, the councillors mixed the imperial "right of supreme inspection" (as defended by Vilella Tavares[137]) with the duty of cooperation between the patron and his bishops. Relying on paragraph 10 of the *Alvará* of 10 May 1805, the council maintained that the emperor should decide the number of ordinations based on the information gathered by the prelates with regard to population, territorial extension of the parishes, and local spiritual needs. More precisely, and the *alvará* made this quite clear, it was up to the monarch to confirm a regulation previously made by each bishop on the matter. It can be observed, then, that the council sought to give a more jurisdictional tone to a mechanism that, in practice, relied heavily on the action of the ecclesiastical authority.[138] The minimal number of opinions on ordination highlights how fragile the affirmation was that this was a matter of mixed nature; it was, in fact, a subject much closer to the clergy than to the state. Furthermore, as described by numerous ministerial reports, Imperial Brazil suffered a general shortage of priests, so that controlling the number of ordinations was only an abstract problem for the patron. The initiative of the Provincial Legislative Assembly of Paraíba, in turn, was aimed precisely at meeting the concrete challenge of the lack of clerics. The opinion thus reveals not so much the intricacies of the governance of the Church, but the attitude of control that the Council of State held in relation to the legislative branch.

In addition to the topics pertinent to secular ecclesiastical administration, two sets of data in Chart 6 draw attention due to their suggestive numbers. Let us begin with the two highest-scoring categories: "confraternities" (37.58 % [106]) and "statutes" (36.52 % [103]). The similarity of numbers is not accidental. The vast majority of the statutes analysed by the Council of State belonged to confraternities, the rest referring to congregations (under the category "religious institutes", which also comprises religious orders), seminaries, cathedrals, and other religious associations. Having already commented on the popularity of these social formations in 19th-century Brazil, it must be said that the establishment of a confraternity necessarily involved the consent of the state, in view of the mixed nature of these associations. The examination of the statutes (i. e. the social regulations) of confraternities

137 JVT1, 267.

138 Paragraph 10 of the *Alvará* of 10 May 1805 provides as follows: "Tendo feito cada um dos Prelados o Regulamento do número necessário do Clero das suas respectivas Dioceses, o remeterão à Minha Real Presença pela Secretaria de Estado da Repartição competente para o Confirmar. […]", as in Collecção da Legislação Portugueza (1826) 361.

was a task shared in a fairly pacific way between ecclesiastical authorities (especially bishops) and secular powers (the Council of State, with the approval of the emperor, in the case of the Court, that is, the city of Rio de Janeiro; the Provincial Legislative Assembly, with the sanction of the president of the province, in cases outside the Court). While the bishop was responsible for examining the part of the statutes related to worship (spiritual exercises, celebration of mass, appointment of chaplains etc.), the state was in charge of analysing the sections related to government (election of the administrative board, offices, their duration, etc.) and goods (inspection, sales etc.).[139] The activity of the Council of State in this matter does not reflect any intention of dispute between Church and state. Rather the opposite was the case, if we remember that the council had the opportunity to curb the excesses of the provincial assemblies, postulating that they could not, solely at their discretion, modify the statutes of confraternities.[140] Generally, when the Council of State analysed these regulations, it performed a routine procedure, which included not only the control of statutes (of the many types of associations and institutions, ecclesiastical and secular, that emerged in the empire), but the control of provincial laws and draft bills. In other words, when carrying out such examinations, the organ sought to ensure that these sets of norms were not in collision with the Brazilian legal system.

Intimately related to each other, the pair "religious institutes" (9.92 % [28]) and "ecclesiastical goods" (8.15 % [23]) also deserves mention. These categories, together with means of subsistence, are the closest to the financial concerns of the Crown. I say this because the cases under these two labels reflect the participation of the civil government in the patrimonial transactions (especially regarding real estates, said to be of "dead-hand", "*mão morta*", that is, *a priori* not alienable) of the so-called "Brazilian" religious orders (that is, orders active in Brazilian territory since long before independence; also called "ancient" orders). With historical support from Book 2, Title 18 of the *Ordenações Filipinas* (1595),[141] and backed by the

139 MRA, I, 416–418.

140 Consulta de 18 de dezembro de 1866, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 542, Pacote 3, Doc. 43.

141 Book 2, Title 18 of the *Ordenações Filipinas* refers to the historical prohibition for churches and religious orders to acquire or own real property *(bens de raiz)* without royal permis-

recent Law of 9 December 1830,[142] the state affirmed its right to be informed of and give consent to onerous contracts such as *aforamento*, leasing, sale, and exchange of regular goods; among the cases analysed by the Council of State, there is also a donation, which is a gratuitous contract. The legitimacy of state participation in the matter was reinforced in parliamentary discussions. The arguments of the imperial congressmen initially defended the religious orders' right of usufruct and administration – but not ownership – over their assets; later, they recognised that the regulars had property rights, though limited.[143] Throughout the Second Reign, this first level of state control, the license prior to any transaction, was followed by negotiations with the Holy See to consolidate, via civil legislation, the systematic de-amortisation of non-essential regular goods, and their conversion into public debt bonds. These dealings, discussed by Santirocchi,[144] favoured the state interests, and resulted in Article 18 of the Law n. 1.764 of 28 June 1870.[145] This measure, combined with others more remote in time, related to the suspension of the admission of novices (e. g. in Decision n. 36 of 31 January 1824), could suggest that the state was guided by a policy of draining religious orders, in line with the enlightened rhetoric of the low usefulness (and eventual harmfulness) of regular priests for a liberal nation. Following this reasoning to its extreme, it would be possible to understand the issue of the control of assets as yet another point of dispute between state and Church. This is, however, a somewhat simplistic interpretation.

Some details must be added. First, the ancient religious orders held most of the country's "dead-hand" real estates.[146] The lack of new members

sion, as in Codigo Philippino, ou Ordenações e Leis do Reino de Portugal (1870 [1603]), p. 435.

142 The Law of 9 December 1830 declared null and void all onerous contracts and alienations made by religious orders without prior licence from the civil power, as in Lei de 9 de dezembro de 1830 (Brasil) (1830).

143 Brito (2018) 119.

144 Santirocchi (2015b) 289–325.

145 Article 18: "Os prédios rústicos e urbanos, terrenos e escravos que as ordens religiosas possuem serão convertidos, no prazo de dez anos, em apólices intransferíveis da dívida pública interna. Não se compreendem nesta disposição os conventos e dependências dos conventos em que residirem as comunidades, nem os escravos que as mesmas ordens libertarem sem cláusula, ou com reserva de prestação de serviços não excedente de cinco anos, e as escravas cujos filhos declararem que nascem livres. […]", as in Lei n. 1.764 de 28 de junho de 1870 (Brasil) (1870).

146 Brito (2018) 117.

resulted in a high concentration of wealth in the hands of a few individuals, giving to these orders an image, be it true or false, of relaxed customs and unproductive properties. This image was widespread not only in secular politics. The ultramontane clergy itself participated in this display of distrust. As observed by Ramos Vieira, the reformist bishops produced very few protests in defense of the old religious orders, for they were aware of the regulars' adherence to institutional jurisdictionalism, and they had also witnessed the failures to reform these corporations.[147] Even the Holy See was informed about the "looseness of customs" of the old regulars, and about their conflicts with ultramontane bishops. Moreover, in its negotiations with the emperor, the Apostolic See displayed an evident understanding of the advantages that the conversion of regular goods would have for the fiscal balance of Brazil, especially at the time of the Paraguayan War (1864–1870).[148] The position of the state, however, did not imply an absolute rejection of religious institutes, but a preference for congregations recently arrived from Europe, under the guidance of *Propaganda Fide*. Both the civil government and the episcopate hoped that these "new" religious institutes, deemed more disciplined and orthodox, would improve the quality of diocesan seminaries and bring catechesis and "civilization" to the missionary zones. In view of all these factors, I do not believe that the state control over regular goods represented an opportunity for the state to violently polarise relations with the Church; rather, in my view, it was an attempt to accommodate, not without difficulties, the interests of the secular and ecclesiastical administration.

Other administrative subjects covered by the Council of State could be mentioned, such as the rendering of accounts of the Church fabrics (*fabrica*, i. e. the administrative organs in charge of the material conservation of the churches; 1.41 % [4] of the opinions), and the re-organisation of the Metropolitan Relation (1.77 % [5]), the ecclesiastical court of second level. Such specific issues, however, exceed the scope of this work. The same could be said of the very interesting cases under the "Protestant" category (6.02 % [17]), which concerns the adaptations and concessions the empire – pressed between the promotion of liberal ideals and the defense of the official religion – had to make in view of the needs of Protestant citizens in terms of worship, marriage, and cemeteries.

147 Ramos Vieira (2016) 270.
148 Santirocchi (2015b) 301.

In general, the panorama I have outlined of the activity of the Council of State allows us not only to perceive the diversity of matters it dealt with – matters which, at least from the state's point of view, could be called of mixed nature – but also to glimpse the complexity of the concerns of the civil government, as well as their intertwining with the concerns of other levels of governance. Considering this complexity, I prefer not to attribute to the state exclusively financial duties with regard to the Church, nor exclusively relations of conflict with ecclesiastical bodies within and outside Brazil. I believe it is more appropriate to interpret the role of the patron and his administrative network in light of concerns such as: (i) ensuring the validity and quality of the provisions of benefices, attentive to the compliance with pertinent canonical and civil legislation, the respect towards the rights of the sovereign, and the appointment of the candidates best suited in intellectual and moral terms; (ii) guaranteeing the quality and efficiency of the administration of the Church, in matters that depended on the state; (iii) securing the harmonisation of local regulations (statutes of confraternities, seminaries, cathedrals etc.) and universal regulations (pontifical constitutions, via placet, for example) with the national legal system. It is true that sometimes the clergy may have interpreted such concerns as invasive. In any case, it does not seem fair to associate the actions of the state with an express attempt to subjugate the Church. The handbooks of ecclesiastical law and secular administrative law – and also the opinions of the Council of State – make clear that, in theory and practice, the civil government was aware of its duty to preserve the *salus animarum* of the citizens of the empire.

2.3 Strong mixed matters in the governance system. A comparison between the petitioning to the Congregation of the Council and to the Council of State

Now it is time to answer the question about the mixed matters that are concretely present in the system of governance that I have chosen to observe. In other words, I shall point out which subjects were common to the jurisdictions of the Council of State and the Congregation of the Council in their interactions with local petitioners from 19th-century Brazil. To build a strong concept, I took guidance from the criteria that follow.

A comparison of Chart 3 and Chart 6 (above) shows the categories shared by the jurisdictions of the Congregation of the Council and the Council of

State: "confraternity", "discipline", "foreign clergy", "matrimony", "ordination", "provision of offices and benefices", "residence", "sacred places", and "seminary". To develop a strong concept, however, we must acknowledge that some categories received more attention than others in the course of the abovementioned interactions – and thus provide a more fruitful ground for analysis.

For this reason, I decided to omit the categories "confraternity" and "ordination". They were major themes for the Council of State and the Congregation of the Council, respectively; yet, this pattern was not kept the other way round, as the Congregation of the Council received only one petition on "confraternity" and the Council of State had only one request on "ordination" directed to it. It is worth noticing that this imbalance is justified not so much by differences of petitioning practices but by differences of competence between the institutions. Just as the Congregation of the Council should not be (and in fact was not) concerned about the statutes of confraternities, the Council of State should not (and in fact did not) opine on dispensable requirements for sacerdotal ordinations (age, patrimony, dimissorial letter, etc.). The lack of communality is simply a matter of "institutional design".

The same cannot be said of the theme "discipline". The number of petitions to the Roman dicastery is small: only three – and one of them was forwarded to another congregation. But the two bodies had competences close to this subject and certain phenomena could, in theory, be brought to the attention of both the Council of State and the Congregation of the Council. This is the case of the suspensions *ex informata conscientia*. The dicastery's lack of contact with this type of request coming from Brazil does not therefore reflect institutional characteristics, but a specific type of interaction, a singularity of the system of governance, which is why the category was included in the analysis.

The question of competence also led me to exclude the category "sacred places", since the overwhelming majority of petitions on the subject addressed to the Council of State concern the creation and delimitation of dioceses and parishes. Such matters, due to the patronage system, were resolved internally, or with the participation of Roman dicasteries other than the Congregation of the Council, such as the Consistorial Congregation or the Congregation for Extraordinary Ecclesiastical Affairs. Finally, in order to grant more homogeneity to the research work, I excluded the category "matrimony", which would require a distinct selection of doctrinal and historiographical sources.

In short, the object of my system of governance, the ecclesiastical administration, mainly appears as the administration of the clergy. It covers the categories "provision of offices and benefices", "residence", "foreign clergy", "seminary", and "discipline". These can be called strong mixed matters of the system of governance, because they involve a reasonable number of petitions sent to the two institutions under analysis (or, in the case of the theme "discipline", because they involve a reasonable expectation of submission of requests). As far as the Congregation of the Council is concerned, these matters comprise 49 petitions and 31 resolutions. As for the Council of State, the selection includes 101 opinions, 40 resolutions that were positive for the petitioner (i. e. favourable and / or clarifying decisions, comparable to the resolutions of the Congregation of the Council), and 19 resolutions against the petitioner's request. In all resolutions, the emperor's decision confirmed, in whole or in part, the councillors' opinion, by means of the standard expression "*como parece*", "[I decide] as it seems [to the Council of State]". In the other situations, either the emperor forwarded the matter to the Plenary Council, or he simply did not issue any resolution.[149] (In the following, I will refer to both petitions and opinions as "cases".)

Before proceeding to the next chapters, where I analyse the content and the entanglements among the cases of strong mixed matter in more detail, I believe it is useful to sketch, on the basis of the selected corpus of sources, an overview of how the administrative petitioning to the Council of State and the Congregation of the Council was structured. Charts 7–11 show the evolution of cases over time (7), cases according to theme (8), themes according to diocese (9), cases according to diocese (10), and proportion of petitioners (11).

149 My finding that little more than half the cases received a resolution (58.41 % of them, to be exact) differs from the conclusions of other researchers. Lima Lopes, for example, focusing on the Section of Justice, found that 78 % of the cases were solved with imperial approval, as in Lima Lopes (2010) 173. The discrepancy in our results can be explained by the fact that my research object forced me into a more intense contact with another part of the Council of State, the Section for Imperial Affairs. In fact, 74 of the cases I examined passed by this department, while only 18 involved the Section of Justice (with some overlapping with Imperial Affairs), and ten were referred to the Plenary Council. The more modest number of resolutions may have to do, then, with the specificities of the Section for Imperial Affairs, and with the specificities of ecclesiastical matters themselves, a hypothesis that can only be confirmed through further research.

I must make two remarks on how I collected this data. Firstly, in cases submitted to the Congregation of the Council, the diocese from which the demand (i. e. the problem) emerges is always the same as the diocese of the petitioner (who is usually the diocesan ordinary or a local priest). In contrast, in the case of the Council of State, the petitioner could raise issues concerning other territories. For example: the Archbishop of Salvador da Bahia could denounce irregularities in his suffragan dioceses. And the petitioner could also bring up problems of national – and not only local – scope. In view of this, I focused on identifying the diocese to which the problem brought before the councillors belonged, even if the petitioner came from somewhere else. When the problem was of a general nature, I assigned as diocese the one where the individual or the organ that introduced the issue to the Council of State was located.

My second clarification concerns the petitioners. For cases under the Congregation of the Council, the criterion is simple: the petitioner is the one who appears as such in the books of protocol. Matters are a little more complex for the Council of State. Its books of protocol are fragmented and do not contain information on who was responsible for each demand, so I preferred to turn to the dossiers to seek those data. I considered the petitioner to be the person who decided to send the doubt or the request to the general administration of the empire,[150] in Rio de Janeiro, thus opening the possibility for the petition to reach the Council of State. In other words, it is the person or body that wished to remove the problem from the local level, making it potentially available to the councillors. For this reason, it is fully conceivable that the demand first arose with one specific actor and was later forwarded to the general administration by another; in this case, the latter was deemed to be the petitioner. I also considered as petitioners the agents of

150 When I say general administration and provincial administration, I mean the administration with national reach and the administration with provincial reach, respectively. I am aware that the general administration and the provincial administration were, strictly speaking, one and the same, given that the empire was an unitary state and not a federation. But this nomenclature was used by jurists of the time (e. g. Pimenta Bueno), and it is helpful for pointing out the scope of action of each administrative agent. Thus, even though the presidents of province were appointed by the emperor (as were the state councillors), their scope of action and, in particular, their sphere of problem-solving was restricted to the province, as was the case of provincial treasuries, provincial *procuradores* of the Crown, etc.

the general administration itself (e. g. secretaries) when they found anomalies in ordinary administrative procedures (examinations and elections, for example, whose minutes were regularly sent to Rio de Janeiro) and referred the matter to the Council of State.

Turning to Chart 7, we observe that the evolution over time of cases involving strong mixed matters more or less matches the pattern of the full *corpora* of sources (see Chart 5). We still see the unmistakable apex of petitions to the Council of State during the 1860s, driven by the shortage of priests and the material precariousness of the dioceses. The 1870s now show a second peak, caused by petitions about discipline, directly or indirectly related to the Religious Question. The new line incorporated into Chart 7, regarding the positive resolutions of the Council of State, is almost parallel to the line of cases. With the 1880s, resolutions become silent, and the role of state councillors within the system of governance gradually fades. The requests to the Congregation of the Council, in turn, are low in numbers between the 1850s and the 1860s. With events such as the First Vatican Council, the loss of the Papal States, and the subsequent strengthening of the idea of an (also) administratively universal Church, petitions to the Congregation of the Council increase in the 1870s, and surpass the demand to the Council of State in the 1880s.

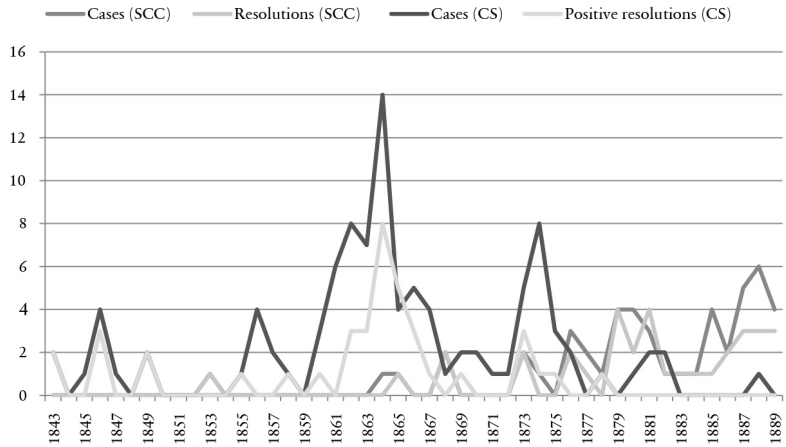


Chart 7. Evolution of strong mixed matter cases in the system of governance of the Brazilian Church analysed, composed by the Congregation of the Council (SCC) and the Brazilian Council of State (CS), between 1843 and 1889, per year.

Chart 8 displays data that has already been visualised and commented on. However, it is useful to reassess the dynamics of petitioning by theme – or rather: by strong mixed matter – considering the proportion of themes by diocese (Chart 9); doing so provides a summary of some of the forum-shopping tendencies of Brazilian petitioners. As I mentioned before, affairs of the category "discipline" were more frequently taken to the Council of State (38.61 % of the cases of strong mixed matters) than to the Congregation of the Council (only 6.12 % of the cases). No Brazilian priest appealed to the latter seeking to reverse disciplinary measures imposed by the episcopal authority (e. g. suspension *ex informata conscientia*). The Council of State, instead, via instruments such as the appeal to the Crown, was a privileged receiver of complaints against judicial and extrajudicial acts of the clergy. In the pages of dossiers, priests challenged suspensions from office and benefice, confraternities resisted interdictions, and lay people turned against burial prohibitions, judicial decisions on divorce, and even pardons granted by the bishop to his own clergy. In short, petitioners saw the appeal to the Crown (and also the complaint, the representation etc.) as a possibility to induce the state to discipline the ecclesiastical body, in particular the episcopate. One can suppose that this practice, in most cases, was guided by the

jurisdictional and liberal tendencies of the petitioners (especially the suspended clergy and the interdicted confraternities), or at least by an attitude of resistance to the disciplinary agenda of ultramontane bishops. This hypothesis is corroborated by the fact that the dioceses of Belém do Pará and Olinda, key places for the Religious Question and led by bishops of a more radical ultramontanism, together accounted for more than half of the requests related to discipline presented to the Council of State. As for the Religious Question in particular, it prompted several petitions coming from the general administration itself. It seems that the exceptional character of a scenario in which the state had to discipline its bishops by both administrative means and those of criminal law created a fertile field for doubts.

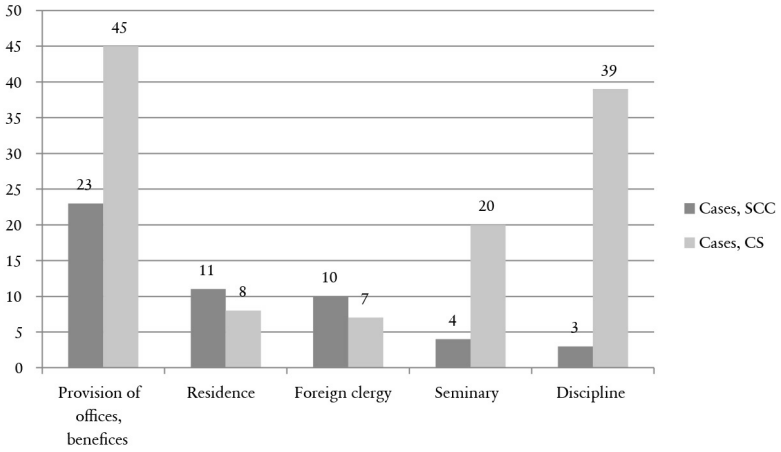
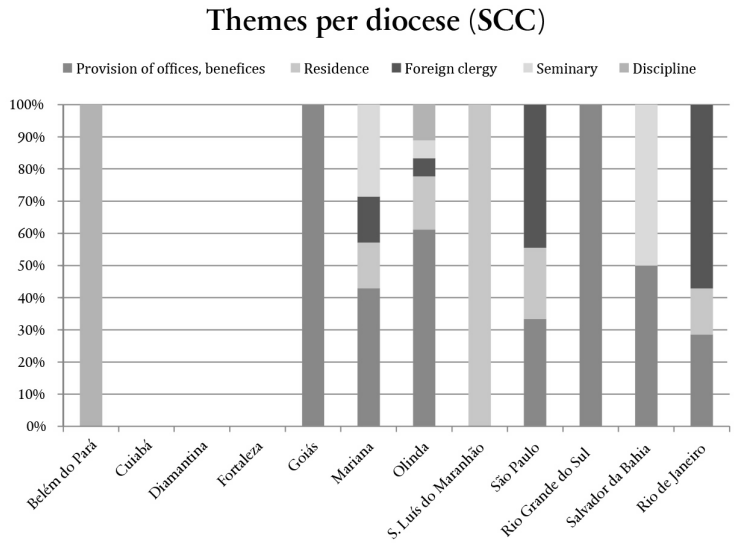


Chart 8. Cases presented to the Congregation of the Council (SCC) and the Brazilian Council of State (CS) (1843–1889) according to strong mixed matter.



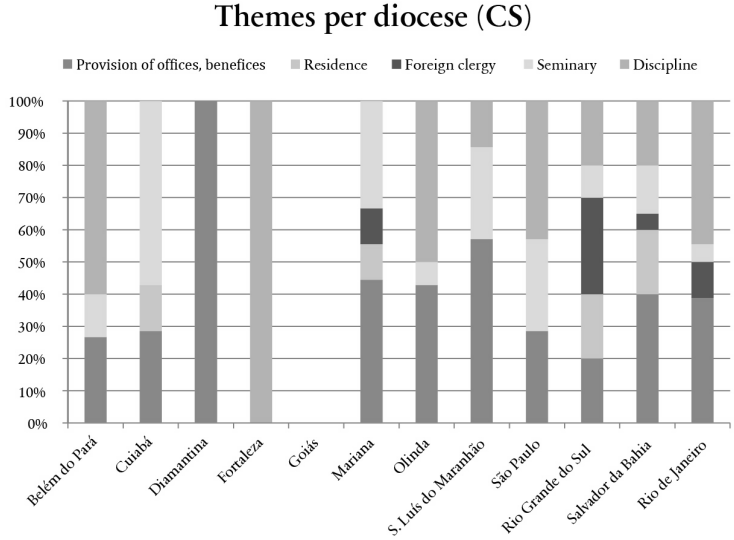


Chart 9. Themes of strong mixed matter cases presented to the Congregation of the Council (SCC) and the Brazilian Council of State (CS) between 1843 and 1889, per diocese.

Dioceses of the Empire of Brazil (1822–1889)			
Diocese	Corresponding provinces/territories (1854–1889)[151]	Year of erection[152]	Number of parishes (as of 1869)[153]
Salvador da Bahia	Bahia, Sergipe	1551	190
Rio de Janeiro	Rio de Janeiro, Município Neutro da Corte, Espírito Santo, Santa Catarina, Minas Gerais (partially)	1676	199
Olinda	Pernambuco, Rio Grande do Norte, Paraíba, Alagoas	1676	157
S. Luís do Maranhão	Maranhão, Piauí	1677	79
Belém do Pará	Pará, Amazonas	1720	90
Mariana	Minas Gerais (partially)	1745	190
São Paulo	São Paulo, Paraná, Minas Gerais (partially)	1745	183
Goiás	Goiás, Minas Gerais (partially)	1826	67
Cuiabá	Mato Grosso	1826	16
Rio Grande do Sul	Rio Grande do Sul	1848	71
Diamantina	Minas Gerais (partially)	1854	55
Fortaleza	Ceará	1854	51

Table 5. Dioceses of the Empire of Brazil (1822–1889), according to corresponding provinces/areas (1854–1889), year of erection, and number of parishes (as of 1869)

151 MI (Br), Rel. 1869 (1870), p. 102.

152 According to Schmitz-Kallenberg (ed.) (1923), Ritzler/Sefrin (eds.) (1952), Ritzler/Sefrin (eds.) (1958), Ritzler/Sefrin (eds.) (1968), and Ritzler/Sefrin (eds.) (1978).

153 MI (Br), Rel. 1869 (1870), p. 102.

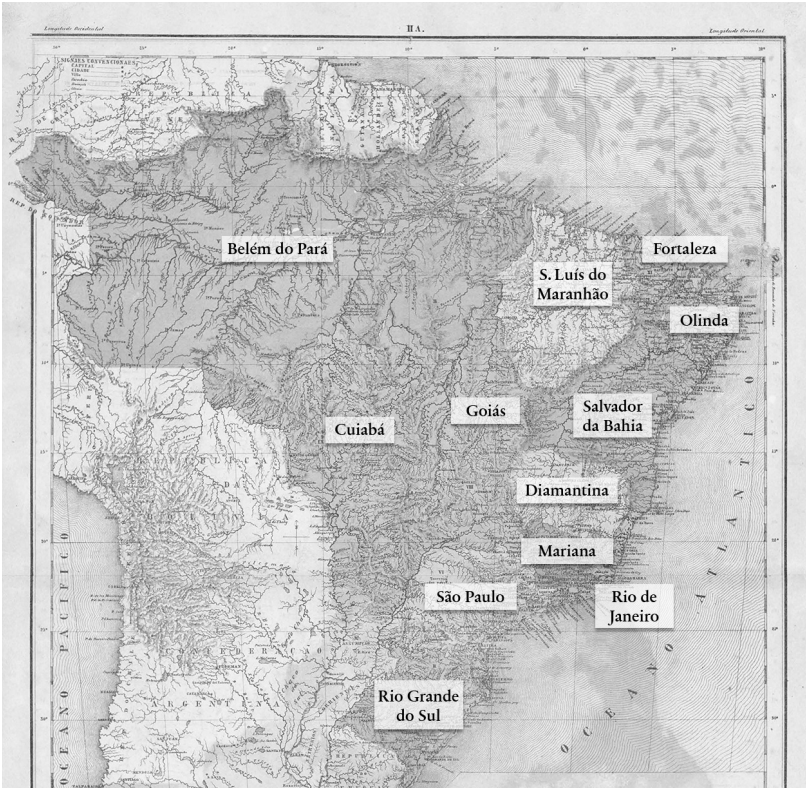


Image 1. Map of dioceses of the Empire of Brazil (1822–1889), from 1854 onwards. Adapted from Mendes de Almeida (1868) IIA

"Seminary", although a typically Tridentine issue – and later deeply linked to the reforming project of the ultramontane episcopate –, achieves little expression in the *positiones* of the Congregation of the Council (8.16 % of the cases, against 19.80 % in the Council of State). The strength of ultramontanism is perceived in those who petitioned to the Brazilian councillors, especially if we think of the bishops who resisted the state administrative norms regarding seminaries. Beyond such clashes, another factor that makes the more intense appeal to the state understandable is the incipient and materially precarious situation of many of these institutions. The material necessities (remuneration of the teaching staff, construction and / or maintenance

of buildings etc.) moved the clergy to resort to the state in view of its role as provider. I am referring not only to the Council of State, but also to the Ministry for Imperial Affairs, as can be seen from their annual reports. These problems also made their way to Rome, but passing through the hands of diplomatic organs, such as the Apostolic Internunciature and the Congregation for Extraordinary Ecclesiastical Affairs. Bishops and vicars capitular hoped these bodies could persuade the Brazilian state to release more funds for the reform (or construction) of diocesan seminaries,[154] or solve problems related to the direction of these institutions.[155] Not by chance, the few requests to the Congregation of the Council on the subject came from older dioceses (see Table 2), with reasonably consolidated seminaries and with an established administrative praxis. This is the case of Mariana, Olinda, and Salvador da Bahia.

"Residence" and "foreign clergy", for their part, reached higher percentages in the Congregation of the Council, although, in absolute numbers, the results for the two organs are quite close. "Residence" (Congregation of the Council: 22.44 %; Council of State: 7.92 %) is one of the central issues of the disciplinary part of the Council of Trent; the Congregation of the Council developed a century-old tradition of case law about it. It is understandable, then, that the Brazilian clergy, from the moment it became more aware of the universal character of the Church's administration, turned to Rome for the relevant dispensations and faculties. This is the case of the ordinaries of S. Luis do Maranhão, São Paulo, and Olinda, and priests of Mariana, Rio de Janeiro, and again Olinda. The petitions to the Council of State, in turn, are largely justified by a phenomenon of civil "mirroring" of Tridentine obligations. With this expression I mean the duty imposed on priests to inform state authorities about their absences, as well as the obligation attributed to bishops of asking for civil leaves of absence. By assigning these duties, the secular administration took on the role of monitoring

154 Letter of 3 December 1878 from José Joaquim Camello de Andrade, Vicar Capitular of Olinda, to Cesare Roncetti, Apostolic Internuncio in Brazil, on his intention of reopening the Seminary of Olinda and promoting examinations to fill the parishes of the diocese, in: AAV, Arch. Nunz. Brasile, Busta 50, Fasc. 235, f. 15r–16r.

155 Relazione e parere del P. Luigi Sapiacci, dei Romitani di S. Agostino, Consultore, sulla domanda del Vescovo di S. Paolo, diretta ad ottenere la rescissione della Convenzione esistente tra lui e l'Ordine dei Cappuccini, riguardante la direzione e l'amministrazione del Seminario Vescovile, in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 199, Fasc. 9.

priests in paralell with ecclesiastical authorities, legitimised by the function of the patron to provide for the sustenance of the clergy. There was, thus, an analogy and an amalgam between the Council of Trent and precepts of the secular administration, in a way that requests to the Council of State came both from ecclesiastics concerned about salary during their absences, and from bureaucrats of the provincial and general administration, who sought clarification about this new competence of the state.

Unlike "residence", the category "foreign clergy" (Congregation of the Council: 20.40 %; Council of State: 6.93 %) was a novelty for both the empire and the Holy See. Struck by the geopolitical changes of the period, the Church's system of governance was confronted for the first time with the phenomenon of mass migrations, which included both religious and lay people. The dioceses from which the demands on the subject came were mostly located in the south and southeast regions of Brazil (i. e. Mariana, São Paulo, Rio de Janeiro, and Rio Grande do Sul; see Image 1), where large contingents of Italian and German immigrants were received between the mid-19th and early 20th centuries.[156] However, the Brazilian state and the Holy See had different visions and plans of action for the foreign clergy: while the empire wanted to promote a controlled opening, perceiving in the immigrants a temporary solution to the shortage of national priests, the Holy See felt the need to impose restrictions on migratory traffic, due to the recent records of abuses perpetrated by southern Italian ecclesiastics. The demands also came from different types of petitioners. The Congregation of the Council received petitions from foreign priests already in Brazilian territory, seeking to regularise their status in the diocese of origin and the diocese of reception. The Council of State, for its part, received doubts from prelates and from the general and provincial (secular) administration regarding the assignment of offices to migrant clerics.

"Provision of offices and benefices", finally, is the major theme in both instances (Council of State: 44.55 %; Congregation of the Council: 46.93 %). It is also the theme with the greatest permeability among dioceses: the overwhelming majority of sees that forwarded petitions either to Rome or to Rio de Janeiro at some point addressed this topic. Among the main petitioners are bishops, agents of general (secular) administration (this group made

156 See Alvim (1999) and Willems (1980).

requests exclusively to the Council of State), and priests. The considerable number of requests on the subject can be explained by its fundamental relevance for the governance of the Church, in addition to the aspects that were traditionally mixed in the context of patronage. The main points of intersection between the Council of State and the Congregation of the Council are the examinations for parish priests and canons, and the elections of vicars capitular. These problems intertwined ecclesiastical and secular jurisdictions to the point that sometimes both instances came into contact with the very same cases, with tension arising on at least one occasion, as we will see in Chapter 3.

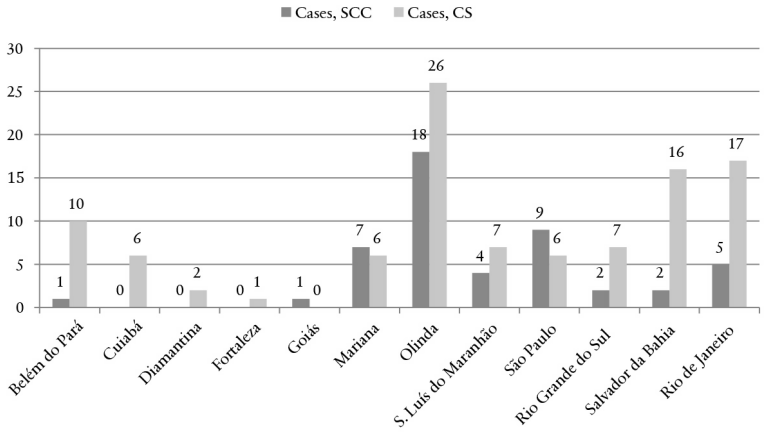


Chart 10. Strong mixed matter cases in the system of governance of the Brazilian Church analysed, composed by the Congregation of the Council (SCC) and the Brazilian Council of State (CS), between 1843 and 1889, per diocese.

To characterise the petitioning within the system of governance, one should also pay attention to the proportion of cases per diocese. Chart 10 shows the diocese of Olinda as the one which gave rise to most cases, both before the Congregation of the Council (36.73 %, [18]) and the Council of State (25.74 %, 26). Located in the northeast of the country (see Image 1), and covering, as of 1854, the provinces of Pernambuco, Rio Grande do Norte, Paraíba, and Alagoas, the diocese of Olinda was one of the oldest in Brazil, and the fourth in number of parishes (157), according to a survey

conducted by the civil government in 1869 (see Table 2). Considering the consistency of a diocese's petitioning to both higher levels of governance (i. e. more than two petitions to each of the organs), Olinda is followed by three dioceses in the southeast of Brazil, São Paulo (18.36 % [9] petitions to the Congregation of the Council; 5.94 % [6] petitions to the Council of State), Mariana (14.28 % [7] to the Congregation of the Council; 5.94 % [6] to the Council of State), and Rio de Janeiro (10.20 % [5] to the Congregation of the Council; 16.83 % [17] to the Council of State), and one diocese in the northeast, S. Luís do Maranhão (8.16 % [4] to the Congregation of the Council; 6.93 % [7] to the Council of State). Like Olinda, these dioceses were erected in the colonial period. With the exception of S. Luís do Maranhão, all contained more than 180 parishes each (during the empire). One may easily sense how complex the administration of these territories was. Surprisingly, the Archdiocese of Salvador da Bahia, the first ecclesiastical circumscription in Brazil, with 11 suffragan dioceses and 190 parishes, is not on this list. It petitioned much more to the Council of State (15.84 % [16]) than to the Congregation of the Council (4.08 % [2]) during the period under study, in the same way as Belém do Pará (9.90 % [10] to the Council of State; 2.04 % [1] to the Congregation of the Council).

In contrast, newer dioceses, erected during the empire, and with only a few parishes, sent a low number of petitions to both instances (see the petitioning from Diamantina, Fortaleza, and Goiás in Chart 10). The exceptions are Cuiabá and Rio Grande do Sul, which kept the Council of State a bit busier (5.94 % [6], and 6.93 % [7], respectively).

The relationships that each diocese developed with the two decision-making bodies were quite unique in terms of theme, as already suggested by Chart 9. Mariana demonstrates well the mixed nature of the selected matters, as its demand, both to the Council of State and to the Congregation of the Council, comprised four themes (provision of offices and benefices; residence; seminary; foreign clergy) in balanced proportions. The requests from S. Luís do Maranhão and São Paulo show that these dioceses attracted the attention of the state and the Holy See for different reasons. In the case of S. Luís do Maranhão, the Congregation of the Council played the role of providing faculties for the ordinary to dispense from residence, whereas the Council of State was in charge of petitions on provision of offices and benefices, seminaries, and discipline. São Paulo, for its part, directed requests about residence and foreign clergy exclusively to the Congregation of the

Council, as did Olinda. Finally, some dioceses had petitions on the five strong mixed matters concentrated in one of the bodies: in the Council of State, in the case of Salvador da Bahia and Rio Grande do Sul; and in the Congregation of the Council, in the case of Olinda.

The number of cases by type of petitioner, shown in Chart 11, demonstrates that many groups of ecclesiastics and laymen, both from higher and lower hierarchical levels, petitioned to instances beyond the local level. As for the Congregation of the Council, all petitioners were ecclesiastics. Bishops were responsible for the majority of cases (53.06 %). Their most frequent request was for faculties, that is, powers to better administer the diocese: for example, the faculty to dispense canons from the obligation of residence, or to appoint examiners and judges without a diocesan synod. This attempt of strengthening administrative ties with Rome can be read as sign of the central role of the ultramontane episcopate in the reform of 19th-century Brazilian clergy. But among the persons who petitioned to the Congregation of the Council there were also more modest officeholders, gathered under the category "priests" (32.65 %). Besides Brazilian ecclesiastics, this includes many foreign clerics who sought to regularize their stay in the empire.

As for the Council of State, the groups of petitioners are more varied. The main difference is the presence of laymen – and not only laymen eagerly disputing acts of the clergy (4.95 % of the petitions), but above all agents of the secular administration. Combining general administration (the emperor included) and provincial administration, they were responsible for 42.57 % (43) of the cases. This reflects the trust the imperial administration had in relation to the Council of State – or perhaps its dependency on the council. In other words, the bureaucrats felt the need of the case-by-case certainties which the councillors built up, especially concerning the provision of offices and benefices (and discipline, in the case of the Religious Question). In contrast to the situation of the Congregation of the Council, the amount of petitions from bishops (17.82 %), canons (of cathedral chapters) (11.88 %), and priests (17.82 %) to the Council of State is more balanced. The major themes, in the case of bishops, are the provision of offices and benefices (organisation of examinations, free appointments), and the administration of seminaries (direction, appointment of teaching staff). Canons and other priests also made frequent demands under the category "seminary", but they sought to correct their remuneration as professors. Both groups also tried to reverse disciplinary measures. And some priests who were in the position of

candidates for vacant benefices were (understandably) concerned about the provision of offices and benefices.

Olinda was the diocese with the largest numbers of petitioners in most groups: bishops (Congregation of the Council, and Council of State), priests (Congregation of the Council), general administration (Council of State), and provincial administration (Council of State). Only priests and canons petitioning to the Council of State came mostly from another diocese, Salvador da Bahia.

The data I collected does not allow me to offer definitive explanations about the dynamics of demand of each diocese. Possibly the most intriguing question is: what are the reasons for the large number of requests sent from Olinda to both the Congregation of the Council and the Council of State? How can we explain that this diocese has brought the two higher instances into its administrative daily life so frequently? And how can we understand the more modest demand from other territories? I cannot offer a straightforward answer. But with the data I gathered, it is possible to perceive the limits of the explanatory potential of factors commonly mentioned by the historiography. I will address three of them: the Religious Question, the growing conflict between the reforming clergy and jurisdictional or liberal groups, and the spread of ultramontanism. My focus will be on Olinda, but in referring to it I will also take into consideration other dioceses, by means of comparison.

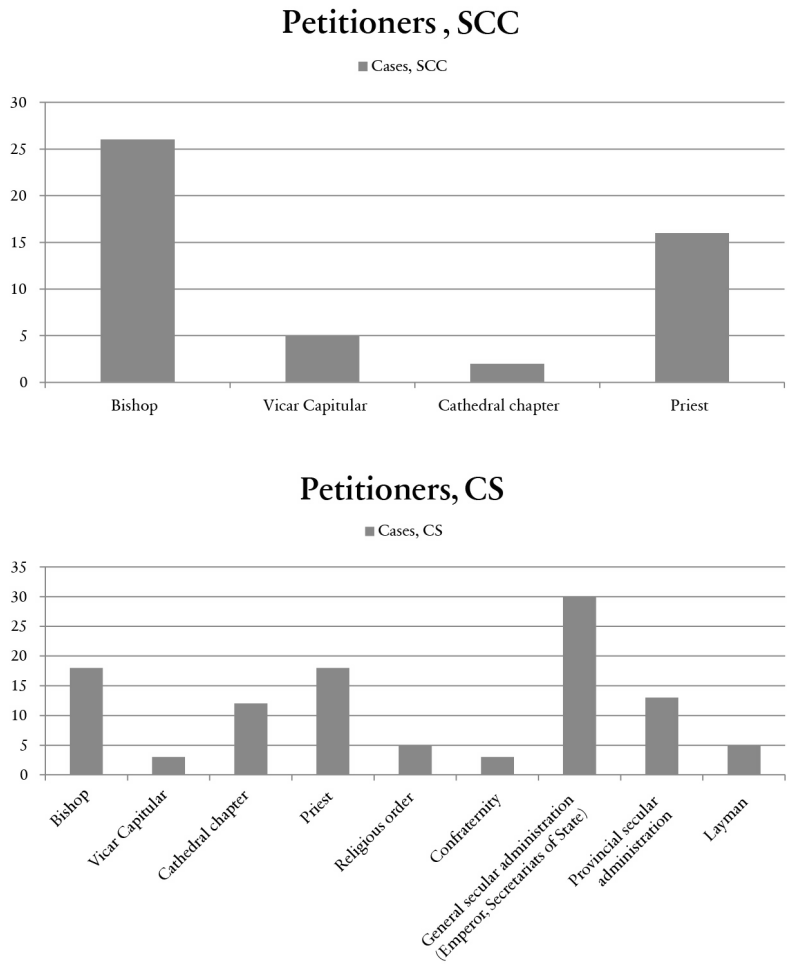


Chart 11. Petitioners of strong mixed matter cases presented to the Congregation of the Council and the Brazilian Council of State, between 1843 and 1889.

Observing only the Council of State, the cases of Olinda are basically divided into matters of discipline and provision of offices and benefices (see Chart 9). Without doubt, the Religious Question occupies a significant slice: 34.61 % (9) of Olinda's consultations. It covers both major issues, as the

proceedings unleashed against the bishop's disciplinary measures were soon followed by the bureaucrats' doubts on the temporary government of the diocese. Excluding the Religious Question, however, Olinda still gave rise to a high number of consultations, shoulder to shoulder with the only Brazilian archdiocese, Salvador da Bahia, and with the diocese of Rio de Janeiro. The latter comprised the territory of the empire's capital, where the general (secular) administration was located. This explains why many of the general questions presented to the Council of State came from the diocese of Rio de Janeiro. We can observe from these data that the Religious Question is not enough to justify the number of petitions from Olinda (and neither can it explain the high numbers from other territories).

If this is true for the Council of State, it is all the more so for the Congregation of the Council, which, due to competence, was not involved in the trial against D. Vital Maria Gonçalves de Oliveira, the bishop of Olinda that was at the centre of the Religious Question. As I said, the diocese of Olinda turned to the Congregation of the Council to solve a variety of issues; in fact, it is the only diocese that sent petitions concerning all the strong mixed matters that I selected (see Chart 9). However, even if the Religious Question did not cause this intense flow of requests, one can argue that the motives behind the Religious Question did. Those were the lines of action adopted by the reformist bishops, all quite young[157] and partisans of an ultramontanism of more radical shades than that found in other regions of Brazil. While seeking a strong alignment with Rome – especially with the ideas then circulating on the unity of the universal Church, the centrality of the pope, and the need for pastoral and disciplinary reform at the local level – these bishops came into collision with at least two groups: the ancient, jurisdictionalist clergy, very present in the cathedral chapters, and the liberal elites of Pernambuco, both groups often connected with Freemasonry.[158]

157 Between 1865 and 1878, the government of the diocese of Olinda passed through the hands of three bishops: D. Manoel do Rego de Medeiros, D. Francisco Cardoso Ayres, and D. Vital Maria Gonçalves de Oliveira. All of them died in office at a young age, only 30–40 years old. See Ramos Vieira (2016) 248–254.

158 On Freemasonry in Imperial Brazil and its relations with liberalism and Protestantism, see Gueiros Vieira (1990). The article contains an insightful overview of the Freemason priests in the country.

One can detect the tension among these groups in other dioceses. For example, Antonio Ferreira Viçoso (1844–1875),[159] Bishop of Mariana, sought to stifle the liberal tendencies of the local clergy by means of a series of pastoral and moralising initiatives;[160] the prelate also produced circular letters and printed articles that went beyond the borders of the province of Minas Gerais, attacking Freemasonry and its national representatives (e. g. Joaquim Saldanha Marinho).[161] D. Antonio Joaquim de Melo (1852–1861), Bishop of São Paulo, in turn, after "converting" to ultramontanism and engaging in reformist strategies, faced palpable resistance from the jurisdictional clergy of the diocese, part of which belonged to the cathedral chapter.[162] The Bishop of Belém do Pará, D. Antonio de Macedo Costa (1861–1890), considered the leader of the most "combative" wing of Brazilian ultramontanism, led fierce disputes with the liberal elites of the province. He did so before, during and even after the Religious Question, especially in the pages of local newspapers.[163] And the Bishop of Rio de Janeiro, D. Pedro Maria de Lacerda (1869–1890), in his pastoral writings regarded the Brazilian higher clergy of his generation as a union of efforts undertaken against "the society of enemies of the Church", that is, Freemasonry.[164]

Although conflicts were present in all these territories, we can speculate that the tension between ultramontanists and opposing groups sharpened in Pernambuco, and particularly along the Olinda-Recife axis, because this zone was one of the most dynamic political and cultural centres of the country. Olinda was home to one – of only two – of the law faculties of the Brazilian Empire. In 1854, after the change of the province's capital, this institution moved to the city of Recife. In addition to the prestige of hosting (or, at this point, having hosted) a law faculty, Olinda had the tradition of its seminary, established in 1800 and subject to great ideological and material modifications in the course of time. The institution embraced generations that went from the liberal revolutionaries of the pre-Independence period to the ardent ultramontanists of the end of the empire. These factors led Per-

159 The dates after the bishops' names refer to the duration of their episcopates.
160 Santirocchi (2015b) 169–177, Coelho (2016) 69–110.
161 Santirocchi (2015b) 175.
162 Santirocchi (2015b) 179.
163 Ribeiro (2018), Santirocchi (2015b) 192–196, Neves (2009).
164 Coelho (2016) 210.

nambuco to become the intellectual cradle of the leading Brazilian jurists specialising in ecclesiastical law,[165] among other legal branches. During the second half of the 19th century, the province welcomed many clerics who, after finishing their studies in Italy or France, were enthusiastic about ultramontanism. Pernambuco was also home to many intellectuals of the "generation of 1870", which, bringing together liberals, republicans, positivists, and also Freemasons, threatened the reforming clergy with anticlerical discourses and the defense of secularism. The province was, in short, a powder keg, and each polemic published in the newspapers brought the flame closer to the fuse.[166]

It is tempting to see these politico-religious tensions as the factor that determined the significant number of administrative petitions coming from Olinda to the Council of State and the Congregation of the Council. This narrative is certainly compatible with some cases presented to the Council of State, especially the appeals. I am referring to laymen who appealed against the refusal of burial to their apostate and Freemason relatives,[167] and priests who tried to reverse suspensions from office and benefice,[168] all acts of the diocesan prelate. The polarisation between ultramontane and non-ultramontane groups is evidently present in these examples, and one can even imagine that jurisdictionalists viewed the resort to the Council of State as a weapon against their opponents. Moreover, the connection between administrative petitioning and politico-religious tension is reinforced by the fact that the cases I mentioned took place in the 1870s, the same decade that saw the Religious Question gain prominence.

165 I refer to Jeronymo Vilella de Castro Tavares, D. Manoel do Monte Rodrigues d'Araújo, and Candido Mendes de Almeida. The Faculty of Law of Olinda was the *alma mater* of these three jurists; Monte also served as a lecturer at the Seminary of Olinda. The province of São Paulo might come to mind as a comparison, since it was home to a law faculty as old as that of Olinda. However, for a long time the diocese of São Paulo remained without a seminary, a fundamental piece for the development of a culture in ecclesiastical law. The Major Seminary of São Paulo only appeared in the 1850s, and its most important intellectual fruits only emerged in the final years of the empire: the *Lições de Direito Eclesiástico*, of 1887, by Canon Ezechias Galvão da Fontoura.

166 On the clashes between Catholics and Freemasons in Pernambuco's newspapers during the Religious Question, see Pereira (1986).

167 Consulta de 20 de fevereiro de 1872, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 551, Pacote 4, Doc. 66.

168 Consulta de 14 de agosto de 1865, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 539, Pacote 3, Doc. 37.

However, polarisation is not the dominant background of other cases. It is not sufficient to explain, for instance, why the Vicar Capitular of Olinda forwarded to the general (secular) administration doubts regarding the validity of examinations for benefices in the 1860s, or why the Bishop of Pernambuco requested the emperor's approval to transfer the episcopal seat in the 1880s.[169] The polarisation also does not seem to be very relevant to a priest who, in the 1860s, asked for a bonus related to the time he worked as a substitute teacher in the seminary.[170] In these cases, the petitioners' concerns seem to have more to do with the ordinary course of administrative relations between the clergy and secular bureaucracy. These petitions were understandable within the daily routine of the *padroado* system, in what it had of reasonably consensual – and even collaborative – relations between Church and State. I am not suggesting that the limits of the consensual and collaborative were immune to change. Nor do I argue that petitioners did not have ideological sympathies, or that such sympathies could not influence their communication with authorities. Petitions were not neutral, they cannot be strictly separated into "political" and "legal", "administrative" petitions – but undoubtedly display both aspects. My point is that the demand to the Council of State was not exclusively determined by conflict, by the clashing of politico-religious positions. Ecclesiastics in very different positions made requests to the state simply to execute standardised procedures, without major controversies, or to inquire how to proceed after a new administrative situation. In short, the tension between ultramontanists and non-ultramontanists was a major factor (with increasing influence over time), but it was not the only factor behind the dynamics of petitioning from Olinda and other Brazilian dioceses.

The results of the Congregation of the Council are helpful to circumscribe with more precision the role of polarisation, especially if one compares the demand of Olinda with that of Belém do Pará, for example. This last diocese, located in the north of Brazil, and comprising the vast province of the same name as well as the Amazonas province, witnessed similar levels

169 Consulta de 26 de dezembro de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 536, Pacote 3, Doc. 40; and Consulta de 20 de novembro de 1882, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 559, Pacote 4, Doc. 56.

170 Consulta de 6 de dezembro de 1862, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 532, Pacote 1, Doc. 20.

of tension during the Second Reign. D. Antonio de Macedo Costa, Bishop of Belém do Pará from the 1860s onwards, faced similar problems to those of his contemporaries in Olinda: indiscipline of the clergy, connections between ecclesiastics and Freemasonry, as well as the frequent attacks from liberal newspapers, as I suggested above. D. Antonio de Macedo's intransigent stance towards local confraternities earned him the same fate as D. Vital, the trial before secular courts and prison. Despite these similarities, Belém do Pará has only one petition sent to the Congregation of the Council, against eighteen from Olinda. It is difficult, therefore, to establish the necessary link between practices of administrative petitioning to Rome and the levels of polarisation of each diocese.

In support of this interpretation, there is, again, the argument that some petitions simply followed a standard administrative path. This is the case, for example, of the numerous requests from bishops and vicars capitular for faculties to appoint ecclesiastical examiners and judges. Such petitions do not indicate conflict, but a strategy of the prelates to circumvent the material difficulties of holding diocesan synods each year, as imposed by the Council of Trent for the filling of these offices. There are grey areas, however: in 1877, the Bishop of Rio de Janeiro asked the Congregation of the Council for these faculties, as well as the power to appoint examiners and judges without the consent of the cathedral chapter.[171] This *addendum* suggests mistrust, tension between the ordinary (an ultramontanist) and the canons of his diocese, a hypothesis that would have to be confirmed by other sources.

Finally, taking D. Antonio de Macedo, Bishop of Belém do Pará and "champion of ultramontanism", as an exception, it can be argued that the large number of petitions to the Congregation of the Council coming from Olinda – and also from other dioceses, such as São Paulo and Mariana – is related to the spread of ultramontanism among the higher clergy and a considerable part of the lower. I am not referring to ultramontanism strictly as an ideology in conflict with others, but as a perspective that proposes a more intimate relationship, in administrative terms, between the dioceses and the Holy See. From this point of view, without doubt, ultramontanism is a strong explanatory factor. The progress of the diffusion of this perspective

171 Numero d'ordine: 3115, Diocesi: S. Sebastiano di Rio Gianerio, Nome e cognome del postulante: Vescovo, Oggetto: Esaminatori senza il consenso del Capitolo, in: AAV, Congr. Concilio, Protocolli, 1877.

in Brazil is compatible with the dynamics of petitioning of bishops. As can be seen in Chart 12, from the end of the 1860s onwards, when the higher clergy was already fully aligned with ultramontane reformism, the bishops were silent towards the Council of State, and petitioned more frequently to the Congregation of the Council. This is not, of course, a perfect, point-by-point substitution, but an important change in the practice of petitioning. It is consistent with the growing eagerness to be in harmony with Rome, and also with the increasingly shared perception that the state was hindering rather than helping the Church in matters of administration.

This interpretation is valid for Olinda, Mariana, and São Paulo, but not for other dioceses directed by prelates with the same ideological tendencies. I recall not only Belém do Pará, but more recent dioceses erected in the 19th century, like Goiás, Cuiabá, Rio Grande do Sul, Diamantina, and Fortaleza. From the beginning, these ecclesiastical circumscriptions were placed under the care of ultramontane prelates. How can one explain the non-existent or minimal petitioning of these dioceses to the Congregation of the Council? Even more perplexing is the situation of Salvador da Bahia; the sole archdiocese of the empire sent just two petitions to the dicastery. How can this be explained, considering that, from D. Manuel Joaquim da Silveira (1861–1874) to D. Luís Antonio dos Santos (1881–1890), all ordinaries expressed clear fidelity to the ideas of autonomy of the Catholic Church, of Rome being at its centre, and of the need to reform the Brazilian clergy?

Far from suggesting a lack of influence of ultramontanism over the Brazilian clergy in the last decades of the 19th century, I would argue that this ideology developed different forms of expression. It is true that ultramontanism implied changes in the administration of dioceses, but there were different ways to achieve these changes. In pursuing them, the ultramontane clergy was not always "at war" with the state and its jurisdictionalist mechanisms, nor did it operate in full conformity with the Holy See, but rather with the idea they had of the universal Church, of the primacy of the pontiff, and of how ecclesiastical and pastoral reform should be carried out. As historiography has already pointed out, Brazilian ultramontanism displayed both more radical and more moderate shades; and the Holy See, preferring silence or moderation, allowed ultramontane solutions to blossom from below.[172] In administrative terms, we can put forward the hypothesis that,

172 On Brazilian ultramontanism from below, see Santirocchi (2015b).

despite having access to a traditional dicastery such as the Congregation of the Council, part of the Brazilian higher clergy considered it more useful to resort to diplomatic organs (like the Apostolic Internunciature, or the Congregation for Extraordinary Ecclesiastical Affairs), or to local strategies. It is also possible that the urgent problems of many Brazilian dioceses did not fall within the competences of the Congregation of the Council, but rather within those of the state, especially if we think of its financial responsibilities towards the Church (e. g. the endowment of seminaries). In sum, my results suggest that ultramontanism, from an administrative perspective, was multiform.

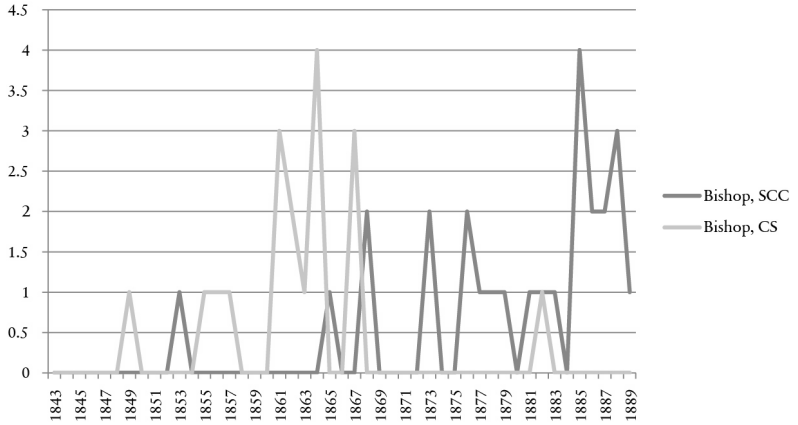


Chart 12. Bishops as petitioners of strong mixed matter cases presented to the Congregation of the Council (SCC) and the Brazilian Council of State (CS), between 1843 and 1889, per year.

Plasticity is not only the prerogative of an ideological movement like ultramontanism. As we shall see in the following chapter, the Council of Trent, quite present in my sample of cases of strong mixed matters, turns out to be a normative set approached in many ways, according to different perspectives, conventions, and needs. Sometimes it is the weapon of resistance of the ultramontane clergy; at other times it is simply part of the ordinary procedures between lower and upper organs; sometimes, Roman cardinals dispense ordinaries from applying Tridentine dispositions; at other times, state bureaucrats are the ones endeavoring to harmonise the canons of

the Council of Trent with the old *alvarás* of the Portuguese *Ancien Régime*, or with the sparse legislation of the empire. In the next chapter, I hope to demonstrate how some of the disciplinary norms of the Tridentine corpus acted as a thread running through the different levels of governance of the Brazilian Church. Focusing on cases of strong mixed matters, I wish to expose how the Council of Trent was concretely inserted in the interactions among the local clergy, the Council of State and the Congregation of the Council. I consider that the uses of the Tridentinum – whether they entail the inclusion or exclusion of other norms (or of Trent itself), whether they encompass amalgam, separation, interpretation, or reinterpretation – provide a window for us to perceive that the dynamics of ecclesiastical administration cannot be fully grasped by relying only on the opposition between ultramontanists and jurisdictionalists.

Chapter 3
Governance and Multinormativity. Tracking the Roles of the Council of Trent in Practice

19th-century Brazilian ecclesiastical administration can be described as the object of a system of multilevel governance guided by a wide range of normative resources. Not only the loca,l clergy, but also imperial institutions and the Roman Curia were engaged in diocesan administration. The responsibility of the Empire of Brazil towards Catholic institutions (churches, monasteries, seminaries etc.) within its territory was due to the maintenance of royal patronage *(padroado)* after the country's independence. Brazil echoed to some extent the legal pattern that had underpinned the relationship between ecclesiastical and secular powers in Portugal since the early modern period, but the novel empire did so within a framework of transition between the Portuguese *Ancien Régime* and 19th-century liberal constitutionalism. Put very briefly, this meant that the emperor, via the bureaucratic network of the executive branch (and, in some cases, with the participation of the legislative), engaged in the appointment of ecclesiastics, the clergy's sustenance and discipline, the setting of diocesan limits, the control over norms issued by the Holy See, etc.[1] Despite the nationalist waves observed during the 19th century, the Brazilian Church was not excluded from contact with the Holy See. On the contrary, the administration of imperial dioceses involved, to a greater or lesser extent, interaction between local ecclesiastical authorities and Roman dicasteries via the sending of reports, *dubia*, and requests for faculties and validations.

This system of governance operated within a scenario of coexistence of norms created and interpreted by different institutions and actors, in different historical periods. Matters of Church administration might be governed by norms from past centuries, such as the Council of Trent, or ordinances,

1 I recall that, due to the *padroado* system, administrative legal books from the imperial period characterised ecclesiastical law in close relationship to (secular) administrative law, sometimes as a "powerful auxiliary", at other times as a "natural auxiliary". See Ribas (1866) 29–30, and Oliveira (1884) 17.

alvarás, and other types of regulation from the Portuguese *Ancien Régime*; but fresh (though scattered) Brazilian legislation was also available, along with recent pontifical constitutions and case law from the Roman Curia. The absence of a major codification of canon law and the failure to conclude a concordat between Brazil and the Holy See were factors that contributed to this scenario of multinormativity.

I say "multinormativity" rather than using more widespread terms such as legal pluralism[2] because ecclesiastical administration, being strongly related to praxis, was guided by logics that went beyond legal norms.[3] The different solutions employed (or rather: created) in the face of concrete problems did not involve merely selecting "the most suitable legal norm". It was a matter of interpreting facts and laws within a specific jurisdiction, a specific level of governance – and within a specific context, with all its historical subtleties. Underlying this operation was the adoption – more or less intentional – of normative conventions. These conventions were not part of the legal *corpora*, nor could they be deduced from it; yet they guided how one could dispose of the available legal norms.

With the term, "multinormativity", I also give a nod to the recent developments of the *économie des conventions* and pragmatic sociology.[4] These theoretical approaches view conventions as resources culturally established for interpreting and evaluating objects (people, processes, situations etc.), serving the purpose of coordinating actors around common goods. Also described as normative principles, or orders of justification, conventions refer to concrete collective experiences, emerging especially in situations of lack of coordination among actors. It is not by chance that law is a privileged

2 Political and legal pluralism comprise a broad field of studies in legal theory and legal history. In the case of legal pluralism, one must recall the *avant-garde* theories of institutionalism from early 20th century and, in particular, Santi Romano's *L'ordinamento giuridico* (1918). Criticising the norm-centred and state-centred leading approaches to legal theory, Romano viewed law as an order *(ordinamento)*, as an organising framework emerging from the structure of society, thus assuming multiple forms. The approach of present-day *Scuola Fiorentina* to legal history owes a debt to Romano's views, as can be seen in the works of Paolo Grossi, for instance. Legal and political pluralism are also recurrent topics in the works of António Manuel Hespanha and Lauren Benton, both from a historical and a contemporary perspective.

3 The way I conceive multinormativity is largely inspired by the remarks of Duve (2017) and Collin (2020).

4 See Boltanski / Thévenot (2006), Reynaud / Richebé (2007), Bessy (2012, 2015), Diaz-Bone (2012, 2017), Thévenot (2012).

field for the tracking of conventions. Many spaces suitable for the manifestation and resolution of lacking coordination (i. e. conflicts, doubts etc.) belong to the legal sphere; moreover, law is among the objects that can be interpreted according to different conventions. Focusing on how law is built, on how it "makes sense", and on which resources are mobilised in these operations, the *économie des conventions* conveys the idea that the solutions proposed by actors in the legal arena combine cognitive schemes and the political construction of interests. The literature on multinormativity draws on these insights.[5] It views the convention as an interpretative framework, located on a deeper level in relation to law, whose ideas originated and were consolidated in a concrete communicative and epistemological context. The analytical potential of the convention would then be in allowing access to how norms and interpretations were forged, in particular in contexts where praxis was central and / or the boundaries between law and other fields of social discipline were blurred.

The convention approach can be particularly useful for examining ecclesiastical affairs in Imperial Brazil, for they were part of a context in which actors and institutions had room to manoeuvre in terms of creation and interpretation of norms. In particular, this approach can shed light on the different normative dynamics that underlay politico-religious positions almost always regarded by literature as homogeneous. I refer, of course, to ultramontanism and jurisdictionalism.

In the analysis, I shall consider two levels of conventions: conventions to *create* norms, and conventions to *interpret* norms. Considering the characteristics of the governance of the Brazilian Church in the 19th century, the conventions for creating norms assume two basic forms: *amalgam* and *separation*. The convention of creative amalgam is present when a secular authority produces norms for governing ecclesiastical institutions, and vice-versa. This convention, in the direction state to Church, naturally appears in systems of patronage; it gained stronger nuances between the 18th and 19th centuries due to the interest of secular powers in regulating aspects that were traditionally under the exclusive responsibility of the Church (e. g. residence, seminaries, clergy discipline etc.). In the convention of creative separation, a secular authority produces norms only for secular

5 See Duve (2017) 95.

institutions, and the ecclesiastical authority does the same for ecclesiastical institutions, as is typical in a system of separation between Church and state.

But, as my research concerns how an existing body of norms is used in practice, I am more interested in the conventions regarding interpretation. I can discern at least three: *amalgam*, *exclusion*, and *separation*. The convention of interpretative amalgam can be employed in many ways. All have a common feature: the authority concerned recognizes itself as the bearer of a broad jurisdiction (sometimes not even bothering to define its limits) and with a normative repertoire that mixes norms from different origins. Some examples are: when a secular authority interprets norms that belong to the ecclesiastical jurisdiction, that is, norms of canon law; when ecclesiastical authorities negotiate the interpretation of norms of canon law with secular authorities, considering civil norms or not; when a secular authority mixes canonical and secular norms in the elaboration of solutions to ecclesiastical matters, among other possibilities.

In the convention of interpretative exclusion, a secular or ecclesiastical authority recognizes the exclusiveness of its own jurisdiction in the solving of an issue. It takes place when, for instance, the secular power defends that only civil norms should be applied to a traditionally ecclesiastical subject, excluding the application of norms of canon law, as well as the jurisdictional power of ecclesiastical authorities over the case. A similar hypothesis is when an ecclesiastical authority claims that only norms of canon law should rule a given subject, rejecting the participation of secular norms and authorities.

In the convention of interpretative separation, a secular or ecclesiastical authority acknowledges the limits of its own jurisdiction, restricting itself to interpret only the norms that were created under that same jurisdiction. Though it is probably not the first scenario that comes to mind, this convention can be observed even in patronage systems. When faced with ecclesiastical issues, secular authorities rely on separation if they interpret only the secular norms that correspond to the case, leaving the interpretation of canonical norms to ecclesiastical authorities. The difference between exclusion and separation lies, thus, in emphasis: discourses under the convention of exclusion stress exclusion of the other, whereas discourses under the convention of separation emphasize one's own limits.

The interpretative schemes outlined above are present not only in the practical arrangements between norms and jurisdictions. Even broader changes, such as the emergence of a legal discipline or its transformation,

bear the mark of specific conventions. Such is the case of ecclesiastical law, which, in its metamorphoses throughout the 19th century, shifts from a convention of amalgam to a convention of separation, as we shall see.

The conventions employed in the governance of the Church could be informed (or rather justified) by many factors: political, ideological, or theological factors, concrete needs, specific events, and also structural changes within law itself. Phenomena such as the emergence of modern administrative law, for instance, paved the way for new uses of the convention of amalgam and the convention of separation by state authorities, who aimed at applying logics of the secular administration to matters such as seminaries and ecclesiastical residence. In anticipating this finding, I wish to stress that, just as law was shaped by conventions, legal changes also altered the dynamics of interpretative schemes.

When thinking about conventions, one is easily tempted to relate jurisdictionalists to amalgam, and ultramontanists and secularists to separation. Such connections, however, perpetuate homogenising views about groups and institutions. Unlike wider models, such as Huber's *Typen des Staatskirchenrechts* (that is, types of law concerning Church-state relations) – which can be reasonably applied to the Brazilian legal system as a whole, observing its transition from a confessional monarchy (consistent with the type "*Staatskirchentum mit nur einer Staatskirche*") to a secularised republic (somewhere between the types "*Privilegierte Freikirchen*" and "*Vereinskirchen*") – the convention approach aims at the more specific (and varied) interactions between actors that face concrete problems. Conventions are not tied to any particular ideology; rather, they allow us to see the diversity of modes of action employed by persons who might share the same ideological background. Looking at cases from the legal praxis, we shall see that conventions changed over time according to the actors involved, the issues at stake, the set of norms available, and the broad as well as the specific historical context. Even if a convention enjoyed stable hegemony during a certain period, within a particular institution or among certain individuals, variations could take place – especially by means of interactions among levels of governance.

Interaction, in fact, is the keyword when it comes to governance.[6] For the Brazilian Church, it meant that the interpretation of legal norms was con-

6 Governance itself *is* an interactive process, as in Stoker (1998) 22.

nected not only to practices of local reach, but also to the exchanges between the local clergy and higher instances from the Empire of Brazil and Rome, which were in charge of providing opinions and decisions to a varied range of cases. In short, the interaction that we witness between bishops, the Council of State, and the Congregation of the Council enabled the circulation and even the changing of the ways of conceiving legal norms and their relationship.

I posit that the tension between ultramontanists and non-ultramontanists (regalists, liberals etc.) had a significant impact on the governance of the Church in the 19th century. This friction took shape in Brazil from 1850 onwards, with the first generation of bishops regarded as "reformers"; it reached an acute stage in the 1870s, with the closing of the First Vatican Council and the struggle between clerics, lay fraternities, and state bureaucrats during the Brazilian Religious Question. Historiography usually focuses on the political aspects of these phenomena, and often relies on a conflictive – and rather static – dichotomy between ultramontanists and non-ultramontanists. My analysis goes in another direction. Besides recalling that, even within the same ideological tendency, actors were heterogeneous, I propose that their interactions were just as dynamic, resulting in distinctive ways of interpreting the Council of Trent along time.

The following pages will cover how the Tridentinum is present throughout several themes: examinations for benefices, election of vicar capitular, obligation of residence, ecclesiastical migration, seminaries, and suspensions *ex informata conscientia*. I came to these themes on the basis of a further refinement of the strong mixed matters, focusing on those cases that displayed the stronger interactions among the levels of governance and that possessed most analytical potential regarding the uses of the Council of Trent (citing it, or alluding to it).[7] The study of topics that are so different among themselves will allow us to better grasp the variety of factors involved and their specific weight in the elaboration of solutions. Political factors such as the growing tension between ultramontanists and non-ultramontanists, and in particular the Religious Question of the 1870s, certainly had their share of influence over the fluctuations of normative conventions employed by the

7 In this sense, the cases of examinations and elections come from the category "provision of offices and benefices", ecclesiastical migration comes from "foreign clergy", and suspensions *ex informata conscientia* comes from "discipline".

actors, but were the outcomes always the same? The unpredictability of the interactions as well as the complexities of law – sometimes flexible, other times unbending – prevent simplistic answers. In the governance of the Brazilian Church, the roles of the Council of Trent were many, and sometimes quite unexpected.

3.1 Before, during, and after a Clash between the Congregation of the Council and the Council of State. Uses of the Council of Trent in examinations for ecclesiastical benefices[8]

In this section, I will analyse how the Council of Trent was employed in the resolution of cases of ecclesiastical examinations for the provision of benefices[9] in Imperial Brazil between 1840 and 1889. The Council of Trent was a milestone in the procedural standardisation of ecclesiastical examinations in the Catholic world.[10] Adaptations followed, with different combinations among Tridentine decrees, other norms of canon law, and even secular norms. I hope to show how Brazilian ecclesiastical and secular authorities moved from a convention of amalgam to a convention of separation when addressing the issue during the 19th century. The transition occurred in the midst of a clash of jurisdictions between the Congregation of the Council and the Council of State, which contributes to my argument on the fruitfulness of interaction for the emergence of new normative arrangements. While following the track of these changes, I shall also point out their relationship with the broader transformations of ecclesiastical law as a legal discipline.

The main prerogative of the emperor as patron of the Brazilian Church was to appoint clerics to vacant benefices.[11] Part of the administrative path

8 An earlier version of this section was published in Lehmann Martins (2020).

9 In Portuguese: *concursos eclesiásticos para provisão de benefícios*.

10 On the impact of the Council of Trent in ecclesiastical examinations and the corresponding fostering of the professionalisation of the clergy, see Fantappiè (2013, 2019a). On ecclesiastical examinations (for parishes, cathedral chapter positions etc.), influenced to a major or lesser extent by the Council of Trent, from local perspectives, see Metz (1974), Quaghebeur (2002), Ayrolo (2008), Rodrigues (2012), Silva (2014, 2015).

11 "Ecclesiastical benefice" comprises the patrimony or revenue attached to an ecclesiastical office. In the Brazilian Empire, due to the scarcity of temporal goods of the Church, benefices are understood as the perpetual right that clerics have of receiving payment from the state in return for services performed to the Church, as we see in MRA, II, 443. Benefices may involve preaching and the administering of sacraments, or not. In

towards canonical provision, this step was known as presentation *(apresentação)*. The emerging Brazilian literature on ecclesiastical law would often refer to it as central to *padroado*, sometimes even as its very definition. In practical terms, presentation depended on the offering of a proposal *(proposta)* to take place. That is to say, before exercising his right, the monarch, through his ministers, should receive a list prepared by the ordinary of the corresponding diocese, containing the names of potential beneficiaries. This list would contemplate the results of examinations *(concursos)* previously organised and presided over by the ordinary or one of his delegates. Depending on the nature of the benefice, oppositions (*oposições*, a synonym for examinations) would comprise more or fewer steps. Benefices with cure of souls required more demanding exams compared to those without. Candidates to a parish church, for instance, underwent not only an appreciation of their life records and morals, but also an evaluation of their knowledge of doctrine and canon law.

From the second half of the 18th century until 1828, local examinations were controlled by the Board of Conscience and Orders *(Mesa de Consciência e Ordens)* to a variable extent. The *Alvará* of 14 April 1781, known as *Alvará das Faculdades*, a royal regulation from the times when Brazil was still a Portuguese colony, had allowed relative autonomy to Brazilian bishops in the conducting of *oposições*. The proposal, however, once ready, was to be sent immediately to the Board in Lisbon. Delays, omissions and nullities would imply the necessity to conduct new examinations, this time presided by the Board itself. The *Alvará* of 14 February 1800 went even further, granting the Board the right of performing its own oppositions regardless of defects in the ordinary's proposal, and in a more rigorous fashion, so as to allow the monarch to choose between the ordinary's and the Board's nominees. Neves's seminal work[12] on the Board while it was installed in Brazilian territory (1808–1828) shows that, with the occurrence of independence in 1822, the effects of some centralising norms decreased (in fact, the *Alvará* of 14 February 1800 endured a period of revocation between 1822 and 1823) and episcopal examinations regained a more autonomous status. Even so,

the first case they are characterised as benefices with cure of souls (e.g. parish priest). Among benefices without cure of souls are the canons, i.e. the offices performed within the cathedral chapter and, in this same context, certain dignities (dean, cantor etc.).

12 Neves (1997).

the Board retained some of its controlling power, issuing opinions on the procedures adopted by ordinaries as well as, occasionally, reforming proposals. Overall, the Board's efforts demonstrate the centralising character of this institution, its urge to provide standard criteria for the selection of benefice holders.

The Second Reign (1840–1889), in turn, shows a different picture. The organs that had succeeded the Board of Conscience and Orders in the task of dealing with ecclesiastical affairs did not inherit its proactive character. Neither the Ministries of Justice or Empire nor the Council of State would ever attempt to conduct ecclesiastical examinations or to reformulate episcopal proposals. The Council of State could, at most, endorse the organisation of a second round of *concursos*, after the first ones were confirmed as invalid by the emperor. The presiding of examinations, however, would always rest in the hands of bishops and vicars capitular. Local practices had, thus, more room to flourish – or rather to be maintained, enjoying less interference from the secular government. Petitions reaching the Council of State and the Congregation of the Council during the second half of the 19th century provide testimony of the decentralisation of practices related to examinations and proposals. Normative references were varied, none of them overarching, there were lacunae, much room for custom, discretion and misunderstandings. So one could say that if these petitions portray plurality, they also unveil new calls towards standardisation, towards certainty.

My point of departure is a case of tension between the Council of Trent, the *Alvará das Faculdades*, and diocesan custom. I shall use this example as a benchmark to address similar situations before and after, for this is the first time we see, from the perspective of the Council of State, the establishment of a relationship of exclusion between Trent and *Faculdades* – which resulted in the rejection of Trent. It was also the first time that the Congregation of the Council had to decide on the validity of ecclesiastical examinations from Brazil, having become acquainted with the country's local practices. The case I am referring to concerns the *oposições* for the provision of several benefices in Olinda between 1879 and 1881. This diocese encompassed the territory of the province of Pernambuco, northeast of Brazil; the cathedral was located in the province's capital, Olinda, hence the diocese's denomination. In the beginning of the 19th century, the town of Olinda, along with its neighbour Recife, was an vibrant cultural centre. Not by chance, in 1827, Olinda was chosen as home to one of the two law schools of the empire; the Faculty of

Law of Olinda followed the steps of the local seminary, then a thriving cradle of liberal ideas.[13] Recife would eventually take Olinda's place as capital (1827) and as seat of the law faculty (1854). But Olinda's legacy to Brazilian legal culture would remain. By the 1860s, the three leading Brazilian jurists engaged in scientific polemics regarding ecclesiastical law had the Faculty of Law of Olinda as their alma mater. They were: Jeronymo Vilella de Castro Tavares, D. Manoel do Monte Rodrigues d'Araújo, and Candido Mendes de Almeida. As the decades went by, the province witnessed a growing animosity between liberals and ultramontanists. Furthermore, the diocese was particularly active in demanding answers from the Council of State and the Congregation of the Council on administrative matters. The case about to be examined involves a clashing between the responses of the two organs.

3.1.1 The case of Francisco Vieira das Chagas (1879–1881) as a turning point

It begins with Francisco Vieira das Chagas, a young priest who was approved at an examination to fill vacant parishes in Olinda on 11 July 1879. At the time, the diocese was *sede vacante*, and the examination was coordinated by Vicar Capitular José Joaquim Camello de Andrade. Francisco Vieira was presented to the emperor on 16 February 1880. Nevertheless, before receiving his collation *(colação)*[14] from the vicar capitular, Francisco Vieira submitted to the Congregation of the Council a petition requiring the convalidation *(sanatio)* of the very examination in which he had been approved.[15] The petition was received on 10 April 1880. According to the young priest, his canonical institution would bear no validity unless there was legal remedy for the fact that his examination did not follow the Tridentine regulation

13 On the Seminary of Olinda, see Santos / Casimiro (2013).

14 *Colação*, collation, refers to the act by the ordinary ecclesiastical authority of communicating to the elected priest the powers to perform an ecclesiastical office and administer the corresponding benefice. In the case of the parishes in Imperial Brazil, this act took place between the presented priest and the bishop or vicar capitular of the related diocese. See MRA, II, 449.

15 Olinden, in: AAV, Congr. Concilio, Positiones, "die 11 7mbris 1880, Lit. N ad R, I. Verga Secret.", f. 1r. Overall, every time that I mention a *positio*, the counting of *folios* starts from the first *folio* of the *positio*, not the first *folio* of the volume.

regarding the quality of examiners. More specifically, the vicar capitular had not summoned synodal examiners, as required by the following decree:

> [A]nd as regards the examiners, six at least shall be annually proposed by the bishop, or by his vicar, in the diocesan Synod; who shall be such as shall satisfy, and shall be approved of by the said Synod. And upon any vacancy occurring in any church, the bishop shall select three out of that number to make the examination with him; and afterwards, upon another vacancy following, he shall select, out of the six aforesaid, the same, or three others, whom he may prefer. But the said examiners shall be masters, or doctors, or licentiates in theology, or in canon law.[16]

Francisco Vieira exposed that the vicar capitular did not have any special faculty granted by the Congregation of the Council to nominate *ad hoc* examiners, as had occurred. Moreover, Vieira continued, the vicar capitular, without consulting the cathedral chapter, nominated three examiners who did not have superior studies on theology or canon law, nor did they teach such disciplines as masters, going against Trent once more.

The Congregation of the Council soon summoned the vicar capitular for information on the legitimacy of the cause.[17] Andrade claimed that, even though he did not have special faculties to nominate *ad hoc* examiners, he did not act on a mere whim but relied on the "long-standing customs of the diocese".[18] To demonstrate this, the vicar capitular stated that there had never been any synodal examiners in Olinda, for no synod was ever conducted in the diocese; also, as far as his knowledge could reach, no ordinary had ever asked the Holy See for special faculties to indicate the members of the examination board. This last bit of information, however, does not match with the data from the Congregation of the Council. There is register of at least one petition from the Bishop of Olinda, in 1868, asking for faculties to nominate examiners as if they were chosen in a synod.[19] Yet, according to the Vicar Capitular of Olinda, immemorial custom allowed examiners to be nominated *motu proprio* in good faith. It is significant that Andrade, in

16 Session 24, *De reformatione*, Canon 18 of the Council of Trent, as in The Council of Trent (1848 [1545–1563]).

17 Olinden, in: AAV, Congr. Concilio, Positiones, "die 11 7mbris 1880, Lit. N ad R, I. Verga Secret.", f. 2v.

18 Olinden, in: AAV, Congr. Concilio, Positiones, "die 11 7mbris 1880, Lit. N ad R, I. Verga Secret.", f. 3r.

19 Olinden, in: AAV, Congr. Concilio, Positiones, "die 21 Martii 1868, Lit. D ad P. P. Giannelli Secr.", f. 1r.

contrast to state officers (as we will soon see), never mentions the *Alvará das Faculdades* as the normative support behind such practice. This points to the different normative expectations that each level of governance placed on the same phenomenon.

On the lack of titles and professional qualification of the examiners, the vicar capitular justified his choice on grounds of the moral qualities and de facto erudition displayed by the ones selected, a reasoning contemplated by Trent. On the lack of consultation with the cathedral chapter, Andrade recurred once more to the argument of custom. He added that when the chapter of Olinda chose him as vicar capitular, the election entailed a transmission of jurisdiction and powers which included the faculty to nominate examiners. This is hardly a reliable argument, since the Congregation of the Council was in charge of the concession of such faculties. Not by chance, the vicar capitular sought means to regularise his situation with the Holy See soon after.[20]

In view of this, on 12 July 1880, after considering the report made by the Secretary of the Congregation of the Council, Pope Leo XIII, in audience, decided to concede the *sanatio* to Francisco Vieira, that is to say, the convalidation of the examination for vacant benefices specifically in Vieira's case, relying on the good faith of the vicar capitular.[21] Later, another candidate forwarded a similar request to the Holy See, followed by the vicar capitular himself, who asked for the extension of the *sanatio* to the other approved priests.[22] Overall, the answer from the Holy See, while harnessing acts that, by its standards, were invalid, displayed a relative tolerance towards local practices.[23]

20 Olinden, in: AAV, Congr. Concilio, Positiones, "die 29 Januari 1881, Lit. N ad P. I. Verga Secret.", f. 1r.

21 Olinden – Vieira das Chagas Franciscus petit sanationem circa concursum, in: AAV, Congr. Concilio, Libri Decret., 223, 1880, pp. 587–588; and Olinden, in: AAV, Congr. Concilio, Positiones, "die 11 7mbris 1880, Lit. N ad R, I. Verga Secret.", f. 12v.

22 The *positio* with Antonio Graciano de Araujo, candidate to a parish, as petitioner: Olinden, in: AAV, Congr. Concilio, Positiones, "die 11 7mbris 1880. Lit. N ad R. I. Verga Secret.", ff. 13r–14v. The *positio* with the vicar capitular as petitioner: Olinden, in: AAV, Congr. Concilio, Positiones, "die 11 Junii 1881. Lit. I ad P. I. Verga Secret.", ff. 1r–2r.

23 I say relative tolerance because the Congregation of the Council was not always open to deviation in the local enforcement of Trent. As an example, there is the failed attempt of the Bishop of Olinda to obtain permission to install examinations in vernacular, on

On 25 September 1880, Francisco Vieira presented to the vicar capitular a *rescriptum* containing the decree of the Congregation of the Council regarding his petition, so as to establish a date for his collation. Andrade stated that, before granting canonical institution to Vieira, the *rescriptum* from the Congregation of the Council had to be submitted to the imperial government, to receive the *placet* – that is to say, the emperor's approval, so that the decree could produce the due effects in national territory. The *placet* request was made by the end of that year. Vieira immediately sent a copy of the petition to the Apostolic Internuncio in Brazil, "for the sake of his conscience", wishing to clarify that he was being forced to initiate a procedure that he knew was anathematised by the First Vatican Council.[24] The case clearly presents a clash of generations. The old vicar capitular, who started preaching during the first half of the century, was still attached to regalist institutions and logics, whereas the young Vieira, ordained in mid-1870s, alumnus of the recently reformed (and no longer liberal) Seminary of Olinda, adopted the language of the reformist, ultramontane clergy, concerned with wider views ("the universal Church") and strict reasoning ("for the sake of conscience"). The tension between these men, while involving larger politico-religious movements in times of crisis, times of transition of normative conventions, gave rise to radical outcomes.

On 12 April 1881, the emperor asked the Council of State's opinion on whether *placet* should be conceded to the Roman *rescriptum* presented by Francisco Vieira. The answer, issued on 18 August 1881 by the Section for Imperial Affairs, was negative.[25] The councillors (Viscount of Bom Retiro,[26]

grounds of necessity. The request was met with blunt refusal, as seen in: Olinden, in: AAV, Congr. Concilio, Positiones, "die 20 August 1887, Lit. N ad P, C. Santori S.", f. 1r.

24 Letter of 3 November 1880 from Francisco Vieira das Chagas to Angelo Di Pietro, Apostolic Internuncio in Brazil, informing him about the placet he requested to the imperial government for the apostolic rescript on the examinations in Olinda, in: AAV, Arch. Nunz. Brasile, Busta 51, Fasc. 241, ff. 12r–v.

25 Consulta de 18 de agosto de 1881, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 558, Pacote 2, Doc. 39, ff. 1r–19v.

26 Luiz Pedreira do Couto Ferraz (1818–1886), the Viscount of Bom Retiro, is a recurrent figure in the major cases of the Council of State regarding the Catholic Church. He was born in Rio de Janeiro; his parents and relatives belonged to the imperial elites, having cultivated close ties with the imperial family. Couto Ferraz graduated from the Faculty of Law of São Paulo. Soon afterwards, he devoted himself to public affairs, as deputy of the Provincial Assembly of Rio de Janeiro (1844), Vice-President of the Province of Rio de

Martim Francisco Ribeiro de Andrada Filho, and José Caetano de Andrade Pinto) based themselves on the narrative presented by Joaquim José de Campos da Costa de Medeiros e Albuquerque, Chief of the Third Directory of the Secretariat of State for Imperial Affairs, who defended the existence of a historical continuity between the *padroado* built and conceived in Portugal during *Ancien Régime* times and the *padroado* in use in the Brazilian constitutional scenario. Many papal bulls containing concessions from the Holy See to Portuguese kings in earlier centuries were mentioned. Campos de Medeiros put emphasis on the Bull *Praeclara carissimi*, from 1551, the so-called "Bull of the Union", which, by incorporating to the Portuguese Crown the grand mastership of three military orders (Avis, Santiago, de Cristo), granted to Portuguese monarchs the privilege of freely appointing clerics to ecclesiastical benefices and dignities. With the word "freely", Campos de Medeiros meant that such right should be – and had actually been – exercised with "maximum liberty" by the monarchs, the only concern being the selection of suitable persons. He conceded that sometimes, due to the long distances separating Lisbon from ultramarine territories, kings had delegated to bishops the faculty of performing examinations; but, even then, procedural norms issued by the Crown were the primary rules.

In the context of Brazil as a Portuguese colony, the *Alvará das Faculdades*, a royal regulation from 1781 with which Queen Mary I of Portugal addressed the Bishop of Rio de Janeiro to aid her in the provision of benefices and

Janeiro (1845), President of the Province of Espírito Santo (1846–1848), President of the Province of Rio de Janeiro (1848–1853), member of the Chamber of Deputies (1848, 1853–1863), Minister for Imperial Affairs (1853–1857), and senator (1867–1886). Unlike most politicians of the empire, who were landowners by heritage or marriage, Couto Ferraz earned his income exclusively from his intellectual, political, and administrative activities. As president of the province and imperial minister, he became known for implementing wide-ranging reforms of primary and secondary instruction, setting the beginning of explicit state intervention in the organisation and control of education. From the 1860s onwards, he developed a close friendship with the emperor, accompanying him and the imperial family on official travels. The two had similar personalities and common personal interests, which justifies the historiographical claims that Couto Ferraz was the "alter ego" of D. Pedro II. Not by chance, the Viscount of Bom Retiro became an extraordinary member of the Council of State in 1866, and an ordinary councillor in 1871. Although in the course of his political career, he shifted from the Liberal to the Conservative Party, his growing proximity to the emperor coincided with the adoption of suprapartisan positions. For more on the Viscount of Bom Retiro, see Blake (1899) 447–449, and Bendiaga (2017).

dignities, was one of the documents that had fulfilled the role of a procedural set of norms for examinations. Regarding the quality of examiners, one can see that the decree uses a less specific language compared to that of the Council of Trent:

> Being, however, the vacant Benefice a Vicariate, a Parish Church, a Chaplaincy, or a Curate, to which I had given, and to which I order to give in the future, collative nature, you shall proceed then to examinations according to the form prescribed by the ancient Alvarás of the Kings my Predecessors, which have been quoted and ordered to be observed by the Alvará of 29 August 1766, summoning for the role of Examiners three Religious men of the highest scores in science and virtue, in the form that is practiced in my Tribunal of the Board of Conscience and Orders; this shall be so not because I am obliged to order the making of said Provisions by means of Examinations; but it shall be so for the greater utility that may result to the Church from [the execution of] these [procedures].[27]

The point defended by Campos de Medeiros, and later endorsed by the councillors of state, was that, as the Brazilian *padroado* was a continuation of the Portuguese one – in terms of rights, norms, legal logics etc. – the *Alvará das Faculdades* would be the standard normative set regulating ecclesiastical examinations in Brazilian territory. Summoning synodal examiners would then remain as a possibility in the hands of bishops, as *Faculdades* allowed a broader margin of discretion.[28] The general idea conveyed by Campos de Medeiros was that the Session 24, *De reformatione*, Canon 18, of the Council of Trent, played no role in the unfolding of Brazilian *concursos*;[29] the sole protagonist was *Faculdades*. This relationship of normative exclusion becomes particularly clear when Campos de Medeiros claims that

27 Alvará das Faculdades de 14 de Abril de 1781, in Copia da analyse da bulla do S.mo Padre Julio III de 30 de dezembro de 1550 (1818) 283–287. The Portuguese original is as follows: "Sendo, porém, o Benefício vago Vigararia, Igreja Paroquial, Capelania, ou Curato, a que Eu tenha dado, e mandar dar para o futuro, natureza colativa, procedereis então a concurso de exames na forma que prescrevem os antigos Alvarás dos Senhores Reis Meus Predecessores, excitados, e mandados observar pelo Alvará de vinte e nove de Agosto de mil setecentos e sessenta e seis, chamando para Examinadores três Religiosos dos de melhor nota em ciência, e virtudes, na forma que se pratica no meu Tribunal da Mesa de Consciência e Ordens; não porque Eu seja obrigada a mandar fazer os referidos Provimentos por Concursos; mas sim *pela maior utilidade que delles pode resultar à Igreja*."

28 Consulta de 18 de agosto de 1881, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 558, Pacote 2, Doc. 39, f. 10v.

29 Consulta de 18 de agosto de 1881, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 558, Pacote 2, Doc. 39, f. 7v.

the Congregation of the Council had operated against *padroado* rights, for it had no competence to decide on Vieira's case: "it was not a matter of interpretation or execution of the decrees of the Council of Trent."[30] In his view, the dicastery was actually judging the application of *Faculdades*, an unacceptable procedure: "the Tribunal [the Congregation of the Council] [was] not competent to take cognisance of the manner *Faculdades*, by which oppositions are ruled among us, was executed."[31] While supporting an exclusionary relationship between Trent and *Faculdades*, Campos de Medeiros concedes only one common point between them: the fact that both ordered the "best appreciation of the aptitude *[idoneidade]* and merit of candidates";[32] *Faculdades* indeed cited Trent on that matter. However, such a narrow understanding of the role of Trent in Brazilian *oposições* does not seem to be shared by others if one looks at earlier perspectives from within and without the Council of State.

3.1.2 Before Vieira's case. The transition from a normative convention of amalgam to a normative convention of separation

There were indeed cases in which state councillors had displayed more deference towards the Tridentine decrees when it came to regulating ecclesiastical examinations and related matters (proposal, collation etc.). Between 1843 and 1881, the year when Vieira's case arrived at the Council of State, the organ had already issued at least 18 opinions on these subjects.[33] Six opinions contained no mention of Trent, only of *Faculdades*.[34] Two cited

30 Consulta de 18 de agosto de 1881, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 558, Pacote 2, Doc. 39, f. 12r.

31 Consulta de 18 de agosto de 1881, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 558, Pacote 2, Doc. 39, f. 12v.

32 Consulta de 18 de agosto de 1881, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 558, Pacote 2, Doc. 39, f. 10r–v.

33 I rely on a scanning of all cases in full version found in the Council of State's fonds at the National Archives of Brazil, as well as on the opinions compiled in Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 1–3 (1869–1870).

34 Consulta de 5 de agosto de 1846, Seção de Justiça, in: AN, Conselho de Estado, Caixa 509, Pacote 3, Doc. 45; Consulta de 6 de julho de 1849, Seção de Justiça, in: AN, Conselho de Estado, Caixa 512, Pacote 3, Doc. 4; Consulta de 26 de junho de 1862, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 531, Pacote 2, Doc. 33; Consulta de 19 de novembro de 1863, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa

neither set of norms.[35] One opinion, while mentioning just Trent, suggested that regarding the procedure of the examinations, Tridentine dispositions might give way to local practices (I will come back to this point).[36] Four opinions focused on the binding nature of the ecclesiastical proposal for the presentation and collation of candidates; three were favourable to the non-mandatory character of the proposal, in accordance with *Faculdades*, and mentioning Trent for secondary purposes;[37] one opinion, however, suggested a contrast between *Faculdades* and Trent on the issue, favouring the mandatory character of the proposal, in accordance with the Tridentinum.[38] In at least six opinions, Trent was mentioned alongside *Faculdades* in a complementary or at least non-exclusionary fashion. Four cases presented the affinity between the two norms as related to the exam of intellectual capacities and / or moral qualities of candidates, in accordance with what was said by Campos de Medeiros in Vieira's case;[39] in one of these, Trent was also invoked on its own, concerning the age and ordination requirements of candidates.[40] Finally, three cases displayed the confidence that state council-

534, Pacote 3, Doc. 45; Consulta de 3 de julho de 1881, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 558, Pacote 2, Doc. 38; and Consulta de 24 de março de 1862, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 119–124.

35 Consulta de 15 de setembro de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 535, Pacote 3, Doc. 54; and Consulta de 30 de novembro de 1843, Seção de Justiça, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 1 (1869) 63–69.

36 Consulta de 26 de dezembro de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 536, Pacote 3, Doc. 40.

37 Consulta de 10 de março de 1856, Seção de Justiça, in: AN, Conselho de Estado, Caixa 520, Pacote 5, Doc. 1; Consulta de 23 de janeiro de 1857, Conselho de Estado Pleno, in: AN, Conselho de Estado, Caixa 520, Pacote 5, Doc. 1; and Consulta de 16 de setembro de 1857, Seção de Justiça, in: AN, Conselho de Estado, Caixa 521, Pacote 4, Doc. 71.

38 Consulta de 8 de março de 1862, Conselho de Estado Pleno, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 82–118.

39 Consulta de 16 de setembro de 1857, Seção de Justiça, in: AN, Conselho de Estado, Caixa 521, Pacote 4, Doc. 71; Consulta de 24 de maio de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 535, Pacote 3, Doc. 49; Consulta de 12 de agosto de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 535, Pacote 3, Doc. 53; and Consulta de 11 de novembro de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 536, Pacote 3, Doc. 37.

40 Consulta de 11 de novembro de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 536, Pacote 3, Doc. 37.

lors had in combining Trent and *Faculdades* to clarify issues such as: the functions of examiners and of the ordinary in the approval or rejection of candidates,[41] deadlines and documents necessary for registering for an examination,[42] and who could preside over examinations.[43] Such uses suggest that the Council of Trent was a relevant set of norms for the Council of State when deciding on ecclesiastical oppositions, and that there were more relations between Trent and *Faculdades* than became apparent in Vieira's case. They could even be harmoniously arranged.

Going beyond the Council of State's activity and into the realm of legal books, it is worth mentioning that the Bishop of Rio de Janeiro, D. Manoel do Monte Rodrigues d'Araújo, in his handbook on ecclesiastical law, which was widely used in bureaucratic environments, employed both the Council of Trent and the *Alvará das Faculdades*, among other specific regulations, in his exposition on examinations for the provision of benefices. While describing the procedure, he indicated at which moments the Brazilian / Portuguese norms had modified the general discipline imposed by the Tridentinum. This, however, did not imply the complete exclusion of the latter; both universal and national normative sets rather established a relationship of complementarity.[44]

If harmonious combinations, or at least the possibility of combining one normative set with another, were envisaged in some circles, in others, certain discourses and practices already pointed to an exclusionary choice. We have seen that, in Vieira's case, the councillors deemed *Faculdades* the standard normative corpus, Trent playing no actual role in the unfolding of examinations. Yet, the Brazilian episcopate acted precisely in the opposite direction: there is evidence that, during the empire's final decades, many bishops moved more and more towards complying with Tridentine obligations. For example, from the 1860s onwards, several ordinaries recurred to the Holy See seeking alternatives to the annual synod in which diocesan examiners should be elected. This tendency, fostered by the rise of ultramontanism

41 Consulta de 4 de novembro de 1843, Seção de Justiça, in: AN, Conselho de Estado, Caixa 508, Pacote 1, Doc. 35.

42 Consulta de 24 de maio de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 535, Pacote 3, Doc. 49.

43 Consulta de 21 de junho de 1864, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 161–163.

44 MRA, II, 466–474.

among higher ecclesiastical ranks,[45] can be observed in the protocol books of the Congregation of the Council. These books attest that, prior to Vieira's case, at least five Brazilian bishops had asked the congregation for faculties (i. e. powers granted by superiors) to elect examiners as if they had been chosen in a synod. In addition to the request of the Bishop of Olinda in 1868, there were petitions from Mariana (1865 and 1876),[46] S. Pedro do Rio Grande do Sul (1873),[47] and S. Sebastião do Rio de Janeiro (1877)[48] – the latter being somewhat surprising because it was the diocese in which the imperial capital was situated. Although this data offers little insight on the bishops' thoughts on *Faculdades*, it does constitute a sign of the ordinaries' urge for uniformity, of their choice for the Council of Trent and the Holy See, setting aside divergent local practices and norms.

Some jurists had a more straightforward approach to the disharmony between Trent and *Faculdades*. One of these men was ultramontane jurist Candido Mendes de Almeida. In the long foreword to his own compilation of Brazilian ecclesiastical civil law (Direito civil ecclesiastico brazileiro antigo e moderno, 1866–1873), Mendes de Almeida voiced harsh criticism of Monte Rodrigues d'Araújo's approach to ecclesiastical examinations. According to the ultramontanist, the *Alvará das Faculdades* and the Council of Trent were irreconcilable norms. Under the former, the bishop would be acting as a delegate of the patron; examiners would be chosen according to the practice of a body alien to Church hierarchy, the Board of Conscience and Orders; and the final decision on the worthiest candidate for a given benefice would be shifted to the patron, since the bishop would only be obliged to compose a list of the three best candidates. Under Trent, on the other hand, the bishop would be acting in his own right; the examiners would be elected

45 For more on the rise of ultramontanism among Brazilian bishops during the second half of the 19th century, see Santirocchi (2015b).

46 Numero d'ordine: 862, Diocesi: Mariana nel Brasile, Nome e cognome del postulante: Vescovo, Oggetto: Exam., in: AAV, Congr. Concilio, Protocolli, 1865; and Numero d'ordine: 949, Diocesi: Marianna nel Brasile, Nome e cognome del postulante: Vicario Capitolare, Oggetto: Esaminatori, in: AAV, Congr. Concilio, Protocolli, 1876.

47 Numero d'ordine: 756, Diocesi: S. Pedro do Rio Grande do Sul, Nome e cognome del postulante: Vescovo, Oggetto: Esaminatori, in: AAV, Congr. Concilio, Protocolli, 1873.

48 Numero d'ordine: 3115, Diocesi: S. Sebastiano di Rio Gianerio, Nome e cognome del postulante: Vescovo, Oggetto: Esaminatori senza il consenso del Capitolo, in: AAV, Congr. Concilio, Protocolli, 1877.

in a diocesan synod; and it would be the responsibility of the ordinary to appoint, after the results of the examinations, the worthiest candidate, so the patron could then proceed to the presentation. With this contrast, Mendes de Almeida posited that "to comply with the *alvará* is to offend the council".[49]

Another narrative of discontinuity unfolded within the Council of State: the position put forward by Marquis of Olinda, a moderate regalist.[50] On some occasions, the marquis claimed that the *Alvará das Faculdades* was no longer valid – at least not concerning Imperial Brazil. According to this narrative, after its independence from Portugal, Brazil had inaugurated a new form of *padroado*, disconnected from any previous concession from the Holy See and based exclusively on the Imperial Constitution. Such position was supported by the fact that, at the beginning of the Brazilian Empire, the General Legislative Assembly refused to give the *placet* to the papal Bull *Praeclara Portugalliae* (1827), which had conceded to the Emperor of Brazil the same prerogatives enjoyed by Portuguese monarchs as grand masters of the Military Order of Christ. Such discontinuity between the Portuguese and the Brazilian *padroados* would not allow, thus, the *Alvará das Faculdades*, a norm from the Portuguese *Ancien Régime*, to be further applicable in the context of independent Brazil. This position was quite unusual among Brazilian regalists (especially within the Council of State), converting the marquis into a (respectable) outsider.

When compared with these jurists' points of view, in particular Mendes de Almeida's, the path of argumentation chosen by the councillors of state in Vieira's case reveals itself to be very different in content – but, at the same time, very close in terms of normative convention. Both perspectives agree on the adoption of an exclusive either/or logic, disagreeing only on the norm that should be discarded. The state councillors, via Campos de Medeiros, defended that *Faculdades* had precedence over Trent, the latter's applicability being very limited, conditioned to the reception operated by the former. This position led the Council of State to maintain that ecclesiastical examinations in Brazil were a matter of exclusive competence of the

49 CMA, I, cccxxvi.

50 Consulta de 8 de março de 1862, Conselho de Estado Pleno, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 96–118.

executive branch, ruled by civil laws.[51] This was a rather bold assertion, because, in view of the *padroado* system, ecclesiastical examinations were commonly held by Brazilian jurists to be a mixed matter, meaning a matter that, involving acts from ecclesiastical and secular authorities, entailed laws developed within the Church as well as laws issued by the state. Moreover, appeals against examinations should be made to the tribunal of the Archdiocese of S. Salvador da Bahia; Monte Rodrigues d'Araújo, in his manual on ecclesiastical law, stated precisely so – and implied the possibility that such appeals might reach the Holy See, while mentioning Trent and the encyclical *Cum illud* of Pope Benedict XIV.[52] The point of view taken by Campos de Medeiros, however, said that if Vieira had noticed any irregularity in the manner in which his examination had been performed, he should have resorted to the state – not to the Holy See. In fact, while recurring to the Congregation of the Council, Campos de Medeiros concluded, Vieira was performing a crime against Brazilian sovereignty – Article 81 of the Imperial Criminal Code, the crime of recurring to a foreign authority to request spiritual grace or privilege in the ecclesiastical hierarchy.[53]

Nevertheless, by the end of the consultation, the councillors of state were not so harsh as to pursue a criminal complaint against Francisco Vieira. They acknowledged the priest's good faith and his struggles of conscience. Moreover, it seems that the sound and fury of the disputes between the reformist clergy and Brazilian state authorities during the decade of 1870 were still quite fresh in their minds. I am referring to the suits that resulted in the arrest of Bishop D.Vital Maria Gonçalves de Oliveira of the diocese of Olinda, on grounds of the enforcement of papal norms which had not received the *placet*.[54] In fact, we may presume that one of the factors that led Vicar

51 Consulta de 18 de agosto de 1881, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 558, Pacote 2, Doc. 39, ff. 11r, 18r. Following the *Ancien Régime*'s nomenclature, the Council of State's sources present the term *civil laws (leis civis)* when addressing laws that were issued by the secular (public) power (which, in its turn, was also denominated *civil power*, *poder civil*).

52 MRA, II, 473.

53 Consulta de 18 de agosto de 1881, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 558, Pacote 2, Doc. 39, f. 15v.

54 I refer to the Brazilian "Religious Question". More specifically, D.Vital, then Bishop of Olinda, had interdicted a lay brotherhood on the grounds that it contained members of the Freemasons. The papal bull upon which D.Vital relied to issue the interdiction condemned Freemasonry – but it had not received the state *placet*. The lay brotherhood

Capitular Andrade to insist on the *placet* for Vieira's *rescriptum* was precisely the fear of encountering the same problem. The case of D.Vital, along with Bishop D. Antonio de Macedo Costa of the diocese of Belém do Pará, both relentless ultramontanists, caused a national commotion and attracted the attention of other countries, as it appeared in the pages of several foreign magazines and newspapers.[55] The Brazilian Religious Question, as it came to be known, mobilised not only jurists in the country, but also diplomats around the Holy See. It was one of the greatest political tribulations of the end of the empire, and the Council of State played a major role in its intensification and resolution. To avoid a similar convulsion in 1881, the Section for Imperial Affairs of the Council of State issued the opinion that the *rescriptum* from the Congregation of the Council presented by Vieira did not have any legal value in Brazil; that the examination that took place in Olinda in 1879 was fully valid; and that, in spite of his acts, Vieira should receive his collation – as long as the vicar capitular, while conceding it, made clear that he was proceeding thus exclusively in virtue of the letter of presentation from the emperor. Among others, this opinion was endorsed by the Viscount of Bom Retiro, a state councillor who had signed the granting of the appeal to the Crown against D.Vital, in 1873. He seemed to have found in Vieira's case an opportunity to exercise moderation.

Even though these entangled procedures provided more or less the same result to Francisco Vieira – that is to say, his collation as parish priest – this case represents a turning point for the Council of State in the field of ecclesiastical examinations, for it was then that formal administrative issues were inserted into the wider – and more delicate – debate on imperial

appealed to the Crown, alleging a use of a bull not approved by the Brazilian Empire, and lack of jurisdiction. The Council of State gave reason to the brotherhood, demanding that D.Vital lift the ban. As he refused to do so, the case was taken to the Supreme Court of Justice, which condemned D.Vital for the crime of obstruction of the executive branch (Article 96 of the Imperial Criminal Code). It was the first time that a bishop was criminally prosecuted and convicted in the country. D. Macedo (Bishop of Belém do Pará) underwent a similar procedure, on similar grounds. See Pereira (1986) and Santirocchi (2015b) 427–453.

55 The French press, in particular its Catholic branch, displayed much interest in D. Vital's case. Local publications of small and wide range serve as examples: *Église de Reims: Vie diocésaine* (Rheims, 3 January 1874), *Annales catholiques: Revue religieuse hebdomadaire de la France et de l'Église* (Paris, 21 February 1874, 21 March 1874, 28 March 1874, 25 April 1874), *Journal des débats politiques et littéraires* (Paris, 27 November 1875), and *Le Temps* (Paris, 3 October 1876).

sovereignty and autonomy of the Church. The perspective of the councillors on Trent seems to have shifted from seeing it as a universal set of norms with local adaptations, which coexisted with other local norms, to a sign of allegiance towards a foreign authority (the Holy See) and a politico-religious movement (the ultramontanists). This is particularly evident if we compare Vieira's case to another one from a little over 15 years earlier.

In December 1864, the councillors of the Section for Imperial Affairs were called to decide on the validity of recent examinations for parishes (again) in the diocese of Olinda.[56] The role played by the late bishop was put into question, for he had not limited his activity to the coordination of examinations. Once the doctrinal round of the evaluation was over, the bishop dismissed the board of examiners and assigned himself the task of evaluating the moral aptitude of candidates. The petitioner – the vicar capitular, then a member of the board – claimed this sort of procedure found no support in the Council of Trent or in subsequent pontifical norms and, thus, the oppositions were irregular. The vote of the Marquis of Olinda, then rapporteur of the section, recognised that neither the Council of Trent nor Pope Benedict XIV's encyclical letter *Cum illud* seemed to allow separate grades for each phase of evaluation. According to these norms, so the marquis's interpretation, examiners should pronounce only one grade after the whole process of examination. Nevertheless, the marquis also acknowledged that Tridentine discipline had been altered in Brazilian churches. He could not specifiy whether that would be the case for all of them, but "for sure in those in Bahia and Rio de Janeiro". In these churches, he continued, examiners would be in charge of evaluating only scientific merits, whereas the verification of morals would be a task for the ordinaries. The marquis regretted that the vicar capitular did not specify whether the separation of grades was a discipline admitted at the diocese (that is to say, whether it was a local practice) or a resolution of the bishop for that particular examination. He concluded that the Council of State did not possess enough data on facts and local discipline and was thus unable to declare the oppositions invalid. The section subsequently agreed that the vicar capitular should restore the proposals to the government, with all necessary information on the candidates' mores; that the government should verify this material and, depending on

56 Consulta de 26 de dezembro de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 536, Pacote 3, Doc. 40.

its contents, proceed to the presentation of approved candidates or order the execution of new examinations. Most importantly, the councillors suggested that all Brazilian bishops should be asked to send information on the discipline in force at their dioceses with regard to the grading of candidates to vacant benefices. This request was officially made via the circular letter of 19 January 1865.

The relevance of this case lies precisely in the fact that state councillors expressed uncertainty on the norms that were employed in ecclesiastical examinations. They recognised that they could not specify to which extent Trent was adopted in Brazilian dioceses when it came to this subject. They showed that they were not familiar with local practices, permitted disciplines and similar issues. Yet they displayed willingness to become informed about it. More than that, they expressed that these details would be relevant to the government while scrutinising ecclesiastical proposals. This behaviour is similar to the one exhibited by the Congregation of the Council in Vieira's case, when it asked for further information from Vicar Capitular Andrade. And it is in stark contrast with the attitude of the state councillors in 1880. Instead of acknowledging his ignorance on local practices, the Marquis of Olinda could have simply posed that the applicable norm in all cases was *Faculdades*, attaching his interpretation on how grading should unfold in accordance to that norm. But he did not. In fact, he did not even mention *Faculdades* on this occasion.

The comparison of the two cases – Vieira's and the one just described – is quite telling with regard to the different normative conventions underlying the governance of the Church during the 1860s and the 1880s. While the first period shows a Council of State more open to the consideration of multiple norms – such as the Council of Trent, local normative uses and even pontifical encyclical letters – the same organ adopted a much more closed position in 1880, rejecting Trent as well as other local practices that represented a deviation from what were considered civil laws for the regulation of the Church.

The Council of State's change of perspective is part of a broader transition in the way of conceiving ecclesiastical law as a discipline.[57] In 19th-century Brazil, most of the handbooks on the field addressed ecclesiastical law as "the

57 My exposition on the conceptual changes regarding ecclesiastical law follows the narratives of Luca (1946) and Salinas Araneda (2000). To highlight how the relationship between norms changed along with the reconceptualisation of the discipline, my terminology differs from that of these authors: while they proposed a "monist" and a "dualist"

law that regulated the Church" and that comprised both canon law (i. e. the *Corpus iuris canonici*, the Council of Trent, pontifical constitutions, decrees of Roman congregations etc.) and civil laws specifically aimed at the Brazilian Church. I choose the term "amalgam" to denominate this normative convention, for it united different elements (canonical laws and civil laws) under the same label (ecclesiastical law). This arrangement derived from two doctrinal trends that were particularly strong during the 1800s. On one side, there was the rationalist systematisation of the *ius publicum ecclesiasticum*, made known in Brazil by means of the *Institutiones Juris Ecclesiastici* (1782), by Austrian canonist Franz Xaver Gmeiner, widely diffused in Coimbra; on the other, the historicist, organic approach of the *Kirchenrecht*, a scientific novelty provided by jurists close to the German Historical School, such as Ferdinand Walter and George Phillips.[58] Both these trends proposed an "amalgamated" conception of ecclesiastical law, for the relevant norms were delimited *ratione materiae* ("laws that regulated the Church"); in relation to this criterion, the norms' origin, that is, whether norms were produced by state authorities or by the clergy, was a secondary aspect, a matter of detailing, not of disciplinary delimitation.

The amalgamated conception of ecclesiastical law matched with the activity of institutions like the Brazilian Council of State, which, during much of its existence, regarded ecclesiastical law as a large toolbox whose varied material was fully available to this organ's interpretation. In fact, the openness of the Council of State to interpret both civil law and canon law had its legitimacy strengthened by the argument, arising from regalist and liberal discourses, that the state should have control over any legal norms concerning the Brazilian Church, so as to preserve national sovereignty and the Church's own interest.[59] Thus, it is not surprising that, before Vieira's case, the councillors' opinions are built around norms of canon law, state laws and diocesan uses.

conception of the law regulating Church affairs, I suggest that there was a shift between a normative convention of "amalgam" and a normative convention of "separation".

58 For more on the doctrinal trends around ecclesiastical law between the 18th and 19th centuries, see Fantappiè (2008). Specifically on *ius publicum ecclesiasticum*, see Hera/Munier (1964) and Meyer (2012).

59 When addressing the monarch's *iura circa sacra*, Brazilian jurists usually included the right of the emperor to control Church-related norms – especially those coming from the Holy See – by means of the *placet*. We see this, for instance, in the third book of JVT1.

Vieira's case lies precisely between the exhaustion of the convention of ecclesiastical law as amalgam, at the full disposal of the Council of State's interpretation, and the ascendancy of another convention, that of separation between canon law and civil law for Church affairs. In Brazil, this separation (which can be categorised as disciplinary, jurisdictional and normative) gained ground with the rise of ultramontanism among the clergy and laity, and the subsequent tensions that these groups established with regalists and secularists. It was ultramontane jurist Mendes de Almeida who, inspired by French authors (Michel André, Gilbert de Champeaux, both supporters of ultramontanism),[60] introduced the term ecclesiastical civil law *(direito civil eclesiástico)* in Brazilian academic debate, referring to the legislation on ecclesiastical matters that was partially or fully produced by secular authorities, in particular state bodies. In his compilation of the genre, Mendes de Almeida delimited and historically situated this branch of law, recalling normative sets that went from the first Portuguese concordats to the last legislative novelties of the Brazilian Empire; he also confronted all this material with both remote and recent canon law. By distinguishing and comparing norms from the two legal fields, Mendes de Almeida wished to offer a critical account of the treatment that the modern Brazilian state displayed towards the Church. It should be stressed that Mendes de Almeida did not defend a complete separation between Church and state. He was not a secularist. Rather, he advocated for greater autonomy for the Church in its relationship with the state; and, as I have already suggested, he stood for the enforcement of canonical norms, like the Council of Trent, to the detriment of recent civil laws which, in his view, possessed a sharp regalist tone (e. g. *Alvará das Faculdades*). One may say that there was an exclusionary note in his general approach of the normative convention of separation.

A more extreme logic of separation is found on the other side of the ideological spectrum, in the writings of supporters of liberalism and republicanism such as Ruy Barbosa and Saldanha Marinho.[61] These jurists, both harsh critics of ultramontanism, postulated that Church and state should undergo full separation, a "reciprocal emancipation", in the words of Barbo-

60 For more on the doctrinal development of ecclesiastical civil law in 19th-century France, see Zimmermann (1980) and Blanco (2008).

61 See Ruy Barbosa's substantial introduction to his translation of Döllinger's *Der Papst und das Konzil*, in Döllinger (1877 [1869]); and Saldanha Marinho's collection of polemical articles in Saldanha Marinho (1873).

sa. They pointed out that Brazilian state law – and, in particular, the liberal values embedded in it, such as freedom of conscience, liberal democracy, national sovereignty – were incompatible with canon law as interpreted by Pope Pius IX (especially by means of the *Syllabus Errorum*, from 1864) and as enforced by the ultramontane clergy in Brazil. The prevalence of canon law in case of normative conflict, as posited by Pius IX, represented a challenge to the Brazilian Empire, as its bureaucracy relied on several regalist and/or liberal mechanisms to perform tasks of administration of the clergy. But the problems went further. The institutional entanglements between Church and state also hindered the advancement of legislative measures applicable to all citizens, such as civil marriage, the secularisation of educational institutions and cemeteries, and the establishment of a system of civil registration. For such reasons, liberal and republican jurists adopted the institutional – and normative – separation of Church and state as the only solution.

Due to their loyalty to the established institutions, the state councillors were not allowed to endorse claims for institutional separation, but they did share the normative convention that was behind both secularist and ultramontane discourses. Vieira's case is an extreme example of this, as the Council of State, in its response, not only adopted the convention of normative separation but bent it towards normative exclusion. In the opposite direction of Mendes de Almeida's proposal (though within the same normative convention), the state councillors excluded canon law from the regulation of ecclesiastical examinations performed in Brazil; only civil laws were deemed applicable, and only the Council of State figured as the proper court of appeal. The days of the convention of ecclesiastical law as amalgam were numbered. However, state councillors would not cling to the radicalism present in Vieira's case. Mitigated solutions were later created within the same normative convention of separation, as we shall see in the next section.

3.1.3 After Vieira's case. Trent to the Church, *Faculdades* to the state

In October 1888, the Council of State opined on an appeal to the Crown *(recurso à Coroa)*[62] from the diocese of São Paulo. The petitioner, Fr. Francis-

62 According to the Decree n. 1.911 of 28 March 1857, by means of the *recurso à Coroa*, ecclesiastical or lay people could appeal to the Council of State against an act performed by an ecclesiastical authority, if it encompassed: usurpation of temporal power and juris-

co Gonçalves Barroso, contested his non-habilitation as candidate to a position of canon of the cathedral chapter.[63] The provisor of the diocese denied his candidacy on grounds of form, for the complainant had not submitted a letter of excardination and *de genere* information within the time limit prescribed by the examination edict. This case raised questions both of form and competence. Even though state councillors focused their attention on the latter, the former aspect, as it appears in the petition, engages in several connections with the Council of Trent – or rather, with Tridentine cultural "translations". While deeming unfair the request of an excardination letter instead of a dimissorial letter,[64] the petitioner supported the prevalence of recent civil norms and doctrine over the First Constitutions of the Archbishopric of Bahia, Colonial Brazil's "adapted version" of the Council of Trent. But, when recalling practices of the diocese's former vicar general – which allowed the delivery of documents even after the expiration of the edict, with no cause for rejecting the candidacy – Barroso addressed Trent at a new, unprecedented level: the level of dispute on how accurately decisions of the Congregation of the Council were being interpreted and applied in Brazil. More precisely, by attaching excerpts from the *Diario Mercantil* newspaper, the petitioner made the Council of State aware of the interpretative discrepancy between the practices of São Paulo's former vicar general and the contents of a recent book on ecclesiastical law written by Ezechias Galvão da Fontoura, a canon from the same diocese. Both relied on decrees (or on what they believed to be decrees) of the Congregation of the Council to support their opinions on the stricter or more flexible consequences of presenting required documents after the period prescribed by the edict. Barroso, of course, did not expect the Council of State to redeem canonical disputes. He pursued his own habilitation to the exams – but, in doing so, he offered to the eyes of state councillors a layer of controversy on Trent's interpretation

diction; any sort of censorship against civil servants due to their offices; notorious violence in the exercise of spiritual power and jurisdiction, violating natural law or the canons received in the Brazilian Church.

63 Consulta de 31 de outubro de 1888, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 562, Pacote 1, Doc. 11.

64 In other words, the petitioner was required to prove his transference from his native diocese to the Bishopric of São Paulo (by means of an excardination letter), instead of simply demonstrating that the head of his native diocese allowed him to be ordained by the Bishop of São Paulo (by means of a dimissorial letter).

which was quite new to the institution. He was addressing the debate on whether a decree from the Congregation of the Council – interpreting the encyclical letter *Cum illud*, which, in turn, detailed a disposition of the Council of Trent – was being properly interpreted in São Paulo. Councillors Domingos de Andrade Figueira and the Viscount of Ouro Preto, however, did not feel like engaging in this tricky hermeneutic exercise.

Figueira bluntly stated that Barroso should have recurred to the ecclesiastical court *(Relação Metropolitana)* of the archdiocese of S. Salvador da Bahia first, in accordance with the civil decree that regulated the appeal to the Crown.[65] But it was not only a matter of following the right sequence of instances of appeal. Figueira indicated that an appeal against the dispatches that had denied the petitioner's candidacy would not be possible on grounds of civil law, for civil law would not allow the postponing of the 30-day period stipulated by the *Alvará das Faculdades* to the habilitation of candidates to examinations. When it came to canon law, the scenario was a bit more positive, for canonical dispositions, said Figueira, would regard it as optional for the bishop to grant or deny extensions of the said 30-day period.

What is particularly noteworthy is that Figueira suggested that the single possible appeal would be to the *Relação Metropolitana* – I repeat: not just because of the right sequence of appealing, but because there would be room for manoeuvre only within canon law. In other words, even if the order of appeals had been correctly addressed and if, after a negative decision from S. Salvador da Bahia, the dossier had reached the hands of the state councillors, they would not judge the case because it was situated in the field of canon law. The arena of the Council of State, one may understand from Figueira's discourse, was confined to the law produced by secular powers, a realm which contained norms that were relevant to ecclesiastical administration, as in the case of the aforementioned *Faculdades*, but which was separate from canon law, an equally valid field, but outside the reach of the state councillors.

This is a position that, although apparently trivial, is very interesting from a broader perspective, if one considers both the treatment that the Council of State historically gave to issues of ecclesiastical administration and the development of debates on ecclesiastical law in Brazil. It is a position that points the

65 Consulta de 31 de outubro de 1888, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 562, Pacote 1, Doc. 11, f. 2r–v.

way to a rupture with the past, more precisely a past when the councillors approached both canonical laws and ecclesiastical civil laws with ease, confident that the boundaries between these normative sets did not correspond to exclusive jurisdictions. As I mentioned earlier, these more "eclectic" normative uses ran in parallel with the convention, heavily present in the major manuals of ecclesiastical law of the 1850s, that ecclesiastical law comprised all norms that regulated Church affairs, regardless of their institutional origin. The cases of Vieira and Barroso are relevant because they depict moments in which the state renounced the interpretation of canon law and confined itself to the consideration of civil laws when deciding on an ecclesiastical matter. Whereas Vieira's case posed a radical solution, Barroso's case offered a mitigated position. Figueira acknowledged that examinations were a mixed issue, but this did not imply that different institutions could use and interpret all rules without distinction. This is different from the radicalism that state councillors displayed in Vieira's case, in which they argued that examinations were a matter of civil law, with the Council of State as the sole court to appeal to in the event of suspected invalidity. What councillor Figueira suggested was that, since examinations were a mixed matter, Church hierarchy and the secular power should approach concrete cases restricting their analysis to the normative sets originated within each institution. Thus, canon law should be interpreted and applied by the Church, via its ecclesiastical courts, whereas ecclesiastical civil law should be interpreted and applied by the state, via its secular courts.

Figueira's position, I think, constitutes an indication, a nod to a political and legal framework that recognised the Church's autonomy in relation to the state (autonomy with mutual cooperation; after all, Figueira was a Catholic conservative, in the sense that he was favourable to the emperor's *padroado* rights, and against the separation between Church and state), and to a clearer delimitation between ecclesiastical civil law and canon law. Even though this opinion went hardly as far as some ultramontanists would have liked (they would have preferred a straightforward rejection of many Church-related civil norms, including *Faculdades*), it did approach the normative convention of separation adopted by ultramontanists. It followed, to a certain extent, the concerns of the ultramontane Mendes de Almeida when he defended the teaching of ecclesiastical civil law as a complementary (and, therefore, separate) discipline to canon law in the country's law faculties. Mendes de Almeida realised that to make an effective critique of the government's measures

regarding ecclesiastical administration, one should first have a solid idea of the two disciplines and their boundaries.[66] Knowing the boundaries (or rather establishing them) was the first step in pointing out where the abuses were and how the autonomy of institutions could be fostered.

It is true that Figueira's opinion did not address the option of appealing to the Holy See, so that it is not possible to follow his argument to its ultimate consequences. But the records of the Congregation of the Council show that at the beginning of 1888 the Bishop of São Paulo sent a general *dubium* on the interpretation of *Cum illud* via the Apostolic Internuncio in Brazil, the encyclical letter that was at the centre of diocesan debates on the congregation's decrees.[67] I found no evidence of control or impediments to these communication flows on the part of the state. But it should be said that when the Holy See answered the Bishop of São Paulo's *dubium*, the Brazilian Catholic Empire was already on its way to become a secular republic.

3.1.4 Exploratory remarks. The uses of the Council of Trent alongside the transformations of ecclesiastical law as a legal field

With this section, I intended to show a concrete example of how 19th-century Brazilian ecclesiastical administration unfolded within a scenario of multinormativity and multilevel governance, and how these two elements were connected. I considered multinormativity not only as the coexistence of multiple legal norms, but as the relationship between these norms according to different normative conventions. Influenced by politico-religious changes, the normative conventions expressed distinctive forms of understanding ecclesiastical law, as well as relations between the Church and the state, entailing different views on Church-related disciplinary fields, normative categorisation and relationship, and jurisdictional arrangement. The interaction between the levels of governance diffused – and even catalysed – shifts of normative conventions. The ways of interpreting and applying the Council of Trent changed from a convention of amalgam to a convention of separation, with significant nuances in the transition.

66 CMA, I, iii–iv.

67 S. Pauli in Brasilia, in: AAV, Congr. Concilio, Positiones, "die 3 Augusti 1889. Lit. R ad Z., L. Salvati Secr.", ff. 1r–1v, 5r–7r.

This could be observed quite clearly from the perspective of the Council of State, whose decisions transitioned from normative amalgam (i. e. ecclesiastical law as a toolbox comprised of canonical laws, civil laws and custom; the Council of Trent, the *Alvará das Faculdades* and local uses are all potentially applicable to ecclesiastical examinations, its concrete implementation depending on the case) to normative exclusion, with a significant expansion of the jurisdiction of the state over the Church (i. e. ecclesiastical examinations are a matter of civil law, only the *Alvará das Faculdades* is applicable, only the state jurisdiction is competent to approach cases related to ecclesiastical examinations). A second, later transition occurred to normative separation, with more jurisdictional autonomy to both institutions (i. e. ecclesiastical examinations are a mixed matter, comprising canon law, which belongs to the Church's jurisdiction, and civil law, which belongs to the state jurisdiction).

To describe shifts of normative convention from the perspective of the Congregation of the Council is less easy and would require the analysis of more sources. With regard to Vieira's case, the dicastery displayed a relatively tolerant attitude towards normative diversity, by harnessing acts that, by the Holy See's standards, were void of validity. The shift of convention is perhaps best appreciated from the side of the petitioners. The absence of petitions about *concursos* in earlier decades signals a conformation with local uses, informed by a more open and varied normative convention, whereas the flows of Brazilian solicitations from the 1860s onwards, along with the rise of ultramontanism among higher ecclesiastical ranks, suggest an urge for uniformity, for consonance with Trent and the Holy See, under the sign of a normative convention of exclusion.

Ultimately, the convulsion – and subsequent changes – provoked by the intersection between the Congregation of the Council and the Brazilian Council of State in Vieira's case are a vivid proof that multilevel governance and multinormativity are strongly intertwined. The interaction between different institutional levels favoured the emergence of new arrangements among multiple norms. Throughout the network of governance of the Brazilian Church, normative conventions had the chance to blossom, circulate, persist and change. Thus, if one considers multinormativity as more than the coexistence of multiple norms regulating the same phenomenon, that is, as the intricate relationship between norms, normative conventions, and concrete events, it would be correct to conclude that multinormativity develops

within multilevel governance, or rather that multinormativity *emerges* from multilevel governance.

I can go into more detail. By comparing Vieira's case with other situations from the field of ecclesiastical examinations that came to the knowledge of the Council of State before and after, I verified that the exclusion between Trent and the *Alvará das Faculdades* was not absolute. Between the 1840s and 1860s, the Council of State employed both sets of norms as complementary or non-exclusionary on several occasions. There are indications of complementarity also in the legal doctrine. On a practical level, the period prior to Vieira's case seems informed by a more eclectic, amalgamated normative convention about ecclesiastical law, mixing laws coming from secular powers and canon law, all under the same label, as seen in books: *ius ecclesiasticum*. Within this framework, civil authorities – via the Council of State – felt authorised to interpret and implement norms of canonical or pontifical origin, the Council of Trent being a striking example. But this situation would not last for the whole century.

Other than an *a priori* exclusion between legal norms, Vieira's case sheds light on how political change is connected with shifts of normative conventions, with modifications on how legal norms were read and on how relationships between legal norms were conceived. In the case of ecclesiastical administration in Brazil, the growing political opposition emerging from the 1870s onwards between groups with different views on the Church – be they classified as ultramontanists, regalists, liberals etc. – encompassed conventions that emphasised normative separation, and even exclusion. The hegemony of Trent, on the side of reformist priests like Vieira, and the hegemony of *Faculdades*, on the part of the state councillors opining on Vieira's case, are proof of this either/or logic. This is in stark contrast with normative amalgam, that is, the and/and logic from previous times.

Exclusion is also found in matters of jurisdiction, since political tension seems to have required a strong position regarding which was the dominant element, the civil or the ecclesiastical jurisdiction. Authority is the great *leitmotif* of the period, being present in many contexts that range from national legal polemics to theological debates during the First Vatican Council. It was something to fight for, even if it implied the adoption of contradictory argumentation. As seen, Campos de Medeiros and the state councillors in Vieira's case were so concerned with rejecting any kind of Roman intervention in the governance of the Church that, to justify the exclusive application of the *Alvará das Faculdades*, they ended up using an argument in

favour of the historical ties between the Holy See and Brazil. Ironically, the councillors' radicalism is supported by a narrative of continuity between Portuguese and Brazilian *padroados*, focused on the inheritance of the grand mastership of the Order of Christ, which was no less than a pontifical concession. That is, the Council of State used an argument against Rome which depended on Rome to exist, that attested Rome's participation in the governance of the old Portuguese Church, and that could ultimately endorse Rome's intervention in the affairs of the Brazilian Church. This is proof of the not entirely coherent fashion in which normative conventions were employed and justified.

But if some factors appeared to feed the chaos, others served to appease it. The Brazilian Religious Question and its traumatic effects emerge as important extralegal factors that helped mitigate the outcomes of Vieira's case, for they directed councillors to a more political (or merciful) solution instead of the strict application of law. It was a question of avoiding the reoccurance of diplomatic scandals that could result from the imprisonment of ecclesiastics. It was a matter of reducing harm.

The appeasing atmosphere persisted and revealed important changes. Barroso's case, following Vieira's after almost a decade, gave way to a more sober action on the part of the Council of State, as if it were a more mature result of the political polarisation experienced earlier. Interpretations that mixed canon law and civil law started to give room for the establishment of interpretative boundaries, for a more precise delimitation of the competence of institutions, within the respective normative scenarios where they originated. Ecclesiastical civil law began to be perceived as separate from canon law. While analysing specific cases, paying attention to the changes in the uses of the Council of Trent allowed me to observe a broader and deeper dynamic which ran in parallel, concerning the change in status of ecclesiastical law as a legal field. *Ius ecclesiasticum*, previously considered a discipline that amalgamated norms from the hierarchy of the Church and from civil powers, was moving away from canon law and towards what we know today as the ecclesiastical law of the state. Barroso's case is evidence of this transition. Having been influenced by extralegal factors, this movement triggered a legal change, a new type of institutional and normative relationship, towards more autonomy for both sides, namely Church and state.

It must be acknowledged that my results have limitations. Vieira's case, the most radical one, is the only case in the corpus of sources of the Council

of State on ecclesiastical examinations in which councillors were confronted – not with general pontifical norms – but with the direct response of the Holy See to a specific petition from national territory. It is not possible to affirm with complete certainty if, when faced with similar situations, councillors from other periods would have acted with equal radicalism. It is important to evaluate what consultations on other issues will show in this regard. However, the comparison of Vieira's case with others on the same subject (ecclesiastical examinations), as done here, already points to the possibility of difference. That is, it points to the variety of perspectives on the Council of Trent that could emerge when resolving apparently common problems in a multilayered structure. It was precisely in this continuous activity of searching for and proposing ordinary solutions that bishops, councillors, and cardinals placed normative resources in conjunction with wide politico-religious movements, normative conventions, and concrete events. If one regards the governance of the Church in its entirety, like a painter's canvas, one may well conclude that all these small cases, all these small interactions, coloured these resources – the Tridentine among them – with multiple, and sometimes surprising, interpretations.

3.2 A dance of opposites. The Council of Trent at the centre stage of the elections of vicar capitular

The previous section may have conveyed the impression that the interpretations of the Council of Trent developed according to a progressive narrative, especially from the point of view of the state. This narrative can be summarised thus: while bishops and vicars capitular increased their communication with the Holy See, the state councillors' interactions with this group moved from a normative convention of amalgam to a normative convention of separation; in the middle of the transition, a few years after the events of the Religious Question, there was a moment of crisis, when state actors decided to employ a convention of exclusion. The topic addressed in this section relativises this narrative.

I will continue to explore the issue of selecting and appointing people to ecclesiastical positions. In the examinations for the provision of benefices, the procedure was clearly centered on the bishop: he (or a delegate of his) had to preside over all the stages of the opposition *(oposição)*; should such become necessary, he was the person competent to request from the Holy

See faculties to appoint synodal examiners; at the end of the phase of evaluation, he was in charge of composing the list of candidates to be submitted to the emperor; and he was the person primarily responsible for the validity of the examination, reacting to claims of nullity made before higher authorities. In contrast, the election of the vicar capitular, by its very nature, lacked a centripetal actor: it took place right after the *sede vacante* was established.[68]

A diocese became vacant when the governing bishop passed away, resigned, or was deposed.[69] When one of these events became known, the prelate's power of ordinary jurisdiction was transferred to the cathedral chapter *(cabido)*. In times of *sede plena*, the government-related tasks of this collegiate body were to advise the bishop and to manifest consent on certain administrative matters. In *sede vacante*, the list of prerogatives of the chapter increased, but their exercise was limited both practically and temporally. According to the "rule of cognition" described by Monte, the chapter could perform the most urgent activities for the government of the Church, but under no circumstances was it allowed to innovate.[70] For instance, the chapter could not assign positions that depended on a direct appointment by the bishop, merge or divide benefices, nor sell diocesan property. Moreover, the powers that the chapter enjoyed during *sede vacante* were short-lived.

68 If we take as reference the procedure established by the Council of Trent (Session 24, *De reformatione*, Canon 16), we shall see that the election of the vicar capitular is a subject little explored by historiography. It appears in general texts on the regime of *sede vacante*, the Tridentine model figuring as a counterpoint to the model of the 1917 *Codex iuris canonici*, as in Molano (1981). The subject is also mentioned in studies on the Latin American concordats of the 19th century, as in Santirocchi (2012) and Salinas Araneda (2013). Historiography on Portugal and Brazil during the first decades of the 1800s dedicates a few lines to the attempts of secular authorities to interfere in the nomination of vicars capitular, exercising the so-called "right of insinuation", then considered a prerogative of the Crown, according to Lima (1952) and Reis (2009). During the same period, Chile witnessed a similar manoeuvre by the *Junta de Gobierno*, according to Enríquez (2008).

69 These were the causes of "proper" *sede vacante*, according to Monte, in MRA, I, 304. The *sede vacante* was "improper" or "fictitious" when the prelate was prevented from governing the diocese due to "serious and incurable illness" or another similar and perpetual factor. In such cases, differently to what occurred during proper *sede vacante*, the cathedral chapter did not assume the bishop's jurisdiction; the government of the diocese passed to a coadjutor bishop. On the *sede vacante* regime from a historical perspective, focusing on the 1983 *Codex*, see Nord (2014).

70 MRA, I, 306.

The Council of Trent, in Session 24, *De reformatione*, Canon 16, ordered the chapter to assemble within eight days of the vacancy and elect among its members (or from without, in exceptional cases) a vicar capitular. This agent would be entrusted with the power of ordinary jurisdiction in a more stable form until the new bishop took office. The practical limitations would persist, though. The precariousness of the vicar capitular's jurisdiction can be observed in the responses that these actors received upon ordinary requests to the Holy See. When asked for faculties to appoint *ad hoc* synodal examiners and judges, the Congregation of the Council granted decade-long permissions to bishops, whereas a vicar capitular's authorisation was valid for just one year.[71] Still, the list of his prerogatives was long. The vicar capitular had power to establish temporary regulations, appoint vicars commissioned for parishes, preside over examinations for benefices, perform the collation of candidates presented by the secular power, officially visit the diocese, and order the holding of a diocesan synod, among many other functions. The administrative – and political – importance of these actors cannot be underestimated, as Brazil, especially in the first decades of the empire, witnessed long periods of *sede vacante*.[72]

Regarding our topic, the election, the Tridentinum established that, if the chapter of a suffragan diocese failed to elect a vicar capitular within eight

71 One may check this difference by comparing the answers of the Congregation of the Council to Bishop Francisco Cardoso Ayres, from the diocese of Olinda, in 1868, and to Vicar Capitular Silvério Gomes Pimenta, from the diocese of Mariana, in 1876. Both ask for faculties to appoint synodal examiners. See: Numero d'ordine: 876, Diocesi: Olinda, Nome e cognome del postulante: Vescovo, Oggetto: Esam., in: AAV, Congr. Concilio, Protocolli, 1868; and Numero d'ordine: 949, Diocesi: Marianna nel Brasile, Nome e cognome del postulante: Vicario Capitolare, Oggetto: Esaminatori, in: AAV, Congr. Concilio, Protocolli, 1876.

72 For example, before being entrusted to D. Antonio Ferreira Viçoso, in 1844, the diocese of Mariana remained vacant for more than eight years. When D. Manoel do Monte Rodrigues d'Araujo assumed the diocese of Rio de Janeiro in 1839, it had been vacant for six years. The government of D. Romualdo Antonio de Seixas in the Archbishopric of Salvador da Bahia began in 1827, after four years of vacancy. Even during the Second Reign, there were long periods of *sede vacante*: between the turbulent government of D.Vital Maria Gonçalves de Oliveira and that of D. José Pereira da Silva Barros there was a gap of three years. Among the reasons for this phenomenon are the slowness of negotiations between the civil government (which presented the candidate) and the pontiff (who instituted the bishop), and exceptional situations (death of the bishop before taking office, in Mariana's case, forcing a new appointment).

days, the metropolitan bishop would be in charge of appointing him. If it was the case of a vacant metropolitan see, the nomination of the vicar capitular would fall to the bishop of the oldest suffragan diocese. The Council of Trent offered criteria for the selection: vicars capitular should be doctors, or at least licentiates of canon law, or, in any case, and as far as possible, suitable *(idoneus)* for the office. As we shall see, these rules gave rise to heated local debates, which on certain occasions reached the higher levels of the governance system.

Even before proceeding to the cases, I can anticipate that the dynamics of the election of the vicar capitular were quite different from those of the examination for benefices. The bishop was not the only absent actor: so was the emperor. The election of the vicar capitular, at least formally, did not include the secular patron. There was no right of presentation. It was an internal procedure; one that could be influenced by politics, for sure, but primarily internal. Only in the face of the extreme situation brought about by the Religious Question would some bureaucrats consider the possibility of the emperor actively interfering in the elections, exercising a presumptive "right to insinuate" *(direito de insinuação)* the name of the person to be chosen. In conjecturing so, these bureaucrats relied on specific experiences from the Portuguese past. But this imaginative exercise would not bear concrete fruit.

The civil government and the Council of State would only play an active role in elections when prompted by petitions questioning the validity of these procedures. Similar requests reached the Holy See via the Apostolic Internunciature in Brazil. In the end, the Council of State and the Congregation of the Council (and also the Congregation for Extraordinary Ecclesiastical Affairs) would display concurrent competences while responding to these petitions, sometimes even ruling on the same cases. I shall concentrate my analysis on these examples, with the addition of a brief excursion on the patron's right of insinuation.

One last word on the difference between examinations and elections: the applicable norms and how they were addressed by the actors. In the case of examinations, as we have seen, debates focused on how norms should (or should not) be combined, since there were several available (canonical laws, state laws, local rules, local custom etc.), and they could assume very different arrangements, depending on the normative convention adopted by the interpreter. The Council of Trent coexisted – and competed – with other, equally relevant, normative bodies; the interpretation of its dispositions

necessarily touched upon its relationship with other norms. This was hardly the case with elections, because of their internal character, on the fringes of patronage. The Tridentinum was undisputedly the main normative reference when appointing vicars capitular. Thus, the question brought to the Council of State and the Congregation of the Council was rather if, in a particular election, the Council of Trent had been correctly applied. What institutions and actors made out of this interrogation reveals their conventions and objectives; it also shows that multinormativity was present even when there was consensus on the body of norms applicable. And, not least, the actions of petitioners, councillors, and cardinals thoroughly challenge the assumption that there were static ideological alliances between the ultramontane clergy and the Holy See, on one side, and the jurisdictionalist clergy and the state, on the other. When aiming at preserving or discrediting elections of vicars capitular, a dance between members of opposing sides was sometimes becoming.

3.2.1 How many days does it take to make a vicar capitular? Olinda, 1866

D. Manoel do Rego Medeiros, Bishop of Olinda, died on 16 September 1866. He was 36 years old, governed the diocese for less than twelve months, and was visiting the city of Maceió in the province of Alagoas at the time of his death. In the story I will tell, the bone of contention is precisely that: time. However, the controversy was not about the exact date of death, but about the date when his death came to be known by the Cathedral Chapter of Olinda. Let us see how this controversy unfolded.

In a letter of 28 September 1866, Dean Joaquim Francisco de Faria announced to Apostolic Internuncio Domenico Sanguigni that he had been elected Vicar Capitular of Olinda by his fellow canons. His message contains two crucial dates: 27 September, when the chapter convened for the election, and 20 September, when the chapter learned of the death of Bishop Manoel Medeiros. The interval between the two dates, said Dean Faria, was in accordance with the rules of the Council of Trent, as the election was held exactly eight days after the news that installed the *sede vacante*. The chapter agreed with this reasoning, having sent the minutes of the election to Sanguigni on 5 October.[73]

73 Letter of 28 September 1866 from Joaquim Francisco de Faria, Vicar Capitular of Olinda, to Domenico Sanguigni, Apostolic Internuncio in Brazil, on the election of vicar capitular in the diocese, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 193, Doc. 14, f. 68r.

But not everyone was satisfied with this procedure. On 2 November 1866, ironically All Souls' Day, the Archbishop of Salvador da Bahia, D. Manuel Joaquim da Silveira, wrote to the internuncio to warn him that he would not acknowledge the vicar capitular elected in Olinda.[74] The prelate suggested that the news of the death of Bishop Manoel Medeiros had come to the knowledge of the chapter on 19 September, and not on the 20th, as Dean Faria had claimed. Thus, according to the archbishop, the determination of the deadline was incorrect – and the election thus invalid.

The clash between D. Manuel da Silveira and Dean Faria unfolded in greater detail in letters the two sent to the civil government. Shortly after, the secular administration forwarded the documentation to the Council of State, so that the organ could provide an opinion on the archbishop's claims. The Section for Imperial Affairs, formed by the Marquis of Olinda, the Viscount of Sapucaí, and Bernardo de Souza Franco,[75] assembled on 21 November 1866 to rule on the issue.[76]

I will summarise the contenders' points of view. D. Manuel da Silveira, as previously said, believed the chapter had received the news of the death of

74 Letter of 2 November 1866 from D. Manuel Joaquim da Silveira, Archbishop of Salvador da Bahia, to Domenico Sanguigni, Apostolic Internuncio in Brazil, on the election of vicar capitular in Olinda, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 193, Doc. 16, f. 75r.

75 Bernardo de Souza Franco (1805–1875), Viscount of Souza Franco, is a recurrent – and polemical – figure in several major cases of the Council of State regarding the Catholic Church. Born in Belém do Pará to a businessman and his wife, he participated in the rebellions of the region in favour of Brazilian independence during 1823, for which he was arrested and deported to Lisbon. Back in Brazil, he graduated at the Faculty of Law of Olinda in 1835. He was trial judge in Belém do Pará between 1836 and 1854. During this period – and also afterwards – he held multiple political offices: he was member of the Chamber of Deputies (between 1838 and 1855); president of the provinces of Pará (1839–1840, 1841–1842), Alagoas (1844), and Rio de Janeiro (1864–1865); Minister of Foreign Affairs and interim Minister of the Treasury, under Francisco de Paula Sousa e Melo (1848); Minister of the Treasury, under Pedro de Araújo Lima, the Marquis of Olinda (1857–1858); and senator (1855–1875). He was appointed extraordinary member of the Council of State in 1859, and ordinary member in 1866. Souza Franco was known for his attachment to liberal principles, having led the Banking Reform of 1857, which established the short-lived plurality of banking and currency issuance in the Brazilian Empire. He was a supporter of the Law of the Free Womb of 1871. Regarding the Religious Question, Souza Franco stood out for his verbal attacks against the Roman Curia. For more on Souza Franco, see Blake (1883) 417–418.

76 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 53–70.

the Bishop of Olinda on 19 September – and that it could, therefore, have declared *sede vacante* on the same day.[77] The archbishop based his argument on information about port traffic: he pointed out that on the 19th, the English ship *Memnon* had reached the port of Recife, the first to bring the news of D. Manoel Medeiros's passing, while on the 20th only a ship from Bahia had arrived, without any information from Maceió. D. Manuel da Silveira stated that the news did not wait for the local newspapers to be printed: the same day the *Memnon* docked, rumours of the death circulated widely in Recife. And they even reached Olinda's clergy: on that date, the vicar general wrote letters on the subject to the president of the province and to the chapter. Moreover, as shown in the minutes of the election, the chapter itself convened on the 19th to deliberate about the *sede vacante*. Thus, it seemed incomprehensible to the archbishop that the chapter had not declared the vacancy on that occasion.

But the minutes of the election help to understand the canons' point of view. According to them, deliberation took place on 19 September because the vicar general had heard in Recife that newspapers from Maceió were reporting the death of the Bishop of Olinda.[78] As the vicar general did not have direct access to the information, the chapter decided that, before declaring *sede vacante*, it would wait for the fact to be published in the newspapers of the province of Pernambuco. This occurred, as we know, on the following day. From the chapter's perspective, then, the precariousness of information was the factor that determined the delay in the declaration of the diocese's vacancy.

The Archbishop of Salvador da Bahia, however, was not convinced. He claimed that local newspapers, such as the *Diário Pernambucano* and the *Jornal de Recife*, which reported the death on 20 September, had no other source than the publications brought from Alagoas by the *Memnon*.[79] The piece of information was the same. Priority should be given, thus, to the first appearance. D. Manuel da Silveira insisted that the vacancy was counted from the day of the news, not from the day of a specific newspaper edition.[80]

77 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 55–59.

78 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 55–56.

79 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 57.

80 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 59.

The delay of the chapter, the archbishop continued, resulted in the nullity of the election of the vicar capitular, as it was held on the ninth day of *sede vacante*, in contravention of the terms of Session 24, *De reformatione*, Canon 16, of the Council of Trent.[81] Refusing to recognise the procedure as valid, D. Manuel da Silveira declared that he would manifest his opinion to the Holy See, "for the measures it deemed adequate", and also to the imperial government.[82] Curiously, the archbishop stressed that he did not intend to appoint a vicar capitular for the diocese, as allowed by the Tridentine disposition he cited.[83] In his words, he would limit himself to "telling the truth". Later on I will offer a hypothesis on why he behaved so defensively.

The letter that Dean Faria sent to the civil government contains more details on the reasons for the chapter's delay in declaring the vacancy of the see. Contrary to the claim of D. Manuel da Silveira that the *sede vacante* should be counted from the date of the news, the notion of news that were verified and certain prevailed among the members of the cathedral chapter. Dean Faria explained that the information coming with the *Memnon* on 19 September was vague, unofficial and uncertain: "everyone spoke about it, but no one specified its origin".[84] The newspapers on the ship were meant for private citizens, he said, and there was no formal communication from the ecclesiastical or secular authorities of Alagoas. A priest from Olinda had reported having read one of the newspapers from Maceió, but he was the only witness.[85] Even the vicar general informed the chapter on the subject by informal means.[86] The information was too precarious, and the matter too serious. The fact that the Bishop of Olinda was very young furthered the uncertainty; his death was not expected.[87] It was necessary to be prudent.

81 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 58.
82 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 58.
83 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 60.
84 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 61.
85 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 62.
86 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 65.
87 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 65.

Therefore, the chapter decided to wait for the local newspapers, which published a detailed medical report on the 20th.

Favouring the view that news should be certain, Dean Faria listed quotations from remote and recent canonists. In certain authors, it was not clear if the quality of the news, whether certain or vague, was relevant (e. g. Devoti, Pichler, Schmalzgrueber, Reiffenstuel). In others, there was indeed reference to news that were certain, as in De Luca *("a diae certae notitiae computandum")*, Abbot Andre ("certain knowledge of the vacancy of the see", "knowing in a positive way of the death"), and Ferraris *("Capitulum non potest devenire ad electionem vicarii capitularis ante certam notitiam vacationis, quia tempus a tridentino statutum incipit a die scientiae mortis certae, et non praesumptae, alias electio est nulla")*. However, in his *Bibliotheca*, Ferraris condemned not only the early declaration of vacancy, but also the delay, a point strategically omitted by Dean Faria.[88]

His letter concludes with a reinforcement of his opinion that the Chapter of Olinda had proceeded in accordance with prudence and law. Two elements draw particular attention. First: an alternative solution.[89] Dean Faria suggests that if the canons had made a mistake about the beginning of the *sede vacante*, and it had really started on 19 September, the election of the vicar capitular would still be in conformity with the Tridentinum if the eight days were counted as full days. The reasoning is as follows: the informal communication of the vicar general, which would have had the effect of installing the *sede vacante*, had been received by the chapter in the afternoon of the 19th; the eighth day would then be completed in the afternoon of the 27th; as the election had taken place in the morning, it would still be within the eight-day period and would, therefore, be valid. The archbishop did not agree with this method; he preferred to count days as it was usually done for liturgical feasts (the first day would be "day one", the second day, "day two", and so on). But Dean Faria, defending his option, emphasised the difference: one thing was law, another was liturgy.

The second noteworthy element in the dean's discourse is its aggressiveness. It contrasted sharply with his reputation as an apparently shy archbishop who did not dare to use all his prerogatives, "limiting himself to

88 Ferraris (1782 [1746]) 202.

89 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 68.

telling the truth". Dean Faria, on his part, openly defended the rights of the chapter. He affirmed that it was this body's competence to acknowledge the fact that had led to the *sede vacante*. The metropolitan, in his opinion, could not interfere in the declaration of vacancy; if he did, it would be an infringement of the chapter's rights.[90] In the same tone, the dean recalled that he had once prevailed over the archbishop in a controversy that had arisen just before the investiture of D. Manoel de Medeiros.[91] On that occasion, Faria, who also played the role of vicar capitular, refused to invest the elected bishop's procurator, arguing that the new prelate's confirmation bulls had not yet received the imperial *placet*. The case was taken to the Council of State, which sided with Faria.[92] In evoking this, the dean seems to imply that, as the civil government supported him before in the defense of the chapter's (and the vicar capitular's) prerogatives, it could do so again.

The tension we see in these letters becomes more understandable if we consider the trajectory of Dean Faria. The literature characterizes him, somewhat caricaturally, as "ultraregalist",[93] "extremely regalist in his motivations",[94] and, above all, as an actor of considerable power among the clergy of Olinda. This depiction is due to the fact that Faria belonged to the tradition of "priests-politicians", typical of the First Reign. He was one of the local leaders of the Liberal Party, and would run for senator even after the Religious Question,[95] a notable exception, given that most of the high clergy had already withdrawn from politics by then. Faria also had ties with the Freemasons, and he was sometimes accused of leading a "scandalous life" (e. g. concubinage), clearly outside the standards of the reformist clergy. Some claim that he "secretly commanded the fight against the [ultramontanist] bishops",[96] but I would rather say, with Dilermando Ramos Vieira,

90 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 65–66.

91 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 68.

92 Consulta de 19 de dezembro de 1863, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 275–280. This case is discussed in more detail in Ramos Vieira (2016) 248–249, and Santirocchi (2015b) 198–199.

93 Ramos Vieira (2016) 249.

94 Santirocchi (2015b) 198.

95 See Anais do Senado do Império do Brasil (1880).

96 Gueiros Vieira (1990).

that Faria had "challenging attitudes" towards the young prelates of Olinda.[97] The patterns of behaviour, and the legal and disciplinary expectations were not the same. Not by chance, D. Vital Maria Gonçalves de Oliveira would suspend him on grounds of indiscipline in the 1870s.[98] The dean's enemies suggested that Faria had a hidden (and always frustrated) intention of becoming a bishop, but he denied this.[99] The Internunciature, under Sanguigni's direction, portrayed him as a "very skilled and very dangerous man".[100] I believe that Faria's ability lay precisely in the good relationship that, despite his tendencies and fame, he maintained with the Brazilian Empire and also the Holy See. The dean knew well how to combine these levels of governance to his advantage.

In this dispute, I would not assert that the Archbishop of Salvador da Bahia was afraid of Dean Faria. D. Manuel da Silveira was an ultramontane prelate,[101] with a record of struggle against the spread of Protestantism and spiritism in the archbishopric.[102] The fact that he did not take Session 24, *De reformatione*, Canon 16, of the Council of Trent to its last consequences can be interpreted as an exercise of prudence, in the canonical sense.[103] I believe that the archbishop, aware of the fame and influence of Dean Faria, preferred to avoid the scandal that a new appointment would provoke.

97 Ramos Vieira (2016) 364.

98 See Chapter 3.6.

99 Faria mentioned these rumours to Sanguigni in mid-1865, when he reported the suspension *ex informata conscientia* he had imposed, as vicar capitular, on the diocese's archdeacon. The archdeacon had been suspended for spreading the rumour that Faria intended to commit suicide prior to the arrival of the new Bishop of Olinda (then D. Manoel Medeiros), as if to give dramatic expression to his frustration for not being himself nominated, as in Letter of 2 May 1865 from Joaquim Francisco de Faria, Vicar Capitular of Olinda, to Domenico Sanguigni, Apostolic Internuncio in Brazil, on the suspension of Archdeacon João José Pereira, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 192, Doc. 31, ff. 103r–104v. In spite of all gossip, the civil government did consider presenting Dean Faria as bishop after the death of D. Manoel Medeiros, according to information that reached the Holy See in 1867, as in Notizie sul Brasile: Vescovo di S. Paolo; Vicario Generale di Pernambuco; sul canonico carmelo di S. Paolo, aspirante al Vescovato di Rio de Janeiro (1867), in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 146, Fasc. 183.

100 Ramos Vieira (2016) 364.

101 He is classified as ultramontane by Santirocchi (2015b) 209.

102 Jesus (2014).

103 In canon law, prudence is a virtue related to the government and administration of justice in the Church. It seeks to ensure that the actions of ecclesiastical authorities pursue the

What, then, did the Council of State decide? The councillors were surprised by the posture of the prelate of Bahia: "If the election was null, the archbishop should have appointed the vicar capitular himself, considering the chapter's impossibility to do so."[104] Faced with the lack of initiative from D. Manuel da Silveira, the Section for Imperial Affairs opined that, "while the Holy See does not resolve this issue", the civil government should keep its regular institutional relations with Dean Faria, without questioning the legality of his election. In fact, in the eyes of the councillors, the letter of the vicar capitular had adequately addressed the doubts of the prelate of Bahia, "satisfactorily explaining all the facts". The emperor approved this opinion on 24 November 1866.

It is significant that the councillors did not exactly rule on the validity of the election but only advised the civil government not to question it until the Holy See had decided. The councillors did not debate on whether the chapter had complied with the Council of Trent or not. The facts might have been "satisfactorily explained" from their point of view, but this concerned only the verbal skirmish between the archbishop and the vicar capitular. The endorsement of a superior authority was lacking. And this authority, according to the councillors, was the Apostolic See. We glimpse in this discourse the use of the convention of interpretative separation. That is: the state acknowledged the jurisdiction of the pope and was prepared to change its position towards the Vicar Capitular of Olinda, depending on the answer from Rome.

On 27 December 1866, the Chapter of Olinda reported the decision of the Council of State to the Apostolic Internuncio in Brazil.[105] Dean Faria had already written to Sanguigni a few weeks earlier to inform him that he

common objective of the *salus aeterna animarum* in the most appropriate way possible, attentive to the characteristics of the concrete case and the surrounding social environment. Prudence, in this sense, is closely connected to *aequitas canonica* and, thus, to mechanisms of flexibility of canon law (dispensation, *dissimulatio*, *tolerantia* etc.). Among the strategies of canonical prudence are: avoiding scandalising the community of the faithful, avoiding encouraging sin, avoiding unnecessary clashes with secular powers etc. See Hervada (1961).

104 Consulta de 21 de novembro de 1866, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 3 (1870) 69.

105 Letter of 27 December 1866 from the Chapter of Olinda to Domenico Sanguigni, Apostolic Internuncio in Brazil, on the Council of State's opinion on the validity of the election of vicar capitular in the diocese, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 193, Doc. 21, f. 91r–v.

was aware that the Archbishop of Salvador da Bahia had notified the Holy See about his non-recognition of the election in Olinda.[106] Even so, Dean Faria assured Sanguigni that he enjoyed general support in the diocese – from clergymen to laymen, from the higher to the lower social classes. At his side, he told, were also all the local newspapers, except those that defamed him, such as *A Esperança*, edited by ultramontane jurist José Soriano de Souza.

The dean did not have to wait long for the verdict of the Apostolic See. On 9 January 1867, the pope, via the Congregation for Extraordinary Ecclesiastical Affairs, issued a *rescriptum* that confirmed the election of Faria as vicar capitular, convalidating *ad cautelam* all the acts performed by him until then.[107] Even though the Congregation of the Council was competent in matters related to the interpretation and execution of the Council of Trent in the Catholic world, we should not be surprised that Faria's case did not reach the dicastery. Many competences were shared among congregations; this was a normal phenomenon in the Roman Curia. Faria's case supports this assertion with concrete data; it demonstrates that more than one dicastery could analyse the validity of elections of vicar capitular. As usual, the *rescriptum* addressed to Faria did not disclose the reasons for the confirmation of

106 Letter of 4 December 1866 from Joaquim Francisco de Faria, Vicar Capitular of Olinda, to Domenico Sanguigni, Apostolic Internuncio in Brazil, on the opinion that D. Manuel Joaquim da Silveira, Archbishop of Salvador da Bahia, had forwarded to the Holy See regarding the election of vicar capitular in Olinda, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 193, Doc. 24, ff. 97r–98v.

107 These are the terms of the *rescriptum*: "Cum exortum fuerit dubium utrum post mortem R. P. D. Emmanuelis de Medeiros ultimi Episcopi Pernambucensis, electio Vicarii Capitularis facta fuerit juxta S. Concilii Tridentini praescripta intra octo dies post acceptum nuntium obitus praedicti Episcopi, S.Sus Dominus Noster Pius divina providentia PP. IX, referente me infrascripto S. Congregationis Negotiis ecclesiasticis extraordinariis praepositae Secretario, ad quamcumque controversiam dirimendam, confirmare dignatus est, quatenus opus sit, electionem Vicarii Capitularis a Capitulo Pernambucensi factam, necnon sanare ad cautelam omnes et singulos actus, quos Vicarius ipse Capitularis exercuerit usque ad diem receptionis praesentis decreti; quique nulli esse possint ob defectum legitimate jurisdictionis. Mandavit autem Sanctitas Sua hoc in rem edi decretum, et in tabulario Curiae Episcopalis Pernambucensis secreto et accurate custodiendum. Contrariis quibuscumque minime ob futuris", as in Decree of 9 January 1867 of the Sacred Congregation for Extraordinary Ecclesiastical Affairs, *Ex Audientia Santissimi*, confirming the validity of the election of vicar capitular in Olinda – and also the conformity of the election with the prescriptions of the Council of Trent, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 193, f. 104r–v.

the election. The convalidation *ad cautelam*, however, suggests that the pope's act aimed above all to pacify the situation, and not to evaluate in detail whether the election had complied with the standards of the Council of Trent or not.

The civil government was promptly informed about this. Triumphant in one more dispute with the Archbishop of Salvador da Bahia, Dean Faria did not interrupt his political projects. Two months after the case was solved, he reported to Sanguigni that he would appoint a substitute governor for the diocese, for he wished to take office as deputy in the General Legislative Assembly.[108]

Interesting conclusions can be drawn from the analysis. First of all, Faria's case shows that the convention of separation was employed by secular authorities even before the Religious Question.[109] The state recognised – and gave way – to the Apostolic See's jurisdiction on elections of vicar capitular. The archbishop's letters followed the same convention, as he only informed the civil government of the case, but expected measures from the Holy See.

Moreover, Faria's case reveals the complex relationships established between the local clergy and higher authorities during the 19th century. The hypothesis of an ideological tension between the episcopate and the cathedral chapter is confirmed. However, the analysis deconstructs the (rather linear) idea that the Holy See only acted in convergence with the ultramontane clergy and their agenda. It may seem shocking, but the pope's *rescriptum* – more specifically, a *rescriptum* ordered by Pope Pius IX (!) – stabilised the government of a vicar capitular with strong political presence, ties with Freemasonry, and evidence of indiscipline. In ideological terms, instead of an arrangement among equals, what we witness is a "dance of opposites". This demonstrates that the administrative wheels of the Church

108 Letter of 26 March 1867 from Joaquim Francisco de Faria, Vicar Capitular of Olinda, to Domenico Sanguigni, Apostolic Internuncio in Brazil, on Faria's election as deputy of the General Legislative Assembly of Brazil, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 193, Doc. 25, ff. 99r–101v.

109 I use the term "separation" and not "exclusion" because, in the discourses analysed, the actors did not focus on excluding the state from the appreciation of the phenomenon. There was no particular concern in affirming or contesting that the elections of vicar capitular were an exclusively ecclesiastical matter, even if, in practice, they were. I say "separation" because ultimately the state simply acknowledged the jurisdiction of the Holy See to interpret canon law, refraining from doing so itself.

obeyed logics other than ideological affinity. Furthermore, the orientation of these wheels followed practical needs, that is, avoiding scandal, and prudently safeguarding the official acts already practiced in the diocese.

It is true that local and national debates permeating Faria's case revolved around the correct interpretation of the Council of Trent. But when the situation reached the Apostolic See, the controversy on how to count the eight-day period vanished in the face of more concrete concerns. There is a logic of canon law behind this approach. It can be summarised thus: the law governing the Church had to be instrumental, and not an obstacle to the spiritual well-being of the faithful, which, in its turn, depended on a properly governed Church.[110] Sometimes, by privileging "technical" details, institutions and actors risked doing more harm than good; they exposed the diocese to administrative paralysis, cascades of invalid acts, and, in a word, instability.

But at other times the "technical", interpretative dimension could pave the way out of concrete trouble. The following decade would bring about a situation of this sort. Other dynamics would be adopted by institutions and actors. A new round of the "dance of opposites" would start, with the Council of Trent still at the centre of controversies.

3.2.2 The most suitable vicar capitular, though titleless. Salvador da Bahia, 1874

The archbishop we met in the previous section, D. Manuel da Silveira, died on 23 June 1874. Four days later, Canon Carlos Luiz d'Amour was elected vicar capitular by the majority of the Cathedral Chapter of Bahia. Once again the three levels of governance would gather around the topic of the validity of an election of vicar capitular. Yet this time, the problem would not be time, but the qualifications of the chosen one.

One may observe this from the report *(memorial)* that the chapter sent to the Holy See in mid-July 1874, attached to a letter by d'Amour informing the Apostolic Internunciature in Brazil of his new office.[111] In the report,

110 On the instrumental character of canon law in its relationship with the *salus aeterna animarum*, see, for instance, Grossi (2003).

111 Letter of 17 July 1874 from Carlos Luiz d'Amour, Vicar Capitular of Salvador da Bahia, to Michele Ferrini, Chargé d'Affaires of the Holy See, on the election of vicar capitular in the archdiocese, followed by the Report of the Cathedral Chapter, dated 27 June 1874 and

the canons recollected the events of the *sede vacante* and the election. They mentioned that Canons João Nepomuceno Rocha and Jacintho Villas-Bôas de Jesus had protested against the results of the election, claiming that d'Amour was neither a doctor nor a licentiate of canon law, as stipulated by Session 24, *De reformatione*, Canon 16, of the Council of Trent as requirements a candidate had to fulfil. Thus, from their point of view, the procedure was null and void. The remainder of the chapter, however, wished to maintain d'Amour as vicar capitular, supporting the thesis that the greater suitability *(maior idoneidade)* of the elected should prevail over his titles.[112]

The Council of Trent had already opened the possibility of electing someone without titles with the expression "*vel alias*" ("or otherwise") in the sentence: "*qui saltem in jure canonico sit doctor vel licentiatus*, vel alias, *quantum fieri poterit, idoneus*". This passage, however, did not answer whether it was legally possible to elect a vicar capitular with no title in a chapter which contained doctors and licentiates. The Tridentinum could be referring to chapters where all members lacked a degree – the canons, then, would have to pick the most suitable among those. But what did suitability mean? To be suitable meant to be apt for the performance of a determined ecclesiastical office, taking into account not only the personal qualities of the individual, but the general objectives of the Church and the needs of the local community.[113] For the office of vicar capitular, the title was closely related to

addressed to the Congregation of Bishops and Regulars, in: AAV, Arch. Nunz. Brasile, Busta 46, Fasc. 213, Doc. 4, ff. 124r–132r.

112 It is telling that in their report, the canons declared that "the Church cannot desire that titles should surpass suitability, or that the greater suitability should yield to the [greater] title", as in Report of the Cathedral Chapter of the Archbishopric of Salvador da Bahia on the election of the vicar capitular, dated 27 June 1874 and addressed to the Congregation of Bishops and Regulars, in: AAV, Arch. Nunz. Brasile, Busta 46, Fasc. 213, Doc. 4, f. 125v.

113 "In the context of the Church, beyond the fundamental capacity to accomplish ecclesiastical functions, judgement about suitability for ecclesiastical office also entails an assessment of the candidate's ability to achieve the responsibility in question according to the institutional goals of the Church as well as the concrete needs of a given ecclesiastical community. In other words, suitability does not merely entail a person's material qualification for the ecclesiastical office as could be verified by the possession of those qualities and testimonials established by law for the holders of an office, but it also involves an evaluation of the quality of service that the candidate is able to offer in view of the realisation of the general and concrete mission, goals and needs of the Church, while also putting into consideration the personal attributes of the prospective office holder", accord-

suitability: one of the main requirements of this position was knowledge *(scientia)* of canon law – which is understandable; after all, the vicar capitular was responsible for the government of the diocese, having to deal with legal questions on a daily basis. The title was strong proof that the candidate met this requirement. In other words: the title indicated that someone was suitable from the intellectual point of view. The issue raised by the Chapter of Bahia was that titles might not be a sufficient sign of suitability, and that, besides knowledge (or evidence of knowledge), other elements should be considered.

The chapter listed several authorities of canon law in favour of this thesis. In fact, the chapter's report is one of the richest pieces in terms of intertextuality that I have found throughout my research. It cited decisions of the Congregation of the Council from the *Thesaurus resolutionum* and the Neapolitan edition of the Council of Trent of 1859. Among these was the decree *Carinolen*, 22 September 1714, which established that, in a chapter with unsuitable doctors, the election of a vicar capitular with no degrees was valid, as long as he possessed greater knowledge, prudence and probity.[114] And this was not an isolated decision.[115]

The canons also gathered passages from a variety of canonists and theologians, modern and contemporary: Thomas Aquinas, Prospero Fagnani, Ludwig Engel, Anaklet Reiffenstuel, Franz Xaver Schmalzgrueber, Lucio

ing to Ejeh (2008) 574. On suitability for ecclesiastical offices, see also Hernández Huerta (2010) and Assimakópulos (2019). For more recent periods, see Viana (2016), Álvarez de las Asturias (2018), and Arrieta (2019).

114 "Verum constito de certa non idoneitate doctoris, et de maiori scientia, prudentia ac probitate non doctoris, aliquoties licet rarissime non abhorruit a confirmando electionem non doctoris spretis doctorum querelis. Nam in una *Carinolen*. 22 Sept. 1714, cum electus fuisset primicerius Sassi non doctor, et metropolitanus alterum elegisset, illo excluso ob defectum doctoratus, quem idem primicerius post 13 dies susceperat, proposito: I. An electio vicarii capitularis facta a capitulo sustineatur? et quatenus negative: II. An deputatio facta a curia metropolitana sustineatur, resp. fuit ad I. *affirmative*, ad II. *negative*", as in Canones et decreta Concilii Tridentini (1859 [1545–1563]) 373. This excerpt is quoted by the canons in Report of the Cathedral Chapter of the Archbishopric of Salvador da Bahia on the election of the vicar capitular, dated 27 June 1874 and addressed to the Congregation of Bishops and Regulars, in: AAV, Arch. Nunz. Brasile, Busta 46, Fasc. 213, Doc. 4, ff. 125v–126r.

115 There is also reference to *Leopolien.*, 14 January 1736, as in Report of the Cathedral Chapter of the Archbishopric of Salvador da Bahia on the election of the vicar capitular, dated 27 June 1874 and addressed to the Congregation of Bishops and Regulars, in: AAV, Arch. Nunz. Brasile, Busta 46, Fasc. 213, Doc. 4, f. 126r. The original quote belongs to Thesaurus resolutionum Sacrae Congregationis Concilii (1742) 182–185.

Ferraris, Jacob Anton Zallinger zum Thurn, Giuseppe C. Ferrari, Giovani Soglia Ceroni, and Romualdo Antonio de Seixas. All these authors tended to agree that suitability (not only for vicars capitular, but also for bishops, vicars general, synodal examiners, etc.) should have a concrete basis, beyond the presumption offered by titles.

The fragment of Aquinas, moreover, expressed an idea that I have already mentioned: that suitability had to be thought of in function of service. In other words, the elected ordinary had to be the best not in absolute terms (e. g. the best canonist, the best theologian), but the best for the regime of the Church, that is, the one who could best instruct, defend, and peacefully govern the diocese.[116] This more "functional" approach was common to other authors too (Reiffenstuel, Engel, Zallinger), and some were quite vocal in advocating that the greatest suitability should prevail over titles when doctors and licentiates proved unsuitable (Fagnani, Seixas). In short, it was out of the question to sacrifice "the fate of a diocese" for the sake of a diploma.

After structuring the report in theoretical terms, the Chapter of Bahia went directly to the facts, clarifying why it had elected d'Amour and not the doctors or licentiates of the diocese. Carlos d'Amour is described in the document as a priest endowed with the knowledge and virtues proper to the office of vicar capitular. In his favour was his nomination as domestic prelate of the pontiff, an honour he had received during a visit to Rome, when he served as aide to the late archbishop at the First Vatican Council. In fact, I believe that the determining factor for his election was precisely his proximity to D. Manuel Joaquim da Silveira. The report tells us that d'Amour was the archbishop's secretary in his last years. And, when justifying their choice, the canons affirm that their eyes were set on "the one who most closely had learned his [the archbishop's] lessons and examples, and who would best continue his wise and paternal government".[117] One may

116 Report of the Cathedral Chapter of the Archbishopric of Salvador da Bahia on the election of the vicar capitular, dated 27 June 1874 and addressed to the Congregation of Bishops and Regulars, in: AAV, Arch. Nunz. Brasile, Busta 46, Fasc. 213, Doc. 4, f. 128r. The original quote is: "Et ideo ille qui debet aliquem eligere in episcopum, vel de eo providere, non tenetur assumere meliorem simpliciter, quod est secundum caritatem: sed meliorem quoad regimen ecclesiae, qui scilicet possit ecclesiam et instruere et defendere et pacifice gubernare", as in Aquino (2013 [1485]) 661–662.

117 Report of the Cathedral Chapter of the Archbishopric of Salvador da Bahia on the election of the vicar capitular, dated 27 June 1874 and addressed to the Congregation of Bishops and Regulars, in: AAV, Arch. Nunz. Brasile, Busta 46, Fasc. 213, Doc. 4, ff. 130v–131r.

safely assume that there was an ideological affinity between the archbishop and his secretary. Although he had not been educated in the most distinguished reformed seminaries in Brazil or abroad,[118] d'Amour cultivated an ultramontane temperament for which he would become famous when elevated to the position of Bishop of Cuiabá, in 1877.[119]

But to describe d'Amour's qualities was still not sufficient to justify the canons' choice. The Chapter of Bahia had to explain why it had not elected any of the doctors or licentiates of the diocese. The report reveals that at the time of the election there were three doctors of canon law and one doctor of theology in the chapter. The doctor of theology was clearly outside the prescription of the Council of Trent. The situation of the doctors of canon law was more complicated. One of them had not reached the proper age. The other two were precisely the canons who had protested against the results of the election, João Nepomuceno Rocha and Jacintho Villas-Bôas de Jesus.

As for Nepomuceno Rocha, the chapter stated that, although he had claimed to be doctor of *utroque jure* and theology by the University of Rome, there was no proof of the titles; moreover, the canon had a record of few services to the diocese, failure to comply with the obligation of residence, and accumulation of debts – a feature that could compromise his independence in office.[120] As for Villas-Bôas de Jesus, even though he had a doctoral degree in canon law from the Pontifical Lyceum of St. Apollinare in Rome, the fear of scandal played against him. In 1870, the canon had quarreled with the superior of a convent where he served as chaplain, giving rise to accusations in the press and public rumours. Although Villas-Bôas de Jesus was eventually absolved in the ecclesiastical court, this was not enough to restore his reputation, making it impossible for him to ascend to the position of vicar capitular.[121] In providing this justification, the Chapter of Bahia

118 D'Amour was educated in the Major Seminary of S. Antonio, in S. Luís do Maranhão. Although the diocese was directed by ultramontane bishops during the Second Reign, its seminary was only systematically reformed when handed over to the Lazarists at the beginning of the 20th century, according to Neris (2017).

119 See Moraes (2003).

120 Report of the Cathedral Chapter of the Archbishopric of Salvador da Bahia on the election of the vicar capitular, dated 27 June 1874 and addressed to the Congregation of Bishops and Regulars, in: AAV, Arch. Nunz. Brasile, Busta 46, Fasc. 213, Doc. 4, f. 129r.

121 Report of the Cathedral Chapter of the Archbishopric of Salvador da Bahia on the election of the vicar capitular, dated 27 June 1874 and addressed to the Congregation of Bishops and Regulars, in: AAV, Arch. Nunz. Brasile, Busta 46, Fasc. 213, Doc. 4, f. 129v.

expressed how relevant good reputation was for the measurement of suitability. A vicar capitular who provided grounds for malicious gossip and scandal, even if innocent, was not a suitable vicar capitular.

One month later, d'Amour would declare to be victim of a plot, as written in a private letter to the Chargé d'Affaires of the Holy See in Brazil, Michele Ferrini.[122] D'Amour would recall that "some laymen" had been discontent with his position as secretary to the late archbishop, as he, d'Amour, had collaborated in acts against Freemasonry. The vicar capitular would then affirm that Nepomuceno Rocha and Villas-Bôas de Jesus were "protégés of the Freemasons", and that, for this reason, they aimed to frustrate the election. I could not find other sources that confirmed this information. It appears strange that former *alumni* of Roman ateneums and universities should have this kind of liaisons in Brazil. However, from the description offered by the chapter, and the official documents and fragments of newspapers attached, one may conclude that the two canons, and in particular Nepomuceno Rocha, behaved outside the disciplinary standards of ultramontanism.

Back to the report: the chapter further supported d'Amour by claiming that, in the election of the previous vicar capitular in 1861, a canon without title had been chosen, and there had been no protest. The statement, it should be noted, is not exact: at least one note of discontent reached the Holy See.[123] In any case, the chapter emphasised that Nepomuceno Rocha

122 Letter of 18 August 1874 from Carlos Luiz d'Amour, Vicar Capitular of Salvador da Bahia, to Michele Ferrini, Chargé d'Affaires of the Holy See, on the civil government's request of the election's report, and on d'Amour's concern about a plot against him, in: AAV, Arch. Nunz. Brasile, Busta 46, Fasc. 213, Doc. 4, f. 110r.

123 Among the ones concerned was Canon José de Souza Lima, who suggested to Internuncio Mariano Falcinelli that the election of Rodrigo Ignacio de Souza Menezes as Vicar Capitular of Salvador da Bahia was invalid. Souza Lima stated that Souza Menezes did not have "the suitability required by the Council of Trent"; by this he meant that the elected was neither a doctor nor a licentiate of canon law, whereas within and without the chapter there were priests with degrees. To support the hypothesis of nullity, Souza Lima cited the Congregation of Bishops and Regulars, the Congregation of the Council and, in particular, Lucio Ferraris, who, collecting decrees from these dicasteries, favoured the election of priests with titles. Souza Lima's concern was essentially pragmatic: besides the nullity of the election, he feared the nullity of the acts of jurisdiction practiced by the elected, which would affect many individuals and families, as in Letter of 31 January 1861 from José de Souza Lima, Canon of the Cathedral Chapter of Salvador da Bahia, to

was present at the occasion, and did not contest the result, even though he was the only doctor in the chapter. The suggestion underlying this claim, I believe, is that Nepomuceno Rocha could have a personal or political rivalry with d'Amour, which converged with the hypothesis of a plot involving Freemasons.

The Chapter of Bahia ended the report with several questions for the Congregation of Bishops and Regulars, some of them distinctively rhetorical. It was asked whether the chapter, when electing the vicar capitular, had the right to assess the suitability of the candidates; whether it had the duty to exclude the unsuitable; which criteria had priority (knowledge, prudence, piety, etc.), or if the chapter should seek a candidate with all these qualities; whether titles were

Mariano Falcinelli, Apostolic Internuncio in Brazil, on the election of Rodrigo Ignacio de Souza Menezes as vicar capitular of the archbishopric, in: AAV, Arch. Nunz. Brasile, Busta 32, Fasc. 144, f. 33r–v. On 20 February 1861, Falcinelli narrated the case to the Secretary of State, Cardinal Giacomo Antonelli, as in Disordini che si cagionano nell'Arcidiocesi di Bahia dall'amministrazione ecclesiastica del Vicario Capitolare D. Rodrigo Ignazio de Souza Menezes, in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 141, Fasc. 182. Falcinelli began his letter reporting that Souza Menezes was not a prudent or zealous vicar capitular, and the he was dismantling institutions introduced by the late archbishop. Even though this information already implied that Souza Menezes was unsuitable, the internuncio ultimately relied on the reasoning of Canon Souza Lima: he sustained that the problem with the election was the lack of titles. Falcinelli claimed that he did not know whether the election of priests with no titles, a recurring phenomenon in Brazil, derived from special privileges or was an accepted and tolerated custom. He then announced that he would ask the Congregation of the Council for a statement on the matter. Falcinelli ended the letter remarking that, in Salvador da Bahia, the doubts surrounding the election of Souza Menezes "disturbed consciences and caused scandal", and that the appointment of the new archbishop should be hastened. Considering that the acts performed by the vicar capitular might have been null on grounds of defect of jurisdiction, the pope authorised their convalidation *ad cautelam*, on 10 April 1861. This precautionary measure calmed the waters and saved the archbishopric from scandal. But it hardly addressed the deeper issue at stake, that is, the causes of nullity (if there was any): would the defect of jurisdiction lie in the absence of titles or in the lack of other characteristics relevant to suitability? The Congregation of the Council does not seem to have followed up on the matter either. I have not found any record of the statement requested by Falcinelli. This silence can be read in a pragmatic key: the sanation *ad cautelam* was enough to stabilise the government of Souza Menezes, which for all intents and purposes was only a temporary issue. A precarious solution was thus responding to an equally precarious situation. Brazil would have to wait until the d'Amour case for an interpretatively strong response on the problem of the vicars capitular without titles. And, curiously enough, that response would not come from the Holy See.

equivalent or subordinated to suitability; and, finally, the most important question: whether the election of vicar capitular d'Amour was valid.

For reasons beyond my control, I could not verify if the report was actually forwarded to the Congregation of Bishops and Regulars. However, as this book concerns the interactions between the local clergy, the Brazilian Council of State, and the Congregation of the Council, its conclusions remain unaffected. That the chapter directed the report to the Congregation of Bishops and Regulars is in itself an interesting fact, because it demonstrates that the validity of elections was a matter under the competence of several organs of the Roman Curia (in the previous section, I pointed out that the Congregation for Extraordinary Ecclesiastical Affairs addressed the issue). Further proof of this diversity is that the report of the Chapter of Bahia eventually reached the hands of the cardinals of the Congregation of the Council, on 1 September 1874.

And it arrived accompanied by other documents, in particular a petition from Nepomuceno Rocha and Villas-Bôas de Jesus to the pope, dated 27 July of the same year.[124] In the document, the discontented canons sustained that the election of d'Amour had gone against Session 24, *De reformatione*, Canon 1, of the Council of Trent. They endorsed a more simplified view of the disposition: the chapter should have either elected one of the doctors or licentiates of the diocese (whether they were members of the chapter or not), or refered the issue to the oldest suffragan bishop. The more nuanced reflection raised by the Chapter of Bahia about the issue of greater suitability was disregarded. The two canons were of the opinion that, if the chapter "ignored" or "neglected" the available doctors, the election of a person with no titles could only be null and void. Without the same level of detail and intertextuality of the chapter's report, Nepomuceno Rocha and Villas-Bôas de Jesus added that their position was supported by the writings of canonists, and by decisions from the Congregation of the Council. One may wonder to which extent this particularsentence may have been the reason why the petition reached the dicastery. The canons ended their letter inquiring if the election of d'Amour was valid; in case it was not, they asked how to procceed, considering that the oldest suffragan bishop, D. Antonio Ferreira Viçoso, from Mariana, was located in a distant diocese and very ill.

124 S. Salvatoris Bahiae, in: AAV, Congr. Concilio, Positiones, "Die 12 7.mbris 1874, Lit. R ad V, P. Giannelli Secret.", ff. 33r–36v.

Attached to the dossier is a small piece of yellow paper which contains a note internal to the congregation, probably written by Secretary Pietro Giannelli.[125] The note's author recognises the difficulties to reach the prelate from Minas Gerais and considers consulting the Bishop of Rio Grande do Sul, D. Sebastião Dias Laranjeira, presumably due to his seniority and familiarity with the clerical milieu of Bahia; it is also remarked that Domenico Sanguigni, Apostolic Internuncio in Brazil between 1863 and 1874, "was not able to say anything positive about d'Amour", possibly because Sanguigni did not know him in depth. Finally, on 11 September 1874, the dicastery decided to ask the Bishop of Mariana and the Bishop of Rio de Janeiro, D. Pedro Maria de Lacerda, for information and their opinion (*pro informatione et voto*), requesting them to declare whether there were, within or without the Cathedral Chapter of Salvador da Bahia, any doctors or licentiates of canon law equally or more suited than the elected vicar.[126]

Although they look rather prosaic on paper, these manifestations of the Congregation of the Council reveal a dicastery that operated on the basis of a complex economy of information. In order to decide, it had to collect the opinion of people not directly interested in the case, but sufficiently qualified to offer reliable data. In a system thus dependent on information, it is only predictable that the persistance of ignorance would result in the stagnation of the procedure. This is exactly the case of the dossier we are analysing. There is no register of any answer coming from Mariana or Rio de Janeiro, perhaps due to illness, in the case of D. Antonio Viçoso, and to almost clinical introversion, in the case of D. Pedro de Lacerda.[127] The fact

125 S. Salvatoris Bahiae, in: AAV, Congr. Concilio, Positiones, "Die 12 7.mbris 1874, Lit. R ad V, P. Giannelli Secret.", ff. 1r–3v.

126 S. Salvatoris Bahiae, in: AAV, Congr. Concilio, Positiones, "Die 12 7.mbris 1874, Lit. R ad V, P. Giannelli Secret.", f. 43v.

127 D. Pedro Maria de Lacerda, Bishop of Rio de Janeiro between 1869 and 1890, has his introverted behaviour exposed in several official documents that reached the Holy See. For example: in correspondence with the Congregation for Extraordinary Ecclesiastical Affairs, on 4 November 1885, Internuncio Rocco Cocchia complains that D. Pedro de Lacerda systematically failed to answer his circular letters. Cocchia also says that, although the prelate had fine qualities, he did not respond to the messages from secular ministers or parish priests, took too long to grant matrimonial dispensations, and displayed no interest in organising diocesan synods or gathering with his peers in a provincial council, as in Letter of 4 November 1885 from Rocco Cocchia, Apostolic Internuncio in Brazil, to the Congregation for Extraordinary Ecclesiastical Affairs, on the situation of some Brazil-

is that the Congregation of the Council never issued a resolution on the validity of d'Amour's election. The Chapter of Bahia would nevertheless have the consolation that, when requesting information, the dicastery had gone in a similar direction to that of the report. In other words, the cardinals implied that d'Amour could only be substituted by a doctor or licentiate with equal or greater suitability than him.

Curiously enough, the Chapter of Bahia experienced greater satisfaction once the election of d'Amour was challenged in the state jurisdiction. After receiving the minutes of the election, the Ministry for Imperial Affairs forwarded the document to the Council of State, so that it could decide whether the procedure had been valid.[128] It was a different question to the one asked in the preceding decade. In the case of Dean Faria, the requested opinion concerned the act by the archbishop of not acknowledging the election. In the case of d'Amour, the state had to make a pronouncement on the election's validity as such, rather than on another authority's assessment thereof – a much more incisive way of participating of the affair.

This incisiveness also appeared in the opinion of the councillors. The Section for Imperial Affairs, composed of the Viscount of Bom Retiro, the Marquis of Sapucaí, and the Viscount of Souza Franco, assembled on 16 December to deliberate. After reporting on the case, the corresponding secretariat recommended that the civil government declared itself aware of the election of d'Amour, a subtle way to recognise it as valid. But the councillors went further, deep into the details of how to interpret canon law. Agreeing with the majority of the Cathedral Chapter of Bahia, the Section for Imperial Affairs denied that the Council of Trent had imposed nullity as consequence of electing a priest with no title. The Tridentinum had simply made a recommendation, leaving the chapter free to appreciate the suitability of the available candidates. This was a *grammatical* interpretation, centered on the fragment "*vel alias […] idoneus*" from Session 24, *De reformatione*, Canon 16. According to the councillors, this conveyed the idea of alternation, the idea that doctors and licentiates were not the only

ian dioceses, in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 251, Fasc. 17. In any case, D. Pedro de Lacerda is considered by historiography as one of the most important representatives of ultramontanism in Brazil, according to Santirocchi (2015b) 188–191.

128 Consulta de 16 de dezembro de 1874, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 553, Pacote 4, Doc. 54.

option.[129] This interpretation reviewed the chapter's arguments of fact and authority and did not repel them; on the contrary: the councillors stated that the chapter could have also cited concrete examples of titleless vicars capitular from Brazilian and Portuguese dioceses.[130]

Only the arguments of the discontented canons were explicitly rejected. Besides dismissing the main one, the councillors pointed out that "it was of no help to them" to cite the Pontifical Constitution of 5 September 1873, for it did not create law, it only reproduced the terms of the Council of Trent.[131] Souza Franco went further: the constitution could not be mentioned in official documents, as it had not received the imperial *placet*.[132] It is particularly curious that this councillor, while strongly jurisdictionalist, did not display the same scruples when reading the minutes of the election, in which the Chapter of Bahia cited the Congregation of the Council several times. In fact, the councillors simply reported, without any reprimand, that the chapter had proceeded according to the interpretation of the "Sagrada Congregação Carolinense [sic]" to Session 24, *De reformatione*, Canon 16.[133] The passivity of the Council of State towards this information – and the way this information is (poorly) written – indicates that the decrees of the Congregation of the Council, at that moment, or regarding that theme, did not belong to the councillors' repertoire of sources of law. In other words, in the economy of information of the Council of State, there was a gap, a hint of ignorance. But as it did not affect elements that were essential for decision-making, this did not impede the councillors' activity.

129 Consulta de 16 de dezembro de 1874, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 553, Pacote 4, Doc. 54, ff. 5v–6r.

130 Consulta de 16 de dezembro de 1874, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 553, Pacote 4, Doc. 54, f. 7r.

131 Consulta de 16 de dezembro de 1874, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 553, Pacote 4, Doc. 54, f. 7r–v. Shortly before the consultation on the d'Amour case, the Council of State had opined that this pontifical constitution could only have force of law after passing by the General Legislative Assembly, as in Consulta de 28 de novembro de 1874, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 552, Pacote 3, Doc. 64.

132 Consulta de 16 de dezembro de 1874, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 553, Pacote 4, Doc. 54, f. 9r.

133 Consulta de 16 de dezembro de 1874, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 553, Pacote 4, Doc. 54, f. 7r. This expression comes from a citation of the Chapter of Bahia to the decree *Carinolen*, 22 September 1714, from the Congregation of the Council.

The councillors concluded that there were no grounds for nullity in the election of d'Amour. The emperor did not issue a resolution on the affair. But we can well assume that this consultation appeased the archdiocese. As I said, the request to the Congregation of the Council did not go forward. And d'Amour remained in charge of the Archbishopric of Salvador da Bahia for another two years, until the arrival of D. Joaquim Gonçalves de Azevedo.

The controversy over the election of Carlos Luiz d'Amour demonstrates that multinormativity is not limited to a plurality of legal norms. All the actors involved, ecclesiastical or secular, from local or higher institutions, agreed that the Council of Trent was the norm applicable to the case. What varied were the interpretations and the interpretative conventions employed.

As for the interpretations, I was surprised by the high level of intertextuality in the discourse of local actors, in particular the Chapter of Bahia. In fact, the frequent recourse to remote and recent canonists, as well as to decisions of Roman dicasteries, demonstrates that the vision these priests had about the Church went beyond the Brazilian particularities and the Iberian heritage. Their tone bent towards universalism and was compatible with ultramontanism. The hypothesis of a bond with the movement is strengthened by the fact that the chapter defended precisely a vicar capitular with ultramontane inclinations. We can thus relativise the trait observed in the case of Olinda, i. e. that of ideological tension between chapter and ordinary.

As for the interpretative conventions, clearly the canons, whether for or against d'Amour, treated the matter as internal to the Church, that is, based on the convention of separation. The Congregation of the Council acted within the same logic. The Council of State, for its part, adhered to the convention of amalgam. This can be observed both from the question posed by the secular administration, and from the councillors' answer. Differently to what we witnessed in Faria's case, the Council of State was then directly asked to provide its opinion on the validity of the election; and, when doing so, it issued an interpretation of canon law. It did not allow the Holy See room to act. In any case, the two cases, Faria's and d'Amour's, are similar in that they break with the idea of an implicit alliance between the Holy See and ultramontane clerics, on one side, and between the state and non-ultramontane priests, on the other. In d'Amour's case, the "dance of opposites" takes place in two moments: when Nepomuceno Rocha and Villas-Bôas de Jesus resort to the Holy See *against* an ultramontane vicar capitular; and

when a jurisdictional state decides *in favour* of the same vicar. These events reinforce the conclusion that the administrative wheels of the governance of the Church had their own logic, more faithful to practical needs than to ideological affinities. One may even conjecture that d'Amour's case did not go forward in the Congregation of the Council due to its being solved at the national level, as it might have encouraged the informing bishops not to act.

3.2.3 Could the civil government suggest a vicar capitular? Normative and practical limits of the changes of convention in the Council of State

I believe now is the appropriate moment for broader reflection, considering all the cases I have analysed in sections 3.1 and 3.2 so far. It emerges that, depending on the subject, i. e. examinations or elections, the interpretative conventions adopted by the Council of State were arranged quite differently over time. While in examinations the conventions were organized according to the pattern amalgam – exclusion – separation, in elections I found the order separation – amalgam. To explain this, I am using the Religious Question as a useful framework with regard to time as well as to political and legal issues. The friction between the bishops of Olinda and Belém do Pará and the secular powers in the 1870s was characterised by a more incisive positioning of the state bodies; in other words, the state (or at least some crucial individuals) attempted to intensify the control over the actions of the ordinaries to a hitherto unknown extent, and did so by interpreting and even creating norms. The results I reached in the analysis of cases lead me to believe that the state's movement towards intensification had an impact on the ordinary administration of dioceses. But this intensification, when it took place, operated within the limits allowed by each theme.

To explain this further: examinations and elections were based on different types of norms and structures. The examination, an essential step for the provision of benefices, was historically associated with the patronage of the Church in the Iberian empires. In view of this bond, the secular powers commonly considered themselves authorised to participate, to a greater or lesser extent, in the production and interpretation of norms on examinations. This can be observed in the promulgation of norms such as the *Alvará das Faculdades* and in the actions of organs such as the Board of Conscience and Orders (and, later, the Council of State). In other words, the examinations were recognized as a mixed subject in the Empire of Brazil (as well as in

Portugal) and, from the patron's point of view, the convention of amalgam, creative and interpretative, was the norm.

As I mentioned, the Religious Question created an atmosphere which favoured that secular powers, after an adequate trigger, took "one step further" in their participation in ecclesiastical affairs. In the examinations, this "one step further" led, as we saw in the Vieira case, towards the convention of exclusion. I believe that this particular movement was enabled by the existence of century-old secular norms on the subject and a long tradition of interpreting these norms (even if sometimes in conjunction with norms of canon law). In other words, the state was in a position from which it could dispense with canon law and ecclesiastical jurisdiction: it had its own normative resources, it had interpretative resources – and, moreover, it had the alibi of patronage rights. This scenario made it plausible for state councillors to declare that examinations were an exclusively civil issue – even if this declaration did not hold up in the long run.

The election of vicars capitular was carried out on a quite different basis. It was a matter in which the Empire of Brazil had never had any significant involvement. In normal times, no relationship was deemed conceivable between this procedure and the patronage in force in the country. Nor were there any recent secular norms on the subject, and those inherited from Portuguese tradition, which evoked the royal (and unilateral) privilege of "insinuating candidates", did not possess enough relevance to merit consideration. The election was a matter primarily internal to the Church and, as such, governed by the convention of creative and interpretative separation. In this context, the only "further step" that the crisis of the 1870s allowed the state to take was to adhere to the convention of interpretative amalgam. That is: the state began to assess the norms of canon law that informed the matter and, thus, to rule on the validity of elections, as in d'Amour's case. This step was less audacious than the one taken for examinations, for the state did not enjoy the same conditions of possibility. There was no equivalent of the *Alvará das Faculdades*. Even the Council of State was not prolific in opinions on the subject. The councillors had only canonical references to resort to, and in particular the Council of Trent.

But could not the state have acted more radically? That is, in times of exception – as were the times of the Religious Question – could not the state have created norms on the election of vicars capitular, or retrieved some anecdotal charter from the Portuguese historical casket? It could have opened the way to a

more complex convention of amalgam, in which the interpretation of canon law would be mixed with the interpretation of civil norms, or it could have claimed a creative and interpretative space of its own, according to a new convention of separation. Practice, however, shows that changing the status quo was not that easy, even during an exceptional period. Between the trial and the execution of the sentences of the Bishops of Olinda and Belém do Pará, the state councillors had several chances to provide opinions in favour of an unprecedented increase in the participation of the secular power in the election of vicars capitular. And yet they restrained themselves – and when they did not do so, they were restrained by others.

I am referring to four meetings held in 1873,[134] 1874,[135] and 1875,[136] in which the state councillors debated on the government of the dioceses affected by the Religious Question. After the prelates were tried and imprisoned, discussions revolved around the configuration (or not) of *sede vacante*, and the issue of who should take charge of the diocesan government – whether that should be a delegate of the bishop, a vicar capitular, a coadjutor bishop appointed by the Holy See, or even a temporal administrator appointed by the secular power. The civil government was mostly interested to see that the novel diocesan governors lifted the bishops' interdictions against lay fraternities that counted members of the Freemasonry among their numbers. When the episcopal delegates refused to do so, the state turned to the possibility of ordering elections of vicar capitular and, if necessary, suggesting to the cathedral chapter the candidate it deemed most suited. These were the "further steps" that the civil government considered taking.

Among these measures, the most daring was undoubtedly the exercise of the secular power's right of insinuation. To demonstrate that this privilege was new only in appearance, some councillors (e. g. Nabuco de Araújo; the Viscount of Bom Retiro) invoked royal charters and *alvarás* from the Portuguese *Ancien Régime*, as well as recent Portuguese handbooks and laws, which confirmed that such privilege was not only ancient, but recurrently

134 Consulta de 8 de novembro de 1873, Conselho de Estado Pleno, in: Atas do Conselho de Estado Pleno (Brasil) (1978 [1868–1873]).

135 Consulta de 28 de abril de 1874, Seção de Negócios Imperiais e Seção de Justiça; Consulta de 29 de maio de 1874, Conselho de Estado Pleno, in: AN, Conselho de Estado, Caixa 552, Pacote 3, Doc. 62.

136 Consulta de 23 de janeiro de 1875, Conselho de Estado Pleno, in: Atas do Conselho de Estado Pleno (Brasil) (1973 [1875–1880]).

employed in Portugal. However, in the 19th century, it was ever more difficult to attest to the continuity of this tradition. In the 1870s, a scandal was caused by the royal insinuation of a vicar capitular for the diocese of Braga; the chapter did not comply with it, the Portuguese civil government broke off relations with the diocese, and the affair ended up in the newspapers.[137] The Brazilian state councillors had, thus, plenty of material on the genealogy of the right of insinuation, but also a strong example of how its exercise could miserably fail in practice.

To return to the debates of the Council of State: there were those (e. g. the Viscount of Niterói) who discouraged the exercise of the insinuation, due to the lack of historical precedent in Brazil; there were also those who, adopting the discourse of continuity between the Portuguese and the Brazilian *padroados*, regarded the privilege as embraced by the Constitution of the Empire (e. g. Nabuco de Araújo), and fully valid in Brazil, despite the lack of use (e. g. Viscount of Bom Retiro). The right of insinuation, however, never met with the approval of the majority of councillors. There were several arguments (not necessarily convergent) against its exercise: many councillors, particularly in the 1874 meetings, argued that the trial and imprisonment of bishops did not entail *sede vacante*; therefore, there was no occasion for election; but if, by all means, an election had to take place, some councillors stated that the cathedral chapters should be kept free of external influence (e. g. the Viscount of Jaguary); and others judged that, although the insinuation was valid, to put it into practice was imprudent, an invitation to schism (e. g. the Viscount of Bom Retiro). The Council of State was thus restrained by its own members.

At the last meeting, on 23 January 1875, however, the opinion prevailed that the civil government should order elections of vicar capitular. It was a more modest "further step", but still a "further step". In normal times, there would be no doubt that the declaration of *sede vacante* and the calling of elections were competences of the cathedral chapter. But the context favoured exceptional solutions. Between 1874 and 1875, as the governors appointed by the bishops had refused to lift the interdictions, they were prosecuted and imprisoned for the same crimes as their superiors.[138] The uncertainty as to who governed the diocese became more acute.

137 See O Apostolo 130 (1874) 2.

138 On the trial and arrest of the governor of the diocese of Belém do Pará, see Jornal do Recife 137 (1875) 1. On the case of the governor of the diocese of Olinda, see O Apostolo 25 (1875) 2.

However, though it was not limited by the Council of State, the state's insistence on calling elections waned in practice. In mid-1875, when the president of the province of Pará ordered the election of vicar capitular in the diocese, the cathedral chapter refused to comply.[139] The canons considered that the bishop still governed the diocese, even if from jail. As there was no acknowledgement of *sede vacante*, it was impossible to hold an election. And so things remained as they were. But the crisis would be short-lived, for D. Antonio de Macedo Costa, Bishop of Belém do Pará, would be granted amnesty in September 1875.

This extreme example illustrates well the normative and practical limits that constrained the civil government in its changes of convention. The state councillors tried to intensify their use of the convention of amalgam (already present in d'Amour's case) either by adding a secular privilege to the repertoire of norms to be interpreted, or by establishing *ex nihilo* the rule that the state was able to call elections of vicar capitular. Yet these *ad hoc* manoeuvres were countered by a state of affairs cemented by decades, or even centuries. In a debate among regalists, the royal privilege was the losing party. The secular norms were fragile, dusty shadows, and the situation was too extreme to accommodate a measure that was sold as "tradition" while looking much more like "innovation". The state's calling of elections collided, with no chance of reaction, with the "no" of the cathedral chapter, which asserted the exclusivity of its competences. Within this state of affairs, the idea that the *sede vacante* and the election of the vicar capitular were matters internal to the Church was kept alive. And in the governing of these matters, the Council of Trent reigned supreme, as in previous cases. Not by chance, the Viscount of Bom Retiro recalled the Tridentinum when he addressed the opposition faced by the right of insinuation in Portugal: "the Fathers of Trent, when granting to the chapter *sede vacante* the appointment of its vicar capitular, did not subject it to any binding influence."[140]

139 The full content of the order issued by the Ministry for Imperial Affairs and executed by the President of the Province of Pernambuco is in O Apostolo 134 (1875) 4. On the refusal of the cathedral chapter to comply with the order, see Jornal do Recife 137 (1875) 1.

140 Consulta de 28 de abril de 1874, Seção de Negócios Imperiais e Seção de Justiça, in: AN, Conselho de Estado, Caixa 552, Pacote 3, Doc. 62, f. 38r–v.

3.3 The obligation of residence and its inconvenient civil double. The Council of Trent at the height of its plasticity[141]

Debates regarding ecclesiastical residence were not a novelty in the mid-16th century; but it was certainly due to the Council of Trent that, for centuries to come, residence became one of the main obligations of the clergy in charge of the cure of souls.[142] To ensure that the faithful would not be left unattended in their spiritual needs on grounds of the absence of priests (a phenomenon quite common at the time, especially among the episcopate), the Tridentinum established that bishops, canons, and parish priests were obliged to personally reside in the diocese or parish where they exercised their ecclesiastical ministry. The Council of Trent also determined which absences were legitimate, and prescribed sanctions for those that were not. Such is its relevance that, even in the 19th century, after having undergone various local adaptations (via provincial councils and diocesan synods), and after having been interpreted in detail in the realms of doctrine and case law, the Council of Trent remained the principal normative reference on the obligation of residence. This can be proved by examining the manuals and treatises of the time – and also the administrative practice.

141 This section was written as part of the author's contribution to the project "RESISTANCE. Rebellion and Resistance in the Iberian Empires, 16th–19th centuries" (778076-H2020-MSCA-RISE-2017), funded by the European Union's Horizon 2020 Research and Innovation Programme.

142 Residence is possibly the most memorable disciplinary issue of the Council of Trent. It is usually mentioned in the literature that recapitulates the process of elaboration of the Tridentinum; within this field, there is a niche that follows the conciliar debate on the divine character of the obligation of residence, according to Sygut (1998) and Bergin (1999). Moreover, most studies on the practical development of residence after the Council of Trent concentrate on episcopal residence, analysing local sources, as seen in Papa (1961) and Pereira (2016). Some works consider sources from the Congregation of the Council and the Congregation on the Residence of Bishops in the analysis. While doing so, Christian Wiesner, for instance, concluded that the centralising efforts of Pope Urban VIII to discipline the higher clergy via the dicasteries combined pastoral concerns and elements of "micro politics", as in Wiesner (2016, 2018a). Still on the subject of 17th-century *Residenzpflicht*, Wiesner (2018b) proposes that the impact of congregations from a global perspective was too limited, as the majority of cases received belonged to Italian territories. The local historiography on cathedral chapters occasionally addresses the difficulties of implementing the obligation of residence among canons, as observed in Portugal during the early modern period, as in Silva (2012). Critical editions of cathedral statutes are also useful to understand how chapters and bishops further regulated this obligation (e. g. Boschi (ed.) (2011)).

Besides being an ordinary concern for ecclesiastical authorities, the residence of the clergy gradually became a matter of state in the Empire of Brazil. This development was connected to the emergence of the conception of the priest as a public servant *(empregado público)*. It should be remembered that, once independent from Portugal, Brazil sought to modernise its administration by various means, eliminating organs of the *Ancien Régime* and replacing them with a more "rational", French-inspired bureaucratic network.[143] This attempted modernisation, strengthened by jurisdictional and liberal discourses, affected the relations that the state, by virtue of the rights of patronage, maintained with the Catholic Church. It was between the Regency (1831–1840) and the Second Reign (1840–1889) that academic and administrative circles became more and more acquainted with the idea that a priest's status in Brazil was close to, or even identified with, that of a public servant.

Diffused by jurist Jeronymo Vilella de Castro Tavares in the 1850s, this conception established that the priest, when exercising the activities that were typical of his ministry, was subject to state control and could be held accountable for his performance (or lack thereof) before secular courts, in accordance with administrative and criminal norms. In his writings, Vilella Tavares justified this idea with three arguments, embedded in a strongly regalist and liberal discourse: bishops, canons, and parish priests were appointed by the emperor; their remuneration came out of the public coffers; and the monarch, as well as his delegates, had the right of inspection over the Church in national territory.

During the Second Reign, this doctrine appeared in the administrative praxis in different ways and, above all, with different degrees of intensity. In the Council of State, some councillors fervently claimed that the priest was a type of public servant, but more moderate members advocated that the two categories shared only a few obligations, the clergy still holding a *sui generis* status. In any case, while assessing the clergy through the lens of public service, laws and administrative decisions came to create a "secularised" dimension of typically ecclesiastical legal institutions. This was the case of the obligation of residence, to which ministers and councillors added the quality of a civil duty, whose fulfillment had to be supervised (and, in the case of non-compliance, punished) by the state.

143 See Lima Lopes (2018).

The episcopate was not indifferent to this process. The growing diffusion of ultramontanism in the country from the 1850s onwards stimulated members of the higher clergy to question the mechanisms of state control over the Church more vocally, among them the inspection of residence. The bishops argued that the Church should be autonomous in relation to civil power, echoing the tone of Pope Pius IX in his condemnation of the "errors of modernity" in the *Syllabus* of 1864. They did not defend complete institutional separation, but coordinated autonomy, an arrangement in which the state stood as an ally to the Church, and was bound by the limits imposed by divine and ecclesiastical law. Such perspective clashed directly with the conception of the priest as a public servant, trigerring gestures of resistance among the Brazilian higher clergy.

In this section, I trace the different perspectives on the residence of the Brazilian clergy, focusing on administrative practice and, more precisely, on the different roles played by the Council of Trent in the interactions between ecclesiastical and state authorities. One of my arguments is that Brazilian bishops employed the Tridentinum as a resistance weapon, so as to curb the attempts by the state to transpose concepts and criteria of the modern secular administration to the ecclesiastical context. But, in a broader sense, I also seek to demonstrate that the Council of Trent was sufficiently plastic to allow other forms of appropriation, some of them indicating collaborative arrangements between the clergy, the state, and the Holy See.

3.3.1 Consolidation of the obligation of residence also as a civil duty. The Council of Trent as a resistance weapon for the episcopate and a rhetorical support for the state

In order to persuade the bishops to fulfil their obligation of residence, the Council of Trent initially established that a prelate absent from his diocese for six continued months, without a legitimate impediment, or a just and reasonable cause, would lose a quarter of the income of his benefice. This penalty would be increased by another quarter if the absence lasted another six months. Beyond this period, the corresponding metropolitan was obliged to denounce the absent suffragan to the pontiff,[144] who would then take the

144 The obligation to denounce fell upon the oldest suffragan in relation to the absent metropolitan.

appropriate measures, including the possibility of substituting the bishop in the government of the diocese. These are the terms of Session 6, *De residentia*, Chapter 1, of the Council of Trent, as established in 1547.

Fearful that such provisions might warrant absences of five continued months, the Council Fathers revisited the matter in 1563, bringing about Session 23, *De reformatione*, Canon 1, of the Tridentinum. In that part, it is stated that bishops could legitimately be absent from their dioceses for just causes – i. e. Christian charity, urgent need, duty of obedience, or evident utility to the Church or the state – if authorised by the pontiff, the metropolitan, or the oldest suffragan. In the 19th century, this leave was usually granted by the Congregation for the Residence of Bishops. Still according to the Tridentine canon, absences for public utility and related to the episcopal office did not require permission. And, a particularly important point for the purposes of this section, absences of short duration were not strictly regarded as absences. This included periods of up to three months per year (cumulatively), which the bishop could use according to his conscience, for plausible reasons and without harm to the community of the faithful. For such period, no superior authorisation was required. In any case, the prelate had to appoint someone to replace him while he was away, preferably avoiding absences on festive occasions (Easter, Christmas, etc.).

The same canon provided for the obligation of residence of parish priests. The sanctions described in Session 6, *De residentia,* Chapter 1 were extended to them. But unlike bishops, parish priests were allowed to be absent from their churches for a maximum of two months per year only, and always for reasons known and approved by the local prelate. Longer leaves could be granted for serious causes. The First Constitutions of the Archbishopric of Bahia (§§ 541–543) established an even shorter standard period of absence, only thirty days, considering the bimester allowed by the Council of Trent as a special permit. For parish priests, only absences of less than a week required no authorisation, according to Ezechias Fontoura.[145] The Tridentinum was not clear about the maximum period of leave a bishop could grant to a priest. Fontoura mentions four months.[146] Praxis may also help us in

145 EGF, II, 193.

146 EGF, II, 191: "Mesmo concorrendo simultaneamente a doença e a inclemência do clima, não pode o Ordinário dar licença por mais de quatro meses, ainda havendo inimizades capitais; passado tal período é preciso recorrer à Santa Sé, que costuma conceder uma ausência de seis meses, depois prorrogada por outros seis e não mais."

this regard: in the 19th century, the Brazilian petitions that came to the Congregation of the Council show that parish priests and canons turned to the Holy See for permissions of at least one year of absence.[147]

The Council of Trent confirmed residence as an ecclesiastical obligation. The Empire of Brazil, during the 1860s, consolidated residence as a civil duty.[148] The authors of this achievement were, to a large extent, the Ministry for Imperial Affairs and the Council of State. Both, by means of opinions and *avisos*, disseminated the rule that bishops and parish priests had to request leaves from the civil government, or at least inform its agents about their absences. If they did not do so, they could face loss of *congrua*, loss of the diocesan government (for bishops), and even criminal liability. Each of these sanctions was based on analogies that jurists and bureaucrats established between priests and public servants over the course of time. In criminal law, these analogies went almost as far as the equivalence between one figure and another, as the cleric absent with no leave from the civil government was considered to have committed a crime against public administration.[149]

147 For instance: S. Sebastiani Fluminis Januarii – Germaine Nicolaus petit facultatem abessendi a parochia, in: AAV, Congr. Concilio, Libri Decret., 222, 1879, p. 751. The congregation's decision was: "Die 3 Septembris // SS.mus etc. audita etc. attentaq. attest. Ep.i S. Sebastiani Fluminis Januarii, benigne commisit eid. ut veris etc. ac dummodo per idoneum sacerdotem ab Ep.o approbandum, qui diu noctuque resideat, ac sacramenta sollecite administret animarum curae satis consultum sit, praevia sanatione quoad praeteritum, petitam facultatem abessendi a sua paroecia per annum prox: tant: pro suo etc. Or.i gratis impertiatur." Also: Olinden. De Rego Maia Franciscus Can. Cathedralis petit indultum abessendi, in: AAV, Congr. Concilio, Libri Decret., 227, 1884, p. 4402. The congregation's decision was: "Die 30. Sept. Sacra etc., attenta jurata medici fide, benigne commisit Ep.o Olinden, ut, veris etc., pro suo etc. Oratori gratis indulgeat, ut ad annum tantum, si tamdiu exposita causa perduraverit, a sua residentia abesse possit, et nihilominus fructus omnes et distributiones quotidianas sui Canonicatus percipere valeat, iis tantum omissis distributionibus, quae inter praesentes dividi solent". The emphasis in these sentences is mine.

148 This idea can be found in the doctrine. Vilella Tavares says that, due to his quality of public servant, the bishop has a "forced residence" in his diocese by civil law, as in JVT2, 126. According to Monte Rodrigues d'Araújo: "Among us the Government also intervenes in the permissions for bishops to leave their dioceses", as in MRA, I, 258.

149 For more on the conceptualisation of the crimes against public administration during the Brazilian Empire (though with emphasis on active and passive corruption), see Faria (2018).

A case of this kind appears in the first issue of *O Direito*, in 1873.[150] This law journal describes the case of a parish priest from the diocese of Rio de Janeiro who had been accused before the municipal court of having committed the act under Article 157 of the Criminal Code of 1830 ("To leave, even if temporarily, the exercise of one's service without previous permission of the legitimate superior; or to exceed the period of the permission granted, without urgent and reported reason. Penalties – Suspension from service for one to three years, and a fine corresponding to half the period"). In the Criminal Code, this offense was listed amidst the hypotheses of prevarication, abuse, and omission by public servants. The analogy was so strong that, although the priest managed to escape conviction, this was not because the article was not applicable to the clergy, but because the defendant had acted in good faith in his absences (leaving a substitute, informing the vicar forane, etc.).

The Brazilian bishops, particularly those active between the 1850s and the end of the empire, resisted the civil regulations on residence by appealing both to the state and the Holy See. In these interactions, the Council of Trent was a constantly present normative reference, explicitly and implicitly invoked by the resistant clergy and also by the jurisdictional bureaucracy. Let us now see how these discourses were articulated, starting with two cases presented to the state that involved strong and mitigated forms of resistance from the clergy.

The first case is the result of an exchange of letters between the civil government, represented by Pedro de Araújo Lima, the Marquis of Olinda, then head of cabinet, and the Bishop of Belém do Pará, D. Antonio de Macedo Costa, in 1863.[151] In a letter of 10 August, the bishop expressed great displeasure with an *aviso* that the Ministry of the Empire had issued on 11 June, which described the procedure that presidents of province had to observe when granting leaves of absence to parish priests.

This *aviso* was actually a response to a letter from the Bishop of S. Luís do Maranhão, D. Luís da Conceição Saraiva, who complained about the inconveniences brought to the diocesan government by the civil leaves of absence granted by presidents of province without communication to the local ordinaries. When composing a solution for this matter, the Minister of the

150 O Direito 1 (1873) 336–343.
151 Annex G of MI (Br), Rel. 1863 (1863a), pp. 1–5.

Empire decided to preserve the powers of the presidents of province as prescribed by the *aviso* n. 415 of 23 December 1859, § 3.;[152] but, at the same time, he clarified that civil leaves would be conceded only after hearing the corresponding bishop; exceptions to this rule were possible in "extraordinary and urgent" cases when the prelate could not be heard; even so, once the civil leave had been issued, the bishop had to be promptly informed. These were the terms of the *aviso* of 11 June 1863.[153]

In his letter to the Marquis of Olinda, D. Antonio de Macedo Costa criticises this regulation harshly. He says it implied that civil authorities could continue to concede permissions regardless of the bishops' approval, only needing to inform the ordinaries about the measures. He adds that the reverse was not true: the episcopate could not grant leaves of absence to parish priests regardless of the secular authority, as those absent could be prosecuted. In other words, in the eyes of the Bishop of Belém do Pará, a priest could be authorised to be absent from his parish even against the will of the prelate, provided he had previously obtained a civil leave.

D. Antonio de Macedo was concerned that the liberty of the episcopate and the autonomy of the Church were hindered by these norms, which he characterized as "repugnant to the ancient discipline always observed in the Church of Brazil". His words were faithful to the ultramontane teachings he had received during his formative years abroad (attending the Seminary of Saint Sulpice, in Paris, and the Pontifical Gregorian University, in Rome), and whose principles he sought to apply in the episcopal ministry. Not by chance, D. Antonio de Macedo Costa would become known as one of the most tenacious champions of ultramontanism in Brazil.[154]

It is understandable, then, that the prelate was greatly disturbed by the institutional jurisdictionalism of the Brazilian Empire. In his opinion, the *aviso* of 11 June 1863 was based on principles that the bishops of Brazil could never acknowledge, which were: that parish priests were public servants; and that civil authorities could "dispense from a canonical law that was based on

152 According to this disposition, "podem aquelles Funccionarios [os Presidentes de Província] conceder taes licenças independente dos Prelados; não excluindo essa faculdade a audiencia dos mesmos, sempre que seja possível", as in Collecção das Decisões do Governo do Imperio do Brasil – 1859 (1859) 379–380.

153 See Collecção das Decisões do Governo do Imperio do Brasil – 1863 (1863) 265–266.

154 See Santirocchi (2015b) 192–194.

divine law". Such principles, he said, endangered the independence that should reign between the spiritual and temporal powers. D. Antonio de Macedo's solution was, thus, conceived according to an exclusionary, either/or logic, which is why I call his resistance strong. There was no middle ground. The principles of jurisdictionalism and the norms informed by them were to be rejected outright; the state was not to intervene in the obligation of ecclesiastical residence; and the granting of leave to parish priests was to remain an exclusive right of the episcopate.

It is true that D. Antonio de Macedo did not explicitly cite the Council of Trent in his letter, but different factors lead us to believe that he was referring to it with the expression "canonical law that was based on divine law": as already mentioned, the Tridentinum contained the most relevant norms of universal canon law regarding residence at the time. Nineteenth-century Brazilian doctrine also used to cite Tridentine provisions when presenting the debate on the divine or merely ecclesiastical grounds of the obligation of residence.[155] Also, when organising his arguments, D. Antonio de Macedo tellingly referred to the efforts of D. Romualdo Antonio de Seixas during the 1850s to reject the state's interference in the matter of residence of the parish clergy. In his texts, the former Archbishop of Salvador da Bahia defended that the episcopate had exclusive jurisdiction over the matter, relying precisely on the Council of Trent, and on norms from the Portuguese and even the Brazilian civil power which confirmed the content of Tridentine dispositions.[156] Besides all these factors, as we shall see, the interlocutor of D. Antonio de Macedo, the Marquis of Olinda, recognised the Tridentinum as the implicit reference in the discourse of the Bishop of Belém do Pará, bringing it to light and relativising its strength in the debate. I believe that

155 Monte Rodrigues d'Araújo revisits the discussion and, quoting Pope Benedict XIV, states that the Council of Trent does not provide a clear, explicit answer, as in MRA, I, 256. Fontoura had a more straightforward approach; he simply affirmed: "The Bishop, by divine right, is obliged to reside in his diocese", as in EGF, II, 79. See also Sygut (1998).

156 With regard to this, D. Romualdo Seixas mentioned the Council of Trent, the *Alvará* of 11 October 1786, and the *aviso* of 17 January 1851; all these sources determined that only the bishop could grant leaves of absence. The prelate of Salvador da Bahia addressed this issue in his replies to Vilella Tavares's public letters regarding the status of the priest as a public servant. These writings were gathered in a single volume; the extracts from D. Romualdo that are of interest for us can be found in: Carta do Doutor Jeronimo Vilella de Castro Tavares (1852–1853) 32–33, 75, 170.

these elements are sufficient to demonstrate that, although not expressly mentioned, the Council of Trent is present in D. Antonio de Macedo's discourse as a weapon of resistance – and strong resistance, in fact – against the state measures.

The reply of the Marquis of Olinda, for its part, asserted that the civil government did not see its regulations as an undue intervention or a threat to the independence of the two powers. The marquis rejected, in the first place, the accusation that the parish priests were being considered public servants. He proved this by pointing out that the civil leaves granted to priests, though similar to those of state servants,[157] were not subject to the general rules of deduction of salaries. If bureaucrats referred to the clergy with the expression "public servant", this was due to their carelessness or confusion, in view of the fact that parish priests performed temporal as well as spiritual functions with civil effects. But the incorrect use of words, the marquis argued, did not imply equivalence between some actors and others.

The Marquis of Olinda also stated that the civil government did not intend to deny bishops the faculty to grant leave of absence to parish priests. What the state did require was the prompt communication of the permissions issued, so that the licensed priest would not be deprived of his salary (the provision of which was, as mentioned, at the state's expense). The civil control over the ecclesiastical residence thus appeared as, above all, a necessity of the (secular) administration.[158] The marquis justified this control by referring to a series of rights that the civil government had in relation to the Church: the right to supervise the "effectiveness of the service" which was being "paid by the public coffers"; the right to be informed about the parish priest in office, in particular due to the temporal character or the temporal effects of some of his functions (assistance in elections, celebration of marriage, etc.); and the old right of inspection and vigilance over the Church. With a tone that would probably sound paradoxical to the supporters of

157 Article 5, § 14. of the Law n. 40 of 3 October 1834 *(Regimento dos Presidentes de Província)*, determined that the presidents of province were competent to grant leaves of up to three months to public servants for just reasons, as in Lei n. 40 de 3 de outubro de 1834 (Brasil) (1834). The *aviso* of 11 June 1863 and its predecessors contained a clear analogy to this provision.

158 According to the Marquis of Olinda: "The presentation of the leaves issued by the respective prelates not only does not offend episcopal rights, but is a necessity of the administration", as in Annex G of MI (Br), Rel. 1863 (1863a), p. 4.

ultramontanism and of the *libertas Ecclesiae*, the description of this last prerogative contains the surprising conclusion that the civil power, while controlling the residence of bishops, was also protecting and observing the canons, and in particular the Council of Trent.[159]

The accusation that the civil government would be promoting "a dispensation from a canonical law that was based on divine law" was also repealed by the Marquis of Olinda, who claimed that the state was fully aware of the limits of its powers. However, he added: "one should consider the reality of things"; and then he began to address the Council of Trent, believing that D. Antonio de Macedo Costa had this normative set in mind. The Marquis of Olinda conceded that the Tridentinum gave rise to the interpretation that the temporal power had no competence to grant leaves to parish priests. Nonetheless, the marquis recalled that ecclesiastical laws were not inexorable, and that "many provisions of the Council of Trent are no longer observed in present day". He pointed out that geographical and historical circumstances had brought about changes in the uses of the Tridentinum in Brazil. He claimed that, since colonial times, Brazilian dioceses encompassed very large territories, a trait that rendered difficult the communication between the bishop and his parish priests, and made it impossible or at least excessively time-consuming to grant leaves. It did not occur to the Marquis of Olinda that the ecclesiastical hierarchy itself could have conceived intermediary agents to facilitate the exchange of information within the diocese, agents such as the vicars forane.[160] This simplification was convenient for the sake of his argument: to remedy such difficulties, the marquis continued, the Portuguese sovereigns and their delegates would have started conferring leaves

159 "Os mesmos bispos, conquanto revestidos de um poder independente, não se pode por isso dizer que podem sair de suas dioceses quando quiserem, e pelo tempo que quiserem sem se entenderem com o poder que é reconhecido em direito como o defensor da Igreja. Pelo Concílio Tridentino estão reguladas as ausências dos bispos, mas não só aos superiores espirituais destes, como também aos príncipes, na eminente qualidade de protetores dos cânones, incumbe vigiar na observância dos mesmos cânones", as in Annex G of MI (Br), Rel. 1863 (1863a), p. 4.

160 On the role of the *vigários forâneos* in late colonial Brazil: "Colonial bishoprics were extremely vast and vicars forane therefore performed an important role in the diocese's communication system, a key point in circuit functioning. Correspondence was sent from the seat of the bishopric to the seats of the ecclesiastical judicial counties, where vicars forane were responsible for resending the papers to every parish rector under their jurisdiction", according to Rodrigues (2015).

of absence themselves. This tradition would have been gradually transmuted from simple repetition of facts to legal rule, reaching independent Brazil as a "right" of the temporal power, as confirmed by the Resolution of 6 June 1827, which makes reference to an "imperial leave" *(licença imperial)*.[161]

As I have previously mentioned, the Marquis of Olinda emphasised that this right did not imply that the state wished to replace the episcopate in granting permissions. He explains that the *aviso* of 11 June 1863, the origin of the entire controversy, aimed precisely to restrict the leaves issued by presidents of province to the extraordinary and urgent cases in which the bishop could not be reached.

Certainly, the text of the *aviso* created room for broader interpretations. Moreover, the vocabulary commonly used to describe the role of the state in the control of ecclesiastical residence was not standardised. Legislation and doctrine adopted terms not perfectly equivalent, such as "imperial leave", "intervention of the government in the leaves" *(intervenção do governo nas licenças)*,[162] "presentation of the leaves granted by prelates" *(apresentação das licenças dadas pelos prelados)*.[163]

It was left open whether the right of the state referred to authorising absences or simply being informed of the absences authorised by bishops. The Marquis of Olinda put the former as the exception (supported by the *aviso* of 1863), and the latter as the rule. According to him, the state's right to information and supervision would be fulfilled if parish priests or ordinaries voluntarily communicated the permissions issued to the secular authorities. In the event that they were unable to do so, presidents of province would then be qualified to grant leaves, always seeking to communicate with the episcopate and considering their opinion fairly.

In the end, the Marquis of Olinda concedes that the *aviso* of 1863 could be used in bad faith by public agents and parish priests who wished to evade episcopal authority. But he still believed that this norm was suited to the needs of the country, and that it expressed a right of the state, which

161 This resolution comes from a decision of the Board of Conscience and Orders *(Mesa de Consciência e Ordens)*, which determined that a priest would not have right to *congrua* if his absence due to illness had only the approval of the diocesan ordinary, without the "imperial leave". The case referred to the vicar of the parish of Nossa Senhora d'Água Suja, in the Archbishopric of Salvador da Bahia. See Legislação Brazileira (1841 [1808–1831]) 45.

162 MRA, I, 258.

163 Annex G of MI (Br), Rel. 1863 (1863a), p. 4.

emerged from these needs. This discourse is of a clear jurisdictionalist hue: it blends royal prerogatives from the late *Ancien Régime* (e. g. right of inspection) and elements of modern administrative law, such as the supervision over the effectiveness of public services, the centralised control over the National Treasury, and the establishing of regulations regarding administrative procedure. In short, one may say that, in the either / or logic of D. Antonio de Macedo Costa, the Marquis of Olinda opposed a more flexible framework that would place the episcopate and the state as complementary in controlling the residence of the clergy. In the absence of one, the other would act. And one had always to be informed of the activity of the other. There was no place for absolute legislation.[164] Local need figured as the criterion allowing either the relativisation of the Council of Trent or the faithful observance of its provisions.

Similarly, episcopal residence also gave rise to acts of resistance of the clergy against the civil government. The example I will analyse was discussed at the Council of State, and led to both strong and mitigated resistance. A few years after the exchange of correspondence we just analysed, D. Sebastião Dias Laranjeira, Bishop of Rio Grande do Sul, who was absent from his diocese, informed the civil government on the subject with a note. The secular administration then turned to the Council of State to know if the prelate was allowed to leave his diocese without prior permission from the imperial government. This case, in other words, addressed once more the point left open in the previous example: was the state entitled to authorise the absences of the episcopate or did it simply need to be informed about them? What was the rule? The result, as we shall see, is different from the conclusion of the Marquis of Olinda about the residence of parish priests.

Councillors Viscount of Sapucaí and Bernardo de Souza Franco assembled on 2 June 1865 to deliberate.[165] They accepted the opinion of

164 "Se para cortarem os abusos por uma vez se estabelecerem sempre regras absolutas, hão de surgir tantos inconvenientes, hão de praticar-se tantas injustiças que o mal que aí há de resultar será muito maior que o que se quer evitar. É mister que as leis se acomodem às ocorrências dos tempos, as quais muitas vezes criam verdadeiras necessidades sociais: olvidá-las é cometer voluntariamente um grande erro em legislação. E sobre este objeto autoridade nenhuma nos oferece mais proveitoso exemplo de sabedoria do que a da Igreja", as in Annex G of MI (Br), Rel. 1863 (1863a), p. 5.

165 Consulta de 2 de junho de 1865, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 539, Pacote 3, Doc. 33.

consultant José Ignacio Silveira da Motta, alumnus of the Faculty of Law of São Paulo and senator of the province of Goiás. Silveira da Motta recognised the residence of bishops as a mixed duty: a canonical duty, by virtue of the distant Council of Sardica (347) and the Council of Trent (he expressly cited Session 6, *De residentia*, Chapter 1), but also a civil duty, as the bishop exercised jurisdiction with civil effects, received the *congrua* from the state, and was awarded civil honours. The diocesan residence would thus concern both spiritual and temporal interests; it would express the nature of the bishop as a "public servant of mixed status" *(empregado público de ordem mista)*, a status which he shared, moreover, with the parish priest. Considering these factors, Silveira da Motta defended that bishops were obliged to request permission from the civil government to be absent; otherwise they could face penalties such as loss of *congrua* or even loss of the diocese.[166] Curiously, Silveira da Motta mentioned the Council of Trent when justifying the economic nature of the punishment (that is, the loss of *congrua* decreed by the state was compared to the loss of part of the income prescribed by Session 6, *De residentia*, Chapter 1). The Tridentinum was also employed to explain the need of just cause to obtain a leave of absence from the state (Session 23, *De reformatione*, Canon 1 was not expressly cited, but the reasons listed are the same). In other words, the consultant drew criteria from canon law to structure an obligation that the higher clergy would have towards civil authorities. In the end, he pointed out that the Bishop of Rio Grande do Sul had made a mistake in not asking permission from the state, and that his communication contained vague motives ("interest of the diocese") or irrelevant ones ("domestic interest"). The councillors and the emperor agreed with the opinion, which later circulated widely among the imperial bishops, making it known that, to be lawfully absent from their dioceses, for any amount of time, the prelates had to request prior authorisation from the civil government, demonstrating a just (and Tridentine) cause.

Mitigated resistance to this provision came from the Bishop of Fortaleza, D. Luís Antonio dos Santos. On 25 April 1866, he wrote to the Marquis of

166 Silveira da Motta cites the Provision of 23 August 1824, which declared that the diocese of S. Luís do Maranhão was vacant due to the "unauthorised absence" (*ausência não licenciada*) of D. Joaquim de Nossa Senhora de Nazaré, as in Collecção das Decisões do Governo do Imperio do Brasil de 1824 (1886 [1824]) 121–122. This case, however, was *sui generis,* as the prelate had abandoned the country on grounds of being against the independence, and had been transferred to the diocese of Coimbra. See Peixoto d'Alencar (1864) 216.

Olinda, then Secretary of State for Imperial Affairs, stating that the consultant of the case of 1865 had interpreted the Session 23, *De reformatione*, Canon 1, of the Council of Trent in an excessively broad sense, extending its dispositions to situations clearly excluded by the Tridentinum. According to the Bishop of Fortaleza, the obligation of asking leave of absence from a superior, demonstrating just cause for absence, would only apply to periods of more than three months per year. For shorter periods, the bishop was allowed to leave his territory without authorisation and without formal justification, provided that the prelate proceeded for plausible reasons according to his conscience, and that he ensured that his flock of faithful would not be abandoned. To reinforce his argument, D. Luís Antonio dos Santos selected excerpts from Pope Benedict XIV's bulls (*Ubi primum*, 1740, and *Ad universae*, 1746), in which the pontiff, aware of the lack of formal control over absences of brief duration, exhorted the episcopate to use this prerogative for reasonable and equitable purposes, and, above all, for purposes that were justifiable before that judge "in whose eyes all things are evident". With this fragment, the Bishop of Fortaleza intended to stress that, within the three months allowed by the Tridentinum, the prelate was accountable only before God, not before ecclesiastical or temporal authorities. He also used jurists' quotations to show that short absences covered a greater variety of reasons. One striking fragment is from mid-18th century Italian canonist Lucio Ferraris, who argued that it would be licit for a bishop to use the three-month period even to "recreate his spirit", "*ex causa animum relaxandi*".

For all these reasons, the Bishop of Fortaleza asserted that the civil government could not rely on the Council of Trent to impose that leaves of absence be requested for any period and with demonstration of just cause. He resisted the intervention of the secular power in matters of residence in a mitigated way, as he implicitly accepted the civil, properly motivated leave for prelates absent for more than three months. In other words, D. Luís Antonio dos Santos established a specular relationship between the ecclesiastical and the civil leaves of absence, both informed by the Tridentinum, either directly or by analogy. He completed his exposition with a complaint about the "so clear and positive distrust" with which the secular power, by means of the obligatory civil leave, treated the "presently humiliated" episcopate; it was, according to him, an undeserved suspicion, considering that the "heavy and laborious" works of the prelates hardly allowed them to take advantage of the three months to which they were entitled. Long absences,

the bishop said, were not typical of the episcopate of independent Brazil; they were rather a feature of colonial times, when it was precisely the Portuguese monarchs who granted long leaves to the clergy. This criticism of jurisdictionalism (past – and also present) can be ascribed to the sympathies the Bishop of Fortaleza nurtured towards the ultramontane movement.[167] Such inclinations also caused him to voice regret about the references to the prelate as a public servant made by the opinion of 1865; but this particular point did not trouble him much, for he was already aware of the more moderate opinion of the Marquis of Olinda on the topic.

The Marquis of Olinda replied to D. Luís Antonio dos Santos on 3 July 1866. His intervention is a true watershed, because, until then, the discussion on the civil leave for bishops had been based on an amalgam of civil and canonical norms. This can be easily grasped from the uses of the Council of Trent in the discourses of the Council of State and the Bishop of Fortaleza. The Marquis of Olinda escapes this model by outlining a clear separation, in normative as well as jurisdictional terms, between the civil and the ecclesiastical leave of absence. In other words, the marquis held that ecclesiastical leave was regulated by canon law, and civil leave by civil law. If, when approaching the civil leave, the Council of State had mentioned the Council of Trent, this was not for normative, but rhetorical reasons, that is, "to provide the appropriate development to the matter". Questions of civil leave had to be determined according to civil law, represented by the relevant imperial *avisos* and resolutions (including the one that, on 2 October 1865, confirmed the opinion issued by the Council of State on 2 June of the same year). And civil law ordered bishops to request permission from the secular power for any period of absence. Exceptions were possible in extreme cases, provided that local authorities were notified and such exceptions were later justified. Regarding the ultramontane complaint that such measures "humiliated" the episcopate, the marquis countered these with a discourse that mingled liberal and jurisdictional *topoi*: on one hand, he emphasized the universal nature of civil law, that is, its characteristic of binding "equally all classes of society, each in the sphere of functions that concerns it"; on the other, he recalled that prelates were subject to the inspection of the emperor in his role of "external bishop". But equality before the law did not imply

167 Santirocchi (2015b) 208 classifies D. Luís Antonio as one of the main ultramontane bishops in the Second Reign.

equality of status between bishops and public servants. What existed, according to the Marquis of Olinda, who always tended towards moderate solutions, was a sharing of some rules between the two groups; among these common rules were those related to the leave of absence.

In general, the discourse of the Marquis of Olinda on the residence of the episcopate featured a very different tone from that of three years before about the residence of parish priests. For parish priests, the civil leave was deemed exceptional, a complementary mechanism to the ecclesiastical leave, to be used only when the latter, due to urgency, could not be obtained. The communication of the absence, not the granting of the leave, appeared to be essential for the state. Regarding bishops, the reasoning was quite different. Communication was insufficient. Civil leave was the rule, and was not linked in any way to ecclesiastical leave; the Council of Trent was at most a rhetorical support, without normative force for the state's purposes. Both leaves were perfectly parallel, that is, they belonged to completely independent jurisdictions and, above all, legislations. Comparing the two situations, parochial and episcopal, a flexible logic based on the complementarity of the actions of the clergy and the civil government gave way to a convention founded on the strict separation of duties and competences over these duties. From the words of the Marquis of Olinda one may glimpse, then, how control over the residence of the higher clergy was a crucial matter for the state.[168]

The marquis would find a fervent opponent in D. Antonio de Macedo Costa, who, shortly thereafter, would express strong resistance to the state reasoning in a series of texts published in *O Apóstolo*, a Catholic newspaper

168 At the same period, the French state also exercised control over the residence of the prelates. Basdevant-Gaudemet (2019) connects this measure to the civil government's objective of preventing bishops from assembling in provincial councils. In Brazil, arguments were more varied; they referred mostly to the *congrua*, the defense of the state religion etc. But the emperor was not pleased by the idea that bishops could organise an episcopal conference. In this context, see the report of a colloquy held between Internuncio Mario Mocenni and D. Pedro II in 1882: L'Internunzio Apostolico Mocenni riferisce sul colloquio avuto con l'Imperatore, al quale espose la necessità di attuare una Conferenza dei Vescovi Brasiliani per prendere e fissare norme generali intorno ai seminari, alla educazione del Clero, nonché estirpare o modificare la piaga del concubinato nel Clero e nel popolo, sulle dispense matrimoniale etc. (1882), in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 216, Fasc. 12.

circulating in Rio de Janeiro. In these writings, the Bishop of Belém do Pará demonstrates radical adherence to the normative convention of exclusion.

Addressing the opinion of the Council of State, he rejects the notion that bishops were public servants of mixed status, and also that the obligation of residence had a hybrid character, in view of the divine foundations of the episcopal ministry. Again resorting to the words of D. Romualdo Seixas, D. Antonio de Macedo states that only metropolitans and the pope were competent to grant permissions and to decide on the absences of diocesan ordinaries. This was, in his words, "the true doctrine", "the doctrine of the Council of Trent; […] of the Supreme Pontiffs […] of all Bishops of the Catholic world".[169] In his discourse, the Tridentinum (whose dispositions are quoted in detail) was strongly connected to the idea of the Universal Church, with the pope at its apex.

But it is when he challenges the Marquis of Olinda that D. Antonio de Macedo displays his either/or logic to its full extent. He deems useless the marquis's justification of the civil government's characterisation of bishops as public servants as a "confusion of language", because the actual confusion was not restricted to discourse: it was embedded in the "reality of things". The "reality" which Bishop Antonio de Macedo alludes to is connected to the state production of legal norms for the government of the Church, and also to the interpretations of canon law issued by secular institutions (such as the Council of State).[170] The Bishop of Belém do Pará rejects both types of state participation in the life of the Church.

In terms of normative convention, this means that, in his reasoning, there was no space for amalgam, either in interpretation (i. e. the state could not legitimately interpret norms of canon law), or in the creation of norms (i. e. the state could not legitimately create norms affecting the Church). The patronage system is conveniently absent from this discourse, as its hybridity

169 O Apostolo 22 (1867) 171.

170 "[…] do que serve, dizemos, proclamar bem alto o governo esta verdade [que o bispo desempenha cargo puramente religioso, espiritual etc.], se de fato e na realidade procede como se os bispos fossem também empregados civis, como se o episcopado fosse um cargo meio religioso, meio civil, regido no desempenho de suas funções ao mesmo tempo pelos cânones da Igreja, e por avisos dos magistrados seculares; recebendo a direção e a lei do Sumo Pontífice tanto quanto do Conselho de Estado, que se julga investido de poderes para explicar aos bispos os cânones disciplinares do Concílio Tridentino e decidir de plano e sem apelo […]", as in O Apostolo 22 (1867) 172.

and uncertainty could open uncontrollable breaches – of normative creation and interpretation – for the secular power. D. Antonio de Macedo also had in mind something more radical than the convention of interpretative separation, for separation would still allow the state room to maneuver in the field of ecclesiastical civil law. What the prelate aimed at, like other ultramontanists, was "the liberty and independence of the Church in the exercise of its spiritual functions".[171] But such liberty, in his opinion (which was not unanimous among ultramontanists), could only be achieved according to a logic of interpretative exclusion and creative separation. In other words: bishops would be subject to canon law and the pontiff, and public servants would be under state regulations and the civil government.[172] In this act of strong resistance, there was no place for mixture, not even for analogy.

A demonstration of the episcopate's resistance to the civil control of the obligation of residence would come to the knowledge of the Apostolic See in the same decade, by means of the Internunciature in Brazil. In a letter of 4 June 1866, the Bishop of Olinda, D. Manoel do Rego Medeiros, a few months after assuming his diocese, presented to Internuncio Domenico Sanguigni two situations in which he refused (or intended to refuse) to ask the civil power's permission to leave Olinda.[173]

The first one refers to a past event. Anticipating the advice of the internuncio, the bishop had written to the imperial government to express his desire to present in person his "recognition and respectful veneration" to the emperor, who had appointed him the year before. Such homage was customary for the newly installed ordinaries. However, the reply of the Marquis de Olinda (then head of cabinet), though apparently trivial, greatly upset the bishop. The marquis said the emperor granted him permission to travel to Rio de Janeiro. "This is the reason why I did not go …", declared the bishop to the internuncio, clearly showing that he did not want to depend on the temporal power to move between his diocese and other places.

The second situation refers to a future event, the consecration of the Bishop of Goiás, D. Joaquim Gonçalves de Azevedo, to which the Bishop

171 O Apostolo 23 (1867) 181.

172 O Apostolo 21 (1867) 164.

173 Letter of 4 June 1866 from D. Manoel do Rego Medeiros, Bishop of Olinda, to Domenico Sanguigni, Apostolic Internuncio in Brazil, on whether he should ask permission from the civil government to be absent from his diocese, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 193, f. 4r–v.

of Olinda had been invited. Although asking for the prudent opinion of the internuncio on the matter, D. Manoel do Rego Medeiros had no intention to request permission from the civil government to travel. While stating so, he relied heavily on the Council of Trent: "I am quite convinced that, to leave the diocese each year for three months, the leave which the Tridentine Council allows me is sufficient." The reference was to the short absences regulated by Session 23, *De reformatione*, Canon 1. To reinforce his argument, the Bishop of Olinda stated that, once aware of the opinion of the Council of State we analysed above, he had consulted other Brazilian ordinaries on the episcopate's alleged obligation to request civil leaves. The Bishops of Pará, Goiás, Fortaleza, and Rio Grande do Sul, all of whom were ultramontanists, thought the same as D. Manoel do Rego Medeiros: that the civil government had nothing to do with the episcopal residence, and that the bishops were not public servants. Thus, one may well infer that the Bishop of Olinda sought to establish a strong resistance to the temporal authorities, adopting an exclusionary, either/or logic: only the Tridentinum should regulate residence, which, in turn, should remain a matter exclusive to the ecclesiastical sphere.

Other letters sent to the Internunciature in Brazil demonstrate, however, that the sympathy of the higher clergy for ultramontane ideas did not necessarily mean an ostensive resistance to the imperial control over residence. Some bishops, despite their ideological tendencies, acted in accordance with civil legislation, without major complaints. This is the case of D. Joaquim Gonçalves de Azevedo, Bishop of Goiás, who, in a letter of 1 December 1868, informed Internuncio Sanguigni that he would be absent from his diocese for four months, in order to accompany ordinands from Belém do Pará and Goiás to France, where they would complete their studies.[174] This prelate, who, a little more than a year earlier, had agreed with the Bishop of Olinda on the illegitimacy of the state to regulate the episcopal residence, then informed, in a rather incidental tone, that he had addressed the emperor asking permission to be absent. He turned to the internuncio to inquire if he would need a similar permission from the Apostolic See, as he was particularly concerned with being away during Lent. Curiously enough, his dis-

174 Letter of 1 December 1868 from D. Joaquim Gonçalves de Azevedo, Bishop of Goiás, to Domenico Sanguigni, Apostolic Internuncio in Brazil, informing about his absence from the diocese, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 194, f. 72r.

course conveyed more familiarity with the state legislation (he cites, for example, the placet) than with the *novissimum* canon law or with the uses consolidated in Brazilian dioceses. In any case, the Bishop of Goiás ended the letter apologising and asking to be considered "observant of all and any disposition that had the purpose of displaying the Bishop's [of Goiás] proximity with the Supreme Pontiff", in accordance with ultramontane *topoi*. That D. Joaquim Gonçalves de Azevedo did not show any resistance to the civil leave on this occasion prompts the hypothesis that it would be acceptable to yield to the state control in order to ensure the realisation of higher or more pressing projects (such as promoting the education of Brazilian ordinands in European centres of consolidated ultramontanism, as the Seminary of Saint-Sulpice, in Paris). In short, it seems to be the case of tolerating a "small evil" for the sake of a greater good.

But the participation of the state in the regulation and supervision of the ecclesiastical residence did not only lead to resistance or tolerance on the part of the higher clergy, as if the governance of the Church always unfolded in the imminence of conflict. There were also moments of convergence, as will be seen in the next section.

3.3.2 Not everything is resistance. The Council of Trent as a flexible resource in the convergence of councillors, bishops, and cardinals for the governance of cathedral chapters

The Council of Trent regulates the residence of canons *(cônegos)* of cathedral and collegiate churches in Session 24, *De reformatione*, Canon 12. It established that priests who held dignities, canonicates, prebends *(prebendas)*, and portions *(porções)* could be absent for a maximum of three months per year, unless the diocesan constitutions fixed a longer period of service (and, consequently, a shorter time of absence). Some of the first statutes of cathedral chapters in Brazil – which dated back to the 18th century and, in some cases, remained valid until the 19th – relativised these temporal limits, allowing the canons up to a hundred days of absence per year. This was the case of the statutes of Salvador da Bahia (1754 [Statute n. 8]), Mariana (1759 [Statute n. 10]), and Olinda (1728 [Statute n. 10]), which relied on "immemorial custom", common to the dioceses of the Kingdom of Portugal,[175] put into

175 "Estatuto 8", in Estatutos da Sancta Sé da Bahia (1754).

practice "under the gaze of the nuncios", and tolerated by the Apostolic See.[176] The statutes that emerged in independent Brazil, such as those of São Paulo (1838 [Article 127]) and Rio Grande do Sul (1863/64 [Article 133]), adhered to the ninety-day interval established by the Tridentinum, leaving the colonial legacy behind.

However, for the bishops of the empire, the problem was not so much the standard duration of the absence of canons, but the need to control the flow of active and inactive capitulars, so as to avoid that the divine office and certain administrative activities (e. g. the convening of the chapter for voting on the appointments of examiners and judges, performed by the bishop) were hampered by lack of personnel. Could a bishop require his canons to ask permission to be absent? The Council of Trent, in its specific provisions on the residence of canons, did not provide answers. In contrast to what was stipulated for those holding benefices with cure of souls, nothing was said about a canon's obligation to request leave from his respective prelate.

But the Congregation of the Council, shortly after the Tridentinum was promulgated, cast some light on this. In a response to the diocese of Ávila in 1581, it decided that absences within the ninety-day period would not require permission from the prelate, as long as they did not entail abandonment of the service due to the Church. Periods that exceeded the quota allowed by the Tridentinum should always be subject to the bishop's discretion.[177] The prelate's authorisation was also necessary, in any case, when the canon wished to leave the diocesan territory.[178] These resolutions were

176 "Estatutos da Santa Sé da Cidade de Mariana" (1759), in Boschi (ed.) (2011 [1745–1820]) 157.

177 "An dignitates, canonici, portionarii, cantores aut alii officiales possint abesse a servitio ecclesiae sine licentia episcopi? S. C. censuit, non requiri licentiam episcopi, quando dignitates, canonici aut portionarii abesse volunt tempore ipsis a Concilio permisso, non tamen simul abesse possit, ne ecclesia suo debito servitio destituatur. Quota autem pars simul abesse possit, relinqui arbitrio episcopi. *Abulen.* 1581", as in Canones et decreta Concilii Tridentini (1859 [1545–1563]) 357.

178 "S. C., tametsi declaraverit, nullam requiri licentiam ad hoc, ut canonici abesse possint in mensibus a Concilio permissis, censuit tamen, hanc declarationem non vindicare sibi locum, quoties canonici abesse volunt *extra dioecesim*, ac proinde hoc casu episcopi licentiam esse obtinendam; ceterum episcopum non debere illam absque rationabili causa denegare. *Iadren*. 9 Maii 1626, *Acerrarum* 23 Aug. 1727 ad I., *Castrimaris* 4 Maii 1737 ad II", as in Canones et decreta Concilii Tridentini (1859 [1545–1563]) 358.

quoted by canonists with whom Brazilian bishops were acquainted, such as Pope Benedict XIV and Dominique Bouix.[179] They were also attached to Session 24, *De reformatione*, Canon 12, of the 1859 Neapolitan edition of the Council of Trent, updated with decisions from the dicastery; this edition was known to at least part of the higher clergy of Brazil.[180]

For some bishops of the empire, however, the canonical norms cited were, apparently, not enough. This was the case of the Bishop of Rio Grande do Sul, D. Sebastião Dias Laranjeira, who, somewhat surprisingly, appealed to the Council of State in the 1860s, seeking for more answers.[181] I said earlier that the norms cited were seemingly insufficient from his point of view, but perhaps another formulation would be more appropriate: D. Sebastião assumed that, in general, canonical norms had already granted him full control over the residence of canons. He claimed so even in spite of the silence of the Tridentinum and the delimitation posed by the Congregation of the Council. His question to the Council of State was then whether the country's capitulars held any particular privilege which, exempting them from the normative framework presupposed by the bishop, authorised them to be absent from cathedrals without episcopal permission, for periods within and beyond the "ninety days of statute".

The concern of the Bishop of Rio Grande do Sul had a concrete, and also economic, background. At the same time that he complained of canons who were absent "whenever it seemed to suit them", even away from the capital, without leave or at least communication of the motives, the prelate wished to know what would befall the remuneration that corresponded to these canons for the recitation of the divine office (i. e. the daily distributions), whether it would be shared among the other capitulars or whether it would be withheld in the provincial treasury.

D. Sebastião was not the first bishop complaining about his chapter, nor would he be the last. Frictions between the two categories are the object of a growing historiography. Although with important exceptions, canons are

179 I refer to the *Tractatus de Capitulis* (1852), by Dominique Bouix, and the *Institutiones Ecclesiasticae* (1747), by Pope Benedict XIV, cited by Bouix.

180 In Chapter 3.2, I observed that this edition of the Council of Trent was used by the Cathedral Chapter of the Archbishopric of Salvador da Bahia in the 1870s.

181 Consulta de 8 de novembro de 1864, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 1 (1869) 113–115.

often represented as a group that resists the attempts of prelates to lead disciplinary reforms. This is the case of the cathedral chapters that react against the implementation of the Council of Trent during the early modern period.[182] It is also the case of old capitulars from independent Brazil who, accustomed to jurisdictional and liberal discourses, and sometimes associated with Freemasonry, came into ideological – and also generational – clashes with the young bishops who had studied in the European cradles of ultramontanism (in Rome, Paris, etc.). Several conflicts between bishops and canons fell into the hands of the Council of State during the Second Reign.[183] Even though not much detail was given regarding the cathedral chapter's ideological background, the case of D. Sebastião indicates the difficulty of the (strongly ultramontane) prelate in disciplining his canons.[184]

But, unlike the cases we saw in the previous section, then the temporal power would act in full convergence with the requests of the bishop. On 8 November 1864, councillors Marquis of Olinda, Viscount of Sapucaí, and Bernardo de Souza Franco supported the prelate's claim that an episcopal permission was obligatory for absent canons, regardless of period and place where they wished to go. This was "what all ecclesiastical laws determined". The opinion was based on a very pragmatic argument that combined elements of canon law, temporal law, and above all, custom. According to the councillors, it was customary that cathedrals possessed an authority whom the canons could inform about their absences, and even about their use of the three months granted by the Tridentinum and the statutes. For the councillors, communication was fundamental to ensure the performance of daily divine exercises and the solemnity of the cathedral celebrations, both the usual and the extraordinary. Necessity and custom favoured the bishop's right to be informed of the reasons for absence and to authorise it. The Council of State's consultant also noted that prelates could rely on their institutional articulations with secular organs in order to punish absent canons with the loss of the full *congrua*, not only of the portion of the daily

182 For instance, Silva (2012).

183 Such conflicts are observed in the diocese of Olinda, for example. There, Dean Joaquim Francisco de Faria, of jurisdictionalist disposition, clashed with at least two young ultramontane bishops, D. Manoel do Rego Medeiros and D. Vital Maria Gonçalves de Oliveira, having been suspended by the latter. I explore these cases in Chapter 3.6.

184 On the disciplinary measures (e. g. suspensions) that D. Sebastião imposed on the canons of his diocese see Santos (2019) 101.

distributions: "the treasuries do not pay the *congruae* without a certificate from the diocesan [prelates]". I will come back to this later.

In general, the Council of State, in recognising the obligation of canons to request leaves of absence from the bishop, "completed" the provisions of the Council of Trent in its own way – and a way that fulfilled the wishes of ultramontane bishops. But the Tridentinum was not only meant to be "completed". The Council of State's consultant also resorted to it when claiming that the leave of three months was not a "legitimate impediment" for the canons to skip pontifical masses. A "legitimate impediment", he continued, was defined by the Council of Trent, with the words "*infirmitas, seu justa et corporalis necessitas, aut evidens ecclesiae utilitas*".

The consultant actually required of the reader a more complex exercise in intertextuality, for such words did not belong to the Tridentinum, but to a text referenced in Session 24, *De reformatione*, Canon 12, more precisely the decree *Consuetudinem* of Pope Boniface VIII, compiled in the *Liber Sextus*. In this text, the pontiff established who would be the canons included and excluded from the daily distributions, considering included those who, despite being absent, were under some of the circumstances we listed. The absentees without right to distributions would still earn the *prebenda*, the main income of the benefice.

The consultant's discourse, endorsed by the Council of State, took this intertextual fragment from the Council of Trent, which referred specifically to the economy of the divine office, and employed it in a broader context, binding it to more serious consequences. The just causes of the decree *Consuetudinem*, originally meant to determine whether absent canons would be included in daily distributions, were reinterpreted as criteria for the bishop to grant leaves of absence to his capitulars, even for the three months allowed by the Tridentinum and the statutes. If the prelate perceived the lack of the criteria of illness or utility to the Church, the absent canon, considered as "not on leave", could lose not only the distributions (which would be reverted to the other capitulars), but also the *prebenda* (which would remain in the public coffers).

The state supported the Bishop of Rio Grande do Sul in the formulation of radical solutions. In imposing that bishops had to grant permissions for a canon's three months of absence per year, the Council of State diverged from universal and local traditions of canon law. I have already mentioned the decision of the Congregation of the Council of 1581; but some remote and

recent diocesan statutes, besides not indicating the necessity of leave of absence in this case, established that "the canons on statute days"[185] should be considered present for the purpose of receiving daily distributions, as well as those absent due to illness or utility to the Church.[186] They were thus safe from any attempt to deprive them of full remuneration.

This example shows that, by means of a somewhat heterodox interpretation of the Council of Trent, a reasonable convergence was established between the episcopate and the state with regard to the governance of the cathedral chapter. Such convergence was anchored in a convention of amalgam; after all, the secular power offered the bishop its interpretation of canon law. In the following decades, the episcopate would bring its strategies for regulating the residence of canons to the attention of the Apostolic See. In other words, the convergence with the state would give way to the convergence with Rome, by means of more stable interactions, with a distinctly administrative, rational, and predictable tone. For example, from 1879 onwards, the Bishop of Maranhão, D. Antonio Candido Alvarenga, would regularly send petitions for faculties to dispense his canons from residence and divine office to the Congregation of the Council; such requests were always met with approval, provided the officiating of the choir was preserved.[187] The Council of Trent appears once again as a flexible resource, as its dispositions are subject to dispensation. The dicastery also gave signs of privileging the figure of the bishop in the granting of such

185 That is, the canons spending the three months of absence allowed by the Council of Trent and the statutes.

186 The cathedral statutes of Mariana (1759 [Statute n. 13]) and São Paulo (1838 [Art. 124]) granted daily distributions to the canons on leave, according to Boschi (ed.) (2011 [1745–1820]) 163, and Lei n. 23 de 30 de março de 1838 (Brasil) (1838). Bouix (1852) 363, following Pope Benedict XIV, affirmed that capitulars in this situation received only the fruits of the prebend, not the distributions.

187 S. Ludovici de Maragnano in Brasilia – Ep.us circa facultatem dispensandi a residentia et choro canonicos et benef. suae cathedralis addictos servitio Dioecesis, in: AAV, Congr. Concilio, Libri Decret., 222, 1879, p. 838; S. Ludovici de Maragnano. Ep.us petit prorogationem facultatis dispensandi cum Canonicis et Benef. Cath. super obligatione residentiae, in: AAV, Congr. Concilio, Libri Decret., 226, 1883, p. 98; S. Ludovici de Maragnano – Ep.us petit prorogationem facultatis exonerandi chorales Cathedralis a lege residentiae, in: AAV, Congr. Concilio, Libri Decret., 229, 1886, p. 325; and S. Ludovici de Maragnano – Ep.us circa facultatem dispensandi Can.cos et Beneficiatos Cathedralis a choro et residentia, in: AAV, Congr. Concilio, Libri Decret., 232, 1889, p. 284.

prerogatives, as can be seen from its negative answer to a similar petition from the Chapter of Olinda, on behalf of the vicar capitular.[188] The vicar himself had to reiterate the request, so as to receive a positive reply.[189]

As these petitions and responses are simple and repetitive, they may convey the impression of having little analytical potential. However, from the wider panorama of the governance of the Church, and considering the recurrence of *positiones* to Rome and the decreasing of ecclesiastical consultations with the Council of State between the 1870s and 1880s, one can conclude that the convention of separation – creative and interpretative – spread beyond polemics and political negotiation, becoming more and more present in ecclesiastical praxis. The empire and the Church were loosening their institutional ties, and there were fewer and fewer situations in which the two institutions resolved (or intensified) problems together. At the same time, the bishops consolidated a situation of administrative stability with the Holy See, with the constant sending of petitions – most of them on gracious matters – on the part of some dioceses at the end of the empire. The Brazilian Church was moving towards a conformation less dependent on the civil government, and closer to the ultramontane ideal of autonomy.

In concluding this section, I can state that the cases analysed are evocative of the Council of Trent's remarkable plasticity, of the adaptation and readjustment of its provisions to situations of conflict and cooperation, resistance and convergence among the state, the Holy See, and the episcopate. The higher clergy was a central actor in the production of different interpretations of the Tridentinum, seeking, in ways more or less adherent to the words of the council (and of its interpreters), to guarantee the autonomy of the episcopate and the solidity of the diocesan government.

188 Olinden, in: AAV, Congr. Concilio, Positiones, "die 23 Augusti 1879, Lit. D ad P, I. Verga Secret.", ff. 1r–2v. The questions were: "1. An Capitulum Cathedralis Ecclesiae, sede vacante, cum suo Vicario Capitulari super chori residentia valeat dispensare? 2. An ipse Vicarius Capitularis, vi capitis 12 Concilii Tridentini Sessione XXIV de Reformatione, alios duos Canonicos ab eadem chori residentia pro servitio Ecclesiae dispensare queat?". The congregation's answer was: "Ad I. et II. negative".

189 Olinden, in: AAV, Congr. Concilio, Positiones, "die 20 Martii 1880, Lit. L ad O, I. Verga Secret.", ff. 1r–3v. The vicar capitular asked: "Quod si Sanctitati Vestrae negative respondendum videbitur, a Beatitudine Vestra idem Vicarius Capitularis vehementer petit, ut cum ipso super chori residentia, Sede Vacante, dispensare dignetur, cum jure fructus beneficii percipiendi, attenta oratoris aetate sexaginta et novem annorum atque evidenti necessitate satisfaciendi quotidianis negotiis hujus amplae Dioecesis". The dicastery answered "pro gratia".

As seen, in order to avoid that their mobility depended on civil leaves, the bishops raised arguments that adhered closely to the terms of the Council of Trent: in his mitigated resistance, D. Luís, Bishop of Fortaleza, argued that the Tridentinum partially excluded the civil leave, as its dispositions did not demand authorisation for brief absences; in his strong resistance, D. Antonio, Bishop of Belém do Pará, suggested that the Tridentinum excluded the civil leave entirely, as it was the main regulation on episcopal residence and contained no mention of the state's competence to grant leaves of absence to prelates. In both cases, the Council of Trent was used to reinforce the autonomy of bishops vis-à-vis the state. A similar operation ensued in relation to the obligation of residence of parish priests. A weapon in the hands of prelates, the Council of Trent was opposed to the standards of modern secular administration that the state sought to implement in the ecclesiastical sphere.

But the group that resisted to the state could also form alliances with it. To better control the cathedral chapter, and thus strengthen discipline and the diocesan government, D. Sebastião, Bishop of Rio Grande do Sul, petitioned to the Council of State implying that canon law was in his favour. In this way, he induced the councillors, by backing his request, to add elements to the Tridentinum and make its terms more flexible. In other words, the bishops did not want to be administered by the state, but resorted to its force to organize those they administered.

Not all bishops, however, were satisfied with the outcome of the case of D. Sebastião. D. Antonio de Macedo Costa vehemently criticised this event (among many others) in the press, claiming that the state should not rule on an issue that, in his eyes, was under the exclusive discretion of the clergy.[190] In such cases, it is clear enough that the supporters of ultramontanism were not monolithic in their view of the relationship that state and Church should cultivate. What some interpreted as the state's "invasion", others regarded as "instrumentality", and even "cooperation" of the state in ecclesiastical affairs. Moreover, the normative conventions underlying the prelates' discourses were not uniform either: while D. Antonio championed a convention of exclusion, which depicted the state as illegitimately governing the Church by means of secular norms, and illegitimately inter-

190 O Apostolo 25 (1867) 194–195.

preting the Council of Trent, D. Luís and D. Sebastião displayed signs of the convention of amalgam, according to which it was possible to discuss and even negotiate interpretations of canon law with state bureaucrats.

My analysis of the obligation of residence discloses two main conclusions. The first is about the plastic character of the Council of Trent. Its dispositions on residence played several roles. They served as model for a civil obligation, as weapon of resistance for the episcopate, as rhetorical support for state bureaucrats, and as a flexible resource for (expected and unexpected) convergences. Its adaptation to different functions is proof of how deeply embedded this normative set was in ordinary administrative practices.

Was there any logic behind these changes of its role? With regard to the interactions between the state and the episcopate, I would not rely on a chronological explanation, as all variations are present in the same decade, the 1860s. I think changes depended largely on the extent to which the autonomy of bishops was involved. In cases regarding episcopal residence, the Council of Trent assumed more roles at a time, most likely because in these cases the discord between ecclesiastical and civil obligation was more apparent. Bishops had a strong urge to pose alternatives, and the state was not much inclined to negotiate or to mitigate its prerogatives of control (as was the case with the residence of parish priests); thus the uses of the Tridentinum multiplied. A chronological explanation, in turn, makes sense with regard to the governance of the capitulars' residence, as the Tridentinum shifted from a flexible resource in the hands of the state in the 1860s to a dispensable object in the hands of the Holy See in the 1870s and 1880s. This change follows the overall disenchantment of prelates with the Council of State and their growing urge to turn to the Apostolic See.

My second conclusion refers to the dichotomy between ultramontanists and jurisdictionalists. Analysing the actors' positions and, above all, their normative conventions, we found that partisans of each camp were not necessarily always in friction, and that a plurality of courses of action was contained within each of these labels. The resistance of ultramontane prelates assumed both stronger and more mitigated forms. Some bishops were open to negotiate with state bureaucrats, and some even to yield to state measures for the sake of achieving more relevant objectives. And jurisdictionalist authorities were divided among those who believed that clergymen were public servants, and those, ultimately dominant, who believed

they only had obligations in common. In a few words, what we observe is that ultramontanism and jurisdictionalism, through the lens of legal practices, were in fact ultramontanisms and jurisdictionalisms.

3.4 Precarious belonging, strong duties. The Council of Trent and the forging of openings and restrictions for foreign priests in 19th-century Brazil[191]

Addressing the role of the Council of Trent in the governance of the foreign clergy is a different challenge compared to the previous topics. Mass immigration, as initiated in the mid-19th century, was as much a new phenomenon for the Brazilian Church as for the Council of State and the Roman Curia. The flows of people coming from Europe to the Empire of Brazil were much more intense than in colonial times. This was not only because population contingents in general were larger. Driven by the need for manpower to gradually replace slaves, and taking advantage of the political and economic crises in Europe, the Brazilian civil government, along with private associations, established a series of incentives for immigrants from areas considered "civilised". This attracted men, women, families[192] and also clergymen[193] who would now find not only options for missionary work in Brazil – although those were still abundant – but also dioceses with stable structures and many vacant parishes.

While it created new opportunities, this scenario also gave rise to new problems. Restricting my exposition to matters of canon law, I could mention, with regard to the laity, the problem of immigrants who were simultaneously married to people on both sides of the Atlantic, that is,

191 A modified version of this section was published in Portuguese in Lehmann Martins (2023).

192 Most populations migrating to Brazil in the 19th century, besides Portugal, came from Italy and Germany and went mainly to the southeastern and southern areas of the country. For more on the migratory dynamics during the Second Reign, see Serrão (1980), Willems (1980), Alvim (1999), Giron / Herédia (2007), and Gregory (2013).

193 On the migration of secular and regular clergymen from Europe to Brazil between the 19th and 20th centuries, see Sanfilippo (2012), Turcatti (2013), and Ramos Vieira (2016) 263–300 (on foreign religious orders and congregations). Brazil was not the only attractive destination for the migrant clergy. Hispanic America also received large numbers of priests coming from Europe, according to Álvarez Gila (2001) and Gallardo (2016).

bigamy.[194] Concerning the foreign clergy, the major difficulty was their insertion in a new institutional context. Due to the rights of patronage, and also to the liberal narrative of defense of the national sovereignty, the state found itself in need of creating rules on the priests' reception and establishing specific administrative practices. A similar regulatory necessity existed for the Holy See, but for reasons of disciplinary matters, which obliged it to exercise greater control over the entry and exit of clergymen. As we shall see, the Council of Trent was an important resource in this scenario of flourishing normative creation. Its provisions went through different metamorphoses, some more inclined towards amalgamation with state norms, others pointing to processes of reinvention within canon law itself. In any case, the analysis of the uses of the Tridentinum brings to light how precarious the situation of the foreign priests was in terms of belonging (to a country – and, above all, to a diocese), and also reveals that what anchored the migrant clergy in this sea of uncertainties were notions of duty.

3.4.1 The perspective of the state. The migrant priest as a foreigner with the obligations of the citizen priest. The Council of Trent as a bridge between ecclesiastical and civil duties

Understanding how the Empire of Brazil addressed "foreignness" inevitably involves becoming acquainted with its views on citizenship, even more so when the subject is the clergy. Due to the rights of *padroado*, the governance of the Catholic Church in Brazilian territory was (also) a matter of state – and, I would add, a national matter. A combination of liberal and jurisdictionalist ideas – deeply embedded in the Constitution of the Empire (1824) and in a number of secular laws and administrative decisions – established that governing the Church should under no circumstances represent a risk

194 In a letter of 3 December 1886, Internuncio Rocco Cocchia informed the Holy See of the growth of poligamy among Italian migrants in Brazil; see L'Internunzio Apostolico Cocchia riferisce sulla poligamia tra gli emigrati italiani in Brasile (1886), in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 260, Fasc. 18, ff. 49r–50r. On 19 February 1887, the Apostolic See sent instructions to the Brazilian bishops on how to inspect the marital status of European migrants who wished to marry in the empire; see Circolare di 19 Febbraio 1887 ai Vescovi del Brasile con norme per provare lo stato libero degli emigrati europei che chiedono di contrarre matrimonio in Brasile, onde evitare la poligamia, in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 263, Fasc. 19, ff. 9r–18r.

to national sovereignty, and that priests, while sharing some of the characteristics of public servants (when not equaling them), had to be Brazilian citizens. This rather nationalist narrative was frequent among political and intellectual circles from the first decades of the empire.

A fitting example may be found in the session of the Brazilian Chamber of Deputies of 12 July 1827. At the time, Brazil had been independent for less than five years. In this session, the congressmen discussed whether or not to permit the enforcement of the bull of Pope Leo XII on the creation of the dioceses of Cuiabá and Goiás. The majority of the Chamber stood against it, claiming that, by nominating foreign apostolic vicars to administer the novel dioceses during *sede vacante*, Pope Leo had violated the rights of patronage of the Emperor of Brazil. The intervention of Deputy Raimundo José da Cunha Mattos is representative of the depiction of foreign agents and trends as a serious threat to the Brazilian Church and the nation's sovereignty:

> As to the nomination of foreigners [the apostolic vicars appointed by the pope], Mr. President, as long as I am a deputy of the Brazilian nation, I shall oppose with all my strength the presence of foreign bishops in our territory, especially Italians. Out with them! Let them be patriarchs in Rome! No Jesuitism, no ultramontane mottos in the churches of Brazil. Foreign bishops shall never cease to be vassals of the pope, even if they declare themselves to be subjects of Brazil. If our young people are handed over to these bishops, they shall become infected with ultramontane ideas. They shall say that the pope is superior to kings, that he may depose them and lift the oath of fidelity sworn by the people. Foreign bishops and Jesuits, [we want] none at all.[195]

Cunha Mattos' speech enjoyed the House's general approval. In the end, Pope Leo's bull was approved only with regard to the creation of the dioceses.[196] This example shows that, from the point of view of the state, governing the Brazilian Church meant controlling two types of foreignness:

195 The original quote is: "Quanto à nomeação de estrangeiros, Sr. Presidente, hei de opor-me com todas as minhas forças, enquanto for deputado da nação brasileira, a que haja no nosso território bispos estrangeiros, principalmente italianos. Fora com eles! Vão ser patriarcas lá em Roma; nada de jesuitismo, nada de máximas ultramontanas nas igrejas do Brasil. Os bispos estrangeiros não deixarão de ser vassalos do papa, ainda que declarem que são súditos o Brasil. Se a nossa mocidade for entregue a estes bispos, fica infeccionada de ideias ultramontanas; eles dirão que o papa é superior aos reis, que os pode depor e levantar o juramento de fidelidade prestado pelos povos. Bispos estrangeiros e jesuítas nem um só", as in Annaes do Parlamento Brazileiro (1875 [1827]) 136.

196 The bull's approval gave way to the Act *(Lei)* of 3 November 1827, which created the dioceses of Goiás and Cuiabá.

on one side, foreign priests, in particular Italians, Jesuits, and ultramontanists; on the other side, a foreign institution – or rather, a foreign sovereign power, the Holy See, with the pope at its head. In fact, as is typical in discourses of liberal and jurisdictional tone, Cunha Mattos' intervention conveyed the idea that the first type of foreignness was strongly connected to the second: it deemed foreign priests (in particular: Italians, Jesuits, and ultramontanists) loyal to Rome in an almost automatic fashion.

In order to protect the Brazilian Church from these two forms of otherness, political representatives and state bureaucrats devised two main courses of action. First: to prohibit foreign priests from holding ecclesiastical benefices in the Empire of Brazil, or to render it as difficult as possible, relying on the old Portuguese legal tradition as well as on the latest constitutional and administrative norms. Second: to establish that normative resources issued by the Holy See had to be submitted to the evaluation of the Secretariat of the Empire (and of the General Legislative Assembly, if the norms had general scope) in order to produce effects in Brazil; I am referring, in short, to the secular power's *placet*.

I will focus on the first course of action, mentioning some of its entanglements with the second. While analysing sources from the Brazilian Council of State and the Congregation of the Council, I hope to show that nationalist discourses such as Cunha Mattos' were heavily challenged during the Second Reign (1840–1889), both by the state's and the Holy See's actions towards ecclesiastical migration. Whereas the former eventually realized the necessity of opening borders, it did not take long for the latter to impose severe limits on the flow of priests. That is, in a perhaps paradoxical way, the national level of governance embraced the foreigner, while the universal level, in some cases, aimed at restricting this encounter.

But, rather than focusing on whether Cunha Mattos's opinion held merit or not, I wish to address the uses of the Council of Trent on the subject. As a new phenomenon, ecclesiastical migration entailed both the creation of norms and the (re)interpretation of existing normative sets. At the time, the Council of Trent was still the most relevant corpus of canon law when it came to the movements as well as the attachment of the clergy to units of ecclesiastical territory. With this section, I intend to demonstrate that both secular and ecclesiastical authorities relied on the Tridentinum while ruling over the waves of migrant clergymen. I hope to show that, to different extents, and in distinctive ways, the council's dispositions helped actors to

coordinate categories of belonging (citizen, foreigner, diocese of origin, diocese of reception etc.) and notions of duty (responsibility, public service, necessity and utility of the Church etc.).

My analysis starts with sources from the Council of State. On 12 October 1861, the Section for Imperial Affairs opined for the first time on the possibility of assigning vacant parishes to foreign priests.[197] In view of the lack of financial resources and national clergymen, the Bishop of Rio Grande do Sul asked whether he was allowed to appoint foreigners as commissioned vicars (i. e. *vigários encomendados*, temporary vicars, who would not undergo regular examinations). While deciding on the subject, the Section revisited a long list of impeding norms.

Among them was the *Carta Régia* of 27 December 1603, a regulation from the Portuguese *Ancien Régime*, which declared that, due to apostolic privileges and immemorial possession, no foreigner was allowed to take power of ecclesiastical benefices or pensions in the Kingdom of Portugal, even if invested by Rome or by Portuguese ordinaries. Stepping away from the realm of pontifical concessions and long-lasting practices, state councillors also relied on numerous administrative regulations (mostly *avisos*) from the Brazilian First Reign (1822–1830) and Regency (1831–1840). Like Cunha Mattos' discourse, these regulations contained strong liberal and jurisdictional tones. In general, they stressed that the appointment of foreigners to parishes or other benefices was forbidden. Some examples: the Resolution of 9 November 1824, while affirming the emperor's patronage rights, recalled Portuguese prohibitions of nominating foreigners; the *aviso* of 20 November 1830 forbade foreigners to act as coadjutors for parish priests; and the *aviso* of 9 November 1831 prohibited foreigners from being employed in benefices with cure of souls, as well as in any other benefices maintained by the National Treasury, even on a temporary basis.

However, despite the existence of these norms, the councillors eventually recognized that they were facing an issue of necessity. There was a severe shortage of national priests in the diocese of Rio Grande do Sul. According to the Report of the Ministry of Justice of 1859, 29 of its 68 parishes had no parish priest nor vicar (i. e. 42.6 %). But shortages of clergymen were common in other provinces, like Santa Catarina, Mariana, Diamantina, Pará, and

197 Consulta de 12 de outubro de 1861, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 5–7.

Amazonas. Overall, 111 of the 1,247 parishes in Brazil were vacant (i. e. 8.9 %).[198] The situation was pressing, and the councillors were aware of it.

Besides, recent records of administrative acts of the empire displayed a growing number of *avisos* and decrees that authorised the employment of foreign priests in exceptional contexts (indigenous settlements, immigrant villages, army etc.). Thus, based on concrete needs, and also on precedents of exception and breaches of interpretation (for example it is argued that the *Carta Régia* of 1603 only referred to collations, never to temporary service), the Section for Imperial Affairs opined for the granting of the request made by the Bishop of Rio Grande do Sul. The emperor, however, feeling that the matter merited further reflection, summoned the Council of State's plenum to decide.

The meeting took place on 4 May 1862.[199] One of the councillors, the Viscount of Albuquerque, presented a recapitulation of the impeding norms, with important additions. He cited, for instance, the *aviso* of 4 June 1832, which stated categorically that parish priests *were* public servants. He also recalled Article 179, § 14. of the Constitution of the Empire, which established that any Brazilian citizen could be admitted to political, military, and public civil offices. This provision was invoked in support of the interpretation that foreigners were inevitably excluded from playing any role as public servants, including ecclesiastical offices, as the latter were connected or equaled to the former, depending on the interpreter.

But, in spite of some resistance, most councillors were convinced by the argument of diocesan necessity, holding that leaving the faithful without access to the sacraments was more damaging than interpreting past and present administrative norms in a more flexible way.[200] The only thing the councillors had to ensure was that their decision would have the flavour of an exception, even when used in the future as a precedent. They were

198 MJ (Br), Rel. 1859 (1860).

199 Consulta de 4 de maio de 1862, Conselho de Estado Pleno, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 5–12.

200 The Viscount of Maranguape provides a fitting example of this point of view: "[…] professando o princípio de que os estrangeiros, em regra, não devem ser providos nas igrejas, e reconhecendo que a seção assim o entende, admit[o] exceção para remediar a falta absoluta de padres brasileiros. Ve[jo] aqui o favor da necessidade, dada a colisão do provimento de um estrangeiro ou de ficarem os fieis sem o pasto espiritual. Observ[o] que as leis e decisões do governo, que parecem contraditórias no assunto, tiveram origem nas diversas circunstâncias das épocas […]", as in Consulta de 4 de maio de 1862, Conselho de Estado Pleno, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 7.

assuaged by the fact that the change was not exactly drastic; after all, it was a matter of allowing the recruitment of commissioned vicars, who did not enjoy the perpetuality of public offices. But the exceptional character of this decision was definitively settled when the councillors opined that each request of employment from foreign priests should have its convenience assessed by the civil government.

According to the councillors, the legitimacy of the control exercised by the state was based on the fact that, in Brazil, parish priests performed civil as well as spiritual functions (administrative assistance in political elections, for example). This argument was more subtle than Albuquerque's: it connected parish priests to public servants without, however, suggesting equivalence. The opinion of the majority convinced the emperor, who transformed it into a resolution shortly afterwards. The document and subsequent *avisos* added that without the civil government's control, the foreign priest would not be able to receive the respective *congrua*.[201]

The Council of State soon increased the list of ecclesiastical positions that could be filled by foreigners. In a consultation of 26 December 1866, this organ opined in favour of the nomination of an Italian priest as coadjutor of a parish in the diocese of Rio de Janeiro. The councillors used the same arguments as in the decisions of 1861 and 1862: there was local need; the position was temporary (and the coadjutor had even less powers than the commissioned vicar, as he only performed tasks delegated by the parish priest or the bishop); and the approval was under the government's discretion, as long as it concerned coadjutors remunerated by the public coffers.

The new situations endorsed by these opinions gave rise to questions about the extent of the responsibility of foreign priests active in the country. It was then that the connection between categories of belonging (citizen, foreigner) and notions of duty emerged most clearly. The discussion to which I refer took place on 27 February 1864, when the Section for Imperial Affairs had to decide whether proceedings of liability *(processo de responsabilização)* could be initiated against a commissioned – and foreign – vicar who had celebrated the marriage of a person already married in Rio Grande do Sul.[202] The coun-

201 Consulta de 4 de maio de 1862, Conselho de Estado Pleno, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 11.

202 Consulta de 27 de fevereiro de 1864, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 19–22.

cillors unanimously opined that commissioned and collated vicars had equal duties. Their arguments are particularly interesting for two reasons.

First, they sought this equality of obligations in *canon law*. They cited paragraph § 522 and the following of the First Constitutions of the Archbishopric of Bahia, the major cultural translation of the Council of Trent for Colonial Brazil. In fact, these paragraphs recalled Session 24, *De reformatione*, Canon 18, of the Tridentinum, which regulated, among other things, the participation of the commissioned vicar in the fruits and, above all, in the *onera* (i. e. responsibilities) of the vacant church. Endorsing Agostinho Barbosa's interpretation of this canon, the First Constitutions established that the commissioned vicar had to fulfill all the duties and obligations related to the parish, just as the collated vicar did. Naturally, the provision concerned the obligations that belonged to the ecclesiastical jurisdiction.

But what is truly surprising about the councillors' arguments – and therein lies the second reason – is that from this equivalence between *ecclesiastical* responsibilities of commissioned and collated vicars, they deduced the equivalence of *secular* criminal liability of foreign and citizen priests.[203] It is an interpretation of a strongly amalgamated character, by means of which the foreign priest suffered the impact of the suppression of ecclesiastical immunities in Brazil. Typically liberal, this measure implied that, if a transgression went beyond the "purely spiritual" sphere (a conveniently vague expression, filled according to the taste of the interpreter), priests – citizens and foreign-

203 The full text of the rapporteur's argument is as follows: "Segundo a opinião dos canonistas, os vigários encomendados não diferem dos colados senão na amovibilidade […] a Constituição do [Arce]Bispado [de Salvador da Bahia], título 24, n. 522 e seguintes, trata da obrigação de se porem encomendados nas paróquias vagas, e nos seguintes títulos enumera suas obrigações, que são as mesmas dos párocos inamovíveis ou colados. […] Nomeados, pois, clérigos estrangeiros para vigários encomendados, e desde que pela nomeação ficam com os mesmos direitos e obrigações que cabem aos vigários encomendados brasileiros, e igualados aos colados, menos na inamovibilidade, é consequência que devem estar sujeitos às mesmas regras de punição, do mesmo modo que os vigários encomendados e colados nacionais, que tem por juízes nos crimes de responsabilidade os juízes de direito, segundo as disposições do Artigo 171 do Código de Processo Criminal, Artigo 28 da Lei de 3 de dezembro de 1841, §§ 1. e 5., e [Artigos] 200 § 1., 242 e 396 do Regulamento n. 120 de 31 de janeiro de 1842", as in Consulta de 27 de fevereiro de 1864, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 20.

ers – would be submitted to common justice, under the empire's Criminal Code and Code of Criminal Procedure.[204]

The criminal legislation included provisions specifically aimed at the clergy, revealing its jurisdictionalist tone; and the articles on crimes against the public administration could easily be applied by analogy to priests, depending on the relationship that the interpreter established between ecclesiastics and public servants. The councillors' conclusion made use of both instruments. In deciding in favour of instituting proceedings of liability against the vicar of Rio Grande do Sul, the Section for Imperial Affairs relied on two provisions of the Criminal Code: Article 247, which punished ecclesiastics who celebrated the marriage of unhabilitated persons, and Article 154, which suspended from office any public servant who failed in his duties. Needless to say, the councillors explicitly endorsed the "the civil quality and the status of public servant that parish priests have among us".[205]

The legal treatment applied to foreign priests shows that state authorities considered the attributes of citizen and public servant as central to the legal identity of the priest. The exception confirmed the rule, or rather, the discourse on the rule was always present in the discourse on the exception. After all, while allowing the temporary hiring of priests from other countries, the councillors called upon the civil government to pressure prelates to more regularly hold examinations for vacant benefices; and the councillors also addressed bishops directly, insisting that they watch over the seminaries, perform diocesan visitations, and verify the true – and, it is implied, national – vocations.[206]

Discourses on citizenship and foreignness reached even apparently uncontroversial issues, such as the provision of collated benefices *(benefícios colativos)*, whose holder, there was little doubt, should be a national. Once again the exception was the gateway to the rule: in 1878, the councillors were surprised by a parish priest who had received collation, and even consecration, without first completing his naturalisation process.[207] It greatly dis-

204 Secular criminal laws were also universally valid for citizen and foreign laymen, as in Lobo (1868).

205 Consulta de 27 de fevereiro de 1864, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 20.

206 Consulta de 4 de maio de 1862, Conselho de Estado Pleno, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 9.

207 Consulta de 10 de maio de 1878, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 556, Pacote 2, Doc. 40.

turbed these bureaucrats that the civil government had presented a priest to a benefice – and to an office for life! – without proof of his citizenship. In any case, as there was no proof of bad faith on the part of the cleric, the Council of State ended up ruling on the basis of equity (*equidade*), and released the priest from the obligation to reimburse the *congrua* received before the naturalisation.

The connection between the notions of priest, citizen, and public servant that these sources display was not unique to Brazil. It goes back to the phenomenon of "functionalization of the clergy" that spread in Europe from the end of the 18th century onwards, and that reached the Americas during the 19th century, in parallel with the advances of jurisdictionalist liberalism. In Imperial Brazil, the approximation between a priest and a servant of the public administration, whether by means of equivalence, analogy, or the sharing of common traits, was never consistently developed: there was no detailed legislation, nor consensus in doctrine or practice. But the idea, intermittently present in each of those spheres, was enough to excite the minds of those involved – especially if among them were ultramontanists, who regarded the idea as an obstacle to the *libertas Ecclesiae*.

As we saw in Chapter 1.4, the main debate on the status of the priest as a public servant took place in the 1850s, in a public exchange of letters between Jeronymo Vilella de Castro Tavares, the jurist from Pernambuco, and D. Romualdo Antonio de Seixas, then Archbishop of Salvador da Bahia.[208] In arguing that a parish priest was a public servant, Vilella Tavares referred to the parish priest according to the Brazilian legal system, that is, according to the laws, *avisos* and also traditions that formed the national normative repertoire. The jurist used arguments that emphasised the role of the secular power in the governance of the clergy: he mentioned that the candidate to a parish was presented by the civil monarch; that the parish priest received the *congrua* from the public coffers; and that, in the performance of his functions, the parish priest was subject to the inspection of the public authority, as a consequence of the privileges of the Crown *(regalias da Coroa)*.

These arguments, in particular the last one, were typical of Brazilian jurisdictionalism; but not all the regalist jurists of the empire used them

208 The letters are collected in Carta do Doutor Jeronimo Vilella de Castro Tavares (1852–1853).

to claim that priests were public servants. Moderate jurisdictionalists, such as the Marquis of Olinda and the Viscount of Bom Retiro, rejected this idea. Vilella Tavares, conversely, argued that the Brazilian legal system endorsed the equivalence. And citizenship was precisely the element that compelled priests to endorse it as well.[209] In other words: the fact of being a citizen required that a priest obeyed civil laws; as civil laws regarded the priest as a public servant, priests had to comply with the legislation of public administration that applied to them as such. This is the picture that Vilella Tavares drew of the legal identity of the priest.

D. Romualdo Seixas, in turn, maintained that the parish priest was an ecclesiastical servant, part of the Church hierarchy, whose functions were primarily and essentially spiritual. Some of his activities could be of a civil nature, but they were secondary, and this did not authorise the state to hold the priest responsible beyond these functions. Emphasising the detachment between the ecclesiastical *métier* and the public service, the archbishop rebutted Vilella Tavares's arguments one by one. He explained that the effective constitution of a parish priest depended not only on the presentation by the monarch, but above all on canonical institution, an act performed exclusively by a bishop; he maintained that the *congrua* provided by the National Treasury was a pontifical concession, being itself an ecclesiastical good; and he held that, instead of the right of inspection, the emperor had the right / duty to protect the Church, which included the defense of the institution's laws and autonomy.

Significantly, after listing these counter-arguments, D. Romualdo Seixas hastened to add that the special circumstances of parish priests did not exempt them from their duties as citizens, nor from the corresponding liability. But he stressed that the priest was a citizen before the state, and a servant only before the Church.[210] As such, he was not subject to the norms

209 Vilella Tavares justifies the subordination of the clergy to civil law by invoking, in addition to citizenship, the obligation to "submit to higher powers", derived from natural law. In any case, the argument of citizenship is more recurrent. It most clearly appears when Vilella Tavares defines the Church as "that of a nation", and parish priests as "citizens and members of [a] political communion", as well as "subjects of the state", as in Carta do Doutor Jeronimo Vilella de Castro Tavares (1852–1853) 109–111.

210 "Os ministros da Igreja são seguramente cidadãos e membros da associação política do país a que pertencem; mas desde que a Igreja os chama, os institui, consagra e encarrega do desempenho de sua missão divina, eles adquirem o caráter especial de seus servos ou

that applied to servants of the public administration. For the Archbishop of Bahia, the Church was not an *affaire de bureau*.[211] The legal identity of the priest was that of a *sui generis* servant of a "foreign and traveling" society, which was not confined to the "narrow dimensions" of the state.[212] Citizenship was not relevant for this identity; it was just a condition that affected priests in the same way as other Brazilians and did not influence their main activities. D. Romualdo Seixas's discourse thus dissolved the connection between priest, citizenship, and public service.

Both positions, as well as the various shades in between, were present in the praxis of the Council of State. As we have seen, in the admission of the foreign clergy, the councillors' opinions tended towards the discourse of Vilella Tavares, suggesting that priests were public servants, or towards more subtle connections, such as that parish priests had "civil functions", or that priests and public servants had "obligations in common". In any case, underlying these discourses was the idea that only citizens could be public servants, or servants "close to" the public ones. The two elements, citizenship and public service, were intimately connected, such was the normality. The foreign priest was only considered to perform functions due to necessity, as an exception, accumulating all the obligations of the position, but not all the prerogatives (e. g. irremovability).

It is indeed curious that the discourse of the councillors about the clergy was not guided by the link between citizenship / foreignness and rights,[213] a

empregados, bem que sujeitos na ordem temporal aos poderes do Estado […]", as in Carta do Doutor Jeronimo Vilella de Castro Tavares (1852–1853) 179.

211 "Perigosa, enfim, é toda a doutrina que direta ou indiretamente, tende a fazer do governo da Igreja um ramo do poder público – *un affaire de bureau*, a cargo desse expediente administrativo, que se tem chamado *bureaucracia*, e que transformando a Igreja cristã em uma instituição puramente humana, lhe faz perder o superior ascendente, que é destinada a exercer sobre a consciência dos povos, e conseguintemente sobre a prosperidade pública", as in Carta do Doutor Jeronimo Vilella de Castro Tavares (1852–1853) 179–180.

212 D. Romualdo Seixas evokes the foreignness (and the cross-border character) of the Church in Carta do Doutor Jeronimo Vilella de Castro Tavares (1852–1853) 179.

213 There is an extensive literature on the historical ties between citizenship, rights, and belonging to a political community. Marshall's classic essay, for example, covering England between the 18th and 20th centuries, portrays citizenship as a status around which civil, political, and social rights progressively developed, as in Marshall (1967 [1950]). Pietro Costa, in his long-term approach to the European context, refuses to formulate a "general theory" on citizenship. He prefers to appreciate the diversity of discourses pro-

topos of liberal rhetoric, but by the relationship between citizenship / foreignness and duties.[214] The foreign priest perfectly mirrored the duties of the citizen priest. Responsibility was central in the discourse of secular authorities. Emphases of this kind usually affected categories that served and depended closely on the state, such as the military and, not by chance, civil public servants. In associating the priest to citizenship and public service, the councillors ultimately had in mind protecting the integrity of the state, defending the national sovereignty, and guaranteeing loyalty to the constitution and national laws. In the cases concerning foreign clergy analysed above, this trait was implicit. It appeared in striking colours in situations concerning the *placet*, the state's second course of action in its control of foreignness. I refer more specifically to the Religious Question of the 1870s.

I will not go into detail on the Religious Question. For the purposes of this section, let us recall that it began with lay confraternities appealing to the Council of State against bishops who had interdicted them on the basis of a pontifical bull which had not received the imperial *placet*. The bishops were radical supporters of ultramontanism, the confraternities had Freemasons among their numbers, and the bull in question called for combating precisely Freemasonry. With the refusal of the bishops to lift the interdictions as suggested by the Council of State and ordered by the emperor, the cases were taken to the Supreme Court of Justice *(Supremo Tribunal de Justiça)*. At the end of the lawsuit, the prelates were convicted and imprisoned for obstructing the effect of determinations from the executive branch (Article 96 of the Criminal Code of the Empire).

This crime was not classified by the code as against the public administration. Nevertheless, when developing their arguments, actors in court labeled the bishops as public servants on several occasions. In sentencing the Bishop of Olinda, the judges mentioned that the prelate's refusal to comply with the decision of the Council of State was all the more serious

duced about it over the course of time, especially those by jurists and intellectuals, analysing their different representations of rights and political belonging, as in Costa (1999) vii–xxiii. On the relations between citizenship and rights in Brazil, see Carvalho (2002 [2001]) and Dal Ri (2011).

214 On the duties (as well as the rights) attached to the status of foreigner and citizen in the Empire of Brazil, in particular for the holding of public offices, see Mello (2018). The historiography on the *Ancien Régime* can also provide good insights on the relations between duty and belonging. See, for instance, Herzog (2003).

in view of his status of public servant, from whom one would expect "prompt and solicitous" observance of the laws of the country. During the instruction of the cases before the Supreme Court of Justice, members of the prosecution, such as the *promotor de justiça* and the *procurador da Coroa*, also characterised the defendant bishops as servants of the state.[215] The *promotor* suggested (albeit rather hesitantly) that the prelate of Belém do Pará be charged with crimes against the public administration (e.g. prevarication).[216] The more laconic *procurador da Coroa* recommended to the Bishop of Olinda that, if he did not wish to obey the Imperial Constitution (which prescribed the *placet*), he should abandon the mitre.[217]

The Council of State, in turn, when referring to the status of the bishops, used expressions such as "highly ranked Brazilian citizen".[218] In fact, when the subject was loyalty to the country, the emphasis rested on citizenship. Troubled by the lack of compliance with national laws, and censuring the "relations of dependence" that the bishops cultivated with the Roman Curia, the councillors declared: "The Reverend Bishop [of Olinda] undoubtedly forgot […] that he was a citizen of the empire."[219] Later, when the cases were analysed in specialised magazines, jurists such as Tristão de Alencar Araripe would claim that placing the allegiance to Rome above the enforcement of national laws was sufficient grounds for the bishops to lose the Brazilian nationality.[220] This point never amounted to more than theory, but it is still meaningful.

In all these state or pro-state discourses, the identity of the priest was strongly linked to his role as citizen. And he was not just any citizen, but a citizen-public servant, or very close to this; a "citizen with duties" who had to take care not to harm the "citizens with rights", exemplified by the members of the confraternities.[221] After all, seen through the jurisdictional lens of the state, the priest always had to take into account his duties towards the nation, even when fulfilling his ecclesiastical functions.

215 I use as source the law journal *O Direito*, in which the main documents of the two cases of the Religious Question were reproduced. See O Direito 3 (1874) 446.

216 O Direito 4 (1874) 483.

217 O Direito 3 (1874) 423.

218 O Direito 3 (1874) 391.

219 O Direito 3 (1874) 385.

220 O Direito 5 (1874) 165–169.

221 The concern to prevent bishops from harming "citizens with rights" can be seen when the councillors reproach a prelate for forbidding the faithful to adhere to Freemasonry: "Im-

The bishops' defense stood against this amalgam. Citizenship was drawn by the lawyers' pen as distinctively separate from ecclesiastical office. The clergyman could be both a citizen and an ecclesiastical servant (*not* public servant); however, one aspect was not to be confused with the other. Candido Mendes de Almeida, one of the defenders of the prelates before the Supreme Court of Justice, said that "the Bishop of Olinda, whether as an ecclesiastic or a citizen, complied with the ecclesiastical laws, and complied with the civil laws."[222] He stressed that each jurisdiction had a distinctive set of duties, and that the ecclesiastical jurisdiction had the advantage over its secular counterpart in case of conflict.[223] In other words, the duties of the clergyman were above the duties of the citizen, much to the taste of ultramontane rhetoric.

With this digression, we come full circle: in the reception of the migrant clergy, the foreigner mirrored the citizen, while in the skirmishes surrounding the imperial *placet*, the citizen risked becoming a foreigner. But it is time to return to the migrant clergy. As we have seen in this section, the opinions of the Council of State challenged narrow, nationalist discourses, such as that of Deputy Cunha Mattos. Local needs prompted a controlled opening to foreign priests.

In normatising this new situation, the categories of belonging "citizen" and "foreigner" were strongly connected with the notion of duty of a public servant, following the dominant institutional jurisdictionalism. The role that the councillors attributed to the Council of Trent was discrete, but it expressed the Council of State's general tendency to interpret and amalgamate elements of canon law and secular law in its argumentation. The Tridentinum, represented in the First Constitutions of Bahia, performed

pede-o [ao bispo], além de outras razões, o art. 179 da Constituição, que positivamente garante ao cidadão brasileiro, no § 1., o direito de não ser obrigado a fazer ou deixar de fazer qualquer cousa, senão em virtude de lei; no § 5., o de não ser perseguido por motivo religioso, e no § 11. o de não ser sentenciado senão pela autoridade competente, por virtude de lei anterior, e na forma por ela prescrita", as in O Direito 3 (1874) 374.

222 O Direito 3 (1874) 444.

223 "O Bispo, por consequência, não cometeu crime quando cumpriu o seu dever: crime praticaria ele se faltasse ao juramento que prestou às leis da Santa Igreja, juramento que é superior ao que prestam ao Poder Civil, porque o juramento prestado ao Poder Civil é sempre subordinado ao primeiro, por isso que não pode haver lei em país católico que esteja em contradição com as leis religiosas", as in O Direito 3 (1874) 443–444.

the unusual function of bridging the gap between ecclesiastical duties and civil duties of commissioned and collated vicars, citizens and foreigners.

It could be argued that, as the Council of State privileged local spiritual needs over legal formalities, it acted in accordance with the "Tridentine spirit",[224] that is, aiming at pastoral effectiveness. Our sources allow us to state so only from an objective point of view. That is to say: the councillors' discourse does not offer any sign of their intention to fulfill the Council of Trent's main goal; but councillors did fulfill it, even if motivated by other reasons, like the sovereign's constitutional duty to preserve the Catholic religion in the empire. For the purposes of my research, one remarkable observation emerges so far: the councillors employed Tridentine dispositions to associate ecclesiastical and civil duties.

We must now trace how the uses of the Council of Trent changed in the treatment conferred by the Holy See to the clerics who migrated to Brazil.

3.4.2 The perspective of the Holy See. The migrant priest divided between two dioceses, navigating according to the needs of the Church. Metamorphoses of the Council of Trent to control migration

From the end of the 1870s onwards, the Holy See manifested increasing concern about the migration of Italians and Germans to the southeastern and southern regions of Brazil. There were problems among the faithful, such as bigamy and the lack of dispensation for mixed marriages.[225] But there was also shortage of priests. The faithful complained about the absence of ecclesiastics capable of saying the mass in their language, and even about the absolute absence of priests to provide the sacraments.[226] These problems,

224 The expression is from Bruno Feitler, referring to the uses of the Council of Trent in Colonial Brazil, in Feitler (2014).

225 L'Internunzio Apostolico Cocchia riferisce sulla poligamia tra gli emigrati italiani in Brasile (1886), in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 260, Fasc. 18, ff. 49r–56v. Also: Il Ministro del Brasile presso la Santa Sede, Baron de Aguiar d'Andrada, domanda per i Vescovi dell'Impero facoltà più estese per dispensare dall'impedimento di mista religione a causa dell'immigrazione (1888–1889), in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 288, Fasc. 22.

226 Lettera dei padri di famiglia tedeschi in Espírito Santo per assistenza religiosa, perché venga loro inviato un Sacerdote tedesco o qualunque (1884–1885), in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 244, Fasc. 15. Also: Cattolici tedeschi della Colonia di S.

which, as we have seen, did not go unnoticed by state bureaucrats, also occupied the minds of Roman cardinals. Historiography has already pointed out the protagonism of foreign religious orders and congregations in the resolution of these issues.[227] The presence of these groups in Brazil resulted from the effort and approval of multiple institutional levels, among which the Holy See (particularly the Congregation of *Propaganda Fide*), the imperial government, local bishops, and the aforementioned foreign orders. Despite ideological differences, there was a reasonable consensus among these levels regarding the usefulness of foreign orders for reforming the Brazilian Church. The same cannot be said, however, about the migrant secular clergy.

Contrary to what liberal Brazilian deputies of the 1820s (and even some of the 1870s) might have imagined, the influx of Italian secular priests in the Americas triggered serious complaints to the Apostolic See, in particular against the clergy arriving from the *Mezzogiorno* region. Their behaviour was quite at odds with the reformist agenda that jurisdictionalists attributed to Rome. The circular letter of 3 February 1886 from the Congregation of the Council reveals how displeased the local episcopate was with these actors.[228] They were accused of indiscipline, "depraved" and "corrupt" habits, involvement in commercial profit, proximity to non-Catholic groups, and negligence with regard to worship. They are portrayed, in short, as a source of scandal and risk to the communities where they were based.

The circular letter of 1886 was a first attempt to remedy this situation. Addressing the bishops of southern Italy, the Congregation of the Council forbade them, until further notice, to grant dimissorial letters to candidates who, under their jurisdiction, wished to be ordained in the Americas. The dicastery also urged prelates to monitor more closely the situation of local parishes: were priests fulfilling their duties? Were the faithful being properly

Leopoldina, Espírito Santo, si rivolgono al S. Padre al fine di ottenere un Sacerdote che conosca la loro lingua e ne prenda la cura spirituale (1887–1890), in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 265, Fasc. 19, ff. 28r–41r. On these problems, see Sanfilippo (2012).

227 See Ramos Vieira (2016) 263–300.

228 Circolare della Congregazione del Concilio del 3 febbraio 1886 ai Vescovi dell'Italia meridionale sui mali, scandali che causano gli italiani, laici e preti, specialmente delle provincie meridionali, che si recano nelle regioni delle Americhe. Si propongono dei rimedi (1886), in: ASRS, AA.EE.SS., Leone XIII, Stati Ecclesiastici II, Positio 1066, Fasc. 342.

catechised, or were the priests abandoning them? The diocesan visitation emerged as a suitable instrument to shed light on these matters. One may thus observe that the Holy See was as concerned about the situation in the Americas as it was about the state of affairs in Italy.

On 20 February 1888, the Secretary of State of the Holy See published a new circular letter on the subject.[229] In this document, the pope ordered Italian prelates to deny permission for their priests to migrate to South America. However, exceptions to the rule were outlined. The bishops from the *Mezzogiorno* could issue discessorial letters (*discessorias litteras*, that is, a formal authorisation for a priest without office or benefice to leave his diocese of origin) at the request of American ordinaries, provided that the migrating priest displayed sufficient zeal, moral conduct, and interest. Moreover, before his departure, the priest in question had to present himself to the Congregation of *Propaganda Fide* in order to submit to an examination of knowledge of ecclesiastical matters.

The migration procedure would receive more technical detail shortly afterwards, by means of the circular letter of 27 July 1890 from the Congregation of the Council.[230] This document was primarily about migration control, but it also had disciplinary character. In this last sense, the dicastery recommended that American ordinaries, observing the form prescribed by the canons, summarily prosecuted already installed Italian priests in cases where those displayed signs of misconduct. As regards Italian ordinaries, they were reminded of the "absolute" prohibition of granting discessorial letters to the secular clergymen who intended to go to the Americas.

The exception was described in great detail as to the type of clergyman authorised to migrate, and the procedure to be followed on both sides of the Atlantic. The priest had to be of mature age, with sufficient instruction in the sacred sciences, and with just cause to migrate.[231] He also had to possess

229 Circolare ai Vescovi d'Italia con cui si comunica la decisione del S. Padre di non permettere ai Sacerdoti Italiani di recarsi nell'America del Sud se non dietro regolare richiesta fattane da quegli Ordinari (1887), in: ASRS, AA.EE.SS., Leone XIII, Italia II, Positio 390, Fasc. 136.

230 Istruzione della Congregazione del Concilio ai Vescovi italiani e d'America relativamente ai Sacerdoti Italiani emigranti in America (1890), in: ASRS, AA.EE.SS., Leone XIII, Stati Ecclesiastici II, Positio 1119, Fasc. 366.

231 Commenting on later instructions of the Apostolic See, the journal *Razón y Fé* defined just cause to migrate as: "[…] deseo de dedicarse al servicio espiritual de sus conciudada-

experience in the priestly ministry, giving proof of "true ecclesiastical spirit" and "zeal for the salvation of souls". These elements combined had to allow one to confidently assume that this priest, once in the Americas, would spread the Christian message, serve as an example to the other faithful, and keep the priestly dignity intact. In short, the Council of Trent's main goal, pastoral effectiveness, had to be secured.

The procedure to migrate began with the negotiations between the bishop of the diocese of origin and the bishop of the diocese of reception. The latter had to formally accept the foreign priest, and commit to assign him to an ecclesiastical ministry. The Congregation of the Council had to be informed of these negotiations. Only after being authorised by the dicastery could the bishop of the diocese of origin grant discessorial letters to the priest concerned. Once in the diocese of reception, should the priest wish to migrate to yet another territory, the procedure would have to be repeated, with a new request of permission to the Congregation of the Council. Moreover, the circular letter of 1890 also differentiated migration from temporary stays abroad determined by just and personal reasons. In this last case, a motivated permission from the bishop of the diocese of origin was sufficient, provided it lasted for no more than one year.[232] After this period had expired, the cleric would be automatically suspended from his orders, unless he obtained a legitimate extension.

These instructions are precious because they constitute the first attempts of the Holy See to regulate with more technical sophistication the phenomenon of ecclesiastical mass migrations between the 19th and 20th centuries. The Congregation of the Council took the lead in this process, which is perfectly understandable, as the Council of Trent contained the most relevant norms on the spatial movement of clerics, or rather on their attachment to defined spaces, in order to prevent vagrant clergymen *(clerici vagi)*. The provisions on residence, for example, allowed the parish priest, with permission from his bishop, to be absent for a short period from the territory where

nos o de cualesquiera otros que moran en aquellos países; el restablecimiento de la salud u otro motivo semejante", as in Razón y Fe 54 (1919) 102–103.

232 The journal *La Civiltà Cattolica*, when reporting on this circular letter, greatly detailed the issue of temporary stay, sometimes even going beyond the letter of the original document; according to the journal, permission could only be given in case of "true and urgent need", for a maximum period of six months (not one year), and with subsequent information to the Congregation of the Council. See La Civiltà Cattolica 4 (1909) 236.

he performed his office. Conversely, migration involved not only leaving the diocese of origin, but carrying out the acts typical of the ecclesiastical ministry in another circumscription, upon the recommendation of the original ordinary. It was thus related to what we read in Session 23, *De reformatione*, Canon 16, of the Council of Trent: "*Nullus praeterea clericus peregrinus sine commendatitiis sui ordinarii litteris ab ullo episcopo ad divina celebranda et sacramenta administranda admittatur.*" The discessorial letters for migratory purposes are, in fact, very similar in logic to the commendatory letters mentioned in this canon.[233]

The circular letters I mentioned show that between the end of the 19th century and the beginning of the 20th century, ecclesiastical migration was a legal construction in between the leave of absence and the excardination / incardination. The leave of absence was clearly temporary, and the bond of service of the priest in question, as well as the jurisdiction of reference, remained in the diocese of origin. In other words, while holding a benefice or a function which required him to reside in his diocese, the priest was allowed to be absent for personal reasons (e. g. illness, pilgrimage to holy places etc.) and for a limited time. The pair excardination / incardination, in turn, meant a permanent transfer, in which the bond of service moved to the diocese of reception, and the priest in question was placed entirely under the jurisdiction of the receiving bishop. Migration was halfway between these two legal constructions: discessorial letters did not entail an automatic excardination; and, unlike the absence from residence allowed by the Tridentinum, migrations spanned a longer interval, and ideally involved the development of ecclesiastical activities in a foreign zone, responding to the demand of the receiving bishop, and with the consent of the original bishop. Furthermore, in most cases, migrant priests did not have a benefice or office in their dioceses of origin, that is, they had no cause obliging them to keep residence in the Tridentine sense. This explains why migration was enabled via discessorial letters (i. e. permission to leave the diocese), and not via leave of absence (i. e. permission to be absent from residence).

The cases of migration classified by the Congregation of the Council as related to Brazilian dioceses demonstrate very clearly that the regulations of

233 Dominique Bouix, when describing the procedure of a cleric's departure from his original diocese, cites canonists who consider the Tridentine commendatory letters as *commendatitiae pro discessu*, as in Bouix (1873 [1859]) 279. This shows the proximity between commendatory and discessorial letters.

the Holy See in this regard were a work in progress. As my analysis is restricted to the duration of the Empire of Brazil, the petitions of foreign priests I have collected precede the detailed circular letter of 1890. They are concentrated in the period between 1886 and 1889, when prohibitions and exceptions were just beginning to be issued. I believe that these dossiers are of great help to realise how the Roman Curia, when drafting the later legislation on migration (and also that on excardination/incardination), drew on the experiences of the "laboratory of praxis" of the Congregation of the Council, trying to identify which normative gaps remained, which emphases had to be made, and which details had to be added in order to enhance the security of the operations. The cases concerning Brazil involved an additional practical effort, because most of them did not concern priests who, located in Italy, wished to emigrate, but priests from the *Mezzogiorno* who were already in Brazilian territory. They thus raised the question of the prorogation of discessorial letters.

Returning to the concepts which helped us in the previous section, one realises that, in terms of categories of belonging, these cases went beyond the distinction between foreign priest and citizen priest that was typical of state institutions. From the point of view of the Apostolic See, the highest interest lay in the bond between a clergyman and a diocese. With regard to migration, a trait that may seem strange at first sight came to the fore: while there was no excardination followed by incardination, the priest was simultaneously attached to two dioceses. He was under the jurisdiction of the receiving bishop in terms of service and discipline, and at the same time he had to ask his original bishop for extensions of the permission allowing him to be abroad. What determined the movement of a priest between the two territories was a logic of duties, expressed in the balancing of the necessity and utility to the Church, on one side, and the possibilities (of service, relocation, etc.) of the clergyman, on the other. This logic of duties was similar to that of the state inasmuch as local need was a determining factor for the relocation of ecclesiastics, and as it was assumed that the priest's primary function was to serve the spiritual health of the faithful. The two logics, however, differed in the administrative framework where the priest was inserted: the state portrayed him as a figure close to a public servant, whereas the Holy See emphasised his submission to episcopal authority and ultimately to the Apostolic See.

Examples may be useful to understand the specificity of the dynamics of the Congregation of the Council, above all how the necessity of the Church

and the possibilities of the clergyman were fundamental criteria in deciding the fate of the migrating clergy. I begin with an emblematic and somewhat radical case. In 1888, the priest Gennaro Fusco wrote to the Congregation of the Council asking permission to be away from his diocese of origin, Nusco, for another five years.[234] He had been in the diocese of São Paulo since 1880, serving as parish priest in Mogi Guaçu. Fusco demonstrated the needs of the diocese of reception by attaching a letter from the local prelate, in which, as well as certifying Fusco's good behaviour and satisfactory exercise of the parochial office, the bishop highlighted the problem of shortage of Brazilian priests in his territory: "*ideoque magnae utilitatis servitium ejusdem sacerdotis, in praesentibus circumstantiis, deficientibus operariis ecclesiasticis Brasiliensibus, esse huic dioecesi mihi videtur*".[235]

The Congregation of the Council then asked the opinion of the Bishop of Nusco. The situation was almost comical: in his letter, the prelate reported how Fusco had deceived him in the past; he had emigrated to the Americas by taking advantage of a permission from the Holy See to visit holy places, and since then he had remained in São Paulo. The Bishop of Nusco, however, did not harbour any resentment: he consented to the prorogation of Fusco's stay in Brazil, as there was no particular spiritual necessity requiring his presence in Nusco, nor was there any benefice with cure of souls available. The Congregation of the Council thus granted a permission of five years for the priest to remain abroad, with the dispensation from the irregularity he had incurred (Fusco had employed discessorial letters for a purpose other than the one intended by his bishop and the Holy See, thus becoming unable to exercise his orders, in line with Session 23, *De reformatione*, Canon 16 of the Council of Trent) and the rehabilitation to celebrate the mass. The case is emblematic in showing how local needs were decisive in determining the permanence of the migrant priest in one of the dioceses, outweighing even disciplinary lapses.

Sometimes, however, both ecclesiastical circumscriptions could be in need of the priest in question. This was the case of Michele Arcangelo Vassallo, a priest from the diocese of Diano (Salerno). By 1887, he had

234 Nuscana et S. Pauli in Brasilia, in: AAV, Congr. Concilio, Positiones, "Die 19 Januarii 1889, Lit. D ad N, L. Salvati Secr.", ff. 1r–9v.

235 Nuscana et S. Pauli in Brasilia, in: AAV, Congr. Concilio, Positiones, "Die 19 Januarii 1889, Lit. D ad N, L. Salvati Secr.", f. 6r.

already spent two years of "praiseworthy service" in the diocese of Olinda, and wished to apply for a parish.[236] Recommended and supported by the Brazilian bishop, Vassallo requested permission from the Holy See to be definitively incorporated (i. e. incardinated) into the clergy of Pernambuco. When, however, the Congregation for Extraordinary Ecclesiastical Affairs inquired whether the Bishop of Diano would be willing to provide for the excardination, the answer was negative. The Italian prelate explained that some parishes in his diocese were about to be left without vicars, due to the advanced age and infirmities of the existing clergy, as well as the lack of young men trained for the priesthood. Therefore, it was in the interest of the faithful of Diano that Vassallo had only a temporary bond with Olinda, a declaration that the Roman dicastery soon forwarded to the Bishop of Pernambuco. One may observe from the example that this migrant priest did not run the risk of remaining idle: he was demanded in both dioceses, and the Apostolic See favoured the diocese of origin, where Vassallo was incardinated. The case is, for this very reason, illustrative of the difference between migration and excardination / incardination.

In other dossiers, although the necessities of local churches were considered, the emphasis lay on the possibilities and even the needs of the priest who made the request. For example, in mid-1889, Giovan Felice Mantone, a cleric from the diocese of Capaccio Vallo, asked the Congregation of the Council for permission to continue his occupation outside his territory of origin.[237] Mantone was then in the Brazilian diocese of Mariana, where for many years he had been exercising the cure of souls. To support his petition, he mentioned that the Bishop of Mariana had accepted his permanence in the diocese – and also that he, Mantone, was old, sick, and without means of subsistence (outside Brazil, it is implied). In other words, the priest expressed that his current possibilities were too limited to correspond to the needs of the diocese of Capaccio Vallo, and even to the physical demands of a journey back to Europe. The balance between the priest's possibilities and local needs had already been reached in Mariana, where Mantone wished to remain.

236 Il Sac. Michele Arcangelo Vassallo, della Diocesi di Diano che da circa due anni esercita il Sacro Ministero nella Diocesi di Olinda, supplica al S. P. Leone XIII la grazia di venire annoverato tra il Clero di quella Diocesi, in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 267, Fasc. 19.

237 Caputaquen Vallen et Mariannen, in: AAV, Congr. Concilio, Positiones, "Die 3 Augusti 1889, Lit. A ad C, L. Salvati Secr.", ff. 1r–4v.

Once informed that the prelates of the two dioceses had agreed on this solution, the Congregation of the Council granted its *nihil obstat*.

The focus was placed on the priest also in the case of Giuseppe Maria Arena, a cleric of the diocese of San Marco e Bisignano, who, at the end of 1889, asked the Congregation of the Council for discessorial letters to migrate to Rio de Janeiro and remain there for at least five years.[238] His petition was based on an argument of personal need: he claimed that his family lacked resources, that his father had died, leaving them in debt. Migration then appeared in its most mundane aspect, that is, as an opportunity to economically support oneself and others. The Congregation of the Council, however, turned the discussion back to the balancing between diocesan necessity and possibility of service of the clergy: the cardinals solicited the opinion of the Bishop of Rio de Janeiro and the Bishop of San Marco e Bisignano, also requesting the latter to inform on the priest's age, customs, instruction, experience, and the legitimacy of cause of Arena's petition. The procedure did not move forward.

In this interplay of needs and possibilities there is, finally, the sad case of Antonio Arcieri, a cleric from the diocese of Marsico e Potenza, who appealed to the Congregation of the Council in 1887.[239] He explained that for the past four years he had been exercising the ecclesiastical ministry in the diocese of São Paulo, greatly pleasing the local prelate. Very urgent family affairs, however, had forced him to return temporarily to Italy. It was from this side of the Atlantic that Arcieri wrote to the Holy See, supplicating permission to return to Brazil and resume his activities. With his petition, he enclosed a favourable certificate from the Bishop of Marsico e Potenza, who said to have no reason to oppose the petitioner's desire. Even so, the Congregation of the Council responded negatively. How to explain this? Restricting myself to the sources we have access to in the Vatican, I believe that the decision may be explained by the restrictions just inaugurated by the Congregation of the Council with the circular letter of 1886. This document certainly did not address Arcieri's case directly, but, in preventing the concession of dimissorial letters for ordinands, it expressed a

238 S. Marci et S. Sebastiani Flum. Ian., in: AAV, Congr. Concilio, Positiones, "Die 7 7mbris 1889, Lit. P ad S, L. Salvati Secr.", ff. 1r–2v.

239 S. Pauli de Brasilia, in: AAV, Congr. Concilio, Positiones, "Die 20 Augusti 1887, Lit. R ad V, C. Santori S.", ff. 1r–4v.

general attitude of caution on the part of the Holy See with regard to any movement of ecclesiastics between southern Italy and the Americas.

Cases like Arcieri's were relevant, for they allowed the Congregation of the Council to take further steps: first, to become aware of this type of migration (which involved priests, not ordinands); and, second, to establish criteria to allow or forbid the relocation of ecclesiastics in analogous situations, safeguarding the *salus aeterna animarum*, and paving the way for the circular letter of 1888. By viewing Arcieri's petition through these lenses, one may conjecture that the permission was rejected by the Congregation of the Council because the need of the diocese of reception was insufficiently demonstrated, one of the main requirements of the exception contemplated in 1888. This interpretation is reinforced by the fact that Arcieri attached to his petition a certificate from the Bishop of São Paulo in which, besides reporting on the good behaviour of the cleric, the prelate declared to be aware that Arcieri was leaving Brazil, considering him from then onwards detached from the diocese. There was no formal expression of the need of the Brazilian diocese, no formal request for Arcieri to return, and, finally, no assurance that the priest would have a role to play outside Italy. I believe that due to these omissions the Congregation of the Council decided that the priest should remain in Italy, even though this was contrary to the actual needs of the diocese of São Paulo and to Arcieri's possibilities of service.

Another case whose legal facets would be regulated only later on was that of the priest Francesco Saverio Gerbasio, from the diocese of Diano, who in 1886 was living in Olinda.[240] Unlike Arcieri, Gerbasio had come to Brazil on medical grounds, to relieve the symptoms of tuberculosis. He did not possess a benefice in Italy, and there was no information that he exercised the sacred ministry in the Church of Pernambuco. After requesting new discessorial letters to the Bishop of Diano, so as to continue his treatment, Gerbasio was informed of the prohibition contained in the circular letter of 1886, and was advised to turn to the Congregation of the Council in order to obtain the desired permission. This recommendation on the part of the Italian prelate is relevant because it shows that, although the text of the circular letter of 1886 mentioned only dimissorials (and, therefore, ordinands), it could be interpreted more broadly to include discessorials (and, therefore, priests). Gerba-

240 Olinden, in: AAV, Congr. Concilio, Positiones, "Die 19 Januarii 1889, Lit. N ad S, C. Santori S.", ff. 1r–3v.

sio then wrote to the Congregation of the Council, presenting his reasons and reporting the *nihil obstat* of the Bishop of Diano. The procedure came to a halt when the dicastery asked the Bishop of Olinda for information and vote. Independently of its results, this case is relevant due to the distinctive manner in which it addresses the logic of necessity and utility to the Church vis-à-vis a priest's possibility of service. Gerbasio had come to Brazil for strictly personal reasons, and yet he was treated by his prelate and by the Holy See in the same way as a standard migrant, which demonstrates the provisional, precarious character of the available norms. The differentiation would only be consolidated, as we have seen, with the circular letter of 1890, which established a much less bureaucratic procedure (e. g. without the need to collect the opinion of the receiving bishop) for ecclesiastics who travelled on a short-term basis for just – and personal – motives.

The time has come to move from examples to more general reflections. I have found a total of seven cases of ecclesiastics from the *Mezzogiorno* who came before the Congregation of the Council invoking issues of migration to Imperial Brazil. It is not so surprising that four of them did not advance beyond the stage of information and vote of the ordinaries. The relevant norms changed every two years; it is reasonable to assume that migrants and local ordinaries (especially the Brazilian ones) had difficulties to keep track of the new procedures. There is also the possibility that such matters were solved without the participation of the Congregation of the Council, and even of the Holy See, according to the idiosyncrasies of each prelate and priest. This is an aspect that only the analysis of other documents may clarify.

What the sources presented are indeed able to tell us is a broader and more decisive history from the perspective of law. I am referring to how the Holy See elaborated a robust normative response to the new phenomenon of ecclesiastical mass migrations between the 19th and 20th centuries. This process was slow, as if it were something artisanal. Norms were gradually refined in praxis, on the basis of concrete problems and reasonable possibilities to solve them, and only later fixed in documents of general character. In fact, migration as a legal issue was strongly characterised by this movement from the particular to the general. The normative production was initially directed to the specific flow of priests between Southern Italy and the Americas; but, as the 20th century progressed, more geographic zones were included in the regulations. Gradually, clergymen from Spain, Portugal, and the rest of Europe were covered. And, in addition to the Americas,

the Philippines were soon incorporated in the scheme of destinations under the Holy See's migratory control. These changes were crystallised in the decree *Clericos peregrinos* (1903),[241] from the Congregation of the Council, and the decrees *Etnografica studia* (1914)[242] and *Magni semper* (1919),[243] from the Consistorial Congregation, which by then had replaced the Congregation of the Council in the handling of the matter.

Besides the broadening of geographical horizons, the differences – and entanglements – between the rules on migration and the rules on incardination came to the fore as the era of the *Codex iuris canonici* of 1917 approached. The decrees *Etnografica studia* and *Magni semper* still portrayed migration as a precarious situation, but they innovated by mentioning the hypothesis of the migrant cleric being *incardinated* in the diocese of reception. It is true that the incardination of migrants was possible before, but the fact that this was fixed in a general norm is quite remarkable. Moreover, incardination itself was the object of fresh regulations between the 19th and 20th centuries – and the trigger was precisely the lack of control over the migration of Italian clerics to the city of Rome.[244] One may well perceive, thus, that the two themes were developing together, in close relationship.

Considering the decrees of the Congregation of the Council, and in particular the 1917 *Codex*, historiography generally holds that the transformations of incardination at the time focused on ecclesiastical discipline rather than on the duties of service.[245] In other words, the Holy See was primarily concerned with incardination as a bond of obedience, seeking to ensure, by means of detailed formal requirements (i. e. letters, formal approval from dicasteries, etc.), the bishop's control over the priests under his jurisdiction. The dimension of service, and especially pastoral ministry, would have to wait until the Second Vatican Council and the 1983 *Codex iuris canonici* to become the main criterion determining to which circumscription a priest belonged.

The different emphases in 1917 and 1983 can be better comprehended if we consider the concrete problems faced by the Holy See, as well as the

241 Acta Sanctae Sedis XXXVI (1903–1904) 555–557.
242 Acta Apostolicae Sedis VI (1914) 182–186.
243 Acta Apostolicae Sedis XI (1919) 39–43.
244 See the decree *A primis* of 20 July 1898, from the Congregation of the Council, in Acta Sanctae Sedis XXXI (1898–1899) 49–51.
245 Le Tourneau (2002), Mullaney (2002), Romano (2012).

major ideological inclinations, in each context. The passage from the 19th to the 20th century was characterised by the emergence of mass migrations and the resulting difficulty for bishops to keep secular clerics who, idle and poor, perceived going to the Americas as a tempting opportunity. It is worth remembering that in the course of the 19th century there was a considerable reduction in the number of ecclesiastical benefices in European territory.[246] It was also a period in which the Church, and in particular the Holy See, lived under the sign of authority, above all, pontifical authority.[247] Ultramontanism, then dominant in the Roman Curia, portrayed the pope as the ultimate authority in doctrinal and legal matters – and this not only for canon law, but for all branches of law. Moreover, as we have already observed in Brazilian cases, disciplining the clergy was one of the main goals of the ultramontane reformist agenda. These factors make the emphasis on authority and discipline more understandable.

The second half of the 20th century witnessed the dissolution of this paradigm, with the establishment of a more horizontal and dynamic scenario, in which the status of the priest was conceived on the basis of his collaboration – his service – to the parish, to the diocese, and ultimately to the universal Church. The disciplinary aspect persists, but beside it lays the aspect of pastoral ministry. The main challenge of present times no longer consists in controlling priests within the boundaries of bishoprics, but in improving their geographic distribution, so that they can be useful wherever they are needed. The mobility of the secular clergy, in this sense, is no longer a problem: it is an instrument.[248]

But let us go back to the 19th century. Although secondary in the regulation of incardination, service was relevant – and sometimes decisive – to the fate of a migrant priest. The cases submitted to the Congregation of the Council showed that the relocation – or rather: the permanence in dioceses other than the original – depended on whether the priest was needed and could be useful for the diocese of reception. The migrant's belonging, even if precarious, and even if mediated by a series of formal requirements, was tied to a duty – the duty to be useful, to address local needs.

246 Le Tourneau (2002) 766.

247 On authority as the foundation of the ecclesiology between the French Revolution and the First Vatican Council, see Congar (1960).

248 Le Tourneau (2002) 767–769, Romano (2012).

At the back of this arrangement was the Council of Trent, the corpus that, until the arrival of the 1917 *Codex*, regulated how the clergy moved and, above all, how it settled. The creative activity of the dicastery that interpreted the Tridentinum gave impetus to the first changes. Although the instructions of the Congregation of the Council on migration did not expressly cite the Council of Trent, they undoubtedly reflected the concerns of this corpus: besides the attention to the formation and conduct of the clergy, and beyond the deference to episcopal authority (who controlled the movements of the clergy by means of official letters), the instructions aimed at avoiding idle priests who had no function to fulfil and no utility for the Church. This was the idea behind the Session 23, *De reformatione*, Canon 16, which went back to the Council of Chalcedon (451): "*cum nullus debeat ordinari, qui iudicio sui episcopi non sit utilis aut necessarius suis ecclesiis*". The clergy had to be where it was useful and necessary. Even though this was a long-standing notion, at the time of the cases I analysed, the Council of Trent was the most recent link in the chain of general norms defining necessity as a criterion that ordained (sacramentally) and ordered (territorially) the clergy. The instructions of the Congregation of the Council can thus be interpreted as a metamorphosis and concretisation of this disposition.

In general, from the perspective of both the state and the Holy See, the governance of the foreign clergy in the 19th century was a "laboratory of praxis", that is to say: solutions were shaped from concrete problems, and were formulated in general terms only *a posteriori*. These solutions, whether they came from the state or the Holy See, placed migrant priests in a vulnerable position. The state, departing from the fragile political belonging of these actors, that is, their status of non-citizens, allowed them to play only fragile ecclesiastical roles: delegations and temporary offices. The Holy See, for its part, kept migrant priests "walking a tightrope" between two jurisdictions: that of the bishop of origin and that of the bishop of reception. To remain in Brazil, the cleric depended on a periodic (and bureaucratic) articulation between the two prelates and, in some cases, on the intervention of the Congregation of the Council. The absence of a small piece of paper, or the omission of one or two lines, was enough for the stay to become irregular. From a broader perspective, these precarious solutions did not only unfold around the same time, they were intertwined: the state, by denying collative benefices to the foreigner, hindered his incardination in national territory and, thus, his detachment from the diocese of origin; and the Holy See, by valor-

ising the migrant's bond with the original bishop, seemed to encourage the performance of temporary services – after all, the priest, at each renewal of permission, exposed himself to the risk of being called back.[249]

While naturalisation and incardination did not resolve the situation of precarious belonging of these clerics, duty performed the function of ordering them or, to use words from Augustine, the function of providing them with the "proper weight", so that they could "seek their proper places".[250] In their movements of openness and restriction, both the Brazilian state and the Holy See established requirements and obligations for the migrant clergy. Both were guided by goals of obedience and discipline, relying on models such as that of the public servant, or that of the priest with "true ecclesiastical spirit" and "zeal for the salvation of souls". The sources show that the Council of Trent was instrumental in determining the duties of the migrant priest, both directly (for ecclesiastical duties) and by analogy (for civil duties). But beyond the disciplinary aspect, the dimension of duty also meant service, that is, the duty to be useful to the Church, to address the needs of the faithful. This element was the tonic of the discourse among the councillors of state, and one of the main points of the instructions by the Congregation of the Council. Thus, it is hardly an exaggeration to say that, once the bureaucratic requirements were met, the anchor determining the position of the travelling priest, whether on one side or the other of the Atlantic, was local need: a pragmatic – and also typically Tridentine – anchor.

249 The authority of the prelate of origin reached a particularly strong level in the 19th century. During this period, the Congregation of the Council recognised that, in order to fulfill the needs of local churches, a bishop could prohibit a priest without office or benefice from leaving the diocese. It was sufficient that the prelate, besides acknowledging local need, assured a source of income to the priest, according to Le Tourneau (2002) 766. Until the mid-18th century, this was not so: for no reason whatsoever was a bishop allowed to prevent an idle priest from assuming an office or a benefice in another diocese. For a *pot-pourri* of the views of modern and contemporary canonists on the point, see Bouix (1873 [1859]) 277–287.

250 In Augustine's metaphysics, weight is considered one of the qualities by which things are ordered in the world. The proper weight compels things to rest in their proper places. Love, as the weight of the soul, once in its proper measure (Christian love, a duty), leads men to their proper place in the divine order of things. See Book 13, Chapter 9 of Augustine's *Confessions*.

3.5 Reform of seminaries: a puzzle of tensions on a converging horizon. The Council of Trent as a normative set evoking episcopal liberty and responsibility[251]

The long Canon 18 of Session 23, *De reformatione*, of the Council of Trent determined that bishops were obliged to maintain in their dioceses institutions for education in religion and ecclesiastical discipline. Such institutions – aimed primarily at young men aspiring to the priesthood – were the *seminaries*.[252] The canon detailed aspects such as the admission of candidates, the disciplinary framework and the organisation of the students' daily life, the economical means to sustain the seminary, the competence for the selection of professors and their criteria, and the exceptional procedures for dioceses lacking seminaries, and for those with more than one seminary.

In 19th-century Brazil, this canon represented one of the goals of the ultramontane episcopate. The bishops' reforming project involved providing full-time and high-quality education, retaining the autonomy of prelates to organise the courses and the personnel. The canon also became a weapon of resistance for bishops against certain regulations from the civil power. This section examines this normative tension in the governance of the Brazilian Church, and also nuances it by pointing out perspectives of convergence.

Between the 1850s and 1860s, Brazilian bishops found themselves in a problematic position: they were caught between the impetus to found or

251 This section was written as part of the author's contribution to the project "RESISTANCE. Rebellion and Resistance in the Iberian Empires, 16th–19th centuries" (778076-H2020-MSCA-RISE-2017), funded by the European Union's Horizon 2020 Research and Innovation Programme.

252 Literature on seminaries is abundant, in particular in the fields of local history of institutions and history of education. The historiograhy on the seminaries of Imperial Brazil concentrates on the dioceses of S. Salvador da Bahia, Mariana, São Paulo and Olinda, as in Costa e Silva (org.) (2017 [1815–2015]), Costa e Silva (2000), Oliveira (2015), Teixeira/Fernandes (2015), Trindade (1953–1955), Melo Martins (2006), Santos (2012), and Nogueira (1985). A point frequently examined in Brazilian literature is the role of religious organisations (the Congregation of the Mission, in particular) in the administration of seminaries, as in Santirocchi/Santirocchi (2020), Santirocchi (2017), Pinto (2013), and Melo Martins (2013). Historiography is also concerned with the adherence of seminaries to long-lasting ideological projects, as in the case of the enlightened and liberal seminaries between the 1700s and the 1800s: Santos/Casimiro (2013); and as in the case of the seminaries reformed according to ultramontane standards between the 1800s and 1900s: Serbin (2006) and Santirocchi (2015b).

reform seminaries and the profound material limitations to fulfill such a project. Testimonies of the precarious situation of these institutions reached the ears of the emperor and those of the Roman Curia. In the Reports of the Ministry of Justice produced between 1850 and 1851, for example, Minister Eusébio de Queirós[253] describes the misery of the seminaries of the country, addressing some of them as "nominal",[254] that is, as structures that only by mere formality were named seminaries, lacking capital for the maintenance of buildings, the payment of professors and staff, the creation of chairs, among other expenses.

The reports offer an interesting panorama of the survival strategies of these educational institutions.[255] The Seminary of Belém do Pará, which was very poor, relied on the rent of some houses owned by the Church. The Seminary of S. Luís do Maranhão had professors who taught for free, and the bishop had already converted part of the Church's temporal patri-

253 Eusébio de Queirós Coutinho Matoso da Câmara (1812–1868) was a prominent politician of the Brazilian Second Reign. He was born in Luanda, Angola, where his father served as *ouvidor-geral* (i. e. a judge with judicial and administrative functions in the Portuguese colonies). Eusébio de Queirós and his family came to Rio de Janeiro in 1815. After attending classes at the Seminary of São José in Pernambuco (1826–1827), he graduated at the Faculty of Law of Olinda (1832). Eusébio de Queirós pursued his entire political and legal career in Rio de Janeiro. Within the span of twenty years, he was criminal court judge of Sacramento (1832), chief of police at the Court (1833–1844), deputy of the Provincial Legislative Assembly of Rio de Janeiro (1838–1841), judge of the court of appeal *(tribunal da relação)* of Rio de Janeiro (1842), and member of the Chamber of Deputies (1842–1851). He was one of the main figures of the Conservative Party, along with José Joaquim Rodrigues Torres, the Viscount of Itaboraí, and Paulino José Soares de Sousa, the Viscount of Uruguay. As Minister of Justice under Pedro de Araújo Lima, the Marquis of Olinda (1850–1851), and under José da Costa Carvalho, the Viscount of Monte Alegre (1849–1852), Eusébio de Queirós was instrumental for the enactment of several far-reaching laws, such as: the Brazilian Commercial Code of 25 June 1850, whose section on maritime commercial law is still in force; the Land Law of 18 September 1850, which reorganised the policy of land ownership in the empire; and the Law n. 581 of 4 September 1850, which is named after him *(Lei Eusébio de Queirós)* and was aimed at the repression of the maritime trafficking of Africans as slaves to Brazil. Towards the end of his life, he accumulated several prestigious functions: senator (1854), inspector-general of primary and secondary education in the Court (1855–1865), and minister of the Supreme Court of Justice (1864). He became a member of the Council of State in 1855. For more on Eusébio de Queirós, see Blake (1893) 308–310, and Arquivo Nacional (Brasil) (2017).

254 Eusébio de Queirós refers to the seminaries of Belém do Pará and Amazonas, as in MJ (Br), Rel. 1851 (1852), p. 29.

255 MJ (Br), Rel. 1851 (1852), pp. 27–35.

mony (e. g. farms) into public debt bonds *(apólices da dívida pública)*, and offered slaves for auction. In the Seminary of Olinda, the professors were paid by the National Treasury, but even so, the prelate was forced to suspend the salaries of the rector and other employees due to constant deficit. The Seminary of Mariana, for its part, had a mixed income, coming from bonds, farm rental, and the contribution of the province of Minas Gerais for some chairs; in extreme cases the most advanced students taught classes. According to Eusébio de Queirós, the Seminary of S. José, in Rio de Janeiro, and the Major Seminary of Salvador da Bahia were the ones in the best position at the time; yet the latter, even if helped by the provincial treasury and rental income, did not possess enough capital. In general, the lack of resources often restrained the number of chairs, and compromised the regularity of classes, when it did not lead to their complete paralysis.

To avoid losing candidates destined for priesthood, and to remain faithful to the reformist plan, bishops sometimes sent young aspirants to study in Europe, especially in Italy and France. This peculiar type of migration is attested by the list of Brazilians admitted at the Pontifical Latin American College (Rome) in 1882, preserved by the Congregation for Extraordinary Ecclesiastical Affairs.[256] Cândido da Costa e Silva, in a reasoning that concerned the candidates from Bahia but could be extended to aspirants from all over Brazil, sees in the exchanges with the Pontifical Latin American College the intention to create an elite "aligned with Rome", apt to assume high positions in the Archbishopric of Salvador da Bahia or the government of other Brazilian dioceses.[257] This could be said about other institutions in the Eternal City, such as the Roman College and the Pontifical Gregorian University. As far as the Pontifical Latin American College is concerned, this project bore late fruit. It only materialised during Republican Brazil (from 1889 onwards), when *alumni* from this institution became bishops, archbishops, and even cardinals. Examples are D. Francisco de Rego Maia, first

256 Quadro sinottico dei Brasiliani ammessi come alunni nel Collegio Pio Latino Americano di Roma nell'anno di 1882 (1882), in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 225, Fasc. 13. For more on the history of the Pontifical Latin American College, see Ascensio (1979). For a more recent account on the institution, framing it within the broader context of the emergence of a conception of Latin American Church, strongly connected to ultramontanism, see Ramón Solans (2017).

257 Costa e Silva (org.) (2017 [1815–2015]) 586.

Bishop of Niterói, and D. Joaquim Arcoverde de Albuquerque Cavalcanti, Archbishop of Rio de Janeiro and first Cardinal of Brazil and Latin America.

In the case of the formation of Brazilian clerics in France, the fruits were already harvested during the empire. The famous Seminary of Saint-Sulpice (Paris) welcomed the two (future) bishops at the center of the Religious Question. Proof of this migratory tendency may be found in a letter that the Bishop of Goiás, D. Joaquim Gonçalves de Azevedo, sent to the Apostolic Internunciature in Brazil, in 1868. The prelate announced that he would be absent from his diocese for four months in order to "take some boys to study in France".[258] The bishop probably had the Seminary of Saint-Sulpice in mind, for he added that he was discussing the matter with D. Antonio de Macedo Costa, Bishop of Belém do Pará – and one of the most successful Brazilian *alumni* of that French institution.[259]

Candidates to priesthood also migrated within Brazil. The episcopal correspondence on the subject is interesting because it helps to map the pace of the reform of seminaries in the country. For example: the Bishop of Fortaleza, D. Luís Antonio dos Santos, in a letter of 28 February 1862 to Apostolic Internuncio Mariano Falcinelli,[260] reported that he would send wealthy students to the Seminary of Salvador da Bahia, as it was the only one that "deserved consideration", after the rehabilitation operated by Archbishop D. Romualdo Seixas.[261] D. Luís manifested a negative opinion about the

258 Letter of 1 December 1868 from D. Joaquim Gonçalves de Azevedo, Bishop of Goiás, to Domenico Sanguigni, Apostolic Internuncio in Brazil, informing him about his absence from the diocese, in: AAV, Arch. Nunz. Brasile, Busta 42, Fasc. 194, f. 72r.

259 On the relationship between the Seminary of Saint-Sulpice and ultramontanism, see Castellani (1966) 769–774. On the Seminary of Saint-Sulpice and the Pontifical Latin American College as common destinations for Brazilian candidates to priesthood, see Ramos Vieira (2016) 226–229, and Serbin (2006) 56.

260 Letter of 28 February 1862 from D. Luís Antonio dos Santos, Bishop of Fortaleza, to Mariano Falcinelli, Apostolic Internuncio in Brazil, informing him about the lack of buildings for the diocesan seminary and the sending of students to institutions outside Fortaleza, in: AAV, Arch. Nunz. Brasile, Busta 32, Fasc. 142, Doc. 3, f. 4r.

261 The Seminary of Salvador da Bahia was closed between 1819 and 1834, due to the political convulsions of the Independence of Brazil, and long periods of *sede vacante*. D. Romualdo Seixas, who assumed the archbishopric at the end of the 1820s, reopened and revitalised the institution. Beyond the material strategies (e. g. the change of building), his actions covered at least three aspects: the consolidation of the academic requirements for the reception of Holy Orders; the restructuring of the curriculum, with more disciplines per year; and a detailed regulation of the daily life of the aspirants, by means of the

institutions of S. Luís do Maranhão and Olinda, claiming they were "directed according to the old [jurisdictionalist] system, which has produced very bad results, as proved by the present clergy". In fact, the reform of the Seminary of Olinda would only begin in 1866, with the ascension of D. Manoel do Rego de Medeiros, who dismissed all professors associated with Freemasonry and "Jansenist ideas".[262]

Sending aspirants elsewhere was one way to deal with the problem, but the bishops still had to confront the precariousness of the seminaries in their hands. And to do so they were obliged to interact with the state. This was because, since before the empire, the seminaries were not funded according to the Tridentine model, that is, by a fixed quota reserved by the bishops from the revenues of the various institutions within the diocese (cathedral chapter, benefices, offices, prebends, dignities, abbeys, religious orders, etc.). The state controlled the tithes and consequently was responsible for distributing the ecclesiastical income. This included the portion for the foundation and maintenance of seminaries, which varied according to needs and possibilities.

In a letter of 16 June 1860, D. Romualdo Seixas tells Internuncio Falcinelli that, in the early decades of the empire, the few existing seminaries had been poorly endowed by the civil government, depending largely on the "zeal and solicitude" (and *congrua*) of the prelates.[263] In Seixas's view, this state of affairs only changed when Eusébio de Queirós took over the Ministry of Justice, between 1848 and 1852. It was he who instigated decisive improvements in the instruction of the clergy, creating – and, above all, adequately funding – chairs in all imperial dioceses. An example of his course of action can be found in the Decree n. 839 of 11 October 1851, which created positions for professors in the seminaries of Belém do Pará, Salvador da Bahia, and Mariana.

However, some among the prelates were critical about Eusebio de Queirós's policy. D. Antonio Ferreira Viçoso, Bishop of Mariana, for example, gladly accepted the subsidy for seminary chairs, but politely rejected the

seminary's statutes. For more on the Seminary of Salvador da Bahia, see Costa e Silva (org.) (2017 [1815–2015]).

262 Ramos Vieira (2016) 250.

263 Letter of 16 June 1860 from D. Romualdo Seixas, Archbishop of Salvador da Bahia, to Mariano Falcinelli, Apostolic Internuncio in Brazil, on the endowment of seminaries, in: AAV, Arch. Nunz. Brasile, Busta 32, Fasc. 143, Doc. 35, ff. 87r–88r.

minister's suggestions regarding potential professors.[264] There were problems even with the Decree of 1851, which, while generous in the endowment of chairs, required professors and compendia to be approved by the civil government after being selected by the bishop. D. Romualdo Seixas, still in his letter to Falcinelli, strongly condemned such dispositions, considering them an attempt of the civil government to become "the supreme judge of Catholic teaching". Defending that the choice of lecturers and textbooks belonged to the episcopate alone, he hoped that the secular power would soon recognise its own limits.

Although controversial, the Decree of 1851 did not cause as much upheaval as its successor, issued in 1863. One possible explanation is that the Decree of 1851 was not meant to be general, that is, it did not concern all seminaries in the empire. Another important factor is that, in 1851, ultramontanism was not as widespread among the clergy as in 1863; the bishops were not sufficiently articulated around the banner of the *libertas Ecclesiae*. In any case, the reactions we observed to the policy of Eusebio de Queirós give hints of the tensions – and also of the convergences – that would take place between the secular power and the episcopate in the following decade. As we will notice from the analysis of cases from 1863 onwards, once again the Council of Trent will be employed as a weapon of resistance by the prelates against the typical logics of modern secular administration. But the results will be quite different from those we saw in the section on ecclesiastical residence.

3.5.1 The Council of Trent versus the Decree n. 3.073 of 22 April 1863. Ultramontane bishops resist, and the Council of State unexpectedly decides *contra legem*

During the times of the empire, the Decree n. 3.073 of 22 April 1863 was the most important – and certainly the most controversial – regulation that the civil government established for diocesan seminaries.[265] The decree standardised the legal treatment of the chairs subsidised by the state, describing their typology, the form of the appointment and dismissal of professors (with the inclusion of mandatory *concursos*, i. e. examinations), the form of

264 Ramos Vieira (2016) 233.
265 See Decreto n. 3.073 de 22 de abril de 1863 (Brasil) (1863).

the payment of salaries and the granting of leaves of absence, and the procedure for selecting textbooks. With this document, the civil government gave a more contemporary expression to its duty to endow the seminaries, as well as to its right to inspect these institutions; elements typical of modern secular administration came to the fore, such as the right of supervision over the object of investment of public funds, the right of information concerning this object, legal certainty (*segurança jurídica*), and efficiency. However, right after its publication, the decree was received rather negatively by the episcopate.

Part of the historiography adheres to the bishops' point of view, mentioning the "deprivation of essential liberties" of ecclesiastics,[266] but the Decree of 1863 actually presented softer control measures compared to the Decree of 1851. For example, professors and compendia no longer needed to be proposed by the bishop and authorised by the civil government; all the prelate had to do was to inform the secular power of his choice. Not by chance, temporal authorities argued that, rather than curtailing the bishops' liberty, the Decree of 1863 had removed the obstacles preventing it from being fully exercised.

In any case, the episcopate defined the document as an attempt of "secularisation of the seminaries", and a clear invasion of the civil government in matters of competence of the prelates. This reaction may be better grasped with the aid of the correspondence exchanged between the Marquis of Olinda (then President of the Council of Ministers, i. e. head of government, and Minister of the Imperial Affairs) and the bishops of Rio Grande do Sul, S. Luis do Maranhão, and Belém do Pará, soon after the new regulation came into force.

The Council of Trent emerged in episcopal discourses as the counterpoint regulation *par excellence*. Against the "invasive" decree, there was Session 23, *De reformatione*, Canon 18, of the Tridentinum, which, following (and even perfecting) the discipline of the preceding councils, entrusted the administration of seminaries to the solicitude – and the jurisdiction – of bishops.[267]

266 For instance, De Groot (2003) 50: "the state did not respect the bishops' complete authority over the seminaries. In 1863, it decreed that teachers and even text books used in the seminaries should be controlled by state inspectors. The bishops were thereby deprived of the essential freedom to direct seminaries according to their own wishes and, as a result, heterodox books remained in the curriculum."

267 Annex D of MI (Br), Rel 1863 (1863a), pp. 9, 18.

The canon appeared as the pinnacle of a continuous process that ranged from the writings of the Church Fathers to contemporary practice in Catholic countries.[268] All these elements converged in favour of the idea that the seminary was an internal, primarily ecclesiastical affair. In this scenario, the participation of the state – beyond the boundaries of financial support – endangered the liberties of the episcopate, and ultimately the liberty of the Church.[269] Clearly, the bishops who claimed this were ultramontanists.

The prelates praised secular norms that possessed ties with the Tridentinum. Curiously, they remembered with great respect the *Alvará* of 10 May 1805, in which Regent João VI referred to the University of Coimbra and the diocesan seminaries as organs that concurred "in reciprocal dependence" to the instruction of the clergy. The bishops clung to this regulation mainly because it ordered that the Council of Trent be observed in the foundation and maintenance of diocesan seminaries, acknowledging the right of free inspection of the episcopate.[270] But when praising the document's delimitation of the rights of the patron, the prelates seemed to forget that a number of provisions of the *Alvará* of 10 May 1805 allowed the secular power to intervene in the business of seminaries in a much more incisive fashion in comparison with the Decree of 1863. The Marquis of Olinda, in his reply to the Bishop of Maranhão, cited some of these provisions. He mentioned that the *alvará* defined the duration of the courses, specified the curricula of study, imposed criteria for the selection of professors, and submitted the method and regime of classes to the Statutes of the Faculties of Theology and Canons of the University of Coimbra. Furthermore, if the prelate wished to entrust the government of the seminary to a religious order or congregation, he first had to request the monarch's permission.[271] Rules of this kind were absent from the Decree of 1863. The Marquis of Olinda thus implied that the ultramontane bishops had fallen into contradiction: if they claimed that the Decree of 1863 had broken with the Council of Trent, they had even more reason to say the same about the *alvará* of 1805.[272]

268 Annex D of MI (Br), Rel. 1863 (1863a), pp. 18–19.
269 According to the Bishop of Pará: "o que está em questão não é precisamente o Seminário; é a liberdade da Igreja", as in Annex D of MI (Br), Rel. 1863 (1863a), p. 20.
270 Annex D of MI (Br), Rel. 1863 (1863a), pp. 8, 20–21.
271 Annex D of MI (Br), Rel. 1863 (1863a), pp. 14–15.
272 Annex D of MI (Br), Rel. 1863 (1863a), p. 14.

But why were the bishops so dissatisfied with the Decree of 1863, in more concrete terms? First, they complained about the lack of uniformity of the proposal: the civil government addressed only some of the seminaries, those endowed by the state, and some of the professors, those of the chairs subsidised by the state: Latin, French, Rhetoric and Sacred Eloquence, Rational and Moral Philosophy, Sacred and Ecclesiastical History, Dogmatic Theology, Moral Theology, Canonical Institutions, and Liturgy and Gregorian Chant. D. Luis da Conceição Saraiva, Bishop of Maranhão, complained that the decree did not solve the disparities of the curricula of Brazilian seminaries, one of the great obstacles to improving the education of the clergy.[273]

The Bishop of Belém do Pará, D. Antonio de Macedo Costa, expressed a similar opinion, stating that, with the new regulation, the civil government had lost the chance to help the episcopate in completing the schedule of seminaries with disciplines such as Mathematics, Profane History, Grammar and National Language, Biblical Exegesis, and Greek, all present in the curricula of educational institutions from "cultured countries".[274] In fact, in D. Antonio's view, the secular power had done something even more serious: by listing the chairs subsidised by the state, it had de facto suppressed courses that, until 1863, were funded by the National Treasury, such as Greek, Biblical Exegesis, Natural Law (in the Seminary of Bahia), Indigenous Language (in the Seminary of Pará), and Geography (in all the seminaries of the empire). Without the endowment from the civil government, these chairs could not be preserved. D. Antonio was skeptical about the possibility – maintained by the decree – of bishops creating chairs on their own iniciative, and supporting them with the revenues of the mitre; he argued that the episcopal *congrua* was "meager", "shameful"; even if added to the revenues of the diocesan registry *(cartório)*, the amount was insufficient. For this reason, the Bishop of Pará defended that the civil government should enlarge the scope of the endowment offered to seminaries, leaving to the prelates' discretion the list of disciplines subsidised (after all, "the government cannot reform the seminaries, but only supply the bishops with the material means for this reform").[275]

273 Annex D of MI (Br), Rel. 1863 (1863a), p. 8.
274 Annex D of MI (Br), Rel. 1863 (1863a), pp. 21–22.
275 Annex D of MI (Br), Rel. 1863 (1863a), p. 22.

Anticipating that the Marquis of Olinda would claim lack of funds, D. Antonio went so far as to suggest that, after signing a concordat with the Holy See, the civil government should transform the properties of some religious congregations into public debt bonds, with the seminaries as their holders; thus the remuneration of rectors, professors, and other employees would be guaranteed without sacrificing the treasury.[276] This suggestion is quite remarkable, for it shows that the ultramontane episcopate and the "old" religious institutions did not possess the same interests, and that, within the polyphony of the Church, one group could even "instrumentalise" the other for its own ends.

In response to the bishops of Maranhão and Pará, the Marquis of Olinda declared that the intention of the civil government was not to prescribe a complete curriculum for the seminaries, but only to list the chairs subsidised by the state and standardise their legal treatment. The delineation of the curricula in their final form was a task that the decree reserved for the prelates – which is why the Marquis of Olinda interpreted the document not as a degradation of the bishops to the level of "delegates of the state", but as a tribute to their liberties and rights. According to the marquis, the country's economic situation did not allow the treasury to endow all chairs; this did not mean, however, that the chairs not subsidised by the state would be automatically suppressed, as D. Antonio assumed. Quite the contrary: the Marquis of Olinda was optimistic about the possibility of bishops supporting professors with the revenues of the mitre or with the aid of the provincial assemblies.[277] And he reproached the Bishop of Pará for the content and form of his recriminations: the marquis pointed out several contradictions between the prelate's recent representation to the government and previous requests, in which the bishop suggested that the chair of Indigenous Language be suppressed in favour of Mathematics; and, above all, the marquis disapproved of the prelate having turned to the press to give vent to his dissatisfaction, at the risk of generating false impressions (above all, in "less illustrated persons") about the religious sentiments of the government and its position on episcopal rights.[278]

276 Annex D of MI (Br), Rel. 1863 (1863a), p. 23.
277 Annex D of MI (Br), Rel. 1863 (1863a), p. 11.
278 Annex D of MI (Br), Rel. 1863 (1863a), p. 28.

Still regarding the (lack of) uniformity of the Decree of 1863, the Bishop of Maranhão claimed that the regulation established a situation of inequality among the seminary professors, who, though members of "the same corporation", were not governed by "the same law". Besides, the prelate continued, the decree placed the professors subsidised by the state as an exception among the other public servants: they earned little money, without having the attributes of a life-long tenure, or the right to alimony in case of illness, among other guarantees.[279] It sounds quite strange that an ultramontane bishop should complain about the lack of status of public servant of actors inserted in an ecclesiastical setting (especially considering that such prelates constantly sought to characterise the seminary as an environment internal to the Church). In response, the Marquis of Olinda did not miss the occasion to lecture the Bishop of Maranhão on episcopal prerogatives. He declared that the subsidy by the state did not turn seminary professors into public servants; they remained diocesan officials, under the inspection of the bishops. The fact that their appointment was not for life was precisely in line with the episcopal right to dismiss professors on grounds of moral discipline, for example.[280]

The Bishop of Belém do Pará was not as naïve in his remarks. He did argue that the Decree of 1863 had transformed the subsidised professors into public servants, however he did so complaining that the state had been given the *de facto* prerogative to dismiss them, upon communication to the bishop and simultaneous suspension of their salaries.[281] In combative tones, D. Antonio affirmed that such prerogative put into the hands of the government's ministers a quick means to "compress and silence orthodox instruction".

The Marquis of Olinda, using the conciliatory voice of moderate jurisdictionalism, replied that the prerogative would be used only in exceptional cases, for temporal and even spiritual reasons, and that it was in line with the

279 Annex D of MI (Br), Rel. 1863 (1863a), p. 8.

280 Annex D of MI (Br), Rel. 1863 (1863a), pp. 12–14.

281 Annex D of MI (Br), Rel. 1863 (1863a), p. 23. D. Antonio is referring to Article 8 of the Decree of 1863, which reads: "A disposição do artigo antecedente deixa sempre salva para o governo a faculdade de declarar aos Bispos não ser conveniente a continuação de qualquer professor no magistério do Seminário. E quando o governo assim o tenha declarado, será logo suspenso o honorário do professor", as in Decreto n. 3.073 de 22 de abril de 1863 (Brasil) (1863).

monarch's role as "exterior bishop", or "exterior vigilance".[282] One may clearly observe that the persons involved in this debate adopted different normative conventions: D. Antonio employs the convention of separation,[283] whereas the Marquis of Olinda relies on the convention of amalgam. Ever pragmatic, the marquis finished his discourse with the argument of legal certainty: if the state had to engage in exceptional acts, it would be best that the rules were previously determined.[284]

Another point of complaint was the procedure for granting leaves of absence to the professors. According to the Decree of 1863, once issued by the bishops, the permissions had to be reported to the presidents of province, so that the salaries of absent professors would continue being paid. D. Sebastião Dias Laranjeira resisted this article by stating that it was better not to have a seminary than to have it under the slightest interference of the presidents of province. He preferred to deal directly with the ministers in Rio de Janeiro.[285] Trying to appease him, the Marquis of Olinda replied that the procedure was analogous to that of the leaves of absence for parish priests. The decree, he said, aimed precisely at preventing arbitrary decisions from the presidents of province, and also at avoiding delays in the payment of the professors, as would occur if the ministers of state were called upon.[286] The arguments of legal certainty and efficiency thus came into play once more, signalling that the civil government sought to introduce elements of modern administration into the governance of the Church.

But among all these points of debate, one aroused particular resistance from the ultramontane episcopate, a point considered exemplary when the subject was injury to the jurisdiction of bishops over seminaries. Such was the relevance of this point that it transcended the letters of bishops criticising secular legislation, and reached the hands of the councillors of state, in the form of requests for exemption (or "dispensation") from the Decree of 1863. I am referring to the examinations *(concursos)* for selecting professors.

282 Annex D of MI (Br), Rel. 1863 (1863a), p. 27.
283 I say separation and not exclusion, because the Bishop of Belém do Pará did not reject the participation of the state in the administration of the seminaries by means of the endowment.
284 Annex D of MI (Br), Rel. 1863 (1863a), p. 27.
285 Annex D of MI (Br), Rel. 1863 (1863a), p. 4.
286 Annex D of MI (Br), Rel. 1863 (1863a), pp. 6, 7.

The Council of Trent, Session 23, *De reformatione*, Canon 18, did not provide details on the procedure for recruiting professors; it only required that they had the degree of doctor, master, or licentiate in Sacred Scripture or canon law, or that they were "person[s] competent to take charge of the office". The corps of professors was composed according to the free choice of the bishop or his delegates.

The Decree of 1863 was more specific. It obliged the episcopate to put the chairs subsidised by the state up for competition and, as long as the bishops did not propose their own regulation, the civil government's norms on procedure (Article 4) would apply. According to this disposition, the selection comprised two examinations of knowledge, one oral and the other written. Both were given before a commission of examiners which was presided over by a delegate of the bishop and monitored by the rector of the seminary. After the examinations, the commission would vote on the merits of the candidates and order them on a list to be submitted to the prelate, who would then proceed to the appointments. This list would be accompanied by documents regarding the competition (selection of points, examinations, minutes, etc.) and other information that the candidates had presented on their morals and service. The bishop was only able to freely appoint professors after two competitions had expired without the presentation of any candidate. Another form of free appointment was that made in favour of foreigners, whose contract had to be approved in advance by the civil government.

The secular power modeled these rules after the Statutes of the Seminary of Olinda (1798), established by D. José Joaquim da Cunha de Azeredo Coutinho, who had reformed the institution in line with the enlightened and liberal agenda that was typical of the Pombaline period and predominant in Brazil during the first half of the 19th century. As one may easily guess, the ultramontane prelates who complained about the Decree of 1863 had other reformist purposes in mind – and saw in the act of the civil government coercion rather than a well-intentioned suggestion.

In the correspondence I analysed a few pages before, the prelates' resistance is well represented in the discourse of D. Sebastião, Bishop of Rio Grande do Sul, when he declared to the Marquis of Olinda that performing examinations for professors was not always feasible. This impracticality was explained by two factors: the general lack of persons to occupy the chairs and, above all, the excessive emphasis of the Decree of 1863 on the scientific qualities of the

candidates. According to D. Sebastião, "the scientific or literary capacity is but one of the qualities required, and the least important".[287] In other words, it was useless for a candidate to succeed in scientific examinations if he did not demonstrate the qualities that, according to the prelate of Rio Grande do Sul, were essential to the education of the clergy, that is, moral and religious qualities. Moreover, the model suggested by the state could occasionally put the bishop in difficult situations, as it would not always be convenient for him to disclose the moral – and perhaps scandalous – reasons that led him not to appoint an approved candidate. In view of this, D. Sebastião argued that professors had to be freely appointed. And, significantly, he contrasted the examinations prescribed by the Decree of 1863 with the liberty allowed by the Council of Trent.[288]

In response, the Marquis of Olinda claimed that the examinations were only a practical means to verify the intellectual capacity of candidates; it was not a case of privileging science over morals. The last word on the appointments still belonged to the prelates. It was, in fact, their right and even their obligation to reject candidates who, once on the approved list, did not combine their "gifts of the mind" with "the necessary moral and religious qualities". Proof that morality had been contemplated by the Decree of 1863, continued the Marquis of Olinda, was that the document did not require bishops to state the reasons for rejecting candidates approved by the commission of examiners.[289]

It is not by chance that D. Sebastião attached particular importance to moral merit in the composition of the seminary's teaching staff. In the Second Reign, the Brazilian prelates – most of them of ultramontane tendency – had an agenda strongly focused on the moralisation of the clergy. Although the Council of Trent did not outline a complete model of priestly life,[290] it is possible to establish a link between the goals of the 19th-century episcopate and the emphasis of the conciliar priests on aspects such as discipline and

287 Annex D of MI (Br), Rel. 1863 (1863a), p. 3, the emphasis is mine.

288 According to D. Sebastião: "[o]s bispos são obrigados em consciência, segundo as prescrições do Concílio de Trento, a adotar os meios mais próprios a formar bons padres; o sistema do concurso [do Decreto de 1863] me parece uma objeção invencível à realização das vistas do Concílio sobre a educação eclesiástica e, por conseguinte, imposta aos bispos, vai de encontro à liberdade que devem ter na escolha dos sujeitos mais próprios moral, religiosa, e cientificamente para a educação e instrução", as in Annex D of MI (Br), Rel. 1863 (1863a), p. 3.

289 Annex D of MI (Br), Rel. 1863 (1863a), p. 6.

290 Jedin (1971). On sacerdotal identity in the *longue durée*, see Armogathe (2020).

pastoral activity.[291] Moreover, the practical implementation of the Council of Trent over the centuries brought out exemplary figures who, immortalised in biographies and even hagiographies, came to serve the purpose of clerical moral formation.[292]

But, by displaying such concerns, the bishops of the Second Reign also disclosed the relevance of more recent references – in particular those from France. In the last decades of the 19th century, most Brazilian prelates had been educated, partially or fully, in institutions administered by French religious orders or congregations (I recall especially the Lazarists, Sulpicians, and Capuchins). After the Council of Trent, the seminaries administered by these organisations embodied the model of the *bon prêtre*, that is, the morally exemplary priest, active mainly in rural areas.[293] This model conceived the ecclesiastic as detached from the community (by dress, by status, by the *sui generis* character of his mission, in-between heaven and earth) and, at the same time, as an example for the community. Oriented towards a deeply interiorised piety, close to holiness, the priest had to behave on the basis of the maxim *sacerdos alter Christus* ("the priest as another Christ").

While it is true that religious orders and congregations developed different approaches to the *bon prêtre*,[294] the moral and spiritual focus was a constant feature of French seminaries throughout the *Ancien Régime*. This format reached the 19th century hand in hand with ultramontanism, having been transformed,[295] and taking advantage of the transnational flows that surrounded this political and religious movement. Proof of this lies in the fact that it reached Brazil, as can be perceived from D. Sebastião's words.[296]

291 On the interweaving of pastoral and disciplinary aspects of the Council of Trent, see De Halleux (1987) 308–309.

292 See Massimi (2011).

293 On the model of the *bon prêtre*, see Noguès (2011), Krumenacker (2014), Langlois (1988), Boutry (1988), and De Halleux (1987).

294 On the differences of method and focus of the French Lazarists and Sulpicians in the early modern period, see Julia (1988).

295 Philippe Boutry, among others, argues that, from the second half of the 19th century onwards, the Sulpician model of the good priest experienced a crisis. I prefer to say it underwent a transformation, because, taking the example of Imperial Brazil, a regime of complementarity was established between the model of the *bon prêtre* and the model of scientific improvement of the clergy.

296 Not by chance, Santirocchi (2015b) 213 remarks how strong the influence of French Catholicism over Brazilian ultramontanism was. On the relationship between ultramontanism and the model of the *bon prêtre* in Brazil, see Pires (2015).

But building a dichotomy between, on one hand, ultramontanism, Romanticism, morality, religious sentiment etc., and, on the other, jurisdictionalism, Enlightenment, science etc., is an exercise that carries a high risk of reductionism. Even an enlightened prelate like D. José de Azeredo Coutinho, when composing the Statutes of the Seminary of Olinda, had not forgotten to state that, before reaching the phase of scientific examinations, candidates to the chairs of seminaries had to be evaluated in terms of morals.[297] Moreover, as Boutry points out, the seminaries reformed *à la* ultramontane in the second half of the 19th century (he refers to France, but the reasoning may be extended to Brazil) combined the tradition of the good priest with the need to address recent and strong intellectual demands.[298]

The increasing complexity of urban centres; the revolutionary political convulsions; the proliferation of magazines and newspapers that conveyed liberal and secularising ideas, very much resistant to the institutional and symbolic role of the Church during the *Ancien Régime*; all these factors urged priests to engage in tasks that transcended their usual evangelising *métier*. They were forced to enter into the arena of public debate. To defend the faith and the Church in spaces sometimes quite hostile to the clergy, the priest needed to be on "parity of arms" with his opponents; his intellectual formation needed to go beyond the model of the *good priest*. This is why the seminaries of the ultramontane reform were founded on two pillars, morality *and* science.

The letters from the Bishop of Belém do Pará to the Marquis of Olinda are evidence of the high value that prelates attached to the scientific training of seminary interns. To request improvements in his institution, D. Antonio used the example of the "best seminaries in Europe" (Saint-Sulpice among them), where the courses of Theology and Canon Law were preceded by the chairs of Mathematics, Natural Sciences, Physics, and Chemistry, in parallel with the regular course of Philosophy. The Bishop of Pará believed that the contact with hard sciences was relevant due to their "frequent application over a lifetime", and to their spreading among "all the classes of society", in a

297 "E como para o ensino da Mocidade não basta só ter ciência, mas é também necessário ter bons costumes; deverão os Pertendentes [sic] apresentar Atestações juradas dos seus Párocos, pelas quais conste da sua probidade, vida, e costumes […]", as in Azeredo Coutinho (1798) 93.

298 Boutry (1988) 228.

way that it would be "shameful for an ecclesiastic to ignore them completely". D. Antonio also believed that the learning of mathematics was useful for sharpening one's logical abilities, preparing the student to understand other subjects (and to get the upper hand in a real-life controversy, one could add).[299] Generally speaking, it was in view of the scientific instruction of the clergy (including not only hard sciences, but subjects such as Profane History, Grammar, Greek etc.) that the Bishop of Pará claimed broader liberty in the creation of chairs, *pari passu* with the unrestricted collaboration of the state in the endowment of seminaries. As I have already said, he desired the curriculum of his seminaries to resemble the ones of reformed European institutions, in a combination of strict morals and strong scientific formation.

However, for ultramontane prelates the reform of seminaries was not only about curricular changes. It concerned administrative modifications. Many Brazilian bishops handed the tasks of directing and teaching to foreign religious organisations that were widely known for their capacity of administering seminaries according to the model of double instruction of the clergy. Among them, religious orders and congregations coming from France stood out: the Congregation of the Mission, pioneer in the reform of Brazilian seminaries, acted in the dioceses of Mariana (as of 1853), Salvador da Bahia (as of 1856), Fortaleza (as of 1864), Diamantina (as of 1864), and Rio de Janeiro (as of 1869); the French Capuchins worked in São Paulo (as of 1856) and Salvador da Bahia (from the 1880s onwards).[300] These organisations came to fill the place left by the Jesuits, who had fallen into disgrace in the Pombaline period. Unlike the Jesuits, the Congregation of the Mission enjoyed a favourable relationship with the secular powers, which facilitated its insertion in Brazilian dioceses. There was, to some extent, a convergence of interests between the state and the ultramontane episcopate to have these foreign organisations come to Brazil. Both parties were concerned with reforming the seminaries – what varied were the terms of such reform, and its conformity to canon law and secular law.

The strategy of the prelates was to delegate as much power as they could to foreign orders and congregations. Contracts of this kind provided reli-

299 Annex D of MI (Br), Rel. 1863 (1863a), p. 21.

300 De Groot (2003) 70. On the Congregation of the Mission in Brazil, see Santirocchi/Santirocchi (2020), Santirocchi (2017), Oliveira (2015), Teixeira/Fernandes/Martins (2015), Pinto (2013) and Trindade (1953–1955). On the French capuchins, see Melo Martins (2006, 2007, 2013), Wernet (1987).

gious organisations with sufficient autonomy to, among other things, define who could join the teaching staff, which in most cases was restricted to the members of the order or congregation in question. The prelate only had to formalise the appointments. It is not difficult to imagine that, depending on the interpreter (especially in the case of a state interpreter), this agreement between bishops and religious organisations might clash with the requirement of examinations posed by the Decree of 1863. This was yet another reason – and a strong one – for prelates to defend their right to freely appoint professors. But, in this case, the bishops' resistance developed in a different arena than that of letters to the civil government: it entered the realm of praxis, to the point that the emperor urged the Council of State to decide on the possibility of granting "dispensations" from the examinations of the Decree of 1863.

These consultations took place in the 1860s. As we have seen in a previous section, during this same period the councillors had to deal with the resistance by the episcopate to another mechanism of the modern secular administration that was being applied to the clergy, the civil leave of absence. However, as we shall observe, the opinions that prevailed in the Council of State in one case and in this other took quite different trajectories.

The first request for exemption from the Decree of 1863 was that of D. Antonio Ferreira Viçoso, Bishop of Mariana, who wished to freely appoint directors and professors among the members of the Congregation of the Mission.[301] The Section for Imperial Affairs, formed by the Marquis of Olinda, the Viscount of Sapucaí, and Bernardo de Souza Franco, assembled on 9 May 1864 to opine on the matter. They focused on simply explaining the decree. First, the councillors clarified that the document was not concerned with the direction of seminaries, which in their opinion rendered it pointless to discuss the issue of exemption.

As for professors, the section declared that bishops could indeed admit foreigners (as in the case of the Lazarists) – provided that the corresponding contract was submitted beforehand for the approval of the civil government, in accordance with the second part of Article 5 of the Decree of 1863. It was not possible to proceed otherwise: a particular suspension of the decree could give rise to similar requests from other dioceses; and, moreover, it

301 Consulta de 9 de maio de 1864, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 535, Pacote 3, Doc. 48.

was not admissible, the councillors said, for a prelate to renounce a right that was given to him (at least, that was how the Decree of 1863 appeared in the eyes of the state authorities).

The section established a differentiation that would be useful for later cases, and which came to appease the bishops' anxieties in their agreements with religious orders and congregations: for foreign professors, the decree's provision on foreigners applied (i. e. the bishop freely appointed the candidate after the approval of the contract by the civil government); for national professors, the general provision would apply, that is, mandatory examinations. With this, the Council of State sought to demonstrate that the Decree of 1863 presented a much simpler procedure for the purposes of the Bishop of Mariana. The emperor approved the opinion by resolution on 4 June 1864.

Apparently, this clarification was not enough to convince D. Antonio Viçoso. On 16 August 1867, the Section for Imperial Affairs, composed of the same members as in 1864, was asked to opine on a petition from the prelate, who once again demanded a "dispensation" from the examinations stipulated by the Decree of 1863.[302] In his letter, the Bishop of Mariana implied that his agreement with the Lazarists for the administration of the seminary was a closed system, which worked well just as it was. Examinations, he declared, were no better procedure than the free choice of the superior of the Congregation of the Mission (who was in charge of the selection of professors). The teaching staff, composed exclusively of members of the religious organisation, could hardly absorb an external member. The latter would most likely not conform to the Lazarists's daily life, nor would he submit to the discipline of the superior of the congregation. The closed system guaranteed disciplinary cohesion. It was also a structure that easily supplied the needs of neighboring dioceses, whose seminaries were also under the Congregation of the Mission; in case of a shortage of professors, staff transferences from Mariana to Diamantina or Fortaleza could be quickly arranged, as the seminaries were administered by the same hierarchical system. To protect this state of affairs, D. Antonio Viçoso requested to the Council of State that Article 2 of the Decree of 1863 ("the appointment

302 Consulta de 16 de agosto de 1867, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 543, Pacote 3, Doc. 47.

of professors shall be made by the bishops, by means of examinations") be provisionally suppressed in favour of his seminary, so that the prelate could freely appoint professors (or rather confirm the choice of the superior of the congregation).

In response, the Council of State reiterated that for the appointment of foreign professors, as was the case with the Lazarist masters, there was no need of examinations, only the government's approval of the contract. It was not, therefore, a case of "dispensation". But a new interpretation, albeit minoritarian, was raised by Souza Franco. He argued that Article 5 of the Decree of 1863 established an order of priority: national priests should be preferred to foreigners, in such a way that only if no Brazilian candidates appeared after two attempts of performing examinations (first part of the article) could the appointment of foreigners be considered (second part of the article). The other councillors did not share this opinion; they interpreted the decree in the same way as in 1864: there was one provision for the selection of foreigners, and another for the selection of nationals, with no hierarchy. Souza Franco, however, gave his opinion the air of a more reliable interpretation by saying that he did not feel authorised to advise contrary to a valid provision. This insinuation that the Council of State might be acting against the law was not gratuitous. Certainly, in this specific case, there was room for both interpretations (and in the end, the emperor did not decide upon this). But a few months earlier the same Section for Imperial Affairs had offered a much more heterodox opinion on the same subject.

I am referring to the consultation of 13 May 1867, which addressed a request from D. Antonio de Macedo.[303] The quarrelsome Bishop of Pará wished an order of payment to be issued in favour of the professor whom he had freely appointed to the chair of Canon Law (which was equivalent to the chair of Canonical Institutions of the Decree of 1863). The professor was not a foreigner, meaning the second part of Article 5 did not apply. The prelate had disregarded the requirement of examinations, and used the petition to expose his motives for having acted thus, repeating a series of arguments employed in his letter to the Marquis of Olinda a few years before. The prelate complained that the decree covered only the subsidised semi-

303 Consulta de 13 de maio de 1867, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 543, Pacote 3, Doc. 44.

naries – and in that, it was the expression of a not very coherent position of the civil government on this question, as it did not match its alleged concern about the quality of the clergy's instruction in the whole national territory. This complaint can be read as ironical: D. Antonio de Macedo protested against the lack of coherence on the part of the state, but if the Decree of 1863 had actually covered all the seminaries in the empire, the prelate would doubtlessly have accused the civil government of undue intervention, of exaggerated regalism, as he had been doing in the press since 1863. The bishop also mentioned the practical difficulty of implementing the Decree of 1863 in the dioceses of the empire and recalled that the civil government itself recognised these challenges in a ministerial report of 1866. Moreover, according to D. Antonio de Macedo, recent appointments of professors in Fortaleza and São Paulo had not been made in accordance with the decree's standards, and this did not prevent the professors from being paid by the public coffers.

His most sincere arguments went back to the ultramontane rhetoric: the model of examinations could not be adopted in the Seminary of Belém do Pará because it went against the liberties of the Church, against orthodoxy, and against essential points of the ecclesiastical regime. It was incumbent on the bishop to appoint the professors that he deemed suitable – in the way he deemed suitable. In affirming this, the prelate did not cite the Council of Trent directly, but claimed he was supported by his conscience (and the civil government could not demand that he sacrificed that) and by a list of authorities located on both sides of the Atlantic: "luminaries" of the European clergy, the Holy See, canonists, and other Brazilian bishops.

If the argument of orthodoxy was not sufficient, there was that of usefulness. The examinations were useless in the eyes of D. Antonio de Macedo, for "seminary chairs [were] not like those of the academy". For the latter, a professor's scientific knowledge was enough; for the former, science needed to be combined with morality, with "spiritual orientation". "[The professor] must form [...] the heart as much as the intelligence [of the pupils]"; this phrase sums up the dual objective of ultramontane seminaries which we have already seen. The *Sulpicienne* tradition of the *bon prêtre* appears in a more pronounced fashion, counterbalancing the purely scientific demands of the Decree of 1863. In the end, morality took the upper hand: "[I]f a bishop has before him those good in science and poor in spirit, those poor in science and good in spirit must prevail."

This ardent letter received an unexpected reply from the Council of State. The section, formed once again by the Marquis of Olinda, the Viscount of Sapucaí, and Bernardo de Souza Franco, did not question the validity of the Decree of 1863. The councillors simply granted D. Antonio de Macedo's request for orders of payment. They justified their decision by the "need to make the seminary chairs effective", so that "the clergy would not be deprived of the necessary instruction". As for the bishop's lengthy argumentation, the councillors limited themselves to stating that the examples of the dioceses of São Paulo and Fortaleza were of no use to the prelate, for "special reasons" (which remained unspecified) had allowed the free appointment of professors then.

Despite the reservations of and the vague terms employed by the councillors, the results in both cases were the same: the prelates managed to persuade the state to remunerate professors appointed without examinations. With this decision, the Council of State demonstrated that the civil government preferred to converge with the bishops, addressing the concrete needs of the seminaries, rather than diverge from them in favour of the strict observance of the law. The councillors' position may be interpreted as a concession, as a "lowering of the guard" of the state in face of the resistance of the prelates to the Decree of 1863. This concession, however, was not an end in itself; it was informed, at least on the level of the official discourse, by the objective of improving the instruction of the national clergy. It is a conciliatory discourse, well suited to the Marquis of Olinda and his moderate jurisdictionalism. With it, throne and altar remained in harmony.

Souza Franco, however, interpreted the concession as an act *contra legem*. He declared that if the Bishop of Pará did not comply with the Decree of 1863, the appointments of professors could not be considered legal, nor could the orders of payment be issued. The councillor concluded that he did not consider himself authorised to advise "against dispositions in force", an expression he would repeat to the Bishop of Mariana. The difference was that, in the case of the Bishop of Pará, there was no room for doubt. The state was not explaining the legislation. It was granting exceptions to it.

It was not the first time that the Council of State had decided *contra legem* in favour of seminaries – and prelates. On 20 July 1861, the Section for Imperial Affairs, composed of the Marquis of Olinda, the Viscount of Sapucaí, and Pimenta Bueno, was asked to opine on the appointments of professors which the vicar capitular of Salvador da Bahia had made soon after having fired two Lazarist priests who had been hired by the late arch-

bishop.[304] The civil government received three representations against this act of the vicar capitular: one from canons and vicars of the archbishopric; another from the bishops of Pará and Rio Grande do Sul, who protested against an "attack on the memory and wisdom of the [late] archbishop", great D. Romualdo Seixas; and one from the superior of the Congregation of the Mission, who, significantly, complained that the act violated the contracts signed between the archbishop and the religious organisation for the administration of the major and minor seminaries. These contracts gave the Lazarists full liberty to select professors and textbooks.

The Council of State promptly noted that the contract concerning the major seminary went against the Decree n. 839 of 11 October 1851, which required that professors and textbooks for the subsidised chairs be proposed by the bishops and approved by the civil government. The Decree of 1863, which did not make such demands, did not exist at the time. The irregularity could lead to the absolute nullity of the contract, at least as far as concerned the teaching staff.[305] However, the councillors opined that, even though the vicar capitular had noted problems in the appointment and also in the conduct of the Lazarist professors, he did not have the power to dismiss them and make a new selection.

Their reasoning this time did not concern the "concrete needs" of the seminaries, but the "respect for solemn contracts and laws". The discourse of the councillors advocated, above all, the stability between ecclesiastical and

304 Consulta de 20 de julho de 1861, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 529, Pacote 4, Doc. 61.

305 In addressing the effects of the violation of civil laws, jurist Antonio Joaquim Ribas states that an act is absolutely null (i. e. irreparably invalid) when it violates a law of public utility whose direct and immediate purpose is to defend and promote social interests, as in Ribas (1880) 249–250. Going back to the *Ordenações Filipinas*, he declares that the absolute nullity of an act results from it being contrary to the ends or the "spirit" of the law, to the *ratio legis*, as in Ribas (1880) 251–252. Theoretically, the emperor and his delegates could move to annul the pact between the archbishop and the Congregation of the Mission, establishing an analogy between civil and ecclesiastical contracts. To legitimise the manoeuvre, the emperor could rely on the "rights of inspection" – a trump card with a conveniently open texture – which jurists and bureaucrats deduced from his condition of monarch and patron of the Church. The situation, however, was too uncertain and the political risks too high. I believe that for this reason the Council of State rejected said course of action, and did not even bother to address the technical dimension of the invalidity of ecclesiastical contracts and the corresponding effects.

secular authorities, a stability which was sedimented over time by means of legal acts: nothing would justify that the vicar capitular interrupted "a state of affairs which has existed for more than five years, established by the late archbishop, and consented to by the different presidents of the province over this long period of time".[306] The contract concerning the major seminary was illegal. The section expressly recognised this ("it was not clothed with legality"). But as long as it was not "legally voided" *(legalmente anulado)*, it had to be respected.[307] Even if the vicar capitular wished to remedy the situation, the state's recommendation was far from demanding recognition of the nullity in secular courts. The Council did not want any sudden rupture. Even in the midst of change, it was necessary to foster institutional equilibrium. Thus, the councillors suggested that the vicar capitular present his complaints to the superior of the Lazarists, "agree[d] with him on the best way to put things in order", and then went to the president of the province and the central government for adjustment of the new agreement in accordance with Brazilian law.[308] The emphasis on stability and harmony between institutions, even at the cost of civil law, is evident.

This conciliatory discourse can easily be explained: bringing the contract to a civil court for the recognition of its absolute nullity would not only imply unnecessary political distress (at least for the 1860s), but would prompt excruciating legal debates on if and how the secular power could verify the validity of a contract of cession of rights between two ecclesiastical entities. The Consolidation of Civil Laws of 1858 did not address this particular problem; it mentioned religious agents in more "predictable" situations, such as marriage and transfer of property of regulars. Books on civil law (e. g. the *Curso* of Antonio Joaquim Ribas) and ecclesiastical law (e. g. Monte, Fontoura) did not deal with the subject either; Fontoura rather described what could be done at the level of the Holy See, which, in theory, should always approve such contracts in advance (I will address this point later).[309]

306 Consulta de 20 de julho de 1861, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 529, Pacote 4, Doc. 61, f. 16v.

307 Consulta de 20 de julho de 1861, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 529, Pacote 4, Doc. 61, f. 21r.

308 Consulta de 20 de julho de 1861, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 529, Pacote 4, Doc. 61, ff. 16v–17r.

309 EGF, II, 32.

In this scenario of uncertainty, taking the matter to the judiciary would demand from judges a hermeneutic exercise that could be politically costly, and this without the guarantee of an effective result. Better to negotiate what was not right, that was the message of the Council of State.

And the task of reviewing these contracts, according to the councillors, did not properly correspond to the vicar capitular, but to the future archbishop.[310] The bishop is, in fact, the central figure in the cases we have analysed: he is the figure appeased with explanations about law; he is the figure whose acts are interpreted in favour of the seminary's necessities; he is the figure respected by the state still after his death and even before his institution. In all these cases the Council of State (albeit not unanimously) seeks conciliation and stability with the episcopate.

This attitude can be interpreted as a concession in face of the acts of resistance to the Decree of 1863. But not only. It also indicates a convergence of objectives. Both the civil government and the bishops were interested in the improvement of the clergy's instruction, and both relied on European religious orders and congregations to conduct this reform.[311]

This convergence is most clear when the Council of State decides *contra legem*. In doing so, the councillors based themselves expressly on the welfare, on the necessities of seminaries (as in the case of Pará in 1867). Moreover, it is significant that they protected the status quo left by a prelate in a situation when the clergy was not resisting the state (as in the case of Salvador in 1861, when the episcopate and other ecclesiastical entities resisted the vicar capitular, not the secular power).

It is true that some secular institutions would become more combative in later decades. Santirocchi reports that, by means of the circular of 23 November 1877, the civil government gave new impetus to the Decree of 1863, ordering bishops to hold examinations for chairs subsidised by the state.[312] The episcopate, with the diplomatic support of agents and dicasteries of the Holy See, persisted in resistance. As a result, the seminaries of Belém do Pará and Fortaleza had their funding withheld by the presidents of province. But a few letters exchanged between the civil government and the Apostolic See

310 Consulta de 20 de julho de 1861, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 529, Pacote 4, Doc. 61, f. 21v.

311 See Ramos Vieira (2016) 257, 270–272.

312 Santirocchi (2015b) 414–420.

were enough to appease the situation. In fact, these documents show that the circular of 1877 had political rather than administrative objectives; in other words, it aimed at destabilising D. Antonio de Macedo Costa due to his partisan articulations and criticism towards the civil government.

Nevertheless, the convergence between the Council of State and bishops in the 1860s is still relevant. It unveils the relativity of the actions of state agents, that is, it presents the possibility of difference, preventing monolithic, homogenising views of the secular power. This convergence also sheds light on how the councillors' legal reasoning was consistently moderate. Unlike ministries and presidents of province, the Council of State never endorsed radical solutions regarding seminaries.

What about the Council of Trent? Although the Council of State did not discuss in depth whether the decrees on subsidised chairs could be "dispensed", the councillors, in practice, gave the bishops room to exercise their liberty according to Session 23, *De reformatione*, Canon 18. It is true that, except for the correspondence of 1863, neither the episcopate nor the councillors cited the Tridentinum explicitly. But the course of action chosen by the bishops followed its dispositions: they postulated liberty to administer, to select personnel (with scientific and moral criteria), and to delegate powers – demanding from the state only the funding. It was a convention of separation that guided this demand, in the sense of differentiating the spheres of action of ecclesiastical and secular authorities according to the pattern prior to 1863.

The behaviour of the state, in turn, was variable. In attempting to impose, by means of decrees, that standards of the modern secular administration be applied in processes which, according to canon law, were at the discretion of bishops, the state was being guided by a logic of amalgam. Especially if we think of the examinations for chairs, we see that the state sought to introduce secular norms – which, in turn, were adapted from canonical norms (the Statutes of the Seminary of Olinda) – into a context widely recognised as one of canon law. The praxis of the 1860s, however, would show that, in deciding against its own legislation on seminaries, the state came close to the separation defended by the episcopate.

3.5.2 Convergence between levels of governance is no guarantee of local success

There were further moments of convergence with regard to seminaries between levels of governance of the Brazilian Church. Unlike the reactions to the Decree of 1863, these convergences did not require a scenario of tension to reveal themselves. Going beyond the actions of the Council of State, I could refer to the successful efforts of some deputies to include the expenses of young Brazilians who were at the Pontifical Latin American College in Rome in the imperial budget of 1860.[313] Gestures such as this support the idea that, alongside the Holy See and local prelates, the secular power was concerned with improving the instruction of the Brazilian clergy – even if these actions were to foment future ideological clashes.

Moreover, just like the state, the Holy See did not hinder the prelates' plan to place seminaries under the direction of foreign orders or congregations. In theory, this type of contract had to be authorised by the Apostolic See, more precisely by the Congregation of the Council. This was acknowledged by Brazilian and foreign canonists.[314] Such requirement was based on the Council of Trent. Session 23, *De reformatione*, Canon 18 assigned to the bishop, with the aid of two canons *(cônegos)*, the task of administering the personnel, the goods, and the routine of the diocesan seminary. This provision may be interpreted as an affirmation of the liberty of ecclesiastical authority vis-à-vis secular power, but in the context internal to the Church, this canon primarily expressed that the bishop – and no other actor – had a responsibility. According to Bouix, the delegation of that responsibility derogated common law; therefore, the diocesan ordinary needed a dispensation from the Apostolic See.[315] The Congregation of the Council has record of only one request of this type from Imperial Brazil, which may indicate the concurrence of other dicasteries in dealing with the matter. The petition I refer to is from 1888, from the Archbishop of Salvador da Bahia, then D. Luís Antonio dos Santos.[316] Via Internuncio Mario Mocenni, the prelate requested the approval of a convention in which he ceded *in perpetuo* to the

313 Congresso Nacional (Brasil) (1979 [1843–1862]) 579.
314 See EGF, II, 32, and Bouix (1873 [1859]) 73.
315 Bouix (1873 [1859]) 73.
316 S. Salvatoris in Brasilia, in: AAV, Congr. Concilio, Positiones, "Die 19 Maii 1888, Lit. S ad Z, C. Santori S.", ff. 1r–6v.

Congregation of the Mission the spiritual and temporal administration, as well as the scientific instruction, of the two seminaries of Bahia. The Congregation of the Council responded positively.

It should be noted that the Council of State and the Congregation of the Council reacted to the participation of religious orders and congregations in the management of seminaries in different periods – the former in the 1860s, the latter in the 1880s. Perhaps, over time, diocesan ordinaries changed their perspective on the higher authority of reference, shifting their attention from the national to the universal level of control. This hypothesis is in line with the broader dynamics of requests to the Council of State and to the Congregation of the Council, as examined in Chapter 2. However, to evaluate with precision the diachrony or synchrony of the control exercised by the secular power and the Apostolic See, other sources should be thoroughly and systematically consulted.[317] In any case, the approval by higher authorities did not guarantee the local success of religious orders. This is proved by the dispute between the French Capuchins who, under a contract approved by the Holy See, ran the Seminary of São Paulo, and the secular clergy of the diocese, who sought to seize their functions.[318]

After the Religious Question, the topic of seminaries would pass through the Council of State only once more. On 20 November 1882, the Section for Imperial Affairs, formed by councillors Martim Francisco Ribeiro de Andrada Filho, Viscount of Bom Retiro, and José Caetano de Andrade Pinto, assembled to opine on the transference of the Cathedral and the Seminary of Olinda to the city of Recife.[319] The plan of transference was one of the hallmarks of D. José Pereira da Silva Barros' episcopate. He argued that Olinda was a town in decay, as were its ecclesiastical buildings. The Seminary of Olinda, for example, had no pipes for potable water. Recife, as the capital of the province, had a better infrastructure and would make masses and

317 Regarding the Holy See, I am thinking of sources from the Congregation of *Propaganda Fide*, and also from the Internunciature in Brazil; regarding the state, I am thinking of the reports from the Ministry for Imperial Affairs.

318 Relazione e parere del P. Luigi Sapiacci, dei Romitani di S. Agostino, Consultore, sulla domanda del Vescovo di S. Paolo, diretta ad ottenere la rescissione della Convenzione esistente tra lui e l'Ordine dei Cappuccini, riguardante la direzione e l'amministrazione del Seminario Vescovile, in: ASRS, AA.EE.SS., Leone XIII, Brasile II, Positio 199, Fasc. 9.

319 Consulta de 20 de novembro de 1882, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 559, Pacote 4, Doc. 56.

other Church services accessible to a larger number of faithful. For these reasons, D. José Barros wanted to transfer the cathedral to the Basilica of Our Lady of the Carmel of Recife, and the seminary to the convent attached to the church, which then housed only six Carmelite religious men. The cathedral chapter had already authorised the bishop, meaning he only had to obtain the approval of the higher authorities.

The Council of State did not oppose the prelate's request. It even proved to be aware of the limits of temporal jurisdiction: the councillors pointed out that, to bring the project to completion, the intervention of the spiritual power, that is, of the Holy See, was necessary. This opinion was ideal for the bishop's intentions: it brought together convergence and the normative convention of separation. Although the dossier does not record the decision of the emperor, D. José Barros acted accordingly.

On 1 January 1884, the bishop included in the *relatio dioecesium* to the pontiff his plan for the transference of the cathedral and seminary.[320] The *relatio* indicates that the negotiations with the Apostolic See had begun much earlier, in the first year of the episcopate of D. José Barros, 1881.[321] The proposal went forward and was submitted to the appreciation of the Congregation of the Council. On 14 December 1885, in an audience with the pontiff, the dicastery decided to approve the request, exhorting that, before putting the transference into practice, the Apostolic Internuncio in Brazil heard all those interested.[322]

D. José Barros had thus in his favour the two higher levels of governance: the Brazilian state and the Holy See. And even before the decree of the Congregation of the Council, between 1884 and 1885, he was already articulating the details of the transference with Internuncio Rocco Cocchia and Secretary of State Ludovico Jacobini.[323] Despite all these efforts, the project

320 AAV, Congr. Concilio, Relat. Dioec., 596 (Olinden), f. 161r–v.

321 AAV, Congr. Concilio, Relat. Dioec., 596 (Olinden), f. 161r.

322 Numero d'ordine: 3672, Diocesi: Olinda, Nome e cognome del postulante: Vescovo, Oggetto: Postulato circa la traslazione della cattedrale e del seminario, in: AAV, Congr. Concilio, Protocolli, 1885; Olinden – Ep.us circa translationem Capituli Cathedralis, Seminarii in Ecclesiam Carmelitas et in aedes ibi adjunctas, in: AAV, Congr. Concilio, Libri Decret., 228, 1885, p. 237.

323 Letter of 1 October 1884 from Luigi Jacobini, Secretary of State of the Holy See, to Rocco Cocchia, Apostolic Internuncio in Brazil, asking for more information on the transference of cathedral requested by the Bishop of Olinda, in: AAV, Arch. Nunz. Brasile, Busta 65,

was a major failure. The Cathedral of Olinda remains in the same place to the present day, even though the diocese became the Archdiocese of Olinda *and Recife* in 1910. The Major Seminary of Olinda only had its structure and personnel moved to another site in 2015 – and on a temporary basis, in order to enable renovations consistent with the status of historical heritage of the old building.[324]

To explain why D. José Barros failed, further investigations, especially of local scope, would have to be carried out. The available literature indicates that between 1882 and 1883, the Carmelites resisted ceding the properties; they claimed to be in a situation of penury, and declared to the bishop that they would only obey direct orders from the Holy See.[325] These studies do not show, however, to which extent the resistance of the religious men was decisive in maintaining the status quo. Letters exchanged between the Internuncio in Brazil, the Secretary of State of the Holy See, and the Bishop of Olinda indicate that there were other problems in the project; for example, some decades earlier, the Carmelites had already donated part of the convent to the civil government for the installation of the library of the Faculty of Law of Recife.[326] Regardless of the cause (or causes) of the failure, this case clearly shows the limits of the articulations of the governance system I have chosen to observe. Even in the absolute convergence among the bishop, the Council of State, and the Congregation of the Council (and ultimately the pope himself), the success of the operations was not guaranteed.

Still, the convergence is quite significant. And I do not have only this case in mind, but the full corpus examined in this section. The goal of better instructing the clergy ended up overcoming tensions in the system of governance. This can be seen in the consultations with the Council of State, but also in the actions of the civil government as a whole. This is proven by an increase of the number of seminaries in Brazil, from eight at the time of the

Fasc. 314, Doc. 23, ff. 61r–63v; Letter of 27 January 1885 from Luigi Jacobini, Secretary of State of the Holy See, to Rocco Cocchia, Apostolic Internuncio in Brazil, on the cession of the church and the convent of the Carmelites to the Bishop of Olinda and its conditions, in: AAV, Arch. Nunz. Brasile, Busta 65, Fasc. 314, Doc. 37, ff. 103r–104v.

324 Arquidiocese de Olinda e Recife (2015).

325 Araujo (2007) 127–130.

326 Letter of 11 November 1884 from D. José Pereira da Silva Barros, Bishop of Olinda, to Rocco Cocchia, Apostolic Internuncio in Brazil, on the donation by the Carmelites of part of their convent to the civil government, in: AAV, Arch. Nunz. Brasile, Busta 66, Fasc. 321, f. 44r–v.

Decree of 1851,[327] some of them merely "nominal", to 19 in 1875.[328] Furthermore, in the same year, at least half of the Brazilian dioceses had both a major and a minor seminary. These changes resulted from a combined effort of bishops and state agents, despite the ideological divergences between them.

I believe that this common objective explains why, within the framework of the Council of State, the outcomes of the cases on seminaries are strikingly different from those of the cases on residence. From the moment the state intervened in matters of residence, a divergence emerged that could not be solved. There was no common ground, for the secular power had never dealt with the issue before. It had historically taken upon itself the financial support of the clergy, but not the control of residence. Moreover, the resistance of the episcopate was further fueled by the spectre of the public servant, which loomed over the clergy, threatening to put them in a state of submission to the state. And the state, interested in controlling funds and people, was not particularly willing to abandon its administrative regulation. In the case of seminaries, the problematic mechanisms, i. e. the decrees – even though they partook of the modernising tendency of secular norms on residence – proved to be dispensable in the face of the common objective to improve the education of the clergy. The state demonstrated particular deference to bishops, to the point of adopting, at the price of its own laws, the convention of separation that underlay the prelates' discourse.

In this scenario, the Council of Trent appeared at first as a weapon of resistance, evoking episcopal liberty and the belonging to the universal Church. If, in the presence of the Council of State, the Tridentinum disappeared from the discourses of bishops, this points to the strength of the idea for which the Tridentinum served as vehicle; in other words, the Council of Trent appeared as one possibility – among others – for evoking and ardently defending the *leitmotiv* of the liberty of the Church. But the Tridentinum also held within itself the idea of responsibility, which emerged in the interactions between

327 MJ (Br), Rel. 1851 (1852), pp. 28–33. Dioceses with seminaries were: Belém do Pará (2), S. Luís do Maranhão (1), Olinda (1), S. Salvador da Bahia (2), Rio de Janeiro (1), and Mariana (1).

328 O Imperio do Brazil na Exposição Universal de 1876 em Philadelphia (1875) 130–132. All twelve dioceses of the empire had at least one seminary. Dioceses with a major and a minor seminary were: S. Salvador da Bahia, Fortaleza, S. Luís do Maranhão, Rio de Janeiro, Mariana, and São Paulo. Belém do Pará had two minor seminaries.

the prelates and the Apostolic See, when contracting with religious orders and congregations, for example. It is true that local factors could put obstacles in the way of the administration of seminaries, but it is no less true that the interactions between levels of governance made it go forward.

3.6 Bishops discipline priests, and the state protects the Council of Trent. Suspension *ex informata conscientia* and appeal to the Crown[329]

"Discipline" is a word with more than one meaning in canon law. According to the *Cours alphabétique et méthodique de droit canon* of French abbot Michel André, a classic of 19th-century canon law, discipline in a broad sense was the set of rules used for the government of the Church.[330] Among these rules was, for example, the disciplinary part of the Council of Trent, which concerned the reform of the clergy's conduct and government and encompassed aspects such as formation, career, duties, remuneration, and punishments for priests. Moreover, the Tridentinum established an extensive discipline on marriage. As they referred to the universal Church, the provisions of the Council of Trent were considered general discipline. But rules of ecclesiastical government could also concern specific territories, constituting particular discipline. It is in this sense that state councillors invoked *alvarás* from the Portuguese *Ancien Régime* to justify the non-application of certain general canons to the Brazilian Church.[331]

329 This section was written as part of the author's contribution to the project "História do direito penal brasileiro em perspectiva comparada entre os séculos XIX e XX", funded by the Fundação de Amparo à Pesquisa do Estado de Minas Gerais, within the framework of the Edital Demanda Universal 01/2017.

330 "On a donné, dans l'usage, le nom de *discipline*, et c'est dans ce sens que nous l'entendons ici, aux règlements qui servent au governement de l'Eglise", according to André (1858) 996.

331 When the state councillors disputed about the binding nature of the bishop's proposal for the presentation and collation of candidates to benefices, the majority of opinions enforced by the emperor favoured the non-mandatory character of the proposal, in accordance with the particular discipline of the Brazilian Church, which encompassed the *Alvará das Faculdades* (1781). Only once the prevailing opinion stood for the mandatory character of the proposal, rejecting the *Alvará das Faculdades*, and in accordance with the Council of Trent, that is, with the general discipline of the Church. See Consulta de 10 de março de 1856, Seção de Justiça, in: AN, Conselho de Estado, Caixa 520, Pacote 5, Doc. 1; Consulta de 23 de janeiro de 1857, Conselho de Estado Pleno, in: AN, Conselho de Estado, Caixa 520, Pacote 5, Doc. 1; Consulta de 16 de setembro de 1857, Seção de Justiça, in: AN,

The word "discipline", however, could also assume the more restricted meaning of punishment *(castigo)*. Portuguese dictionaries of the 18th and 19th centuries associate it with the instrument of flagellation commonly used in penitence.[332] Michel André describes it as punishment, but also as *emendatio*.[333] In criminal canon law, this combination of punishment and correction was present in the *censures*, medicinal sanctions that deprived the convicted of certain spiritual goods until they displayed signs of amendment.[334] The censures were imposed by bishops both on ecclesiastics and lay people, provided they were baptised. This sanction could also be inflicted upon corporations (lay fraternities, educational institutions, etc.), as long as it affected only the guilty parties. The censures were imposed on grounds of external, mortal sins, most often consummated. The modalities of censure were, in decreasing order of gravity, excommunication, suspension, and interdiction.

This section will address the second type, which was reserved for the clergy. For serious deviations from customs, priests could be suspended from their orders (i. e. from the exercise of functions received with the sacrament of order, such as the celebration of mass, the administration of sacraments, etc.), from their office (i. e. from the exercise of any function associated with the power of order and the power of jurisdiction), and from their benefice (i. e. from the earning of the respective revenues). In procedural terms, suspension was commonly decreed at the end of a summary judicial proceeding, with summons, hearing of the defendant, and sentence. This process was preceded by three admonitions which the bishop addressed to the priest in question; the first two were private, and the last public, being forwarded to the ecclesiastical judge, and serving as denunciation. The suspensions, however, could also be imposed extrajudicially – and it was precisely this possibility which, at the service of ultramontane reform projects, gave rise to strong controversy in the course of the 19th century.

Conselho de Estado, Caixa 521, Pacote 4, Doc. 71; and Consulta de 8 de março de 1862, Conselho de Estado Pleno, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 82–118.

332 Silva (1789) 622: "Disciplina, s. f. […] instrumento de pernas, com que se açoita […] *Dar disciplina*: açoitar por castigo". Pinto (1832): "Diciplina, s. f. Instrumento para açoutar".

333 André (1858) 996.

334 While preparing this part, I drew on MRA, III.

I am referring more specifically to the suspension *ex informata conscientia* regulated by Session 14, *De reformatione*, Canon 1, of the Council of Trent, according to which the prelates were authorised, for any reason, even for a hidden crime, and using any procedure, even the extrajudicial route, to prohibit the promotion of a candidate to new orders, and also to suspend a cleric from the orders, degrees and dignities he already possessed.[335] In other words, the suspension *ex informata conscientia* meant that the bishop would impose censures without employing judicial formalities (i. e. without admonition, without summons, without hearing the defense, and without sentence, only with a letter of the bishop informing of the punishment). He would keep the reasons for the condemnation in his "informed conscience". This procedure was particularly useful for cases whose publicising could cause scandal for the Church and / or jeopardise the amendment of the suspended. But, as it concentrated great power in the hands of the prelate, the method *ex informata conscientia* prompted heated debates within and without ecclesiastical hierarchy.

These tensions could already be observed at the end of the 18th century, when, by means of the Bull *Auctorem fidei* (1794), Pope Pius VI gave a vigorous response to the Synod of Pistoia (1786) and to Jansenist groups, affirming that the extrajudicial suspension was valid, and that to say otherwise was false, injurious to the Council of Trent as well as to episcopal jurisdiction. In the course of the 19th century, several doctrinal *opuscula* on the subject were written, particularly in Italy and France.[336] As in previous periods, the topic was also contemplated in general works of canon law; the difference was that then European books were joined by handbooks

335 Literature on this subject is scarce and remote, and mostly motivated by the survival of the suspension *ex informata conscientia* in the 1917 *Codex iuris canonici* (e. g.: Murphy (1932), Gottlob (1939), and Barberena (1956)). The best sources for understanding the peculiarities of this legal figure and its controversial points are monographs and treatises of canon law from the 19th century (e.g.: Baillès (1852), Bouix (1855), and MRA, III). Nevertheless, even doctrinal sources have blind spots: there is, for instance, little information on the procedure of the appeal from suspensions *ex informata conscientia* to the Congregation of the Council. Questions such as this one can be answered only after systematic archival research.

336 Beyond the Bishop of Luçon's monography, there are some anonymous pieces from Italy: Lettera di un parroco in risposta ad un ecclesiastico (1801), Intorno ai giudizi ex informata conscientia (1850), and L'origine e l'equità delle sospensioni ex informata conscientia (1863).

from the Americas.[337] In these texts, the points of controversy surrounding the suspension *ex informata conscientia* can be reduced to the following: (1) still an old question: Did the extrajudicial procedure actually apply to suspensions or only to the prohibition of promotion to new orders? (The wording of the Tridentinum allowed both interpretations);[338] (2) Was the bishop allowed to suspend *ex informata conscientia* a priest who had committed public crimes, or was the measure restricted to hidden delicts? (3) Was the bishop obliged to inform the affected priest of the reasons for the suspension?; and (4) Was a suspension for life or for an indefinite duration valid?

Remote and recent canonistics, with very few exceptions (Van Espen, for example, regarded with reservations by Rome), responded to item (1) in line with Pius VI: the Tridentinum permitted extrajudicial suspensions.

Item (2), in turn, was more controversial. Dominique Bouix, a great authority on canon law in 19th-century France (and also a representative *par excellence* of French ultramontanism), and Jacques Marie Joseph Baillès, Bishop of Luçon and author of a famous *opusculum* on extrajudicial suspension, held that, although the procedure *ex informata conscientia* was usually applied to hidden delicts, it could validly cover public crimes if the bishop acted for strong reasons and on an extraordinary basis (that is, preventing this practice from becoming a habit). Monte, quoting Bouix, echoed this view.[339] However, this perspective went against some giants of early modern canonistics (Augustine Barbosa, Heinrich Pihring, and even Pope Benedict XIV), and it was also far removed from the orientation that the Congregation of the Council consolidated in the course of the 19th century. In decisions such as *S. Agathae Gothorum*, 26 February 1853, and *Bosnien. et Sirmien.*,

337 For instance: from Italy: Vecchiotti (1876 [1868]); from the United States: Smith (1892 [1882]) and Quigley (1878); from Chile: Donoso Vivanco (1848); and from Brazil: MRA, III.

338 The expression "aut qui" in Session 14, *De reformatione*, Canon 1, of the Council of Trent was the main source of controversy, as highlighted: "Cum honestius ac tutius sit subiecto, debitam praepositis obedientiam impendendo, in inferiori ministerio deservire, quam cum praepositorum scandalo graduum altiorum appetere dignitatem, ei, cui ascensus ad sacros ordines a suo praelato ex quacunque causa, etiam ob occultum crimen, quomodolibet, etiam extraiudicialiter, fuerit interdictus, aut qui a suis ordinibus seu gradibus vel dignitatibus ecclesiasticis fuerit suspensus, nulla contra ipsius praelati voluntatem concessa licentia de se promoveri faciendo, aut ad priores ordines, gradus, dignitates sive honores restitutio suffragetur", as in Conciliorum Oecumenicorum Decreta (2013 [2000]) 714.

339 MRA, III, 135.

20 December 1873, the dicastery was emphatic in declaring that extrajudicial suspensions, when imposed by the prelate, referred only to hidden offenses.[340] Six years later, on 11 June 1880, the Congregation of Bishops and Regulars made clear that the decree *Bosnien. et Sirmien.* had to be regarded as a general norm, by including it in procedural instructions addressed to all ecclesiastical curias.[341]

As for item (3), canonists generally held that the bishop was not obliged to inform the suspended priest of the reasons behind the suspension; the prelate had to be able, however, to disclose them to the Holy See in case of appeal. This was precisely what the decree *Vercellen*., 21 March 1643, of the Congregation of the Council, stated.[342] This prescription gave many occasions for 19th-century liberals to accuse the Apostolic See of violating the natural right to defense – a right that involved knowing for which reasons one was accused and condemned. In spite of any criticism, the Congregation of *Propaganda Fide* confirmed that the communication of reasons in extrajudicial suspensions was subject to the prudence of the bishop; the dicastery stated so by means of an instruction dated 20 October 1884 addressed to ordinaries in territories of mission.[343] One possible explanation is that suspensions could, in exceptional situations, be imposed due to notorious crimes, without the need of making further clarifications; another hypothesis is that a suspension could be applied not as a censure, but as vindicative punishment, aiming primarily at the protection of the legal good injured.

Regarding item (4), on the duration of the censure, the Congregation of the Council established with the decisions *Lucionen.,* 8 April 1848, *S. Agathae*

340 See Acta Sanctae Sedis VII (1915 [1872–1873]) 607–613. It is important to distinguish between the suspension imposed by the prelate, *ab homine ferenda*, and the suspension *a jure lata*. The latter occurred *ipso facto*, that is, automatically, in the cases defined by law. The priest was suspended for life immediately after committing the crime. Sentences or other official documents were merely declaratory. The Congregation of the Council was interested in another kind of censure, the suspensions *ab homine ferenda*, that is, those arbitrated by the ecclesiastical superior or by judges, within the limits of canon law. In the procedure *ex informata conscientia*, this type of suspension could address only hidden crimes. But, in case of suspensions *a jure lata*, the bishop could act extrajudicially even in view of public crimes, for then he would not be arbitrating the censure, but simply declaring that it had already taken place. This is precisely the interpretation of the *S. Agathae Gothorum* decree. On the classification of censures (*lata*, *ferenda*, etc.), see MRA, III, 137.

341 Acta Sanctae Sedis XIII (1880) 324–336.

342 Bouix (1884 [1855]) 332.

343 Collectanea S. Congregationis de Propaganda Fide (1893) 355.

Gothorum, 26 February 1853, and, above all, *Bosnien. et Sirmien*., 20 December 1873, that extrajudicial suspensions could not be perpetual unless it was a matter of suspension *a jure lata*. This interpretation put an end to the loopholes left by previous decrees.[344] Nevertheless, the bishop was allowed to leave the duration of suspensions undetermined as long as there were serious reasons for doing so; the suspension would then run *ad suum beneplacitum* and end along with the administration of the corresponding prelate. In other words, indefinite suspensions had no place; the duration always depended on the bishop: he could determine it at his discretion or it would be limited by his time of service. The prerogative to suspend *ad suum beneplacitum* dates back to a decision of 14 July 1583 of the Congregation of the Council,[345] whose content was kept in the instruction of 20 October 1884 of the Congregation of *Propaganda Fide*.[346]

The debates on the suspension *ex informata conscientia* came to the fore in Brazil during the Second Reign (1840–1889). It did not take long for them to become mingled with the discussions about the appeal to the Crown, a historical form of appeal to the secular high administration against abuses of the ecclesiastical and temporal jurisdictions.[347] Regarding the Church, the appeal to the Crown was a mechanism by means of which the state attributed to itself the capacity to compel ecclesiastical authorities to cease acts which invaded the secular jurisdiction or implied abuse of prerogatives of canon law. Considering this last aspect, it is not surprising that on several

344 Having written before 1873, Bouix gives an account of the uncertainties surrounding the possibility that bishops arbitrated perpetual extrajudicial suspensions. See Bouix (1884 [1855]) 334–338.

345 Giraldi (1769) 848.

346 Collectanea S. Congregationis de Propaganda Fide (1893) 355.

347 On the appeal to the Crown in Imperial Brazil, the best reference, for its detail, remains Pimenta Bueno (1873). The Brazilian and Portuguese historiography on the appeal to the Crown are still rather timid. It is worth checking the comparison between the Portuguese *recurso à Coroa* and the Spanish *recurso de fuerza* in Bouzada Gil (2016). The historiography on the *recurso de fuerza* has undergone strong developments, as seen in Costa (1952), Maldonado y Fernández del Tronco (1954), Mota (1977), Bouzada Gil (2000), Cárceles de Gea (2000), Traslosheros (2004), and Gamiño Estrada (2009). Addressing the construction of episcopal jurisdiction in the context of the Third Mexican Provincial Council, Moutin (2009) describes the curious case of a cleric who requested a *recurso de fuerza* to a metropolitan; this points to the bonds of loyalty forged between the bishops and the monarch at the time, and also to the *sui generis* arrangements of competence that could be established between the prelates and the *Real Audiencia*.

occasions the question posed by state bureaucrats, legislators, jurists, and above all suspended clerics, was whether a priest could appeal to the Crown against extrajudicial suspensions decreed by bishops. *Prima facie*, and relying only on the doctrine aligned with Rome, one may easily answer: no. Even D. Manoel do Monte Rodrigues d'Araújo, whose *Elementos de Direito Eclesiástico Público e Particular* were not fully approved by the Apostolic See, declared that without the absolution on the part of the issuing bishop, it was only possible to appeal against a suspension *ex informata conscientia* to Rome, more precisely to the Congregation of the Council.[348]

Praxis, however, reveals different answers. In my two-year investigation at the Vatican Apostolic Archive, I did not find a single appeal against suspensions *ex informata conscientia* from Imperial Brazil to the Congregation of the Council. Nor did I find any evidence of these appeals in the inventory of the Congregation for Extraordinary Ecclesiastical Affairs. Among the reasons for the absence of appeals of this kind to the Holy See, we could cite the ignorance of the suspended clerics about the procedure, or their discouragement because of the distance separating the Brazilian dioceses from Rome – a long distance that, from the point of view of the appellants, could be interpreted as a long wait until the resolution of a case. But books of canon law – books full of procedural references – were sufficiently distributed in the national territory to undermine the strength of the first argument. And the second hypothesis is weakened by the (well documented) fact that the Apostolic See regularly received letters from bishops and priests of the empire on other matters, establishing with these agents, in many cases, a reasonably fluid communication.

Whatever the reason why appeals were not sent to Rome, the sources of the Brazilian Council of State show that, in spite of doctrine, some of the extrajudicially suspended priests perceived in the appeal to the Crown or in the simple representation to the civil government adequate mechanisms to express their dissatisfaction and to remedy some of the censure's effects. My research suggests that, between 1841 and 1889, state councillors were asked to give their opinion on at least eleven cases involving suspensions *ex informata conscientia*, with relevant variations in procedure and focus of the request. Precisely the differences of focus allow us to glimpse some of the reasons driving the suspended clergy to resort to the secular power: sympa-

348 MRA, III, 134.

thy with state jurisdictionalism, as opposed to the bishops' ultramontanism; the belief that the suspension had been imposed in excess by the prelate while in the exercise of his prerogatives, an issue typically featured in appeals to the Crown; or the pragmatic choice of resorting to the side responsible for the orders of payment to the clergy.

In addition, these appeals and representations constituted a direct interpellation to the Council of State on how the Council of Trent should be employed in the country. The councillors' responses had consequences of impact: they gave rise to acts of the executive branch, debates in the Chamber of Deputies and the Senate, and long polemics in newspapers. The issue of the interpretation and application of the Tridentinum in Brazil was brought to public attention with unprecedented intensity. Brazilian bureaucrats, politicians, and jurists demonstrated on several occasions that they were aware of the interpretative work of canonists and the Apostolic See, with a degree of detail not seen in other topics covered by this chapter. In other words, although the Congregation of the Council did not decide on any case of extrajudicial suspension coming from Brazil, the dicastery was present by means of the perspective of local agents, who, by proposing solutions to national problems, uncovered the global texture of the issue.

In this section, considering the concatenation of multiple institutions and actors, I will trace how the Council of Trent was modulated in the opinions of the Council of State.

Following the entanglements between the suspension *ex informata conscientia* and the appeal to the Crown, I shall demonstrate that the Council of State formed and consolidated a majority discourse on the protection of the prerogative contained in Session 14, *De reformatione*, Canon 1, of the Tridentinum. Due to the efforts of moderate jurisdictionalists, the state continued to defend this provision of canon law for most of the Second Reign. But not everything was placid continuity: as decades went by, the state adjusted its discourse. It remained faithful to the Council of Trent, but it also grew suspicious of the bishops' interpretation of the prerogative.

3.6.1 The Council of State shields the suspension *ex informata conscientia*. The Decree of 1857, on the appeal to the Crown, as a victory for the Council of Trent and the bishops

The appeal to the Crown, in the legal form with which it became known for most of the Second Reign, was the result of one particular cleric's dissatisfaction with a suspension of orders issued *ex informata conscientia*. This dissatisfaction gave rise to an opinion of the Section of Justice of the Council of State, on 2 January 1856.[349] It was the beginning of a new demarcation of limits between the episcopal prerogative of disciplining, correcting the clergy, and the prerogative of the state to intervene in the acts of ecclesiastical authorities.

Councillors Eusébio de Queirós, the Viscount of Maranguape, and the Marquis of Abrantes opined on the appeal to the Crown filed by priest Francisco de Paula Toledo against the suspension of orders issued *ex informata conscientia* by the Bishop of São Paulo, D. Antonio Joaquim de Melo, in 1854. The prelate had proceeded thus because he considered certain behaviours and activities of Toledo to be incompatible with the exercise of priesthood, such as: maintaining a "criminal occupation" (*in casu*, public service as detective *[delegado]*); seeking to influence the results of political elections, participating or conniving with electoral violence; not wearing the cassock; keeping a concubine and an illegitimate daughter, having baptised his own grandson; and resisting to sign a term of moral conduct after being interpellated by the prelate himself. The Bishop of São Paulo based the suspension on the "Regulations to the Clergy" *(Regulamento ao Clero)* of 22 August 1852, a document of his authorship, backed by Tridentine dispositions and the First Constitutions of the Archbishopric of Bahia, and part of the reformist, ultramontane project he was leading in the diocese.[350]

In the appeal, Toledo argued that his position as detective was prior to the "Regulations to the Clergy" and that, according to secular law, he could not resign, only be dismissed by his superior; the priest claimed that the whole imbroglio was created by the bishop, whose "Regulations" were in conflict with the laws of the state. Toledo also argued that the crime of "influencing elections" did not exist, and that nobody, not even the prelate, could "pre-

349 Consulta de 2 de janeiro de 1856, Seção de Justiça, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 66.

350 The document is available in Irponi (2012) 140–146.

vent a Brazilian citizen from intervening in the organisation of the parliament". Regarding the lack of cassock, the practice of concubinage, and the fact of not having signed the term of conduct, Toledo insisted – and this was the dominant argument of the appeal – that the bishop had not presented evidence of his allegations in court, and that he had not executed the provisions of Session 25, *De reformatione*, Chapter 14, of the Tridentinum, which ordered him to admonish before punishing.

In his reply, D. Antonio Joaquim de Melo pointed out that Toledo had appealed to the Crown "not on his own, but at the instigation of the cathedral chapter, with the intention of bringing [the bishop] into conflict with the temporal power". This is a *leitmotif* of intradiocesan relations during the Second Reign: the friction (more or less silent, depending on the diocese) between jurisdictional canons and ultramontane bishops. Olinda had notable examples of this tension, as we have already seen, but signs of this problem were also present in São Paulo. The bishop's discourse fitted well with the rhetoric of ultramontanism: it was based on the argument of the independence of the Church in face of the state; more specifically, he defended the prelate's power to discipline his clergy, that is, to impose ecclesiastical punishments according to his conscience, without bending to the pressures of secular authorities. Thus, if a clergyman wished to appeal against excommunication, suspension, interdiction, etc., according to D. Antonio Joaquim he had to address the metropolitan or the pope, not the Council of State. In general, the prelate seems more concerned with hoisting the flag of the autonomy of the clergy than with following the procedure *ex informata conscientia* with precision and coherence. For example, when raising the point of punishing according to conscience, the Bishop of São Paulo did not cite Session 14, *De reformatione*, Chapter 1, of the Council of Trent, which was specifically about extrajudicial suspension; he referred to Session 25, *De reformatione*, Chapter 3, which concerned excommunication. D. Antonio Joaquim also mentioned that Toledo had received a triple admonition – not required in *ex informata conscientia* cases. But, most surprisingly, the prelate forwarded to the councillors of state documents evidencing the priest's concubinage, a step not only unnecessary for an extrajudicial suspension, but ultimately contradictory with the bishop's views on the independence of the Church. Apparently, *everything* – even contradiction – was worthwhile to convince the emperor to "close the door to these appeals of priests against their bishops".

Faced with this material, the Section of Justice of the Council of State had two questions to answer: 1) How should appeals to the Crown be filed and processed? 2) Could bishops suspend a cleric *ex informata conscientia* from his orders? For the purposes of this section, I will focus on the second question. The councillors were initially keen to defend that the appeal to the Crown was a legitimate institution of secular law, useful for curbing abuses of ecclesiastical authorities. They countered the bishop's ultramontane sermon with a jurisdictionalist litany, claiming that the appeal to the Crown ensured the independence of the state in relation to the Church, and ultimately the harmony between the two entities. Their view found support in regalist jurists, that is, Portuguese authors who, between the 17th and 19th centuries, defended the prerogatives of the Crown in religious matters (e. g. Gabriel Pereira de Castro, Pascoal José de Melo Freire, Manuel Borges Carneiro; even the Brazilian Jeronymo Vilella de Castro Tavares was included). The persistent influence of Portuguese jurists was coupled with the existence of norms from the Portuguese *Ancien Régime* still in force. Citing the *Ordenações Filipinas* (1595), the councillors stated that, in exceptional cases, the Brazilian *ius principis circa sacra* authorised the appeal to the Crown against ecclesiastical censures. According to Book 1, Title 9, Paragraph 12, of the *Ordenações*, it was sufficient that the cognisance of the matter belonged to the monarch and that, at the same time, the ecclesiastical authority had acted with notorious oppression, use of force (in the sense of violence), or in violation of natural law. On these occasions, the secular sovereign was "obliged to help his vassals", taking cognisance of the appeal.

However, despite this "prologue" of jurisdictionalist colours, the Section of Justice observed that specifically in the case of Toledo, there was no oppression or violence that justified the exceptional intervention of the state. The right of prelates to suspend clerics from their orders could not be challenged, the councillors agreed. Reproducing the words of Bouix in *De Judiciis Ecclesiasticis*, they recalled that the suspension *ex informata conscientia* derived from Session 14, *De reformatione*, Canon 1, of the Council of Trent. And not only that: they mentioned a decision of 24 November 1657 of the Congregation of the Council which had confirmed that the extrajudicial procedure could be employed to suspend a priest from his orders, degrees, and dignities, going against some (jurisdictionalist) authors, like Van Espen, who confined the procedure to the prohibition of ascension in holy orders.

To complete the reasoning, it remained to be determined whether the Tridentinum had been received in Brazil. The councillors revisited some

milestones of the council's reception in Portuguese and Brazilian normative history. They considered that the Tridentinum had been received in Portugal in the 16th century, but that this reception had been contested in doctrinal works of the Pombaline era. Regarding Imperial Brazil, they considered that the Decree of 3 November 1827, in commanding that the Council of Trent be observed in relation to matrimony, gave the impression that the rest of the council did not have the monarch's consent to produce effects in the country. The councillors, however, opted for a more favourable solution for the episcopate: they declared that they did not have grounds to suppose that the emperor had ceased to adopt the doctrine of the suspension *ex informata conscientia*, nor did they recall that secular authorities had complained against this procedure, as was the case with some "temporal dispositions" of the Tridentinum. Therefore, the Bishop of São Paulo was within his rights when punishing Toledo.

As for the reasons for the suspension, the Section of Justice recognised that it would have been a problem if the censure had been imposed solely because Toledo was employed as a detective and had influenced political elections. The councillors were not sure if spiritual sanctions, within a "purely ecclesiastical" procedure, could be applied to "such a temporal matter". But as luck would have it, it was precisely around this period that the emperor had determined that priests occupying positions such as detectives had to be removed from office. This solved the issue. Besides, there was no doubt about the full legitimacy of the bishop to suspend Toledo on grounds of concubinage and lack of cassock, reasons well known to the Tridentinum and the Constitutions of Bahia.

Finally, in alluding to the probative documents embarrassingly listed by the bishop, the Council of State emphasised that it was not competent to verify and decide if the facts were true; nor was it competent to examine whether the prelate had proceded fairly or unfairly within the limits of his disciplinary power (this assessment, it should be noted, was an attribution of the Congregation of the Council). Considering the matter (the exercise of orders), the persons (bishop and priest), and at least some of the facts (concubinage and cassock), the case of Toledo could be regarded as of purely ecclesiastical nature and, for this very reason, the state was not entitled to take cognisance of it. Such was the opinion of the Section of Justice, which was close to the normative convention of separation by result, but still attached to the convention of amalgam by debate (in view of the evaluation,

however superficial, of the motives of the bishop; the conjectures on the reception of the Tridentinum; the non-recognition of canon law in its full autonomy, etc.).

The emperor was either not convinced by the opinion, or considered that the issue was of sufficient importance to merit a qualified analysis. He took the case of Toledo to the Council of State's plenum, which convened on 19 June 1856.[351] Once more I will focus on the answers to question number 2: could bishops suspend a cleric *ex informata conscientia* from his orders? The majority of councillors thought so, approving the opinion of the Section of Justice. Among those in agreement was the Marquis of Olinda, who pointed out two relevant aspects. Contrary to the expectations of the Bishop of São Paulo, who wished the councillors would "close the door to these appeals", the marquis signalled that the appeal to the Crown was useful to curb abuses of authority in ecclesiastical matters. In other words, he aimed at highlighting that the "notorious oppression and violence" mentioned in the *Ordenações Filipinas* – "notorious" in the sense of open and blatant, rather than "hidden" – authorised the questioning of a prelate's interpretation and application of canon law, even without any hint of invasion of the secular power's jurisdiction. But the Bishop of São Paulo had no reason to be concerned: Toledo's appeal would not have sufficient strength to overturn the suspension. The Marquis of Olinda also took the opportunity to dispel the doubts voiced by the Section of Justice on whether the position of delegate and the priest's behaviour in political elections were valid grounds for censure; once again, he opined in favour of the prelate. The marquis explained that some temporal acts, although innocuous according to the secular legal order, could be interpreted as ecclesiastical offences, that is, as transgressions of canon law, and that it was fully legitimate for the bishop to use his power to punish the perpetrators. In more concrete terms, the marquis indicated that with the suspension, the prelate was not looking after the regularity of the electoral process; rather, he was concerned with the *vita et honestate* of the priests under his jurisdiction. Overall, the reasoning of the Marquis of Olinda is interesting because it blends different normative conventions at the service of his moderate jurisdictionalism, that is, in favour of a careful though precarious balance between the *iura circa sacra* of the

351 Consulta de 19 de junho de 1856, Conselho de Estado Pleno, in: AN, Conselho de Estado, Caixa 519, Pacote 4, Doc. 66.

emperor and the autonomy of the Church and its legal order. We have already observed a similar coexistence of conventions when the marquis addressed the issue of ecclesiastical residence. Regarding the suspension *ex informata conscientia*, the convention of amalgam – which mixes the secular and the ecclesiastical sphere – is present when the Marquis of Olinda claims that, prompted by an appeal to the Crown, an organ of state could assess how the ecclesiastical hierarchy had interpreted and applied canon law. This discourse implied that the Council of Trent ultimately remained at the disposal of the Council of State as part of the large normative toolbox of ecclesiastical law. The convention of separation, in turn, lay in the idea that canon law was perfectly parallel and autonomous in relation to secular law. This presupposed that the same human act could be invested with quite different meanings, depending on the "normative lenses" with which it was contemplated, neither "lens" annulling or delegitimising the other; consequently, in this scenario, the jurisdiction of the state was not capable of annulling or delegitimising that of the bishop.

Councillor Eusébio de Queirós was another voice favouring the opinion of the Section of Justice – and a voice more faithful to the convention of separation. This convention does not appear as often in the activity of the Council of State, due to the risks that such a discourse could have implied for sovereignty, according to jurisdictionalists and liberals. More specifically, Queirós recalled that the pope and the Congregation of the Council had already established that the Council of Trent authorised the extrajudicial suspension of priests. Then, the councillor postulated that, regardless of one's opinion on papal infallibility (i. e. regardless of whether one was more inclined towards ultramontanism or jurisdictionalism), and considering the practical difficulties of gathering all bishops of the Catholic orb in another council, there was no authority more adequate than the pope to interpret the Tridentinum. Although he hastened to add that the point of view of the Holy See was "current opinion among theologians", rarely did a councillor support the authonomy of the Church in this way, that is, by suggesting that the Apostolic See had the prevailing interpretative jurisdiction. Queirós also gave a nod to the convention of separation by mentioning that the "ecclesiastical penalty"[352] did not affect individual freedom as the secular penalty did, allowing one to relativise the claim that it

352 Technically speaking, the suspension was a censure, and not an ecclesiastical penalty.

was inconvenient to impose a penalty without any judicial process. In fact, the councillor believed that extrajudicial suspensions were very convenient, as they avoided scandal and, above all, impunity. His argument demonstrated a good dose of pragmatism: the state might fear the abuses of bishops, but prelates were few and could be chosen "scrupulously" by the emperor, while clergymen were numerous and, without the suspension *ex informata conscientia*, would become rampant in their indiscipline.

Only two of the twelve councillors voiced their opposition – and strongly so – to the episcopal prerogative of extrajudicial suspension. One of them was the Viscount of Jequitinhonha, whose main argument was that, without the right to defense, the procedure *ex informata conscientia* placed the bishop in a position similar to that of a tyrant. In his words, the right to defense was a "very important guarantee to the Brazilian citizen", consecrated by the Imperial Constitution, historically supported by the *Ordenações Filipinas*, and ultimately fixed by natural law. It was, in short, a constant in civil and canon law, an omnipresent element across legal systems, within and beyond history. To tailor this argument to the concrete case, Jequitinhonha expanded the reach of certain norms. This is the case of Book 2, Title 1, Paragraph 13, of the *Ordenações Filipinas*, which, according to the viscount, had nothing to do with the censures issued to discipline the clergy, but rather with excommunication and temporal penalties (imprisonment, exile, seizure of assets etc.) imposed by prelates on laymen for the crime of adultery. Jequitinhonha also distorted content and context of the words of popes. He stated, for example, that Pope Benedict XIV, in his work *De Synodo Dioecesana*, had recommended that bishops should not declare in synodal constitutions that they possessed powers to suspend *ex informata conscientia*. The viscount inserted this recommendation in a chain of other opinions (most of them from jurisdictionalist jurists) that denied such powers to the episcopate. But, like his predecessors, and in line with the decisions of the Congregation of the Council, Benedict XIV was far from denying such prerogatives. In *De Synodo Dioecesana* the pontiff did regard as reprehensible that bishops fixed in synod their ability to suspend the clergy *ex privata scientia*; however, such reproach was not directed against the prerogatives – which remained very true ("haec verissima sint") – but against the bishop's act of displaying power, of constructing an image of domination over the clergy.[353]

353 Benedicti XIV (1748) 455.

As is evident from his incursions into canon law and secular law, Jequitinhonha relied heavily on the convention of amalgam. When he said that a priest did not cease being a citizen – and thus retained the right to defense –, the councillor was precisely trying to apply liberal legal schemes to ecclesiastical procedures, which, as is well known, were organised according to a very different logic. "And do not base your arguments on the Council of Trent", continued Jequitinhonha, who then interpreted canonical norms in his own right as councillor of state, not at all annulling them, but blending them with other normative elements (citizenship, right to defense, majestic right / duty, etc.). He claimed that the general acceptance of Trent could not be presumed, since this would come at the expense of the "oppressed subjects" of the emperor; and the words of Session 14, *De reformatione*, Canon 1, being equivocal, had to be interpreted in the most restricted way – meaning that the procedure *ex informata conscientia* would refer only to the prohibition of ascension into new orders, not to the suspension of orders already received. Broader interpretations, he added, would rightfully remind monarchs of their duty to protect subjects from the violence and opression of bishops – a duty that, following the convention of amalgam, derived from both civil law and canon law and was, at the same time, a majestic right.

The Viscount of Abaeté, the second person to challenge the opinion of the Section of Justice in this case, supported Jequitinhonha's restrictive reading of the Council of Trent, deeming the procedure *ex informata conscientia* not applicable to suspensions. In his opinion, this procedure was meant to be exceptional, preventive and provisional; it could not substitute the canonical judicial process, in which the prelate had to present the necessary evidence for instruction, especially considering the notoriety of the crimes. Abaeté's argumentative *mélange* brings together the restrictive interpretation of the Tridentinum, typical of jurisdictionalists, on one side, and the reminder of the irreplaceable character of the canonical judicial process in view of notorious facts on the other. This last reasoning, somewhat surprisingly, was in conformity with many canonists respected in Rome (early modern ones, in particular), and with decisions that the Congregation of the Council had taken and would still take throughout the second half of the 19th century. Even with such an "orthodox" argument, one cannot conclude that Abaeté had used the convention of separation, since what he was doing, as a state authority, was precisely criticising the way the Bishop of São Paulo interpreted and applied canon law. Finally, comparing the discourses of Abaeté

and Jequitinhonha, it is easy to see that the convention of amalgam could assume quite different forms: sometimes with more pronounced emphases on canon law, ecclesiastical civil law, or even secular law; other times with more or less distortion of third party arguments etc.

The outcome of the discussion, both in the Section of Justice and in the Plenary Council, was positive for the bishops, who saw their prerogative of correcting the clergy without judicial process respected (albeit also assessed). Moreover, the debates were in favour of applying the Council of Trent according to a broad interpretation, comprising the perspective of the Congregation of the Council (i. e. suspensions *ex informata conscientia* were valid), and even going beyond it (i. e. suspensions *ex informata conscientia* were valid even for notorious facts). In recognising the autonomy of the episcopate to punish according to canon law, the results came close to the normative convention of separation. But, in the end, the convention of amalgam triumphed: the appeal to the Crown was renewed as a mechanism capable of submitting acts of episcopal jurisdiction to the control of the state; furthermore, with the councillors' opinions, the state recognised that it could compel ecclesiastical authorities to cease their actions even in cases of abuse of interpretation of canon law. In short, the results of the consultations were favourable for the bishops, but the ideas consolidated in the discussion were a powder keg for the relations between Church and state, as the following decades would demonstrate.

These ideas were fixed soon afterwards, in the Decree n. 1.911 of 28 March 1857, which provided new regulations for the appeal to the Crown, in terms of competences, filing of the appeal, effects, and form of judgment.[354] According to Article 1 the appeal was possible in situations of "usurpation of jurisdiction and temporal power" (§ 1.), also "due to any censure against civil servants on account of their office" (§ 2.), and, significantly, "due to notorious violence in the exercise of spiritual jurisdiction and power, in disregard of natural law, or of the canons received in the Brazilian Church" (§ 3.). This last item crystallised the point emphasised by the Marquis of Olinda in the Plenary Council. Article 2 listed the situations when it was not possible to appeal to the Crown: "against the procedure *intra claustrum* of regular prelates with regard to their subjects in correctional matters" (§ 1.), and, of particular interest to us, "against the suspensions and prohib-

354 See Decreto n. 1.911 de 28 de março de 1857 (Brasil) (1857).

itions that bishops, extrajudicially or *ex informata conscientia*, imposed on clerics for their amendment and correction" (§ 2.).

There are signs that the Decree of 1857 was well received in the ecclesiastical milieu. This affirmation may sound somewhat unexpected if we consider that, between the 1860s and the 1870s (and during the Religious Question in particular), the appeal to the Crown came to be intensely criticised by supporters of ultramontanism, ecclesiastics and laity alike.[355] In any case, it cannot be denied that some members of the higher clergy regarded the decree as a sign of cooperation between state and Church during the 1850s. And these were not jurisdictionalist prelates. For instance, D. Antonio Joaquim de Melo, the bishop involved in Toledo's case – and admittedly sympathetic to ultramontanism – expressed his "cordial gratitude" to the author of the decree, (then) Minister of Justice José Tomás Nabuco de Araújo,[356] emphasising that the document was a "great good".[357]

355 Regarding the 1860s, it is sufficient to recall the criticism by Catholic lay jurists such as Candido Mendes de Almeida, in CMA, I, xxix, and Braz Florentino Henriques de Souza, in his monography on the appeal to the Crown, in Souza (1867). With regard to the 1870s, with the coming of the Religious Question, criticism abounded in the Catholic press (e. g. newspapers such as *O Apóstolo*, in Rio de Janeiro, and *A Boa Nova*, in Belém do Pará).

356 José Tomás Nabuco de Araújo (1813–1878) was a major politician and lawyer of the Brazilian Empire. Born in Salvador da Bahia, Nabuco de Araújo graduated at the Faculty of Law of Olinda in 1835. Between 1836 and 1849, he served as public prosecutor in Recife and trial judge in several places in Pernambuco. Nabuco de Araújo was member of the Chamber of Deputies (1843–1844, 1850–1852, 1853–1856, and 1857–1860), President of the Province of São Paulo (1851–1852), Minister of Justice (1853–1856, under Honorio Hermeto Carneiro Leão, the Marquis of Paraná; 1856–1857, under Luis Alves de Lima e Silva, the Marquis of Caxias; 1858–1859, under Antonio Paulino Limpo de Abreu, the Viscount of Abaeté; and 1865–1866, under Pedro de Araújo Lima, the Marquis of Olinda), and senator (1858–1878). He became a councillor of state in 1866. He shifted from the Conservative to the Liberal Party during the 1860s, becoming a leading figure of the latter and a relevant supporter of the abolition of slavery. Regarding his views on religious affairs, Nabuco de Araújo is described as a "profound regalist" who affirmed the state's duty to protect the Church and, at the same time, the Church's duty to follow the state laws, according to Rodrigues (1979) 90. Besides, even though he was a devout Catholic, Nabuco de Araújo had a genuinely liberal agenda: he pleaded for effective guarantees of liberty of conscience, was against the inelegibility of non-Catholics, and supported civil marriage. Known for his legal erudition, he drafted a project of Civil Code around 1872 that remained unfinished. For more on Nabuco de Araújo, see Blake (1899) 217–218, Rodrigues (1979), and the biography written by his son, Joaquim Nabuco (1897).

357 I refer to the letter of 6 April 1857 from the Bishop of São Paulo to Nabuco de Araújo. See Nabuco (1897) 324–325.

The first news the Apostolic See received of the Decree of 1857 is also exemplary in this sense. It was transmitted in a very festive tone by Vincenzo Massoni, Apostolic Internuncio in Brazil, in a letter of 30 April 1857 to Cardinal Giacomo Antonelli, Secretary of State of the Holy See. Massoni described the new regulation of the appeal to the Crown, especially Article 2, §§ 1. and 2. (which he transcribed), as a victory for bishops and superiors of regular orders. In his words, it had restored to these actors "the most important and effective part of the sacred rights of disciplinary authority", striking a hard blow against the "Josephism introduced in Brazil by the Marquis of Pombal".[358] Even though Massoni was (apparently) aware of the full decree, and also of the developments of Toledo's case, including the participation of the Council of State and the emperor in its resolution, the internuncio did not show any hint of alarm over Article 1, § 3. The possibility that the state might rule on abuses of spiritual jurisdiction and power – and ultimately control the interpretation of prelates in matters of canon law – would only emerge years later as an alternative for the state and a problem for the Church.

This would be brought about *pari passu* with the intensification of measures of *emendatio* issued by the most radical wing of the ultramontane episcopate, a phenomenon that would eventually lead to the Religious Question. The recurrent interdictions and suspensions *ex informata conscientia* in the 1860s and 1870s would persuade parliamentarians, councillors, and jurists that such measures could be imposed in an abusive way, making it necessary to relativise Article 2, § 2. of the Decree of 1857. As the article would fail to be derogated or modified by parliament, the Council of State would then be forced to seek strategies to circumvent it, safeguarding at least the income of suspended clerics. The councillors would not dare to go against the Council of Trent. They would go against some of its interpreters.

358 Diverse notizie del Brasile comunicate da Mons. Vincenzo Massoni, Internunzio Ap.o, sui seguenti argomenti: […] Decreto imperiale sui ricorsi degli Ecclesiastici alla Corona contro le misure corregionali dei loro superiori […], in: ASRS, AA.EE.SS., Pio IX, Brasile I, Positio 127, Fasc. 176, ff. 109r–110r.

3.6.2 Countering and adjusting the discourse of the state on the suspension *ex informata conscientia*. Deference to the Council of Trent becomes detached from shielding the acts of bishops

In August 1865, the suspension *ex informata conscientia* was on its way back to public attention. First, the issue was raised in the Council of State, but without major interpretative shifts. On the contrary: in a consultation of 14 August, the councillors extended the application of Article 2, § 2. of the Decree n. 1.911 of 28 March 1857, to extrajudicial suspensions decreed by a vicar capitular. In other words, even against these censures one could not appeal to the monarch; the remaining legal option, as noted by the Procurator of the Crown, was the one described by Monte in volume 3 of the *Elementos*, that is: the appeal to the Congregation of the Council. There were no surprises: the normative convention of separation continued to dictate the outcomes, and the Council of Trent was still used in the broad terms of the decision from Toledo's case.

But events outside the Council of State would begin to cast doubt on whether suspensions *ex informata conscientia* should always be safeguarded against state intervention. It all started on 31 August 1857, when D. Sebastião Dias Laranjeira, Bishop of Rio Grande do Sul, suspended three canons of his diocese from their orders, offices, and benefices, following the extrajudicial procedure.[359] Unable to appeal to the Crown, the canons decided to petition to the General Legislative Assembly, asking for legislative solutions that would safeguard the right to defense that was "guaranteed to every Brazilian citizen by the Constitution". In response, on 1 June 1866 the Commission of Ecclesiastical Affairs of the Chamber of Deputies presented a bill to revoke Article 2 of the Decree of 1857, intending to make the appeal to the Crown possible against any correctional measures imposed on the clergy. This bill gave rise to more than three years of debate in the Chamber of Deputies and the Senate, the interpretation of the Council of Trent appearing as one of the main points of controversy.

According to the commission in charge of the project, the terms of Session 14, *De reformatione*, Canon 1, were not sufficiently "clear and final" so as to authorise bishops to suspend *ex informata conscientia.* A broad interpretation of the Tridentinum, which conferred such power to the episcopate,

359 Congresso Nacional (Brasil) (1980 [1861–1889]) 45–46.

was regarded as "forcible", "tyrannical", "abusive", and "opposed to natural, divine, canonical, and national laws". The possibility of appealing to the Holy See against a suspension *ex informata conscientia* did not seem a sufficient guarantee to the commission. The Roman dicasteries were regarded as "distant and difficult tribunals", especially from the perspective of the "poor and underprivileged" Brazilian priest. In general, the commission's reasoning was articulated according to the normative convention of amalgam. It displayed a restrictive interpretation of the Tridentinum. In favour of this point of view, the deputies manipulated arguments from canonists well regarded by the Holy See (claiming, for instance, that Bouix had said that the suspension *ex informata conscientia* was only valid for hidden delicts, and that Pope Benedict XIV had characterised this episcopal prerogative as tyranny). But the commission also mixed elements from secular procedural law and criminal canon law. This operation was performed in historical key: after all, suspensions *ex informata conscientia* might have been tolerated at the time of the Council of Trent, but not "in an eminently free country" such as Brazil, whose penal system was founded on summons *(citação)*, hearing *(audiência)*, and public evidence. The recent view of the cleric as a mixed servant *(empregado misto)* was also supposed to prevent the ecclesiastical jurisdiction from invading the temporal sphere in assigning punishment. According to this view, the bishop was not authorised to suspend a cleric from his benefice, for the *congrua*, as well as other types of ecclesiastical income, was regulated by secular law. As such, it should be discontinued in the manner stipulated for other public servants, that is, following the Code of Criminal Procedure. It was necessary, for all these reasons, to remedy the "break of tradition" brought about by the Decree of 1857, and restore to the state the historical privilege of protecting citizens against violence and oppression, including suspensions *ex informata conscientia*.

Despite dissenting voices, the bill was approved by the Chamber of Deputies on 24 August 1866.[360] When it went to the Senate, it met strong resistance from the Commission of Legislation and Ecclesiastical Affairs, headed by Nabuco de Araújo, author of the Decree of 1857.[361] The opinion of this new commission, presented in the session of 27 August 1867, harshly

360 Annaes do Parlamento Brazileiro (1866) 119.

361 See the full opinion of the Senate's Comission of Legislation and Ecclesiastical Affairs in Annaes do Senado do Império do Brasil (1867) 114–118.

criticised the interpretation of the Tridentinum that underlay the bill. It pointed out that a simple hermeneutical exercise was enough to conclude that Session 14, *De reformatione*, Canon 1, had extended the procedure *ex informata conscientia* to suspensions. For the senators, it was sufficient to observe the preface to Session 14, which in their opinion had made clear, with the phrase "*ut autem ipsi episcopi id* liberius *exequi*", the "intention of the council" to "extend and facilitate the authority of bishops for the reformation of the clergy". The commission also invoked Prospero Fagnani and his statement that if extrajudicial suspensions had not been contemplated, the council would not have given to the bishops powers other than those they already possessed.

Moreover, the commission of the Senate highlighted that the commission of the Chamber of Deputies had manipulated the fragments of Bouix and Benedict XIV, "truncating the words of these canonists, and making them say the opposite of what they actually say". With this line of argument, the senators relied on a representation filed shortly before to the General Legislative Assembly by D. Antonio de Macedo Costa, Bishop of Belém do Pará. The mention of this bishop by the commission is symptomatic of the cooperation between ultramontanists and "moderate regalists" (such as Nabuco de Araújo, for example) in order to safeguard the episcopal prerogative of correcting the clergy.

But the senators did not limit themselves to the act – typical of the convention of amalgam – of proposing an interpretation to the Council of Trent. Guided by the convention of separation, they also recognised in the Congregation of the Council the power constituted by the Church to authentically interpret the Tridentinum. They recalled not only the Bull *Immensa Aeterni Dei*, which delimited the competences of the dicastery, but also a series of decisions that the congregation had issued in favour of the suspension *ex informata conscientia*, leaving no room for doubt that it was a lawful and applicable institution.

The commission of the Senate challenged the opinion of the commission of the Chamber on two other points: the alleged rupture between the Decree of 1857 and previous legislation, and the legal impossibility of bishops suspending priests from benefices. The senators stressed that both Article 1 and Article 2 of the Decree of 1857 were based on royal provisions of the Portuguese *Ancien Régime*. They claimed that Article 2, § 2. which exempted the suspension *ex informata conscientia* from the reach of the state, was

created by analogy with the Royal Charter *(Carta Régia)* of 9 May 1654, which prohibited the Crown to decide on complaints about disciplinary, *intra claustrum* procedures filed by members of religious orders; and, as it did not constitute violence in grave matters, extrajudicial censure was also in harmony with Book 1, Title 9, Paragraph 12, of the *Ordenações Filipinas*. The senators insisted that this reasoning was not confined to Brazil or Portugal: mentioning a decision of the French Council of State, they intended to demonstrate that the disciplinary power of bishops was preserved even where Gallicanism prevailed.

As for the suspension from benefices, the commission of the Senate decided in favour of the episcopate. It recognised that the secular power was in charge of regulating the *congrua* due to the secularisation of tithes. However, it held the suspension of the *congrua* of undisciplined clergy to be nothing but an indirect yet necessary consequence of the suspension from office, a prerogative definitely in the hands of bishops. There was, thus, no invasion of jurisdiction, not least because the state paid the clergy's *congrua* only in two situations: with proof of residence (i. e. with sufficient evidence that priests were performing their duties), or after dispensation from residence. The suspension was neither of these cases. Moreover, the senators recalled that the civil government had already decided on the matter by means of the *aviso* of 14 September 1863. Based on an opinion of the Council of State, this norm established that a parish priest suspended by the ordinary had no right to *congrua*, unless the suspension was revoked by absolution or appeal (that is, by a mechanism that expressed that the suspension had been unfair; a pardon, for example, did not serve this purpose). Despite the similarities with the suspension of public servants, the commission decided that the Code of Criminal Procedure was inapplicable to clergymen suspended *ex informata conscientia*, as the suspension regulated in the code was preventive, not correctional. One must admit that the commission of the Senate missed the opportunity to point out more markedly the separation between the secular procedure for crimes against public administration and the ecclesiastical procedure for disciplinary matters; but this fragment may be more fairly interpreted as a hint that the commission of moderate regalists alternated between normative conventions.

For all these reasons, the commission headed by Nabuco de Araújo opined for the rejection of the bill presented by the Chamber of Deputies. There were dissenting votes within the commission, as well as opposing

voices in the Senate. The discourse of these groups contained a particularly blunt question: should the Council of Trent be considered law in Brazil? The thorny issue of reception, which had not been fully addressed by the councillors of state in 1857, came into play. With a discourse rooted in the jurisdictionalism and liberalism of the first half of the 19th century (with citations to, for example, Manuel Borges Carneiro), senators in favour of the bill, such as José Martins da Cruz Jobim, postulated that the Tridentinum had never been received in Portugal, and only partially in Brazil.[362] They defended that the historical *Alvará* of 12 September 1564, which ordered the execution of the Tridentine decrees in the Kingdom of Portugal, had never been conceived as properly binding, in view of the tender age of the monarch at the time of its publication (King Sebastião I was then ten years old), and the "harmful influence of the Jesuits" over the Portuguese government. The recent history of Brazil also provided convenient legal constructs for the dissenters of the commission of the Senate. I am referring to the controversial Decree of 3 November 1827, which, by determining that the sections of the Council of Trent on marriage were in effective observance in the empire, gave rise to the interpretation that the rest of the Tridentine dispositions did not enjoy similar validity.

Nabuco de Araújo was one of the actors refuting these arguments. In a discourse dated 10 August 1869,[363] he affirmed that the *Alvará* of 12 September 1564 had been incorporated into Book 2, Title 1, Paragraph 13, of the *Ordenações Filipinas*, then in force in Brazil; he added that this opinion – which favoured the reception of the Counclil of Trent – was shared by important Portuguese (and regalist) jurists such as Pascoal de Melo Freire and Manuel de Almeida e Sousa de Lobão. As for the Decree of 3 November 1827, Nabuco de Araújo declared that it had been published to remedy the error of the compilers of the *Ordenações Filipinas*, who had transcribed matrimonial provisions from the *Ordenações Manuelinas* that had already been revoked by the Tridentinum. In other words, the decree did not regulate which sections of the Council of Trent were in force in Brazil, but emphasised that with regard to matrimony, Tridentine dispositions – and no other rules – had to be followed. When making this point, Nabuco relied

362 See the dissenting opinion of Jobim in Annaes do Senado do Império do Brasil (1867) 118–121.

363 O Apostolo 6 (1870) 44.

on Lobão and the Brazilian Empire's Consolidation of Civil Laws (1858), making it clear that he was not going against the country's legislation or even the institutionalised jurisdictionalism.

The debates in the Senate finished on 13 August 1869, when the bill presented by the Chamber of Deputies was rejected.[364] The suspension *ex informata conscientia* was protected from secular intervention, at least from the legislative point of view. The interpretation of Session 14, *De reformatione*, Canon 1, of the Council of Trent remained broad and in favour of the episcopate, allowing extrajudicial suspension; the ideas on the reception of the Tridentinum in Brazil, and on its harmony with the existing canonical and civil legislation were strengthened; and the Congregation of the Council, in its role as authentic interpreter, was valued in a way unprecedented in Brazilian secular institutions.

In any case, the discussion left an open wound, and the arguments developed by the parliamentarians would be retrieved by other agents in times of crisis – a crisis that was not far off. In the 1870s, the greatest administrative and judicial clash yet between imperial authorities and radical ultramontane bishops unfolded: the Religious Question. The legal debates that emerged along with it were not limited to the issue that determined its escalation, the interdiction of lay confraternities. The suspension *ex informata conscientia* also came to the fore, as the prelates involved, in particular D. Vital Maria Gonçalves de Oliveira, Bishop of Olinda, often used this mechanism to correct undisciplined clergymen, many of whom were among the ranks of Freemasons.

The emperor, aware of this, placed extrajudicial suspensions on the agenda of the Council of State's plenum of 8 November 1873, the first to deal with a series of exceptional administrative issues which arose while the prelates were facing criminal trials.[365] The main question was: should the appeal to the Crown be denied in any case of suspension *ex informata conscientia*? Or was it admissible to appeal against this censure when "the conditions established by canonical and national laws" were not met? The discussion of the Plenary Council in 1873, differently to that in 1857, suggested that depending on how they were imposed, extrajudicial suspensions could

364 Annaes do Senado do Império do Brasil (1869) 153.

365 Consulta de 8 de novembro de 1873, Conselho de Estado Pleno, in: Atas do Conselho de Estado Pleno (Brasil) (1978 [1868–1873]).

constitute abuse of ecclesiastical authority. In other words, considering that derogation was impossible, a new interpretation began to take root, namely that Article 1, § 3. of the Decree of 1857 acted as a regulator of Article 2, § 2. The normative convention of amalgam was strengthened by this idea. The state thus grew in its position of interpreter of canon law. And, in the years to come, suspended priests would feel encouraged to seek out the Council of State in order to reverse censures, or at least mitigate their effects.

Let us see how this change came about at the Plenary Council of 1873, and how it impacted the interpretation of the Council of Trent. Of the ten councillors present, seven defended that suspensions *ex informata conscientia* had to be limited in some way. Among them was Viscount Abaeté, who opined that Session 14, *De reformatione*, Canon 1, of the Tridentinum was not clear about when extrajudicial censures could be imposed. Displaying a merely superficial knowledge of canon law, Abaeté said that the canonists most "adherent to the doctrines of the Holy See", supported by decisions of the Congregation of the Council, held that all ecclesiastical crimes could prompt a suspension *ex informata conscientia*. This is wrong, as we have seen. And Abaeté himself refuted it with an equally inaccurate citation of Bouix (possibly incorrectly taken from Monte, who cites Bouix correctly). Abaeté stated that, according to the French author, a bishop who suspended priests outside the cases of hidden crime was operating unfairly; the councillor conveniently omitted the part saying that the prelate could suspend on grounds of notorious crimes if he had sufficient reason. In any case, the councillor invoked the doctrine on canon law to demonstrate that it provided some limits for the suspension *ex informata conscientia* – limits which were not contemplated in Article 2, § 2. of the Decree of 1857, preventing the state from legitimately countering abuses. As not all extrajudicial suspensions seemed acceptable to him, Abaeté suggested Article 2 be derogated, pointing out that the rejected bill of 1866–1869 could be used for this purpose.

The Marquis of São Vicente, in turn, was more radical in limiting extrajudicial suspensions. He was not interested in the Council of Trent, but in the country's secular legislation. In his eyes, the *Ordenações Filipinas* did not authorise sentences *ex informata conscientia* – and this for a simple reason: natural law rejected convictions without the hearing of the defendant; to insist on such procedure implied accepting the risk of public disturbance. The *leitmotiv* of the right to defense returned. Similarly to Abaeté, São Vi-

cente recognised that it would be better to revoke Article 2, § 2. But, given the impossibility of doing so, he proposed that this provision should not be read isolatedly, but in "the whole spirit" of the Decree of 1857, that is, admitting appeals against extrajudicial suspensions in case of "notorious violence" and disregard of laws. Though not explicitly, São Vicente suggested that Article 2, § 2. should be interpreted along with Article 1, § 3. the latter limiting the former. The Marquis of Sapucaí followed him.

The Viscount of Bom Retiro reached the same result by a very different route. Similarly to the moderate jurisdictionalism of Nabuco de Araújo and the Marquis of Olinda, he recognised that the suspension *ex informata conscientia* was both licit and valuable for the government of the Church. He said it was "the most powerful weapon at the bishops' [disposal] to moralise the clergy". He recalled his earlier support of the promulgation of the Decree of 1857, and his vote against its partial revocation in the Senate in 1869. In his eyes, by protecting extrajudicial suspensions from secular interference, the Decree of 1857 did not establish a new right; it actually prevented the state from becoming a second instance for the Church, while preserving ecclesiastical independence. Bom Retiro also warned of the pragmatic dimension of the issue: an appeal to the Crown against a suspension *ex informata conscientia* was not useful, because, besides running the risk of breaking the bonds of subordination among the clergy, a possible victory for the defendant would not "make the suspended come back to pray the mass". That is: the success of the appeal would not revert the suspension in matters that only the bishop could touch (use of orders, exercise of the office, etc.). In any case, Bom Retiro conceded that abuses of the prerogative could take place (and that this might indeed have been the case with the bishops at the heart of the Religious Question). Extrajudicial suspensions, in Bom Retiro's opinion, should not apply to all crimes, and not in all circumstances; their use should be adapted to the conditions established in canon law, national law, and natural law. If these conditions were not met, he said, it would be possible to appeal against the censure on the basis of Article 1, § 3. of the Decree of 1857. He did not specify, however, which measure the suspended cleric could expect from the state if he were successful. Possibly Bom Retiro hoped that bishops would adopt a more reasonable behaviour before any appeal reached the councillors, after all: "the episcopate should concentrate on moralising the clergy, not on demoralising the state".

Nabuco de Araújo's brief vote engages (and ultimately converges) with Bom Retiro's on several levels. He was more specific in saying that the Decree of 1857 was not a new law. He claimed that Article 2, § 2. consolidated a provision of the Council of Trent received in Brazil, and that the only way to enable appeals to the Crown against suspensions *ex informata conscientia* would be to revoke not the paragraph, but the *placet* granted to that part of the Tridentinum. However, Nabuco de Araújo did not believe that this was necessary. He pointed out that if the Decree of 1857 remained in its original form, the abuses of the episcopate would in no way be excluded from appeals, since the Minister of Justice and the presidents of province (and *not* the bishop) were competent to evaluate whether the contested act had sufficient grounds to give rise to appeal. In other words, it was in the hands of the civil government to arbitrate whether or not the act in question fell within the suspension *ex informata conscientia* authorised by the canons and laws of the country. These statements bring to our attention the mixture of normative conventions underlying the discourses of moderate jurisdictionalists (a phenomenon already seen with the Marquis of Olinda). After all, Nabuco de Araújo defended before the Senate that the Congregation of the Council was the ultimate authority to "theoretically" determine what an extrajudicial suspension was, thus approaching the convention of separation; in the Plenary Council, conversely, he considered that a secular authority was responsible for evaluating these suspensions "in practice", clearly using the convention of amalgam.

Only two councillors came closer to the normative convention of separation: the Viscount of Jaguary and the Viscount of Muritiba. Both deemed that the appeal to the Crown had to be denied for any case of suspension *ex informata conscientia*, stating that the bishops should have full autonomy in imposing such measures. Muritiba even declared that the imperial authorities were not competent to verify whether the conditions established by canonical and civil laws had been respected. The bishops had to be trusted in their discretion, he said.

At the other end of the spectrum was the Viscount of Souza Franco, the strongest voice against extrajudicial suspensions (and also the most radically regalist) of the Plenary Council of 1873. He believed that the measure hindered the natural and positive right to defense, which resulted in "the surrender [of] a large group [of persons] to the whims of the bishops". His target was D. Antonio de Macedo Costa, Bishop of Belém do Pará, who, in

the opinion of the councillor, was using censures to relieve himself of his "indisposition against independent and literate priests". But Souza Franco had more technical arguments up his sleeve. He postulated that censures *ex informata conscientia* went against the Brazilian legal system. Based on the Constitution (Article 179, § 11.) and, above all, on the Code of Criminal Procedure (Articles 155, 308, 310, and 324), the councillor argued that an ecclesiastical punishment could not imply a temporal penalty (he was referring, I suppose, to the loss of *congrua* as consequence of the suspension from office and benefice), and that bishops could not sentence anyone without trial and defense. Souza Franco went so far as to say that, in fact, prelates were incompetent to decide on any cause, even purely spiritual ones, for the Code of Criminal Procedure (Articles 155 and 324) bound this function to "the ecclesiastical justice". In view of this, the councillor believed that the most appropriate solution was to revoke Article 2, § 2. of the Decree of 1857. But, differently to other colleagues who displayed a similarly positive position towards such derogation, Souza Franco wanted to eliminate, not limit the extrajudicial disciplinary powers of the episcopate. He saw them as unnecessary and ultimately despotic. Thus, should any ordinary impose suspensions *ex informata conscientia* in the future, this would automatically constitute a case of "notorious violence", and Article 1, § 3. would apply; and, should he disturb temporal interests, Article 1, §§ 1. and 2. could be used cumulatively. Such radicalism – which flirted with the normative convention of exclusion, completely disregarding canon law – could not prosper in the Council of State, and remained a one-man battle.

Finally, the Viscount of Niterói and the Duke of Caxias agreed with the majority, represented by Bom Retiro and Nabuco de Araújo (and ultimately also by the Marquis of São Vicente and the Marquis of Sapucaí). They saw extrajudicial suspensions as a legitimate exercise of the bishops' disciplinary powers, but, at the same time, agreed that appeals could be addressed to the Crown when canonical and national laws were violated. Thus, the interpretation – of moderate jurisdictionalism, and in accordance with the normative convention of amalgam – that Article 2, § 2. was to be regulated by Article 1, § 3. of the Decree of 1857, won the day. The corresponding part of the Council of Trent remained protected by the state, as in 1857, but its interpretation, or rather the assessment of its proper use by the bishops, ultimately remained in the hands of the councillors.

As a consequence of this majority understanding (and also of other factors, such as the arrest of the Bishop of Olinda and the Bishop of Belém do Pará), in the following years the Council of State was urged to evaluate the legality of some suspensions *ex informata conscientia.* A paradigmatic opinion was that of the Section for Imperial Affairs on 4 March 1874, on the representation of Canon João José da Costa Ribeiro against the suspension from orders, office, and benefice imposed by the Bishop of Pernambuco.[366] In the debate, there were moderate and radical jurisdictionalists: the Viscount of Bom Retiro, the Viscount of Souza Franco, and the Marquis of Sapucaí. The canon pointed out that the prelate had not informed him, publicly or privately, of the reasons for the censure. As he intended to appeal to the Holy See, the priest believed that the lack of this information could harm his defense, which is why he petitioned to the state.

The councillors found the Bishop of Olinda's procedure strange, recalling that, by natural law, no one could be condemned without at least knowing the crime he was accused of. The spirit of the Tridentinum could not go against natural law, they said. And neither could its letter, they added: after all, Session 14, *De reformatione*, Canon 1, contained no word that would allow the ordinary to conceal the reason for the suspension; *extrajudicialiter* meant "without judicial process" and "without common appeal" (to the metropolitan), but not "without communication of reasons". Moreover, the councillors believed that the corrective purpose attributed to the suspension *ex informata conscientia* by the Council of Trent had been completely disregarded by the Bishop of Olinda, because without knowing the reasons for the censure the canon could neither justify himself before the prelate or the Holy See (if innocent), nor correct himself (if guilty). Thus, the Section concluded that the prelate's conduct amounted to the "notorious violence" mentioned in Article 1, § 3. of the Decree of 1857. From a formal point of view, even though the canon had not appealed to the Crown, but rather made a representation, the Council of State decided to consider the demand as a way to alert the bishop that he had acted irregularly. Given that the suspension was the result of abuse by the ordinary, the councillors decided to reverse it insofar as it was possible for the state, that is, they ordered that the

366 Consulta de 4 de março de 1874, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 552, Pacote 3, Doc. 60.

canon's *congrua* continued to be paid. The emperor, in a resolution of 10 June 1874, approved the opinion.

The contrast between this decision and that of 1857 is striking. The councillors completely disregarded what the Holy See and canonists had said about the optional character of the communication of reasons to suspended priests. The opinion, in fact, was quite poor in terms of intertextuality; the Council of Trent and the Decree of 1857 were the only norms cited. And although the councillors (and the suspended canon) knew that against a suspension *ex informata conscientia* one could appeal to the Congregation of the Council, they seemed unaware of how this appeal played out in practice. The fact that the communication of reasons to the suspended cleric was optional did not leave him unprotected, for as soon as he appealed to the Roman dicastery the cardinals would demand from the bishop the reasons for the suspension and the evidence supporting it. If the evidence was insufficient, the prelate would be obliged to lift the punishment. The Holy See and most canonists regarded this procedure with natural ease; they deemed the suspension *ex informata conscientia* an exceptional measure that sacrificed the judicial form (with admonition, summons, defense, etc.) in order to serve the greater good of safeguarding the Church and correcting the unruly clergy. Furthermore, the concentration of powers in the person of the bishop reflected the great confidence placed in him – at the time of the Council of Trent, and also throughout centuries of post-Tridentine law. With the opinion of 1874, the Council of State concretely separated the defense of the Council of Trent from the defense of the procedure of the episcopate, elements that were closely tied in 1857. The councillors recognised, in practice, that a bishop could be wrong when interpreting the Tridentinum.

A few days later, the same group of councillors had to deal with the appeal to the Crown of priest Bartolomeu da Rocha Fagundes, collated vicar of Rio Grande do Norte, suspended from orders, office, and benefice by the Bishop of Olinda.[367] Significantly, the priest requested the Council of State to rule on the prelate's act and on the payment of the *congrua*. The Marquis of Sapucaí reported that the cause of the suspension had not been communicated to Rocha Fagundes, and that the bishop had limited himself to declaring that the procedure employed was based on Session 14, *De reformatione*,

367 Consulta de 16 de março de 1874, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 552, Pacote 3, Doc. 61.

Canon 1. Deducing that the prelate had suspended the vicar *ex informata conscientia*, the councillor voted in accordance with the normative convention of separation. He focused on Article 2, § 2. of the Decree of 1857 and, leaving aside the "conditions established by the canons and laws of the country", opined that the appeal was inadmissible and the *congrua* should not be paid. Bom Retiro agreed, but surreptitiously introduced the convention of amalgam in his discourse. He declared that the Resolution of 9 September 1863 (corresponding to the *aviso* of 14 September 1863)[368] had to be changed in order to allow the clergy unfairly suspended (that is, the clergy suspended arbitrarily or for offenses incompatible with the extrajudicial procedure) to keep earning their income, even without the prelate's absolution.

Souza Franco, for his part, acted once again as a passionate jurisdictionalist. He diverged from the rapporteur. As usual, he used secular norms as paradigm to evaluate the conduct of the clergy; canon law was put aside, if not completely forgotten. For Souza Franco, the bishop had violated the Decree of 1857 by not declaring that the suspension was *ex informata conscientia* (he had only pointed out the session and canon of the Tridentinum), operating with "notorious violence" in the exercise of spiritual jurisdiction and power (Article 1, § 3.). Souza Franco went so far as to assess the reasons for the suspension – a threshold which, as had been consolidated in 1857, the state was not allowed to cross. He claimed that the violence was "further aggravated" by the fact that the prelate had suspended the priest on grounds of his being a member of Freemasonry. This justification, according to Souza Franco, made no sense after recent events. He recalled that, in the case at the root of the Religious Question, the emperor had declared that the interdictions imposed on lay confraternities due to the presence of Freemasons among their numbers were without effect. This would have had, in Souza Franco's view, delegitimised any attempt of the bishops to reproduce the argument in further punishments. He claimed, then, that the appeal should be granted, that the priest should receive his revenues and, moreover, that the diocesan government should reinstate him in his spiritual functions. In conclusion, he implied

368 This *aviso* stipulated that a parish priest whose suspension had been absolved by the corresponding ordinary had the right to two-thirds of his *congrua*. The justification was that the absolution implied that the suspension had been unjust, or the fault involuntary. This *aviso* was composed after a consultation to the Council of State, as seen in Consulta de 28 de agosto de 1863, Seção de Negócios do Império, in: Consultas do Conselho de Estado sobre Negocios Ecclesiasticos 2 (1870) 207–210.

that in case of resistance, the state itself could reinstate the clergyman, even if this was clearly beyond its competences. For Souza Franco, there seemed to be no limits to how the state could interfere in Church affairs.

In any case, on 10 June 1874, the emperor decided in line with Bom Retiro. Thus, the case did not have a positive outcome for Rocha Fagundes, but it consolidated the idea that, under certain circumstances, a suspension *ex informata conscientia* could be declared unlawful and reversed within the limits of state action (i. e. payment of *congrua*). But what would these circumstances be? The case of Canon João José da Costa Ribeiro provided a concrete clue: the ordinary not communicating the reasons for the suspension to the priest who wished to appeal against it. In fact, a later case, the last one I will analyse in this chapter, would confirm this criterion.

On 25 March 1876, the Section for Imperial Affairs assembled in the person of the councillors Viscount of Bom Retiro, José Pedro Dias de Carvalho, and Paulino José Soares de Souza, to provide its opinion on a request from a priest asking to receive the *congrua* withheld from him when he was suspended *ex informata conscientia*.[369] The petition came from someone we already know, the controversial Dean Joaquim Francisco de Faria from the diocese of Olinda. This was a clash of titans: Faria had been suspended by D. Vital. Radical ultramontanism was fighting with blatant jurisdictionalism, very much to the taste of the historiography that emphasises the dichotomy and the conflict between the poles. The reason of the conflict was the obligation of residence. The dean had been appointed regent of the provincial high school and, in order to assume the position, he had to leave the see of Olinda. The prelate asked him to request a brief of dispensation from ecclesiastical residence from the Holy See, but Faria replied that this was not necessary. The dean's discourse surprisingly reproduces, and even sharpens, opinions that we have only seen coming from the mouths (or rather quills) of bureaucrats and lay jurists. Faria claimed to be a mixed employee; he believed the civil power was as competent as the ecclesiastical to grant him a leave of absence; and he even said that the secular authorities had "immemorial possession" of the right to license ecclesiastics with benefices, and to employ them at the service of the state, regardless of leave from the spiritual power. In face of this demonstration of a jurisdictionalism of exclu-

369 Consulta de 25 de março de 1876, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 554, Pacote 2, Doc. 29.

sivist hue (which, after all, deemed possible the exclusion of the bishop from the control of residence), more radical than the stronger opinions of lay bureaucrats, the fatal outcome was the suspension *ex informata conscientia*.

Faria hoped to succeed based on the precedent set by the case of Canon João José da Costa Ribeiro. But it was not meant to be. The state councillors acknowledged that the Bishop of Olinda had been imprudent, in addition to having defended ideas contrary to the prevailing ideology in the state *bureaux*, but said that the civil government could do nothing about it. The councillors' hands were tied because Dean Faria had not shown any signs of having requested from D. Vital the reasons for his suspension in order to appeal. According to the councillors, he had not suffered "the consequences of violence against a principle of natural law". This principle was the right to defense. For the section, the violation of this natural right was the "exceptional and only case which oblige[d] the government to deviate from the rule of respecting in all its effects the suspensions *ex informata conscientia*". Faria's petition, which was limited to the reimbursement of the *congrua*, clearly did not correspond to this hypothesis. The case would be reopened in 1880, but the councillors would not change their opinion.[370]

We can draw at least two conclusions from this. First: the ideological affinity between Faria and the imperial bureaucrats did not automatically mean favourable results for the dean. In other words, the friction between ultramontanists and jurisdictionalists was not the main factor determining the outcome of administrative cases – even in the decade of the Religious Question, in a situation involving D. Vital, one of its protagonists. Second: although the Council of State went from an interpretative convention of separation to a convention of amalgam, adressing how an extrajudicial suspension should be imposed, this body tried hard to set objective limits to its own actions. Given the situations that came to their hands (and a certain level of ignorance on their part as to how some aspects of canon law worked, in particular those related to the Roman Curia), the councillors established a specific criterion for abuse – the violation of the right to defense. And when the state did interfere in the suspensions, it did not go beyond what was within the reach of the state itself – the *congrua*.

In general, the picture we have analysed in this section breaks with the negative image assigned to the appeal to the Crown for having been the proce-

370 Consulta de 10 de junho de 1880, Seção de Negócios do Império, in: AN, Conselho de Estado, Caixa 557, Pacote 3, Doc. 30.

dure that inaugurated the Religious Question. We did not analyse the development of the appeal with regard to the interdiction of lay confraternities; this would deserve an article – or possibly a book – of its own. But as for the extrajudicial suspension of clerics – which, like interdiction, was part of the ultramontane project of reforming customs –, the prevailing position in the Council of State (and the Chamber of Deputies, and the Senate) was guided by a remarkable respect for canon law. And a remarkable degree of erudition. Undoubtedly, of all the issues of ecclesiastical administration we discussed, the suspension *ex informata conscientia* was the one in which the discourses of politicians and bureaucrats emerged heavily coated with intertextuality, that is, with references to national and foreign canonists, with citations to congregations and popes (despite the occasional distortions). The Congregation of the Council, which did not actually rule on the Brazilian cases, still was very present in the statements and opinions, oral and written, given by representatives of the state.

It was by dealing with this issue that the state most clearly and unexpectedly defended the Council of Trent – and, along with the Tridentinum, the state defended the bishops, at least at first. Article 2, § 2. of the Decree of 1857 had precisely this purpose.[371] Certainly, the forms this defense assumed over time were not exempt of participation, of amalgamation of the state in the affairs of the Church. Article 1, § 3. had already opened the first flank, and the events of the 1860s and 1870s would prompt the secular power to evaluate more incisively the discipline imposed by the bishops. All of a sudden, the prelates found themselves outside the legal dome that protected the Tridentinum. Nevertheless, when reviewing the decisions of bishops, the state sought to build objective criteria and demonstrated awareness that its power to intervene had limits. This is a more dispassionate picture of the relationship between supporters of jurisdictionalism and ultramontanism. And it shows, once again, that, although closely related to politics and its convulsions, the administrative machinery followed its own logics.

3.7 Retrieving the *fil rouge*

Underneath the pages of this chapter beats the heart of this book. We delved into a remarkable variety of themes: examinations for benefices, election of

371 Not by chance, De Groot classifies the Decree of 1857 as a key moment in the reform of the Brazilian clergy, relativising the classical image of the oppressive, regalist state, as in De Groot (2003) 49–50.

vicar capitular, obligation of residence, ecclesiastical migration, seminaries, and suspension *ex informata conscientia*. We did it through the lenses of three levels of governance of the Church: the global level, represented by the Congregation of the Council; the national level, represented by the Brazilian Council of State; and the local level, represented by the petitioners, many of them bishops, vicars capitular, canons, and parish priests. Our *fil rouge* is the Council of Trent, or rather the roles that the actors of the governance system attributed to the Tridentine dispositions. Normative conventions are the instruments that have enabled us to appreciate the variety of roles and, at the same time, to make them comparable in their dynamics.

Predictably, the Council of Trent was invoked in the context of various conflicts between ecclesiastical and secular authorities. The ultramontane episcopate brandished it as a weapon of resistance to the attempts of the civil government to impose standards of modern secular administration on the clergy. This usage, which associated the Tridentinum with typically ultramontane concerns, i. e. liberty for ecclesiastics and *libertas Ecclesiae*, was observed in cases concerning the obligation of residence for parish priests and bishops, and in cases relating to the administration of seminaries. In these subjects, resistance operated against a norm newly created by the secular power (convention of creative amalgam), against interpretations that established a relationship of eventual overlap between a canonical norm and a secular norm (convention of interpretative amalgam, as seen in the state's treatment of the residence of parish priests and seminaries), and against interpretations that, without express relation to canonical norms, consolidated a new field of state jurisdiction over the Church (convention of interpretative separation, as seen in the treatment of episcopal residence by the Marquis of Olinda).

Used as a weapon of the higher clergy against state novelties, the Council of Trent was also at the centre of a conflict concerning examinations for benefices. Its employment was rejected outright by the Council of State in the early 1880s, following an encounter between the activity of this organ and the activity of the Congregation of the Council. Resistance to novelty became apparent once more: the councillors had never had a rescript from the Roman dicastery before their eyes; they thought it an invasion of jurisdiction, and employed radical arguments to push back. In general terms, this leads me to conclude that an important source of conflict between the secular power and the clergy was the appearance of new norms, or new legal

interpretations, that brought with them sudden changes – real or imagined – of jurisdiction.

But in most cases these conflicts found solutions – some of them quite unexpected, if we consider the usual portrait painted by the literature of the groups involved. Let us start with the least resolved issue: episcopal residence. Dissatisfied with the newly-created civil duty to request leaves of absence, the bishops failed to overcome or at least mitigate this measure when addressing the Council of State and the civil government. In the course of these interactions, it is significant that the Council of Trent was not used solely as a clerical weapon. The councillors resorted to it as a rhetoric support to the new civil regulation. A bishop – in fact, an ultramontane bishop – criticised the councillors' account of the Tridentine decrees, but left open the possibility of accepting the civil regulation provided it was adjusted to the correct interpretation of the Council of Trent. This is the closest to negotiation that a prelate would ever get on the subject. Yet the tension persisted, unresolved. Only in view of practical reasons the prelates would gradually modulate their forms of reaction. Thus, while those more reluctant avoided travelling, others simply decided to comply with the civil norms, in order to ensure the execution of projects more important to the ultramontane agenda. Conflict was then occasionally put to an end by an attitude of concession.

In the case of seminaries, the interaction between the episcopate and the councillors of state was more fruitful. The two parties were able to recognise a common objective – the improvement of the education of the clergy, according to the needs and concrete possibilities of each diocese. And they also retrieved common values – such as the respect towards contracts involving bishops and foreign religious orders and congregations and, ultimately, the stability between Church and state authorities. Based on these elements, the Council of State, albeit not saying so expressly, ended up authorising on a case-by-case basis the non-observance of the civil norms that had recently become intertwined with the canonical norms for the management of seminaries. That is to say, in these decisions, the state distanced itself from both the creative and the interpretative convention of amalgam: it eclipsed the problematic civil norms; the ecclesiastics saw their free will in the administration of seminaries safeguarded, in line with the Council of Trent; and the secular power, in conformity with its traditional patronage rights, was confined to the endowment of these institutions, and no further. It was the

victory of the convention of interpretative separation in a traditional setting, stripped (albeit casuistically and precariously) of the normative novelties that had sparked the conflict.

Interpretative separation along with an attitude of "returning" to a traditional normative repertoire was a more appropriate convention for reversing the atmosphere of crisis left by new norms and new jurisdictional arrangements. The crisis regarding ecclesiastical examinations in the early 1880s demonstrates this well. Shocked by the rescript of the Congregation of the Council, the Council of State abandoned the peaceful amalgamated interpretations it had adopted up until then when it mixed the Council of Trent with other norms, civil and ecclesiastical; councillors claimed, in a radical tone, that the affair was a civil matter, with no room for canon law. Stabilisation was achieved some years later, when the councillors recognised that examinations were governed by canon law and also by secular laws, and that they, the councillors, were able to interfere only with regard to the latter.

But the interactions of the system of governance did not take place only in view of conflicts. There were many occasions when one level turned to another for cooperation. In the last decades of the 19th century there was a growing collaboration between the Congregation of the Council and the Brazilian episcopate. The dicastery operated consistently under the convention of creative and interpretative separation. Its activity was certainly more discreet than that of the Council of State in argumentative terms, because of its *modus operandi* (and, consequently, the information that was retained in the sources). But the repetitiveness of simple requests and decisions reveals the changes in the petitioners' practices, that is, it reveals their shift from a convention of amalgam – in which they negotiated interpretations of canon law with the Council of State – to a convention of separation – in which canon law was left to the Roman dicasteries. But it is important to remember that, within the system of governance, the Congregation of the Council is not "antagonistic" to the Council of State, despite the clash in the 1880s. I say this because the state often recalls the Holy See's participation in the affairs and seeks to safeguard as far as possible the division of competences (which, of course, is no guarantee of concrete success). In short, the congregation makes an appearence through the mouth – or rather the quills – of the state.

Moving on to the cooperation with the Council of State, it can be said that the convention of interpretative amalgam was instrumental in enabling

the Council of State to assist bishops and vicars capitular in maintaining diocesan stability. We saw the councillors shaping legal solutions from different normative resources – among them the Council of Trent – to deal with various topics: examinations for benefices (before the 1880s), elections of vicar capitular, the reception of foreign priests, and the episcopal control over the residence of canons. On these occasions we note the breadth of the normative repertoire of the councillors, who combined canonical and secular laws, customs, etc., in the style of an amalgamated conception of ecclesiastical law.

But the Council of State also cooperated with the diocesan government by means of the convention of interpretative separation. This became apparent in the treatment conferred to suspensions *ex informata conscientia* until the 1870s. By excluding these censures entirely from the appeal to the Crown, the councillors favoured the implementation of the Council of Trent and protected the autonomy of episcopal jurisdiction. This stance only underwent concrete changes with the Religious Question, in view of the intensification of petitions complaining about the extra-judicial suspensions carried out by the Bishop of Olinda, one of the protagonists of the crisis. Leaning towards the convention of interpretative amalgam, the councillors of state established that, by means of the appeal to the Crown, they could assess whether the suspensions *ex informata conscientia* had been imposed in accordance with the canons and national laws. In case they had not, the secular power would still not pressure the prelates to reverse the suspensions, maintaining the separation of jurisdictions. In practice, this control was far more limited than it might seem. In the first decisions on the subject, the Council of State endeavoured to delineate an objective criterion to recognise a conduct as abusive. This criterion took the shape of a "violation of the natural right of defense", an argument of a liberal tone and with a certain amount of ignorance as to how canon law worked. In any case, it was a relevant legal self-limitation.

The awareness of the state regarding the limits of its own jurisdiction was also apparent in cases of election of vicars capitular. Over time, the Council of State shifted from a position of abstaining from judging their validity (convention of interpretative separation), acknowledging that the issue was essentially internal to the Church, to a position of judging the validity of elections on the basis of the Council of Trent (convention of interpretative amalgam). However, in view of the developments of the Religious Question,

the councillors had the opportunity to increase the scope of the state's jurisdiction, by endorsing the secular power's authority to call elections and even insinuate to the chapter the names of the candidates of its preference. But the Council of State held back, restrained by fact: after all, the cathedral chapters in question refused to call elections. And it was also restrained by law. It did not recognise that the trial and imprisonment of the bishops constituted grounds for *sede vacante*. Above all, it took into account that Portuguese royal charters and *alvarás* authorising the right of insinuation had never been applied in Brazil. The election, until then, had always been conducted freely, in accordance with the Council of Trent. Moreover, it would be a political imprudence to impose anything different. The normative novelty, even if disguised as tradition, was thus tamed.

Such normative novelty had more chances to be accepted not when it obeyed the interests of one level or another, but when it responded to deeper needs, perceived by all levels of governance (or at least more than one). This is the case of the secular and ecclesiastical regulations on the migration of priests, which addressed the major problems of the lack of priests on Brazilian soil, the lack of benefices in European territory, and the permanent need of discipline, of control of the ecclesiastics' conduct. In dealing with this theme, both the Brazilian state and the Holy See effected, to a greater or lesser extent, metamorphoses of the Council of Trent in different directions, one of openness to immigrants, the other of control of the emigrant. But these two instances of transformation had a feature in common, that is, the attachment of the migrant priest to categories of precarious belonging and strong notions of duty.

Overall, in this chapter, the Council of Trent played the role of the *fil rouge*, connecting the three levels of governance in the weaving of solutions or, at least, interactions. It assumed several functions – as weapon, model for canonical and even secular norms, rhetorical support, as limit for the state action, as a reminder of tradition, as a flexible resource in the hands of cardinals. But was the Tridentinum everywhere? No. It was not expressly mentioned in the petitions regarding seminaries that were presented to the Council of State, only in the correspondence between bishops and bureaucrats. And the Council of Trent gave way to new norms with regard to ecclesiastical migration, appearing as, at the same time, an inspiring and an eclipsed normative set. Nevertheless, it certainly worked well as a point of reference for us to observe the place of conflict in the governance system,

as well as the limits of labels such as "ultramontanist" and "jurisdictionalist". The roles played by the Council of Trent led us to a scenario of multi-level control of normative novelties, cooperation, and reliance on communalities. This scenario introduced us to many possibilities not envisaged by literature: from ultramontanists who negotiated interpretations of canon law with state bureaucrats to jurisdictionalists who shielded Tridentine dispositions and recalled the competences of the Congregation of the Council.

Conclusion

This book proposed a journey across a universe of norms, arguments, and procedures. It is the universe of ecclesiastical administration – and, in broader terms, the universe of law. It is a universe that is in close relationship with others, such as those of politics and theology, but that also very much has its own language, its own way of expressing itself. And it is, above all, a necessary universe for the life of the Church. As such, it cannot afford to allow revolutions or persistent conflict. The Religious Question was not an everyday event, nor an event that involved all the dioceses. The ecclesiastical administration of 19th-century Brazil compelled different institutional levels to interact. It required actors to cooperate, negotiate, make concessions, retrieve common objectives, and realise their own limits.

Analysing sources of the Brazilian Council of State and the Holy See's Congregation of the Council from the point of view of governance, I was able to re-dimension, on several levels, the polarisation between jurisdictionalists and ultramontanists that most historians consider to be the heart of the relations between Church and state in Imperial Brazil. In fact, in the preliminary analysis of handbooks on ecclesiastical law it is already possible to see that jurisdictionalists and ultramontanists did not compose homogeneous groups; they had different references and points of view, sometimes even at the cost of coherence. This "diversity within the unity" was also present in the sources of praxis.

In approaching these sources, the first such "re-dimensioning" appears at the level of the themes whose handling was shared by ecclesiastical and secular authorities. Normally, when we think of the Brazilian Church of the 19th century, we think of *padroado* and the predictable intersections between bureaucrats and priests: appointment of bishops, provision of benefices, *placet*, and appeal to the Crown. The tension between ultramontanists and jurisdictionalists is connected in particular to these last two themes, because of their strong presence in the Religious Question. But an inspection of the activity of the Congregation of the Council and the Council of State reveals other categories common to the secular power and the clergy: examinations for benefices, election of vicars capitular, obligation of residence,

ecclesiastical migration, seminaries, and suspension *ex informata conscientia*. None of these themes has a fixed, predictable place in the literature on the Church of Imperial Brazil; it is difficult to relate them *a priori* to political polarisation. Some of these themes are clearly associated with patronage relations. Others were drawn into the system of governance via new practices and adjustments of jurisdiction, guided by more and less convergent objectives among the institutions. And new problematic circumstances (e. g. mass migrations) also had their share of relevance in drawing the attention of ecclesiastical and secular agents.

The second re-dimensioning concerns the conception of the institutions involved. The sources of praxis challenge the idea that institutions act in a homogeneous and isolated way. As far as the Brazilian state is concerned, one of the main contributions of this study is to unveil a bureaucracy that is quite attentive to – and even very knowledgeable about – canon law. The votes of the councillors of state rely on a complex framework of references to European canonists, recent and remote, and canonical norms, universal and particular. Such erudition can be explained by the academic training of these figures (some from Coimbra, like the Marquis of Olinda; others, from the Faculty of Law of Olinda, like Nabuco de Araújo), by the circulation of canon law via Brazilian and foreign manuals of doctrine in the country, and – why not say it? – by the genuine interest that some of the councillors had in this branch. Knowledge, however, was no guarantee of fidelity to the position of the authors cited. Nor did it prevent demonstrations of ignorance. These traits become quite clear in the treatment of suspensions *ex informata conscientia*. There we see sophisticated debates on universal canon law – but also a councillor who twists the words of Pope Benedict XIV to defend extrajudicial suspension as an act of "tyranny", and a majority of councillors (mistakenly) convinced that not communicating the reasons for suspension makes it impossible to appeal to the Holy See.

In any case, regardless of the more or less innovative character of the interpretations which emerged, one cannot escape the conclusion that, during the times of the empire, the Brazilian state was an interpreter of canon law. The bureaucrats did not isolate themselves in the world of secular law. They combined canon law and civil law. And they constantly evaluated the practical employment of ecclesiastical norms, even in discourses on delimiting jurisdiction. There is one aspect, in fact, that is particularly remarkable: canon law was one of the factors that compelled the state to self-limitation –

against the idea of state solipsism that marks, in particular, the literature on the Religious Question. The recurrent reference to the Council of Trent is also quite significant, since it breaks with the idea that the ecclesiastical hierarchy, especially the ultramontanists, had a monopoly over the interpretation and implementation of the Tridentinum. I will speak further below about the Council of Trent and state self-limitation.

During the analysis, I was also able to reassess the state on the issue of loyalties. There is no doubt that the Council of State operated in an atmosphere of institutional jurisdictionalism – after all, councillors were responsible for the conservation of a legal system that had this tendency. But this does not mean that its operation always benefited petitioners with similar ideological inclinations. It is enough to recall cases such as the failure of the "ultra-regalist" Dean Faria to recover the *congrua* lost during his suspension. There is also the criticism unleashed by the Marquis of Olinda against the *Compendio* of Vilella Tavares, objecting to the (jurisdictionalist) theory of the priest as a public servant. Furthermore, we saw a Council of State that on several occasions converges with the ultramontane ordinaries. This is manifested in the councillors granting the requests of prelates on the reception of foreign priests, and on the control of the absences of canons *(cônegos)*. The confirmation of the validity of the election of Carlos d'Amour, an ultramontanist, as vicar capitular of Salvador da Bahia, is also an effective example. But the convergence appears in its strongest, most radical colours when the councillors of state waive secular regulations to harness episcopal acts and contracts that would otherwise be considered invalid. I am referring to the contracts signed between bishops and religious institutes for the administration of seminaries, and also to the free appointments of professors between the 1850s and 1860s. By deciding *contra legem* on these occasions, the secular power suspended the discourse of defense of sovereignty and of the universality of secular law, and, voluntarily or involuntarily, attuned itself to the ultramontane agenda. The relativity of ideological loyalty in the activities of the Council of State can thus be clearly seen.

As far as the Holy See is concerned, this study shows that it participated in the governance of the Brazilian Church not only in terms of diplomatic affairs, but also on the administrative level. Throughout the 19th century, this participation became more and more normalised, more and more an organic aspect of the diocesan government. Without doubt, the spread of ultramontanism among the Brazilian higher clergy was an important factor

in accentuating the presence of the Apostolic See in the governance of the Brazilian Church. Most of the petitioners to the Congregation of the Council were bishops strongly convinced of the connection between the local and the universal Church. Ultramontanism thus appears as a project "coming from below" from a legal perspective (as well as from a political and cultural point of view): after all, the Roman dicasteries were "attracted" to the system of governance by local petitions without a particularly revolutionary character; they were ordinary petitions which sought to organise the daily life of a diocese in a way interwoven with the daily life of the Roman Curia.

The importance of agents "from below" can also be seen in the intimate dependence of the Holy See on local information. On many occasions, the Congregation of the Council issued decisions only if it had previously received clarifications from local bishops or from the Apostolic Internuncio. The clarifications revolved around norms or facts: was there a special privilege that allowed the Bishop of Olinda to appoint examiners *ad hoc* without a dispensation from the Holy See? Were there any canons within the cathedral chapter of Salvador da Bahia that had a doctoral degree and that were as suitable as elected vicar capitular d'Amour? Was there a concrete necessity that justified a migrant priest's stay in a Brazilian diocese?

The lack of such clarification – which could take place for many reasons, for example: ignorance of the procedure, timidity, or bad faith – had severe consequences for the system of governance. It implied that the Congregation of the Council was unable to decide – and would not decide. The procedure would halt. And, depending on the case, the situation of invalidity would remain, the situation of irregularity that one sought to avoid would come, or the situation of uncertainty would simply persist. One may well conclude that the participation of the Apostolic See in the governance of the Brazilian Church depended not only on the initiative of locals, but also on their contribution to the economy of information in the Roman Curia. This is a fact which weakens the idea that, in the 19th century, bishops were "servants" of the pope, as if orders came from above to be simply executed by the locals. Rome depended on the locals, just as the locals depended on Rome.

But, returning to what I said before, ultramontanism is undoubtedly an important factor in understanding the dynamics of petitions to the Holy See. However, it does not explain all petitions. Canons *(cônegos)* sympathetic to jurisdictionalism appealed to the Apostolic See to contest the election of an ultramontane priest as vicar capitular; and a conservative pontiff like Pius IX

did not hesitate to validate the acts of a vicar capitular who, besides having his election challenged by an ultramontane archbishop, was widely known for his lack of discipline and his belonging to the Freemasonry. It can be seen that, like the Brazilian state, the Holy See relativised the issue of ideological loyalty in the administrative field. Other values were at stake, such as diocesan stability and the *salus aeterna animarum*. The connection between ultramontanism and petitioning to the Apostolic See also does not explain the "administrative silence" of younger dioceses with regard to the Congregation of the Council. I refer to Goiás, Cuiabá, Rio Grande do Sul, Diamantina, and Fortaleza, governed from the start by ultramontane prelates, and with very few petitions (or none). The same can be said of Belém do Pará, a diocese which for a long time was under the care of the "champion of ultramontanism", D. Antonio de Macedo Costa. This silence opens up at least two hypotheses: (i) that the bishops from these circumscriptions were too busy with problems that they had to tackle at the local level, or that they had to solve by resorting to the state (I recall the issue of the endowment of dioceses, for instance); or (ii) that the administrative issues commonly accessed by the Congregation of the Council were resolved by other dicasteries (such as the Congregation for Extraordinary Ecclesiastical Affairs). Further investigations – both in local and Vatican archives – should be undertaken to test these possibilities.[1]

The third re-dimensioning my work offers for the polarisation between ultramontanists and jurisdictionalists operates at the level of the handling of law and, more precisely, of the disciplinary part of the Council of Trent. In the cases that I analysed, the Tridentinum did not appear as a normative set monopolised by a group of actors or by an ideology. In other words, it did not appear as an exclusively clerical normative corpus, nor was it necessarily linked to ultramontanism – although, admittedly, ultramontane priests often invoked it. It was rather a plastic resource used by ecclesiastical and secular agents to govern the affairs of the Church. It was not a corpus accepted without any reservations. In the interpretative activity of bureaucrats and priests, it coexisted with, complemented, and competed with other norms, canonical and temporal. The Holy See itself enriched its understand-

1 A comparison with the existing studies on the Congregation for Extraordinary Ecclesiastical Affairs, regarding its relationship with other countries, may also be helpful.

ing of the Tridentinum with pontifical constitutions and the robust case law of the Congregation of the Council.

The governance of the Church unfolded within a scenario of multinormativity. Behind the legal uses of the Council of Trent were many factors that, assembled into complex units, drove the emergence of interpretative frameworks, that is, normative conventions. Classifying the actions of agents and institutions based on normative conventions allowed me to standardise and better compare operations of creation and interpretation of legal norms. These were individual operations, located with precision in space and time, and not entirely fitting within broader labels that were usually associated with ideological groups and / or historical periods (e. g. "Throne and Altar", a term linked to jurisdictionalists, and to ultramontanists until the Religious Question; "separation between Church and state", a term linked to the republicans and to part of the ultramontanists after the Religious Question). Observing the normative conventions on a case-by-case basis, it was possible to perceive that behind ideological affiliations such as "ultramontanist" and "jurisdictionalist" were hidden different ways of reacting to conflicts and doubts, either mixing norms and jurisdictions, or separating them. And these labels also concealed different ways of conceiving ecclesiastical law, so that we find again, in praxis, theoretical questions that we saw in the handbooks.

In general, the analysis of cases has led me to the conclusion that the governance of the Brazilian Church operated as a system to control the novelty, more precisely the normative novelty. Many conflicts were triggered by the emergence of norms that implied sudden changes – real or imagined – of jurisdiction. Many novelties came from the state: the regulations on the obligation of residence of parish priests and bishops, and the decrees on seminaries, for example. Imitating Tridentine provisions while at the same time anchored in the idea that the Church had to conform to the standards of modern secular administration, these norms were met with varying degrees of resistance from the ultramontane episcopate. Some bishops were willing to negotiate their terms, recalling standard interpretations of the Council of Trent; others flatly refused to compromise, brandishing the Tridentinum as a weapon of resistance and symbol of *libertas Ecclesiae*. But the Apostolic See, too, was capable of causing turmoil with its normative production. Proof of this can be found in the rescript of convalidation of examinations issued by the Congregation of the Council at the beginning of

the 1880s, which made the Council of State consider, besides criminally prosecuting the petitioning priest, excluding the Council of Trent from the regulation of the subject in Brazil. The arguments about authority and sovereignty, political *leitmotif* of the 19th century on Church and state relations, came into play.

The conflict, however, was not permanent. It could not remain unresolved, since that would have compromised the daily administrative life of the Church. Among the possible solutions was concession – as when prelates accepted civil control over the obligation of residence in order to facilitate the transfer of seminarians to Europe. In this case, a rather uncomfortable state intervention was accepted in order to guarantee a major objective of the ultramontane agenda. The councillors of state also refrained from taking any action against the Congregation of the Council or against the petitioning priest in the case of the rescript on examinations. They seemed convinced of the priest's good faith and of his struggles of conscience, but one may well assume that the trauma of the Religious Question was another factor that held the councillors back.

Another possible solution, from the perspective of the state, was to move away from the normative convention of amalgam and towards the normative convention of separation. To do so, it was necessary to turn to a more "traditional" legal repertoire, that is, it was necessary to eclipse, to suspend the problematic norm, even if on a case-by-case basis. This eclipse took a radical form in the case of the rescript of the Congregation of the Council on examinations – after all, the councillors ended up dismissing not only the rescript, but canon law as a whole from the regulation of the matter. In cases involving seminaries, the eclipse was more localised and even more surprising, for the Council of State decided to suspend the application of civil norms that overlapped with the canons. In other words: it decided against civil norms, harnessing the effects of acts by the bishops, invalid in face of the eclipsed norms. This approval guaranteed, albeit precariously, casuistically, a sphere of autonomy for the clergy in the interpretation and execution of canon law. This is the normative convention of separation in action. In the case of examinations, this convention was present after the trauma with the rescript, when the councillors expressly recognised that they would only decide on civil law, leaving the interpretation of canon law to the ecclesiastics.

But normative novelty could also be welcome in the governance system. There were situations in which new rules responded to deeper needs, per-

ceived by more than one institutional level. This was the case with the norms on ecclesiastical migration, issued by both the Brazilian state and the Holy See, by means of metamorphoses of Tridentine provisions. These rules were created with different immediate objectives. The empire sought to promote an opening to the foreign clergy in order to solve the problem of the lack of priests. The Holy See, for its part, aimed to limit the traffic of migrants between Italy and the Americas, in order to contain cases of indiscipline. The sources I analysed show that these lines of action arose at different times and always ran in parallel, that is, the Council of State did not intervene in the business of the Congregation of the Council, and vice versa. The state was concerned with categories such as citizen, foreigner, and priest as public servant, while the Holy See was concerned with the diocese of origin, the diocese of reception, and the priest as model of faith and morals. Despite their discrepancies, these two lines of action converged in the composition of an institutional status (precarious, it is true) for the migrant priest – and, above all, they converged in the focus on the local spiritual needs, in the interest for the *salus aeterna animarum*. As to this objective, without doubt, the three levels of governance were in harmony.

The normative novelty was also well received, at least at first, when the new civil legislation on the appeal to the Crown was forged in the 1850s. With the regulation, the state came to shield the episcopal jurisdiction in its power to extrajudicially suspend the clergy, as allowed by the Council of Trent. No appeal against such censures could be made to the Council of State. The novelty was welcomed by both the local clergy and the Holy See. It would only acquire a negative, "regalist" aspect with the approach of the Religious Question, when the processes concerning the Bishops of Olinda and Belém do Pará would be triggered by an appeal to the Crown and, furthermore, the councillors themselves would rethink the terms of the treatment conferred by the state to suspensions *ex informata conscientia*.

Another general aspect that helps to re-dimension the polarisation between ultramontanists and jurisdictionalists in Brazil are the moments of cooperation between the levels of governance. The cooperation between the episcopate and the Council of State, and between the episcopate and the Congregation of the Council, takes place for the most part in different periods. In the first case, between the 1850s and 1860s; in the second case, between the 1870s and 1880s. But this does not necessarily mean that there was antagonism between one higher administrative instance and the other.

In fact, on certain occasions, the Council of State either did not issue a decision, waiting for the Holy See to do so (as in the case of the election of the vicar capitular of Olinda in 1866), or declared that a decision of the Apostolic See was necessary, in addition to its own (as in the case of the transference of the cathedral and seminary of Olinda in 1882 – it should be remarked: after the Religious Question). Cooperation by way of recalling of competences reaches a high level when the councillors deal with the topic of suspensions *ex informata conscientia*, both in the 1850s and the 1870s. It is then that they demonstrate proper knowledge of decisions of the Congregation of the Council on the subject, and also awareness of its competence to judge appeals against these censures. In concrete terms, the dicastery did not judge any appeal coming from Brazil against suspensions *ex informata conscientia*. But the Congregation of the Council was present in the discourse of the councillors of state – with some twists, but still unexpectedly present.

A few words still need to be said about what moved the levels of governance towards cooperation. Especially in view of the results achieved in the topics of seminaries, migration, and suspensions, one can see that a fundamental factor for cooperation was the existence of common objectives or values. With regard to ecclesiastical migration and extrajudicial suspensions, these elements of communality have already been suggested: the *salus aeterna animarum* in the first case and the discipline of the clergy in the second. As for the seminaries, the convergence between ultramontane bishops and the councillors of state, which led to the latter sometimes deciding *contra legem*, was situated primarily in the aim of improving the education of the clergy. The secular power did not wish to see seminary chairs paralysed, even if it meant disregarding civil law. Above the zeal for the "universality of secular law" was the care for official religion, the concern for the quality of evangelisation carried out in the country. Another element of convergence was the respect for the contracts signed between bishops and religious institutes for the administration of seminaries. Such respect can be interpreted as a sign of the prestige that foreign religious orders and congregations enjoyed in the eyes of the Brazilian civil government, which saw them as civilising instruments (in opposition to the local, "old" orders, which were considered parasitic, retrograde). This respect could also be read more broadly, as the value of stability of relations between ecclesiastical and secular authorities.

It is also worth remembering that the opposite of communality, that is, unilateralism, gave rise to conflicts in the system of governance. I refer in

particular to the unilateral objective of the state to apply standards of modern secular administration to the Church, in an act of affirmation of national sovereignty or in an act of normalising and optimising the modes of participation of the state in ecclesiastical affairs (e. g. payment of *congruas* and bonuses). This objective never achieved success with ultramontane bishops (although it appears as a reference for some jurisdictionalist clerics). This lack of common ground appears quite clearly in the treatment of the residence of parish priests and bishops, the least resolved issues in my sample. The common ground reappears in cases such as when an ultramontane bishop negotiated with the councillors of state interpretations of canon law to better control absences in the cathedral chapter. The shared objectives of maintaining external worship and, again, the stability of relations between ecclesiastical and secular authorities came to the fore.

Another aspect that challenges a totalising narrative about the polarisation between ultramontanists and jurisdictionalists in Brazil is the fact that the state imposed limits on its own action over the Church. This was observed especially in moments of crisis, when one might most expect the secular power to act in an arbitrary or excessive manner. I refer to the 1870s, the decade of the Religious Question. In that period, the Council of State was open to the possibility of increasing the degree of state intervention over the elections of vicar capitular and the suspensions *ex informata conscientia*. But it also acknowledged and / or established restrictions upon such intervention.

In the case of suspensions, the councillors allowed themselves to evaluate whether a censure had been properly applied, in accordance with the "canons and national laws", that is, they began to control the bishops' interpretation of canon law when suspending a priest. They recognised, however, at least two limiting factors in their activity. First, even if the suspension was assessed as undue, the councillors could not compel a prelate to lift it; the state would remain within its jurisdiction, merely continuing the suspended priest's *congrua*. Secondly, the councillors outlined an objective criterion to separate undue suspensions from due suspensions, namely, the violation of the natural right of defense. This criterion revealed a degree of ignorance as to how canon law – and, in particular, the procedure in the Roman Curia – unfolded. But, even so, it was a limit on state action – and a law-based one.

In the case of the elections of vicar capitular, the councillors saw the opportunity to support the right of the civil government to summon elec-

tions, and even to suggest to the cathedral chapter the names of preferred candidates. The facts, however, limited the action of the Council of State: after all, the chapters refused to call elections at the behest of the secular power. But legal factors also played restrictive roles. The councillors recognised that the requirements for a vacant see were lacking. And there was the weight of years of normality: elections had always been perceived in Brazil – by the clergy and the state – as a matter internal to the Church, and regulated by the Council of Trent. The rules of the Portuguese *Ancien Régime*, which authorised the right of insinuation, had never been employed. Implementing this mechanism at a time of crisis was not only politically risky but also went against the prevailing, concretely sedimented legal conception of the election of vicar capitular. The tradition of "exception" – which sounded like an innovation from the perspective of Brazil – thus had to give way to the more legally convincing tradition of "normality".

In fact, in both cases – suspensions and elections – we see, once again, the control of legal novelty, the restraint placed on sudden changes of jurisdiction in the system of governance. But in these particular cases, there is a clear demonstration of the state's self-awareness: it does not need a concrete reaction from the clergy to calibrate its form of intervention (as we have seen in residence and seminaries), it does not need a concrete movement of resistance from the other. The councillors envisaged the normative possibilities that were more and less acceptable in the system of governance, while being concerned with the common objective of stability of Church and state relations. Self-limitations were thus aimed at the system of governance as a whole, with the bishop's jurisdiction and the autonomy of the chapter being safeguarded – as far as this was possible in times of crisis.

In general, the literature portrays the Second Reign as a period of progressive distancing between Church and state, a result of the tension between jurisdictionalists and ultramontanists. The transition from imperial patronage to the institutional separation of the First Republic is seen by many authors as a "liberation" for the Church. This view may be true for sources of political or diplomatic character. And even the sources presented in this book, if appreciated from a purely quantitative perspective, might convey this impression. After all, petitions to the Congregation of the Council increased while petitions to the Council of State decreased. An analysis of the content of these petitions and the decisions concerning them, however, reveals another landscape. In the administrative sphere, the life of the

Church was organised as governance – and it could not surrender itself to permanent conflict, indifference, or sheer arbitrariness, at the risk of paralysis, of chaos. A good number of the actors – ecclesiastical and secular – were aware of this. And they held to this point of view until the end of the empire, even during the worst crises.

The polarisation between jurisdictionalists and ultramontanists was an element that could undoubtedly influence the course of petitions and decisions, actions and reactions. But jurisdictionalists and ultramontanists, in addition to holding their respective positions and opinions, had different ways of "getting out of trouble", of overcoming problems and crises. Jurisdictionalists did not always amalgamate legal norms or jurisdictions, just as ultramontanists did not always separate them. Moreover, jurisdictionalists and ultramontanists were also bishops, canons, parish priests, and state bureaucrats – and, as such, they had precise functions in the administration of the Church. Ideological differences could not eclipse concrete needs, nor the strength of institutional roles that had been consolidated over time. In the face of a problem, solutions were needed, accommodation was necessary. And, in this sense, the actors involved in the administration were guided not only by political tension. They were limited by the weight of long-term legal practices. They gave in to pragmatism or to the fear of traumatic events repeating themselves. And they reached a compromise in view of common objectives and values, which spoke louder than the conflict itself. The daily administrative life of the Church required, in effect, a minimum of common references, beginning with the norms. Hence the great analytical potential of the Council of Trent, which was the *fil rouge* running through all levels of governance. Even in its rejection, it was perceived as an inescapable normative reference and, moreover, it was extremely plastic in the 19th century, being interpreted by jurisdictionalists and ultramontanists, present in conflict and cooperation.

We have thus reached the end of this book. It is not the sensational end of a novel; after all, I have not brought sensational stories of crimes of *lèse-majesté*. The defense of national sovereignty was present in some of our cases – but as one argument among others, and one that was hardly capable of winning a dispute on its own. The portrait I composed for this book focused rather on the everyday governance of the Church, which took place at the local, national, and global levels without having the flavour of exceptionality. Such picture captured a network of interactions between different actors and

institutions, with modest requests and doubts, nothing revolutionary, but still urgent, necessary for the administrative life of the Church to go forward. It is a scenario which presents a wealth of perspectives, of arguments, highlighting the diversity which hides behind classifications such as "ultramontanist" and "jurisdictionalist". Should we then abandon such labels? I do not think so. These terms are useful to situate actors and discourses, even if in approximate terms. They allow for the comparison of entities, avoiding the fragmentation of simply stating that each and every position is "unique", "singular". They provide a reasonable mediation between uniformity and diversity.

Conflict certainly constituted a part of the governance system. But it did so as a precarious element, a trigger that often activated mechanisms of controlling the novelty, and of recalling commonalities. The petitions and decisions analysed in this book are a window onto the system's pursuit of stability, of common ground. They are a small, yet vibrant piece of the fabric of the ordinary that dresses the everyday life of the Brazilian Church in the 19th century. The fabric is that of administrative practices, that of law, with its possibilities and restraints. Its colour might as well be green, like the chasubles that priests use during the longest period of the liturgical calendar, the ordinary time. The many hands weaving its threads work according to different factors, from within and without the law, which allows us to recognise a scenario of multinormativity. The Tridentinum is a recurring thread, present in many guises (as weapon, model, rhetorical support, tradition, flexible resource etc.), remembered in its absence, sometimes metamorphosed into other norms, other times simply eclipsed. Even if it was not always present, the Council of Trent, as employed in legal cases in 19th-century Brazil, helps us see how polarisation was relativised within the governance system, in favour of case-by-case concrete needs, common objectives, and ordinary peace.

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ANNEX 1 – Table of Brazilian cases presented to the Congregation of the Council, 1840–1889

The asterisk (*) means that the data inserted is a transcription from the *Protocolli* or the *Libri Decretorum* (indicated as LD in the table; where the source is not specified, the information belongs to the *Protocolli*) of the Congregation of the Council, from the Vatican Apostolic Archive. The cases are organised in chronological order of reception of the petition by the Congregation of the Council, as appears in the *Protocolli*; in the few instances where this information was not found, the cases were put in the bottom of the corresponding year and ordered by date of resolution, as appears in the *Libri Decretorum*. The data is analysed in **Chapter 2.1.**

	Year (Petition)	Protocol Number	Diocese	Name of the Petitioner*	Type of Petition	Subject of the Petition*	Theme of the Petition	Resolution?	Resolution*	Year (Resolution)
1	1851	9718	Rio de Janeiro	Luigi Mouttinho Ministro del Brasile circa il figlio Francesco d'Assisi	FPD	Ordinazione a quocumque senza dimissorie	Ordination	Yes	Die 18 Augusti etc. SS.mi […] ben. com. Ep.o ordinant. ut […] petitam dispensationem pro suo arb.o etc. Or.i gr.is impertiatur. (LD)	1851
2	1853	13833	Rio de Janeiro	Fernandez Pincherio Gioacchino Gaetano	FPD	Facoltà di celebrare	Mass	Yes	18 Aprile 1853 Ad sex menses arb. Em.i Urbis Vicarii.	1853
3	1853		Mariana	Vescovo	FPD	Seminarii facultatem (LD)	Seminary	Yes	Die 26 Septemb. SS. […] enunciatam facultatem Ep.o Or.i ben. impertitus est juxta petita […]. (LD)	1853
4	1858		Goiás	Franciscus de Azevedo Coutinho (LD)	FPD	Habilitationem ad exercitium munerum parochialium (LD)	Mass	Yes	Die 17 Maii 1858 SS.mus […] benigne commisit Vicario Capitulari Goyanen, ut […] enunciatum oratorem ad exercitium reliquorum munerum parochialium […] gratis habilitare possit et valeat. (LD)	1858
5	1861	448	Bahia	Rio de Contes Tiberio	FPD	Dimissorie	Ordination	Yes	25 Febbraio 1861 Ex Aud. arb.o Vicarii Cap.lis.	1861
6	1862	1324	São Paulo	Vescovo	FPD	Proroga per consagrarsi	Ordination	Yes	23 Maggio 1862 De mandato ad sex menses.	1862

7	1862	2715	Bahia	Rio de Contas Tiberio	FPD	Extra tempora	Ordination	Yes	17 Novembre 1862 Ex Aud. Pro gratia.	1862
8	1862		Bahia	Justinianus de Almeida Pires (LD)	FPD	Asservari possit in sua Capella SS. Euch.ae Sacramentum (LD)	Mass; Sacred places	Yes	Die 23 Junii 1862 SS. […] benigne remisit Archiep.o […], cum omnibus facultatibus […] ut […] osservationem SS. Sacramenti iis […] Cappella pro suo etc. gratis indulgere possit: salvis tamen juribus parochialibus […]. (LD)	1862
9	1863	110	Mariana	Franklin Masssera Giuseppe	FPD	Dimissorie	Ordination	No		
10	1864	84	Belém do Pará	De Medeiros Emmanuele	FPD	Facoltà di portare la barba lunga	Discipline	No		
11	1865	862	Mariana	Vescovo	FPD	Exam.	Provision of offices, benefices	Yes	31 Marzo 1865 Ex. Pro 12 ad decennium.	1865
12	1866	1922	Belém do Pará	Giovanni Ferreira d'Andrade Muniz	FPD	Extra tempora	Ordination	Yes	16 Luglio 1866 Ex Aud. Pro gratia.	1866
13	1866	2666	Bahia	Febronio Esmeraldo	FPD	Ordinazione	Ordination	Yes	26 Novembre 1866 Ex Aud. Pro tempora, et min. ordinibus.	1866
14	1866	2764	Bahia	Gio. Lopes Freire Lobo	FPD	Ordinarsi	Ordination	Yes	12 Novembre 1866 Ex Aud. Pro gratia.	1866
15	1866	2765	Bahia	Gio. Nepomuceno Souza	FPD	Ordinarsi	Ordination	Yes	12 Novembre 1866 Ex Aud. Pro gratia.	1866
16	1866		Belém do Pará	Joannes Ferreira de Andrade Muniz (LD)	FPD	Defectu aetatis (LD)	Ordination	Yes	Die 23 Julii 1866 SS. […] facultates necessarias et opp.nas Em.o D. Card. ejusdem S. Suae in Urbe Vicario benigne impertitus est ad hoc […]. (LD)	1866
17	1867	538	Bahia	Giacinto Villas-Boas	FPD	Professione di fede	Profession of faith	Yes	25 Febbraio 1867 SS. Em.o Urbis Vicario.	1867
18	1867	2094	Rio Grande do Sul	Marcolino Maria de Maja Firme	FPD	Ordinazione	Ordination	Yes	8 Luglio 1867 Ex Aud. arb. Em.i Urbis Vicarii.	1867

19	1867	3040	Belém do Pará	Cap.lo della Cathedrale	FPD	Circa l'offiziatura	Divine office	Yes	9 Sett. 1867 Ex Aud. Pro […] ad 5.nnium.	1867
20	1868	876	Olinda	Vescovo	FPD	Esam.	Provision of offices, benefices	Yes	28 Marzo 1868 Ex. Pro 12 ad X.cennium.	1868
21	1868	877	Olinda	Vescovo	FPD	Giudici	Provision of offices, benefices	Yes	28 Marzo 1868 Ex Aud. Pro 12 ad X.cennium.	1868
22	1868	878	Olinda	Vescovo	FPD	Trasferire	Mass	Yes	28 Marzo 1868 Ex. Pro facultate ad X.cennium.	1868
23	1868	879	Olinda	Vescovo	FPD	Assolvere ridurre	Mass	Yes	28 Marzo 1868 Ex. Pro utraque ad X.cennium.	1868
24	1868		Bahia	Raphael Aquilar	FPD	Absolutionem Missarum (LD)	Mass	Yes	Die 28 7.mbris 1868 SS. […] benigne commisit Ep.o […] super omnibus Missarum omissionibus pro suo etc. gr.is absolvere possit et valeat. (LD)	1868
25	1870	2317	Olinda	Rego Maia Francesco	FPD	Extra tempora	Ordination	Yes	22 Agosto 1870 Ex Aud. Arbitrio Em.i Urbis Vicarii.	1870
26	1870	2473	Olinda	Arcoverde Gioacchino	FPD	Dimissorie	Ordination	Yes	5 Settembre 1870 Ex Aud. Arbitrio Em.i Urbis Vicarii.	1870
27	1871	1333	Mariana	Cotta Stefano	FPD	Dispensa d'età ed extra tempora	Ordination	Yes	26 Giugno 1871 Ex Aud. Arbitrio Em.i Urbis Vic.	1871
28	1872	1621	Rio de Janeiro	Sodales sub titulo S. Luciae V. et M. (LD)	FPD	Exemptionem a dependentia Parochi Loci (LD)	Confraternity	Yes	Die 2 Septembris 1872 SS.mus […] committatur praefato Ep.o, ut pium Sodalitium […] a dependentia Parochi Loci pro suo etc. gratis eximere possit et valeat […]. (LD)	1872
29	1873	756	Rio Grande do Sul	Vescovo	FPD	Esaminatori	Provision of offices, benefices	Yes	14 Marzo 1873 Ex. Pro 12 ad decennium.	1873

30	1873	757	Rio Grande do Sul	Vescovo	FPD	Giudici	Provision of offices, benefices	Yes	14 Marzo 1873 Ex. Pro 12 ad decennium.	1873
31	1873	758	Rio Grande do Sul	Vescovo	FPD	Trasferire	Mass	Yes	14 Marzo 1873 Ex. Ad aliud decennium.	1873
32	1873	759	Rio Grande do Sul	Vescovo	FPD	Assolvere e ridurre	Mass	Yes	14 Marzo 1873 Ex. Pro utraque ad aliud decennium.	1873
33	1873		Olinda	Joachim Severianus Arcoverde (LD)	FPD	Extra tempora (LD)	Ordination	Yes	Die 14 Martii 1873 SS.mus etc. ad decennium. (LD)	1873
34	1873		Fortaleza	Ananias Correas De Amaral (LD)	FPD	Extra tempora (LD)	Ordination	Yes	Die 19 Maii 1873 SS.mus etc. ut in praecedenti. (LD)	1873
35	1874	2498	Bahia	Il Capitolo Metropolitano	Doubts	Circa l'elezione del Vicario Capitolare	Provision of offices, benefices	No		
36	1874	3173	Olinda	Officiale della Curia	Marriage	Intorno alla validità di un matrimonio	Matrimony	No		
37	1874	3489	Olinda	Officiale della Curia	Marriage	Circa un matrimonio	Matrimony	Yes	22 Maggio 1875 […] Affirmative.	1875
38	1876	949	Mariana	Vicario Capitolare	FPD	Esaminatori	Provision of offices, benefices	Yes	16 Marzo 76 Ex. Pro 12 ad annum.	1876
39	1876	2677	São Paulo	Vescovo	FPD	Circa l'Officiatura corale	Divine office	Yes	21 Agosto 1876 Ex. Pro gratia.	1876
40	1876	3034	São Paulo	Vescovo	Not classified	Circa il Sacerdote Gioacchino de Monte Carmelo	Residence	No		
41	1876	3105	São Paulo	Vescovo	FPD	Circa la residenza	Residence	Yes	25 Sett. 1876 Ex Aud. Pro gratia.	1876

42	1877	515	Mariana	Vicario Capitolare	Doubts	Riduz. Messa pel Seminario	Mass; Seminary	Yes	20 X.bris 1879 Ad I. Affirmative; Ad II. Firmo remanente festa S. Bernardi, affirmative juxta petita facto verbo cum SS.mo; 22 X.bris 1879 SS.mus ben. appr.b. et cogens.	1879
43	1877	2912	Rio de Janeiro	Vescovo	Doubts	Se i Parrochi siano tenuti celebrare pro populo nel giorno 26 Luglio	Mass	No		
44	1877	2913	Rio de Janeiro	Vescovo	Doubts	Soppressione della Messa pro populo in alcune feste	Mass	No		
45	1877	3115	Rio de Janeiro	Vescovo	FPD	Esaminatori senza il consenso del Capitolo	Provision of offices, benefices	Yes	24 7.bre 1877 Ex. Pro 12 ad X.nnium.	1877
46	1878	2503	São Paulo	Vescovo	Not classified	Circa il Vicario Gen.le	Provision of offices, benefices	No		
47	1879	383	Rio de Janeiro	d'Argenzio Fr. Vincenzo	FPD	Dimissione della parrocchia senza conoscere i motivi	Foreign clergy; Provision of offices, benefices	No		
48	1879	1974	Olinda	de Lima e Sá Giuseppe Alfonso	FPD	Circa il S. Patrimonio Sacro	Ordination	Yes	31 Maggio 1879 Vig. pro gratia.	1879
49	1879	3110	Olinda	Capitolo della Catedrale	Doubts	Quesito	Residence; Divine office	No		
50	1879		Rio de Janeiro	Germaine Nicolaus (LD)	FPD	Facultatem abessendi a parochia (LD)	Residence; Foreign clergy	Yes	Die 3 Septembris SS.mus […] benigne commisit eid. ut […] petitam facultatem abessendi a sua paroecia per annum prox. tant. pro suo etc. Or.i gratis impertiatur. (LD)	1879

51	1879	4112	Maranhão	Ep.us (LD)	FPD	Dispensandi a residentia et choro canonicos et benef. (LD)	Residence; Divine office	Yes	Die 29. Nov. SS.mus […] Ep.o Or.i benigne indulsit, ut […] ad triennium tantum […] a choro et residentia […] pro suo etc. gratis dispensare possit et valeat, omissis distributionibus quotidianis […]. (LD)	1879
52	1880	1157	Olinda	Vicario Capitolare	FPD	Circa la residenza in coro	Residence; Divine office	Yes	Die 22. Martii SS.mus […] indulsit, ut a chori servitio […] quibus […] fuerit impeditus, vacare possit, et […] fructus omnes et distributiones quotidianas suae praebendae percipere valeat, […] omissis distributionibus, quae inter praesentes dividi solent […]. (LD)	1880
53	1880	1383	Olinda	Vieira Francesco	FPD	Sanatoria	Provision of offices, benefices	Yes	12 Luglio 1880 Pro gratia.	1880
54	1880	3868	Olinda	Graziano de Araujo Antonio	FPD	Circa la nullità di concorso	Provision of offices, benefices	No		
55	1880	4092	Olinda	Vicario Capitolare	FPD	Circa le proviste di benefici	Provision of offices, benefices	Yes	14 Febbraio 1881 Ex Aud. Pro gratia.	1881
56	1881	798	Olinda	Vicario Capitolare	FPD	Esaminatori	Provision of offices, benefices	Yes	25 Febbraio 1881 Ex. Pro duodecim.	1881
57	1881	838	Olinda	De Araujo Gratiano	FPD	Circa il concorso a parrocchia	Provision of offices, benefices	Yes	27 Giugno 1881 Ex Aud. Pro gratia.	1881
58	1881	1053	Mariana	Vescovo	FPD	Esaminatori	Provision of offices, benefices	Yes	14 Marzo 1881 Ex Aud. Pro decem.	1881

59	1881	3082	Olinda	Matilde Gonçalves; Bernardino de Figueredo	Marriage	Circa nullità di Matrimonio	Matrimony	Yes	Die 1. Septembris 1883. Sacra […] Ad I. Providebitur in secundo. Ad II. Affirmative; vetito viro transitu ad alias nuptias, inconsulta […] Congregatione. (LD)	1883
60	1881	4888	Mariana	Vescovo	FPD	Dispensare dal Canto corale	Divine office	Yes	9 Gennaio 1882 Ex Aud. Pro gratia.	1882
61	1882	2102	Olinda	De Lima e Sá Giuseppe Alfonso	FPD	Circa il S. Patrimonio	Ordination	Yes	15 Maggio 1882 Ex Aud. Pro gratia.	1882
62	1882	2698	Maranhão	Sampaio Castello Branco Gioacchino	FPD	Dispensa di età	Ordination	Yes (x 2)	26 Junii 1882 Ex Aud. Pro gratia […] 14 Agosto 1882 Ex Aud. Pro gratia.	1882
63	1882	2754	Goiás	Vescovo	FPD	Circa la nomina del V. Gen.le	Provision of offices, benefices	Yes	1 Julii 1882 […] Pro gratia.	1882
64	1882	3535	Maranhão	Rios Doroteo	FPD	Anticipazione di ore canoniche	Divine office	Yes	21 Aug. 1882 Ex Aud. Arbitrio Ep.i.	1882
65	1883	897	Maranhão	Vescovo	FPD	Circa la residenza dei canonici	Residence	Yes	19 Febbraio 1883 Pro gratia.	1883
66	1883	1941	Maranhão	De Lima Giuseppe	FPD	Dispensa d'età	Ordination	Yes	23 Aprile 1883 Ex Aud. Pro gratia.	1883
67	1883	2851	Maranhão	Giosè de Lima Alvaro	FPD	Anticipazione di ore canoniche	Divine office	Yes	25 Junii 1883 Ex Aud. Pro gratia.	1883
68	1883		Olinda	Matrimonio	Marriage	Matrimonio	Matrimony	Yes	Die 1 Decembris 1883. Sacra etc. ad 1. e 2. dubium stetit in decisis. […] in Audientia diei 3 […], Sanctitas Suae […] resolutionem approbare et confirmare dignata est. (LD)	1883
69	1884	4300	Olinda	De Rego Francesco	FPD	Indulto d'assenza	Residence	Yes	30 Settembre 1884 Pro gratia.	1884

70	1884	4960	Olinda	De Figueredo Reis Alessandro	Marriage	Facoltà per sposare	Matrimony	No		
71	1885	655	Olinda	De Figueredo Alessandro Bernardino	Marriage	Per poter contrarre matrimonio	Matrimony	Yes (x 2)	22 Agosto 1885 Affirmative cum eidem tantum; 18 Settembre 1886 Pro facultate Ep.o relaxationem status liberi oratori impediendi.	1885; 1886
72	1885	3667	Olinda	Vescovo	Doubts	Postulato circa le prebende teologale e dottorale	Provision of offices, benefices	No		
73	1885	3668	Olinda	Vescovo	Doubts	Postulato circa certi riti	Rites	No		
74	1885	3669	Olinda	Vescovo	Doubts	Postulato circa i regolari	Discipline	No		
75	1885	3670	Olinda	Vescovo	Doubts	Postulato circa la vita e l'onestà dei chierici	Discipline	No		
76	1885	3671	Olinda	Vescovo	Doubts	Postulato circa le celebrazioni del matrimonio […]	Matrimony	No		
77	1885	3672	Olinda	Vescovo	FPD	Postulato circa la traslazione della cattedrale e del seminario	Seminary; Sacred places	Yes	14 Dicembre 1885 Ex Aud. Pro gratia.	1885
78	1886	2851	Olinda	Vescovo	FPD	Dispensare i Chierici dal titolo	Ordination	Yes	7 Giugno 1886 Ex Aud. Pro gratia.	1886
79	1886	3279	Maranhão	Ep.us (LD)	FPD	[…] Exonerandi chorales Cathedralis a lege residentiae (LD)	Residence; Divine office	Yes	Die 25 Junii […] Sacra etc. praevia […] Ad triennium. (LD)	1886

80	1886	3877	Mariana	Vescovo	Doubts	Dubbi circa alcune facoltà	Matrimony; Ordination; Divine office; Baptism	No		
81	1886	5317	São Paulo	Vescovo	FPD	Circa il Vic. G.le	Provision of offices, benefices	Yes	19 Novembre 1886 Pro gratia.	1886
82	1887	1600	Olinda	Vescovo	FPD	Esaminatori	Provision of offices, benefices	Yes	21 Marzo 1887 Ex A. Pro gratia.	1887
83	1887	1879	Olinda	Gerbasio Francesco Saverio	FPD	Rimanere in America	Foreign clergy	No		
84	1887	1945	São Paulo	Sonni Pietro	FPD	Facoltà di celebrare	Foreign clergy; Mass	No		
85	1887	2436	Rio de Janeiro	Vescovo	FPD	Circa i titoli della s. ordinazione	Ordination	Yes	2 Maggio 1887 Ex A. Pro gratia.	1887
86	1887	4046	São Paulo	Vescovo	FPD	Circa i sacri patrimonii	Ordination	Yes	22 Agosto 1887 Ex Aud. Pro gratia.	1887
87	1887	4047	São Paulo	Vescovo	FPD	Circa i titoli della s. ord.	Ordination	Yes	1 Agosto 1887 Ex Aud. Pro gratia.	1887
88	1887	4048	São Paulo	Vescovo	Doubts	Circa la procedura per dichiarare la nullità dei matrimoni	Matrimony	No		
89	1887	4300	Olinda	Vescovo	FPD	Circa l'esame nei concorsi alle parrocchie	Provision of offices, benefices	No		
90	1887	4315	Fortaleza	Vescovo	FPD	Permettere ai parrocchi di trasferire la messa pro populo	Mass	Yes	22 Agosto 1887 Ex A. Pro gratia.	1887

91	1887	4316	Fortaleza	Vescovo	FPD	Circa la messa pro populo riguardo ai parrochi aventi due parrocchie	Mass	Yes	29 Febbraio 1888 Pro gratia.	1888
92	1887	4367	São Paulo	Arcieri Antonio	FPD	Rimanere in America	Foreign clergy	No		
93	1887	5966	Fortaleza	Vescovo	Marriage	Circa i sponsali	Matrimony	No		
94	1888	1358	Olinda	Da Costa Onorato Emanuele	FPD	Sanatoria per acquisto etc.	Ordination	No		
95	1888	1908	Rio de Janeiro	Roncini Achille	FPD	Proroga per rimanere altro tempo in America	Foreign clergy;	No		
96	1888	2762	Bahia	Arcivescovo	FPD	Circa i seminari	Seminary	Yes	20 Maggio 1888 […] Pro gratia.	1888
97	1888	3281	São Paulo	Vescovo	Doubts	Circa il concorso ad beneficia	Provision of offices, benefices	Yes	3 Agosto 1889 Ad I et II non que interloquendum.	1889
98	1888		Fortaleza	Ep.us (LD)	FPD	Missae pro populo (LD)	Mass	Yes	Die 21 Januarii Sacra […] benigne commisit Ep.o Or.i ut praevia absolutione […] ob obligatione applicandi secundam Missam pro populo per septennium proximum tantum pro suo etc. dispensare possit et valeat. (LD)	1888
99	1888	5535	São Paulo (& Nusco)	Fusco Gennaro	FPD	Emigrare	Foreign clergy; Mass	Yes	22 Gennaio 1889 Pro gratia.	1889
100	1888	5591	Olinda	Vescovo	FPD	Esaminatori	Provision of offices, benefices	Yes	21 Novembre 1888 Ex Aud. Pro gratia.	1888

101	1888		Mariana	Cotta Stefano	FPD	Exemptionem a choro et residentia […] (LD)	Residence; Divine office	Yes	Die 28 Feb. 1888 Sacra […] benigne commisit Ep.o Mariannen ut […] dispensationem […] Or.i gratis impertiatur iis tantum ab eo interim omissis distributionibus quae inter praesentes dividi solent. (LD)	1888
102	1889	139	Olinda	Do Rego Maia Francesco	FPD	Orat. privato	Sacred places; Mass	Yes	7 Gennaio 1889 Ex A. Pro gratia.	1889
103	1889	412	São Paulo (& Tricarico)	Petruccelli Maurizio e Camillo	FPD	Emigrare	Foreign clergy	No		
104	1889	1519	Maranhão	Ep.us (LD)	FPD	[…] Facultatem dispensandi Can. cos […] a choro et residentia (LD)	Residence; Divine office	Yes	Die 22 Martii: Sacra […] Ad triennium incipiendo ab ultima die expiraturi […] (LD)	1889
105	1889	3858	Mariana (& Capaccio Vallo)	Mantone Giovanfelice	FPD	Facoltà di restare in America	Foreign clergy	No		
106	1889	4588	Rio de Janeiro (& San Marco)	Arena Giuseppe M.a	FPD	Emigrare	Foreign clergy	No		

ANNEX 2 – Table of Brazilian cases of strong mixed matter presented to the Congregation of the Council, 1840–1889

The asterisk (*) means that the data inserted is a transcription from the *Protocolli* or the *Libri Decretorum* (indicated as LD in the table; where the source is not specified, the information belongs to the *Protocolli*) of the Congregation of the Council, from the Vatican Apostolic Archive. The cases are organised in chronological order of reception of the petition by the Congregation of the Council, as appears in the *Protocolli*; in the few instances where this information was not found, the cases were put in the bottom of the corresponding year and ordered by date of resolution, as appears in the *Libri Decretorum*. The data is analysed in **Chapter 2.3**.

	Year (Petition)	Diocese	Name of the Petitioner*	Type of Petitioner	Type of Petition	Subject of the Petition*	Theme of the Petition	Resolution?	Resolution*	Year (Resolution)
1	1853	Mariana	Vescovo	Bishop	FPD	Seminarii facultatem (LD)	Seminary	Yes	Die 26 Septemb. SS. […] enunciatam facultatem Ep.o Or.i ben. impertitus est juxta petita […]. (LD)	1853
2	1864	Belém do Pará	De Medeiros Emmanuele	Priest	FPD	Facoltà di portare la barba lunga	Discipline	No		
3	1865	Mariana	Vescovo	Bishop	FPD	Exam.	Provision of offices and benefices	Yes	31 Marzo 1865 Ex. Pro 12 ad decennium.	1865
4	1868	Olinda	Vescovo	Bishop	FPD	Esam.	Provision of offices and benefices	Yes	28 Marzo 1868 Ex. Pro 12 ad X.cennium.	1868
5	1868	Olinda	Vescovo	Bishop	FPD	Giudici	Provision of offices and benefices	Yes	28 Marzo 1868 Ex Aud. Pro 12 ad X.cennium.	1868
6	1873	Rio Grande do Sul	Vescovo	Bishop	FPD	Esaminatori	Provision of offices and benefices	Yes	14 Marzo 1873 Ex. Pro 12 ad decennium.	1873

7	1873	Rio Grande do Sul	Vescovo	Bishop	FPD	Giudici	Provision of offices and benefices	Yes	14 Marzo 1873 Ex. Pro 12 ad decennium.	1873
8	1874	Bahia	Il Capitolo Metropolitano	Chapter	Doubts	Circa l'elezione del Vicario Capitolare	Provision of offices and benefices	No		
9	1876	Mariana	Vicario Capitolare	Vicar Capitular	FPD	Esaminatori	Provision of offices and benefices	Yes	16 Marzo 76 Ex. Pro 12 ad annum.	1876
10	1876	São Paulo	Vescovo	Bishop	Not classified	Circa il Sacerdote Gioacchino de Monte Carmelo	Residence	No		
11	1876	São Paulo	Vescovo	Bishop	FPD	Circa la residenza	Residence	Yes	25 Sett. 1876 Ex Aud. Pro gratia.	1876
12	1877	Mariana	Vicario Capitolare	Vicar Capitular	Doubts	Riduz. Messa pel Seminario	Mass; Seminary	Yes	20 X.bris 1879 Ad I. Affirmative; Ad II. Firmo remanente festa S. Bernardi, affirmative juxta petita facto verbo cum SS.mo; 22 X.bris 1879 SS.mus ben. appr.b. et cogens.	1879
13	1877	Rio de Janeiro	Vescovo	Bishop	FPD	Esaminatori senza il consenso del Capitolo	Provision of offices and benefices	Yes	24 7.bre 1877 Ex. Pro 12 ad X.nium.	1877
14	1878	São Paulo	Vescovo	Bishop	Not classified	Circa il Vicario Gen.le	Provision of offices and benefices	No		
15	1879	Rio de Janeiro	d'Argenzio Fr. Vincenzo	Priest	FPD	Dimissione della parrocchia senza conoscere i motivi	Foreign clergy; Provision of offices, benefices	No		

16	1879	Olinda	Capitolo della Catedrale	Chapter	Doubts	Quesito	Residence; Divine office; Delimitation	No		1879
17	1879	Rio de Janeiro	Germaine Nicolaus (LD)	Priest	FPD	Facultatem abessendi a parochia (LD)	Residence; Foreign clergy	Yes	Die 3 Septembris SS.mus […] benigne commisit eid. ut […] petitam facultatem abessendi a sua paroecia per annum prox. Tant. pro suo etc. Or.i gratis impertiatur. (LD)	1879
18	1879	Maranhão	Ep.us (LD)	Bishop	FPD	Dispensandi a residentia et choro canonicos et benef. (LD)	Residence; Divine office	Yes	Die 29. Nov. SS.mus […] Ep.o Or.i benigne indulsit, ut […] ad triennium tantum […] a choro et residentia […] pro suo etc. gratis dispensare possit et valeat, omissis distributionibus quotidianis […]. (LD)	1879
19	1880	Olinda	Vicario Capitolare	Vicar Capitular	FPD	Circa la residenza in coro	Residence; Divine office	Yes	Die 22. Martii SS.mus […] indulsit, ut a chori servitio […] quibus […] fuerit impeditus, vacare possit, et […] fructus omnes et distributiones quotidianas suae praebendae percipere valeat, […] omissis distributionibus, quae inter praesentes dividi solent […]. (LD)	1880
20	1880	Olinda	Vieira Francesco	Priest	FPD	Sanatoria	Provision of offices and benefices	Yes	12 Luglio 1880 Pro gratia.	1880
21	1880	Olinda	Graziano de Araujo Antonio	Priest	FPD	Circa la nullità di concorso	Provision of offices and benefices	No		
22	1880	Olinda	Vicario Capitolare	Vicar Capitular	FPD	Circa le proviste di benefici	Provision of offices and benefices	Yes	14 Febbraio 1881 Ex Aud. Pro gratia.	1881

23	1881	Olinda	Vicario Capitolare	Vicar Capitu-lar	FPD	Esaminatori	Provision of offices and bene-fices	Yes	25 Febbraio 1881 Ex. Pro duodecim.	1881
24	1881	Olinda	De Araujo Gratiano	Priest	FPD	Circa il concorso a parrocchia	Provision of offices and bene-fices	Yes	27 Giugno 1881 Ex Aud. Pro gratia.	1881
25	1881	Mariana	Vescovo	Bishop	FPD	Esaminatori	Provision of offices and bene-fices	Yes	14 Marzo 1881 Ex Aud. Pro decem.	1881
26	1882	Goiás	Vescovo	Bishop	FPD	Circa la nomina del V. Gen.le	Provision of offices and bene-fices	Yes	1 Julii 1882 […] Pro gratia.	1882
27	1883	Maranhão	Vescovo	Bishop	FPD	Circa la residenza dei canonici	Residence	Yes	19 Febbraio 1883 Pro gratia.	1883
28	1884	Olinda	De Rego Francesco	Priest	FPD	Indulto d'assenza	Residence	Yes	30 Settembre 1884 Pro gratia.	1884
29	1885	Olinda	Vescovo	Bishop	Doubts	Postulato circa le prebende teologale e dottorale	Provision of offices and bene-fices	No		
30	1885	Olinda	Vescovo	Bishop	Doubts	Postulato circa i regolari	Discipline; Delimita-tion	No		
31	1885	Olinda	Vescovo	Bishop	Doubts	Postulato circa la vita e l'onestà dei chierici	Discipline	No		
32	1885	Olinda	Vescovo	Bishop	FPD	Postulato circa la traslazione della cattedrale e del seminario	Sacred places; Seminary	Yes	14 Dicembre 1885 Ex Aud. Pro gratia.	1885

33	1886	Maranhão	Ep.us (LD)	Bishop	FPD	[…] Exonerandi chorales Cathedralis a lege residentiae (LD)	Residence; Divine office	Yes	Die 25 Junii […] Sacra etc. praevia […] Ad triennium. (LD)	1886
34	1886	São Paulo	Vescovo	Bishop	FPD	Circa il Vic. G.le	Provision of offices and benefices	Yes	19 Novembre 1886 Pro gratia.	1886
35	1887	Olinda	Vescovo	Bishop	FPD	Esaminatori	Provision of offices and benefices	Yes	21 Marzo 1887 Ex A. Pro gratia.	1887
36	1887	Olinda	Gerbasio Francesco Saverio	Priest	FPD	Rimanere in America	Foreign clergy	No		
37	1887	São Paulo	Sonni Pietro	Priest	FPD	Facoltà di celebrare	Foreign clergy; Mass	No		
38	1887	Olinda	Vescovo	Bishop	FPD	Circa l'esame nei concorsi alle parrocchie	Provision of offices and benefices	No		1887
39	1887	São Paulo	Arcieri Antonio	Priest	FPD	Rimanere in America	Foreign clergy	No		1887
40	1888	Rio de Janeiro	Roncini Achille	Priest	FPD	Proroga per rimanere altro tempo in America	Foreign clergy	No		
41	1888	Bahia	Arcivescovo	Bishop	FPD	Circa i seminari	Seminary	Yes	20 Maggio 1888 […] Pro gratia.	1888
42	1888	São Paulo	Vescovo	Bishop	Doubts	Circa il concorso ad beneficia	Provision of offices and benefices	Yes	3 Agosto 1889 Ad I et II non que interloquendum.	1889
43	1888	São Paulo (& Nusco)	Fusco Gennaro	Priest	FPD	Emigrare	Foreign clergy; Mass	Yes	22 Gennaio 1889 Pro gratia.	1889

44	1888	Olinda	Vescovo	Bishop	FPD	Esaminatori	Provision of offices and benefices	Yes	21 Novembre 1888 Ex Aud. Pro gratia.	1888
45	1888	Mariana	Cotta Stefano	Priest	FPD	Exemptionem a choro et residentia […] (LD)	Residence; Divine office	Yes	Die 28 Feb. 1888 Sacra […] benigne commisit Ep.o Mariannen ut […] dispensationem […] Or.i gratis impertiatur iis tantum ab eo interim omissis distributionibus quae inter praesentes dividi solent. (LD)	1888
46	1889	São Paulo (&Tricarico)	Petruccelli Maurizio e Camillo	Priest	FPD	Emigrare	Foreign clergy	No		
47	1889	Maranhão	Ep.us (LD)	Bishop	FPD	[…] Facultatem dispensandi Can.cos […] a choro et residentia (LD)	Residence; Divine office	Yes	Die 22 Martii: Sacra […] Ad triennium incipiendo ab ultima die expiraturi […] (LD)	1889
48	1889	Mariana (&Capaccio Vallo)	Mantone Giovanfelice	Priest	FPD	Facoltà di restare in America	Foreign clergy	No		
49	1889	Rio de Janeiro (&S. Marco)	Arena Giuseppe M.a	Priest	FPD	Emigrare	Foreign clergy	No		

ANNEX 3 – Table of cases on ecclesiastical affairs presented to the Council of State, 1840–1889

The asterisk (*) means that the data inserted is a transcription (or a paraphrase, if within square brackets) from the directory *(fichário)* of the fonds of the Council of State, from the Brazilian National Archive; from the official compilation of ecclesiastical cases of 1869–1870 *(Consultas do Conselho de Estado sobre Negócios Eclesiásticos)*; or from José Honório Rodrigues' collection of the minutes of the Council of State's plenary meetings. The cases are organised in chronological order of date of consultation. The data is analysed in **Chapter 2.2.**

	Year (Consultation)	Section*	Theme	Subject of the Consultation*	Date (Consultation)
1	1843	Justiça	Provision of offices, benefices	[...] Sobre os embargos de ob e sub-repção opostos pelo Padre Raimundo de Campos e Silveira à carta de apresentação do Padre Manoel José da Hora, na freguesia de N. Senhora de Guadalupe [...] Sergipe.	04.11.1843
2	1843	Império	Confraternity; Statutes	[...] Sobre se pertence à Assembleia [Legislativa Provincial] a confirmação dos compromissos das irmandades.	06.11.1843
3	1843	Justiça	Provision of offices, benefices	Honras de cônego e outras semelhantes.	30.11.1843
4	1843	Justiça	Confraternity; Statutes	Confirmação de compromissos de irmandades. [...] Sobre se o parágrafo 10, artigo 10 do Ato Adicional proíbe o governo imperial da confirmação de compromissos de irmandades localizadas fora da Corte.	11.1843
5	1844	Justiça	Sacred places	Criação de freguesias no Ceará. [...] Sobre a questão entre a Assembleia [Legislativa] Provincial daquela província e o Bispo de Pernambuco.	26.01.1844
6	1844	Justiça	Ordination	[...] Sobre haver negado o presidente da província sua sanção à resolução da Assembleia Legislativa [Provincial], facultando a ordenação *in sacris* dos moradores da província que se mostrassem habilitados pelo Seminário de Olinda.	26.01.1844
7	1844	Justiça	Religious institutes; Ecclesiastical goods	Convento do Carmo. [...] Sobre os bens, rendas e dívidas do convento e sobre a proposta do presidente da província de passarem a ser administrados pela Fazenda Pública.	12.10.1844
8	1845	Pleno	Confraternity; Statutes	[Ato adicional, compromissos de irmandades.]	21.08.1845
9	1845	Império	Discipline	[...] Sobre se os presidentes de província estão autorizados a receber queixas contra párocos em suas funções e transmiti-las às autoridades eclesiásticas.	31.10.1845

10	1845	Justiça	Means of sustaining	[…] Sobre o Alvará de 10.10.1754 que marcou os salários e as custas judiciais do foro secular, na parte das diárias de juízes e escrivães.	24.12.1845
11	1845	Fazenda	Religious institutes; Ecclesiastical goods	Aforamento de fazendas e granjas de mosteiros. […] Sobre o pedido feito pelo Abade do Mosteiro de São Bento.	12.1845
12	1846	Justiça	Confraternity; Statutes; Discipline	[…] Sobre requerimento do vigário de Santo Antônio Além do Carmo contra o arcebispo e o presidente da dita província. […]	07.1846
13	1846	Justiça	Provision of offices, benefices	[…] Sobre o requerimento do Padre José Custódio de Siqueira Bueno. Solicitação de canonicato na Catedral […] de São Paulo.	05.08.1846
14	1846	Justiça	Means of sustaining	[…] Sobre dúvidas do Bispo do Maranhão relativas ao pagamento das côngruas e vencimentos dos cônegos e mais empregados da catedral daquela província.	24.09.1846
15	1846	Império	Seminary	[…] Sobre ofício do Vigário Capitular de Mariana em que expõe dúvidas se o procurador do seminário daquele bispado pode transigir nas causas em que aquele estabelecimento é parte.	13.11.1846
16	1846	Fazenda	Religious institutes; Ecclesiastical goods	Mosteiro de São Bento. […] [Sobre] aforamentos de terras do dito mosteiro.	11.1846
17	1846	Justiça	Religious institutes; Discipline	[…] Sobre ofício do Provincial dos Carmelitas Calçados desta província em que participa ter mandado proceder contra Fr. Custódio de S. José Bonfim e Fr. Bernardino de Santa Cecília.	1846
18	1847	Justiça	Provision of offices, benefices	Direito do Brasil à apresentação de candidatos ao cardinalato.	06.03.1847
19	1849	Justiça	Discipline	[…] Sobre ofícios do presidente da província e do coadjutor da freguesia de Vitória, relativos ao afastamento do vigário da direção da dita freguesia, por ser membro da Assembleia [Legislativa] Provincial.	17.03.1849
20	1849	Justiça	Confraternity; Ecclesiastical goods	[…] Sobre requerimento do Prior e Mesa da Ordem Terceira de N.S. do Monte do Carmo, tratando de imóvel doado à referida ordem por Rosa da Silva Bueno de Figueredo.	04.1849
21	1849	Justiça	Means of sustaining; Church fabric/fabrica	[…] Sobre ofício do presidente da província relativo ao pagamento das despesas com os coadjutores, fábricas e guisamentos das freguesias da província.	23.06.1849
22	1849	Justiça	Provision of offices, benefices	[…] Sobre ofício do Bispo de Pernambuco, expondo motivos que o levaram a não dar cumprimento à carta de apresentação do Padre Joaquim Manoel de Oliveira, na Igreja Paroquial da Serra do Pereira, daquele bispado.	06.07.1849
23	1849	Justiça	Matrimony	[…] Sobre dúvidas suscitadas por ocasião do aparecimento de causas de divórcio no juízo eclesiástico sem que se houvesse procedido aos termos conciliatórios pelo juízo de paz.	15.12.1849

24	1850	Império	Confraternity; Statutes	Compromisso da Irmandade do Santíssimo Sacramento da freguesia de Nossa Senhora do Amparo da vila de Itapemirim, […] Espírito Santo. […]	08.10.1850
25	1851	Império	Confraternity; Statutes	Irmandade do Santíssimo Sacramento. […] Sobre compromissos da Irmandade do S. Sacramento das freguesias de Santo Antão e da Várzea.	07.05.1851
26	1852	Justiça	Matrimony	[…] Sobre as dúvidas do Vigário Capitular de São Paulo a respeito da competência do juízo eclesiástico para arbitrar alimentos provisionais e "expensas litro" nas causas matrimoniais.	15.03.1852
27	1852	Império	Confraternity; Statutes	[…] Sobre as Irmandades de Nossa Senhora do Livramento de Maceió; de São Benedito da vila de São Miguel; de N. Senhora da Glória do Porto das Pedras e de N. Senhora do Rosário da vila de Atalaia.	29.04.1852
28	1854	Império	Confraternity; Statutes	[…] Sobre a falta dos artigos 15, 16 e 31 dos compromissos da Irmandade do Santíssimo Sacramento de Vitória.	16.02.1854
29	1854	Império	Confraternity; Statutes	[…] Sobre a lei n. 1, relativa ao Recolhimento da Anunciação e Remédios; e das leis n. 8, 12 e 23, sobre aprovação de compromisso de irmandades.	16.02.1854
30	1854	Império	Confraternity; Statutes	[…] Sobre a lei n. 224 que aprovou o compromisso da Irmandade de Nossa Senhora do Amparo da capital.	16.02.1854
31	1854	Império	Confraternity; Statutes	[…] Sobre as leis n. 155, 156, 176 e 177 sobre compromissos de irmandades, especialmente os de N. Senhora do Livramento de Maceió e São Benedito da vila de São Miguel.	23.02.1854
32	1854	Justiça	Matrimony; Protestants	Nulidade do casamento, celebrado segundo o rito evangélico, de Catharina Scheid, de religião evangélica, com Francisco Fagundes, católico romano.	27.04.1854
33	1854	Justiça	Means of sustaining	[…] Sobre o pedido de aposentadoria do Padre Thomaz d'Aquino, vigário de S. João Batista de Icaraí.	31.08.1854
34	1854	Justiça	Means of sustaining	Capela Imperial. […] Sobre o requerimento do Padre Affonso Pedroso pedindo aposentadoria no lugar de capelão cantor.	25.09.1854
35	1854	Justiça	Means of sustaining	[…] Sobre o requerimento do Padre João Máximo Prado pedindo aposentadoria no lugar de capelão cantor e regente.	30.09.1854
36	1854	Império	Confraternity; Statutes	[…] Sobre compromisso de irmandades confirmado pelas leis provinciais n. 634 e 635 de 28 [de dezembro] do ano passado e n. 638 e 639 de 2 e 7 de [janeiro] de 1854.	03.11.1854
37	1855	Justiça	Confraternity	[…] Sobre requerimento dos Devotos do Senhor Bom Jesus do Bonfim e do Prior da Ordem Terceira de São Domingos.	29.01.1855

38	1855	Justiça	Religious institutes; Ecclesiastical goods	[…] Sobre requerimento do Fr. José da Conceição Meireles, Provincial da Ordem de N. Senhora do Carmo, pedindo licença para vender fazenda pertencente a dita ordem.	14.05.1855
39	1855	Império	Confraternity; Statutes	[…] Sobre compromisso da Irmandade da Virgem Santíssima dos Remédios de São Luís.	04.06.1855
40	1855	Justiça	Religious institutes; Ecclesiastical goods	[…] Sobre requerimento dos Frades Joaquim de Santa Maria Cunha, Ernesto de Sant'Ana Cunha e Cândido de Santa Isabel Cunha, pedindo licença para entrarem no gozo de usufruto de uma casa.	10.06.1855
41	1855	Justiça	Religious institutes; Ecclesiastical goods	[…] Sobre licença solicitada pelos religiosos do Convento do Carmo para converter em foro perpétuo o arrendamento das terras da Fazenda da Pedra, na freguesia de Guaratiba.	02.08.1855
42	1855	Justiça	Seminary; Statutes	[…] Sobre o projeto de estatutos do Seminário de Cuiabá.	01.09.1855
43	1855	Justiça	Means of sustaining	[…] Sobre requerimento do Padre José Gregório de Souza, que pede ser aposentado como capelão da sé da Bahia.	08.09.1855
44	1856	Justiça	Discipline	[…] Sobre o recurso do Padre Francisco de Paula Toledo de Pindamonhangaba contra o ato do bispo que o suspendeu das ordens.	02.01.1856
45	1856	Justiça	Means of sustaining	[…] Sobre o requerimento do Padre Joaquim Jerônimo de Castro pedindo jubilação no lugar de cônego da catedral.	20.01.1856
46	1856	Justiça	Matrimony; Protestants	Sobre o casamento civil e o religioso e casamentos mistos entre católicos e protestantes. […] Sobre o projeto de lei.	11.02.1856
47	1856	Justiça	Sacred places	Intervenção dos reverendos bispos na criação de paróquias.	02.03.1856
48	1856	Justiça	Provision of offices, benefices	[…] Sobre representação do Bispo de Mariana [contra] colação do Cônego Honorário José de Souza e Silva Roussin em canonicato da respectiva sé.	10.03.1856
49	1856	Justiça	Confraternity; Statutes	Compromisso da Irmandade do Senhor Bom Jesus do Bonfim, embargada pela Ordem Terceira de São Domingos. […]	13.03.1856
50	1856	Império	Ecclesiastical law handbooks	Faculdade de Direito de Pernambuco. […] Sobre o Compêndio de Direito Eclesiástico do Dr. Jerônimo Villela de Castro Tavares.	03.05.1856
51	1856	Pleno	Matrimony; Protestants	[Casamento misto, casamento entre protestantes.]	29.05.1856
52	1856	Pleno	Discipline	[Suspensão de ordens: Padre Francisco de Paula Toledo, São Paulo, ex informata conscientia.]	19.06.1856
53	1856	Justiça	Means of sustaining	[…] Sobre a aposentadoria do Padre Izaías Gomes Valente no lugar de confessor da catedral e Capela Imperial.	23.10.1856

54	1856	Justiça	Seminary; Means of sustaining	[…] Sobre a jubilação do Cônego Joaquim Anselmo de Oliveira na cadeira de teologia moral da sé do bispado.	30.10.1856
55	1857	Pleno	Provision of offices, benefices	Parecer do Conselho de Estado sobre o parecer da Seção de Justiça, relativo à representação do Bispo de Mariana [contra] colação do Cônego Honorário José de Souza e Silva Roussin em canonicato da respectiva sé.	23.01.1857
56	1857	Império	Confraternity; Statutes	[…] Sobre os atos que se referem aos compromissos das Irmandades de Nossa S. do Livramento da vila de Serinhaém de Nossa S. do Rosário e de Santo Antônio do Rio Formoso.	03.09.1857
57	1857	Justiça	Provision of offices, benefices	[…] Sobre os motivos dados pelo bispo para não conferir a instituição canônica ao Padre Manoel José de Oliveira Rego, da freguesia de Nazaré.	16.09.1857
58	1858	Justiça	Discipline; Means of sustaining	[…] Sobre o vigário de Granja, envolvido em processos criminais: côngruas.	08.03.1858
59	1858	Império	Statutes	Instituto Episcopal Religioso, Corte. […] [Aprovação de estatutos.]	20.12.1858
60	1859	Justiça	Religious institutes; Ecclesiastical goods	Convento da Ajuda, Corte. […] Sobre a venda de terrenos pertencentes ao convento.	06.03.1859
61	1859	Império	Confraternity; Statutes	[…] Sobre lei n. 418, compromissos das Irmandades do Santíssimo Sacramento e de São Francisco de Paula de Cima da Serra.	04.07.1859
62	1860	Justiça	Seminary; Means of sustaining	[…] Sobre se vigário colado ou vigário geral que são professores do seminário devem receber ambos os vencimentos ou se devem optar.	07.01.1860
63	1860	Justiça	Provision of offices, benefices	[…] Sobre a transferência do Padre Raimundo José Lecont da Fonseca, da freguesia de S. Sebastião do Iguará, da qual é vigário colado, para a de N. S. do Rosário.	30.01.1860
64	1860	Império; Justiça	Religious institutes	Missionários Lazaristas. […] [Sobre] o estabelecimento de uma casa central na Corte.	09.02.1860
65	1860	Império	Religious institutes	[…] Sobre o projeto de lei provincial que suprime os Conventos de N.S. das Mercês da cidade de S. Luís e da [cidade] de Alcântara.	27.03.1860
66	1860	Império	Seminary	Seminário Episcopal de São José. […] Sobre se a inspeção de ensino abrange estabelecimentos religiosos de instrução, especialmente sobre fatos ocorridos no seminário.	27.04.1860
67	1860	Justiça	Religious institutes; Ecclesiastical goods	[…] Sobre se a Mesa Definitória dos Religiosos Franciscanos é competente para contratar a venda de seus bens, visto [a ordem] ser mendicante e não poder possuí-los.	10.09.1860
68	1861	Justiça; Fazenda	Means of sustaining	[…] Competência da côngrua entre o vigário colado e o encomendado da freguesia de Francisco de Assis de Anicuns.	16.01.1861

69	1861	Justiça; Fazenda	Sacred places; Means of sustaining	[…] Requerimento de Félix Vicente de Leão, vigário colado da freguesia de Curucá, relativo à extinção da dita freguesia pela Assembleia Legislativa [Provincial].	22.01.1861
70	1861	Império	Statutes	Instituto Episcopal Religioso. Aprovação dos estatutos e autorização para continuar as suas funções. […]	09.02.1861
71	1861	Império	Confraternity; Statutes	Compromisso da Irmandade de N. Senhora da Batalha da Igreja Matriz de Sant'Ana, da Corte. […]	13.07.1861
72	1861	Império	Seminary; Provision of offices, benefices	Seminário da Bahia. […] Sobre a validade das nomeações feitas pelo vigário capitular de dois professores.	20.07.1861
73	1861	Império	Confraternity; Statutes	Compromisso da Irmandade [da] Santa Cruz dos Militares, Corte. […]	24.07.1861
74	1861	Império	Confraternity; Statutes	Compromisso da Irmandade da Ordem Terceira de São Francisco da Penitência, cidade de São Salvador de Campos, Rio de Janeiro. […] Sobre a reforma.	16.08.1861
75	1861	Império	Confraternity; Statutes	Compromisso da Irmandade de São Benedito, da [Igreja] Matriz de N. S. do Amparo da vila de Itapemirim, Espírito Santo. […]	16.08.1861
76	1861	Império	Seminary; Means of sustaining	Seminário da Bahia. […] Sobre o requerimento do professor de teologia moral, Dr. Raimundo Nonato da Madre de Deus, pedindo jubilação.	12.09.1861
77	1861	Império	Provision of offices, benefices	[…] Sobre a proposta do Bispo de Pernambuco para a transferência do Padre Agostinho de Godoy e Vasconcelos, vigário colado da freguesia do Altinho para a de Quipapá.	14.09.1861
78	1861	Império	Seminary; Means of sustaining	[…] Sobre o pagamento do ordenado do professor de retórica João Pedro Dias Vieira.	28.09.1861
79	1861	Império	Foreign clergy; Provision of office, benefice	[…] Sobre a dúvida do bispo se, em falta de clero nacional, pode empregar sacerdotes estrangeiros, como vigários encomendados.	12.10.1861
80	1861	Império	Confraternity; Statutes	Compromisso da Irmandade da Santa Casa de Misericórdia de Barra Mansa, Rio de Janeiro. […]	14.10.1861
81	1861	Império	Seminary; Means of sustaining	Seminário do Maranhão. […] Sobre o ordenado do professor de canto gregoriano Cônego Estevão Alves dos Reis.	16.10.1861
82	1861	Império	Foreign religious associations	Associações estrangeiras para fins pios. Associação denominada Obra da Santa Infância.	09.11.1861
83	1861	Império	Confraternity; Statutes	[…] Leis provinciais n. 566 e 569 relativas à aprovação dos compromissos da Irmandade do Glorioso São Benedito da Igreja de N. Senhora do Rosário da cidade de São Luís e da Gloriosa Virgem Senhora de Nazaré de Tresidela.	05.12.1861
84	1862	Pleno	Provision of offices, benefices	[…] Sobre os motivos dados pelo bispo para não conferir a instituição canônica ao Padre Manoel José de Oliveira Rego, da freguesia de Nazaré.	08.03.1862

85	1862	Império	Confraternity; Placet	[…] Sobre a Irmandade de N. Senhora Mãe dos Homens que pede a revogação do beneplácito para poder ter execução o breve da Nunciatura elevando-a a ordem terceira e isentando-a da jurisdição paroquial.	15.03.1862
86	1862	Império	Placet; Discipline	[…] Sobre o ofício do arcebispo perguntando se há necessidade de beneplácito para o ofício circular da Nunciatura Apostólica, censurando o procedimento do vigário capitular contra o Bispo do Pará.	18.03.1862
87	1862	Império	Confraternity; Statutes	Compromisso da administração da Venerável Ordem Terceira de N. Senhora do Monte do Carmo da cidade de Campos. […]	22.03.1862
88	1862	Império	Provision of offices, benefices	Sobre os meios que o governo pode empregar para tornar efetiva a apresentação de um sacerdote a beneficio eclesiástico, se o bispo recusar-lhe a instituição canônica.	24.03.1862
89	1862	Pleno	Foreign clergy; Provision of office, benefice	[Sobre a dúvida do bispo se, na falta de padres nacionais, pode empregar estrangeiros como párocos encomendados.]	04.05.1862
90	1862	Império	Religious institutes; Ecclesiastical goods	Ordem Carmelitana na Corte. […] Sobre o requerimento do provincial pedindo autorização para contrair um empréstimo de 60 contos para um edifício de aulas públicas.	06.05.1862
91	1862	Império	Statutes; Protestants	Estatutos da Comunidade Evangélica Alemã existente na Corte.	26.05.1862
92	1862	Império	Foreign religious associations	Associações estrangeiras para fins pios. Associação denominada Obra da Santa Infância.	28.05.1862
93	1862	Império	Confraternity; Statutes	Compromisso da Irmandade de N. Senhora da Conceição da freguesia de N. Senhora da Piedade de Iguaçu. […]	28.05.1862
94	1862	Império	Confraternity; Statutes	Compromisso da Irmandade de São Manoel, da Igreja de N. Senhora da Candelária da Corte. […]	28.05.1862
95	1862	Império	Provision of offices, benefices	[…] Sobre provimento das Igrejas Paroquiais de São Sebastião de Itabapoana e de N. Senhora do Morro do Coco, cidade de Campos.	26.06.1862
96	1862	Império	Residence; Means of sustaining	[…] [Sobre] Restituição de côngrua imposta ao vigário de Piranga por ter se ausentado sem licença da presidência.	07.07.1862
97	1862	Império	Confraternity; Statutes	Compromisso de irmandade [do] Rio de Janeiro: Confraria de Sant'Ana da Freguesia de S. João Batista de Macaé. […] [Sobre] alterações.	24.07.1862
98	1862	Império	Confraternity; Statutes	Compromisso da Irmandade do Divino Espírito Santo, vila de S. Sebastião das Tijucas Grandes, Santa Catarina. […] Aprovação.	09.08.1862

99	1862	Império	Seminary; Provision of offices, benefices	Seminário de Cuiabá. […] [Sobre] requerimento de Padre Ernesto Camilo Barreto, solicitando ser lente efetivo das duas cadeiras de teologia.	03.09.1862
100	1862	Império	Ecclesiastical law handbooks	Faculdade de Direito do Recife. […] Sobre compêndio de "Direito Público Eclesiástico" de autoria de Jerônimo Villela de Castro Tavares.	22.09.1862
101	1862	Império	Confraternity; Statutes	Compromisso da Irmandade N. Senhora do Rosário de Vassouras, Rio de Janeiro. […] Aprovação.	04.11.1862
102	1862	Império	Seminary; Means of sustaining	Seminário. […] [Sobre] pagamento da gratificação ao professor do seminário Manoel Tomás de Oliveira por substituição na cadeira de instituições canônicas […].	06.12.1862
103	1863	Império	Confraternity; Statutes	Compromisso da Irmandade de N. Senhora do Amparo da freguesia de Capela, Sergipe. […]	09.01.1863
104	1863	Império	Confraternity; Statutes	Compromisso da Irmandade do Santíssimo Sacramento da cidade de Assú, Rio Grande do Norte.	10.01.1863
105	1863	Império	Confraternity; Statutes	Compromisso da Irmandade de S. Miguel e Almas da freguesia de N. Senhora da Piedade de Magé, Rio de Janeiro. […]	23.01.1863
106	1863	Império	Confraternity; Statutes	Compromisso da Ordem Terceira de São Francisco da Penitência da cidade de Campos dos Goitacazes, Rio de Janeiro. […] Sobre a reforma.	23.01.1863
107	1863	Império	Confraternity; Statutes	Compromisso da Irmandade da Confraria de Sant'Ana da freguesia de S. João Batista de Macaé. […] Sobre a reforma.	24.02.1863
108	1863	Império	Confraternity; Statutes	Compromisso da Irmandade de Santo Antônio do Curato de Sapucaia, Rio de Janeiro. […]	04.03.1863
109	1863	Império	Confraternity; Statutes	Compromisso da Irmandade de N. Senhora da Conceição da capela da freguesia de S. João Batista da Lagoa Rodrigo de Freitas. […]	04.03.1863
110	1863	Império	Confraternity; Statutes	Compromisso da Venerável Ordem Terceira de N. Senhora das Mercês, da Igreja do Parto, Corte. […]	05.04.1863
111	1863	Império	Confraternity; Statutes	Compromisso das Irmandades do Santíssimo Sacramento, S. João Batista, e São Miguel e Almas da freguesia de São João Batista da Lagoa, Corte. […]	24.04.1863
112	1863	Império	Religious institutes; Statutes	Congregação das Irmãs de Santa Teresa de Jesus. Aprovação dos estatutos para auxiliar a Caixa Municipal de Beneficência.	03.05.1863
113	1863	Império	Confraternity; Statutes	Compromisso da Venerável Irmandade do Príncipe dos Apóstolos S. Pedro, da Corte. […] Sobre alterações.	22.05.1863

114	1863	Império	Matrimony; Discipline	[…] Sobre o recurso de Francisco Basílio Junior contra a sentença do vigário geral do bispado, que lhe negou o recurso de apelação na causa de divórcio que lhe move a mulher Maria Fausta Dias Pavão.	24.05.1863
115	1863	Império	Confraternity; Statutes	Compromisso da Irmandade do S. Sacramento na Igreja de N. Senhora da Piedade de Iguaçu, Rio de Janeiro. […] Sobre aprovação.	30.05.1863
116	1863	Império	Confraternity	Eleição dos membros das mesas administrativas das irmandades.	13.06.1863
117	1863	Império	Discipline; Means of sustaining	[…] Sobre o requerimento do Padre João Gomes Carneiro, vigário colado da freguesia de São Joaquim da Barra Mansa, pedindo pagamento da côngrua durante o tempo em que esteve suspenso.	22.06.1863
118	1863	Império	Relação Metropolitana; Residence	Relação Metropolitana. […] [Sobre] ausências prolongadas dos desembargadores.	06.08.1863
119	1863	Império	Discipline; Means of sustaining	[…] [Sobre] requerimento do Padre Leopoldo Frederico da Costa, vigário colado da freguesia de N. Senhora da Piedade do Rio Irituia, pedindo pagamento da côngrua correspondente ao tempo em que esteve suspenso das ordens por ato do vigário capitular.	28.08.1863
120	1863	Império	Matrimony; Discipline	[…] Recurso de Antônio Francisco da Fonseca Cunha e Antônio Rodrigues Pereira da sentença pela qual o vigário geral do Bispo do Rio de Janeiro julgou insubsistente o assentamento de casamento do Comendador Francisco Antônio da Fonseca e Cunha com Lucinda Maria d'Oliveira.	22.09.1863
121	1863	Império	Confraternity; Statutes	Irmandade do Santíssimo Sacramento da freguesia de N. Senhora da Ajuda da Ilha do Governador, Rio de Janeiro. […] Aprovação.	12.10.1863
122	1863	Império	Confraternity; Statutes	Irmandade do Santíssimo Sacramento e N. Senhora da Apresentação da freguesia de Irajá. […] Aprovação.	09.11.1863
123	1863	Império	Discipline	[…] Recurso interposto por Manoel Marques Ribeiro de ato do Reverendo Bispo do Rio de Janeiro que perdoou o Padre João Gomes Carneiro, vigário colado da freguesia de São Joaquim da Barra Mansa, da pena de 3 anos de suspensão do ofício e benefício.	09.11.1863
124	1863	Império	Protestants	[…] Medidas convenientes à execução do Decreto n. 3.069 de 17.04.1863, relativo ao registro dos títulos dos pastores das religiões toleradas.	13.11.1863
125	1863	Império	Means of sustaining	[…] [Sobre a] data em que os bispos começam a ter direito à côngrua por inteiro.	14.11.1863
126	1863	Império	Provision of offices, benefices	[…] Dúvidas do Arcebispo da Bahia, relativas à apresentação da primeira dignidade da sé metropolitana e [ao] uso de se fazerem as nomeações das demais dignidades.	19.11.1863

127	1863	Império	Relação Metropolitana	Relação Metropolitana. […] [Sobre] marcha e organização, providências a serem propostas à Assembleia Geral Legislativa.	28.11.1863
128	1863	Império	Religious institutes; Ecclesiastical goods	Ordem de N. Senhora das Mercês – Serviço de Escravos. […] [Sobre] requerimento de Francisco Sabino Freitas dos Reis, [em que] pede autorização para contrato de locação dos serviços de escravos da Ordem de N. Senhora das Mercês – se podem ser executados por dívidas os bens das corporações de mão morta.	07.12.1863
129	1864	Império	Foreign clergy; Discipline	[…] Sobre se sacerdotes nomeados vigários encomendados nos termos do aviso de 30.07.1862 estão sujeitos a processo de responsabilidade.	27.02.1864
130	1864	Império	Confraternity; Discipline	[…] Sobre o recurso da Irmandade de São Miguel e Almas, da Igreja do S.S. Sacramento, contra o ato do vigário capitular que a suspendeu do exercício do culto.	13.04.1864
131	1864	Império	Seminary; Statutes	Seminário da Conceição. […] Sobre os estatutos.	26.04.1864
132	1864	Império	Seminary; Provision of offices, benefices; Religious institutes	Seminário de Mariana. […] Sobre o ofício do bispo pedindo isenção das disposições do Decreto n. 3.073 de 22.04.1863, aos padres lazaristas que servem como diretores e mestres.	09.05.1864
133	1864	Império	Confraternity; Statutes	Compromisso da Irmandade do Senhor do Bonfim da Capela na Praia de S. Cristovão. […]	24.05.1864
134	1864	Império	Provision of offices, benefices	[…] Sobre benefícios eclesiásticos.	24.05.1864
135	1864	Império	Confraternity; Statutes	Compromisso da Irmandade do S.S. Sacramento da freguesia de N. Senhora do Loreto de Jacarepaguá.	06.06.1864
136	1864	Império	Cemetery, funeral rites	[…] Sobre o requerimento do cura da freguesia do S.S. Sacramento pedindo que os cemitérios públicos só possam efetuar enterramentos com documentos das paróquias provando ter-se feito a encomendação determinada pela Igreja.	18.06.1864
137	1864	Império	Provision of offices, benefices	Propostas para provimento de benefícios eclesiásticos feitas pelos governadores dos bispados, e pelos provisores.	21.06.1864
138	1864	Império	Means of sustaining	[…] Sobre a conveniência de alterar-se a provisão de 18.08.1862, e determinar ajudas de custo aos bispos eleitos para primeiras despesas.	23.06.1864
139	1864	Império	Statutes	[…] Sobre os estatutos organizados pelo bispo para a catedral.	07.07.1864
140	1864	Império	Provision of offices, benefices; Discipline	[…] Sobre o recurso do Cônego Rodrigo Ignácio de Souza Menezes contra o arcebispo por não haver sido incluído na proposta para a Igreja de São Pedro da Muritiba.	12.08.1864
141	1864	Império	Provision of offices, benefices	[…] Sobre o provimento das dignidades nas catedrais em que há cônegos de prebenda inteira e de meia prebenda.	15.09.1864

142	1864	Império; Justiça	Religious institutes; Ecclesiastical goods	[…] Sobre a validade dos contratos celebrados pela administração do Convento do Carmo da Corte e de outras ordens religiosas existentes também no Maranhão e Paraíba.	29.09.1864
143	1864	Império	Religious institutes; Ecclesiastical goods	[…] Requerimento em que o Abade do Mosteiro de São Bento, da cidade de Paraíba do Norte, pede licença para aforar a ilha pertencente ao mosteiro, em frente ao povoado de Cabedelo.	19.10.1864
144	1864	Império	Confraternity; Statutes	Compromisso da Venerável Irmandade do Príncipe dos Apóstolos. […] Reforma.	25.10.1864
145	1864	Império	Seminary; Means of sustaining	[…] Requerimento em que o arcipreste da sé, Joaquim Anselmo d'Oliveira, reclama contra o aviso de 02.07.1864, relativo à perda de ordenado como lente de teologia moral.	02.11.1864
146	1864	Império	Residence	[…] [Sobre] se os capitulares podem ausentar-se das catedrais, sem licença expressa dos prelados diocesanos.	08.11.1864
147	1864	Império	Confraternity; Statutes	Compromisso de irmandade: Venerável Ordem Terceira do Patriarca S. Domingos de Gusmão. […]	09.11.1864
148	1864	Império	Provision of offices, benefices	[…] Proposta para provimento de dois benefícios da catedral.	11.11.1864
149	1864	Império	Seminary; Means of sustaining	Seminário Arquiepiscopal. […] Reclamação do Cônego Henrique de Sousa Brandão, contra redução de seus honorários da cadeira de liturgia.	12.11.1864
150	1864	Império	Religious institutes; Ecclesiastical goods	[…] [Sobre] competência do poder civil para por si só decretar medidas que compilam as ordens religiosas a converter em apólices da dívida pública os bens de raiz.	12.11.1864
151	1864	Império	Provision of offices, benefices	[…] Informações relativas ao concurso feito na diocese [para] provimento de paróquias vagas.	26.12.1864
152	1864	Império	Relação Metropolitana; Provision of offices, benefices	[…] [Sobre se] condição de perpetuidade está anexa ao cargo de desembargador da Relação Metropolitana e, em caso negativo, se é privativa do metropolita e não pode ser exercida durante a vacância da sé a atribuição de destituir os ocupantes.	27.12.1864
153	1864	Império	Means of sustaining	[…] [Sobre] se para o pagamento das côngruas aos párocos das freguesias novas é necessário que a despesa seja incluída no orçamento e autorizada pelo ministério competente.	27.12.1864
154	1865	Império	Statutes	Faculdades teológicas. […] [Sobre] criação. Projeto de estatutos.	13.05.1865
155	1865	Império	Confraternity; Statutes	Compromisso de irmandade. […] Emendas ao projeto de compromisso da Venerável Ordem Terceira de São Domingos de Gusmão.	18.05.1865
156	1865	Império	Means of sustaining	[…] Requerimento do Monsenhor Antônio José de Melo, contra redução de seus vencimentos em favor dos herdeiros de seu antecessor no benefício.	23.05.1865
157	1865	Império	Residence	[…] Sobre se os bispos podem deixar as respectivas dioceses sem licença prévia do governo imperial.	02.06.1865

158	1865	Império	Church fabric/fabrica	[…] Sobre a proposta apresentada pelo Bispo de Mariana para dois projetos de lei relativos à administração das fábricas das igrejas e emolumentos por atos religiosos.	05.06.1865
159	1865	Império	Matrimony; Discipline	[…] Sobre o recurso de Joaquim José de Sá contra o vigário capitular por causa de uma emenda em livro de registro de casamentos.	08.06.1865
160	1865	Império	Confraternity; Statutes	Compromisso da Imperial Irmandade do Divino Espírito Santo da Igreja de N. Senhora da Lapa do Desterro, Corte. […]	09.06.1865
161	1865	Império	Confraternity; Statutes	Compromisso da Venerável Irmandade do Príncipe dos Apóstolos S. Pedro, Corte. […] Sobre a reforma do artigo 52.	20.06.1865
162	1865	Império	Religious institutes; Ecclesiastical goods	[…] Sobre a execução judicial movida pelo Barão de Livramento aos religiosos do Convento do Carmo de Recife.	20.06.1865
163	1865	Império	Confraternity; Statutes	Compromisso da Venerável Ordem Terceira do Patriarca S. Domingos de Gusmão, Corte. […] Sobre alterações.	22.07.1865
164	1865	Império	Discipline	[…] Sobre o arcediago da sé de Olinda João José Pereira contra o ato do vigário capitular que o suspendeu ex informata conscientia.	14.08.1865
165	1865	Império	Confraternity; Statutes	Compromisso da Irmandade do S.S. Sacramento da freguesia do Bom Jesus do Monte de Paquetá, Corte. […]	16.08.1865
166	1865	Império	Confraternity; Statutes	Compromisso da Irmandade do S.S. Sacramento da freguesia de Sant'Ana, Corte. […]	17.08.1865
167	1865	Império	Matrimony; Protestants	[…] Sobre as questões do vigário da freguesia de S. José contra um casamento misto de católico e protestante.	24.08.1865
168	1865	Império	Placet; Provision of offices, benefices	[…] Sobre a pastoral mandada publicar pelo Bispo D. Manoel do Rego Medeiros no periódico "Esperança" de Recife.	19.12.1865
169	1866	Império	Confraternity; Statutes	Compromisso da Irmandade de Santo Antônio da Mouraria, da Igreja de N. Senhora do Rosário. […]	27.02.1866
170	1866	Império	Cemetery, funeral rites	[…] Sobre a queixa do vigário colado da freguesia de Curvelo contra o Coronel Candido de Souza Viana, pela maneira como foi tratado ao fazer uma encomendação.	05.03.1866
171	1866	Império	Church fabric/fabrica	[…] Sobre dúvidas do bispo a respeito da prestação de contas do fabriqueiro da catedral.	05.04.1866
172	1866	Império	Confraternity; Statutes	Compromisso da Venerável Irmandade do Príncipe dos Apóstolos, S. Pedro. […] Sobre a reforma do artigo 52.	19.06.1866
173	1866	Império	Confraternity; Statutes	Compromisso da Imperial Irmandade de N. Senhora do Outeiro. […]	22.06.1866

174	1866	Império	Confraternity; Statutes	Compromisso da Irmandade dos Mártires Santos Crispim e Crispiniano, freguesia de N. Senhora da Candelária. […]	13.07.1866
175	1866	Império	Sacred places; Provision of offices, benefices	[…] [Sobre] se tendo sido criada uma nova freguesia em território desmembrado da de Curvelo, podia o Bispo de Diamantina transferir o vigário colado daquela para a nova freguesia.	30.07.1866
176	1866	Império	Confraternity; Statutes	Compromisso de Irmandade [do] S.S. Sacramento da freguesia de S. Cristovão, Corte. […] Aprovação.	15.10.1866
177	1866	Império	Residence; Means of sustaining	[…] [Sobre] direito a côngrua, requerido pelo vigário Manoel dos Santos Vieira, durante o período de licença por ato do governo provincial.	15.10.1866
178	1866	Império	Sacred places	[…] [Sobre] intervenção da Santa Sé na fixação dos limites das dioceses do Brasil, nos casos especificados na provisão do Conselho Ultramarino de 18.06.1807.	07.11.1866
179	1866	Império	Confraternity; Statutes	Compromisso da Irmandade [da] Santa Cruz dos Militares.	14.11.1866
180	1866	Império	Provision of offices, benefices	[…] [Sobre] não reconhecimento pelo arcebispo, do vigário capitular.	21.11.1866
181	1866	Império	Confraternity; Statutes	Compromisso de irmandades. Ordem Terceira de N. Senhora do Monte do Carmo de Recife. […] Alteração.	18.12.1866
182	1866	Império	Religious institutes; Discipline	[…] Recurso do Provincial da Ordem Franciscana da Corte, contra o ato do juiz provedor das capelas, de convocar, sem conhecimento do prelado, uma congregação de irmãos e presidir a ela.	18.12.1866
183	1866	Império	Foreign clergy; Provision of office, benefice	[…] [Sobre] se pode ser coadjutor um padre estrangeiro.	26.12.1866
184	1867	Império	Seminary; Provision of offices, benefices; Discipline	Seminário do Pará. […] Sobre os recursos dos Padres Eutyquio Pereira da Rocha, Ismael de Souza Ribeiro Nery e Manoel Ignácio da Silva Espíndola contra o ato do bispo que os demitiu dos lugares de professores.	11.01.1867
185	1867	Império	Means of sustaining	[…] Sobre a representação do Monsenhor Antônio Pedro dos Reis contra a contagem dos vencimentos dos monsenhores e cônegos da Imperial Capela.	29.01.1867
186	1867	Império	Sacred places; Provision of offices, benefices	[…] Sobre a freguesia do Morro da Garça, criada por separação de parte do território da [freguesia] de Curvelo, do bispado de Diamantina.	14.02.1867
187	1867	Império	Statutes	[…] Sobre os estatutos da catedral.	16.02.1867
188	1867	Império	Seminary; Provision of offices, benefices	Seminário Episcopal do Pará. […] Sobre a execução do Decreto n. 3.073 de 22.04.1863, sobre o ensino.	13.05.1867
189	1867	Império	Statutes; Protestants	Estatutos da Comunidade Evangélica Alemã de Petropólis.	31.05.1867

190	1867	Império	Confraternity; Statutes	Novo compromisso da Irmandade do Glorioso Patriarca S. José do Rio de Janeiro. […]	31.05.1867
191	1867	Império	Confraternity; Placet	[…] Sobre o requerimento da Mesa Regedora da Confraria de N. Senhora do Livramento de Recife pedindo licença para requerer da Nunciatura um breve de elevação a ordem terceira, ficando sujeita ao Convento de N. Senhora do Carmo.	10.06.1867
192	1867	Império	Means of sustaining	[…] Sobre o requerimento do Padre Francisco da Silva Ribeiro, vigário encomendado da freguesia de Santo Antônio da Vargem Grande, do município de Resende, pedindo pagamento de côngrua.	08.08.1867
193	1867	Império	Seminary; Provision of offices, benefices	[…] Sobre a representação do Bispo de Mariana que pede a dispensa do concurso exigido pelo decreto de 22.04.1863, para o provimento das cadeiras dos seminários.	16.08.1867
194	1867	Império	Confraternity; Statutes	Compromisso da Venerável Irmandade do S.S. Sacramento, Santo Antônio dos Pobres e N. Senhora dos Prazeres da Igreja Matriz de Santo Antônio dos Pobres da Corte. […]	08.11.1867
195	1867	Império	Matrimony; Protestants	Divórcio de cônjuges acatólicos.	14.12.1867
196	1868	Império	Relação Metropolitana; Residence; Means of sustaining	Relação Metropolitana. […] Pagamento de ordenado ao Desembargador Antônio da Rocha Viana, quando em gozo de licença.	04.05.1868
197	1868	Império	Confraternity; Statutes	Compromisso da Irmandade do Senhor Jesus do Bonfim e N. Senhora do Paraíso, Corte (S. Cristovão). […]	13.08.1868
198	1868	Império	Confraternity	[…] [Sobre] elevação da Confraria de N. Senhora do Livramento da cidade do Recife a ordem terceira.	19.10.1868
199	1869	Império; Justiça	Religious institutes; Ecclesiastical goods	[…] [Sobre] direito de fiscalização do governo imperial sobre gerência das administrações das corporações de mão-morta, especialmente das ordens regulares.	16.04.1869
200	1869	Império	Confraternity; Statutes	Compromisso da Irmandade de S. José dos Aflitos, Corte. […]	31.05.1869
201	1869	Império	Confraternity; Statutes	Compromisso da Irmandade de N.S. da Conceição do Engenho Novo, Corte. […]	12.06.1869
202	1869	Império	Residence; Relação Metropolitana; Means of sustaining	[…] Requerimento dos desembargadores da Relação Metropolitana, provisor e vigário geral, [que] pedem revogação da resolução de 23.05.1868, declarante da ausência de direitos de perceberem vencimentos, quando licenciados.	28.09.1869
203	1869	Império	Confraternity; Statutes	Compromisso [da] Irmandade [de] N. Senhora da Conceição da Capela do Campinho, freguesia de N. Senhora da Apresentação de Irajá, Corte.	12.11.1869
204	1869	Império	Religious institutes; Ecclesiastical goods	Escravos. […] [Sobre] arrematação de terras e escravos da Fazenda "Pernambuco", pertencente à Ordem Carmelitana Fluminense.	15.11.1869

205	1869	Império	Cemetery, funeral rites; Discipline	[…] Representação da [freguesia de] N. S. da Conceição e São José, Caxias, Maranhão, contra portaria do bispo diocesano, concedendo licença a Manoel Lourenço de Moraes e Silva para fazer jazigo […].	23.11.1869
206	1869	Império	Confraternity; Statutes	Irmandade de N. Senhora da Luz, São Francisco Xavier, na freguesia de Engenho Velho, Corte. […] [Sobre] compromisso.	27.11.1869
207	1870	Império	Cemetery, funeral rites; Protestants	[…] Sobre as dificuldades para o enterramento de pessoas que não professam a religião do Estado.	04.02.1870
208	1870	Império	Means of sustaining; Residence	[…] Sobre o requerimento de Frei Mariano de Bagnais, vigário encomendado da vila de Miranda, pedindo o pagamento de côngrua de 1868–1869, quando esteve prisioneiro no Paraguai.	12.03.1870
209	1870	Império	Matrimony; Protestants	[…] Sobre o ofício do bispo contra G. Wolson, pastor protestante, que casou […] Carlota Krum, católica, e João Schoser, acatólico.	11.07.1870
210	1870	Império	Confraternity; Statutes	Compromisso da Irmandade do S.S. Sacramento da Igreja Matriz de S. Francisco Xavier do Engenho Velho, Corte. […]	18.08.1870
211	1870	Império	Seminary	Seminário de Cuiabá. […] Sobre as medidas propostas pelo Padre Ernesto Camilo Barreto, para evitar a paralização do curso teológico.	28.10.1870
212	1870	Império	Confraternity; Statutes	Compromisso da Devoção de N. Senhora da Piedade da [Igreja] Matriz do Santíssimo Sacramento da Corte. […]	15.12.1870
213	1871	Império	Confraternity; Statutes	Compromisso da Irmandade Devoção de N. Senhora da Piedade da Igreja da Cruz dos Militares. […]	07.02.1871
214	1871	Império	Confraternity; Statutes	[…] Requerimento em que a Devoção de N. S. da Piedade ereta na Igreja da Cruz dos Militares, pedindo aprovação de estatutos e supressão das palavras "instituída na Igreja da Cruz dos Militares e hoje ereta na Matriz do S.S. Sacramento".	23.05.1871
215	1871	Império; Justiça	Matrimony; Protestants	[…] [Sobre] ofício do Bispo […] de Diamantina, relativo à celebração de batizados de filhos de católicos casados com protestantes pelo pastor protestante da Filadélfia.	28.06.1871; 16.08.1871
216	1871	Império	Ecclesiastical law handbooks	Faculdade de Direito do Recife. […] Requerimento de Maria Madalena Carneiro Rios Vilela, pedindo aprovação da obra […] "Instituições de Direito Público Eclesiástico" […] por […] Joaquim Vilela de Castro Tavares e bem assim o prêmio que lhe competir na forma do artigo 72 dos Estatutos das Faculdades de Direito.	03.07.1871
217	1871	Império	Provision of offices, benefices	[…] Requerimento do Padre Lourenço Custódio dos Anjos, vigário colado da freguesia de S. Francisco Xavier do Turiaçu, pedindo confirmação da permuta sua para [a] Igreja de S. José de Guimarães.	25.07.1871

218	1871	Império	Religious institutes; Ecclesiastical goods	[…] [Sobre] doação sem licença prévia do governo, feita pelos religiosos do Convento da Ajuda.	09.10.1871
219	1871	Império	Other	[…] [Sobre] protestos do episcopado do Império, contra invasão italiana que privou o Sumo Pontífice do poder temporal e de sua independência.	24.10.1871
220	1871	Império	Religious institutes; Ecclesiastical goods	Mosteiro de S. Bento. […] Permissão para distribuir pelos escravos que a ordem libertou o seu patrimônio rural devoluto.	15.12.1871
221	1872	Império	Confraternity; Statutes	Compromisso da Irmandade de N. Senhora da Batalha dos Oficiais da Guarda Nacional da Corte e Rio de Janeiro. […]	13.01.1872
222	1872	Império	Confraternity; Statutes	Compromisso da Irmandade de São João Batista e N. Senhora do Alívio, de S. Cristovão, Corte. […]	19.01.1872
223	1872	Império	Cemetery, funeral rites; Discipline	[…] Sobre o recurso de Joaquim Antônio de Faria Abreu Lima, contra o Bispo de Olinda, que não permitiu o sepultamento em cemitério do General José Ignacio de Abreu Lima.	20.02.1872
224	1872	Império	Matrimony	[…] Sobre o requerimento de João José Warsener e Eva Maria Duty pedindo dispensa do impedimento de consanguinidade para contraírem matrimônio.	18.03.1872
225	1872	Império	Confraternity; Statutes	Reforma do compromisso da Irmandade do Mártir S. Manoel, da Igreja Matriz da Candelária, Corte. […]	26.06.1872
226	1872	Império	Confraternity; Statutes	Reforma do compromisso da Imperial Irmandade da Santa Cruz dos Militares. […]	27.06.1872
227	1872	Império	Other	[…] Sobre a condenação do bispo ao jornal "Liberal do Pará"; proibindo a sua leitura por conter propaganda anticatólica.	09.07.1872
228	1873	Império	Confraternity; Statutes	Compromisso da Irmandade do Senhor Bom Jesus do Monte, N. Senhora de Aparecida e Santa Teresa da Corte. […]	14.04.1873
229	1873	Império	Means of sustaining	[…] Sobre o pedido do Cônego José de Souza Silva Roussin para receber as côngruas a que diz ter direito como prebendado da Catedral de Mariana.	13.05.1873
230	1873	Império	Discipline; Confraternity	[…] Sobre o recurso da Irmandade do S.S. Sacramento da igreja matriz da paróquia de Santo Antônio de Recife contra a interdição sentenciada pelo bispo.	23.05.1873
231	1873	Pleno	Confraternity; Discipline	[…] Julgamento do recurso interposto pela Irmandade do Santíssimo Sacramento […] do Recife […], contra a sentença do […] bispo […], que a declarou interdita e sobre a qual há o parecer junto da Seção […] Império. […] [Abordam-se ainda os] meios coercitivos [a] ser empregados, no caso de resistência dos bispos […].	03.06.1873
232	1873	Império	Confraternity; Statutes	Compromisso da Irmandade do S.S. Sacramento da freguesia da Glória […].	19.06.1873

233	1873	Pleno	Confraternity; Discipline	[…] Sobre os recursos interpostos pelas […] Ordens Terceiras de N. Senhora do Monte do Carmo e de S. Francisco da Penitência e pela Confraria do Senhor Bom Jesus dos Passos, […] do Pará, contra o ato do […] prelado […] [pelo] qual foram suspensas do exercício das funções religiosas, […] interditas as suas capelas.	26.07.1873
234	1873	Império	Insignias; Discipline	[…] Sobre a representação do cônego honorário da Capela Imperial, Francisco Teodósio de Almeida Leme, contra o ato do pároco da freguesia de Cruz Alta que não permitiu que ele usasse suas insígnias para pregar.	18.09.1873
235	1873	Pleno	Confraternity; Discipline; Provision of offices, benefices	Se o governo imperial […] pode […] ordenar a suspensão [de um bispo] do exercício de suas funções. No caso afirmativo, como e por quem será regida a diocese. Se das suspensões e interditos […] ex informata conscientia […] é denegado o recurso à Coroa em qualquer caso […].	08.11.1873
236	1873	Império	Confraternity; Ecclesiastical goods	[…] Sobre a concessão de um terreno à Irmandade do S.S. Sacramento da freguesia de S. Cristóvão para a edificação da igreja matriz.	22.12.1873
237	1874	Império	Placet; Discipline	[…] Recurso do procurador da Coroa do Tribunal da Relação de Pernambuco, do ato do Bispo de Olinda que mandou publicar e observar, sem o devido beneplácito, um breve pontifício.	15.01.1874
238	1874	Justiça	Means of sustaining	[…] Requerimento do Cônego José de Souza e Silva Roussin, relativo ao pagamento de côngruas como prebendado da Catedral de Mariana.	13.02.1874
239	1874	Império	Discipline	[…] Representação do Cônego João José da Costa Ribeiro, vigário colado da freguesia de S. José do Recife, contra o ato pelo qual o Reverendo Bispo de Olinda o suspendera do exercício de suas ordens, e das funções do benefício.	04.03.1874
240	1874	Império	Discipline	[…] Recurso do Padre Bartolomeu da Rocha Fagundes, vigário colado da freguesia da capital do Rio Grande do Norte, do ato pelo qual o Bispo de Olinda o suspendeu de suas ordens, ofícios e benefícios.	16.03.1874
241	1874	Império; Justiça	Provision of offices, benefices	[…] Durante impedimento do Bispo de Olinda de reger sua diocese, por quem e como deve ser esta, administrada [?] – Ao bispo cabia direito de nomear o administrador da diocese […]? Em caso negativo, como cumpre proceder[?]	28.04.1874
242	1874	Pleno	Provision of offices, benefices	[…] Questões relativas ao governo da diocese de Olinda, depois da pronúncia e condenação do bispo.	29.05.1874
243	1874	Império	Confraternity; Statutes	Compromisso da Irmandade de São José e N. Senhora das Dores do Andaraí Grande.	12.08.1874
244	1874	Império	Provision of offices, benefices	[…] [Sobre] constituição de S.S. o Pontífice Romano, relativa à administração das dioceses durante vacância das sés episcopais, e aos sacerdotes nomeados ou apresentados para estas pelos governos estaduais.	28.11.1874

245	1874	Império	Procession; Discipline	[…] Sobre ofícios do presidente da província e da Câmara de Belém sobre não haver permitido o governador do bispado a saída da procissão do Corpo de Deus.	11.12.1874
246	1874	Império	Provision of offices, benefices	[…] Sobre a validade das eleições do vigário capitular do arcebispado.	16.12.1874
247	1875	Pleno	Provision of offices, benefices; Discipline	Tendo declarado os governadores dos bispados […] que não lhes foi delegada, jurisdição para levantarem os interditos lançados pelos ditos bispos, pode o governo retirar o reconhecimento das nomeações […]? […] Deve [o governo civil] ordenar a eleição de vigários capitulares e insinuar aos cabidos pessoas idôneas? […]	23.01.1875
248	1875	Justiça	Procession; Discipline	[…] Sobre o [parecer] remetido pela Seção do Império a respeito de haver o governador do bispado negado permissão para a realização da procissão do Corpo de Deus.	24.04.1875
249	1875	Império	Church fabric/fabrica	[…] Sobre a competência do juiz de capelas e resíduos sobre as contas da fábrica da Capela Imperial.	06.05.1875
250	1875	Império	Confraternity; Statutes	Compromisso da Devoção de São José, freguesia de São João Batista da Lagoa, Corte. […]	03.06.1875
251	1875	Pleno	Discipline	[…] Sobre a falta de governo eclesiástico nas dioceses pela questão surgida com os respectivos bispos; anistia.	08.09.1875
252	1875	Império	Religious institutes; Ecclesiastical goods	[…] Sobre uma representação do Vigário Prior do Convento da Ordem Carmelitana de Mogy das Cruzes sobre contratos de arrendamentos em que se acham envolvidos escravos já considerados livres.	29.12.1875
253	1876	Império	Discipline; Means of sustaining	[…] Requerimento do deão da sé de Olinda, Joaquim Francisco de Faria ao Bispo de Olinda, sobre pagamento de côngruas, não recebidas por sua suspensão ex informata conscientia.	25.03.1876
254	1876	Império	Discipline	Documento relativo à anistia concedida aos reverendos de Olinda e Pará.	21.11.1876
255	1876	Império	Religious institutes; Ecclesiastical goods	[…] [Sobre] permuta da fazenda Guapi-Assú pertencente à Ordem Carmelitana Fluminense, por 24 apólices da dívida pública do valor nominal de 1 conto de reis, oferecidas por José da Costa e Souza.	15.12.1876
256	1877	Império	Religious institutes; Statutes	Compromisso da Congregação dos Filhos da Imaculada Senhora das Dores, da igreja matriz da paróquia de Santo Antônio da Corte. […]	20.06.1877
257	1877	Império	Confraternity; Statutes	Compromisso da Irmandade de N. Senhora da Conceição e S. S. Sacramento da freguesia do Engenho Velho, Corte. […]	26.08.1877
258	1877	Império	Confraternity; Statutes	Compromisso da Irmandade de N. Senhora da Soledade, na igreja do Convento da Lapa, Corte. […]	17.09.1877

259	1877	Império	Confraternity; Statutes	Compromisso da Irmandade do S.S. Sacramento da freguesia de N. Senhora da Candelária da Corte. […]	18.09.1877
260	1877	Império	Confraternity; Religious institutes; Ecclesiastical goods	Irmandade do S.S. Coração de Maria, Corte. […] Sobre o requerimento da superiora pedindo licença para contrair um empréstimo com a Ordem Carmelitana Fluminense para a construção de um asilo.	05.10.1877
261	1878	Império	Confraternity; Cemetery, funeral rites	[…] Representação do provedor da Santa Casa de Misericórdia, contra as ordens terceiras por darem sepulturas a menores que não podem ser irmãos.	04.05.1878
262	1878	Império	Means of sustaining; Foreign clergy	[…] Pagamento de côngruas ao Padre Rafael Faraco, como pároco colado de Garopaba, desde sua colação até sua naturalização.	10.05.1878
263	1879	Império	Confraternity; Statutes	Irmandade do Glorioso Patriarca São José, Corte. […] Compromisso: reforma.	23.06.1879
264	1879	Império	Confraternity; Statutes	Compromisso da Devoção de N. S. da Conceição e Dores da paróquia de S. Cristovão. […] Criação.	25.09.1879
265	1880	Império	Means of sustaining; Discipline	[…] Sobre o pagamento de côngruas do deão da sé de Olinda Dr. Joaquim Francisco de Faria, durante o tempo da suspensão ex informata conscientia […].	10.06.1880
266	1880	Império	Confraternity; Statutes	Compromisso da Irmandade do Santíssimo Sacramento, da freguesia da Glória. […] Alterações.	02.07.1880
267	1881	Império	Confraternity; Statutes	Irmandade de N. Senhora da Glória do Outeiro. […] Estatutos da Caixa de Socorros.	30.04.1881
268	1881	Império	Confraternity; Statutes	Irmandade do S.S. Sacramento da Igreja da Candelária da Corte. […] Estatutos.	30.04.1881
269	1881	Império	Confraternity; Statutes	Compromisso da Irmandade de N. Senhora da Batalha dos oficiais da Guarda Nacional da Corte e Rio de Janeiro. […]	12.05.1881
270	1881	Império	Confraternity; Statutes	Irmandade do S.S. Sacramento da Igreja da Candelária da Corte. […] Sobre a eliminação dos artigos 10, 11, 12 dos estatutos.	16.06.1881
271	1881	Império	Provision of offices, benefices; Discipline	[…] Sobre o recurso do Cônego João Gonçalves da Cruz contra o ato do cabido que o empossou na quarta cadeira de canonicato de meia prebenda da sé metropolitana e não na segunda.	03.07.1881
272	1881	Império	Provision of offices, benefices	[…] Sobre o concurso feito na diocese de Olinda para o provimento de diversas igrejas paroquiais.	18.08.1881
273	1882	Império	Provision of offices, benefices	[…] Sobre a concessão de honras de cônego feita pelo prelado da diocese.	31.01.1882
274	1882	Império	Matrimony; Protestants	[…] Sobre o pedido de dispensa dos inconvenientes da disparidade de religião feito por Raimundo Ferreira Mendes, para a realização de seu casamento com Ernestina Torres de Carvalho.	23.08.1882
275	1882	Império	Confraternity; Statutes	Compromisso da Imperial Irmandade da Santa Cruz dos Militares. […] Alterações.	24.08.1882

276	1882	Império	Sacred places; Seminary	[…] Sobre a mudança da Catedral da Igreja do Santíssimo Salvador de Olinda para a de N. Senhora do Carmo da cidade de Recife.	20.11.1882
277	1884	Império	Other	[…] [Sobre] satisfação das obrigações impostas pelo art. 1. do Decreto n. 9.033 de 06.10.1883, que determina providências para organização da estatística do movimento do estado civil. Resposta do Bispo de Olinda ao ofício recebido do presidente da província.	26.01.1884
278	1885	Império	Confraternity; Statutes	Compromisso de irmandade. Imperial Devoção de Nossa Senhora da Piedade, Corte. […] Alteração do compromisso.	21.03.1885
279	1885	Império	Confraternity; Statutes	Compromisso de Irmandade de Nossa Senhora do Rosário e S. Benedito, Corte. […] Alterações no compromisso.	18.04.1885
280	1885	Império	Confraternity; Statutes	Irmandade do S.S. Sacramento da Candelária. […] Estatutos – alterações.	15.07.1885
281	1887	Império	Confraternity; Statutes	Compromisso da Irmandade do Santíssimo Sacramento da Igreja Matriz de N. Senhora da Glória da Corte. […] Reforma.	19.12.1887
282	1888	Império	Provision of offices, benefices; Discipline	[…] Sobre recurso do Padre Francisco Gonçalves Barroso, contra negativa de provimento da cadeira de cônego da Catedral de São Paulo.	31.10.1888

ANNEX 4 – Table of cases of strong mixed matter presented to the Council of State, 1840–1889

The asterisk (*) means that the data inserted is a transcription (or a paraphrase, if within square brackets) from the directory *(fichário)* of the fonds of the Council of State, from the Brazilian National Archive; from the official compilation of ecclesiastical cases of 1869–1870 *(Consultas do Conselho de Estado sobre Negócios Eclesiásticos)*; or from José Honório Rodrigues' collection of the minutes of the Council of State's plenary meetings. The cases are organised in chronological order of date of consultation. The data is analysed in **Chapter 2.3**.

	Year (Consultation)	Section*	Diocese	Type of Petitioner	Theme	Subject of the Consultation*	Date (Consultation)	Imperial Resolution?	Year (Imperial) Resolution
1	1843	Justiça	Bahia	Priest	Provision of offices, benefices	[…] Sobre os embargos de ob e sub-repção opostos pelo Padre Raimundo de Campos e Silveira à carta de apresentação do Padre Manoel José da Hora, na freguesia de N. Senhora de Guadalupe […] Sergipe.	04.11.1843	YES	1843
2	1843	Justiça	Cuiabá	General administration	Provision of offices, benefices	Honras de cônego e outras semelhantes.	30.11.1843	YES	1843
3	1845	Império	Olinda	Provincial administration	Discipline	[…] Sobre se os presidentes de província estão autorizados a receber queixas contra párocos em suas funções e transmiti-las às autoridades eclesiásticas.	31.10.1845	YES	1846
4	1846	Justiça	Bahia	Priest	Confraternity; Statutes; Discipline	[…] Sobre requerimento do vigário de Santo Antônio Além do Carmo contra o arcebispo e o presidente da dita província. […]	07.1846	YES	1846
5	1846	Justiça	São Paulo	Priest	Provision of offices, benefices	[…] Sobre o requerimento do Padre José Custódio de Siqueira Bueno. Solicitação de canonicato na Catedral […] de São Paulo.	05.08.1846	YES, against petitioner	1846
6	1846	Império	Mariana	Vicar Capitular	Seminary	[…] Sobre ofício do Vigário Capitular de Mariana em que expõe dúvidas se o procurador do seminário daquele bispado pode transigir nas causas em que aquele estabelecimento é parte.	13.11.1846	YES	1864

7	1846	Justiça	Bahia	Religious order	Religious institutes; Discipline	[…] Sobre ofício do Provincial dos Carmelitas Calçados desta província em que participa ter mandado proceder contra Fr. Custódio de S. José Bonfim e Fr. Bernardino de Santa Cecília.	1846	YES	1846
8	1847	Justiça	Rio de Janeiro	General administration	Provision of offices, benefices	Direito do Brasil à apresentação de candidatos ao cardinalato.	06.03.1847	NO	
9	1849	Justiça	Rio de Janeiro	Provincial administration	Discipline	[…] Sobre ofícios do presidente da província e do coadjutor da freguesia de Vitória, relativos ao afastamento do vigário da direção da dita freguesia, por ser membro da Assembleia [Legislativa] Provincial.	17.03.1849	YES	1849
10	1849	Justiça	Olinda	Bishop	Provision of offices, benefices	[…] Sobre ofício do Bispo de Pernambuco, expondo motivos que o levaram a não dar cumprimento à carta de apresentação do Padre Joaquim Manoel de Oliveira, na Igreja Paroquial da Serra do Pereira, daquele bispado.	06.07.1849	YES	1849
11	1855	Justiça	Cuiabá	Bishop	Seminary; Statutes	[…] Sobre o projeto de estatutos do Seminário de Cuiabá.	01.09.1855	YES	1855
12	1856	Justiça	São Paulo	Priest	Discipline	[…] Sobre o recurso do Padre Francisco de Paula Toledo de Pindamonhangaba contra o ato do bispo que o suspendeu das ordens.	02.01.1856	NO, to Plenary council	
13	1856	Justiça	Mariana	Bishop	Provision of offices, benefices	[…] Sobre representação do Bispo de Mariana [contra] colação do Cônego Honorário José de Souza e Silva Roussin em canonicato da respectiva sé.	10.03.1856	NO, to Plenary council	
14	1856	Pleno	São Paulo	General administration	Discipline	[Suspensão de ordens: Padre Francisco de Paula Toledo, São Paulo, ex informata conscientia.]	19.06.1856	YES, against petitioner	1857
15	1856	Justiça	São Paulo	Cathedral chapter	Seminary; Means of sustaining	[…] Sobre a jubilação do Cônego Joaquim Anselmo de Oliveira na cadeira de teologia moral da sé do bispado.	30.10.1856	UNKNOWN	
16	1857	Pleno	Mariana	General administration	Provision of offices, benefices	Parecer do Conselho de Estado sobre o parecer da Seção de Justiça, relativo à representação do Bispo de Mariana [contra] colação do Cônego Honorário José de Souza e Silva Roussin em canonicato da respectiva sé.	23.01.1857	YES, against petitioner	1857

17	1857	Justiça	Olinda	Bishop	Provision of offices, benefices	[…] Sobre os motivos dados pelo bispo para não conferir a instituição canônica ao Padre Manoel José de Oliveira Rego, da freguesia de Nazaré.	16.09.1857	NO, to Plenary Council	
18	1858	Justiça	Fortaleza	Provincial administration	Discipline; Means of sustaining	[…] Sobre o vigário de Granja, envolvido em processos criminais: côngruas.	08.03.1858	YES	1858
19	1860	Justiça	Rio Grande do Sul	Provincial administration	Seminary; Means of sustaining	[…] Sobre se vigário colado ou vigário geral que são professores do seminário devem receber ambos os vencimentos ou se devem optar.	07.01.1860	YES	1860
20	1860	Justiça	Maranhão	Priest	Provision of offices, benefices	[…] Sobre a transferência do Padre Raimundo José Lecont da Fonseca, da freguesia de S. Sebastião do Iguará, da qual é vigário colado, para a de N.S. do Rosário.	30.01.1860	YES, against petitioner	1860
21	1860	Império	Rio de Janeiro	General administration	Seminary	Seminário Episcopal de São José. […] Sobre se a inspeção de ensino abrange estabelecimentos religiosos de instrução, especialmente sobre fatos ocorridos no seminário.	27.04.1860	NO	
22	1861	Império	Bahia	Bishop; Cathedral chapter; Priest; Religious order	Seminary; Provision of offices, benefices; Foreign clergy	Seminário da Bahia. […] Sobre a validade das nomeações feitas pelo vigário capitular de dois professores.	20.07.1861	NO	
23	1861	Império	Bahia	Religious order	Seminary; Means of sustaining	Seminário da Bahia. […] Sobre o requerimento do professor de teologia moral, Dr. Raimundo Nonato da Madre de Deus, pedindo jubilação.	12.09.1861	NO	
24	1861	Império	Olinda	Bishop	Provision of offices, benefices	[…] Sobre a proposta do Bispo de Pernambuco para a transferência do Padre Agostinho de Godoy e Vasconcelos, vigário colado da freguesia do Altinho para a de Quipapá.	14.09.1861	NO	
25	1861	Império	Maranhão	Provincial administration	Seminary; Means of sustaining	[…] Sobre o pagamento do ordenado do professor de retórica João Pedro Dias Vieira.	28.09.1861	YES, against petitioner	1861

26	1861	Império	Rio Grande do Sul	Bishop	Foreign clergy; Provision of office, benefice	[…] Sobre a dúvida do bispo se, em falta de clero nacional, pode empregar sacerdotes estrangeiros, como vigários encomendados.	12.10.1861	NO, to Plenary Council	
27	1861	Império	Maranhão	Cathedral chapter	Seminary; Means of sustaining	Seminário do Maranhão. […] Sobre o ordenado do professor de canto gregoriano Cônego Estevão Alves dos Reis.	16.10.1861	NO	
28	1862	Pleno	Olinda	General administration	Provision of offices, benefices	[…] Sobre os motivos dados pelo bispo para não conferir a instituição canônica ao Padre Manoel José de Oliveira Rego, da freguesia de Nazaré.	08.03.1862	NO	
29	1862	Império	Belém do Pará	Bishop	Placet; Discipline	[…] Sobre o ofício do arcebispo perguntando se há necessidade de beneplácito para o ofício circular da Nunciatura Apostólica, censurando o procedimento do vigário capitular contra o Bispo do Pará.	18.03.1862	NO	
30	1862	Império	Rio de Janeiro	General administration	Provision of offices, benefices	Sobre os meios que o governo pode empregar para tornar efetiva a apresentação de um sacerdote a beneficio eclesiástico, se o bispo recusar-lhe a instituição canônica.	24.03.1862	NO	
31	1862	Pleno	Rio Grande do Sul	Bishop	Foreign clergy; Provision of office, benefice	[Sobre a dúvida do bispo se, na falta de padres nacionais, pode empregar estrangeiros como párocos encomendados.]	04.05.1862	YES	1862
32	1862	Império	Rio de Janeiro	General administration	Provision of offices, benefices	[…] Sobre provimento das Igrejas Paroquiais de São Sebastião de Itabapoana e de N. Senhora do Morro do Coco, cidade de Campos.	26.06.1862	YES	1862
33	1862	Império	Mariana	Provincial administration	Residence; Means of sustaining	[…] [Sobre] Restituição de côngrua imposta ao vigário de Piranga por ter se ausentado sem licença da presidência.	07.07.1862	YES	1862
34	1862	Império	Cuiabá	Priest	Seminary; Provision of offices, benefices	Seminário de Cuiabá. […] [Sobre] requerimento de Padre Ernesto Camilo Barreto, solicitando ser lente efetivo das duas cadeiras de teologia.	03.09.1862	YES, against petitioner	1862
35	1862	Império	Olinda	Provincial administration	Seminary; Means of sustaining	Seminário. […] [Sobre] pagamento da gratificação ao professor do seminário Manoel Tomás de Oliveira por substituição na cadeira de instituições canônicas […].	06.12.1862	YES	1863

36	1863	Império	Rio de Janeiro	Layman	Matrimony; Discipline	[…] Sobre o recurso de Francisco Basílio Junior contra a sentença do vigário geral do bispado, que lhe negou o recurso de apelação na causa de divórcio que lhe move a mulher Maria Fausta Dias Pavão.	24.03.1863	YES, against petitioner	1863
37	1863	Império	Rio de Janeiro	Priest	Discipline; Means of sustaining	[…] Sobre o requerimento do Padre João Gomes Carneiro, vigário colado da freguesia de São Joaquim da Barra Mansa, pedindo pagamento da côngrua durante o tempo em que esteve suspenso.	22.06.1863	NO	
38	1863	Império	Bahia	General administration	Relação Metropolitana; Residence	Relação Metropolitana. […] [Sobre] ausências prolongadas dos desembargadores.	06.08.1863	YES	1863
39	1863	Império	Belém do Pará	Priest	Discipline; Means of sustaining	[…] [Sobre] requerimento do Padre Leopoldo Frederico da Costa, vigário colado da freguesia de N. Senhora da Piedade do Rio Irituia, pedindo pagamento da côngrua correspondente ao tempo em que esteve suspenso das ordens por ato do vigário capitular.	28.08.1863	YES, against petitioner	1863
40	1863	Império	Rio de Janeiro	Layman	Matrimony; Discipline	[…] Recurso de Antônio Francisco da Fonseca Cunha e Antônio Rodrigues Pereira da sentença pela qual o vigário geral do Bispo do Rio de Janeiro julgou insubsistente o assentamento de casamento do Comendador Francisco Antônio da Fonseca e Cunha com Lucinda Maria d'Oliveira.	22.09.1863	YES, against petitioner	1863
41	1863	Império	Rio de Janeiro	Layman	Discipline	[…] Recurso interposto por Manoel Marques Ribeiro de ato do Reverendo Bispo do Rio de Janeiro que perdoou o Padre João Gomes Carneiro, vigário colado da freguesia de São Joaquim da Barra Mansa, da pena de 3 anos de suspensão do ofício e benefício.	09.11.1863	YES, against petitioner	1863
42	1863	Império	Bahia	Bishop	Provision of offices, benefices	[…] Dúvidas do Arcebispo da Bahia, relativas à apresentação da primeira dignidade da sé metropolitana e [ao] uso de se fazerem as nomeações das demais dignidades.	19.11.1863	YES	1863
43	1864	Império	Rio Grande do Sul	General administration	Foreign clergy; Discipline	[…] Sobre se sacerdotes nomeados vigários encomendados nos termos do aviso de 30.07.1862 estão sujeitos a processo de responsabilidade.	27.02.1864	YES	1864
44	1864	Império	Rio de Janeiro	Confraternity	Confraternity; Discipline	[…] Sobre o recurso da Irmandade de São Miguel e Almas, da Igreja do S.S. Sacramento, contra o ato do vigário capitular que a suspendeu do exercício do culto.	13.04.1864	YES, against petitioner	1864

45	1864	Império	Cuiabá	General administration; Bishop	Seminary; Statutes	Seminário da Conceição. […] Sobre os estatutos.	26.04.1864	NO	
46	1864	Império	Mariana	Bishop	Seminary; Provision of offices, benefices; Religious institutes; Foreign clergy	Seminário de Mariana. […] Sobre o ofício do bispo pedindo isenção das disposições do Decreto n. 3.073 de 22.04.1863, aos padres lazaristas que servem como diretores e mestres.	09.05.1864	YES	1864
47	1864	Império	Rio de Janeiro	General administration	Provision of offices, benefices	[…] Sobre benefícios eclesiásticos.	24.05.1864	NO	
48	1864	Império	Bahia	Bishop	Provision of offices, benefices	Propostas para provimento de benefícios eclesiásticos feitas pelos governadores dos bispados, e pelos provisores.	21.6.1864	YES	1864
49	1864	Império	Bahia	Cathedral chapter	Provision of offices, benefices; Discipline	[…] Sobre o recurso do Cônego Rodrigo Ignácio de Souza Menezes contra o arcebispo por não haver sido incluído na proposta para a Igreja de São Pedro da Muritiba.	12.08.1864	YES, against petitioner	1864
50	1864	Império	Rio de Janeiro	General administration	Provision of offices, benefices	[…] Sobre o provimento das dignidades nas catedrais em que há cônegos de prebenda inteira e de meia prebenda.	15.09.1864	YES	1864
51	1864	Império	São Paulo	Cathedral chapter	Seminary; Means of sustaining	[…] Requerimento em que o arcipreste da sé, Joaquim Anselmo d'Oliveira, reclama contra o aviso de 02.07.1864, relativo à perda de ordenado como lente de teologia moral.	02.11.1864	YES	1864
52	1864	Império	Rio Grande do Sul	Bishop	Residence	[…] [Sobre] se os capitulares podem ausentar-se das catedrais, sem licença expressa dos prelados diocesanos.	08.11.1864	YES	1864
53	1864	Império	Maranhão	General administration	Provision of offices, benefices	[…] Proposta para provimento de dois benefícios da catedral.	11.11.1864	YES	1864

54	1864	Império	Bahia	Cathedral chapter	Seminary; Means of sustaining	Seminário Arquiepiscopal. […] Reclamação do Cônego Henrique de Sousa Brandão, contra redução de seus honorários da cadeira de liturgia.	12.11.1864	NO	
55	1864	Império	Olinda	Vicar Capitular	Provision of offices, benefices	[…] Informações relativas ao concurso feito na diocese [para] provimento de paróquias vagas.	26.12.1864	YES	1865
56	1864	Império	Bahia	Priest	Relação Metropolitana; Provision of offices, benefices	[…] [Sobre se] condição de perpetuidade está anexa ao cargo de desembargador da Relação Metropolitana e, em caso negativo, se é privativa do metropolita e não pode ser exercida durante a vacância da sé a atribuição de destituir os ocupantes.	27.12.1864	YES	1865
57	1865	Império	Rio Grande do Sul	General administration	Residence	[…] Sobre se os bispos podem deixar as respectivas dioceses sem licença prévia do governo imperial.	02.06.1865	YES	1865
58	1865	Império	Rio de Janeiro	Layman	Matrimony; Discipline	[…] Sobre o recurso de Joaquim José de Sá contra o vigário capitular por causa de uma emenda em livro de registro de casamentos.	08.06.1865	YES	1865
59	1865	Império	Olinda	Cathedral chapter	Discipline	[…] Sobre o arcediago da sé de Olinda João José Pereira contra o ato do vigário capitular que o suspendeu ex informata conscientia.	14.08.1865	YES, against petitioner	1865
60	1865	Império	Olinda	Vicar Capitular	Placet; Provision of offices, benefices	[…] Sobre a pastoral mandada publicar pelo Bispo D. Manoel do Rego Medeiros no periódico "Esperança" de Recife.	19.12.1865	YES	1865
61	1866	Império	Diamantina	Provincial administration	Sacred places; Provision of offices, benefices	[…] [Sobre] se tendo sido criada uma nova freguesia em território desmembrado da de Curvelo, podia o Bispo de Diamantina transferir o vigário colado daquela para a nova freguesia.	30.07.1866	YES	1866
62	1866	Império	Bahia	Provincial administration	Residence; Means of sustaining	[…] [Sobre] direito a côngrua, requerido pelo vigário Manoel dos Santos Vieira, durante o período de licença por ato do governo provincial.	15.10.1866	YES	1866

63	1866	Império	Olinda	General administration	Provision of offices, benefices	[…] [Sobre] não reconhecimento pelo arcebispo, do vigário capitular.	21.11.1866	YES	1866
64	1866	Império	Rio de Janeiro	Religious order	Religious institutes; Discipline	Parecer e consulta – recurso do Provincial da Ordem Franciscana da Corte, contra o ato do juiz Provedor das Capelas, de convocar, sem conhecimento do Prelado, uma congregação de Irmãos e presidir a ela.	18.12.1866	YES, against petitioner	1868
65	1866	Império	Rio de Janeiro	General administration	Foreign clergy; Provision of office, benefice	[…] [Sobre] se pode ser coadjutor um padre estrangeiro.	26.12.1866	YES	1867
66	1867	Império	Belém do Pará	Priest	Seminary; Provision of offices, benefices; Discipline	Seminário do Pará. […] Sobre os recursos dos Padres Eutyquio Pereira da Rocha, Ismael de Souza Ribeiro Nery e Manoel Ignácio da Silva Espíndola contra o ato do bispo que os demitiu dos lugares de professores.	11.01.1867	NO	
67	1867	Império	Diamantina	Bishop	Sacred places; Provision of offices, benefices	[…] Sobre a freguesia do Morro da Garça, criada por separação de parte do território da [freguesia] de Curvelo, do bispado de Diamantina.	14.02.1867	NO	
68	1867	Império	Belém do Pará	Bishop	Seminary; Provision of offices, benefices	Seminário Episcopal do Pará. […] Sobre a execução do Decreto n. 3.073 de 22.04.1863, sobre o ensino.	13.05.1867	NO	
69	1867	Império	Mariana	Bishop	Seminary; Provision of offices, benefices	[…] Sobre a representação do Bispo de Mariana que pede a dispensa do concurso exigido pelo decreto de 22.04.1863, para o provimento das cadeiras dos seminários.	16.08.1867	NO	
70	1868	Império	Bahia	Priest	Relação Metropolitana; Residence; Means of sustaining	Relação Metropolitana. […] Pagamento de ordenado ao Desembargador Antônio da Rocha Viana, quando em gozo de licença.	04.05.1868	YES, against petitioner	1868

71	1869	Império	Bahia	Priest; Cathedral chapter	Residence; Relação Metropolitana; Means of sustaining	[…] Requerimento dos desembargadores da Relação Metropolitana, provisor e vigário geral, [que] pedem revogação da resolução de 23.05.1868, declarante da ausência de direitos de perceberem vencimentos, quando licenciados.	28.09.1869	YES, against petitioner	1870
72	1869	Império	Maranhão	Confraternity	Cemetery, funeral rites; Discipline	[…] Representação da [freguesia de] N.S. da Conceição e São José, Caxias, Maranhão, contra portaria do bispo diocesano, concedendo licença a Manoel Lourenço de Moraes e Silva para fazer jazigo […].	23.11.1869	YES	1869
73	1870	Império	Cuiabá	Priest; Religious order	Means of sustaining; Residence	[…] Sobre o requerimento de Frei Mariano de Bagnais, vigário encomendado da vila de Miranda, pedindo o pagamento de côngrua de 1868–1869, quando esteve prisioneiro no Paraguai.	12.03.1870	NO	
74	1870	Império	Cuiabá	Priest	Seminary	Seminário de Cuiabá. […] Sobre as medidas propostas pelo Padre Ernesto Camilo Barreto, para evitar a paralização do curso teológico.	28.10.1870	NO	
75	1871	Império	Maranhão	Priest	Provision of offices, benefices	[…] Requerimento do Padre Lourenço Custódio dos Anjos, vigário colado da freguesia de S. Francisco Xavier do Turiaçu, pedindo confirmação da permuta sua para [a] Igreja de S. José de Guimarães.	25.07.1871	NO	
76	1872	Império	Olinda	Layman	Cemetery, funeral rites; Discipline	[…] Sobre o recurso de Joaquim Antônio de Faria Abreu Lima, contra o Bispo de Olinda, que não permitiu o sepultamento em cemitério do General José Ignacio de Abreu Lima.	20.02.1872	NO	
77	1873	Império	Olinda	Confraternity	Discipline; Confraternity	[…] Sobre o recurso da Irmandade do S.S. Sacramento da igreja matriz da paróquia de Santo Antônio de Recife contra a interdição sentenciada pelo bispo.	23.05.1873	NO, to Plenary Council	
78	1873	Pleno	Olinda	General administration	Confraternity; Discipline	[…] Julgamento do recurso interposto pela Irmandade do Santíssimo Sacramento […] do Recife […], contra a sentença do […] bispo […], que a declarou interdita e sobre a qual há o parecer junto da Seção […] Império. […] [Abordam-se ainda os] meios coercitivos [a] ser empregados, no caso de resistência dos bispos […].	03.06.1873	YES	1873
79	1873	Pleno	Belém do Pará	General administration	Confraternity; Discipline	[…] Sobre os recursos interpostos pelas […] Ordens Terceiras de N. Senhora do Monte do Carmo e de S. Francisco da Penitência e pela Confraria do Senhor Bom Jesus dos Passos, […] do Pará, contra o ato do […] prelado […] [pelo] qual foram suspensas do exercício das funções religiosas, […] interditas as suas capelas.	26.07.1873	YES	1873

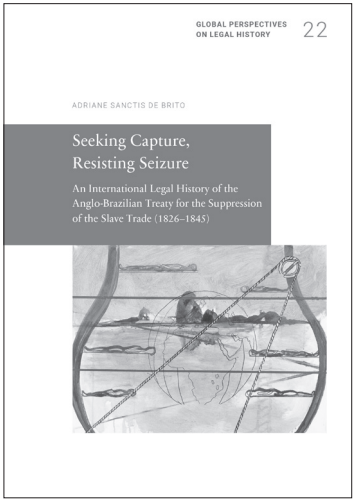
80	1873	Império	Rio Grande do Sul	Cathedral chapter	Insignias; Discipline	[…] Sobre a representação do cônego honorário da Capela Imperial, Francisco Teodósio de Almeida Leme, contra o ato do pároco da freguesia de Cruz Alta que não permitiu que ele usasse suas insígnias para pregar.	18.09.1873	YES	1873
81	1873	Pleno	Olinda; Belém do Pará	General administration	Administration; Confraternity; Provision of offices, benefices; Discipline	Se o governo imperial […] pode […] ordenar a suspensão [de um bispo] do exercício de suas funções. No caso afirmativo, como e por quem será regida a diocese. Se das suspensões e interditos […] ex informata conscientia […] é denegado o recurso à Coroa em qualquer caso […].	08.11.1873	NO	
82	1874	Império	Olinda	Provincial administration	Placet. Discipline	[…] Recurso do procurador da Coroa do Tribunal da Relação de Pernambuco, do ato do Bispo de Olinda que mandou publicar e observar, sem o devido beneplácito, um breve pontifício.	15.01.1874	NO	
83	1874	Império	Olinda	Cathedral chapter	Discipline	[…] Representação do Cônego João José da Costa Ribeiro, vigário colado da freguesia de S. José do Recife, contra o ato pelo qual o Reverendo Bispo de Olinda o suspendera do exercício de suas ordens, e das funções do benefício.	04.03.1874	YES, against petitioner	1874
84	1874	Império	Olinda	Priest	Discipline	[…] Recurso do Padre Bartolomeu da Rocha Fagundes, vigário colado da freguesia da capital do Rio Grande do Norte, do ato pelo qual o Bispo de Olinda o suspendeu de suas ordens, ofícios e benefícios.	16.03.1874	YES, against petitioner	1874
85	1874	Império; Justiça	Olinda	General administration	Provision of offices, benefices	[…] Durante impedimento do Bispo de Olinda de reger sua diocese, por quem e como deve ser esta, administrada [?] – Ao bispo cabia direito de nomear o administrador da diocese […]? Em caso negativo, como cumpre proceder[?]	28.04.1874	NO, to Plenary Council	
86	1874	Pleno	Olinda	General administration	Provision of offices, benefices	[…] Questões relativas ao governo da diocese de Olinda, depois da pronúncia e condenação do bispo.	29.05.1874	YES	1874
87	1874	Império	Rio de Janeiro	General administration	Provision of offices, benefices	[…] [Sobre] constituição de S.S. o Pontífice Romano, relativa à administração das dioceses durante vacância das sés episcopais, e aos sacerdotes nomeados ou apresentados para estas pelos governos estaduais.	28.11.1874	YES	1875

88	1874	Império	Belém do Pará	Provincial administration	Procession; Discipline	[…] Sobre ofícios do presidente da província e da Câmara de Belém sobre não haver permitido o governador do bispado a saída da procissão do Corpo de Deus.	11.12.1874	NO, to Section of Justice	
89	1874	Império	Bahia	General administration	Provision of offices, benefices	[…] Sobre a validade das eleições do vigário capitular do arcebispado.	16.12.1874	NO	
90	1875	Pleno	Olinda; Belém do Pará	General administration	Provision of offices, benefices; Discipline	Tendo declarado os governadores dos bispados […] que não lhes foi delegada, jurisdição para levantarem os interditos lançados pelos ditos bispos, pode o governo retirar o reconhecimento das nomeações […]? […] Deve [o governo civil] ordenar a eleição de vigários capitulares e insinuar aos cabidos pessoas idôneas? […]	23.01.1875	NO	
91	1875	Justiça	Belém do Pará	General administration	Procession; Discipline	[…] Sobre o [parecer] remetido pela Seção do Império a respeito de haver o governador do bispado negado permissão para a realização da procissão do Corpo de Deus.	24.04.1875	NO	
92	1875	Pleno	Olinda; Belém do Pará	General administration	Discipline	[…] Sobre a falta de governo eclesiástico nas dioceses pela questão surgida com os respectivos bispos; anistia.	08.09.1875	NO	
93	1876	Império	Olinda	Cathedral chapter	Discipline; Means of sustaining	[…] Requerimento do deão da sé de Olinda, Joaquim Francisco de Faria ao Bispo de Olinda, sobre pagamento de côngruas, não recebidas por sua suspensão ex informata conscientia.	25.03.1876	NO	
94	1876	Império	Olinda	General administration	Discipline	Documento relativo à anistia concedida aos reverendos de Olinda e Pará.	21.11.1876	UNKNOWN	
95	1878	Império	Rio de Janeiro	Provincial administration	Means of sustaining; Foreign clergy	[…] Pagamento de côngruas ao Padre Rafael Faraco, como pároco colado de Garopaba, desde sua colação até sua naturalização.	10.05.1878	YES	1878
96	1880	Império	Olinda	General administration	Means of sustaining; Discipline	[…] Sobre o pagamento de côngruas do deão da sé de Olinda Dr. Joaquim Francisco de Faria, durante o tempo da suspensão ex informata conscientia […].	10.06.1880	NO	

97	1881	Império	Bahia	Cathedral chapter	Provision of offices, benefices; Discipline	[…] Sobre o recurso do Cônego João Gonçalves da Cruz contra o ato do cabido que o empossou na quarta cadeira de canonicato de meia prebenda da sé metropolitana e não na segunda.	03.07.1881	YES, against petitioner	1881
98	1881	Império	Olinda	General administration	Provision of offices, benefices	[…] Sobre o concurso feito na diocese de Olinda para o provimento de diversas igrejas paroquiais.	18.08.1881	NO	
99	1882	Império	Maranhão	Provincial administration	Provision of offices, benefices	[…] Sobre a concessão de honras de cônego feita pelo prelado da diocese.	31.01.1882	NO	
100	1882	Império	Olinda	Bishop	Sacred places; Seminary	[…] Sobre a mudança da Catedral da Igreja do Santíssimo Salvador de Olinda para a de N. Senhora do Carmo da cidade de Recife.	20.11.1882	NO	
101	1888	Império	São Paulo	Priest	Provision of offices, benefices; Discipline	[…] Sobre recurso do Padre Francisco Gonçalves Barroso, contra negativa de provimento da cadeira de cônego da Catedral de São Paulo.	31.10.1888	NO	

About the Author

Anna Clara Lehmann Martins is a legal historian and jurist currently holding a researcher position at the Max Planck Institute for Legal History and Legal Theory (mpilhlt). Her recent work focuses on the global governance of the Catholic Church in contemporary times, encompassing central and local perspectives (especially Latin America), besides the relationship between canon law and secular legal systems. As part of the Department Historical Regimes of Normativity, she is active in the Research Group "Normative knowledge in the praxis of the Congregation of the Council" led by Benedetta Albani, where she develops a personal project on how the Holy See governed the migration of secular priests between Europe and the Americas (19th–20th centuries). She holds a cotutelle doctoral degree in law from the Universidade Federal de Minas Gerais (UFMG) and in modern and contemporary history from the Universität Münster, having elaborated her doctoral dissertation as part of the Max Planck Research Group "Governance of the Universal Church after the Council of Trent" led by Benedetta Albani at the mpilhlt until 2021. She is a member of *Studium Iuris* – Grupo de Pesquisa em História da Cultura Jurídica, led by Ricardo Sontag at the UFMG. She is fond of writing letters and fiction, singing, and drawing.



Adriane Sanctis de Brito

Seeking Capture, Resisting Seizure

An International Legal History of the Anglo-Brazilian Treaty for the Suppression of the Slave Trade (1826–1845)

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