

# Cross and Crown: Church, state and jurisdictional conflict in colonial Maranhão

Pollyanna Gouveia Mendonça Muniz\*

## RESUMO

Nunca foram bem definidos os limites entre as jurisdições da Igreja e do Estado. As questões tornaram-se ainda mais conflituosas quando, no século XVIII, ascendeu ao poder o ministro marquês de Pombal com sua política regalista que tentava cada dia mais secularizar o Estado português. Mesmo distante da metrópole, o bispado do Maranhão vivia igualmente esses conflitos. As relações tensas entre as autoridades que representavam a Igreja e o Estado no norte da colônia são o foco principal deste artigo. Através do cruzamento de fontes do Tribunal Episcopal, do Juízo da Coroa e até da Inquisição de Lisboa é possível acompanhar os motivos dessa disputa de jurisdição e como se dava o desrespeito às imunidades eclesiásticas.

Palavras-chave: Igreja; Estado; jurisdição.

## ABSTRACT

The jurisdictional boundaries between Church and state were never well defined. In the 18th century they became even more contentious following the rise to power of the Marquis of Pombal and his regalist policy which attempted to secularize the Portuguese state. Despite being distant from the metropole, the bishopric of Maranhão also experienced these conflicts. The tense relations between the authorities representing the Church and state in the north of the colony are the principal focus of this article. By looking at sources from the episcopal court, the crown court and the Inquisition, the reasons for these jurisdictional conflicts will be looked at, as well as how the ecclesiastical immunities were treated with contempt.

Keywords: Church; State; jurisdiction.

In the Bull *Dudum pro parte*, dated 31 March 1516, Pope Leo X conceded the universal right of patronage (*Padroado* in Portuguese) of all lands subject to the dominion of the Portuguese Crown. The Order of Christ received jurisdiction over all the churches built in the two years prior the Conquests and those which would be built in the future. In addition, the order was to receive

\* Universidade Federal do Maranhão (UFMA). Departamento de História. Rua Raimundo Pimenta, s/n, Floresta. 65200-000 Pinheiro – MA – Brasil. pollyannagm@yahoo.com.br

tithes and the Crown the right to patronage.<sup>1</sup> This involved “a combination of rights, privileges and duties, conceded by the papacy to the Portuguese Crown, as patron of Catholic missions and ecclesiastic institutions in Africa, Asia and Brazil.”<sup>2</sup> This gave the king the authority to accept or reject papal bulls; choose, with the approval of the papacy, representatives of the Church overseas; build and authorize the construction of churches, cathedrals, monasteries, cemeteries and convents, amongst other attributions.

Since the beginning of colonization of Brazil and of other areas in the Portuguese Empire, the cross and the crown had marched together. However, although patronage gave the king the right to interfere in ecclesiastic questions, relations between Church and state were not always friendly. Discussions about this were very old. There were serious defenders of ecclesiastic immunity and occasionally conflicts of jurisdiction were latent. In relation to the right to patronage, Arlindo Rubert states that its exaggerations were common. According to him, “the ministers of the Crown, supported by some canonists, especially the religious, took the so called *rights of patronage* so far that they made the king” – after the perpetual union to the Crown of the Masters of Military Orders – “a type of ecclesiastic head, upon whom depended all jurisdiction. Lay and religious jurists openly considered the king, in relation to the Overseas Church, a type of Apostolic Vicar and even a natural pontifical legate!” (Rubert, 1981-1993, vol.1, p.50).

Although he exaggerates a little, Rubert was correct in part. Secular authorities frequently justified their attacks on ecclesiastic power evoking the sovereignty of the king.<sup>3</sup> Gabriel Pereira de Castro, an important Portuguese jurist, spent a long time clarifying it, as the question was so complex. His work *Monomachia sobre as concórdias*, published in 1638, dealt with the agreements that the kings of Portugal had made with their prelates to try to determine the limits between the ecclesiastic and secular jurisdictions. He demonstrates that since the expulsion of the Moors from Portuguese territory there had been discussions about this, and that the first kings allowed prelates to make decisions concerning themselves and to protest when the secular hindered them or when temporal jurisdiction was exceeded.<sup>4</sup> From the thirteenth century onwards, during the reign of D. Afonso II, complaints and the swapping of accusations between the secular and ecclesiastics became more constant. Doubts and quarrels continued over the years, until 1457, in the reign of D. Afonso V, the first Concordia were jointly drawn up by these powers.

Gabriel Pereira de Castro included in his work letters exchanged with Francisco Suárez, a professor theology in Coimbra. These letters help to un-

derstand the discussions that took place between Church and State, especially in relation to the privilege of jurisdiction and the defense of the king's against the ecclesiastic power. Castro and Suárez discussed from where the king's right to interfere in Church matters came. The former stated that the right of kings had always existed and the reasons for this were very clear

because temporal and political jurisdiction was not conceded by Kings to the Supreme Pontiffs, since before God Our Lord came to the world, from whom the Ecclesiastic Power was delegated to S. Pedro, head of the Apostolate of Christ, and from him to his Successors, there were Kings who had temporal jurisdiction given immediately by God, and mediated through peoples.

Suárez, in turn, states that the right to ecclesiastic exemption was limited by divine will, which implied that "men could not by human potency, voluntarily diminish custom, because they could not prevail against the Divine will, against what He granted the right to."<sup>5</sup>

In another of Castro's works, *De manu regia tractatus*, from 1622 – which was prohibited from being certified by the Congregation of the Index on 26 October 1640 –, the author left it in the *Praeludium* of the work that the king could intervene to help those who considered themselves wronged, even if in doing this ecclesiastic immunities were infringed.<sup>6</sup>

Luís Reis Torgal states that these disagreements involving Church and State occupied a primordial place in all European countries, especially in the sixteenth and seventeenth centuries, even in those states which were essentially or even totally linked to Rome. This was a question which had a dimension that was not just religious, rather it was principally political, linked to the affirmation of nationalities and the growing power of monarchs.

The author spends a long time explaining how these questions were processed in different European countries. In France, for example, Gallicanism was stressed which "without breaking with Rome, loudly affirmed the temporal superiority of its king, who presented himself, on the other hand, as the protector of the liberties of the Church." In Spain and in Portugal, which were similar in many aspects, it was tried to highlight the respect due by the state to the Church, without however denying regal authority and independence.<sup>7</sup>

In Spain, for example, the work *Historia legal de la Bula llamada "in Coena Domini"*, published in 1768 by Juan Luis López – but which collected petitions made to the Holy See from 1254 to 1698 –, describes in detail cases

of conflict and overlapping of jurisdiction. In the prologue the author clarifies his position in favor of royal sovereignty, stating that

the independent spiritual power in its functions aimed at the salvation of men, has often confused the privileges which the Churches and the Clergy have conceded to the King and Emperors claiming to hold divine right an immunity whose origin is owed to a large extent to the Catholic Princes, as is recognized by St. Thomas.

Juan López also criticizes the attitude of bishops who, according to him,

not a few have entered into temporal subjects, prejudicing the Regalia and authority of Princes and their Tribunals. The acquisition of estates and other temporal rights has been another of the causes of the confusion between the Empire and the Priesthood.<sup>8</sup>

Even in Spain and Portugal, where relations with Rome were at some moments very close and the right to patronage was a reality, many points of controversy emerged. The motives for these conflicts of jurisdiction invariable arose out of the affirmation of political power. Regal tribunals were the place *par excellence* where these disputes gained greatest force. Laypersons, generally royal officials, appealed to the civil power whenever they felt wronged by ecclesiastic authorities.

These were made in the form of appeals to Crown courts. In relation to these, Cândido Mendes de Almeida has stated that these were “an expedient which used the temporal power to influence, dominate and subordinate the decisions of the ecclesiastic power,” under the pretext that the king was responsible for “the task of protecting his subjects from oppression and violence.” Almeida states that it was only during the reign of the Philips that this question was defined, since

the excess of the fourteenth century was transformed into law and as regulated by the new legislation prepared at the end of the sixteenth century, despite protests from Rome ... but some hypocritical deference was still kept towards the ecclesiastic authorities. This deference little by little fell into disuses, with Jansenist-Gallician doctrines dominating in during the eighteenth century, especially during the reign of D. José I, sufficient demonstration of which is the License dated 18 January 1765, issued in hatred of the Ecclesiastic Authority,

with not a few arbitrary decisions being practiced in Brazil and other Portuguese colonies.<sup>9</sup>

Civil jurisdiction operated by sending letters rogatory which were passed to the ecclesiastic judge if in the understanding of the secular judge there was violence or excess on the part of the former. The letter stated “*ElRey* (the King), entreats and asks you to desist from the force you have taken against his vassal, declaring that if this is not done, he will neither save his Censures, nor procedures, whichever is the most apt mode to defender temporal jurisdiction.”<sup>10</sup> If the ecclesiastic judge still refused to obey the royal orders, *temporalities*, were used against him. In this case the ecclesiastic authority lost all his power, servants were not to serve him and he was ‘imprisoned’ in his own house without right to the necessities for his subsistence. In the last case *desnaturamento* (literally to disfigure) could be resorted to, in other words, he could be expelled from the kingdom, though this could only happen after the monarch had been informed.

#### EPISCOPAL TRIBUNAL *VERSUS* CROWN JUDGE: CHURCH AND STATE IN CONFLICT

At the level of diocesan administrations the tendency towards the general reform of the Church, which occurred in a more ordered manner after the Council of Trent (1545-1563), had a profound impact. With the widening of their powers, prelates immediately sought to have the Tridentine decrees approved in their dioceses. According to Giuseppe Marcocci this required the holding of synods and provincial councils.<sup>11</sup> This legalist reflex, which occurred through the promulgation of diocesan constitutions in harmony with the ideas defended by Trent, only ceased when all the bishoprics had their own normative codes.

A testament of this organizational and religious concern of the Church was the promulgation of the First Constitutions of the Archbishopric of Bahia in 1707. This synod adapted the Portuguese colony in America to the Tridentine decisions. Linked to the 1704 Regulations of Ecclesiastic Courts (*Auditório Eclesiástico*) – which provided rules for the functioning of the tribunal and detailed the functions of its agents –, the first constitutions became the principal legislative code for the Episcopal Tribunals in Brazil, stating which crimes were under ecclesiastic jurisdiction, as well as their punishments. As in all the bishoprics, these hearings functioned under the aegis of the bishop, who had

jurisdiction in two distinct situations: in relation to the person and in relation to the subject. In relation to the person, he could judge the offenses committed by the secular clergy. In relation to the subject, some forms of illicit behavior, irrespective of whoever practiced them, due to the nature of these offenses came under ecclesiastic jurisdiction.<sup>12</sup>

Among the important points discussed in the Constitutions of Bahia were the *ecclesiastic immunities*. The title “The immunity and exemption of ecclesiastic persons” states that these were “exempt from secular jurisdiction, to which those who due to the dignity of the Priesthood and Clerical Office are thus the spiritual masters of lay people cannot be subjected,”<sup>13</sup> in other words ecclesiastics would be judged in their own courts with privileged jurisdiction. In relation to this defense of immunities, María Luisa Candau Chacón comments that

Due to these immunities, our clerics possessed separate courts – and even Episcopalian prisons – depending for the most common offenses on the ecclesiastic hierarchies; thus, one further privilege inherent to their status and condition, the use of this jurisdiction inhibited the secular arm from pursuing law cases, even in those circumstances when civil authorities were implicated.

While the clergy had the right to a privileged jurisdiction of ecclesiastic judgment, laypersons were not immune to the jurisdiction of prelates. In addition to discussions about the monarch and his officials’ disrespect for ecclesiastic immunities, Churchmen also defended their right to judge laypersons in their courts. In both tribunals there were *mixti fori* questions, in other words, those to which came under both ecclesiastic and secular jurisdiction. Laypersons, however, could appeal almost without except to secular authorities, alleging that the ecclesiastics had used force. The interests of the Episcopal Courts were thus opposed by those of the secular courts, the Crown Courts.

Secular judges, in turn, alleged that in addition to the right to judge the crimes committed by laypersons, in Book I of the 1603 Philippine Ordinances of the Kingdom there appears the title *Dos Juizes dos Feitos de El Rei da Coroa*, (The Judges of the Deeds of the King of the Crown) in which it can be seen that these judges could judicially act in cases involving ecclesiastic persons if the issues involved came under civil jurisdiction, such as the presentation of Churches under Patronage and the use of arms and lands, amongst others. After “judging that the knowledge belongs” to secular justice “and not to Ecclesiastic,”<sup>14</sup> they were ordered to proceed against these clerics without fearing excommunication to which they were subject and with which they were

threatened by the authority of the prelate under the allegation of the usurpation of jurisdiction.

In the bishopric of Maranhão the secular and ecclesiastic authorities clashed from early on, which must have been common in other parts of the colony. What is of interest to us is the conflicts involved priests and royal officials, since in the Ecclesiastic Court archive there are 21 lawsuits against secular priests – or 12.3% out of a total of 170 records – which mention appeals made to secular courts and use annexed lawsuits, inquiries or summaries, which had been produced by their agents. In the collection of the Overseas Council, in turn, there are 121 documents for the eighteenth century which demonstrate that the notification and sending of complaints against priests to royal officials was very common.

An emblematic lawsuit in this sense is the one taken against the Parish Priest of Oeiras, Dionísio José de Aguiar, in 1784. His own parishioners sent complaints against him to the queen, Maria I., in Lisbon. She then wrote to the Bishop, Fr. Antonio de Pádua, stating that Fr. Dionísio behaved with “irregular and scandalous conduct” participating “in all forms of secular business,” having a “genius for perturbation and discord,” and that he was not concerned with administering the sacraments. She ordered the prelate to have the cleric’s behavior investigated through a *devassa* (an official inquiry).

The bishop did this. He sent two commissioners to Oeiras, Fr. Henrique José da Silva and Canon João Maria da Luz Costa who in secret opened an investigation in Vila de Moucha and took statements from many witnesses, with Fr. Dionísio being pronounced guilty, deposed from his position, fined 200,000 réis and sent under arrest to the bishop’s seat.

After being condemned the reverend, who had been the parish priest of that town for more than 22 years, did not accept the orders of the bishop, nor his privileged jurisdiction in the Episcopal Court, appealing his sentence to the Crown Court. He came under the protection of the ‘enemies’ of the prelate, Fr. Antonio de Pádua, because since the beginning of his administration, the latter had been in constant conflict with the governor José Teles da Silva, almost always for reasons of the usurpation of jurisdiction. The royal court came to analyze the conflict while the prelate maintained the decision to arrest the cleric. From this point it is possible to see how these conflicts of jurisdiction occurred in the daily practice of these courts.

The Royal Court in Maranhão consisted of the *ouvidor geral* (attorney general), Manuel Antonio Leitão Bandeira; the *procurador da coroa* (crown attorney) and district judge Antonio Pereira dos Santos, and the lawyer José

Felix da Silva. It was to these people that Fr. Dionísio turned to in order to make a Civil Act of Appeal against the bishop, Fr. Antonio, in the Royal Court of the Crown Tribunal of the City of “Juizado Régio do Tribunal da Junta da Coroa da Cidade do Maranhão.” In his petition to D. Maria I he stated that he had resorted to royal support “due to the force, violence, trespass and injury done to him by the Rev. Bishop of this Bishopric.”

Fr. Dionísio alleged that the reason for the reprehension of his prelate was because he had not accepted that a mulatto named Baltazar dos Reis Pinto receive ecclesiastic jurisdiction, as desired by the Vicar General Francisco Matabosque, because he was a soldier and held the position of captain of foot. Since he disobeyed the orders he had an accusation of disobedience and injury made against him, and he lost the keys and books of the Church, which the prelate ordered to be handed over to the commissioner, Canon João Maria da Luz Costa. The condemned priest said that he “appealed to the Bishop believing that he would find in him the peace that Shepherds should seek among their sheep, however, he found greater violence.” It was then that he chose to appeal to the Crown Court, since, according to him,

Her Majesty promised to protect all her vassals against the unjustly drawn sword of the Church, as declared in the Provision of 10 March 1764 and similar proceedings which were the cause for Her Majesty to take pious measures to create in Brazil Crown Courts so that through them your vassals would be free from the violence they had suffered from the Prelates and Ecclesiatic Ministers, as can be seen determined in the License of 18 January 1765.<sup>15</sup>

The bishop Fr. Antonio de Pádua had really ordered Fr. Dionísio’s arrest and sent him to São Luís. In another document it can be seen that the prelate used the prerogatives of the first letter Maria I had sent him from Portugal – the one which ordered the priest’s behavior investigated – to have proceedings carried out against him. Fr. Antonio resolved to write to the governor José Telles da Silva complaining about usurpation of his jurisdiction, since the Prior of the Convent of Mercês did not want to receive the prisoner due to an order of the governor. Later he adds

The Defendant with this patronage which he found in Your Excellency found... hit the officials who accompanied him and retreating into some houses that had been rented to them, he locked them in and threatened that if they came back he would teach them a lesson. I ordered the Reverend Defendant

summonsed and in contempt of my summons he said to my officials that I was not his Prelate and he was only subject to the Crown Courts.<sup>16</sup>

Indignant with the governor's orders, the bishop asked him to correct this error, which not only affected his jurisdiction and person, but also the initial royal orders which were to punish the offending priest. Not satisfied he wrote to the queen on 26 December 1785, stating that he was the victim of this dispute and he had been prejudiced by the usurpation of his jurisdiction.

A year previously in 1784, the prelate wrote to the Secretary of State for the Navy and Overseas, Martinho de Melo e Castro, annoyed with what he considered to be the arbitrariness and abuse of the secular power. *Temporalities* had been decreed against him with the result that the bishop had lost his authority. He stated that he had obeyed the decision which ordered the priest to be found innocent and restored to his church, but complaining about crown officials, he stated:

I was indignantly treated by that *Junta*, using against me scandalous accusations, which far from being guaranteed by the law of temporalities, are repressed by it. It is enough to state that I was proclaimed by the Porter in the streets of the city of Maranhão, with the people being told not to assist me in any convenience in life, and furthermore, it was alleged that this was in agreement with the holy law, which explicitly orders this, otherwise due respect for ecclesiastics would be lacking.

He did not neglect to emphasize that the proper functioning of that institution would be injurious to the fundamental laws of the Royal Juntas of the Crown in America. He stated, for example, that in the Junta of Oeiras there was a *relator* judge who barely knew how to read or write and that the function of assistants – which was only supposed to be filled by graduates – was occupied by surgeons, apothecaries or some lawyer trained in Pernambuco. Finally, he asked that Melo e Castro observe “the many disorders sown in those lands between the priesthood and the Empire by the abuse the Crown *Juntas* make of the power which Her Majesty granted them.”

It was no use. The Crown Attorney was firm in defense of Fr. Dionísio. More than this, he was firm in defense of secular jurisdiction and tried at all costs to reduce the importance and even the legitimacy of the power of prelates. According to him, “the temporal power looks to the world, works on the body, and all that is temporal” while “the spiritual body looks to heaven, and works on the soul.” For him the bishop had “passed the limits of the concession

and Royal Jurisdiction” and for this reason on 5 January 1786, annulled the decisions of the prelate against the priest. The *Junta das Justiças* considered the question two days afterwards, ordering Fr. Antonio de Pádua to restore Fr. Dionísio to liberty, as well as the possession of his church.<sup>17</sup>

It is not difficult to determine why priests, despite having the right to a privileged jurisdiction in the Ecclesiastic Courts, resorted to royal authority, especially if we take into account that of the 21 processes in which these priests resorted to the Crown Court, 18 were judged after 1750. In the second half of the eighteenth century the Portuguese scenario altered profoundly due to the reforms implemented by the Marquis of Pombal, inspired by an assumed regalism.<sup>18</sup> This policy defended that the civil and spiritual powers were never equal and at the utmost could only be thought of as complementary.

This was the period of the reign of José I in Portugal, in which it was sought to strengthen royal authority, but also giving due importance to the spiritual. In this context Jansenism<sup>19</sup> played an important role for the grounding of royalist practices, especially because it was related to the specificity and independence of the temporal and spiritual powers especially the desacralization of the temporal power. In the second half of that century diplomatic relations were broken between Portugal and the Holy See, which confirms the alteration of the Portuguese religious and political scenario.

The licenses of 10 March 1764 and 18 January 1765 are a witness to this moment of reforms which advanced in the judicial field above all. These determined that the common jurisdiction of prelates was restricted to purely spiritual matters, prohibited the institution of the *alma por herdeira* (having one’s soul as an heir), restricting the ancient liberty of leaving legacies for the Church and for masses for one’s soul (called *pios*, *capelas* and *sufrágios* in Portuguese). This is further proof that the Pombaline laws did not save the power of the prelates. These authorizations were only gradually accepted, but their evocation could be accompanied in many cases in Maranhão at the end of the eighteenth century.

The dispute involving the priest, the bishop and the secular authorities was not, as has been stated, an isolated fact in the ecclesiastic history of Maranhão. Relations between these authorities oscillated between periods of collaboration and, principally, conflict, especially because between 1761-1778 the nephew of the Marquis de Pombal, Joaquim de Mello e Póvoas, was in charge of the civil government in Maranhão. As soon as he took office, Mello e Póvoas began to intervene in the administration of the then bishop, Fr. Antonio de São José – who governed the bishopric of Maranhão between 1756-

1778 – substituting clerics with bad reputations in various parts of the bishopric. The prelate, however, chose to maintain them in their parishes. The governor considered this as an affront, while the bishop complained of the usurpation of his jurisdiction. In one of these discussions, the prelate excommunicated the governor, accusing him of being a persecutor of the Church.

In order to understand a little of this scenario of latent conflict, it is necessary to draw on the documents in the *Arquivo Histórico Ultramarino*, since for this period in particular there are few cases in the Ecclesiastical Court of Maranhão. This is most notable for the 1770s, for which curiously there are no appeal cases to the Royal Court. Although it can be supposed that these were quiet years for the ecclesiastic administration, a series of letters and complaints sent to the metropole by ecclesiastic governors, such as Frs. Filipe Camelo de Brito and João Duarte da Costa, fill this gap and prove the opposite.

They assumed this function after the bishop Fr. Antonio de São José was summoned back to the kingdom on 18 July 1766, due to constant disagreements with governors. The conflicts occurred because the civil authorities had involved themselves in questions which did not belong to their jurisdiction, in relation to both the judgment of clergy and laypersons. The cannons asked for royal protection to resolve these questions and more importantly that their jurisdiction been respected. However, the complaints continued. In 1772 the two priests sent a letter to the Metropole complaining that

seeking for as much as it is possible for us, the service of God, and to receive the royal pleasure of Your Majesty: however, since the Crown Court of this city has in some form inhibited ecclesiastic jurisdiction in such a way that it has hindered our use of it; since the parties in any action, decision or sentence, without them being denied the ordinary means to appeal to their Ecclesiastic superiors, make appeals to the said Royal Crown Court of Your Majesty where they are commonly successful.<sup>20</sup>

In a letter sent almost two decades earlier, in 1756, to the then king D. José, there appeared the concern with clarifying how the secular court should function in Maranhão and how to proceed in cases and appeals from the Ecclesiastical Court to the Crown Court. This missive stated that the Overseas Council (*Conselho Ultramarino*) was informed by the appeals court and district judge of Maranhão, Gaspar Gonçalves dos Reis, “that in order to discover the causes of the Appeals made for the Ecclesiastical Court to the Crown Court of His Majesty” and that there was “in that city one graduated as an Attorney and

two Assistants, one an Ecclesiastic, and the other Secular, who is a layperson due to the lack of a diploma.”

The document was concerned with clarifying that the aim of the law dated 19 February 1752, stated that for the territories of Maranhão and Pará, cases and appeals would be resolved “in relation to that district in which it is intended to do justice, excusing the reported delays,” this is because the “*comarcas* (districts) of the two captaincies of Pará and Maranhão were very distant in relation to this Court.”<sup>21</sup> As a result a judicial structure was formed which was more independent from the metropolitan power, which also reduced the expenses of the parties involved.

The result of these alterations was an increase in the autonomy of the power of secular judges. More than 20 years after this first letter, during the Mello e Póvoas government the *Junta das Justiças do Maranhão* (Council of Justice of Maranhão) was created. In a 1775 letter, Mello e Póvoas described the need to create mechanisms to make the resolution of conflicts more dynamic, but only in 1777 was his request answered through a Royal Letter.<sup>22</sup> Its aim was to solve an old problem, since when an ecclesiastic judge did not obey the ruling of a Crown Court, he was obliged to return to Portugal on the first ship to resolve the conflict in *Desembargo do Paço*. The Council of Justice, however, changed this scenario. This Junta was presided by the *ouvidor* (attorney general), who had a district judge and a lawyer or jurist as assistants so that appeals could be solved as quickly as possible.

The creation of the Council of Justice in Maranhão undoubtedly represented a victory of secular justice which, supported by a court with greater freedom to resolve conflicts previously sent to the Court in Lisbon, became a scenario of great conflict with the agents of ecclesiastic justice. It was not that this conflict did not exist previously, but the possibility of being judged in Maranhão by attorney general and royal agents who dealt directly with prelates and ecclesiastics gave a more serious tone to disputes which previously had taken years to find solutions on the other side of the Atlantic. The creation of the Council of Justice in Maranhão is thus responsible for the increase in the number of cases in the Ecclesiastic Court of Maranhão in the later period, and the consolidation of measures in favor of royal power which had been drafted since the *Pombaline* period.

In addition to the conflicts that have already been seen, there were cases of the usurpation of the jurisdiction of the Bishops of Maranhão in which priests were judged directly by secular justice without their prelates being consulted. An example of this is the proceedings involving Fr. José de Sousa

Machado in 1759. He publicized a false story that large amounts of gold had been found in the Angicos plantation in the Iguará *sertão*. The governor, Gonçalo Pereira Lobato de Sousa, sent many expeditions there at great expense to His Majesty's coffers. After nothing was found the cleric sought the bishop, still Fr. Antonio de Pádua, to complain about the excesses of the secular agent who had ordered that a summary complaint against him been drafted without the orders of the prelate.

Bishop and governor did not reach a consensus and a breach was inevitable. The governor, who had ordered the priest arrested, had to hand him over to ecclesiastic jurisdiction. The prelate, however, received a new order on 19 April 1759 to hand over the cleric who was "seditious, rebellious, and disturbing the peaces" to secular jurisdiction and send him "on the first ship leaving this port for that of Lisbon."<sup>23</sup> The prelate complained again to the king, stating "they did not take into account Ecclesiastic jurisdiction, the censures of the Church, and the dogmas of religion." However, the cleric was not considered only an enemy of the Church, but also of the king of Portugal.

Another who was judged and imprisoned by the civil authorities was the priest José Afonso. In 1798 he was accused in Oeiras of forming "conventicles and causing disorder" against the governor of Piauí, D. João de Amorim Pereira. The reverend was accused of criticizing and outraging public officials, disrespecting the governor and creating disturbances to the public peace. The priest appealed to the Episcopal Court alleging that what was occurring was "a lay judge and for layperson, elevated over the sacredness of canon law, and intending to indirectly drag an Ecclesiastic, who enjoys privileged jurisdiction, and of Canon Law, into its court." The cleric asked that he be helped by "his own legitimate superior, in whose court he should be heard and convinced" so that "the sickle will not be used in the harvest of others... giving to Caesar what is Caesar's, and to God what is God's."<sup>24</sup>

The priests of Maranhão demonstrated their dissatisfaction with the disrespect for their jurisdiction by the staff of the Crown Court by writing to the kingdom. From these letters it is possible to consider questions that left no traces in the cases in the Ecclesiastic Court. An example of this is the report sent to Martinho de Melo e Castro, Secretary of State of the Navy and Overseas, in 1772 by canons João Duarte da Costa and José Marinho Sampaio, about the obstacles they had been meeting in the attempt to run the bishopric in the period of a vacancy. They complained of having placed

in the presence of His Majesty some of the cases in which the Attorney General of this Captaincy has, with the intent of discovering through an appeal to the Royal Crown Court all our procedures, left us in the straitened condition of not being able to exercise Ecclesiastic jurisdiction, nor administrate to the different parties the justice we owe.

The canons stated that everything started because the *Cabido* (Chapter) had ordered the provision of choir boys be passed to José Miguel dos Santos. Months later one of the losing candidates for this function made an appeal to the Crown Court, which was accepted. The issue became prolonged and the *Cabido* had to send the “principal records to the Royal Table in Dezembargo do Paço.” The governor also became involved in the question in favor of the royal judge. The canons concluded the letter stating that

for the felicity of a Republic it is very useful that there be a proper union between those who govern the spiritual and the temporal, and that there rarely be discord between them, otherwise there will soon be scandal among the people; with this consideration to remedy all occasions of dissent, we have closed our eyes to many things in which the Governor has interfered in things belonging to Ecclesiastic jurisdiction.<sup>25</sup>

The canons requested royal support for the resolution of these questions, and principally that their jurisdiction be respected. Nonetheless, the complaints continued. Nor were the ecclesiastic judges exaggerating. In the cases appealed from the Ecclesiastic Court to the Crown Court, generally speaking, it was observed that the appellant’s supplication was almost always accepted. Especially when the case involved the top hierarchies – notably bishops, vicars-general and the *Cabido* – the judgment of secular justice was contrary to what the ecclesiastic authorities determined. Victory was almost always the king’s ministers.

The denunciation of the secular power especially occurred when those involved were at the top of the ecclesiastic hierarchy, notably vicars-general. This possibly occurred because defendants had a certain difficulty in accusing and suing vicars-general in Episcopal courts where they were the actual judges. Two good examples are the complaints which reached the kingdom against the canon João Maria da Luz Costa, one for abuse of a slave and for not wanting to release him; another for concubinage with a married woman.<sup>26</sup>

Some incorrigible clerics who had already been denounced in the eccle-

siastic jurisdiction were also denounced in the secular court. Fr. Thomás Aires de Figueiredo is one of the best examples. An obstinate cleric who appeared at least six times in the Episcopal Court of Maranhão, he was also one of those denounced to royal officials. The Attorney General João da Cruz Diniz Pinheiro wrote to the kingdom in 1752, reporting that Fr. Thomás was “subject to perverse customs, which shelter and protect all quality of malevolent men.”

The following year the confusions caused by Fr. Thomás were the subject of another letter, this time from the attorney general and appeals court judge Manuel Sarmento, who demanded measures be taken to ascertain the crimes committed by that priest on the high seas. The *ouvidor* told Diogo de Mendonça Corte Real, the Secretary of State and Overseas, that Thomás was a “bad cleric,” who had “had been involved in thirteen or fourteen deaths” and that he had been incriminated in two *devassas* because he had been carried out “with despotisms in the regions where he lived, as a bad pastor.”<sup>27</sup>

Another example of how these conflicts could reach extreme conflicts is the process taken by the Inquisition of Lisbon against Friar Cosme Damião da Costa Medeiros in 1791. Although he was accused of crimes under inquisitorial jurisdiction, such as *sigilismo* (breaching the confidentiality of confession) and solicitation in confession, Friar Cosme told the inquisitors that the real motives of the accusation made against him were, amongst other reasons, disagreements with the then vicar-general, Fr. João Maria da Luz Costa. Everything had started years before when on Easter Sunday he had given a homily in the chapel of Desterro Church.

According to what Friar Cosme said, the sermon dealt with the flight of Our Lady, and furthermore that “the Doctrine of this sermon was based on the virtue of Holy Obedience which the same Lady practiced in her flight and without any enthusiasm at all other than to encourage all those listening to imitate the same lady in such sublime virtue.” The sermon on obedience, however, would cause him much trouble because it was confused with disobedience. The vicar general was present and did not like what Friar Cosme spoke about since

one of those listening was the District Judge of that city, Antonio Pereira dos Santos, who was an enemy of the said João Maria, the governor of the Bishopric, and, regarding the resources of the Crown, about which he had not received a reply, even saying he had invited the said minister to listen to him and in his presence defend the observance of the Holy virtue of obedience, suspecting that he the defendant had made a satirical piece about the said João Maria and the

bishop of Maranhão, while it was only the truth that he the defendant had not declared to anyone in particular the said sermon and only said that they all should absolutely and that holy persons should obey the principal sovereigns, since being from the Tribe of Levi did not exempt them from the position of subjects.<sup>28</sup>

A new conflict was established between the ecclesiastic government and the secular government in the bishopric of Maranhão. Frei Cosme was a friend of the vicar of Oeiras, Dionísio José de Aguiar – mentioned above and who had created problems years before by appealing to the Crown Court and defying the bishop –, as well as the district judge of São Luís. This must not have pleased the vicar general and the defenders of the sovereignty of ecclesiastic power and privilege. The persecution which would unfold from them should be considered as pedagogical and served as an example to those who sought assistance from royal power to the detriment of the respect they owed to the prelate.

As Friar Cosme said in this statement, at that time temporalities had been declared against the bishop “for not complying with the decisions of the Crown Council in the case of appeals.” Due to this sermon the canon suspended him from the exercise of the orders in the sacristy after the mass and the polemical sermon of obedience. One of the witnesses of the case did not hide his words to link the fact. In relation to the cause of the misunderstandings between the friar and vicar general, he stated that

perhaps some indisposition, with which the same Friar Frei Cosme Damião found against the reverend João Maria da Luz Costa Vigário Geral of that bishopric, who had been a Commissionaire Judge of the *Devassa* which at the order of His Excellency the bishop had been made into the Vicar of the City of Oeiras, such *Devassa* gave rise to the appeal which caused the temporalities.

The attitude of the friar after he was removed from holy orders delimited even more the sides of the conflict. He said that he still tried to appeal the decision in the Ecclesiastic Court, but after being told to deliver his petition to the Vicar General, the latter was said to have stated in front of various people that he stick that paper “in a part that modesty prevents him from saying.” What was left to him was to appeal to the Crown Court. In his own words, after this, “it was then that the anger and slander got even worse.”<sup>29</sup> By bringing the case to the Inquisition in Lisbon, the vicar-general of Maranhão could make real a punishment which had not been possible against Fr. Dionísio José

de Aguiar years before, as shown here, and even against the Crown Court which in the inquisitorial jurisdiction could not protect Friar Cosme as it had done before with the parish priest of Oeiras.

The reports described until now have shown that the scenario of rivalries was constant throughout the eighteenth century, especially during its second half. Notwithstanding the right to privileged jurisdiction and the insistent defense that the prelates and vicar generals tried to make of their exemptions and immunities, the force of that royal patronage could exert on the institutions within the ecclesiastic power cannot be underestimated. Linked to this was the always anodyne and indefinite limit between the two jurisdictions which was, as I have shown, a subject of discussion and conflict within the Portuguese kingdom for centuries.

From complaints of clerics' bad behavior to cases against them which did not go through the Ecclesiastic Court, relations between the Crown Court and the Episcopal Court in Maranhão were almost always strained. Furthermore, this must have been common in other regions at the same time. The overlapping of jurisdictional conflicts between the secular and ecclesiastic spheres is not proof that the administration of justice was confused or disorganized. Rather it explains the multiplication of institutions with their more or less autonomous ramifications, typical of the exercise of power in the *Ancien Régime*, both in the metropole and overseas.

In the colony, where royal officials and the administrators of vacant bishoprics had to confront each other, while also being distant from their superiors, anything could happen. Wherever there was an ecclesiastic official trying to exercise his jurisdiction, there was certainly a secular official trying to interfere in his affairs, and vice-versa. Both sought help by resorting to the monarch to try to resolve the conflict. In a period of the maturation of judicial institutions, royal patronage, regalism, Jansenism, etc., nothing else could be expected. They were spaces where rivalries and personal conflicts gained strength, where temporal and spiritual waged a constant war to determine which would prevail.

## NOTES

<sup>1</sup> In May 1503 a great controversy was brought to a close when Pop Alexandre VI authorized the nuncio to take possession of the Archbishopric of Braga in the name of the Cardinal of Alpedrinha. The brief *Cum te in praesentia* also guaranteed that the King of Portugal, D. Manuel I, could choose whomever he wished to occupy the same archbishopric on its next vacancy. After this Portuguese bishops came to be designated by the king and

were no longer selected by the pope. (PAIVA, José Pedro. *Os Bispos de Portugal e do Império (1495-1777)*. 1.ed. Coimbra: Imprensa da Universidade de Coimbra, 2006. p.42. Also in relation to this, see RUBERT, Arlindo. *A Igreja no Brasil*. Santa Maria (RS): Pallotti, 1981-1993. Vol. I, p.48-49.

<sup>2</sup> BOXER, Charles. *A Igreja e a expansão ibérica (1400-1770)*. Lisboa: Ed. 70, 1978. p.99-100.

<sup>3</sup> In relation to this form of sovereignty, Antonio Vanguerve Cabral stated that “the Prince, who does not know any superior, can grant pardon to criminal kings.” This was justified, according to Cabral, “because the Prince is the absolute Lord in power among his vassals, and also universal Lord of the whole Kingdom.” CABRAL, Antonio Vanguerve. *Epilogo juridico de varios casos civéis e crimes concernentes ao especulativo e practico controvertidos, disputados, e decididos a maior parte delles no Supremo Tribunal da Corte, & Casa de Suplicação com humas insignes annotações à Ley novíssima da proibição das facas, & mais armas promulgada em 4 de Abril de 1719*. Lisboa: Antonio Pedrozo Galram, 1729. p.128.

<sup>4</sup> CASTRO, Gabriel Pereira de. *Monomachia sobre as concórdias que fizeram os reis com os prelados de Portugal nas duvidas da jurisdição eclesiástica e temporal*. 1.ed. Lisboa: José Francisco Mendes, 1638. p.2.

<sup>5</sup> Ibidem, p.8-10 and p.54, respectively. Castro positions himself in defense of royal power. In his view, ecclesiastics could also ask for royal help if they considered themselves wronged by the power exercised by their prelates and other appeal authorities. Moreover, he believed that when kings took advantage of their power to protect subjects for the arbitrariness of the Church, they did not offend its liberty and exemption, much less did they usurp its jurisdiction.

<sup>6</sup> CASTRO, Gabriel Pereira de. *De manu regia tractatus: prima [-secunda] pars: in quo, omnium legum regiarum (quibus Regi Portugalliae invictissimo in causis ecclesiasticis cognitio permessa est) ex jure, privilegio, consuetudine, seu concordia, sensus, & vera decidendi ratio aperitur...* Lisboa: Petrum Craesbeeck Regium Typographum, 1622. pt I, § 6, 7 and 8.

<sup>7</sup> TORGAL, Luis Reis. *Ideologia política e teoria do Estado na Restauração*. Coimbra: Universidade de Coimbra, 1982. v.II, respectively p.53-54 and 54-63.

<sup>8</sup> LÓPEZ, Juan Luis. *Historia legal de la Bula llamada “in Coena Domini” dividida en tres partes en que se refieren su origen, su aumento, y su estado...* Madrid: En la imprenta de D. Gabriel Ramirez, 1768. p.xii and xiii.

<sup>9</sup> Apud SILVA, D. Francisco de Paula e. *Apontamentos para a História eclesiástica do Maranhão*. Bahia: Tipografia de São Francisco, 1922. p.86 and 87, respectively.

<sup>10</sup> CASTRO, Gabriel Pereira de. *Monomachia sobre as concórdias*, 1638. p.19-20.

<sup>11</sup> MARCOCCI, Giuseppe. *I custodi dell'ortodossia. Inquisizione e Chiesa nel Portogallo del Cinquecento*. Roma: Edizioni di Storia e Letteratura, 2004. p.173-174. The diocesan constitutions came to be much more wide-ranging. No longer were they only concerned with limited and occasional questions, they became true normative codes with pedagogical concerns such as the proliferation of Catholic doctrine, in addition to establishing penalties

and offenses which were the jurisdiction of the prelate. They thus went beyond concern with the property of the Church and its clergy, to deal in a more wide-ranging manner with various aspects of the life of the diocese, paying special attention to the sacraments, teaching of the doctrine, the functioning of ecclesiastic institutions; the valorization of the church and faith as the means to save souls – intensifying the control of the behavior of laypersons and ecclesiastics through a rigorous policy of Pastoral Visits, for example; the functioning of the bureaucratic machine in dioceses as well as its judicial apparatus, amongst others. In relation to this, see: PAIVA, José Pedro. *Constituições Diocesanas*. In: AZEVEDO, Carlos Moreira de (Dir.) *Dicionário de História Religiosa de Portugal*. v.C-I. Lisboa: Círculo de Leitores, 2000. p.9-15.

<sup>12</sup> The documentary estates of the Episcopal tribunals were destroyed or are in the possession of ecclesiastic archives which do not allow access to researchers. Until the short while ago what was known about its functioning was what was contained in its rules. The Maranhão archive is currently the sole and largest collection of documents about tribunals of this type open for consultation. It holds an impressive 429 civil and criminal cases against lay and clergy. These documents served as the basis for my masters' and doctoral research, namely: MENDONÇA, Pollyanna Gouveia. *Sacrílegas famílias: conjugalidades clericais no bispado do Maranhão no século XVIII*. Masters' Thesis in History, Programa de Pós-Graduação em História, Universidade Federal Fluminense. Niterói (RJ), 2007; and *Parochos imperfeitos: Justiça Eclesiástica e desvios do clero no Maranhão colonial*. Doctoral Dissertation in History, Programa de Pós-Graduação em História, Universidade Federal Fluminense. Niterói (RJ), 2011.

<sup>13</sup> *Constituições primeiras do Arcebispado da Bahia feitas, e ordenadas pelo Illustrissimo e Reverendissimo Senhor D. Sebastião Monteiro da Vide, Arcebispo do dito arcebispado, e do Conselho de Sua Magestade, propostas, e aceitas em o Synodo Diecesano, que o dito Senhor celebrou em 12 de Junho do anno de 1707*. Lisboa: na Officina de Miguel Rodrigues, 1764. Livro IV, tit I, n. 639, fl. 248. Recently the constitutions have been republished: VIDE, Sebastião Monteiro; FEITLER, Bruno; SALES SOUZA, E. *Constituições primeiras do arcebispado da Bahia*. São Paulo: Edusp, 2010. v.1. 920p.

<sup>14</sup> *Codigo Philippino ou Ordenaçõens e Leis do Reino de Portugal recopiladas por mandado d'El-Rey D. Philippe I*. 14.ed. Rio de Janeiro: Tipografia do Instituto Filomático, 1870. Livro I, tit X, p.34.

<sup>15</sup> Arquivo Histórico Ultramarino (hereafter AHU), Conselho Ultramarino (hereafter CU), Capitania do Maranhão (hereafter CM), doc 5828, fl. 25; fl. 2 v and fl 3, respectively.drff6

<sup>16</sup> Instituto Histórico e Geográfico Brasileiro (hereafter IHGB), Arq 1. 1. 5, fl 314 v.

<sup>17</sup> AHU, CU, CM, doc 5708, fl. s/n, fl. 29, 32 and 38 v, respectively.

<sup>18</sup> In relation to this, also see: CASTRO, Zília Osório. O Regalismo em Portugal: Antonio Pereira de Figueiredo. *Cultura História e Filosofia*, v.I, 1987, p.360; and CATROGA, Fernando. Secularização e laicidade: uma perspectiva histórica e global. *Revista de História das Ideias*, v.25, p.76-77, 2004.

<sup>19</sup> René Taveneaux demonstrates how complex the task of defining Jansenism could be. The influence of space, individuals, and times means that it is difficult to classify this concept. Taveneaux suggests that the term Jansenisms, in the plural, be used. In this way, the risk of uniformization is avoided. TAVENEAU, René. *La vie quotidienne des Jansenistes aux XVII et XVIII siècles*. Paris: Hachette, 1985. p.9-11. A work of reference about the question of Jansenism in Portugal is: SOUZA, Evergton Sales. *Jansénisme et réforme de l'Eglise dans l'Empire Portugais (1640 à 1790)*. Paris: Gulbenkian, 2004.

<sup>20</sup> AHU, CU, CM, doc. 4480, fl. s/n.

<sup>21</sup> AHU, CU, CM, doc. 3660.

<sup>22</sup> Arquivo Público do Estado do Maranhão. *Retratos do Maranhão colonial: Correspondências de Joaquim de Mello e Póvoas, governador e capitão-general do Maranhão (1771-1778)*. São Luís: Ed. SECMA, 2009. p.241 and 281, respectively.

<sup>23</sup> AHU, CU, CM, doc. 3817 and doc. 3813, respectively. In the collection of Arquivo Histórico Ultramarino there appear the following documents about the case: 3804, 3805, 3807, 3813, 3817, 3827, 3866, and 3884. In the collection of the ecclesiastic court it was not possible to find any records about the question, however, Fr. José de Sousa Machado had already been sued in the ecclesiastic forum. The same year as the dispute about the false *eldorado*, 1759, he was sued because he owed 5000 *cruzados* and 33,000 *réis* to Captain José da Silva Costa. Arquivo Público do Estado do Maranhão (hereafter, APEM), Feitos Cíveis de Assinação de Dez Dias, doc. 2572.

<sup>24</sup> APEM, Autuamentos de Ofício, doc. 5287, fl. s/n.

<sup>25</sup> AHU, CU, CM, doc. 4511, fl. s/n.

<sup>26</sup> AHU, CU, CM, doc. 8642, fl. s/n and doc. 6562, respectively. Inácio Luis Domingos states that he still tried to resume the marriage but Josefa was irreducible. They separated and he lost his goods. He ask the he be taken under the protection of the monarch and have his goods to be restored to him. Months later the same Inácio wrote again to D. Maria I asking that some ecclesiastic authority allow his complaint against the vicar-general to continue. AHU, CU, CM, doc. 6639, fl. s/n.

<sup>27</sup> AHU, CU, CM, doc. 3312 and doc. 3395, respectively.

<sup>28</sup> Arquivo Nacional da Torre do Tombo, Tribunal do Santo Ofício, Inquisição de Lisboa, proc. 14880, fl. 40 v. and 39, respectively.

<sup>29</sup> Idem, fl. 47, fl 47 v, fl 153 v. and fl. 83, respectively.