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Clerical Misconduct in Colonial Brazil

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Clerical Misconduct in Colonial Brazil*

In 1741, the Bishop of Maranhão, Fray Manoel da Cruz, was informed about the bad behavior of Father Tomás Aires de Figueiredo, whom the people of the remote village of Aldeias Altas saw many times accompanied by women, including a *mulatta* that lived together with him. In the following years, there were reports about his wrongdoings: in addition to the negligence regarding his sacerdotal duties, he owned lands, cattle and slaves, protected bad men, threatened honored people and had an extremely violent character. Accused of having murdered four men, he was arrested, but a few months later escaped from jail. The priest, finally transferred to a village in the neighborhood of the head of the diocese, continued to transgress, as new denunciations of concubinage and debits demonstrate. Father Figueiredo was »a man in conflict, undeniably as many others in his lifetime«.

This final phrase implies that cases like these were not rare in Colonial America and ends a chapter of the book *Réus de Batina: Justiça Eclesiástica e clero secular no bispado do Maranhão colonial (Defendants in cassocks: ecclesiastical jurisdiction and secular clergy in the bishopric of Maranhão in the Colonial Age)*, written by historian Pollyanna Gouveia Mendonça Muniz. Originally a PhD dissertation presented at the Universidade Federal Fluminense, the most prestigious Brazilian graduate school in Historical Studies, the book deals with the space of the 1677 founded Diocese of Maranhão, which corresponds to the areas of the modern-day states of Piauí and Maranhão, where Muniz is Professor for Modern History at the Federal University. The head of the diocese was São Luís, which was also the capital of the state of Maranhão, some years later renamed State of Maranhão and Grão-Pará, the other administrative division of Portuguese America, which was unified with the Vice-Royalty of Brazil only in the 1770s. The northern part of Portuguese America was therefore directly

subordinated to Lisbon in both administrative and ecclesiastical affairs, and this is probably the reason why studies on these areas are not as frequent as those dedicated to the State of Brazil. In this perspective, the text of Muniz is an interesting study on this vast space.

The book is divided into two parts of three chapters each. The first is named »Inside the ecclesiastical court of the bishopric of Maranhão«, and its main concern is to offer a general description of the court. Chapter one outlines the ecclesiastical jurisdiction in the diocese, which was *sede vacante* for sixty-three years during the 18th century. Consequently, the vicar general had a central role in the practice of ecclesiastical jurisdiction, adjudicating civil and criminal lawsuits under the jurisdiction of the *Auditorio Eclesiástico*. Most of the vicars held doctoral degrees in canon law or in theology, which demonstrates that they had specialized knowledge to rule the cases. Documents also prove that in the 18th century the jurisdiction of the court expanded over distant areas inside the bishopric, particularly through the presence of the *vicar forane* in villages located at great distances from São Luís. The diocese covered a vast area; to demonstrate its size, the author includes a 1764 lawsuit in the village of Marvão, which is 122 *léguas*¹ away from the bishop's seat in São Luís.

The second chapter (»Ecclesiastical court: functioning, jurisdiction, and social divisions«) deals with the data about the lawsuits, commenting on the documents found in the Public Archive of the State of Maranhão. The research focuses on the secular clergy and shows that even during the years of *sede vacante*, the number of lawsuits was high. In contrast to other studies on ecclesiastical jurisdiction in Portuguese America, Muniz delivers a complete structure of the civil and criminal lawsuits in a procedural perspective. Looking more carefully into the criminal proceedings, she investigated the sources mentioned both in petitions

* POLLYANNA GOUVEIA MENDONÇA MUNIZ, *Réus de Batina. Justiça Eclesiástica e clero secular no bispado do Maranhão colonial*, São Paulo: Alameda 2017, 338 p., ISBN 978-85-7939-491-1

1 One *légua* corresponded to 6.66 kilometers. In this case, 813 km or 505 miles separated Marvão and São Luís.

and sentences; there she found references to the legislation (Decrees of the Council of Trent, the First Constitutions of the Archbishopric of Bahia, and Royal Ordinances), to the Bible and the legal literature, particularly related to the *ius commune* tradition.² In the analysis of civil lawsuits, Muniz highlights the debts of priests, most of them charged through summary proceedings such as the *assinção de dez dias*.³ Finally, this chapter analyzes the social profile of the people involved in litigation, examining the influence of social status on adjudication in the period.

The relations between the ecclesiastical court and other institutions is the theme of the third chapter. Looking at the documents, Muniz investigates the contacts with the Inquisition, and especially with the ecclesiastical court of the archbishopric of Lisbon. Maranhão was a suffragan diocese of Lisbon, and this hierarchical relationship helps us understand the appeal system in ecclesiastical jurisdictions; however, only 7% of the lawsuits against secular clergymen reached Lisbon. Conflicts between ecclesiastical and secular jurisdictions were common, and the author explores them using not only the lawsuits of her documental source base but also the legal literature of that period, particularly the *Tractatus de Manu Regia* by Gabriel Pereira de Castro, probably the most relevant work written in Portugal on that theme. The documents show a high number of cases in which the priests involved in litigation invoked royal jurisdiction, notably after the creation of the *Junta de Justiça*⁴ in the last decades of the 18th century, despite the absence of any formal jurisdiction of this council over ecclesiastical affairs.

The second part of the book looks more directly at the priests and their practices in the space of the diocese of Maranhão. Chapter four (»Being a priest«) presents relevant information about the secular clergy in the area, using documents such as the register of ordinations. The records of examinations (*habilitações de genere, vita et moribus*) show that in remote areas of Christendom, the hard regime of the sacrament of the order was relativized to satisfy the local needs for priests, because

having a priest with moral problems was better than having none. Issues related to the color of the skin (the so-called »blood defect«), questionable family origins or concubinage, especially the status of priests' illegitimate sons, are common in the documents used by Muniz.

Transgressions are analyzed in Chapter five (»Imperfect priests«), starting with civil lawsuits. Debts are the most common problem, and they demonstrate that many priests had an active economic life, doing business in commerce and agriculture, negotiating over goods and slaves. In criminal matters, statistics show that concubinage was by far the most common crime in which priests were involved, but there is also a notable number of accusations of negligence of sacerdotal obligations, injuries, murders, incest, adultery, sodomy, and so on. Among the cases of negligence, Muniz highlights drinking and the promotion of games.

The last chapter (»Personal paths«) reconstructs three case studies of transgressing priests. The stories of Fray Cosme Damião, Fathers Filipe Camello de Britto, and Tomás Aires de Figueiredo are told in order to understand in a clearer way the entanglement of jurisdictions, the investigations of Judaism inside the Church and the already reported high level of criminality among priests, respectively.

This book is remarkable for the legal historiography on Portuguese America for many reasons. Muniz deals with the intersections between the history of justice and the history of Church, although these relations could have been conceptualized on a more theoretical level in order to make the relations between law and the Church even clearer. This study leaves no doubt about the presence of a highly institutionalized legal system even in remote areas of the Portuguese Empire. Despite the huge areas of the Empire, the rare creation of dioceses, and the insufficient number of priests, as Muniz stated (5), the ecclesiastical institutions were able, even if faced with many difficulties, to function satisfactorily, and to maintain a degree of social control over these areas.

2 Some of the authors found in the lawsuits are Pedro Barbosa, Manuel Mendes de Castro, Belchior Febo, Manuel Themudo da Fonseca, Sebastião Guazzini, Gabriel Pereira de Castro, Álvaro Valasco, Manuel Ál-

vares Pegas, Prospero Farinaci and Bartolus.

3 According to this procedure, debtors were summoned to pay the debt in ten days due to the existence of a document that proved the indebtedness.

4 The *Juntas de Justiça* had an appealing jurisdiction and were composed by the *ouvidor*, the *juiz de fora* and a lawyer.

However, no obstacle could be greater to an institution that was trying to create a model of rules than the misconducts of its members. Muniz shows that the delinquency among the priests was a bad thing that had to be repressed because of the effects these acts could have in society, but the realization of this repression did not happen in the same way in all the cases. There was sometimes a clear tolerance towards misconduct because of the global situation in the diocese; without relativizing, it would be impossible for the Church to control the actions of its pastors.

On some issues, the author could have taken her analysis further, such as regarding the complexity of normative sources in Portuguese America, which would have allowed a reflection on the interactions of moral and juridical orders.⁵ If the focus of this research is the practice of the diocesan court in the lawsuits, the role of other agents

specializing in this matter, particularly the lawyers, procurators and notaries, should also have been examined more closely – without a reflection on these actors, an important part of the juridical practice will be lost. Recent historiography on the legal phenomenon in Spanish America is concerned about understanding the role of these actors,⁶ but the investigation of this theme in Portuguese America is still at an early stage. Muniz referred to some documents on the licenses for acting as lawyers (67) and that is important to provide legal historians with sources about litigation, but much work remains to be done. However, in a perspective quite related to the institutions and to this group of litigants, this book is a very important step towards the consolidation of the Brazilian legal history during the Colonial Age. ■

Filippo Ranieri

Englische Verfassung *à la française**

Mit der vorliegenden monumentalen Monographie veröffentlicht der Verfasser, der seit Ende 2018 als *Professeur agrégé de droit public* an der *Université Paris Saclay (Université d'Evry-Val d'Essonne)* tätig ist, seine in Frankreich mehrfach ausgezeichnete *thèse de doctorat* aus dem Jahre 2015. Die Arbeit, die bereits vom amerikanischen Politikwissenschaftler Aurelian Craiutu begeistert rezensiert wurde (in: *French Studies. A Quarterly Review* 73,2 [2019] 335–336), verdient unbedingt auch einem deutschen Lesepublikum vorgestellt zu wer-

den. Die zentrale These des Verfassers lautet, dass das englische parlamentarische System in der französischen Rechts- und politischen Kultur seit dem 18. Jahrhundert und über das ganze 19. Jahrhundert hinweg eine rechtspolitische Vorbildfunktion hatte. »Le modèle réformiste de la Constitution de l'Angleterre«, lautet also das Fazit der Untersuchung, »a intellectuellement dominé la France du XIXe siècle«.

Einiges sei hier zunächst zum Inhalt und zur Anlage des Werkes mitgeteilt. Nach bester franzö-

5 THOMAS DUVE, Was ist »Multinormativität«? – Einführende Bemerkungen, in: *Rechtsgeschichte – Legal History Rg* 25 (2017) 88–101, online <http://dx.doi.org/10.12946/rg25/088-101>.

6 See BIANCA PREMO, *The Enlightenment on Trial. Ordinary litigants and colonialism in the Spanish Empire*, New York 2017; MICHELLE A.

McKINLEY, *Fractional Freedoms. Slavery, intimacy, and legal mobilization in Colonial Lima, 1600–1700*, New York 2016; RENZO HONORES, *Una Sociedad legalista: abogados, procuradores de causas y la creación de una cultura legal colonial en Lima y Potosí, 1540–1670*, PhD dissertation, Florida International University 2007.

* TANGUY PASQUIET-BRIAND, *La réception de la Constitution anglaise au XIX^e siècle: Une étude du droit politique français* (Collection des thèses 149), Bayonne: Institut Universitaire Varenne 2017, 958 S., ISBN 978-2-37032-144-2