Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

THE GOVERNANCE OF THE CHURCH WRITTEN BETWEEN NATIONAL AND GLOBAL PERSPECTIVES: THE PRESENCE OF CONGREGATIONS OF CARDINALS IN BRAZILIAN MANUALS OF ECCLESIASTICAL LAW (1853-1887)

Benedetta Albani[1,2]

Anna Clara Lehmann Martins[3,4]

1 Max Planck Institute for European Legal History. Frankfurt am Main – Germany.

2 Researcher at the Max Planck Institute for European Legal History, where he directs 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". PhD in Modern History from Università di Roma "Tor Vergata" and Universidad Nacional Autónoma de México. Email: albani@rg.mpg.de

3 Max Planck Institute for European Legal History. Frankfurt am Main – Germany.

4 Doctoral student at Max Planck Research Group "Governance of the Universal Church after the Council of Trent". PhD student in Law at the Federal University of Minas Gerais and in History at Westfälische Wilhelms-Universität Münster, under co-tutelage. Member of Studium Iuris - Research Group on the History of Legal Culture (UFMG / CNPq). Email: martins@rg.mpg.de

Abstract

This article seeks to verify how the congregations of cardinals – more precisely, the permanent collegiate bodies of universal reach, then active in the Holy See – were represented in the legal culture of imperial Brazil (1822-1889). The sources chosen for this exploratory study were the manuals of ecclesiastical law produced by Brazilian jurists – clerics and laymen – of the Empire. The focus on legal books is due to the central role that this genre played in Brazilian legal teaching and practice during the 19th century. We analyze how the country's jurists described the Roman congregations, how these dicasteries were inserted in the exposition of legal doctrine, which specific debates were considered relevant, and how the congregations' decisions were regarded in terms of normative authority. The article shows that, in general, even in an institutional scenario marked by jurisdictional logics, Brazilian jurists composed distinct and original narratives about the Roman dicasteries. As the 19th century unfolded, expositions ranged from summary presentations, historical and static portraits, to updated and dynamic design. The recurrent mention to normative material from the congregations is perceivable both in an author sympathetic to jurisdictional positions and in an author close to ultramontanism. The significant use of French doctrinal sources of varied ideological perspectives is also noteworthy.

Keywords

Congregations of cardinals – Roman Curia – legal culture – Brazilian patronage

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

A GOVERNANÇA DA IGREJA ESCRITA ENTRE O NACIONAL E O GLOBAL: A PRESENÇA DAS CONGREGAÇÕES CARDINALÍCIAS EM MANUAIS BRASILEIROS DE DIREITO ECLESIÁSTICO (1853-1887)

Resumo

Este artigo busca verificar como as congregações cardinalícias permanentes de alcance universal ativas na Santa Sé eram representadas na cultura jurídica do Brasil imperial (1822-1889). As fontes escolhidas para esse estudo de caráter exploratório foram os manuais de direito eclesiástico produzidos por juristas brasileiros – clérigos e leigos – do Império. A preferência pelos manuais se deve ao papel central que esse gênero doutrinário desempenhou no ensino e na prática jurídica do Brasil durante o século XIX. Analisa-se como os juristas do país descreviam os dicastérios romanos, como as congregações eram inseridas na exposição da doutrina jurídica, quais debates específicos eram tidos como relevantes e como eram encaradas as decisões de congregações em termos de autoridade normativa. Este artigo mostra que, em geral, mesmo em um cenário institucional marcado por lógicas jurisdicionalistas, os juristas brasileiros compuseram narrativas distintas e originais a respeito dos dicastérios romanos. Conforme o século XIX avança, as exposições variam entre a apresentação sumária, o retrato histórico e estático, e o desenho atualizado e dinâmico. O emprego recorrente de material normativo das congregações é perceptível tanto em um autor simpático a posições jurisdicionalistas quanto em um autor avizinhado ao ultramontanismo. Destaca-se igualmente o uso expressivo de fontes doutrinárias francesas de variado matiz ideológico.

Palavras-chave

Congregações cardinalícias – Cúria Romana – cultura jurídica – padroado brasileiro.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Introduction

Established during the second half of the 16th century, the permanent congregations of cardinals marked the beginning of a new era in the governance of the Catholic Church, an era characterized by the centralization and specialization of pontifical government. In previous periods, the Roman Curia was already at the pope's side as an administrative reality, in different formats: as the College of Cardinals, that is, as the totality of cardinals, holder of the monopoly of election of the pontiff; as the Consistory, a formal meeting of the body of cardinals, whose objective was to advise the pope on serious matters; and as temporary congregations, that is, *ad hoc* commissions in charge of examining particular issues. The convergence of a number of factors during the early modern period – among them the concentration in the hands of the pontiff of the task of last interpreter and first guarantor of the execution of the decrees of the Council of Trent in the Catholic world[5] – led to the formation of long-lasting collegiate organs, provided with specific competences and arranged in sufficiently stable and reasonably flexible structures: the permanent congregations of cardinals. The bull *Immensa aeterni* (1588), of Pope Sixtus V, sedimented this model of organization by specifying the scope of action of 15 congregations. For some of them, the bull represented the recognition of a *de facto* situation begun in 1542 with the foundation of the Congregation of the Holy Office. In the case of other dicasteries,[6] the bull operated their establishment *ex novo*. Some of these congregations were responsible for the

5 On the appropriation of the Council of Trent by the Holy See, for the purpose of centralizing the government of the Universal Church, consult the different perspectives of: PROSPERI, A. *Il Concilio di Trento: una introduzione storica*. Torino: Einaudi, 2001. EMICH, B. 'Dalla Chiesa tridentina al mito di Trento. Una rilettura storico-concettuale'. In: *Storica*, v. 63, 2015. REINHARD, W. 'Mythologie des Konzils von Trient'. In: CATTO, M.; PROSPERI, A. *Trent and Beyond. The Council, Other Powers, Other Cultures*. Turnhout: Brepols, 2017.

6 For the purposes of this article, we understand "dicastery" as synonymous of congregation of cardinals, although its use, in an ecclesiastical and even secular context, is broader.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

spiritual government on a global scale, others for the management of the temporal affairs of the States under the pope's authority. This scheme reflected the mixed character of the work of the Roman Curia, simultaneously occupied with the Universal Church, the Papal States and the diocese of Rome. Among the congregations included in Sixtus' bull and directed at the Catholic orb, we may recall: The Congregation of the Holy Office, responsible for the protection of the doctrine of faith and morals; the Congregation of the Council, dedicated to the interpretation and execution of the disciplinary decrees of the Council of Trent; the Congregation of the Index, responsible for the censorship of books, in addition to making the lists of publications condemned by the Holy See; and the Congregation of Rites, occupied with the surveillance and regulation of liturgical worship and ceremonial aspects, in addition to the processes of canonization. Other dicasteries were consolidated shortly afterwards, such as the Congregation of Bishops and Regulars (1601), responsible for all matters pertaining to these two segments, and the Congregation of *Propaganda Fide* (1622), charged with the evangelization of non-Catholic populations. The "government through congregations",[7] by promoting the professionalization, specialization and regularity of the procedures in the Curia, has broadened the horizon of information and control of Rome, and has also dynamized its (ordaining, inspecting, cooperative etc.) participation in the administration of ecclesiastical institutions located even in the most distant places of the globe. The model contributed decisively to the strengthening of the Holy See as a central authority, proving to be so successful that, after successive changes in competences and reconfigurations of

7 This expression was recently used as the title of a workshop specifically dedicated to the mechanisms of government employed by the Roman Curia through the congregations of cardinals: "Governare per Congregazioni. La Curia papale tra pratiche istituzionali e logiche informali (XVI-XVII secolo)"; this event was held at the Pontificia Università Gregoriana, in Rome, on 16 April, 2018. The scholars gathered on this occasion are working in a variety of ways on the concept of "government through congregations" or "through councils".

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

the general framework, it arrived at our time with its strong traits preserved. And it certainly reached the 19th century.[8]

8 The literature on the Roman Curia, as we know, is vast. Studies on the congregations of cardinals, however, are quite recent compared to those dedicated to other organisms of the Curia, much more popular among researchers. So far, the investigation on permanent congregations is characterized by a strong emphasis on some dicasteries, such as the Holy Office, the Index, and *Propaganda Fide*, in contrast to other organs that remain virtually unknown. Historiography has also privileged predominantly historical-institutional and prosopographic perspectives, usually limited to the study of a single congregation at a time, without highlighting the functioning of these bodies as a whole, as a system of government. Only in recent times have researchers pointed to the existence of unequivocal links between the various congregations of the Curia, and also between them and other structures, paving the way for the study of the relations between permanent congregations and secular forms of government. For a historical overview of the Roman Curia and the congregations of cardinals in general, see: DEL RE, N. *La Curia Romana. Lineamenti storico-giuridici*. 4. ed. Città del Vaticano: Libreria Editrice Vaticana, 1998. ROSA, M. *La Curia romana nell'età moderna. Istituzioni, cultura, carriere*. Roma: Viella, 2013. PALAZZINI, P. 'Le Congregazioni Romane'. In: BONNET, P. A.; GULLO, C. (eds.). *La Curia Romana nella Costituzione Apostolica* Pastor Bonus. Città del Vaticano: Libreria Editrice Vaticana, 1990. JANKOWIAK, F. 'Congrégations'. In: DICKÈS, C. et al. (org.). *Dictionnaire du Vatican et du Saint-Siège*. Paris : Robert Laffont (Bouquins), 2013. For the context of the 19th and 20th centuries: JANKOWIAK, F. *La Curie Romaine de Pie IX à Pie X. Le gouvernement central de l'Église et la fin des États Pontificaux (1846-1914)*. Rome: École Française de Rome, 2007. On the reforms of the Roman Curia over time: STICKLER, A. M. 'Le Riforme della Curia nella Storia della Chiesa'. In: BONNET, P. A.; GULLO, C. (eds.). *La Curia Romana nella Costituzione Apostolica* Pastor Bonus. Città del Vaticano: Libreria Editrice Vaticana, 1990. JANKOWIAK, F. 'Curie romaine et réformes de la Curie'. In: DICKÈS, C. et al. (org.). *Dictionnaire du Vatican et du Saint-Siège*. Paris : Robert Laffont (Bouquins), 2013. FATTORI, M. T. 'Per una storia della curia romana dalla riforma sistina, secoli XVI-XVIII'. In: *Cristianesimo nella Storia*, v. 35, 2014. GALAVOTTI, E. 'Sulle riforme della curia romana nel Novecento'. In: *Cristianesimo nella Storia*, v. 35, 2014. For the topic of the Holy See's participation in the governance of the Church in Ibero-American territory through the activity of specific congregations of cardinals: ALBANI, B. '*In universo christiano orbe*: la Sacra Congregazione del Concilio e l'amministrazione dei sacramenti nel Nuovo Mondo (secoli XVI-XVII)'. In: *Mélanges de l'Ecole française de Rome. Italie et Méditerranée*, v. 121, n. 1, 2009. BROGGIO, P. 'Le congregazioni romane e la confessione dei neofiti del Nuovo Mondo tra *facultates* e dubia: riflessioni e spunti di indagine'. In: *Mélanges de l'Ecole française de Rome. Italie et Méditerranée*, v. 121, n. 1, 2009. ALBANI, B.; PIZZORUSSO, G. 'Problematizando el patronato regio. Nuevos acercamientos al gobierno de la Iglesia Ibero-americana desde la perspectiva de la Santa Sede'. In: DUVE, T. (coord.). *Actas del XIX Congreso del Instituto Internacional de Historia del Derecho Indiano – Berlín 2016*. Vol. I. Madrid: Dykinson, 2017. For reasons of space and scope, we have not included here all the pragmatic literature on the functioning of the Curia and the congregations.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

During most of this period, Brazil was a Catholic Empire (1822-1889). Partly following the tradition of the Portuguese Ancien Régime,[9] partly dressing it up in constitutional clothing,[10] the country adopted the system of *padroado* (*i. e.*, patronage) to regulate relations between State and Church.[11] In other words, this means that the emperor, mostly through the administrative network of the Executive Branch (with interventions from the Legislative in some cases), actively participated in the ecclesiastical administration, presenting the clergy, providing for their sustenance and discipline, establishing diocesan boundaries, among many other matters. By reinterpreting institutions of Iberian heritage in the light of liberal discourses on constitution and sovereignty, the Brazilian legal order also authorized the monarch to employ mechanisms of regulation and control of the Church, such as the *placet* and the appeal to the Crown (*recurso à Coroa*). Fostered both by the memory

9 The *padroado* goes back to the pontifical concessions offered to Portugal as of the 15th century, with the aim of promoting the evangelization of the territories discovered during the kingdom's expansionist voyages. Until the mid-16th century, the Portuguese Crown shared with the Military Order of Christ the right of presentation to vacant benefices in the overseas domains, a right that was the central feature of the Iberian royal patronage. In 1550, with the bull *Praeclara charissimi*, the Grand Mastership of the Order of Christ was annexed to the Crown of Portugal in a perpetual and hereditary manner, making the rights of patronage of all overseas possessions coincide in the person of the king as Grand Master. In the bull *Praeclara Portugalliae* (1827), Pope Leo XII considered the rights of patronage of the Brazilian emperor as an extension of those of the Grand Mastership belonging to the Portuguese kings.

10 The Brazilian patronage was present in the Constitution of the Empire (1824) under the article 102, II: "The Emperor is the Head of the Executive Branch, and exercises it [this function] through his Ministers of State. These are his main attributions: [...] II. To appoint Bishops, and provide to the Ecclesiastical Benefices".

11 On the relations between State and Church in Brazil during the 1800s, see: HOORNAERT, E. *Formação do Catolicismo Brasileiro*. Petrópolis: Vozes, 1974. HAUCK, J.; BEOZZO, J. O.; VAN DER GRIJP, K.; BROD, B. *História da Igreja no Brasil. Ensaio de interpretação a partir do povo. Segunda Época. A Igreja no Brasil no século XIX*. Petrópolis: Vozes, 1980. VIEIRA, D. R. *O processo de Reforma e reorganização da Igreja no Brasil (1844-1926)*. Aparecida: Santuário, 2007. NEVES, G. P. 'A religião do Império e a Igreja'. In: GRINBERG, K.; SALLES, R. (eds.). *O Brasil imperial*, vol. 1 (1808-1831). Rio de Janeiro: Civilização Brasileira, 2009. SANTIROCCHI, Í. *Questão de Consciência: os ultramontanos no Brasil e o regalismo do Segundo Reinado (1840-1889)*. Belo Horizonte: Fino Traço, 2015. VIEIRA, D. R. *História do catolicismo no Brasil (1500-1889)*, vol. I. Aparecida: Santuário, 2016.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

of the "majestic rights" of inspection of the Church and by the narrative of defense of national sovereignty, these measures were implemented in absentia of the Holy See and, during the last decades of the pontificate of Pius IX, with the explicit disapproval of Rome. For this reason, historiography usually refers to these mechanisms as expression of Brazilian "regalism" or "jurisdictionalism", that is, as expression of the unilateralism of the State in the administration of ecclesiastical institutions.[12] In fact, the Brazilian patronage itself was based on unilateral reasons from the political elite of the early years of independence. Pope Leo XII's bull *Praeclara Portugalliae* (1827), which confirmed D. Pedro I's rights as patron of the Brazilian Church, never obtained the approval of the Legislative Branch,

12 We prefer to use the term "jurisdictionalism" due to the heavy ideological burden carried by "regalism", a word repeatedly employed in historiography to express intervention or even abuse of the State in relation to the Church, as warned by DI STEFANO, R. 'Las trampas sutiles del ultramontanismo'. In: *Debates de Redhisel*, v. 3, n. 2, 2017. Jurisdictionalism was a narrative that underlay certain practices of the absolutist monarchies in religious matters, particularly during the 18th century. This narrative generally praised the autonomy of the national clergy before Rome and invested secular sovereigns with a series of rights over the ecclesiastical institutions in their territories. These rights were adjectivated "majestic" as they bound their legitimacy to the quality of the monarch as such, not to pontifical concessions. Such rights could relate to a wide range of subjects: ecclesiastical benefices, the distribution of competences between royal and ecclesiastical jurisdictions, matrimonial legislation, educational organization etc. Furthermore, jurisdictionalism included the adoption of mechanisms to control the action of the Holy See over national territories, mechanisms such as the *placet* or *exequatur*. Jurisdictionalist policies manifested themselves in different forms and have a varied nomenclature, depending on the place and period of incidence and also on the context of the issuer. Among the most famous currents of jurisdictionalism, we may recall: Bourbon Regalism in Spain, Gallicanism (the term primarily refers to 17th-century France, but its use was soon extended to other temporal and geographical circumscriptions), Febronianism (in Trier, at the end of the 18th century), Pombalism (in Portugal, during the reign of King José I, with Sebastião José de Carvalho e Melo, the Marquis of Pombal, as Secretary of State), Josephinism (in Austria, under Joseph II), Jansenism (when the term is employed in a political, anti-Roman sense, not necessarily related to the dogmatic clashes led by Cornelius Jansen and his followers in the 17th century) etc. For more on jurisdictionalism, in particular the French and the Iberian ones, see: BASDEVANT-GAUDEMET, B. 'Quelques manifestations de juridictionalisme dans le droit des royaumes français, espagnols, portugais (XVIe-XVIIIe siècles)'. In: DE FRANCESCHI, S.; HOURS, B. (org.). *Droits antiromains. Juridictionalisme catholique et romanité ecclésiale. XVIe-XIXe. Actes du colloque de Lyon (30 septembre – 1er octobre 2016)*. Lyon: LARHRA, 2017.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

whose majority view was that of a patronage system based on the constitution, not on pontifical concession. Another strong measure of Brazilian jurisdictionalism was the suppression of the Tribunal of the Nunciature,[13] a legislative maneuver that reduced ecclesiastical jurisdiction to only two instances, both headed by members of the national clergy.

It is inaccurate, however, to think that these jurisdictional norms and practices have caused the isolation of the Brazilian Church with regard to Rome and, in particular, with regard to the congregations of cardinals. The appointment of the episcopate and the establishment of new diocesan territories depended not only on the patron emperor, but also on the Consistorial Congregation. And the daily administration of the imperial dioceses involved, to a greater or lesser extent, interaction between local ecclesiastical authorities and the Holy See, through the sending of questions, and requests for faculties and convalidations. With the State being aware of it or not, sometimes through mediating figures such as the Apostolic Internuncio, clerics and lay people sent missives to the

13 The Tribunal of the Nunciature (also called the Tribunal of the Legation) was suppressed by the Decree of 27 August 1830. For more on the Nunciature installed in Brazil before the independence and during the Empire (then as Internunciature), see, for example: DE MARCHI, G. *Le Nunziature Apostoliche dal 1800 al 1956*. Città del Vaticano: Libreria Editrice Vaticana, 2006. COLEMAN, W. J. *The First Apostolic Delegation in Rio De Janeiro and its Influence in Spanish America. A Study in Papal Policy, 1830-1840*. Washington: Catholic University of America Press, 1950. ACCIOLY, H. *Os Primeiros Núncios no Brasil*. São Paulo: Instituto Progresso Editorial, 1949. For more details on the individual trajectory of nuncios and internuncios that operated in Brazilian territory, check, for example: DE ROSSI, C. L. *Memorie intorno alla vita del Card. Lorenzo Caleppi e ad alcuni avvenimenti che lo riguardano*. Roma: Tipografia della S. Congregazione di Propaganda Fide, 1843. DE LIMA, M. C. 'Metropolitanismo e Regalismo no Brasil durante a Nunciatura de Lourenço Caleppi'. In: *Revista de História*, v. 4, n. 10, 1952. PÁSZTOR, L. 'CALEPPI, Lorenzo'. In: *Dizionario Biografico degli Italiani*, vol. 16. Roma: Istituto dell'Enciclopedia Italiana, 1973. CALAZANS, M. M. *A Missão de Monsenhor Francesco Spolverini na Internunciatura do Brasil (1887-1891), segundo a documentação Vaticana*. Tese (Doutorado em Teologia) – Pontificium Athenaeum Sanctae Crucis. Roma, 1997. BENEDETTI, C. 'Ostini, Pietro'. In: *Dizionario Biografico degli Italiani*, vol. 79. Roma: Istituto dell'Enciclopedia Italiana, 2013. For more on the Archive of the Nunciature of Brazil, currently located in the Vatican Apostolic Archive: KIEMEN, M. C. 'A Summary Index of Ecclesiastical Papers in the Archive of the Papal Nunciature of Rio de Janeiro, for the Period of 1808-1891'. In: *The Americas*, v. 28, n. 1, 1971.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Roman Curia that corresponded to the different competences of the Roman congregations: discipline of the secular or regular clergy, annulment of marriage, validity of examinations for the provision of benefices, dispensation from residence and from officiating in the choir etc. Thus were woven the multiple flows of governance of the Brazilian Church, within and outside the borders of the country.

Considering such exuberant practical scenario, this article aims to show that Brazilian jurisdictionalism did not block the contact or the interest of the national legal culture in the governing activity of the Holy See. On the contrary: in their writings, some jurists developed original narratives regarding the multi-level governance of the Church in Brazilian territory, combining the description of particular aspects of the local government and of the national legal order with detailed expositions on the activity of the Roman Curia and even mentions to specific decrees issued by the dicasteries. Thus, this article seeks to observe how the congregations of cardinals – here comprised only those of universal scope – were represented in the Brazilian doctrine of ecclesiastical law. We would like to apprehend how the country's jurists described the Roman dicasteries, how they inserted the congregations in the doctrinal exposition, which specific debates were considered relevant, and how the decisions from these organs were regarded in terms of normative authority.

The sources we chose for this exploratory study were the manuals of ecclesiastical law produced by Brazilian jurists – clerics and laymen – of the Empire.[14] The preference for manuals is due to

14 The kind of literature to which we refer is characterized by proposing, in a synthetic and systematic way, a comprehensive vision of a legal discipline. It is not a large, exhaustive analytical *corpus* (as in the case of treatises and commentaries on legislation), nor does it suppose the in-depth examination of a particular issue (as in the case of monographic studies). The manual is rather a compact, "handy" book, organized around a pedagogically effective method of synthesis; after all, it is a material intended for teaching, either in faculties of law or seminars. Thus, we would like to stress that our analysis, by turning to this specific genre, disregards other works which, for their part, also helped shaping the Brazilian legal culture on ecclesiastical administration in the 19th century. This is the case of the classic *Direito Civil Ecclesiastico Brazileiro Antigo e Moderno em suas relações com o Direito Canonico* (1866-1873), by Candido Mendes de Almeida, a text not

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

the central role that this doctrinal genre played in the legal education and practice of 19th-century Brazil. On one hand, these books formed the basis of the curriculum of seminaries and faculties of law; on the other, they provided support for the solutions adopted by the imperial bureaucracy. They are objects that reveal the permeability between theory and practice of law at the time, especially if we take into account that the jurists who wrote them were not exclusively dedicated to academia, but also to politics, religion, administration etc.[15]

This article seeks to contribute to the discussion developed in the dossier "The Nineteenth-Century Catholic Church from a Transnational Perspective". It should be noted, first of all, that the idea of transnationality associated with the Holy See requires particular attention and a certain nuance, in view of the range of activities of the Apostolic See, the nature of its power, and international recognition and influence. Many of the activities of the Holy See have universal reach, that is to say, an ordinarily cross-border scope, covering the entire Catholic orb. For this reason, the Apostolic See cannot be equated with a State or a nation according to traditional conceptions – and, consequently, the transnationality involving congregations of cardinals should be regarded as different from that between two or more countries. Taking this factor into consideration, the books employed as main sources in this study, while referring to the congregations, adhere, one may say, to a double level of transnationality. On one hand, they portray transnational

taken into account here due to its character of legislative compilation. We also exclude from our observation monographic works, journal and newspaper articles, pamphlets, ecclesiastical circular letters, among many other types of printed material from the time.

15 For more on the overlapping of intellectual and political functions among Brazilian academics (*bacharéis*) in the 19th century, see Adorno, who argues that this superposition occurs at the expense of legal education in the country (in: ADORNO, S. *Os Aprendizes do Poder*. Rio de Janeiro: Paz e Terra, 1988). Interesting criticism to this study can be found in Fonseca, who claims that the overlapping of functions is part of the Brazilian legal culture at that period (see: FONSECA, R. M. 'Os juristas e a cultura jurídica brasileira na segunda metade do século XIX'. *Quaderni fiorentini per la storia del pensiero giuridico moderno*, v. 35, n. 1, 2006).

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

dynamics of governance; after all, Roman congregations act in a way that, as we have already suggested, transcends national borders. On the other hand, by composing such a portrait, these manuals rely on the intense transatlantic circulation of ideas, norms and practices that took place during the 19th century, the books themselves constituting transnational objects. It is from the perspective of this double transnationality that the sources will be analyzed. By offering an original point of view, this article intends to be a contribution not only to the historiography on Brazilian legal handbooks, but also to the historiography on the Roman Curia. The transversal approach, not focused on a single dicastery; the selection of sources external to the world of the Curia – and which thus show the mechanisms of action of this organism from a decentralized perspective; all these factors converge in a relevant contribution to the history and historiographical reflection on the system of pontifical government.[16]

This article is divided into three parts. The first portrays how the congregations of cardinals were described in the manuals, including aspects such as their location in the book, the space used in the exposition, types of congregations covered and their treatment, and references employed. The second part goes beyond the sections of description, focusing on how the Roman dicasteries were inserted in specific doctrinal debates in these books. We were able to identify two major debates: the arrangements of jurisdiction between

16 This article is included in the set of scientific activities developed by 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", headed by Benedetta Albani, at the Max Planck Institute for European Legal History, Frankfurt am Main, Germany. More precisely, this work belongs to the research scope of one of the group's doctoral students, Anna Clara Lehmann Martins, who investigates the governance of the Catholic Church in Brazil during the Second Reign (1840-1889). In the context of her research, the term "governance" alludes to a multi-level institutional scheme that encompasses the activity of several actors in matters of ecclesiastical administration: bishops, jurists, counsellors of State, and also congregations of cardinals. This article is closely connected to Lehmann Martins' doctoral dissertation, currently in progress and preliminarily entitled "Governance of the Brazilian Church between Rome and Rio de Janeiro: The role of the Council of Trent in ecclesiastical administration (1840-1889)".

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

congregations and bishops; and the force of law of the decrees from these collegiate bodies. The third part, finally, is an attempt to compose a quantitative overview of the concrete decisions from congregations of cardinals mentioned in the manuals. With this effort, we wish to specify the field of normative authority of the Roman dicasteries according to the viewpoint of Brazilian authors. To this effect, we present the results of the collecting of citations, categorizing the decisions found by congregation, by protagonist agent, and by theme. In the end, we make some considerations regarding the sources from which the authors may have extracted the decisions.

1 The description of the congregations of cardinals between static tradition and dynamic present

It is reasonable to assume that the Brazilian academics from mid-19th century left the faculties of law of Olinda or São Paulo with little knowledge on the Roman congregations. The first handbook officially used in the chair of ecclesiastical law in Brazil was the first volume of the *Institutiones Juris Ecclesiastici*, by Austrian canonist Franz Xaver Gmeiner;[17] while covering the *ius publicum ecclesiasticum*,

17 Franz Xaver Gmeiner (1752-1822) was born in Studenitz, Styria, Austria. His academic career was centered 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 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" (SCHULTE, J. F. 'Gmeiner, Franz Xaver'. In: *Allgemeine Deutsche Biographie*, v. 9, 1879, p. 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

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

the book rarely mentioned the subject. In one occasion, the author indicated the existence of dicasteries within the Roman Curia.[18] A couple times Gmeiner was more specific, referring to the functions of the Congregation of the Council[19] and even to a concrete decision.[20] One may interpret the lack of mentions as something predictable for a manual elaborated under late 18th-century Austrian jurisdictionalism, a context in which the position of the secular power in the governance of the Church had grown in face of the ecclesiastical hierarchy, leaving small room for Rome. However, it should be considered that, despite his loyalty to Josephinism, Gmeiner does addresses the activities of permanent congregations of cardinals, but he does so in the second volume of the *Institutiones*, dedicated to private ecclesiastical law. In this book, the author inserted a historical prolegomenon about the sources of ecclesiastical law, where he explained how the dicasteries originated and which were their competences; Gmeiner also made reference, at certain moments, to compilations of congregations' decrees.[21] Nevertheless, as the 1825 Draft Regulation of the Faculties of Law of Olinda and São Paulo privileged ecclesiastical *public* law in the academic *curriculum* (such was, in fact, the official denomination of the discipline until 1854) and expressly suggested the adoption

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 from the *Corpus iuris canonici* (FANTAPPIÉ, C. *Chiesa romana e modernità giuridica. L'edificazione del sistema canonistico (1563-1903)*. Milano: Giuffrè, 2008, p. 80). *Institutiones* was condemned by decree of the Congregation of the Index, dated 8 June 1847.

18 GMEINER, F. X. *Institutiones Juris Ecclesiastici, ad Principia Juris Naturae et Civitatis Methodo Geometrica Adornatae et Germaniae Accomodatae*. Tomus I. Jus Ecclesiasticum Publicum. Prostant Viennae & Graecii, apud J. G. Weingand, et Fr. Ferstl, 1782, p. 117. Henceforth cited as GMEINER, I.

19 GMEINER, I, p. 98.

20 GMEINER, I, p. 149.

21 GMEINER, F. X. *Institutiones Juris Ecclesiastici, ad Principia Juris Naturae et Civitatis Adornatae et Germaniae Accommodatae*. Tomus II. Jus Ecclesiasticum Privatum. Prostant Viennae & Graecii, apud J. G. Weingand, et Fr. Ferstl, 1782.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

of Gmeiner's first volume,[22] one is allowed to conclude that the knowledge of Brazilian *bacharéis* about the congregations was limited to the few mentions of this book.

The handbook that succeeded Gmeiner's *Institutiones* as reference book of the discipline was the *Compendio* of Jeronymo Vilella de Castro Tavares, lay jurist, professor in Olinda during the 1850s and 1860s.[23] In a single volume, the *Compendio* was the first manual of ecclesiastical law composed by a Brazilian author.[24] Its first edition dates from 1853,

22 We refer 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: "[p]ara 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." (COLLECÇÃO das Leis do Império do Brazil de 1827. Parte Primeira. Rio de Janeiro, Typographia Nacional, 1878, p. 24).

23 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 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 in the end of 1851. Among his writings, besides the *Compendio*, which had three editions (1853, 1862, and 1882; the latter is a posthumous and faithful reproduction of 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, S. *Diccionario Bibliographico Brazileiro*. Terceiro volume. Rio de Janeiro: Imprensa Nacional, 1895, p. 311-312.

24 One could object that *Instituições Canonico-Patrias* (1822), by academic Francisco Soares Maris (born in Pernambuco, a graduate of Coimbra), would be the pioneer of the genre, as it preceded Vilella Tavares' *Compendio* in more than 30 years. It should be noted, however, that only the first of six books achieved a printed edition (BLAKE, S. *Diccionario Bibliographico Brazileiro*. Terceiro

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

when it was entitled *Compendio de Direito Ecclesiastico*. Vilella Tavares submitted the book to the scrutiny of the Brazilian Council of State in the 1850s, so that the *Compendio* could obtain the status of official literature of the country's faculties of law. But approval did not come immediately. The harsh opinion of the Marquis of Olinda imposed a series of modifications on the work, which only won a positive verdict from the councilors after its second edition, in 1862. More compact, systematic and with the addition of new references, the manual also had its title changed to *Compendio de Direito Publico Ecclesiastico*.

According to the preface to the first edition, what moved Vilella Tavares to write the *Compendio* was the conviction that Gmeiner was already outdated in terms of doctrine and method, especially considering "the advance and progress of science" and the "heights at which Italy and Germany, in particular, have placed ecclesiastical law".[25] Observing the recurrence of citations and the praising tone in certain passages, the Brazilian jurist was probably referring to late 18th-century Roman canonists (Giovanni Devoti) and to German scholars who orbited more or less close to the *Historische Rechtsschule* (Ferdinand Walter, George Phillips). Both groups were critical of enlightened jusnaturalism and jurisdictionalism, having earned the approval of Rome. Vilella Tavares' proposal, thus, was to combine in the *Compendio* "the doctrine of the most accredited, orthodox authors"

volume. Rio de Janeiro: Imprensa Nacional, 1895, p. 126). Though written for the formation of the clergy in the Seminary of Olinda, in terms of form and content, Maris' 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' *Instituições*, but he does not believe the book overshadows his own. According to Vilella Tavares, Maris' 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 article, Maris' *Instituições* shall not be considered in the analysis, on grounds that it is a work whose elaboration precedes the conformation of the legal system of imperial Brazil, and it has, moreover, little relevance for the governance of the Brazilian Church in practical and theoretical terms.

25 VILELLA DE CASTRO TAVARES, J. *Compendio de Direito Ecclesiastico para uso das academias juridicas do Imperio*. 1. ed. Recife: Ricardo de Freitas, 1853, s/p. Henceforth cited as VILELLA TAVARES, 1.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

and "that which the very same Gmeiner has of good", adding notes regarding the application of general rules to the Church in Brazil, in view of its specific legislation. He was a syncretistic author. He had, on one side, the academic inclinations that brought him closer to Roman orthodoxy and, on the other, the State concerns that resulted in a form of jurisdictionalism adapted to the normative logics of more modern administrative law.

Vilella Tavares' scientific claims, however, did not materialize in any further deepening regarding the Roman congregations. In fact, the references to the subject are even more scarce compared to Gmeiner's first volume. The dicasteries are mentioned in a generic tone in the section on the rights and obligations of the cardinals, as we observe from the following fragment:

> Na sé plena, são elles [os cardeais] os conselheiros do papa; presidem em Roma a diversas congregações, secções ou collegios, a quem por intermedio do papa se submette um certo genero de causas ecclesiasticas, e estas congregações se denominam, conforme a materia, de que se occupam, – *consistorialis, inquisitionis, indicis, concilii, episcoporum ac regularium, de ritibus, de indulgentiis et reliquis ac de propaganda fide inter paganos et hereticos, etc.* [...].[26]

This paragraph is present both in the second and first edition. It contains a citation of the *Manuale Compendium Juris Canonici* by Jean-François-Marie Lequeux, a choice closer to the jurisdictionalism of previous centuries than to the "progress of science" that Vilella Tavares ascribed to more recent Italian and German authors. Lequeux was superior of the Great Seminary of Soissons between 1832 and 1850, as well as vicar general in that diocese and in Paris.

26 VILELLA DE CASTRO TAVARES, J. *Compendio de Direito Publico Ecclesiastico para uso das Faculdades de Direito do Imperio*. 2. ed. Recife: Guimarães & Oliveira, 1862, pp. 97-98. Henceforth cited as VILELLA TAVARES, 2.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

His textbook, first published in the late 1830s, supports positions of distinct Gallican tone, that is, in favor of the autonomy of the French Church before the Holy See. An example of this is Lequeux's claim that the national Churches would have the faculty of rejecting decisions coming from congregations of cardinals. This opinion, among others, earned Lequeux's manual its insertion in the Roman Index of Forbidden Books in 1851.[27] The list of congregations that Vilella Tavares reproduces can be found in the introduction of Lequeux's (almost 50-page-long) section on "ministers of pontifical jurisdiction", in which he describes a bit of the history and scope of the Roman cardinals and dicasteries.

Vilella Tavares' second (and last) mention to the congregations in the *Compendio* is a footnote added to the second edition, in the section where he briefly addresses the division of ecclesiastical law into ancient, new, and *novissimo*.[28] In the text body, the author limits himself to stating that the *novissimo* branch covered the "provisions and laws" subsequent to the consolidation of the *Corpus iuris canonici*; he points that these norms would not be individually presented because of their large number. The footnote included in the second edition seeks to offer more detail on the subject, mentioning the decrees of the congregations as part of the *novissimas* sources of law, and nodding to the Congregation of the Council:

> O direito novissimo comprehende as novas constituições dos summos pontifices, as regras da chancellaria apostolica, e todas as disposições e canones do Concil. Trident., no qual foram condemnadas as heresias, principalmente de Luthero e Calvino, e regulados muitos pontos da disciplina ecclesiastica. Comprehende tambem varias declarações das sagradas congregações dos cardeaes, especialmente das interpretes

27 JANKOWIAK, F. 'Lequeux, Jean-François-Marie'. In: ARABEYRE, P.; HALPÉRIN, J.-L.; KRYNEN, J. (org.) *Dictionnaire historique des juristes français XIIe-XXe siècle*. 2. ed. Paris: PUF, 2015, p. 648.

28 VILELLA TAVARES, 2, pp. 5-6. VILELLA TAVARES, 1, pp. 9-10.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

do Conc. de Trent.[29]

One of the most reasonable explanations for the absence of further mention to the administrative apparatus of the Holy See in the *Compendio* is that, despite the eagerness to overcome Gmeiner through the adoption of new theories, some of them particularly appreciated in Rome, Vilella Tavares structured his work according to the first volume of Gmeiner's *Institutiones*. The indexes of the two books are quite similar. Despite all criticism, Vilella Tavares seems to have perceived in Gmeiner's oeuvre an effective starting point, a well-known tradition to which he could often turn to, guaranteeing the acceptance of segments of jurists more attached to the references adopted in Coimbra.[30] As the detailed description of the Roman Curia's institutions appeared in Gmeiner's volume on ecclesiastical *private* law, one can imagine that Vilella Tavares thought that further deepening would not be necessary for a handbook such as his, focused on matters of *public* law. In any case, considering that, from the 1860s until the end of the Empire, the *Compendio* was the main reference for ecclesiastical law among Brazilian academics, one should not underestimate the harmful effect that the book's silence regarding the congregations of cardinals had on the imperial bureaucracy. The *Compendio* offered little information and nuance to the *bacharéis* who, in administrative positions, had to deal with phenomena such as the

29 VILELLA TAVARES, 2, pp. 5-6.

30 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. See: MERÊA, P. Como nasceu a Faculdade de Direito. *Boletim da Faculdade de Direito (Coimbra)*, v. 1, 1961, p. 160. The *Biographisches Lexikon des Kaiserthums Oesterreich* remarks that more than one hundred copies of this manual were sent to Coimbra in 1807. See: WURZBACH, C. v. 'Gmeiner, Franz Xaver'. In: *Biographisches Lexikon des Kaiserthums Oesterreich*. 5. Teil. Verlag der typogr.-literar.-artist. Anstalt (L. C. Zamarski & C. Dittmarsch.), Wien, 1859, p. 233.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

growth of the ultramontane movement[31] and the intensifying of the communication flows between Rome and Brazilian dioceses.

But Vilella Tavares' handbook was not the only of its kind to appear in the middle of the 19th century in Brazil. Between 1857 and 1859, the *Elementos de Direito Ecclesiastico Publico e Particular*, by D. Manoel do Monte Rodrigues d'Araujo, then Bishop of Rio de Janeiro, was published.[32] At that time, Monte already enjoyed considerable

31 Ultramontanism is a politico-religious perspective that emerged with the Restoration and developed throughout the 19th century. It defended that the Catholic Church, as an institution, was entirely 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 able 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: O'MALLEY, J. W. *Vatican I. The Council and the Making of the Ultramontane Church*. London: Belknap Press, 2018. BLASCHKE, O. 'Der Aufstieg des Papsttums aus dem Antiklerikalismus. Zur Dialektik von endogenen und exogenen Kräften der transnationalen Ultramontanisierung', in: *Römische Quartalschrift für Christliche Altertumskunde und Kirchengeschichte*, v. 112, 2017. For more on ultramontanism in Latin America, see: RAMÓN SOLANS, F. J. *Más allá de los Andes: los orígenes ultramontanos de una Iglesia latinoamericana (1851-1910)*. Bilbao: Universidad del País Vasco Servicio Editorial, 2019. SANTIROCCHI, Í. *Questão de Consciência: os ultramontanos no Brasil e o regalismo do Segundo Reinado (1840-1889)*. Belo Horizonte: Fino Traço, 2015.

32 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 Faculty of Law. During the transition from the First to the Second Reign, he perfectly integrated the social group of the so-called "political priests" (SOUZA, F. J. D. O. *Do altar à tribuna: os padres políticos na formação do Estado Nacional Brasileiro (1823-1841)*. Doctoral dissertation (History). Instituto de Filosofia e Ciências Humanas, Universidade do Estado do Rio de Janeiro, Rio de Janeiro, 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. After a dispute with D. Romualdo Seixas, Archbishop of S. Salvador da Bahia, Monte managed to celebrate the coronation of D. Pedro II as Emperor of Brazil, in 1841. 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

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

fame amidst the Empire's seminaries due to his *Compendio de Theologia Moral*, whose first edition dates back to 1837. One may well suppose that he wanted to repeat such success with *Elementos*, a work that shares with *Theologia* the pedagogical format (especially the dual approach of contents, sometimes in universal, other times in national key), certain references and even themes (marriage, patronage etc.), then observed from a legal perspective.

Monte's *Elementos* are organized in three volumes, dedicated to ecclesiastical persons, things, and actions, respectively. In the first book, the bishop explains the choice of the traditional system of the *institutes* in the distribution of subjects.[33] Monte says that such scheme would allow him to explain the contents in "a natural order and without any violence", and that, while doing so, he imitated the example of canonists like "Fleury, Schramm, Selvagio, Cavallario, Devoti, Lequeux, and Van-Espen".[34] The heterodoxy of Monte 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 characterizes *Elementos*. Like Vilella Tavares, Monte makes use of a fairly varied composition of cited authors, combining jurisdictional and ultramontane positions.

(*e.g.*, Academy of Sciences and Arts of Rome, Brazilian Historical and Geographical Institute). In addition to writing 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, S. *Diccionario Bibliographico Brazileiro*. Sexto volume. Rio de Janeiro: Imprensa Nacional, 1900, pp. 164-167.

33 The exposition system of the *institutes* dates back to the rupture inaugurated by Perugian canonist Giovan Paolo Lancellotti in his *Institutiones iuris canonici* (1563), organized according to the tripartition *personae-res-actiones* from Justinian's *Institutiones*; for more on this rupture, see: SINISI, L. *Oltre il Corpus iuris canonici. Iniziative manualistiche e progetti di nuove compilazioni in età post-tridentina*. Soveria Mannelli: Rubbettino, 2009.

34 MONTE RODRIGUES D'ARAUJO, M. *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, 1857, pp. 42-43. Henceforth cited as MONTE, I.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Such plurality of authorities and arguments resulted in a troubled critical reception. On 1 June 1869, the Congregation of the Index issued a decree inserting *Elementos* in its inventory of prohibited books.[35] On the same date, the dicastery decided to condemn *Theologia*. Monte did not live to take advantage of the *donec corrigatur* clause attached to the decree of the Congregation of the Index, offering him the possibility of correcting his texts. And it seems that others did not undertake the task on his behalf, considering that *Theologia* and *Elementos* do not have editions posterior to 1869. In any case, these setbacks did not prevent the success of Monte's books in Brazil. As for *Elementos*, its presence was felt not only in seminaries and in the ecclesiastical milieu, but also in the Empire's bureaucratic activity (the Council of State used Monte and Vilella Tavares as references of authority in its opinions) and in the formation of academics. On what concerns this last aspect, it is sufficient to recall that Vilella Tavares, in the second edition of his manual, cites *Elementos* (and also *Theologia*) on several occasions.

Differently from the *Compendio*, there is a space for the description of the congregations of cardinals in *Elementos*: three chapters, in at least 10 pages. This space is located in the first volume of the work ("On Ecclesiastical Persons"), more precisely in the section on the Pope, in the part dedicated to the Roman Curia. When defining the Curia, Monte divides it into two segments. One of them would be responsible for the "affairs of grace", involving institutions such as the Consistory, the Apostolic Chancery, the Apostolic Datary and the Apostolic Penitentiary. The other segment, in charge of the so-called "affairs of justice", would concern the congregations.[36] Although instructive, such classification does not correspond to the effective

35 The decree of condemnation is transcribed in: WOLF, H. (ed.). *Systematisches Repertorium zur Buchzensur 1814-1917*. Indexkongregation. München: Ferdinand Schöningh, 2005, p. 502. For the purposes of her doctoral dissertation, Anna Clara Lehmann Martins is currently investigating in greater depth the dossier on Monte's *Elementos* in the Congregation of the Index, focusing on the opinions issued by consultants.

36 MONTE, I, p. 175.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

distribution of competences among the dicasteries during the period. The Congregation of the Council, for example, had a series of gracious functions, such as the granting of administrative faculties to the clergy (*e.g.*, the faculty of a vicar capitular to appoint examiners and judges as if they had been elected in a diocesan synod).[37]

Subsequently, Monte presents his general concept for congregation: "Certain corporations, instituted by the Pontiff, with the aim of deliberating and deciding on certain matters regularly by means of judgment".[38] Pointing out that he would focus on permanent congregations, Monte offers a summary description of some of them, covering, more or less consistently, the following information: foundation, competences, staff composition, and procedure. It is significant that in this descriptive part Monte employs sources which carried quite distinct fortunes before the eyes of the Holy See. On one side was the monumental *Theatrum veritatis et iustitiae* (1669-1681) of Cardinal Giovanni Battista De Luca (1614-1683),[39] an Italian jurist who is part of a long-standing tradition of canonists who, belonging to or linked to the high Roman clergy, exercised great influence on

37 For more on the competences of the Congregation of the Council, see: VARSÁNYI, G. I. 'De competentia et procedura S. C. Concilii'. In: *La Sacra Congregazione del Concilio. Quarto Centenario della Fondazione (1564 - 1964). Studi e ricerche*. Città del Vaticano, 1964. STANGARONE, A. 'De activitate S. Congregationis Concilii tempore Pontificatus Pii IX'. In: *La Sacra Congregazione del Concilio. Quarto Centenario della Fondazione (1564 - 1964). Studi e ricerche*. Città del Vaticano, 1964.

38 MONTE, I, p. 179.

39 For more on De Luca, see: on the Roman Curia: ERMINI, G. 'La curia romana forense del secolo XVII nella relazione di Giovanni Battista De Luca'. In: *Archivio Storico Italiano*, v. 138, n. 1 (503), 1980; PÁSZTOR, L. 'Per una storia della storiografia sulla Curia Romana nel Medio Evo. Il contributo del Cardinale Giovanni Battista De Luca', in: MORDEK, H. (ed.) *Aus Kirche und Reich. Studien zu Theologie, Politik und Recht im Mittelalter*. Sigmaringen: Jan Thorbecke, 1983; in general: SANTANGELO, A. *La Toga e la Porpora. Quattro Biografie di Giovan Battista De Luca*. Biblioteca Federiciana. Venosa: Edizioni Osanna, 1991; DANI, A. *Giovanni Battista De Luca divulgatore del diritto. Una vicenda di impegno civile nella Roma barocca*. Roma: Aracne, 2012; D'ERRICO, G. L. 'Truth and Justice in a "Forest of Thieves": The Heresies of Giovanni Battista De Luca and the Documents of the Roman Inquisition', in: *Max Planck Institute for European Legal History Research Paper Series*, n. 2016-09, in: <http://dx.doi.org/10.2139/ssrn.2847613> 06.03.2020; RUGGIERO, R. 'La nuova retorica di Giovanni Battista De Luca e il disciplinamento dello stato moderno'. In: *Giovanni Battista De Luca giureconsulto. Atti del convegno nazionale di studio, Venosa 5-6 dicembre 2014*, 2016.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Curial administration. Among the names to compose such dynasty we may recall, among others, Prospero Fagnani (1588-1678), Prospero Lambertini (1675-1758), better known as Pope Benedict XIV, and Giovanni Devoti (1744-1820). All these characters were jurists acknowledged by the Holy See and, at a certain period of their lives, they performed administrative activities within the Roman Curia. Fagnani and Lambertini were secretaries of the Congregation of the Council and Devoti was a consultant to the Index. De Luca himself, as Mazzacane tells us,[40] was one of Pope Innocent XI's trusted men at the beginning of his pontificate. On the other hand, Monte makes use of the *Ius Ecclesiasticum Universum* (1700) of Zeger-Bernard Van Espen (1646-1728), a Belgian jurist, professor of canon law in Louvain, famous for his erudition – and also for his sympathy towards Gallican opinions, especially those regarding the wide reach of the civil power's control over ecclesiastical matters. Not by chance, the *Universum* was listed in the Roman Index of Forbidden Books on 22 April 1704, being known (or stigmatized) as Jansenist literature.[41] These choices of bibliography are a demonstration of Monte's attachment to authors from the early modern period, and also a sign of his syncretism.

Considering the manner in which the congregations are arranged and described in *Elementos*, we observed that only six are mentioned, even though the number of permanent universal congregations in activity at that time was higher (sixteen in total). The order of presentation follows Van Espen's exposition in *Universum*: Holy Office, Index, Council, Bishops and Regulars, Rites, in addition to

40 MAZZACANE, A. 'De Luca, Giovanni Battista'. In: *Dizionario Biografico degli Italiani*. Roma: Treccani, 1990.

41 For more on Van Espen, see: on the trial before the Index: COOMAN, G.; WAUTERS, B. '*Jus ecclesiasticum subversum*: La condamnation du *magnum opus* de Zeger-Bernard Van Espen par le Saint-Office romain (1704)'. In: COOMAN, G.; VAN STIPHOUT, M.; WAUTERS, B. (ed.). *Zeger-Bernard Van Espen at the crossroads of canon law, history, theology and church-state relations*. Leuven: Leuven University Press, 2003; on the reception of Van Espen's ideas in the 19th century: VIAENE, V. 'Zeger-Bernard Van Espen, Liberalism and Religious Reform in 19th-Century Belgium'. In: COOMAN, G.; VAN STIPHOUT, M.; WAUTERS, B. (ed.). *Zeger-Bernard Van Espen at the crossroads of canon law, history, theology and church-state relations*. Leuven: Leuven University Press, 2003.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Propaganda Fide, which does not possess its own section in the work of the Belgian jurist. The absence of the Consistorial Congregation, auxiliary of the Consistory (this one, on its turn, is mentioned), and of the Congregation for Extraordinary Ecclesiastical Affairs (AAEESS), whose activity had a direct impact on the relations between State and Church (concordats, civil laws on ecclesiastical matters etc.). The lack of reference to these dicasteries may be explained by the sources employed by Monte. The Consistorial Congregation is presented in accessory form in De Luca's *Theatrum*. It is approached in the midst of other issues in the discourse on the Consistory[42] – a trait that Van Espen reproduces in *Universum*[43] – and in the end of the discourse on *Propaganda*.[44] In the case of the AAEESS, it is a dicastery created at the beginning of the 19th century as a reaction to the ecclesiastical crisis unleashed by the French Revolution, and hence is outside the horizon of Monte's early modern sources.

The number of pages occupied by each congregation in *Elementos* is also noteworthy. The Congregation of the Holy Office has by far the largest space: more than three pages. This is not only because its composition and procedure are presented in greater detail, but because Monte further develops a specific question – on the relationship between episcopal jurisdiction and the jurisdiction of the inquisition. And there is an extended historical note ranging from the medieval inquisition to the modern congregation, with an apologetic phrase attributed to Lacordaire[45] ("[The Roman inquisition] is the

42 DE LUCA, I. B. *Theatrum Veritatis et Iustitiae.* Liber Decimus Quintus. Par. I. De Iudiciis, et de Praxi Curiae Romanae. Par. II. Relatio Romanae Curiae Forensis, eiusque Tribunalium, et Congregationum. Romae: Typis Haeredum Corbelletti, 1673, Par. II, Disc. V.

43 VAN ESPEN, Z. B. *Jus Ecclesiasticum Universum* etc. Tomus Primus. Coloniae Agrippinae, ex Officina Metternichiana Sub Signo Gryphi, 1748, Pars I, Tit. XXII, Caput II, n. 14.

44 DE LUCA, I. B. *Theatrum Veritatis et Iustitiae.* Liber Decimus Quintus. Par. I. De Iudiciis, et de Praxi Curiae Romanae. Par. II. Relatio Romanae Curiae Forensis, eiusque Tribunalium, et Congregationum. Romae: Typis Haeredum Corbelletti, 1673, Par. II, Disc. XXIII.

45 Jean-Baptiste Henri-Dominique Lacordaire (1802-1861) was a French priest who became famous for his defense of liberal Catholicism. He was responsible for the restoration of the Dominican order in post-revolutionary France. He was much praised for his oratory skills.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

sweetest tribunal that has ever existed in the world, the only one that in 300 years has not shed a drop of blood"[46]) and another about the inexistence of the Tribunal of the Holy Office in Brazil.[47] In terms of space, the Holy Office is followed by Index and Rites, both with two pages. This is due to large footnotes. In the case of the Index, it is a note on how Rome exercised control over books before the creation of the dicastery, along with a paragraph in which one of the Index's rules on reading the Bible in vernacular is transcribed. In the case of Rites, the footnote concerns the procedure of canonization. Finally, Council, Bishops and Regulars, and *Propaganda Fide* comprise the narrow interval of about one page each. It is a bit odd that Bishops and Regulars did not deserve more content development, especially in view of Monte's characterization of this congregation as "the largest and busiest", the one which "knows of all the controversial cases from ecclesiastical, diocesan or regular jurisdiction in the Catholic Orb", a trait that would have earned it the denomination of "the *Universal* Congregation". At least in De Luca, Bishops and Regulars is the congregation that covers most space, with 26 topics (against 15 for the Holy Office, for example). One may observe, thus, that Monte follows a proportion that is closer to Van Espen's (in *Universum* there are 36 topics for the Holy Office, 35 for the Index, 18 for Council, 12 for Bishops and Regulars, and 21 for Rites).

46 MONTE, I, p. 183. On the different historiographical discourses – or "black" and "white legends" – produced between the 17th and 19th centuries regarding the Roman, Spanish, and Portuguese inquisitions, see the panorama offered by: BETHENCOURT, F. *História das inquisições: Portugal, Espanha e Itália. Séculos XV-XIX*. São Paulo: Companhia das Letras, 2000. MARCOCCI, G.; PAIVA, J. P. *História da Inquisição portuguesa: 1536-1821*. Lisboa: A Esfera dos Livros, 2013.

47 Despite the absence of a Tribunal of the Holy Office in Brazilian lands, the inquisition was present in Portuguese America through various agents, networks, instruments, and strategies, as verified by: FEITLER, B. *Nas malhas da consciência: Igreja e Inquisição no Brasil: Nordeste, 1640-1750*. 2. ed. São Paulo: Editora Unifesp, 2019. NOVINSKY, A. *Viver nos tempos da Inquisição*. São Paulo: Perspectiva, 2018. RODRIGUES, A. C. *Igreja e Inquisição no Brasil: agentes, carreiras e mecanismos de promoção social – século XVIII*. São Paulo: Alameda, 2014.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

The last handbook of ecclesiastical law of the Brazilian Empire was the *Lições de Direito Ecclesiastico*, by Ezechias Galvão da Fontoura.[48] It was directed to the teaching of the discipline in seminaries, more specifically in the Episcopal Seminary of São Paulo, where Fontoura lectured. In fact, for the first time a book of this kind emerged outside the intellectual circuit of Olinda. The three-volume work came to light in 1887, two years before the abolition of *padroado* with the Proclamation of the Republic.

Lições consists of three books which, together, cover 100 lessons. The author did not bother to state the method adopted in the division of volumes, but it is possible to deduce that Fontoura followed, to a fair extent, the division of the *institutes*. The first book deals with ecclesiastical law in general (definition, sources etc.) and with the central authorities of the Church (pope, ecumenical councils, Roman congregations); the second is dedicated to local authorities such as the bishop and the parish priest; and the third volume covers ecclesiastical *res* (patrimony, in particular) and trial.

The primarily pedagogical purpose of the manual, to the detriment of more scientific intentions, also appears in the lack of rigor in the citation of authorities. Unlike Vilella Tavares and Monte, Fontoura does not display uniformity in the presentation of references. He hardly mentions other works by title, he is content to point out the names of authors, when he does not limit himself to employing vague expressions such as "according to a great canonist...". This attitude makes it difficult to grasp the repertoire of legal culture upon which *Lições* relies. When it comes to the description of Roman congregations, we can only conjecture which sources were used, based on references

48 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, A. *Discurso proferido na Sessão Magna de 1 de novembro de 1929*, pp. 392-393, in: <http://ihgsp.org.br/wp-content/uploads/2018/05/revista-IHGSP-vol-27-pgs387-a395.pdf> 30.09.2019.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

mentioned in other parts of the work. In any case, one must consider that Fontoura is heading towards a politico-religious position that is different from his predecessors'. In spite of a few gray areas, *Lições* assumes a distinctive ultramontane tone. A greater weight is given to papal authority in the exposition of the general principles of the discipline, for example.[49] Also, the appeal to the Crown is summarily discarded as a method of controlling episcopal jurisdiction.[50] And the canonist leaned heavily, explicitly and tacitly, on one of the great figures of 19th-century French ultramontanism, the canonist Dominique-Marie Bouix (1808-1870).[51]

In Fontoura, the congregations are object of four lessons, three of them dedicated to the description of the origin and activity of the dicasteries, and one concerning the force of law of these organs' decrees (a topic to which we will refer in the next section). All are lessons from the first volume, comprising a total of approximately 13 pages. Fontoura does not offer a general concept for congregation, he only insert it into the set of organs and persons belonging to the Roman Curia, alongside the College of Cardinals, the Roman tribunals, and pontifical legacies.[52] In contrast to his predecessors, the canonist provides information about a significant number of congregations: 16 in total. The description of dicasteries, however, does not follow a uniform criterion of exposition; sometimes it is robust, other times quite summary. Although Fontoura does not refer to any authority while discoursing on the subject, he probably used the *Tractatus de Curia Romana* (1859), by Bouix, as model. Several

49 FONTOURA, E. G. *Lições de Direito Ecclesiastico*. Volume I. S. Paulo: Impressores Jorge Seckler & Comp., 1887, pp. 32-33. Henceforth cited as FONTOURA, I.

50 FONTOURA, E. G. *Lições de Direito Ecclesiastico*. Volume II. S. Paulo: Impressores Jorge Seckler & Comp., 1887, pp. 45-46. Henceforth cited as FONTOURA, II.

51 For more on Bouix, see: MOULINET, D. 'Un réseau ultramontain en France au milieu du 19e siècle'. In: *Revue d'histoire ecclésiastique*, v. 92, 1997. JANKOWIAK, F. 'Bouix, Dominique-Marie'. In: ARABEYRE, P.; HALPÉRIN, J.-L., et al. (eds.). *Dictionnaire historique des juristes français XIIe-XXe siècle*. Paris: Quadrige, 2007.

52 FONTOURA, I, p. 177.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

factors support this hypothesis. Besides the affinity of ideas (both authors are, after all, in line with principles from ultramontanism), Fontoura explicitly cites Bouix throughout all three volumes of *Lições*. There are also certain moments when the Brazilian author mixes translated fragments from Bouix's treatises to the text itself, without making any reference to the French author.[53] On what directly concerns this article, it is important to remember that Bouix was one of the few recent canonists to devote himself to a detailed study of the institutions of central government of the Catholic Church.[54] An element that strengthens the hypothesis that Fontoura employed him as reference for approaching the Roman congregations is the order in which the dicasteries appear in *Lições*. It is a perfect mirror of the sequence adopted in the *Tractatus*: Consistorial, Holy Office, Index, Council, Rites, *Super Disciplina Regulari*, *Super Statu Regularium*, Bishops and Regulars, *Propaganda Fide*, *Super Negotiis Ecclesiasticis* (the AAEESS), Indulgences and Sacred Relics, *Super Residentia Episcoporum*, and Ecclesiastical Immunity. Faithful to the order drawn up by Bouix, Fontoura presents the Congregation *Super Promovendis ad Episcopatum* as auxiliary to the Consistorial (even though he does not mention its name, only the competence); and the Congregations for the *Ad Limina* Visit and for the Recognition of Provincial Councils are mentioned as adjoint to the Congregation of the Council.

The congregations occupy a variable space in the chapters of *Lições*. Depending on the information, they can comprise a full page or a simple sentence. The Congregation of *Propaganda Fide* is the one that covers most space, with little more than one page; this is due to a detailed description of its competences, composition, and procedure,

53 The insertion of translated passages of foreign doctrine – sometimes without reference to the original author – is a trend observed in 19th-century Brazilian manuals from other legal branches. This is the case of international law literature, as noticed by: SILVA JÚNIOR, A. R. Brazilian literature on international law during the empire regime. Or the diffusion of international law in the peripheries through appropriation and adaptation. In: *Revista de Direito Internacional*, v. 15, n. 3, 2018.

54 JANKOWIAK, F. 'Cardinaux et droit canonique'. In: *Mélanges de l'École française de Rome - Italie et Méditerranée modernes et contemporaines*, 127-2, 2015.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

and also to a paragraph on the normative force of its decrees (see below). It is followed by Consistorial and Rites, each with one page. Holy Office, Index, Council, and Bishops and Regulars occupy about half a page, while the others reach a quarter of a page or less. There are occasions when the transcription of bulls or decrees is important to the presentation of competences, as is the case of Consistorial and Rites. At other times, it is convenient for Fontoura to mention only that "[the] matter, which this Congregation deals with, is found in the decrees of its institution and confirmation",[55] without further clarification, as is the case of Bishops and Regulars, and Indulgences and Sacred Relics. These details are not eclipsed in Bouix's *Tractatus*. *Lições* also includes very brief accounts for congregations such as *Super Residentia Episcoporum*, which is solely described as instituted by Pope Urban VIII and confirmed by Pope Benedict XIV. And there are incomplete descriptions, whose comprehension is compromised, as in the case of the AAEESS's. When addressing the dicastery's competences, Fontoura claims that "it can approach any kind of ecclesiastical affairs",[56] without specifying, as Bouix does, that such affairs must be under particular circumstances.[57] Overall, these data can be interpreted, on one hand, as the author's attempt to demonstrate an erudition that sometimes borders the useless (case of the extremely brief descriptions). On the other, they can reveal the eagerness to exhibit an updated picture of the structure of the Roman Curia, albeit with an unequal distribution of information. Moreover, these data may indicate which congregations were more and less invoked in the government of the diocese of São Paulo, they may be, in other words, a window for transnational legal practices.

Comparing Fontoura and his predecessor in the field, Monte, it can be said that the latter reaches a greater degree of consistency in the

55 FONTOURA, I, p. 190.

56 FONTOURA, I, p. 191.

57 BOUIX, D. *Tractatus de Curia Romana seu De Cardinalibus, Romanis Congregationibus, Legatis, Nuntiis, Vicariis et Protonotariis Apostolicis*. Parisiis: Apus Jacobum Lecoffre et Socios, Bibliopolas, 1859, p. 236. Henceforth cited as BOUIX, *De Curia Romana*.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

presentation of the congregations, for he establishes neat criteria for his exposition, and the information concerning each dicastery meets these criteria in a reasonably harmonious manner. In Fontoura, the criteria are more volatile. It is true, however, that the canon of São Paulo relies, as we have said, on more recent data, and may even serve to correct certain of Monte's positions, as when in *Lições* it is written that "[...] We should not confound this congregation [the Holy Office] with the Tribunal of the Holy Office or of the Inquisition, previously established with a different mission".[58]

In general, from the analysis of the three works it becomes clear that to address the congregations is not an exclusive tendency of the clergy or of authors openly engaged with ultramontane ideas. Even jurists with strong jurisdictional concerns – that is, authors who supported mechanisms such as the limited *placet* and the appeal to the Crown, and/or refused logics of submission of the State towards the Holy See – even these jurists possess their own narrative about the congregations of cardinals. In the composition of their discourses, it is significant that these authors relied on foreign literature from the Ancien Régime, in a syncretistic manner or drawing closer to sources of Gallican flavor. Nevertheless, the choice of such references seems more guided by respect for tradition, by deference to the authority of these works, than by the explicit objective of defending State positions. For instance, although Monte defends jurisdictionalist positions in other parts of *Elementos*, he surprisingly offers much historical detail on the congregations, and shows sympathy towards dicasteries such as the Holy Office. The lack of a more developed narrative, by contrast, as seen in Vilella Tavares, can be interpreted as a sign of jurisdictionalism. Fontoura, on his turn, shows that his handbook is from another time. Defending positions that are mostly ultramontane, *Lições* employs the most recent references to approach the Roman Curia, and it also extrapolates the descriptive level in order to enter into the hotter debate on the force of law of

58 FONTOURA, I, p. 186.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

the congregations' decrees, as seen in Fontoura's description of *Propaganda Fide*, which we will address in detail later on. In other words, analyzing only the descriptive part of the Brazilian doctrine on the congregations of cardinals, one has the impression that there is a shift from a traditional, historical and ultimately static perspective (Monte) to a more updated, contemporary, and dynamic perspective (Fontoura).

2. Specific debates

2.1 The arrangements of jurisdiction between congregations and bishops

The chapters describing congregations are not restricted to basic information on the foundation, competences, composition, and procedure; they also develop more specific debates. In Monte's *Elementos*, an issue that is often raised is the relationship between congregations and bishops in terms of jurisdiction. This concern takes the form of a question in the section on the Holy Office: "shall not [the] Sacred Congregation of the Inquisition prevent bishops from intervening in matters of faith and morals emerged in their dioceses? [...] Even more so if one considers the Sacred Congregation as the tribunal through which the pope exercises the main attribution of the primacy, *i. e.*, the cognition and judgment of matters of faith and morals".[59] In other words, Monte wonders if a congregation's jurisdiction excludes the bishop's in affairs of the organ's own competence. Relying on a quotation from De Luca, who addresses bishops as "native inquisitors", the Brazilian author answers that the episcopacy has the right to intervene in issues of faith raised in diocesan level; therefore, the inquisitorial and the episcopal

59 MONTE, I, p. 181.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

jurisdiction ought to be considered *cumulative*. Accumulation, however, only works properly if the Holy See subsequently confirms the condemnation (of heresies) issued by the bishop.[60] In other words, it is a matter of relative, coordinated, and ultimately hierarchical autonomy between the local and central poles.

Accumulation is also possible within the realms of competence of other dicasteries. The activity of the Congregation of the Index, for instance, does not hinder bishops from examining and censoring books in their own territories.[61] Another example is *Propaganda Fide*, when Monte states that, in spite of the authorization that missionaries receive from Rome to preach, they keep the duty of obedience to the local episcopacy.[62] This is also the case of the Congregation of Rites, whose authority, according to the Brazilian author, does not prevent bishops from regulating rites and ceremonies in their respective dioceses. The motif of the need of coordination with Rome, however, quickly resurfaces: as Monte says, bishops cannot create new rites or ceremonies, they may only apply those prescribed by the Holy See or directly by the congregation. Similarly, though it can solve disputes on "religious public functions" or even "funerary rights", the episcopacy may do so only as a temporary arrangement, which must be later referred to Rome.[63]

Beyond the descriptive chapters, both Monte and Fontoura incorporate the congregations into other parts of their books, demonstrating how these organs were deeply involved in the dynamics of Church governance. It is no longer just a question of pointing out the "coordinated accumulation" of jurisdictions, but of delineating in a clearer fashion the hierarchical relationship between bishops and congregations. The hierarchy between jurisdictions appears, for instance, when Monte mentions diocesan synods. Based on 18th-

60 MONTE, I, pp. 181-182.

61 MONTE, I, pp. 184.

62 MONTE, I, pp. 190.

63 MONTE, I, pp. 188.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

century German canonist Dominikus Schramm, Monte declares that synodal statutes ought not to be published without the examination and approval of the Congregation of the Council. He claims that the same applies to provincial councils, this time citing Pope Benedict XIV and the famous bull *Immensa aeterni* (1588) of Pope Sixtus V, who founded or confirmed the first permanent Roman congregations, including Council.[64]

The hierarchy of jurisdictions is also present in discussions on canonical procedure, when authors mention the role of congregations as courts of appeal. In Fontoura's *Lições*, the Congregation of Bishops and Regulars is depicted in this function in at least two occasions. The first is the erection of churches of religious orders, a situation when, according to the Council of Trent, the consent of the ordinary is required; if the authority in question refuses to grant his consent, the religious can appeal to Bishops and Regulars.[65] Recourse to this congregation is also permitted when a vicar general seeks reintegration after being unfairly dismissed by the bishop.[66]

Another is the court of appeal against episcopal decisions *ex informata conscientia*, a topic addressed both by Monte and Fontoura. Sentencing *ex informata conscientia* was at the center of debates in the high circles of imperial administration in the 1850s, when the limits between Church and State were object of (re)definition for the sake of producing a new law on the appeal to the Crown. To decide *ex informata conscientia* was the bishop's prerogative of punishing the clergy under his jurisdiction with suspension (of orders, dignities, offices, benefices etc.) without the need of publicly stating the reasons for his decision (that is, keeping them in his *informed*

64 MONTE, I, p. 269. In the case of the Congregation of the Council, the *Immensa aeterni* served for its confirmation and a more precise delineation of its competences, which were, moreover, expanded. The dicastery's foundation, however, dates back to the *motu proprio Alias Nos*, issued by Pope Pius IV, on 2 August 1564.

65 FONTOURA, E. G. *Lições de Direito Ecclesiastico*. Volume III. S. Paulo: Impressores Jorge Seckler & Comp., 1887, p. 10. Henceforth cited as FONTOURA, III.

66 FONTOURA, III, 171.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

conscience). The ordinary was able to do so in judicial or extra-judicial form. The same mechanism could be employed when the bishop felt the need of prohibiting certain candidates to be ordained. This prerogative was granted to the episcopal authority by the Council of Trent (Sess. 14, *de reformat.*, c. 1). In 1857, the new law on the appeal to the Crown[67] established that it was not possible to appeal from a sentence *ex informata conscientia* to the State, for such decision, even if not publicly motivated, did not constitute an abuse of jurisdiction. Thus, Monte and Fontoura indicate in their manuals that the only court of appeal was the Congregation of the Council.[68] Monte, in fact, following Bouix, refers to the hierarchical relationship between the episcopate and the dicastery in order to draw conclusions on the kind of evidences required for a legitimate suspension *ex informata conscientia*. In other words, the hierarchical relationship limits the range of evidence that may be invoked by the local jurisdiction:

> O Pontifice Romano commette a decisão d'este recurso à S. Congregação do Conc., à qual em consequencia deve dirigir-se ao Bispo, que fulminou a pena, dando as razões ou causas do seo procedimento [...] não bastão as provas que sómente ao Bispo servem para provar o crime; mas outras se requerem aptas para provar o crime perante a Sagrada Congregação do Concilio [...].[69]

From the examples above, we perceive that, in the debate on jurisdictions, the handbooks exhibit the congregations as a very *present* hierarchical level – and even as a *determining* level for the

67 Decree n. 1.911, of 28 March 1857, "Regula a competencia, interposição, effeitos e fôrma do julgamento dos Recursos à Coroa".

68 MONTE RODRIGUES D'ARAUJO, M. *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, 1859, p. 134. Henceforth cited as MONTE, III. See also: FONTOURA, III, p. 44.

69 MONTE, III, p. 135.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

validity and/or full effectiveness of certain acts of the episcopacy. Vilella Tavares is the only author who does not touch on this debate. In the *Compendio*, the collegiate bodies of the Holy See do not appear as relevant components for the governance of the Church. In his exposition on provincial councils, for instance, Vilella Tavares remarks only the necessity of the pope's confirmation and sanction of the local decrees, so that they may achieve the same degree of authority of general councils. The author does not mention the role of the Congregation of the Council in the examination of these norms.[70] There is no reference to episcopal decisions *ex informata conscientia* in the book, neither to the possible means of appeal. In fact, the section on the appeal to the Crown even misses the decree of 1857.[71] Monte and Fontoura, on their turn, care to unveil the bonds of coordination and dependence between the two institutional levels, congregations and bishops. It is remarkable that Monte is the one who pays attention to the accumulation of jurisdiction, while Fontoura's discourse remains focused on the hierarchical difference between one level and the other. This variety of approach could be interpreted as an echo of the more jurisdictionalist (or episcopalist) tendencies of the Bishop of Rio de Janeiro, and the more ultramontane, verticalist inclinations of the canon of São Paulo.

In any case, other sources would have to be consulted in order to verify whether these representations of coordination and dependence are anchored in recurrent practices. Regarding episcopal decisions *ex informata conscientia*, partial results of our ongoing research, covering Brazilian and Vatican archives,[72] show that the Brazilian clergy did not resort to the Congregation of the Council to revert these sentences during the Empire. Priests did so by appealing to the Crown, that is, to the Council of State, an institution which, due to

70 VILELLA TAVARES, 2, p. 92.

71 The most recent law cited by Vilella Tavares on the subject is the *Alvará* of 10 May 1845, in VILELLA TAVARES, 2, p. 217.

72 We are referring to the Brazilian National Archive, Fonds of the Council of State; and the Vatican Apostolic Archive, Fonds of the Congregation of the Council.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

the decree of 1857, did not proceed with most of the appeals. Findings like this lead to another type of conjecture regarding the presence of congregations in handbooks. Perhaps the authors' intention with these mentions on procedure was not to mirror a practical reality, but to convey the idea of *recent, modern, updated* doctrine (Monte, after all, quotes Bouix, who at the time of the publication of *Elementos* was a novelty even in European territory) or the idea of *orthodoxy*, support for *Roman positions* (a trait observed in Fontoura, whose discourse has a distinctive ultramontane tone). These mentions, each in its own way, profit from the centralizing discourses about Rome circulating at the time, particularly in ultramontane circles (of which Bouix was part, for instance), where not only the supremacy of the pope over the Universal Church was stressed, but also the administrative authority of Roman dicasteries over local ecclesiastical institutions.

The arrangements of jurisdiction, however, are not the sole debate on the activity of Roman congregations that is possible to identify in Brazilian manuals. Another pressing issue was the force of law of the dicasteries' decrees, as we will discuss in the next section.

2.2 The vis legis of the decrees of congregations

Compared with its predecessors, Fontoura's *Lições* presents a novelty that goes beyond descriptive chapters on the congregations of cardinals and scattered mentions about them: it has a whole chapter on the nature of the decrees issued by dicasteries. The author opens the section questioning himself whether the decrees were sources of ecclesiastical law, that is, whether they have force of law (*vis legis*). He then introduces three opinions: (i) decrees do not have normative force, they are not obligatory; (ii) decrees have normative force as if they had been issued by the pope himself, being part of the general legislation of the Church and, thus, obligatory; (iii) the force of law of decrees depends on a distinction between *comprehensive* and *extensive* decisions; those *comprehensive* are within the terms of existing law,

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

and are obligatory, whereas those *extensive* are outside the terms of law, broadening its meaning, and not obliging.[73]

These opinions are part of a centuries-long debate among canonists and theologians, all focused on examining the authority of the congregations' decrees. In 1897, the debate was recapitulated by R. Parayre[74], based on the case of the Congregation of the Council, whose decisions held particular relevance because they involved the interpretation of the most recent general disciplinary corpus of the Catholic orb until then, the Council of Trent. Parayre's synthesis stresses that the first position, for non-binding nature, was adopted by some canonists and moral theologians between the 16th and 17th centuries. They equal the authority of decrees with that of doctrine: prestigious, but not obligatory. Among the supporters of this opinion are the Spanish Jesuit Tomás Sánchez (1550-1610) and the French Franciscan Bruno Chassaing (17th century), among others.[75] This is also the position defended by movements regarded warily by Rome due to their attitude of decentralization and jurisdictionalism. It is the case of Jansenists, Gallicans, and jurists deemed to be connected to these groups.[76]

Conversely, the force of law of the decrees of the Congregation of the Council is defended by most early modern canonists, especially by those whose lives were divided between canonical writings and the administrative praxis of the Roman Curia. Among them, we may recall Prospero Fagnani and Prospero Lambertini, later Pope Benedict XIV, both famous secretaries of the congregation.

---

73 FONTOURA, I, p. 64.

74 PARAYRE, R. *La S. Congrégation du Concile; son histoire, la procedure, son autorité.* Paris: Lethielleux, 1897. It should be noted that R. Parayre was a member of the Congregation of the Council's *Studium*, an annexed organ whose aim was to provide training and to collaborate with the secretary of the dicastery.

75 PARAYRE, R. *La S. Congrégation du Concile; son histoire, la procedure, son autorité.* Paris: Lethielleux, 1897, p. 292.

76 PARAYRE, R. *La S. Congrégation du Concile; son histoire, la procedure, son autorité.* Paris: Lethielleux, 1897, p. 295.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Fagnani,[77] for instance, maintains that the Congregation of the Council did not act on its own authority when interpreting the disciplinary part of the Council of Trent; it did so using the authority that the Roman pontiff had delegated to the dicastery with the apostolic constitutions of Pope Pius V and Pope Sixtus V.[78] Invested with apostolic authority, the congregation performed interpretations that, according to Fagnani, were essentially declaratory, not interpretative in the sense of modification. As such, these declarations did not add anything new to the Tridentine decrees, they only explained and clarified them. They were equivalent to what would later be called *comprehensive* declarations. The *declarationes*, thus, depended on the Council of Trent to exist.[79] Consequently, they shared with Trent the force of universal law, without the need of solemn publication.[80]

77 For more on Fagnani, see: PALAZZINI, P. 'Prospero Fagnani. Segretario della Sacra Congregazione del Concilio e suoi editi ed inediti'. In: *La sacra congregazione del concilio. Quarto centenario della Fondazione (1564 - 1964). Studi e ricerche*. Città del Vaticano, 1964.

78 FAGNANI, P. *Jus Canonicum : sive Commentaria absolutissima in V. libros decretales.* Tomus Primus. Coloniae Agrippinae, apud Haeredes Ioannis Widenfelt, 1681, *Quoniam. De Constitut.* n. 8: "His ita constitutis, manifestum videtur declarationes S. Congregationis Concilii vim legis obtinere, & in utroque foro obligare cujus quidem assertionis veritas nititur praecipue his fundamentis. Et primo, cum facultas Concilium Tridentinum interpretandi fit Sedi Apostolicae reservata per Constitutionem Pii V. initio relatam; & quod Sixtus V. in sua Constitutione hanc interpretandi facultatem ipsi Congregationi impertitus fuerit, jam Congregatio in his decretis interpretandis non sua, sed Papae utitur authoritate: nam quotiescunque Papa tribuit aliquamfacultatem alteri, qui eam prius non habebat, tunc authoritas illa intelligitur esse Apostolica [...]."

79 FAGNANI, P. *Jus Canonicum : sive Commentaria absolutissima in V. libros decretales.* Tomus Primus. *Quoniam. De Constitut.* n. 19: "[...] interpretationem statuti esse statutum, si sit intrinseca, & substantialis & inseparabilis à Statuto. Haec enim est mera declaratio, secus si sit argumentalis, vel extrinseca, quae dicitur interpretatio, vel potius correctio, seu enodificatio [...]." FAGNANI, P. *Jus Canonicum : sive Commentaria absolutissima in V. libros decretales.* Tomus Primus. *Quoniam. De Constitut.* n. 20-22: "[...] Congregationis declarationes editas Apostolica authoritate nihil aliud esse essentialiter, quam decreta ipsa Concilii ex se obscura ac dubia, seu [...] malè ab aliquibus intellecta, explicatione dilucidata & clarificata: hinc necessario sequitur ut obligandi vim habeant perinde ac decreta ipsa declarata [...]. Subdens declarationem esse dependentem, implicitam, & consequentem ad declaratum."

80 FAGNANI, P. *Jus Canonicum : sive Commentaria absolutissima in V. libros decretales.* Tomus Primus. *Quoniam. De Constitut.* n. 43: "Verum haec objectio tollitur, quia solemnitas publicationis exigitur quidem in legis editione, idque servat etiam S. Congregatio in decretis, quae per modum

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

This kind of publication would only take place if the interpretation of the Congregation of the Council exceeded the terms of Tridentine legislation, creating new law.[81]

Following this reasoning, with certain modifications (form of publication, *e.g.*), were renowned jurists such as Portuguese Agostinho Barbosa (1589-1649), Spanish Nicolás García (16th century-1645), and Bavarians Anaklet Reiffenstuel (1642-1703) and Franz Xavier Schmalzgrueber (1663-1735), the latter cited by Fontoura in the fragment we are analyzing. In the 19th century, French Dominique Bouix and Thomas-Marie-Joseph Gousset (1792-1866), both supporters of ultramontane ideas, come to join this list.

Along time, the academic discussion focuses on detailing the criteria which, already observable in Fagnani, allow a decree of the Congregation of the Council to be recognized as holder of force of law. Some classifications emerge, such as promulgated/not promulgated, comprehensive/extensive. For example, Giovanni Fortunato Zamboni (1756-1850), an Italian priest and jurist who produced a private compilation of decrees of the Congregation of the Council in the 19th century, uses the following criteria to discern a decision with *vi legis*: the pope had to be consulted on the decision, the declaration had to be *comprehensive* and produced in *authentic* form, that is,

novae legis ab ipsa eduntur, ut patet in decretis de Apostatis, & ejectis, de rebus regularium non alienandis, de celebratione Missarum, & aliis hujusmodi. At secus est in legis declaratione [...] quia cum legis declaratio non faciat novum jus, sed tantum manifestet quod prius erat, [...] lex declarata ab initio promulgata fuerit, solemnitas publicationis semel adhibita in principali dispositione, non est ulterius repetenda in illius declaratione." FAGNANI, P. *Jus Canonicum : sive Commentaria absolutissima in V. libros decretales.* Tomus Primus. *Quoniam. De Constitut.* n. 66-67: "[...] quamvis declarationes editae fuerint ad consultationem Episcoporum, aut partium litigantium in aliquo speciali casu: tamen nemo dixerit non esse generaliter observandas, cum decreta illa Concilii, quae generaliter ligant omnes, habent semper in ventre sensum, seu intellectum illum, quem Sacra Congregatio sua declaratione manifestavit. Et proptere videmus sententiam Principis, quae venit ad declarandum aliquod dubium juris, quamvis lata fuerit inter partes, & in casu particulari; tamen facere jus quoad omnes, quia non solum habet vim sententiae, sed etiam generalis statuti [...]."

81 FAGNANI, P. *Jus Canonicum : sive Commentaria absolutissima in V. libros decretales.* Tomus Primus. *Quoniam. De Constitut.* n. 43.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

signed by the congregation's prefect and secretary, with the usual seal.[82] The division to which Zamboni refers, separating decrees into *comprehensive* and *extensive*, is the same signaled by Fontoura in the third opinion. But, when *Lições* was published, in the late 19th century, the binding nature of comprehensive declarations, in opposition to extensive ones, was already a consensus in European handbooks.[83]

Bouix, for instance, in his *Tractatus de Curia Romana*, when addressing the state of art on the Congregation of the Council's authority, reports the absence of dissent regarding extensive declarations. As they represent changes in legislation, Bouix states, relying on Fagnani, that they have no force of law unless solemnly promulgated by the pontifical authority.[84] The French canonist is actually concerned about another debate (also touched by Fagnani): the one regarding the necessity of promulgating comprehensive declarations.

But let us turn our eyes back to Fontoura. Unlike his contemporaries on the other side of the Atlantic, he does not agree with the opinion (iii). Although he does not deny the existence of the *comprehensive/extensive* distinction, the Brazilian author rejects the position for not believing that a private authority (*i. e.*, a canonist) is entitled to decide on the nature of the Holy See's decisions. In his own words:

> Não se póde admittir a terceira opinião que destingue os decretos das Sagradas Congregações; portanto, não negando mesmo a existencia dessa distincção, não podemos concordar que um simples particular possa por sua autoridade privada declarar quaes são as decisões *comprehensivas* e quaes são as *extensivas*. Sómente uma autoridade

82 ZAMBONI, J. F. *Collectio declarationum Sacrae Congregationis Cardinalium Sacri Concilii Tridentini Interpretum*. Atrebati: 1860, LXXXIII.

83 PARAYRE, R. *La S. Congrégation du Concile; son histoire, la procedure, son autorité*. Paris: Lethielleux, 1897, p. 303.

84 BOUIX, *De Curia Romana*, p. 301.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

> superior é que póde firmar essa declaração [...]. Desta fórma cada um tornar-se-hia juiz de sua competencia, ficando as decisões das Sagradas Congregações sujeitas a um exame privado, donde tiraria sua jurisdicção.[85]

His emphasis on a higher authority – who could rightfully determine the character of decisions – makes easily predictable the position that Fontoura elects as correct. For the author, all congregations' decrees possessed *vim legis*, as if they were issued by the pope himself. Like Fagnani and the long list of canonists who followed him, Fontoura employs the argument that Roman congregations possess delegated authority from the papacy to interpret ecclesiastical laws. His discourse, however, does not pay attention to how the act of interpreting takes place; he does not consider that interpretation, when developed within the terms of the law interpreted, depends on that law and, *for this reason*, shares with it the character of general law. This step is not taken into account by Fontoura. His argument is based exclusively on the delegation of papal authority. The reader goes so far as to doubt whether what was delegated was just the power to interpret or also the power to legislate. In any case, it seems quite clear that, in *Lições*, a congregation's decree is general law because it is an echo from the pope.[86]

85 FONTOURA, I, p. 65.

86 "Seguimos a segunda [opinião] [...] Provamol-a pela razão canonica e pelo sentido das mesmas Congregações. É princípio inconcusso de direito ecclesiastico que as declarações do Summo Pontifice tem autoridade na Egreja universal e obrigam em consciencia. O poder de legislar é superior ao de interpretar; concedendo-se o primeiro, o segundo é uma consequencia necessaria delle. Ora, os Summos Pontifices, em virtude de sua jurisdicção ordinaria em toda Egreja, delegaram às Congregações por elles estabelecidas o poder de interpretar as leis ecclesiasticas, de conformidade com a natureza de cada uma dessas instituições; logo as decisões, as declarações e os decretos das Congregações Romanas tem força de lei geral. De outra sorte para que seriam instituidas essas Congregações? Não consideramos nessas respeitaveis reuniões sómente a sabedoria, a illustração e o alto criterio de seus venerandos membros; ha, na realidade, alguma cousa mais nellas, a autoridade delegada pelo Summo Pontifice, para tratarem de suas respectivas materias. Sem esta autoridade as Congregações seriam um congresso de sabios, de jurisconsultos,

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

It is also meaningful that Fontoura claims being supported by overseas canonists, when what he actually does is to quote positions that, not being endorsed by these authors, were only mentioned for the sake of better composing the central argument. This is the case when Fontoura turns to Schmalzgrueber. Although the Bavarian jurist had indeed made reference to the opinion that was favorable to the indistinctiveness of decrees with *vi legis*, he ultimately defended the differentiation between comprehensive and extensive decisions, without immediate force of law for the latter.[87]

Fontoura's emphasis on the pope's authority in the shaping of the sources of ecclesiastical law becomes more understandable if we consider his broader view on the Church during the period. As we said, Fontoura adopts positions from ultramontanism, a movement that, defending the autonomy of the Church against the surviving jurisdictionalism of the Ancien Régime (Gallicanism, Josephinism etc.) and the political and intellectual trends of modernity (liberalism, materialism etc.), relies on the narrative of the *authority* of the

cujas opiniões podem ser levadas aos privados tribunaes e ahi discutidas com toda liberdade. Entretanto, não é esta a praxe constante da Egreja; os decretos das Sagradas Congregações foram sempre tidos como échos dos Pontifices Romanos", in: FONTOURA, I, pp. 65-66.

87 Fontoura reports the following: "Schmalzgweber [sic], falando da Sagrada Congregação Tridentina, diz: *Eadem ratio habendo* [sic] *est in his quae scribantur* [sic] *a Cardinalibus Sacra Congregationis concilii Tridentini, nomine ipsius Congregationis, ac si a Papa scripta essent.* Outros canonistas consideram do mesmo modo a esta como as outras congregações, visto serem instituidas todas pela autoridade apostolica com o fim de representa-la em todas as questões que lhes são submettidas. [...]". See: FONTOURA, I, pp. 66-67. Comparing the fragment we just mentioned and the corresponding excerpt in Schmalzgrueber, the selective maneuver of the Brazilian author can be easily perceived: "[...] nam teste Garcia *l. c.* haec Sacra Congregatio sic rescripsit cuidam Abbatissae Messanensi: *Eadem ratio habenda est in his, quae scribuntur à Cardinalibus Sac. Congr. Concil. Trid. nomine ipsius Congregationis, ac si à Papa scripta essent.* Tertia, & verior Sententia distinguit inter Declarationes ; nam hae duplicis generis sunt, Comprehensivae, & Extensivae. [...] De *Extensivis* libenter concedit sententia ista, quod vim, & authoritatem Legis non habeant, nisi siant [sic] ex speciali mandato Papae, & legitimè promulgentur. *Ratio* solida, & perspicua est; quia hoc ipso, quòd Conciliarium Decretorum verbis non contineantur, sunt novae Leges Ecclesiasticae, authoritatem Legislativam in declarante exposcentes. Atqui S. Congregatio ex sua institutione authoritate istam non habet. [...]". See: SCHMALZGRUEBER, F. *Jus Ecclesiasticum Universum* etc. Tomus Primus. Neapoli, 1738, prostant Venetiis apud Josephum Bortoli, p. 44.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Church – and, above all, the authority of the *pope*.[88] Differently from its predecessors, *Lições* emerged after the First Vatican Council and the loss of the Papal States. Both events were instrumental for the reorganization of the central government of the Church in practical and symbolic ways.[89] This period was characterized by the reinforcement of the centralizing character and universal reach of the spiritual government of the pope and the Curia. These changes were felt in Brazil especially between the 1860s and 1880s, when dioceses came to be ruled by a predominantly ultramontane episcopate, in increasing communication with the Holy See.[90] This was the case of the diocese of São Paulo at the time of the publication of *Lições*, when it was under the direction of D. Lino Deodato Rodrigues de Carvalho. We must also note that Fontoura wrote his manual after the impact of the Brazilian Religious Question, an occasion in the mid-1870s when national bishops were brought before secular courts after enforcing anti-masonic papal bulls without the civil government's

88 On the importance of the issue of authority for 19th-century ecclesiological discourse, says Congar: "Le XIXe 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 XIXe 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". See: CONGAR, Y. 'III. L'ecclésiologie, de la Révolution française au Concile du Vatican, sous le signe de l'affirmation de l'autorité'. In: *Revue des Sciences Religieuses*, 34-2-4, 1960, pp. 100-103. On the relationship between ultramontanism and centralization of authority, see: O'MALLEY, J. W. *Vatican I. The Council and the Making of the Ultramontane Church*. London: Belknap Press, 2018, p. 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."

89 For more details on the changes in the central government of the Church due to the end of the Papal States, see: JANKOWIAK, F. *La Curie Romaine de Pie IX à Pie X. Le gouvernement central de l'Église et la fin des États Pontificaux (1846-1914)*. Rome: École Française de Rome, 2007.

90 SANTIROCCHI, Í. *Questão de Consciência: os ultramontanos no Brasil e o regalismo do Segundo Reinado (1840-1889)*. Belo Horizonte: Fino Traço, 2015.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

permission, being convicted and imprisoned.[91] Even though it ended with the bishops' amnesty, the case generated a scandal of international proportions, and deepened the division between supporters of ultramontanism and defenders of opposing tendencies (jurisdictionalists, liberals, republicans, freemasons etc.) within the country. The issue of the ultimate authority in ecclesiastical matters was more pressing than ever. Bearing all these factors in mind, it is possible to understand why Fontoura sometimes adopts a tone that is "more ultramontane than that of ultramontanists", that is, more radical when compared with previous European canonists, like Bouix and Gousset. If Fontoura's unreserved belief in the authority of the Roman congregations' decrees seems to distance him from the standards of most orthodox canonists, it brings him very close to the devotional perspective that the Universal Church expected from the faithful. Parayre approaches this topic when questioning *how* it would be possible to distinguish whether the object of a given declaration of the Congregation of the Council was contained in Trent (comprehensive declaration) or not (extensive declaration). He seeks to understand whether such decision is to be promptly obeyed or if it needs special promulgation beforehand. The question, according to the author, is of little relevance to the faithful, since they simply have to obey.[92]

91 PEREIRA, N. *Dom Vital e a questão religiosa no Brasil*. Rio de Janeiro: Tempo Brasileiro, 1986. SANTIROCCHI, Í. *Questão de Consciência: os ultramontanos no Brasil e o regalismo do Segundo Reinado (1840-1889)*. Belo Horizonte: Fino Traço, 2015, pp. 427-453.

92 "[...] la question est peu importante en soi, puisqu'il faut obéir à toutes les déclarations quelle que soit leur nature. Que les canonistes discutent la chose théoriquement, c'est leur affaire, les fidèles n'ont pas à s'en inquiéter, ils sont parfaitement à l'aise et instruits de leurs devoirs, ils savent que la Congrégation a droit d'imposer ses ordres de quelque manière qu'elle les donne. Ils n'ont pas même à se demander si le Pape a été consulté, s'il a approuvé le décret, ils doivent le supposer [...]", in: PARAYRE, R. *La S. Congrégation du Concile; son histoire, la procedure, son autorité.* Paris: Lethielleux, 1897, p. 358. Varsányi has a similar opinion, claiming that extensive interpretation should be openly recognized as one of the prerogatives of the Congregation of the Council, especially in view of the new demands of the 19th century in disciplinary issues, which prompted popes to legislate by means of the congregation: "Libenter tamen admittimus Summos Pontifices, praesertim saeculo XIX, quando disciplina tridentina iam non correspondebat

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Fontoura revisits the topic of the normative force of the congregations' decrees in his description of *Propaganda Fide*. There he defends that the dicastery's decisions, once signed by the prefect and secretary, have the "force and value" of apostolic constitutions. When making this claim, he refers to two popes: Pope Urban VIII, who, having reigned between 1623 and 1644, would have decreed the equivalence, and Pope Pius IX, who would have confirmed such determination in 1853, condemning those who postulated the absence of *vis legis* for lack of papal or civil permission.[93] In saying it, Fontoura is in line with his European counterparts. In Bouix's *Tractatus de Curia Romana*, there is a similar fragment with further development (there we discover that the decrees in question are the *general* ones).[94] Although Fontoura does not explicitly cite the French canonist when

omnibus exigentiis temporis, multoties per Congregationem Concilii introduxerunt tum novas leges, tum mutationes partiales antiquarum ordinationum. [...] In casibus practicis non semper facile dignoscitur, utrum agatur de interpretatione tantum explicativa an potius restrictiva vel extensiva. Inde, nisi Congregationi facultas huiusmodi interpretationis agnita fuisset, fideles rationabiliter dubitare potuerunt, utrum interpretatio esset legitime data necne, utpote intra facultatem interpretantis, an eam excedens. Ad hanc perniciosam consequentiam evitandam Congregationi necessario agnoscenda esse videtur facultas practica extensive ac restrictive interpretandi". See: VARSÁNYI, G. I. 'De competentia et procedura S. C. Concilii'. In: *La Sacra Congregazione del Concilio. Quarto Centenario della Fondazione (1564 - 1964). Studi e ricerche*. Città del Vaticano, 1964, p. 104.

93 FONTOURA, I, pp. 190-191: "Urbano VIII decretou que os actos emanados dessa Congregação, firmados pelo seu Prefeito e subscritos pelo seu Secretario, tivessem força e valor de Constituição Apostolica. Pio IX confirmou essa determinação por sua Constituição *probe*, de 9 de Maio de 1853, condemnando o erro daquelles que affirmam que os decretos dessa Congregação não obrigam, não sendo referendados pelo Summo Pontifice ou pelo poder civil."

94 BOUIX, *De Curia Romana*, p. 233: "[...] Hinc decretis S. Congregationis de Propaganda, inest vis seu valor Constitutionis Apostolicae. Quod sic exponitur apud Antoine (in appendice ad tractatum *de legibus*): 'Decreta Congregationis generalis de propaganda fide, *quotiescumque sint a praefecto ejusdem firmata, et a secretario subscripta, vim et valorem habere Constitutionis Apostolicae* decrevit Urbanus VIII [...]'. V. Ergo rejiciendus omnino est error eorum, qui effutiunt [sic] non obligare S. Congregationis Propagandae decreta, sive quod inscio Romano Pontifice saepius ferantur, sive quod civilis auctoritatis placitum eis non accesserit. Sequitur ex eo quod decreta haec vim Constitutionis Pontificiae habeant. Praeterea errorem hunc expresse confixit Pius Papa IX (in sua Constitutione *probe*, 9 maii 1853 [...]".

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

addressing this matter, he probably adapted information from this very source.

To conclude this section, we must mention that Fontoura's *Lições* is the only Brazilian handbook that includes the decrees from permanent congregations of cardinals in its general chapter on sources of ecclesiastical law.[95] It is true that, as seen previously, Vilella Tavares considers these decisions as part of the *ius novissimum*, but he does not list them in the section on sources.[96] This absence can also be felt in Monte.[97] The Bishop of Rio de Janeiro does introduce a bit of the debate on the quality of decrees, noting that some authors distinguish the declarations of the Congregation of the Council in those given *in abstracto* and those given in view of a specific case. Monte claims that, according to the same (unnamed) authors, only declarations *in abstracto* would be "general norms and laws". The others would have "force of *res iudicata*", referring just to the corresponding cases. Even for similar situations the equivalence of circumstances would have to be proved before any extensive application.[98] The idea of separating general and particular decisions, with normative advantage to the former, can be found in the sources upon which Monte relies at the description of congregations, namely De Luca[99] and Van Espen (who

95 FONTOURA, I, p. 37.

96 VILELLA TAVARES, 1, pp. 12-13; VILELLA TAVARES, 2, pp. 7-8.

97 MONTE, I, pp. 4-5.

98 MONTE, I, 186. "Alguns AA. distinguem entre as declarações, que este tribunal dá *in abstrato*, e que são como normas e leis gerais; e aquellas, que elle dá em *alguma hypothese*, ou caso particular, que sómente ácerca d'esse tem autoridade e força de *cousa julgada*, principalmente sendo dada *por via de juizo*; mas não ácerca d'outro caso particular embora semelhante, ao menos em quanto se não prova que as circumstancias d'um e d'outro caso são precisamente as mesmas."

99 DE LUCA, J. B. *Theatrum Veritatis et Iustitiae.* Liber Decimus Quartus. etc. V. Annotationes practicae ad S. C. Trident. in rebus concernentibus reformationem, & forensia etc. Venetiis, apud Paulum Balleonium, 1716, Par. V, Disc. I. n. 11: "[...] quia pro meo sensu, (aliquibus exceptis decretis, vel declarationibus generalibus,) erroneum est, in particularibus declarationibus, cum consueta caeca fide, vim constituere, cum illae, quae singulos, vel particulares concernunt casus, ex eorum particulari qualitate, & circumstantiis manere soleant, ideòque alteri diversas circumstantias habenti, non semper sunt applicabiles, cum diversi modè ob diversam facti qualitatem, saepius decernere congruat, quod vulgus malè concipit, atque contrarietatem appellat."

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

cites the Italian).[100] Fagnani apparently disagrees with this point of view.[101] Pope Benedict XIV seems to do the same.[102] It is a thorny issue – and it would surely need more pages to be developed.[103], [104] However,

100 Van Espen uses the citation of De Luca to conclude that, as particular *declarationes* are frequent and the decrees of the Congregation of the Council are not usually published *modum legis* (solemnly), the declarations from this dicastery do not have force of general law. See: VAN ESPEN, Z. B. *Jus Ecclesiasticum Universum* etc. Tomus Primus. Coloniae Agrippinae, ex Officina Metternichiana Sub Signo Gryphi, 1748, Pars I, Tit. XXII, Caput V, n. XIV, XVI, XVII.

101 FAGNANI, P. *Jus Canonicum : sive Commentaria absolutissima in V. libros decretales.* Tomus Primus. *Quoniam. De Constitut.* n. 66-67, as quoted above.

102 Pope Benedict XIV, in the *Institutiones ecclesiasticas*, sustains that, if the answer to particular questions involves *interpretation* of the Council of Trent, the corresponding declaration of the Congregation of the Council has force of universal law. See, for instance, the following passage, in which Pope Lambertini initially criticizes those who disregard the normative character of the congregation's decrees for lack of promulgation: "Neque illae excusationis causae admittuntur, quas superius attulimus, nempe Sacrae Congregationis Decretis legem minime induci, & fine culpa violari, cum promulgari non consueverint. Nam, cum lex aliqua jam palam innotuit, necesse non est, ut eodem pacto reliquae sanctiones publice divulgentur, quibus eadem lex magis declaratur. Cum vero illam legem indicant, qui non modo auctoritate praediti sunt, etiam soli possunt Tridentinum Concilium explicare, ideo utrumque forum jure complectitur. Item supervacaneum est ad eam rationem confugere, hujusmodi Decreta ad illos solum pertinere, pro quibus constituta sunt. Nam, licet id non semel contingat, ea tamen, de quibus sermo est, ad universos referuntur, licet viri alicujus singularis gratia emanaverint, quia ad explicandum, magisque inteliigendum Concilium confecta fuerunt." See: BENEDICTI XIV. *Institutiones ecclesiasticae* etc. Venetiis, Ex Typographia Balleoniana, 1750, n. 10.

103 Varsányi acknowledged the highly controversial character of the issue on whether all the decrees of the Congregation of the Council would be *authentic interpretations*, that is, whether they would *all* have force of universal law. Escaping from a definitive answer, the author lists some opinions: "a) Decisiones Congregationis Concilii in casibus particularibus emanatae valorem universalem non habebant, nisi per stylum Curiae et consensum Doctorum ex eis ius consuetudinarium efformabatur. b) Interpretationes ius vere dubium explicantes, ut omnes subditos tenerent, legitime promulgari debebantur, contra ac permulti canonistae docebant. Quae promulgatio antiquitus sollemniter, i.e. per decretorum affixionem in certis locis publicis fiebat, posterius per exemplarium ad Ordinarios transmissionem fieri solebat". See: VARSÁNYI, G. I. 'De competentia et procedura S. C. Concilii'. In: *La Sacra Congregazione del Concilio. Quarto Centenario della Fondazione (1564 - 1964). Studi e ricerche*. Città del Vaticano, 1964, p. 100.

104 The force of law of the decrees of the Congregation of the Council is a research topic being developed by another member of the Max Planck Research Group "Governance of the Universal Church after the Council of Trent", Alfonso Alibrandi, in his in-progress doctoral dissertation preliminarily entitled "Il dominio sull'interpretazione della legge. Uno studio sul concetto

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

what is remarkable here is the difference of tone between Monte and Fontoura, which says a lot about the background and the general positions adopted by the two authors. Monte makes reference to an opinion of third parties without caring to clarify whether he endorses it or not, in a syncretistic fashion that mirrors his balanced political attitude (between cautious and coward, depending on the point of view) towards the State and the Holy See in the 1850s. Fontoura, on his turn, mentions many opinions and clearly chooses a side. He favors the unrestricted authority of the congregations of cardinals, in a somewhat exaggerated conformity with late-19th-century ultramontanism. By then, the time for minced words had already passed.

After visiting the debates on the force of law of the congregations' decrees, we must observe if and how Brazilian canonists used the authority of concrete decisions.

3. The decisions of congregations as authoritative references: a preliminary quantitative panorama

Both *Elementos* and *Lições* cite decisions from Roman congregations in order to detail certain legal aspects of Church governance. This material is employed as a normative parameter, as a reference of authority. In Monte's manual, concrete decisions are referenced at least 49 times.[105] In Fontoura, the number of

d'interpretazione 'autentica' della norma tra il diritto canonico e il diritto francese nei secoli XVI e XVII".

105 In the counting, we considered any reference to a congregation's decision as a citation, no matter how general its formulation was (decree, instruction, rule, model etc.), as long as it was evident that the author referred to concrete decisions. Multiple references to the same decision in a single argumentative unit were counted as *one* citation. In Monte, we observed that many citations from the text body repeat in the preface of the work, whose function is to provide a

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

citations is 38. Regarding mentions per dicastery (see Table 1 and Charts 1 and 2), the Congregation of the Council, responsible for the interpretation and execution of the Council of Trent in the Catholic world, accounts for most citations in both handbooks. In Monte, they amount to 59,18% (29) of cited decisions, whereas in Fontoura they represent 36,84% (14). In fact, the percentage in *Lições* is likely even more expressive, considering that Fontoura explains topics related to the Council of Trent while mentioning unidentified congregations (classified here as "indeterminate").

In *Elementos*, the Congregation of Rites also reaches a significant number of citations (20,40%, 10). There are timid references to the Holy Office (8,16%, 4), *Propaganda Fide* (4,08%, 2), Ecclesiastical Immunity (2,04%, 1), and Bishops and Regulars (2,04%, 1). Surprisingly, in *Elementos*, the decisions from Bishops and Regulars are very few, even though Monte characterizes it as a congregation of broad jurisdiction, "the largest and busiest", "the universal congregation". In *Lições*, on its turn, Bishops and Regulars is present in 15,78% (6) of citations, followed by Rites, with 10,52% (4). The Holy Office is mentioned only once (2,63%). Despite being extensively described by Fontoura, *Propaganda Fidei* does not have a single declaration cited. References to indeterminate congregations amount to 34,21% (13).

summary of the book's contents. In this case, each citation was individually counted (that is, *one* citation corresponding to the text body, and *one* citation corresponding to the preface). We proceeded thus because we consider that decisions in one and another context perform relevant and non-equivalent functions. In other words, taking into account that a citation present in the text body could be included in the preface *or not*, we interpret that its inclusion expresses the author's choice of emphasizing its value, a new feature in comparison with the text body.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

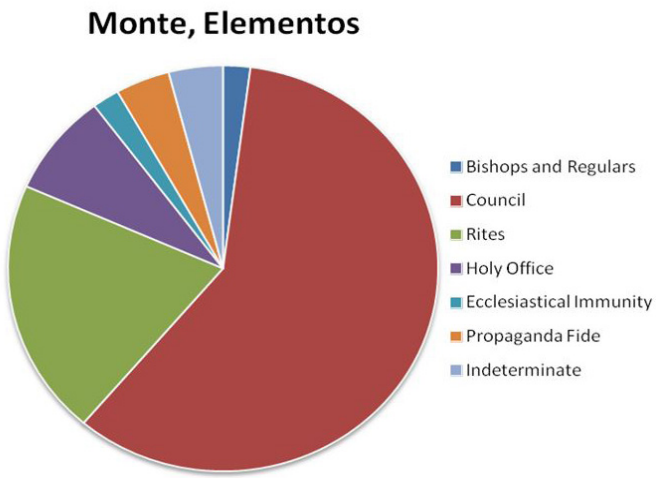
Table 1

Citations of decisions from congregations of cardinals in Brazilian books on ecclesiastical law, organized by dicastery (percentage and absolute numbers)

	Elementos, by Monte	*Lições*, by Fontoura
Bishops and Regulars	2,04% (1)	**15,78% (6)**
Council	**59,18% (29)**	**36,84% (14)**
Rites	**20,40% (10)**	10,52% (4)
Holy Office	8,16% (4)	2,63% (1)
Propaganda Fide	4,08% (2)	0
Ecclesiastical Immunity	2,04% (1)	0
Indeterminate	4,08% (2)	**34,21% (13)**
Total	100% (49)	100% (38)

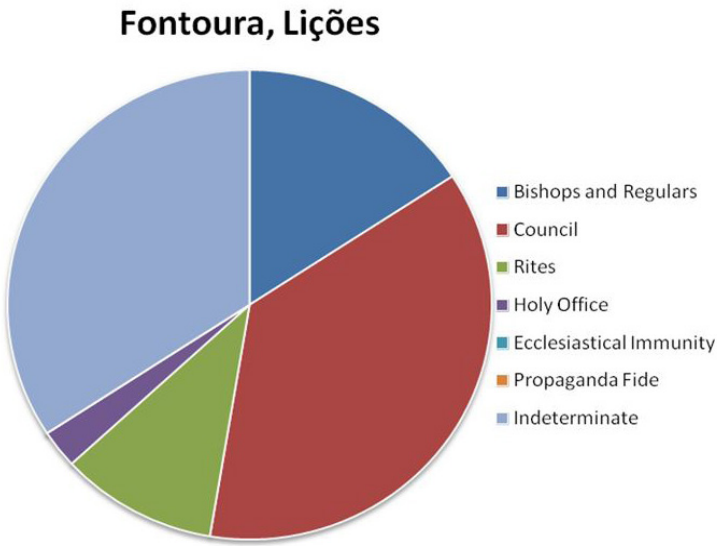
Chart 1

Citations of decisions from congregations of cardinals in the book Elementos de Direito Ecclesiastico Publico e Particular (1857-1859) by D. Manoel do Monte Rodrigues d'Araujo. Citations organized by dicastery



Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

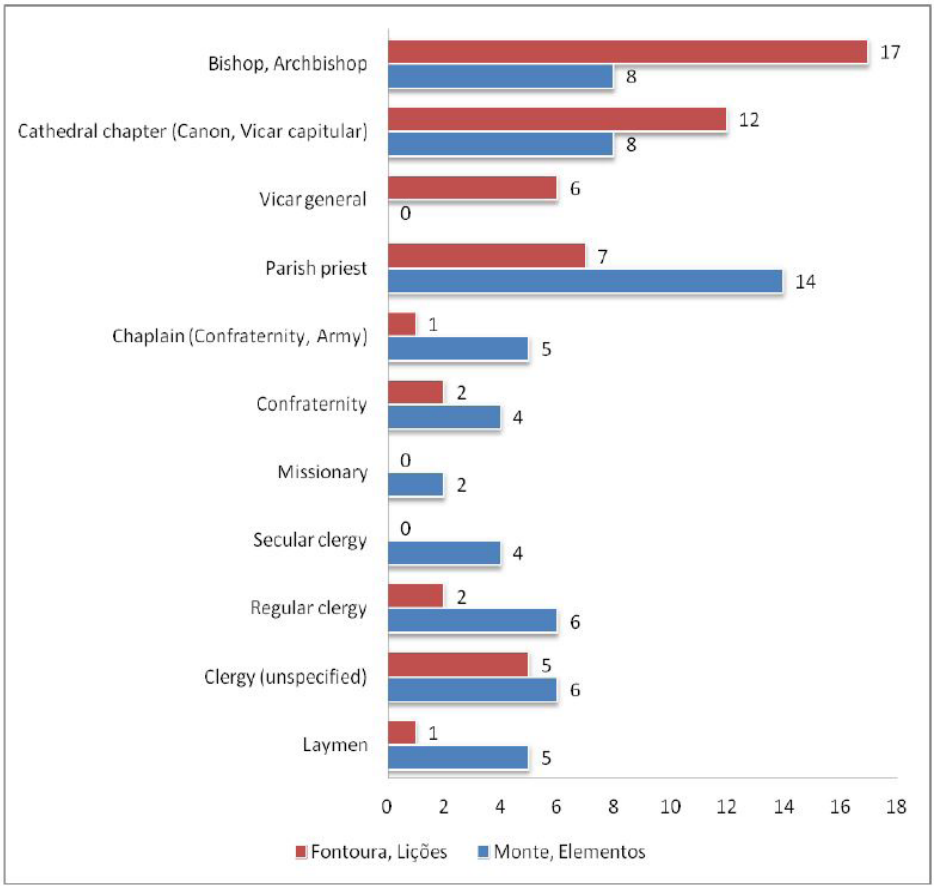
Chart 2
Citations of decisions from congregations of cardinals in the book Lições de Direito Ecclesiastico (1887) by Ezechias Galvão da Fontoura. Citations organized by dicastery



Regarding *protagonist agents* (Chart 3), that is, the actors to whom decisions were predominantly related (in terms of content, not form), both *Elementos* and *Lições* present expressive numbers for bishops, cathedral chapter (including canons and vicars capitular), and parish priests. In Fontoura's handbook, the focus rests on the first two groups (44,73%, 17, for bishops; 31,57%, 12, for canons), while Monte concentrates more decisions from the third group (28,57%, 14, for parish priests). *Elementos* also displays a greater variety of protagonist agents. Beyond the usual persons responsible for the government of dioceses and parishes, the decisions recurrently refer to chaplains, confraternities, secular clergy, regular clergy, and even laymen. In comparison, the normative material present in *Lições* repeatedly addresses the vicar general.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Chart 3
Citations of decisions from congregations of cardinals in Brazilian books of ecclesiastical law, organized by protagonist agent (absolute numbers). Decisions may fall in more than one category



Such recurrences can be better grasped by taking a look at the data represented in Chart 4, which dwells on the predominant themes of the decisions. We note that this division of matters is still tentative, a suggestion of categorization, subject to future changes

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

and adjustments. Notwithstanding that, the chosen categories are already capable of promoting some interesting reflections. What firstly draws our attention is the striking concentration of citations on the topic *delimitation* of powers, functions and jurisdiction. Numbers reach 32,65% (16) in Monte, and 23,68% (9) in Fontoura. Combining these results with the ones from Chart 3, one may infer that the Holy See emerges as a strong reference when it comes to defining the limits of the sphere of action of agents involved in diocesan and parochial administration. Especially the decisions from the Congregation of the Council and the Congregation of Rites figure as parameters for ecclesiastical government and discipline. This is the case for everyday matters (*e.g.*: can the regular clergy ring the bells of their churches during Holy Saturday, or is this an exclusive prerogative of the cathedral? Can chaplains of confraternities perform functions that traditionally belong to parish priests, such as the celebration of the Solemn Mass?) as well as for exceptional periods of the ecclesiastical government (*e.g.*: can the cathedral chapter or the vicar capitular exercise apostolic faculties granted to the Brazilian bishops?).

But the themes of decisions are not confined to the delimitation of the spheres of action. In Monte, other relevant topics are matrimony (16,32%, 8), censure and penalty (12,24%, 6), mass (12,24%, 6), the Eucharist (8,16%, 4), and the clergy's means of sustaining (8,16%, 4). In most of the corresponding decisions, the congregation invoked is Council, followed by Rites on what concerns mass and the Eucharist.[106] In Fontoura, the prevailing themes are election and examinations (21,05%, 8); the "corporative" concern with the insignias of canons (10,52%, 4); mass (10,525, 4); and the Eucharist (7,89%, 3). In this scenario, the decisions from the Congregation of the Council

106 Although we are aware of the close relationship between the two themes, we consider mass and the Eucharist separately. We interpret the former as the *liturgical service* whose center is the Eucharist, emphasizing the aspects of *service*, *celebration* (of different kinds: *solemn*, *requiem*), and also of *duty* of the parish priest to offer it to the people (*missa pro populo*). The Eucharist, on its turn, is observed as a *sacrament* (even in contexts outside the mass, as is the case of the viaticum) and as object of *display* for the purposes of worship and blessing.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

share protagonism with those from Bishops and Regulars, especially in topics such as the election of the vicar general and the Eucharist.

The strong presence of normative material from the Congregation of the Council in Brazilian handbooks of ecclesiastical law confirms the centrality enjoyed by the Council of Trent in these works. More than that: it is proof of the interest that Brazilian canonists had in the official interpretation of the Holy See and in how certain lacunas concerning the government and discipline of the Church were filled. This trait is visible not only in the themes of greater recurrence listed above, but also in those which, covering just one or two decisions, correspond to very specific competences of the congregation. This is the case of extraordinary themes (*ad limina* visits, diocesan synod, for example) and prosaic themes, typical of everyday ecclesiastical administration (residence, divine office, procedure *ex informata conscientia*, for instance). One may say that the handbooks execute a double movement: they acknowledge the normative authority of these decisions and, at the same time, perceive in them the opportunity to reach a higher degree of detail and update of the discipline of ecclesiastical hierarchy. This movement, however, does not imply the absence of contrast or an unrestricted acceptance of the selected decrees on the part of the Brazilian authors. It is true that harmonization and conformity are the dominant notes. Nevertheless, if we consider Monte's *Elementos*, sometimes a certain friction is perceived between universal (that is, from the Holy See) and local positions. An example of this is when the Bishop of Rio de Janeiro declares that, in spite of an affirmative decision from the Congregation of the Council, the practices from his diocese and, he believes, from other parts of the Empire, dictate that chaplains of confraternities cannot celebrate the annual Solemn Mass without the authorization of the parish priest in charge.[107] Fontoura, for his part, also exhibits a contrast regarding the

107 "Bouix, que segue esta opinião, a confirma com uma Declaração da Sagr. Congr. do Conc. e muito moderna (1844), na qual se lê o seguinte: 1. Se é lícito ao Capellão fazer novenas, triduos e outras funcções com exposição e benção do SS. Sacramento no Oratorio de S. Domingos, independentemente do Parocho no caso. 2. Se é lícito ao mesmo Capellão cantar as Missas

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

form of ecclesiastical examinations. He states that the diocese of São Paulo interpreted the apostolic constitution *Cum illud* (1742) of Pope Benedict XIV in opposition to the decisions of the Congregation of the Council.[108] However, unlike Monte, Fontoura is not praising the local perspective, but subtly censoring it. This becomes clear when, after quoting the decrees from the dicastery, the canon emphasizes the authority of the Apostolic See and the duty of obedience due from the rest of the hierarchy: "[the] Catholic Church has tribunals that are competent to interpret its legislation; subaltern authorities are only executors".[109] Once again, behind the authors' discourses we are able to catch a glimpse of the differences between positions more inclined to jurisdictionalism and others more attached to ultramontanism.

solemnes independentemente do Parocho. A Sagr. Congr. respondeo ao 1. e 2. quesito *affirmative*, em tudo, na forma do Decreto – Urbis et Orbis de 10 de Dezembro de 1703, salvo todavia o direito do Bispo para dar licença de abençoar o povo com o SS. Sacramento, como é de direito. Bouix, loc. cit. par. 3. Não obstante, nós dissemos em outra parte e repetimos aqui, que nesta Diocese do Rio de Janeiro, e cremos que em outras deste Imperio, as Missas solemnes per annum, celebradas nas Igrejas não isentas ou filiaes das Matrizes, formam um direito parochial, direito util, não podendo por isso os Capelães das Confrarias celebrar essas Missas, salvo de licença do respectivo páraco", in: MONTE RODRIGUES D'ARAUJO, M. *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, 1858, p. 422.

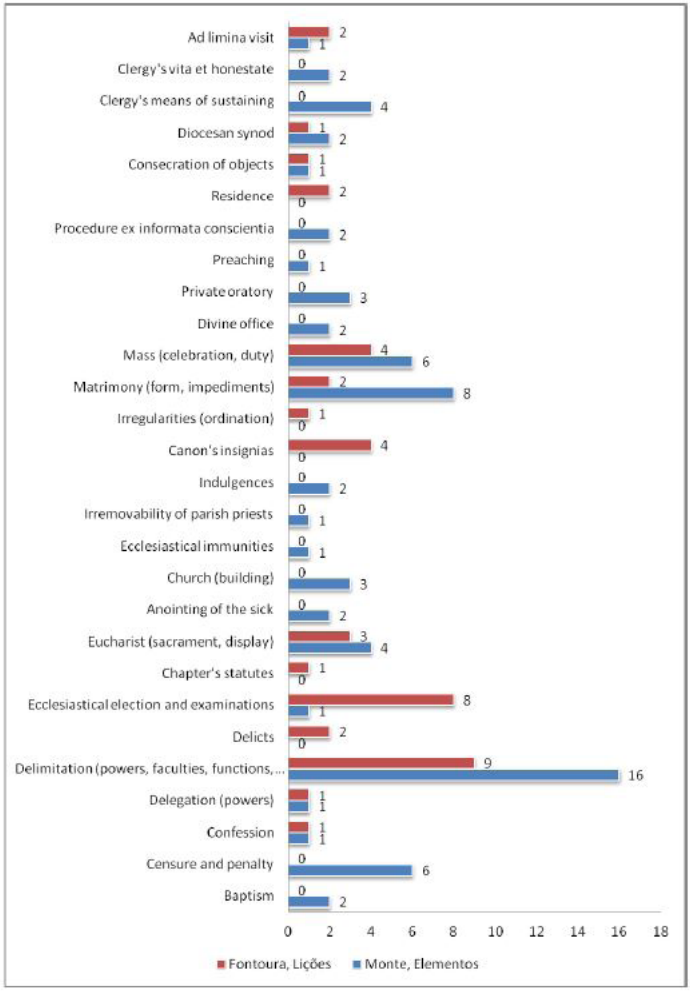
108 FONTOURA, II, p. 207.

109 FONTOURA, II, p. 208.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Chart 4

Citations of decisions from congregations of cardinals in Brazilian books of ecclesiastical law, organized by theme (absolute numbers). Decisions may fall in more than one category



The quality of the decisions cited (in terms of content, objective, form of citation) also depends on the sources consulted by Brazilian

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

authors. In the case of Lições, considering its more pedagogical than scientific tone, Fontoura did not reference the compilations, journals, or canonists from which he selected the congregations' declarations. Discovering his sources would demand a more complex strategy, that is, to perform a general bibliometric analysis and verify which of the cited canonists employed the same decisions, searching for fragments which Fontoura might have translated to Portuguese (as he did in other parts of the manual). Even so, the attribution would only be approximate. In Monte's case, the scenario is more encouraging. With greater attention to the scientific character of his work, the Bishop of Rio de Janeiro offered some information regarding the origin of the decisions he mentioned. The following are the sources that have been referred to, with the respective recurrence: the Ius Ecclesiasticum Universum, by Portuguese jurist Agostinho Barbosa (one citation), published for the first time in 1633; the Ius Canonicum Universum, by Reiffenstuel (2 citations), whose first edition dates back to 1700; "Ferraris na sua Bibliotheca" (2 citations), a reference to the encyclopedia Prompta Bibliotheca Canonica, by Italian canonist Lucio Ferraris, from the middle 18th century; the Institutiones Iuris Ecclesiastici Publici et Privati, by Schramm (one citation), from 1774; the Compendio di Diritto Canonico Istorico-Dogmatico, by Italian priest Francesco Mercanti (one citation), printed in the early 19th century; "Abade André, Droit Canon." (2 citations), probably the Cours Alphabétique et Méthodique de Droit Canon.: Mis en Rapport avec le Droit Civil Ecclésiastique, published in the 1850s by French canonist Michel André, in collaboration with Jacques Paul Migne, famous editor and encyclopedist; closer to jurisdictionalist points of view are the Manuale Compendium, by Lequeux (2 citations), and the Jus Ecclesiasticum in Epitome Redactum, by Van Espen (one citation); on the side of the "combative orthodoxy" of ultramontanism, one can find the first volume of the journal L'Auxiliaire Catholique (one citation), from 1845, organized by the Benedictine Abbot D. Prosper Guéranger, one of the bastions of French ultramontanism, along with Bouix, cited simply by name, suggesting that Monte refers to one of his Tractatus (7 citations); official sources are represented by the compilation of authentic decrees of the Congregation of Rites

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

(Decreta Authentica Congregationis Sacrorum Rituum), edited by the Holy See, with 4 citations; lastly, there is Benedict XIV, who reaches the largest number of citations (7), three of which are of the work De Synodo Dioecesana, from 1748.

This varied set of sources allows some interesting conclusions – and further questions. We confirmed Monte's syncretism, which mixes references closer to Gallicanism and to ultramontanism without further ado. But, beyond that, we could perceive the permeability of the congregations' decisions, that is, their potential of diffusion through a wide range of means, being infused with different politico-religious positions and/or scientific or extra-scientific purposes, in a circuit that transcends national borders. In the Brazilian case, taking Monte as an example, it is meaningful that foreign doctrinal works appear as the main source of normative material. This data allows us to raise more questions: would it be indicative of the prestige of doctrine or evidence that the access to ecclesiastical compilations and specialized journals in 19th-century Rio de Janeiro was scarce? Moreover, would the quality of a foreign book be linked to the presence or absence of congregations' decisions? Or conversely: would the importance of decisions be connected to their presence in books by famous authors? Could one consider that the authority of the Holy See and the authority of jurists were complementary? Regardless of the answers, our results point to the participation of Brazilian canonists in the global circulation of legal knowledge and practices related to the Roman Curia. The country's authors, by inserting normative material from the congregations in their doctrinal exposition, acted themselves as interpreters, as mediating intellectuals. As such, they either fully abided by the decrees of the Holy See, sometimes relying on the selection provided by a foreign author or a compilation; or they sought to accommodate (or to polemize on) the differences between these norms and local practices. This mediation, besides transatlantic, is clearly multilevel. The activity of the Apostolic See, the interpretation of such activity by European jurists in different periods and spaces, the Brazilian culture of ecclesiastical law, and the particularities of the ecclesiastical administration during the

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Empire, all these dimensions are involved. Within this framework, Brazilian handbooks can be regarded as objects molded by multiple cross-border operations, as compositions that are simultaneously common – i.e., that share ideas, norms, and references from the same transnational community of jurists and institutions – and original – as the result of specific circumstances and interpretations.

Conclusion

The congregations of cardinals are, per se, administrative bodies of transnational character. Their activities are not directed to the Church of a specific nation, but to the Catholic world. They are part of the sui generis governance of the Catholic Church, which is precisely characterized by a multidimensional arrangement: temples, seminaries, religious institutions, all these elements are placed in a local setting, within national boundaries, and yet they are part of a global structure. This arrangement finds a means of representation, discussion and dissemination in manuals of ecclesiastical law. This article sought to portray how, in the 19th century, the Brazilian variant of this literature presented in its pages the transnational administrative level of this arrangement – the permanent congregations of cardinals. By doing so, it proposed an original, transversal and decentralized reading of the Roman Curia, besides addressing for the first time some of the peculiarities of Brazilian handbooks on ecclesiastical law.

The analysis allowed us to observe that, even in an institutional scenario where jurisdictional logics operated, and even in authors who defended, to a greater or lesser extent, State measures that were then condemned by the Holy See, there was room for the Roman congregations in Brazilian handbooks. The authors' diversity of context and ideological orientation actually contributed to the composition of distinct and original narratives. The jurists who were closer to the institutional jurisdictionalism of the first decades of

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

the independence, Vilella Tavares and Monte, both syncretists, were characterized, in the case of the former, by a fairly brief exposition, in the case of the latter, by a more descriptive style, constant in criteria, and supported by "traditional" references from the Ancien Régime (some well regarded in Roman circles, others not so much). Monte dedicated considerable attention to historical details, so much that some fragments of his text seem to amount to no more than exercises of erudition. Not by chance, his depiction of the framework of congregations is limited by the horizon of knowledge of his old references. For this reason, his exposition conveys the impression of stillness, staticity.

Fontoura, on his turn, makes one realize how significant is the interval of more than 25 years that separates him from the publications of his colleagues. Fond of ultramontane ideas, this canonist composes a more updated picture of the permanent congregations, even if he fails in methodological precision. It is noteworthy that, in addition to the chapters describing the Roman dicasteries' competences (a feature of Monte's Elementos), Fontoura's Lições has an autonomous section dedicated to the problem of the normative force of the congregations' decrees. It is evident that this work was conceived after the First Vatican Council and the Brazilian Religious Question, both events in which one witnesses the symbolic and practical intensification of the interactions between the Holy See and local ecclesiastical institutions, in parallel with the decline of the clergy's relations with the imperial government. In this scenario, Fontoura's exposition expresses dynamism, in the sense that it appears to be more focused on daily praxis and didactics, and less on academic rigor and historical curiosity.

The ideological and contextual differences between the authors can also be found in the addressing of debates that orbited around a major topic for the 19th century: authority, in particular the central authority of Rome. Monte delineates the arrangements of jurisdiction between bishops and congregations from horizontal and vertical perspectives, emphasizing, on one side, accumulation, on the other, dependence. Fontoura, instead, highlights the vertical

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

axis, the hierarchy between the levels. When he discusses the issue of the force of law of the congregations' decrees, the canon of São Paulo goes so far as to unreservedly support the authority of the Roman dicasteries, in a clear radicalization of the opinions of European authors and, one might say, in an attempt to be "more ultramontane than Rome". In Monte's case, his narrative about the normative quality of the decrees is more sober, more descriptive; he does not openly express a personal position. This does not mean, however, political neutrality. It can be rather understood as reflection of the politically balanced relationship that Monte sought to maintain with the imperial government and the Holy See, entities bearing different (and sometimes conflicting) interests.

But the authority of the congregations is measured not only in the doctrinal debate, but also in the frequency of citation of concrete decisions. A question arises: why Brazilian canonists as diverse as Monte and Fontoura cited the congregations? The strong recurrence of citations regarding ecclesiastical functions, prerogatives and duties of figures such as the bishop, the canon, and the parish priest leads us to the interpretation that the congregations' decisions served as authoritative responses to the needs of detailing and updating local ecclesiastical government and discipline. Not by chance, the dicastery whose decisions were most frequently cited was the Congregation of the Council, the organ of the Roman Curia which was in charge of the interpretation and implementation of the disciplinary part of the Council of Trent. In fact, although other congregations played a more prominent role in the handbooks' descriptive sections (at least in terms of space used in the exposition, if we think of the Holy Office or Propaganda Fide), the number of citations shows that the Congregation of the Council was the main reference for the legal governance of daily ecclesiastical administration. Another important, though limited, result concerns the sources from which Brazilian jurists extracted the decisions. Among the citations whose origin was traceable, the majority came precisely from foreign books of legal doctrine, data that manifests the importance of this literature for the circulation of the congregations' decrees in Brazil.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

As is well known, the reference to European works is abundant in Brazilian legal handbooks. We confirmed it while observing the great receptivity of national manuals of ecclesiastical law to French references. In other words, the transnational level of the governance of the Church – the Roman dicasteries – was itself explained by ideas that came from far beyond the national boundaries, as we have pointed out with the notion of double transnationality. It is true that Brazilian jurists displayed preference towards French authors in several legal fields during the 19th century, but in the case of ecclesiastical law this cannot be explained by the diffusion of the (French) language among intellectuals, for the vast majority of works in this field was not written in vernacular. Beyond the contingencies of the Brazilian publishing market, the reason for this receptivity may be found in Portuguese jurisdictionalism, a tradition still strong in the first decades of the century, which held sympathy for Gallican writers such as Lequeux, cited by Vilella Tavares. Bouix's significant recurrence years later, on its turn, reveals the strength of French ultramontanism from the 1850s onwards. Through legal books and polemical journals, this movement acquired a distinctive transnational character and soon arrived in Brazilian lands. The striking presence of French references should not, however, obliterate the fact that Italian and German texts were also part of the repertoire that Brazilian jurists used to address the articulations of Roman dicasteries. Overall, one may hypothesize that a factor that contributed to the presence of a varied range of foreign references in Brazilian handbooks on ecclesiastical law was precisely the uniformity of the language of imported literature (Latin).

Finally, we must remember that these books do not only reflect a transnational scenario of canonists and institutions, but are part of it. They both guide and submit themselves to the movement of the wheels of the global system of governance of the Church. These books have effectively crossed the Atlantic. Rome was not indifferent to them, nor to the uses these works made of the congregations' normative material. It is enough to recall, in the first case, the condemnation of Monte's *Elementos* by the Congregation of the Index; and,

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

in the second, the mention that a consultant of the Congregation of the Council made of Fontoura's mistakes when quoting decrees from the dicastery. And it was to these books that one resorted in daily administrative practice. In the case of the *Compendio* of Vilella Tavares, with so few mentions to the dicasteries, it would be interesting to verify the effects of these silences on the performance of the lay bureaucrats who were formed under the rule of the manual as official literature. After all, ignorance is also a component – strategic or dangerous – of governance. But these are territories to be explored in future investigations.

References

Primary sources

BENEDICTI XIV. *Institutiones ecclesiasticae* etc. Venetiis, Ex Typographia Balleoniana, 1750.

BLAKE, S. *Diccionario Bibliographico Brazileiro*. Terceiro volume. Rio de Janeiro: Imprensa Nacional, 1895.

BLAKE, S. *Diccionario Bibliographico Brazileiro*. Sexto volume. Rio de Janeiro: Imprensa Nacional, 1900.

BOUIX, D. *Tractatus de Curia Romana seu De Cardinalibus, Romanis Congregationibus, Legatis, Nuntiis, Vicariis et Protonotariis Apostolicis.* Parisiis: Apus Jacobum Lecoffre et Socios, Bibliopolas, 1859.

COLLECCAO das Leis do Imperio do Brazil de 1827. Parte Primeira. Rio de Janeiro, Typographia Nacional, 1878.

DE LUCA, I. B. *Theatrum Veritatis et Iustitiae.* Liber Decimus Quintus. Par. I. De Iudiciis, et de Praxi Curiae Romanae. Par. II. Relatio Romanae Curiae Forensis, eiusque Tribunalium, et Congregationum. Romae: Typis Haeredum Corbelletti, 1673.

DE LUCA, J. B. *Theatrum Veritatis et Iustitiae.* Liber Decimus Quartus. etc. V. Annotationes practicae ad S. C. Trident. in rebus concernentibus refor-

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

mationem, & forensia etc. Venetiis, apud Paulum Balleonium, 1716.

FAGNANI, P. *Jus Canonicum: sive Commentaria absolutissima in V. libros decretales*. Tomus Primus. Coloniae Agrippinae, apud Haeredes Ioannis Widenfelt, 1681.

FONTOURA, E. G. *Licoes de Direito Ecclesiastico*. Volume I. S. Paulo: Impressores Jorge Seckler & Comp., 1887.

FONTOURA, E. G. *Licoes de Direito Ecclesiastico*. Volume II. S. Paulo: Impressores Jorge Seckler & Comp., 1887.

FONTOURA, E. G. *Licoes de Direito Ecclesiastico*. Volume III. S. Paulo: Impressores Jorge Seckler & Comp., 1887.

FREITAS JUNIOR, A. *Discurso proferido na Sessao Magna de 1 de novembro de 1929*, pp. 392-393, in: <http://ihgsp.org.br/wp-content/uploads/2018/05/revista-IHGSP-vol-27-pgs387-a395.pdf> 30.09.2019.

GMEINER, F. X. *Institutiones Juris Ecclesiastici, ad Principia Juris Naturae et Civitatis Methodo Geometrica Adornatae et Germaniae Accomodatae*. Tomus I. Jus Ecclesiasticum Publicum. Prostant Viennae & Graecii, apud J. G. Weingand, et Fr. Ferstl, 1782.

GMEINER, F. X. *Institutiones Juris Ecclesiastici, ad Principia Juris Naturae et Civitatis Adornatae et Germaniae Accommodatae*. Tomus II. Jus Ecclesiasticum Privatum. Prostant Viennae & Graecii, apud J. G. Weingand, et Fr. Ferstl, 1782.

MONTE RODRIGUES D'ARAUJO, M. *Elementos de Direito Ecclesiastico Publico e Particular em relacao a disciplina geral da Igreja e com applicacao aos usos da Igreja do Brasil*. Tomo I. Das Pessoas Ecclesiasticas. Rio de Janeiro: Antonio Goncalves Guimaraes & C.a, 1857.

MONTE RODRIGUES D'ARAUJO, M. *Elementos de Direito Ecclesiastico Publico e Particular em relacao a disciplina geral da Igreja e com applicacao aos usos da Igreja do Brasil*. Tomo II. Das Cousas Ecclesiasticas. Rio de Janeiro: Antonio Goncalves Guimaraes & C.a, 1858.

MONTE RODRIGUES D'ARAUJO, M. *Elementos de Direito Ecclesiastico Publico e Particular em relacao a disciplina geral da Igreja e com applicacao aos usos da Igreja do Brasil*. Tomo III. Dos Juizos Ecclesiasticos. Rio de Janeiro: Antonio Goncalves Guimaraes & C.a, 1859.

PARAYRE, R. *La S. Congregation du Concile; son histoire, la procedure, son autorite*. Paris: Lethielleux, 1897.

SCHMALZGRUEBER, F. *Jus Ecclesiasticum Universum* etc. Tomus Primus.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Neapoli, prostant Venetiis apud Josephum Bortoli, 1738.

SCHULTE, J. F. 'Gmeiner, Franz Xaver'. In: Allgemeine Deutsche Biographie, v. 9, 1879.

VAN ESPEN, Z. B. *Jus Ecclesiasticum Universum* etc. Tomus Primus. Coloniae Agrippinae, ex Officina Metternichiana Sub Signo Gryphi, 1748.

VILELLA DE CASTRO TAVARES, J. *Compendio de Direito Ecclesiastico para uso das academias juridicas do Imperio*. 1. ed. Recife: Ricardo de Freitas, 1853.

VILELLA DE CASTRO TAVARES, J. *Compendio de Direito Publico Ecclesiastico para uso das Faculdades de Direito do Imperio*. 2. ed. Recife: Guimaraes & Oliveira, 1862.

WURZBACH, C. v. 'Gmeiner, Franz Xaver'. In: *Biographisches Lexikon des Kaiserthums Oesterreich*. 5. Teil. Verlag der typogr.-literar.-artist. Anstalt (L. C. Zamarski & C. Dittmarsch.), Wien, 1859, p. 233.

ZAMBONI, J. F. *Collectio declarationum Sacrae Congregationis Cardinalium Sacri Concilii Tridentini Interpretum*. Atrebati: 1860.

Bibliography

ACCIOLY, H. *Os Primeiros Nuncios no Brasil*. Sao Paulo: Instituto Progresso Editorial, 1949.

ADORNO, S. *Os Aprendizes do Poder*. Rio de Janeiro: Paz e Terra, 1988.

ALBANI, B. '*In universo christiano orbe*: la Sacra Congregazione del Concilio e l'amministrazione dei sacramenti nel Nuovo Mondo (secoli XVI-XVII)'. In: *Melanges de l'Ecole francaise de Rome. Italie et Mediterranee*, v. 121, n. 1, 2009.

ALBANI, B.; PIZZORUSSO, G. 'Problematizando el patronato regio. Nuevos acercamientos al gobierno de la Iglesia Ibero-americana desde la perspectiva de la Santa Sede'. In: DUVE, T. (coord.). *Actas del XIX Congreso del Instituto Internacional de Historia del Derecho Indiano – Berlin 2016*. Vol. I. Madrid: Dykinson, 2017.

BASDEVANT-GAUDEMET, B. 'Quelques manifestations de juridictionalisme dans le droit des royaumes francais, espagnols, portugais (XVI^{e}-XVIII^{e} siècles)'. In: DE FRANCESCHI, S.; HOURS, B. (org.). *Droits anti-*

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

romains. Juridictionalisme catholique et romanite ecclesiale. XVI^e^-XIX^e^. Actes du colloque de Lyon (30 septembre – 1^er^ octobre 2016). Lyon: LARHRA, 2017.

BENEDETTI, C. 'Ostini, Pietro'. In: *Dizionario Biografico degli Italiani*, vol. 79. Roma: Istituto dell'Enciclopedia Italiana, 2013.

BETHENCOURT, F. *Historia das inquisicoes: Portugal, Espanha e Italia. Seculos XV-XIX*. Sao Paulo: Companhia das Letras, 2000.

BLASCHKE, O. 'Der Aufstieg des Papsttums aus dem Antiklerikalismus. Zur Dialektik von endogenen und exogenen Kräften der transnationalen Ultramontanisierung', in: *Römische Quartalschrift für Christliche Altertumskunde und Kirchengeschichte*, v. 112, 2017.

BROGGIO, P. 'Le congregazioni romane e la confessione dei neofiti del Nuovo Mondo tra *facultates* e dubia: riflessioni e spunti di indagine'. In: *Melanges de l'Ecole francaise de Rome. Italie et Mediterranee*, v. 121, n. 1, 2009.

CALAZANS, M. M. *A Missao de Monsenhor Francesco Spolverini na Internunciatura do Brasil (1887-1891), segundo a documentacao Vaticana*. Tese (Doutorado em Teologia) – Pontificium Athenaeum Sanctae Crucis. Roma, 1997.

COLEMAN, W. J. *The First Apostolic Delegation in Rio De Janeiro and its Influence in Spanish America. A Study in Papal Policy, 1830-1840*. Washington: Catholic University of America Press, 1950.

CONGAR, Y. 'III. L'ecclesiologie, de la Revolution francaise au Concile du Vatican, sous le signe de l'affirmation de l'autorite'. In: *Revue des Sciences Religieuses*, 34-2-4, 1960.

COOMAN, G.; WAUTERS, B. *'Jus ecclesiasticum subversum*: La condamnation du *magnum opus* de Zeger-Bernard Van Espen par le Saint-Office romain (1704)'. In: COOMAN, G.; VAN STIPHOUT, M.; WAUTERS, B. (ed.). *Zeger-Bernard Van Espen at the crossroads of canon law, history, theology and church-state relations*. Leuven: Leuven University Press, 2003.

DANI, A. *Giovanni Battista De Luca divulgatore del diritto. Una vicenda di impegno civile nella Roma barocca*. Roma: Aracne, 2012.

D'ERRICO, G. L. 'Truth and Justice in a "Forest of Thieves": The Heresies of Giovanni Battista De Luca and the Documents of the Roman Inquisition', in: *Max Planck Institute for European Legal History Research Paper Series*, n. 2016-09, in <http://dx.doi.org/10.2139/ssrn.2847613> 06.03.2020.

DE LIMA, M. C. 'Metropolitanismo e Regalismo no Brasil durante a Nunciatura de Lourenco Caleppi'. In: *Revista de Historia*, v. 4, n. 10, 1952.

DE MARCHI, G. *Le Nunziature Apostoliche dal 1800 al 1956*. Citta del Vaticano:

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

Libreria Editrice Vaticana, 2006.

DE ROSSI, C. L. *Memorie intorno alla vita del Card. Lorenzo Caleppi e ad alcuni avvenimenti che lo riguardano*. Roma: Tipografia della S. Congregazione di Propaganda Fide, 1843.

DEL RE, N. *La Curia Romana. Lineamenti storico-giuridici*. 4. ed. Citta del Vaticano: Libreria Editrice Vaticana, 1998.

DI STEFANO, R. 'Las trampas sutiles del ultramontanismo'. In: *Debates de Redhisel*, v. 3, n. 2, 2017.

EMICH, B. 'Dalla Chiesa tridentina al mito di Trento. Una rilettura storico-concettuale'. In: *Storica*, v. 63, 2015.

ERMINI, G. 'La curia romana forense del secolo XVII nella relazione di Giovanni Battista De Luca'. In: *Archivio Storico Italiano*, v. 138, n. 1 (503), 1980.

ESPINDOLA DE SENA, N. N.; SONTAG, R. 'The Brazilian Translation of Franz von Liszt's Lehrbuch des deutschen Strafrechts (1899): A History of Cultural Translation between Brazil and Germany'. In: *Max Planck Institute for European Legal History Research Paper Series*, n. 2019-17, in: <http://dx.doi.org/10.2139/ssrn.3414844> 06.03.2020.

FANTAPPIE, C. *Chiesa romana e modernita giuridica. L'edificazione del sistema canonistico (1563-1903)*. Milano: Giuffrè, 2008.

FATTORI, M. T. 'Per una storia della curia romana dalla riforma sistina, secoli XVI-XVIII'. In: *Cristianesimo nella Storia*, v. 35, 2014.

FEITLER, B. *Nas malhas da consciencia: Igreja e Inquisicao no Brasil: Nordeste, 1640-1750*. 2. ed. Sao Paulo: Editora Unifesp, 2019.

FONSECA, R. M. Os juristas e a cultura juridica brasileira na segunda metade do seculo XIX. *Quaderni fiorentini per la storia del pensiero giuridico moderno*, v. 35, n. 1, 2006.

GALAVOTTI, E. 'Sulle riforme della curia romana nel Novecento'. In: *Cristianesimo nella Storia*, v. 35, 2014.

GOMES, Â. de C.; HANSEN, P. S. 'Intelectuais, mediacao cultural e projetos politicos: uma introducao para a delimitacao do objeto de estudo'. In: GOMES, Â. de C.; HANSEN, P. S. (orgs.). *Intelectuais mediadores: praticas culturais e acao politica*. Rio de Janeiro: Civilizacao Brasileira, 2016.

HAUCK, J.; BEOZZO, J. O.; VAN DER GRIJP, K.; BROD, B. *Historia da Igreja no Brasil. Ensaio de interpretacao a partir do povo. Segunda Epoca. A Igreja no Brasil no seculo XIX*. Petropolis: Vozes, 1980.

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

HOORNAERT, E. *Formacao do Catolicismo Brasileiro*. Petropolis: Vozes, 1974.

JANKOWIAK, F. 'Bouix, Dominique-Marie'. In: ARABEYRE, P.; HALPERIN, J.-L., et al. (eds.). *Dictionnaire historique des juristes francais XIIe-XXe siècle*. Paris: Quadrige, 2007.

JANKOWIAK, F. *La Curie Romaine de Pie IX a Pie X. Le gouvernement central de l'Eglise et la fin des Etats Pontificaux (1846-1914)*. Rome: Ecole Francaise de Rome, 2007.

JANKOWIAK, F. 'Congregations'. In: DICKÈS, C. et al. (org.). *Dictionnaire du Vatican et du Saint-Siège*. Paris: Robert Laffont (Bouquins), 2013.

JANKOWIAK, F. 'Curie romaine et reformes de la Curie'. In: DICKÈS, C. et al. (org.). *Dictionnaire du Vatican et du Saint-Siège*. Paris: Robert Laffont (Bouquins), 2013.

JANKOWIAK, F. 'Cardinaux et droit canonique'. In: *Melanges de l'Ecole francaise de Rome - Italie et Mediterranee modernes et contemporaines*, 127-2, 2015.

JANKOWIAK, F. 'Lequeux, Jean-Francois-Marie'. In: ARABEYRE, P.; HALPERIN, J.-L.; KRYNEN, J. (org.) *Dictionnaire historique des juristes francais XIIe-XXe siècle*. 2. ed. Paris: PUF, 2015.

KIEMEN, M. C. 'A Summary Index of Ecclesiastical Papers in the Archive of the Papal Nunciature of Rio de Janeiro, for the Period of 1808-1891'. In: *The Americas*, v. 28, n. 1, 1971.

MARCOCCI, G.; PAIVA, J. P. *Historia da Inquisicao portuguesa: 1536-1821*. Lisboa: A Esfera dos Livros, 2013.

MAZZACANE, A. 'De Luca, Giovanni Battista'. In: *Dizionario Biografico degli Italiani*. Roma: Treccani, 1990.

MEREA, P. Como nasceu a Faculdade de Direito. *Boletim da Faculdade de Direito (Coimbra)*, v. 1, 1961.

MOULINET, D. 'Un reseau ultramontain en France au milieu du 19e siècle'. In: *Revue d'histoire ecclesiastique*, v. 92, 1997.

NEVES, G. P. 'A religiao do Imperio e a Igreja'. In: GRINBERG, K.; SALLES, R. (eds.). *O Brasil imperial*, vol. 1 (1808-1831). Rio de Janeiro: Civilizacao Brasileira, 2009.

NOVINSKY, A. *Viver nos tempos da Inquisicao*. Sao Paulo: Perspectiva, 2018.

O'MALLEY, J. W. *Vatican I. The Council and the Making of the Ultramontane Church*. London: Belknap Press, 2018.

PALAZZINI, P. 'Prospero Fagnani. Segretario della Sacra Congregazione

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

del Concilio e suoi editi ed inediti'. In: *La sacra congregazione del concilio. Quarto centenario della Fondazione (1564 - 1964). Studi e ricerche*. Citta del Vaticano, 1964.

PALAZZINI, P. 'Le Congregazioni Romane'. In: BONNET, P. A.; GULLO, C. (eds.). *La Curia Romana nella Costituzione Apostolica* Pastor Bonus. Citta del Vaticano: Libreria Editrice Vaticana, 1990.

PASZTOR, L. 'CALEPPI, Lorenzo'. In: *Dizionario Biografico degli Italiani*, vol. 16. Roma: Istituto dell'Enciclopedia Italiana, 1973.

PASZTOR, L. 'Per una storia della storiografia sulla Curia Romana nel Medio Evo. Il contributo del Cardinale Giovanni Battista De Luca', in: MORDEK, H. (ed.) *Aus Kirche und Reich. Studien zu Theologie, Politik und Recht im Mittelalter*. Sigmaringen: Jan Thorbecke, 1983.

PEREIRA, N. *Dom Vital e a questao religiosa no Brasil*. Rio de Janeiro: Tempo Brasileiro, 1986.

PROSPERI, A. *Il Concilio di Trento: una introduzione storica*. Torino: Einaudi, 2001.

RAMON SOLANS, F. J. *Mas alla de los Andes: los origenes ultramontanos de una Iglesia latinoamericana (1851-1910)*. Bilbao: Universidad del Pais Vasco Servicio Editorial, 2019.

REINHARD, W. 'Mythologie des Konzils von Trient'. In: CATTO, M.; PROSPERI, A. *Trent and Beyond. The Council, Other Powers, Other Cultures*. Turnhout: Brepols, 2017.

RODRIGUES, A. C. *Igreja e Inquisicao no Brasil: agentes, carreiras e mecanismos de promocao social – seculo XVIII*. Sao Paulo: Alameda, 2014.

ROSA, M. *La Curia romana nell'eta moderna. Istituzioni, cultura, carriere*. Roma: Viella, 2013.

RUGGIERO, R. 'La nuova retorica di Giovanni Battista De Luca e il disciplinamento dello stato moderno'. In: *Giovanni Battista De Luca giureconsulto. Atti del convegno nazionale di studio, Venosa 5-6 dicembre 2014*, 2016.

SANTANGELO, A. *La Toga e la Porpora. Quattro Biografie di Giovan Battista De Luca*. Biblioteca Federiciana. Venosa: Edizioni Osanna, 1991.

SANTIROCCHI, I. *Questao de Consciencia: os ultramontanos no Brasil e o regalismo do Segundo Reinado (1840-1889)*. Belo Horizonte: Fino Traco, 2015.

SILVA JUNIOR, A. R. Brazilian literature on international law during the empire regime. Or the diffusion of international law in the peripheries

Received in: 30/09/2019 – Approved in: 03/04/2020

Almanack, Guarulhos, n. 26, ed00219 2020
http://doi.org/10.1590/2236-463326ed00219

through appropriation and adaptation. In: *Revista de Direito Internacional*, v. 15, n. 3, 2018.

SINISI, L. *Oltre il Corpus iuris canonici. Iniziative manualistiche e progetti di nuove compilazioni in eta post-tridentina*. Soveria Mannelli: Rubbettino, 2009.

SOUZA, F. J. D. O. *Do altar a tribuna: os padres politicos na formacao do Estado Nacional Brasileiro (1823-1841)*. Doctoral dissertation (History). Instituto de Filosofia e Ciencias Humanas, Universidade do Estado do Rio de Janeiro, Rio de Janeiro, 2010.

STANGARONE, A. 'De activitate S. Congregationis Concilii tempore Pontificatus Pii IX'. In: *La Sacra Congregazione del Concilio. Quarto Centenario della Fondazione (1564 - 1964). Studi e ricerche*. Citta del Vaticano, 1964.

STICKLER, A. M. 'Le Riforme della Curia nella Storia della Chiesa'. In: BONNET, P. A.; GULLO, C. (eds.). *La Curia Romana nella Costituzione Apostolica* Pastor Bonus. Citta del Vaticano: Libreria Editrice Vaticana, 1990.

VARSANYI, G. I. 'De competentia et procedura S. C. Concilii'. In: *La Sacra Congregazione del Concilio. Quarto Centenario della Fondazione (1564 - 1964). Studi e ricerche*. Citta del Vaticano, 1964.

VIAENE, V. 'Zeger-Bernard Van Espen, Liberalism and Religious Reform in 19th-Century Belgium'. In: COOMAN, G.; VAN STIPHOUT, M.; WAUTERS, B. (ed.). *Zeger-Bernard Van Espen at the crossroads of canon law, history, theology and church-state relations*. Leuven: Leuven University Press, 2003.

VIEIRA, D. R. *O processo de Reforma e reorganizacao da Igreja no Brasil (1844-1926)*. Aparecida: Santuario, 2007.

VIEIRA, D. R. *Historia do catolicismo no Brasil (1500-1889)*, vol. I. Aparecida: Santuario, 2016.

WOLF, H. (ed.). *Systematisches Repertorium zur Buchzensur 1814-1917*. Indexkongregation. München: Ferdinand Schöningh, 2005.