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Jaime Ricardo Gouveia

Episcopal Justice in a Time of Change: the Court of Portalegre, 1780-1835

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Episcopal Justice in a Time of Change: the Court of Portalegre, 1780-1835¹

Jaime Ricardo Gouveia²

Introduction

Most of documentary collections of the episcopal courts, generally mentioned as Ecclesiastical Auditoriums (*Auditórios Eclesiásticos*) have been lost, and little or nothing exists that allow us to reconstitute the judicial decisions of a significant part of the dioceses of Portugal and its overseas empire. The documental collection of the now named Archive of the Chapterhouse of Portalegre, stored at the local seminary, was first published by José Geraudes Freire. In various articles published in the *Boletim de Pastoral*, between 1988 and 1989, he raised awareness for the series and documentary resources related to the *cúria e cabido* (curia and chapterhouse) of Portalegre, which were then heaped without archival treatment. While revealing the existence of sources relating to various dioceses, he pointed out the need to write a history of Portalegre in detail and with a critical sense³.

Between June 2013 and December 2014, a team of researchers from the CIDEHUS-EU developed a project financed by the Calouste Gulbenkian Foundation, which consisted of the organization and inventory of all existing documentation in the See of Portalegre and its online description in the FUNDIS database. The documents of the Episcopal Court of Portalegre revealed by this listing, to which I was able to add others, stored in the Episcopal Palace, constitute the empirical basis of this study⁴.

¹ This article was written during my time at the Max Planck Institute for European Legal History as a visiting researcher and during the project PTDC/HAR-HIS/28719/2017 - Religion, Administration and Ecclesiastical Justice in the Portuguese Empire (1514-1750), ReligionAJE. The translation benefited from the support of CHAM – Center of Humanities (FCSH, Universidade NOVA de Lisboa, Universidade dos Açores) through the strategic project sponsored by FCT (UID/HIS/04666/2013). I would like to thank the critical readings made by José Pedro Paiva and MPI referees.

² University of Coimbra, Faculty of Arts and Humanities, CHSC.

³ See J. G. FREIRE, “Os Arquivos do Cabido e da Cúria Episcopal de Portalegre”, *Boletim de Pastoral* 131 (1988-1989), 1-41; J. G. FREIRE, “Alguns arquivos paroquiais da diocese de Portalegre e Castelo Branco”, *Separata do Boletim De Pastoral* (1987-1988), 1-13.

⁴ See Archive of the Chapterhouse of Portalegre (hereinafter ACP) – Ecclesiastical Court of Portalegre-Castelo Branco (hereinafter TEP-CB), Livro para a distribuição das causas crime do Juízo Eclesiástico (hereinafter LDC), Lv. 001, 1780-1831; Episcopal Palace of Portalegre (hereinafter PEP) – Ecclesiastical Chamber of Portalegre (hereinafter CEP), TEP-CB, Livro de Distribuição do Juízo Eclesiástico (hereinafter LDJE), Lv. 095, 1797-1835.

Considering that the diocese of Portalegre, located in eastern Portugal, was never one of the largest and most populous, a diachronic comparison of the legal action taken by other courts in other dioceses with both similar and different demographic thresholds is important. Doing so in the late eighteenth and first decades of the following century will have the relevancy of investigating how the judicial structures of the diocese functioned in a time characterized by the changes that the *pombalismo* and other governments introduced into the structure of the Portuguese Church⁵. The problem that is meant to be solved is based on the following question: what performance did the episcopal court reveal at a time when the pastoral office was already marked by the imposed limitations of the secular power?

From the analytical point of view this is an exciting period that allows us to inquire about the impact of the tumultuous, fractured and structural alteration of the Church authority paradigms, the power of bishops, and the place of religion, unleashed in the 60s of the eighteenth century by Sebastião José de Carvalho e Melo and consummated since the Liberal Revolution of 1820. This period stretches until the year of 1835, when the period to which the studied sources are related ends, and marks the end of a very problematic sexennial for the diocese, as will shall see.

The winds of a new era, marked by the unstable relations between the Crown and the Portuguese Church, and even between these two and the Holy See, with repercussions both on the theoretical and practical level were already blowing, with decisive changes in the institutional structure, instruments and agents of the diocesan government. However, little is known about the impact of such an environment on the concrete action evidenced by episcopal courts. Is it possible to measure this impact? Has the lack of power and influence of the episcopal courts affected the overall number of cases they have instigated? What consequences can be detected in the volume of documentation produced by diocesan judicial mechanisms with the disappearing of the *foro eclesiástico* in 1833?⁶ Historiography has not yet answered these questions, and we intend to do so through the sources collected in the archives of the Chapterhouse and in the Episcopal Palace of Portalegre.

⁵ *Pombalismo* was the period during which the count of Oeiras Sebastião José de Carvalho e Melo (1699-1782), better known as Marquis of Pombal, held the position of Secretary of State for the Interior Affairs of the Kingdom (a governmental position of the utmost importance and equivalent to what today is a Prime Minister), under the appointment of the King of Portugal, José I (1750-1777). See J. S. DIAS, *Pombalismo e teoria política*, Lisboa, 1982; N. G. MONTEIRO, *D. José. Na Sombra de Pombal*, Lisboa, 2006.

⁶ The *foro eclesiástico*, framed by Canon Law, consisted of several privileges of immunity that implied that the Church had its own courts. See P. M. VELARDE, *Cursus juris canonici, hispani, et incidi in quo, juxta ordinem titularum decretalium non solum canonicae decisiones ...*, 3. Ed., Matriti, 1791, Lib.V, Tit.XL, No. 440; WALTER, *Manual del Derecho Eclesiástico*, Lib. IV, Cap.3, § 176, 282-284; § 178, 286-287; § 180, 288-291.

1. The cases / procedural pleadings in court: authors, volumes and procedural typologies

Since its creation, on August 21, 1549, with the promulgation of the bull *Pro Excellenti Apostolicae Sedis*, the Portuguese diocese of Portalegre has come to know various configurations⁷. Portalegre, diocesan headquarters, was located 2 leagues from the Castilian line, on top of a hill, where at its highest point the cathedral was erected. The external borders of the bishopric were well defined, resulting from the orography and hydrography, with a concave polygon figure. The diocese occupied a peripheral territory and of low population density, limited to the north by the Tejo river and by the *Priorado do Crato*; to the south by the bishopric of Elvas and the archdiocese of Évora; to the west by the archdiocese of Lisbon and the *Priorado do Crato*; and to the east by the Spanish *Extremadura*⁸. In spite of being small, the diocesan territory was geophysically diverse, combining areas of mountain range, composed by Serra de S. Mamede and other secondary mountains; and long plains, like those of the heath on the banks of the Tagus river, fertilized by the rivers Caia and Sever, and by the streams of Nisa, Sor, Seda and Avis.

Table 1. Structure of the diocese of Portalegre between 1780 and 1835

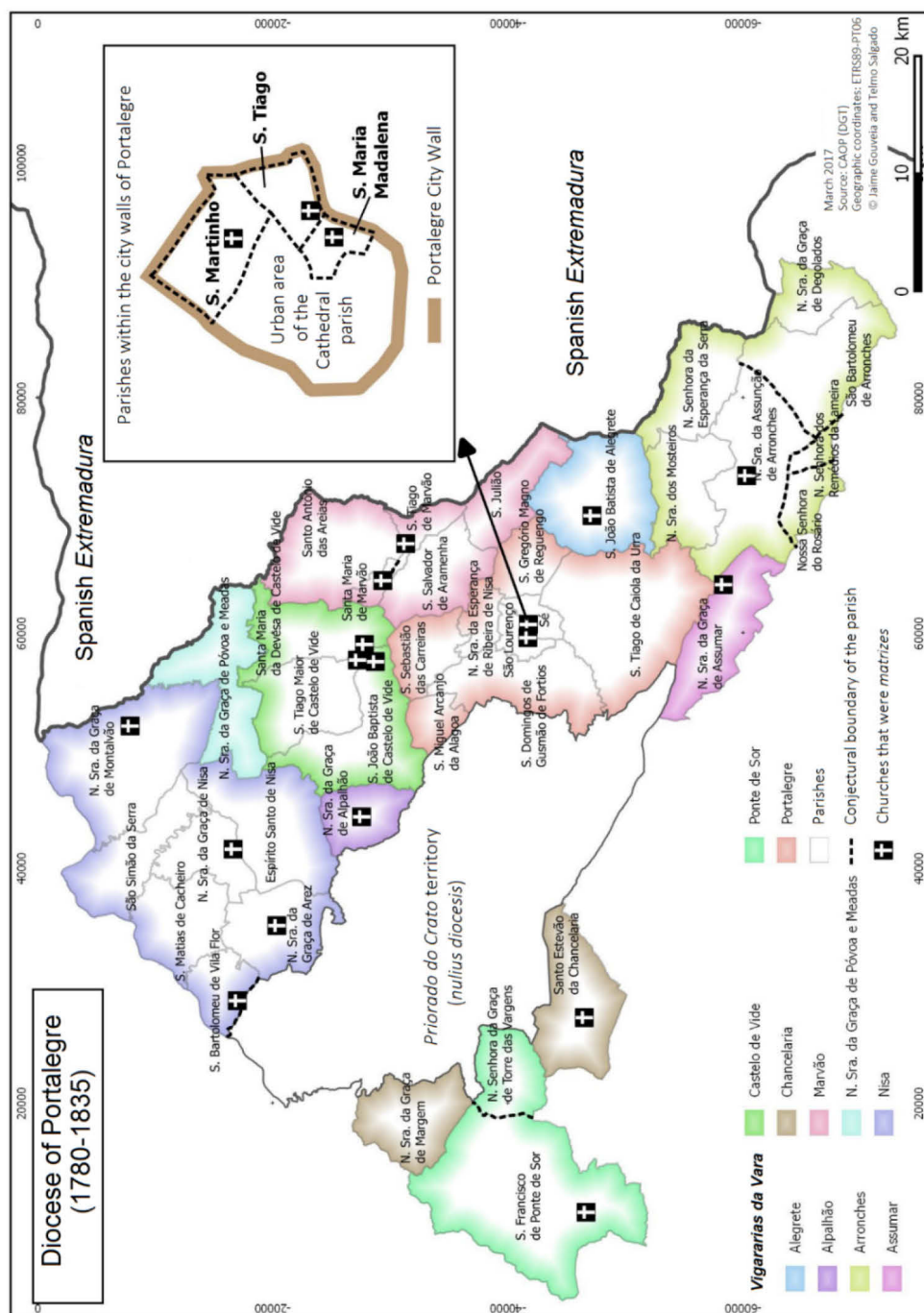
<i>Vigarrarias da vara</i>	Portalegre (Sé)	Marvão	Castelo de Vide	Nisa	Arronches	Ponte de Sor	Chancelaria	Alpalhão	Assumar	Alegrete	Póvoa e Meadas	Total
Number of parishes	11	5	3	7	7	2	2	1	1	1	1	41
Main churches	5	2	3	4	1	1	1	1	1	1	0	20

Source: ACP – TEP-CB, LDC, Lv. 001, 1780-1831; PEP – CEP, TEP-CB, LDJE, Lv. 095, 1797-1835⁹

⁷ See F. de ALMEIDA, *História da Igreja em Portugal*, Oporto, Lisbon, 1971, II, 233-239; A. BRÁSIO, “A diocese de Aveiro”, *Lusitania Sacra* 4 (1959), 187-222.

⁸ The Military Order of the Hospital later converted into the Military Order of Malta was directed by a prior who was subordinate to the *grão-comendador* of the Order. From the reign of D. Afonso IV onwards this prior would be designated as *Prior do Crato* in reference to the parish where the order was centralized. However, *Priorado do Crato* corresponded to a territory composed of a set of *comendas* and parishes that, as they belong to a military and religious order, were exempt from episcopal jurisdiction, therefore *nulius diocesis*. See M. H. C. COELHO, “Priorado”, in C. M. AZEVEDO (dir.), *Dicionário de História Religiosa de Portugal*, Lisboa, 2001, Vol. P-V, 62-63; J. P. PAIVA, “Dioceses e organização eclesiástica”, in C. M. AZEVEDO (ed.), *História Religiosa de Portugal*, Lisboa, 2000, vol. 2, 187-199.

⁹ This reference is also valid for the following tables and graphs.



Map 1. Diocese of Portalegre between 1780 and 1835

Compared to the standard of the Portuguese bishoprics, Portalegre had a small population and thresholds, with only 41 parishes, divided into 11 *vigararias da vara*: Portalegre (Sé), Alegrete, Alpalhão, Arronches, Assumar; Castelo de Vide, Chancelaria, Marvão, Póvoa and Meadas, Nisa and Ponte de Sor¹⁰.

The areas that constituted the *vigararias da vara* were disproportionate. Some had jurisdiction over several parishes; others were composed only of the head parish. The parochial administration was more rationalized, because it was based on a structure of 20 mother churches and 21 branch churches, which were equitable distributed. These *vigararias* were intended to accelerate the administration of justice and improve the bishopric governance. The superintendent of this structure could have several designations such as *vigário da vara*, archpriest, vicar forane (*vigário forâneo*), *vigário pedâneo* and *ouvidor pedâneo*¹¹.

The court cases in the episcopal courts were usually triggered by general or special *devassas/inquirições* (investigations/inquiries), by *querelas* (disputes), and by *denúncias* (denunciations).

Table 2. Authors of the cases registered in the Episcopal Court of Portalegre (1780-1835)

Authors	Individuals external to the Episcopal Court		Episcopal Court		<i>Vigararias da Vara</i>		Secular Courts		Total
	N.º	%	N.º	%	N.º	%	N.º	%	
Cases	861	84,0	147	14,3	9	0,9	8	0,8	1025

The judicial system of the diocese of Portalegre was set in motion, above all by external individuals to the court (861-84%), who demanded justice. It is also important to emphasize the importance of the court officers, who were then responsible for 147 cases (14.3%), 98 of which related to criminal accusations, carried out by the prosecutor. This means that the legal action of the prosecutor was crucial during that period.

The profession of prosecutor, which existed in other courts of that time, was of special relevance for the full functioning of episcopal justice. The rules of procedure of the *Auditório* of Portalegre determined that the individual who took office was required to deal with great

¹⁰ In the same chronological period, the bishopric of Viseu had 202 parishes, separated by 16 ecclesiastical districts or minor Archpriest jurisdictions, structured in 5 bigger Archpriest jurisdictions. See J. R. GOUVEIA, "Geografia paroquial e diocesana", in J. P. PAIVA (ed.), *História da Diocese de Viseu* (hereinafter HDV), Viseu, 2016, vol. 3, 7-24.

¹¹ See, for the case of Portalegre, *Constituições Synodais do Bispado de Portalegre ordenadas e feitas pelo illustrissimo e reverendissimo senhor D. Frei Lopo de Sequeira Pereira, bispo de Portalegre, do Conselho de sua Magestade*, Portalegre 1632, liv.5, Tit. I, §6, fo 207v; Tit. X §1-2, fos 43v-43r. A comprehensive view of the subject could be found in J. R. GOUVEIA, "Ecclesiastical Justice in the Diocese of Coimbra in the 16th Century: Organization, Structure and Jurisdiction", *IUS CANONICUM* 58 (2018), 223-259; A. C. RODRIGUES, "Clergy, Society and Power Relations in Colonial Brazil: On the vicar Forane (*Vigário da Vara*), 1745-1800", *e-JPH* 13-1 (2015), 40-67.

care and all due diligence in the cases belonging to this court. It also urged him to be vigilant about the crimes committed by clerics and lay people, making records and sending them to the bishop or vicar general¹².

If, in practice, the prosecutor effectively required the diocesan legal action, the solicitor was the one who informed him, making him aware of the crimes and requesting higher orders. Hence, the rules of procedure stipulated that the former should instruct the latter to take special care while gathering reliable information about all the guilt committed in the bishopric and to proceed so that the guilty parties would not remain unpunished¹³. This circuit demonstrates two things:

a) The exercise of justice depended on the proper functioning of the entire judicial system, especially regarding the helpfulness of the various officers in the conduction of the proceedings, with mechanisms of internal inspection to investigate failures¹⁴.

b) At the time, the episcopal courts exercised two primary actions: interrogative and repressive, vigilant and disciplinary, a parallel and continuous process in which the judicial officers were required to strive for the defence of legal order.

Besides the prosecutor and the solicitor, the Episcopal Court was composed by other officers, with well-defined competences and rules of procedure: *provisor*, vicar-general, visitations executor, bailiff, lawyers, clerks, inquisitor, accountant, distributor, jailer, doorman and *vigários da vara*¹⁵, that according to table 2 were in charge of only 9 (0.9%) of the 1025 judicial cases in the episcopal court¹⁶.

Finally, it should be noted that only 8 cases were triggered by the secular court, namely 7 *devassas* and 1 *auto de perguntas* (inquiry notice), this one made by the judge of Arronches, against the priest Tomás Paulo, considered to be a “vagabond”. It was despatched by the Episcopal Court on May 17, 1784¹⁷.

¹² See *Regimento do Auditorio Ecclesiastico e officiais da Justiça Ecclesiastica do Bispado de Portalegre*, in *Constituições Synodais ...*, Portalegre, 1632, Liv.5, Tit. VI §1-3, fos 38v-39r.

¹³ See *idem*, §12, 39v; tit. VII, 44.

¹⁴ On this point, see: J. R. GOUVEIA, “Quod non est in actis, non est in mundo: mecanismos de disciplina interna e externa no Auditório Eclesiástico de Coimbra”, *Revista de História da Sociedade e da Cultura* 9 (2009), 179-204.

¹⁵ In the analyzed period there were 11. See *Prima synodus dioecisana ab illustrissimo et Reverendissimo Domino D. Alvaro Pirez de Castro et Noronha, episcopo portalegren. Celebrata diebus 20. 21. et 22 maii, anno Domini 1714. Clemente XI feliciter regnante*, Roma, 182.

¹⁶ See *Regimento do Auditorio Ecclesiastico e officiais ...*, Tit. II §1-5, fos 6v-6r; Tit. II §6, fo 6 e v. See also, on this point: GOUVEIA, “Ecclesiastical Justice”, 223-259. Some of the mentioned professions were developed by more than one individual simultaneously. Their numbers depended on the volume of the bureaucratic structure of the court, which in turn varied according to the size of the bishopric and the respective population numbers, thus differing from diocese to diocese. This was the case of prosecutors and clerks. See ACP – TEP-CB, LDC, Lv. 001, 1780-1831; PEP – CEP, TEP-CB, LDJE, Lv. 095, 1797-1835.

¹⁷ See ACP – TEP-CB, LDC, Lv. 001, 1780-1831, fo 42v.

Table 3. Number and type of proceedings in the Episcopal Court of Portalegre (1780-1835)¹⁸

Type of legal action/procedural pleadings	N.º abs.	%
<i>Petições</i> (Petitions)	260	25,4
<i>Mandados</i>	250	24,4
<i>Monitórios</i>	132	12,9
<i>Denúncias</i> (Denunciation)	106	10,3
<i>Instrumentos de testemunhas ou justificações</i> (Witnesses instruments or justifications)	68	6,6
<i>Ações de alma</i>	59	5,8
<i>Libelos</i>	42	4,1
<i>Devassas</i>	33	3,2
<i>Livramentos das visitas</i>	20	2,0
<i>Assinados de dez dias</i>	17	1,7
<i>Cartas de seguro</i>	14	1,4
<i>Querelas das partes</i>	12	1,2
<i>Comissões</i> (Comissions)	6	0,6
Inquiries from outsider the bishopric	3	0,3
<i>Ações dizimais</i> (Tithe actions)	2	0,2
<i>Ação de força nova</i>	1	0,1
Total	1025	100

Of the 1025 legal actions/procedural pleadings at the Episcopal Court of Portalegre, *petições* (petitions) were the most frequent, corresponding to 25.4% (260). The petitions were varied, but generally consisted of a declaration of will, formulated by a certain individual, clergyman or layman, and addressed to the judicial authority. In this ecclesiastical court there is record of *petições para notificações*, that is, requests for the court to order compliance with a particular court order; *petições de sevícia*, that is, actions for marital violence; *petições de visita*, the ones

¹⁸ Under the term legal action there are included not only the proceedings themselves, but also certain pleadings or formal documents which proceeded through the episcopal courts until they are attached to the proceedings. Thus, for example, pleadings as denunciations, inquiries and letters of insurance, are not processes in themselves, but parts of them, but attest their existence. See A. C. GOMES, *Manual Prático, Judicial, Cível e Criminal, em que se descrevem recopiladamente os modos de processar em hum, e outro Juízo ...* Lisboa, 1766. Some of these procedural actions have already been studied from the point of view of Canon Law. See for example L. LÓPEZ, “Libelo, Citación y Contestación de la Demanda (DCH)”, *Max Planck Institute for European Legal History Research Paper Series* 26 (2019), 1-20; S. O. PALLERO, “Petitionen Excesivas (DCH)”, *Max Planck Institute for European Legal History Research Paper Series* 08 (2018), 1-10; A. AGUERO, “Acusaciones e Inquisiciones (DCH)”, *Max Planck Institute for European Legal History Research Paper Series* 06 (2017), 1-31; J. R. GOUVEIA, “Os ladrões das honras e a repressão das desonras. A ação do Juízo Eclesiástico no Atlântico português (1640-1750)”, *Revista Ultramares* 4-1 (2013), 45-71.

which required the audience to compel certain accused individuals to apologise before judicial proceedings were initiated; and *petições justificativas*, in other words requests for the court to accept non-compliance with a particular court order, and for that, providing justification¹⁹.

The following are the *mandados*, which are the second most frequent type of legal action (24.4% - 250). They written orders varied according to the purpose for which they were intended, but which generally aimed at rectifying the fulfilment of the penalties included in the sentences. The most common were debts and attachment orders. The Episcopal Court of Portalegre executed or issued “general warrants” (151), “executive warrants” (75) and warrants of *penhora* (attachment) (24)²⁰.

The *monitórios*, judicial executive titles that dealt with the proven allegations against the defendant and that admonished him to pay the burden of guilt, were also one of the procedural pleadings that caused rivers of ink to flow in the Ecclesiastical Court (132-12.9%)²¹. The 106 reported *denúncias* (complaints) represented 10.3% of the total, and 98 concerned criminal and penal actions by the prosecutor; and 8 relating to criminal proceedings, were presented by the parties²².

Next, we have the instruments of witnesses or justifications that consisted of an accusation contradiction by means of presentation of witnesses or other favourable justification. In the 68 registered in the studied period, corresponding to 6.6% of the total, there are justifications for: marital status, baptisms; miracles; dependent family members; lack of vocation for the ministry of religious orders; affection to royalty, among others²³. The *instrumento de justificação* made by Joaquina Almeida on October 15, 1812, is one of the remarkable examples. She asked for proof that the French had burned the church books of her hometown, Pinhel, as a justification for the impossibility of proving her sacraments²⁴.

The *ações de alma* were debt procedures, against clerics. The 59 documents, registered between 1780 and 1835, represented only 5.8% of the total²⁵. The debts of clerics focused on different situations. Loans, accrued interest and defaults on tithes payments were the most common²⁶.

Following the order of the table, it is now necessary to refer to the *libelos* (accusations), which consisted of pleadings that contained the assumptions of a given accusation. Of the

¹⁹ See PEP – CEP, TEP-CB, LDJE, Lv. 095, 1797-1835, fos 157v-174r.

²⁰ See *idem*, fos 142v-156v.

²¹ See *idem*, fos 130v-135r.

²² See ACP – TEP-CB, LDC, Lv. 001, 1780-1831, fos 17v-23r, 36v.

²³ See PEP – CEP, TEP-CB, LDJE, Lv. 095, 1797-1835, fos 116v-118v.

²⁴ See *idem*, fos 116v-118v.

²⁵ See PEP – CEP, TEP-CB, LDJE, Lv. 095, 1797-1835, fos 116v-118v, 88v-93v.

²⁶ As an example of this disparity, I record the *ação de alma* requested by Francisco Caldeira, from Alpalhão, that was distributed to the clerk of the episcopal court on April 30, 1805. He requested to mention that Father Francisco Venancio, coadjutor of the church in that village, should pay him the five pigs that their dogs had killed. See PEP - CEP, TEP-CB, LDJE, Lv. 095, 1797-1835, fos 87r.

42 that were registered, corresponding to 4.1% of the total, there are, in particular, three typologies: *libelos cíveis* (civil accusations) against clerics for debt matters; *libelos de bens de raiz*, against clerics for matters related to real estate; and *libelos de impedimentos matrimoniais*, against laymen for marriage-related irregularities²⁷.

Furthermore, there is a series of legal actions that are not very representative, such as: the *devassas*, sets of acts and investigations aimed at detecting crimes and their perpetrators; the *livramentos das visitas*, that is, actions aimed at demonstrating the falseness of a certain accusation verified by the investigations of the pastoral visits; the *assinados de dez dias*, actions to determine the deadline for interposition of evidence, payment of debts or embargo allegations; the *cartas de seguro*, which certified that a certain defendant could be set free, although entrusted to the responsibility of someone with fixed residence; the *querelas das partes*, actions of a complaint against a particular crime, requested in court by the injured party; the *comissões*, actions of delegation of powers by the court to carry out several diligences; the *acções dizimais*, related to the non-payment of the tithe; the *inquirições* (inquiries) from outside the bishopric, requested by superior court judgments, or sent by courts that transferred the occurrences that went beyond their jurisdiction to the competent court; the *acções de força nova*, which aimed at cases of violence or disturbance against possession, allowing the legitimate possessor to defend, or to recover his or her property²⁸.

The broad variety of typologies point out how casuistic the diocesan judicial administration was, by looking at the existing legal normative order, as confirmed by the fact that between the headings with and without occurrences, the sources under study allow us to count 46 different types of procedural pleadings²⁹.

2. The crimes under the judicial action of the court

The jurisdiction of the episcopal courts was divided into two distinct situations: the person (*ratione personae*) and the matter (*ratione materiae*). The person was above all secular clergy,

²⁷ See PEP – CEP, TEP-CB, LDJE, Lv. 095, 1797-1835, fos 121v-127r.

²⁸ See ACP – TEP-CB, LDC, Lv. 001, 1780-1831, fos 4v-14r, 43v-44r; PEP – CEP, TEP-CB, LDJE, Lv. 095, 1797-1835, fos 93v, 109v-110r, 119v, 164v.

²⁹ See J. R. GOUVEIA, *A quarta porta do inferno. A vigilância e disciplinamento da luxúria clerical no espaço luso-americano (1640-1750)*, Lisboa, 2015, 334-335. I use the concept of casuistry here as a cognitive or technical instrument (unequivocally present in ecclesiastical courts) designed to mediate the intricate relationship between norms and exceptions. Víctor Tau Anzoátegui studied how the "concealment" used in the courts came from a casuistic conception. See V. T. ANZOÁTEGUI, *Casuismo y Sistema. Indagación histórica sobre el espíritu del Derecho Indiano*, Buenos Aires, 1992. An updated, comprehensive and critical overview of the subject can be found in C. GINZBURG; L. BIASIORI (eds.), *A Historical Approach to Casuistry. Norms and Exceptions in a Comparative perspective*, London, New York, BLOOMSBURY ACADEMIC, 2019.

except for certain crimes (such as those of *lèse-majesté* and disputes concerning Crown property), and certain clerics (the members of the royal chapel and those of the military orders). As far as the subject is concerned, that is to say, the nature of the offenses, its competence was comprehensive, spreading not only, but above all, through public sins, regardless of whether the perpetrators were laymen or clerics³⁰. The following tables give an account of the crimes that originated the 1025 legal actions/procedural pleadings judged in the Episcopal Court of Portalegre between 1780 and 1835.

Table 4. Number and type of crimes judged in the Episcopal Court of Portalegre against laity (1780-1835)³¹

Crimes related to lust ³²	<i>Amancebamento</i> (to live in marital status without marriage)	52
	Adultery	7
	Concubinage	9
	Fornication	5
	Allow concubinage	3
	Clandestine marriage	2
	Total	78
Other crimes	Debt	386
	<i>Sevícias</i> (marital violence)	120
	Not living together with spouse	58
	Theft	13
	Irregular performance of profession	12
	Sacrilege	10
	Non-compliance with catholic precepts	8
	Usury	5
	Perjury	3
	Disobedience to the instances of the diocese	3
	Irregular ownership of assets	2

³⁰ See J. P. PAIVA, “As estruturas do governo diocesano”, in J. P. PAIVA (ed.), *HDV*, Viseu, 2016, vol. 3, 206-214.

³¹ The terminology used in this table for the type of crimes judged in the Episcopal Court of Portalegre is the same used in *Constituições Synodais ...*, 1632. What Walter says about this is not to be dismissed. See M. F. WALTER, *Manual del Derecho Eclesiástico*, 1844, Lib. IV, Cap.3, ¶ 183, 295-298; ¶ 184, 298; ¶ 185, 300. Based on this type of sources, historiography has already specified which practices were included in some of the crimes listed on the table. See GOUVEIA, “Os ladrões das honras e a repressão das desonras”, 45-71; J. R. GOUVEIA, *O Sagrado e o Profano em Choque no Confessionário. O delito de solicitação no Tribunal da Inquisição. Portugal, 1551-1700*, Coimbra, 2011, 69-97; R. VAINFAS, *Trópico dos Pecados. Moral, Sexualidade e Inquisição no Brasil*. Rio de Janeiro, 2014, 79-145.

³² For an understanding of what kind of crimes, according to moral literature of the early modern period, were included in the definition of lust, see GOUVEIA, *O Sagrado e o Profano em Choque no Confessionário*, 69-97; J. R. GOUVEIA, “Vigilância e disciplinamento da luxúria clerical no espaço luso-americano, 1640-1750”, *Análise Social* 213-XLIX (2014), 821-860; GOUVEIA, *A quarta porta do inferno*, 21-30.

	Matrimonial irregularities/impediments	2
	Verbal injuries	2
	Drunkenness	2
	Set religious institution on fire	1
	Marriage annulment	1
	Remain in excommunication	1
	Neighbourhood disturbance	1
	Total	630
Unknown		136
Global Total		844

Table 5. Number and type of crimes judged in the Episcopal Court of Portalegre against clerics (1780-1835)

Crimes related to lust ³³	<i>Amancebamento</i> (live in marital status without marriage)	9
	Deflowering	4
	<i>Rapto</i> (Kidnapping)	1
	Concubinage	1
	Total	15
Other crimes	Debt	63
	Non-compliance with ecclesiastical ministry	14
	Physical aggression to parishioners	10
	Irregular ownership of assets	8
	Verbal injuries	8
	Drunkenness	6
	Neighbourhood disturbance	5
	Parent maltreatment	2
	Sacrilege	2
	Celebrating masses in other parishes	2
	Murder	1
	Theft	1
	Handling weapons	1
	Resistance to secular justice	1
	Inability to exercise the ecclesiastical ministry	1
	Bickering with Brotherhoods	1
	Implication in revolutionary events	1
	Total	127
Unknown		39
Global Total		181

³³ See the preceding footnote.

Debts, mostly related to non-payment of tithes, parochial contributions and loans, were the type of offense on which more legal actions were filed against laymen (386) and clerics (64). Regarding laymen, the frequency with which they committed crimes against marriage, such as *sevícias* (120), and the separation of spouses (58) were also observed.

With regard to *sevícias*, the overwhelming majority of cases concerned situations of violence and/or male maltreatment. Of the 120 cases that occurred, only four were related to accusations made by the husbands against their wives³⁴.

As regards the 58 cases concerning cases of separation of spouses, it should be noted that the most frequently recorded episodes were those of wives who did not live with their husbands, who would then ask the episcopal court to compel them to re-accept the marriage. The exceptionality of cases like this makes us believe that the legal action of the episcopal courts, which aimed at the indissolubility of marriage, showed its effect. From the legal point of view, the *petições de notificações* (notification petitions) for *sevícias* were legal actions / procedural pleadings that, with the presumed tacit guilt of the accused, only issued an order whose non-compliance was subject to an excommunication sentence. In that sense, it was not intended to know or to act on the grounds of the separation, as happened with other proceedings, in particular those aimed at obtaining marital separation.

Among the offenses related to lust, which had a low level of significance (78), the *amancebamento* (to live in marital status without marriage) was the most common. Less frequent were adultery, concubinage and its consent, fornication and clandestine marriage. However, they did not fail to arouse the interest and attention of the bishopric's judicial structures. Although sporadic, the other occurrences demonstrate how the court continued to exercise a comprehensive disciplinary action on various illicit and scandalous conducts, such as theft, sacrilege, usury, perjury, drunkenness and verbal injuries³⁵.

It is now necessary to pay attention to the crimes committed by the clergy of Portalegre that originated cases in the episcopal court. Legal actions/procedural pleadings for debt were the most frequent (63), followed by a set of causes with a low percentage of representation, namely those related to lustful behaviours (15), such as *amancebamentos*, deflowering, kidnap and concubinage; non-fulfilment of the ecclesiastical ministry (14); and physical aggression to parishioners (10). Although punctual, and more common in some places than in others, these scandalous occurrences were always repressed. Take for example the village of Montalvão. On August 15, 1799, the church's coadjutor, Antonio Pires Curado, was involved in a dispute for allegedly having “deflowered with betrayal” one of the daughters of Eusebio Joaquim Artur³⁶. On January 8, 1804, when the village had not yet forgotten what happened,

³⁴ See PEP – CEP, TEP-CB, LDJE, Lv. 095, 1797-1835, fo 159v.

³⁵ Some of these crimes are already studied. See, for example, M. P. M. LÓPEZ-CANO, “Usuras (DCH)”, *Max Planck Institute for European Legal History Research Paper Series* 01 (2020), 1-25; V. U. SCHÜLER, “Injuriantes (DCH)”, *Max Planck Institute for European Legal History Research Paper Series* 22 (2019), 1-35.

³⁶ See ACP – TEP-CB, LDC, Lv. 001, 1780-1831, fo 14v.

a new dispute reached the court against a priest from the same village. Father António Miguéis da Piedade was accused of “having deflowered with betrayal” the daughter of Pedro Marques “who gave birth two or three months ago³⁷.”

Besides these, other incidents led the episcopal court to open procedures in order to ascertain the veracity of the accusations against clerics and to proceed accordingly. There have been legal actions for physical aggression against parishioners, irregular possession of assets, insults, drunkenness, disturbance of the neighbourhood, maltreatment of parents, sacrilege, theft, resistance to secular justice, inability to exercise profession, handling of weapons, bickering with Brotherhoods, implication in revolutionary events and, even, conflicts of territorial jurisdiction between priests.

Table 6. Places of occurrence of the crimes under the legal action of the Episcopal Court of Portalegre (1780-1835)

	Place	Number of cases	Population/ neighbours ³⁸
Portalegre	City parishes	504	1705
	Ribeira de Nisa	12	167
	Carreiras	11	130
	Reguengo	16	24
	Fortios	6	109
	S. Tiago Caiola/Urra	11	188
	Alagoa	1	102
Arronches	N. Sra. da Assunção de Arronches	35	419
	Degolados	1	42
	N. Sra. do Rosário	2	31
	Mosteiros	4	58
	N. Sra. da Esperança da Serra	1	31
	S. Bartolomeu	1	30
	Lameira	1	15
Marvão	City parishes	58	253
	S. Julião	2	93
	S. Salvador de Aramenha	0	212
	S. António das Areias	0	86
Nisa	City parishes	45	553
	Montalvão	31	300
	Arez	2	80
	S. Matias do Cacheiro	0	194
	S. Simão da Serra	0	111

³⁷ See *ibid.*

³⁸ Data obtained from P. D. NIZA, 1768. This work does not refer to Alagoa. The number of households of this parish was taken from the following document: ANTT - *Memórias Paroquiais*, 19, n.º 21, 93-96.

	Vila Flor	1	38
Ponte de Sor	Ponte de Sor	19	341
	Torre das Vargens	2	33
Chancelaria	Chancelaria	9	119
	Margem	0	72
Castelo de Vide		179	843
Assumar		25	202
Póvoa e Meadas		10	61
Alegrete		17	266
Alpalhão		19	420
Total		1025	7328

A significant part of the cases in the Episcopal Court of Portalegre, 504 (49.2%), concerned individuals living in the city's territory, the diocesan area where a larger number of individuals lived, 1705 neighbours. Although with limited relevance, it is possible to notice that there was a greater number of *feitos* related to inhabitants of more densely populated villages, some of them with more than an urban parish and headquarters of the *vigararia da vara*, namely Castelo de Vide (179), Marvão (58), Nisa (45) and Arronches (35). The villages of Alpalhão and Ponte de Sor, which were also headquarters of *vigararias da vara* and had higher demographic numbers than Marvão, were the only exceptions, where a very low number of judicial cases against resident individuals was verified.

There is therefore a general relationship between the number of cases that took place in the Episcopal Court of Portalegre and the population numbers of the respective diocesan territories to which these legal actions were related. The same can be detected between the type of defendants and their numerical representation in the population distribution of the bishopric. In respect to lay people, the registered cases (844-82.3%) had a much greater expression than those involving clerics (181-17.7%), and were unequivocally proportional to the numerical representation of the type of people involved in the total population of the diocese.

3. Administrative matters: the “alvarás de folha corrida” and the “requisitórias”

Besides the prosecution, investigation and conclusion of legal actions, the episcopal courts exercised other activities. One of them was the issuance of *alvarás de folha corrida*, judicial attestations that certified that until the date of its issuance, the petitioner did not have any legal action against him in the Ecclesiastical Court. The Portuguese episcopal courts were only competent to issue this type of documents to laypeople. They were intended to prove the reliability of the applicants, when this was required to obtain priestly orders, and the

exercise of certain offices or positions in the *vigararias da vara*, in the church councils and in hermitages or chapels.

Another activity of the episcopal court was the issuance and enforcement of *requisitórias* from outside (and outward of) the bishopric. They consisted of a request, usually formulated by (and for) other secular and ecclesiastical courts, to carry out certain diligences. These *requisitórias* demonstrate an action of institutional collaboration and respect for the respective jurisdictions. Among the referred institutions we can find the so-called *juízos gerais*, existing in the municipalities; the *juízos de correição*; the *Provedoria do Crato*; the *Tribunal da Legacia ou da Nunciatura* and the *Patriarcado*.

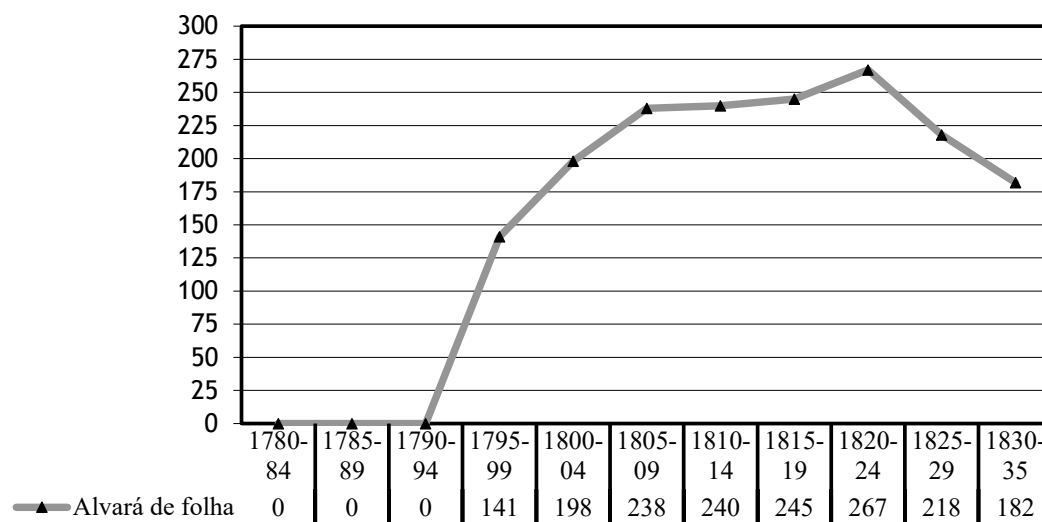
The *requisitórias* had different names, depending on the type of applicant and the type of diligence for which they were intended. The *cartas de comissão*, which generally came from higher-order ecclesiastical judgments, required the Episcopal Court to carry out certain procedures, usually the examination of witnesses, by delegating powers to do so. The *cartas precatórias* were instruments of justice that involved the requesting of diligences between courts of different districts (the case of secular courts) or with different jurisdictions. They consisted of requests from a judge (*deprecante*), to another judge (*deprecado*), both to inquire and to *citar* (to quote), that is, to intimidate or compel a certain individual (witness or defendant), to a particular action, usually to attend the audience. It was a functional horizontal relationship, since there was no hierarchy between the *deprecante* and the *deprecado*.

Table 7. Number and type of bureaucratic/administrative matters performed by the Episcopal Court of Portalegre (1780-1835)

Bureaucratic/administrative matters	N.º
<i>Alvarás de folha corrida</i>	1730
<i>Requisitórias</i> from outside (and outwards) the bishopric	27
Total	1757

Although the *requisitórias* were not very frequent (only 27 in the period under study), from the 1930s onwards their records disappear, which is presumably explained by the disappearance of the *foro eclesiástico* in 1833. The volume of *alvarás de folha corrida* was much higher, requiring our attention to their distribution in time, as follows.

Graph 1. Chronological representation of the *alvarás de folha corrida* in the Episcopal Court of Portalegre (1780-1835)



In the first 15 years of the period under review there are no records of requisition of this type of document to the Episcopal Court of Portalegre. Between 1795 and 1835 the court issued 1730 *alvarás de folha corrida*, with an average of 42 per year, 83% of which (1432) state the reason for their request. The majority was dedicated to the exercise of certain offices, namely: *prioste* (responsible person for receiving the church revenues), 631 (44.1%); *ermitão* (hermit), 413 (28.8%); church treasurer, 186 (13.0%); clerk or bailiff of the *vigararia da vara*, 41 (2.9%); clerk of the barn of the churches, 36 (2.5%); and organist, 9 (0.6%). A minority of these documents were requested to obtain priestly orders, 85 (5.9%); and several administrative procedures, such as marital dispensations, 31 (2.2%).

As we can see in Graph 1, the number of requests for *alvarás de folha corrida* followed the circumstances of the kingdom, emphasising a gradual growth until the introduction of Liberalism and initiating, from then on, a sharp fall. As a large part of the *alvarás de folha corrida* aimed at the exercise of positions and offices related to the collection and administration of the bishopric churches revenues, its decrease in this period reflects the impact of the constitutional normative of the supporters of the Portuguese Revolution of 1820, that transferred these powers to the State.

In compliance with what was established in the “Constitutional Charter of 1826”, this transfer was initially focused on the right to confer lay and ecclesiastical benefits. With the extinction of the tithes law, of July 30, 1832, the support of the clergy initiated a new chapter:

the legal consecration of the contribution universality, to be fixed by the citizens representative organs, according to their income³⁹. This new social and political order, which integrated the clergy in the civil service, paid by the Government, caused a great tension, but it became stronger and had an indirect impact on the court bureaucracy, emptying it of functions regarding the issuance of *alvarás de folha corrida*, which worsened with the disappearance of the *foro eclesiástico* in 1833.

4. Government or misgovernment during the time of the *simulacra depicta*?

During the 55 years analyzed in this study, the diocese of Portalegre met three bishops: D. Manuel Tavares Coutinho e Silva (20/7/1778-7/4/1798); D. José Valério da Cruz (13/11/1798-17/7/1826); and D. José Francisco da Soledade Bravo (24/2/1832-10/11/1833)⁴⁰. Between the episcopates of these last two the diocese remained vacant⁴¹.

The episcopal justice was exercised on the basis of Canon Law and the normative codes in force, which in the said period were two. One of them, the rules of procedure of the Episcopal Court, promulgated in 1631 and published in 1632, which included the Synodal Constitutions, concluded on June 5, 1622, at the diocesan synod convoked by D. Frei Lopo de Sequeira Pereira (1619-1632), and published ten years later⁴². The other was the *corpus* which replaced the latter, that is, the Synodal Constitutions conceived in 1714 during the synod convoked by D. Álvaro Pires de Castro Noronha (1711-1737), and published five years later⁴³. In addition to those already mentioned, other Constitutions are known namely those of 1585, compiled at the synod of July 9, 1589, convoked by the 3rd bishop in the diocese, the Calced Carmelite D. Frei Amador Arrais (1581-1598)⁴⁴.

³⁹ See J. R. GOUVEIA, “Rendimentos”, in J. P. PAIVA (ed.), *HDV*, Viseu, 2016, vol. 3, 219-229; S. R. PINTO, “A diocese de Viseu no Constitucionalismo Liberal”, in J. P. PAIVA (ed.), *HDV*, Viseu, 2016, vol. 3, 87.

⁴⁰ Although the process of episcopal provision provided for other formalities other than the election by the king and confirmation by the pope to be completed, the proposed dates for the beginning and end of the episcopates in this study correspond, respectively, to the date of papal confirmation and death of the appointed, in line with *Hierarchia Catholica, Medii et Recentioris Aevi*, Pádua, 1958, 345 /1968, 312.

⁴¹ At the end of the short episcopate of D. José Bravo, the diocese plunged into a long period of vacancy that only ended on September 30, 1881, in the third year of the pontificate of Gioacchino Vincenzo Pecci, Pope Leo XIII.

⁴² See *Constituições Synodais ...*, 1632.

⁴³ See NORONHA, *Prima synodus*; FREIRE, “Os Arquivos do Cabido”, 16.

⁴⁴ The first translated version of the original in latin of the *Constituições*, together with some notes of erudition was published in T. ALVES, *Constituições Sinodais de D. Frei Amador Arrais, Bispo de Portalegre (1585), transcrições e notas de Tarcísio Fernandes Alves*, Portalegre, 1999. The original, unique copy never replicated, is at ACP – CS, SC:A/Constituições e regulamentação, SR.005 Constituições Sinodais do Bispado de Portalegre, Lv.1, 1589. For the question of whether or not the bishop Arrais has called two

There are no other known constitutions or rules of procedure. This means two things: that the episcopal court functioned during 8 decades without its own rules of procedure; and that during the period under study the rules of procedure already existed for a century and a half. It is true that the Constitutions also set standards for the functioning of the *Auditório*. However, their deference to judicial matters did not cover all the issues that needed to be regulated about the functioning of this judicial institution. For that reason, the publication of the *Regimento* of the Episcopal Court in 1632 and of the Synodal Constitutions in 1719, which governed the diocese between 1780 and 1835, would compensate the lack of statutes only on a provisional basis, since, in practice, their longevity, outdated them⁴⁵. It was in this context that on May 16, 1774, the Crown set a one-year deadline for the bishops to proceed with the drafting of new constitutions⁴⁶. However the new texts would remain at the royal court *Desembargo do Paço*, without ever being published, presumably due to the fact that they did not fulfil the expectations of whoever asked them⁴⁷.

synods, see D. P. S. MAIOR, *Tratado da Cidade de Portalegre, Introdução, leitura e notas de Leonel Cardoso Martins*, Lisboa 1984, 83-89; ALMEIDA, *História da Igreja* II, 514, 645.

⁴⁵ Apart from defining the composition of the tribunals, these *regimentos* established the profile and competences of the various officers and determined certain aspects of the *praxis* of daily administration, namely the procedures of court hearings, sanctions imposed on offending officials, procedures of summary cases, course of action in cases of suspicion against officials of the Episcopal Court, embargoes and grace periods in pending causes. See GOUVEIA, "Ecclesiastical Justice", 223-259; J. P. PAIVA, "The Portuguese secular clergy in the sixteenth century and seventeenth centuries", in E. ANDOR; I. G. TÓTH (eds.), *Frontiers of Faith. Religious Exchange and the Constitution of Religious Identities, 1400-1750*, Budapest, 2001, 157-166; PAIVA, "Dioceses e organização eclesiástica", 187-199.

⁴⁶ During the second half of the eighteenth century only in Viseu and Miranda were held diocesan concils. See ALMEIDA, *História da Igreja*, II, 517; III, 439.

⁴⁷ See ALMEIDA, *História da Igreja*, III, 28.

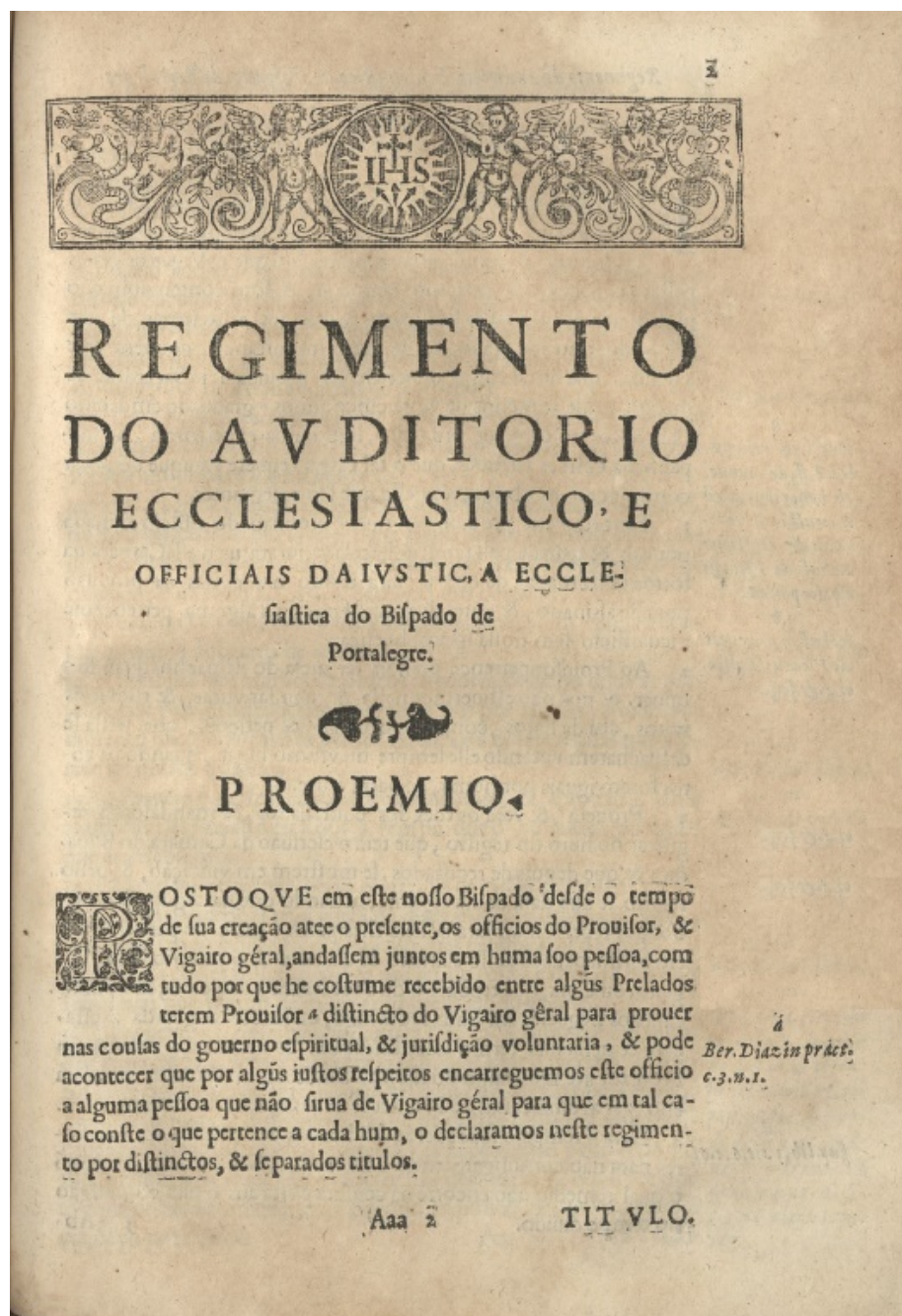


Figure 1. *Regimento do Auditorio Ecclesiastico e officiais da Justiça Ecclesiastica do Bispado de Portalegre, in Constituições Synodais do Bispado de Portalegre ordenadas e feitas pelo illustrissimo e reverendissimo senhor D. Frei Lopo de Sequeira Pereira, bispo de Portalegre, do Conselho de sua Magestade, Portalegre 1632 ..., fo 2 (Archive of the Chapterhouse of Portalegre).*

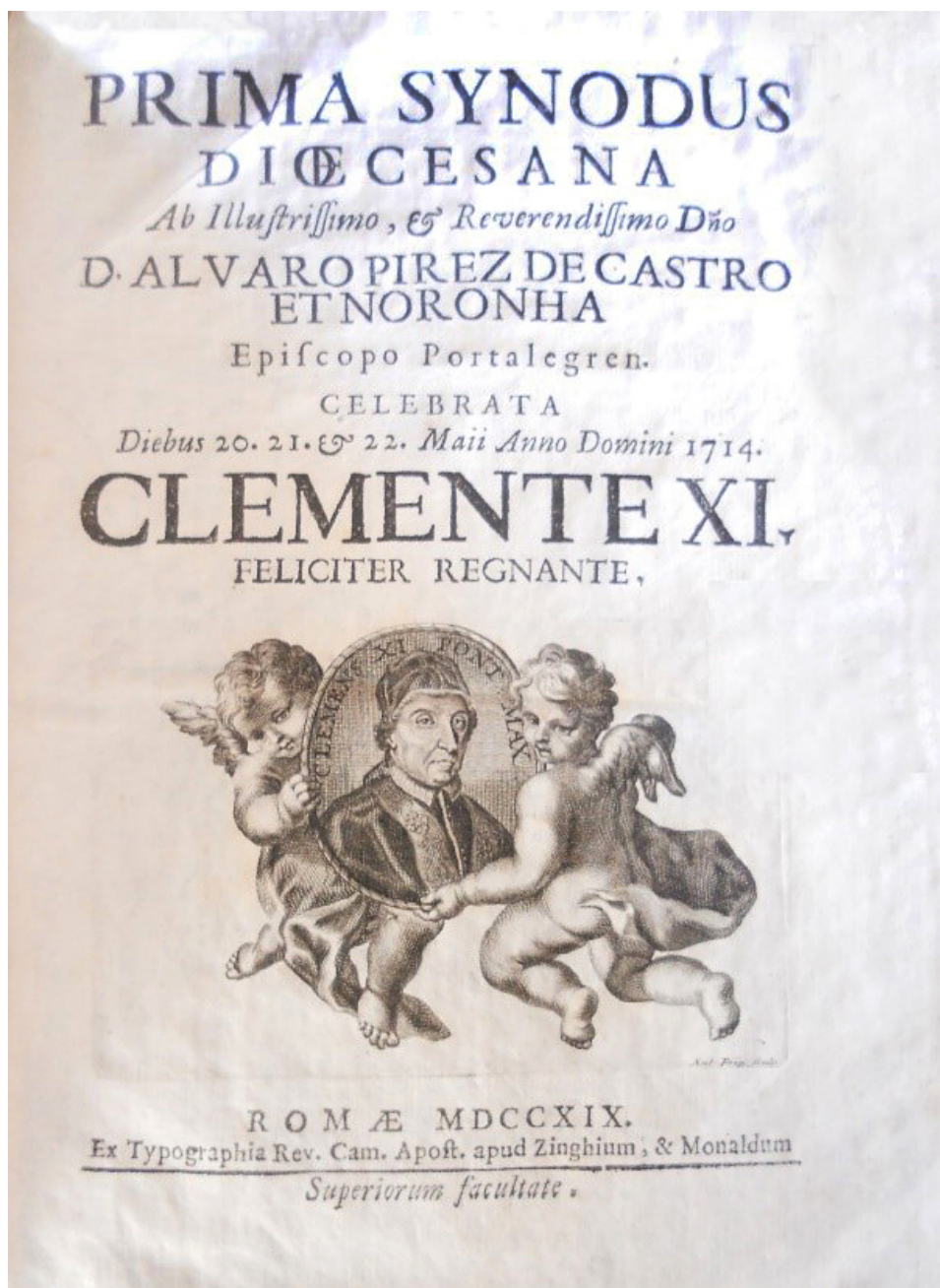


Figure 2. Frontispiece of *Prima synodus dioecesana ab illustrissimo et Reverendissimo Domino D. Alvaro Pirez de Castro et Noronha, episcopo portalegren. Celebrata diebus 20. 21. et 22 maii, anno Domini 1714. Clemente XI feliciter regnante*, Romae: Ex Typographia Rer. Casn. Apost. apud Zinghium et Monaldum, 1719 (Archive of the Chapterhouse of Portalegre).

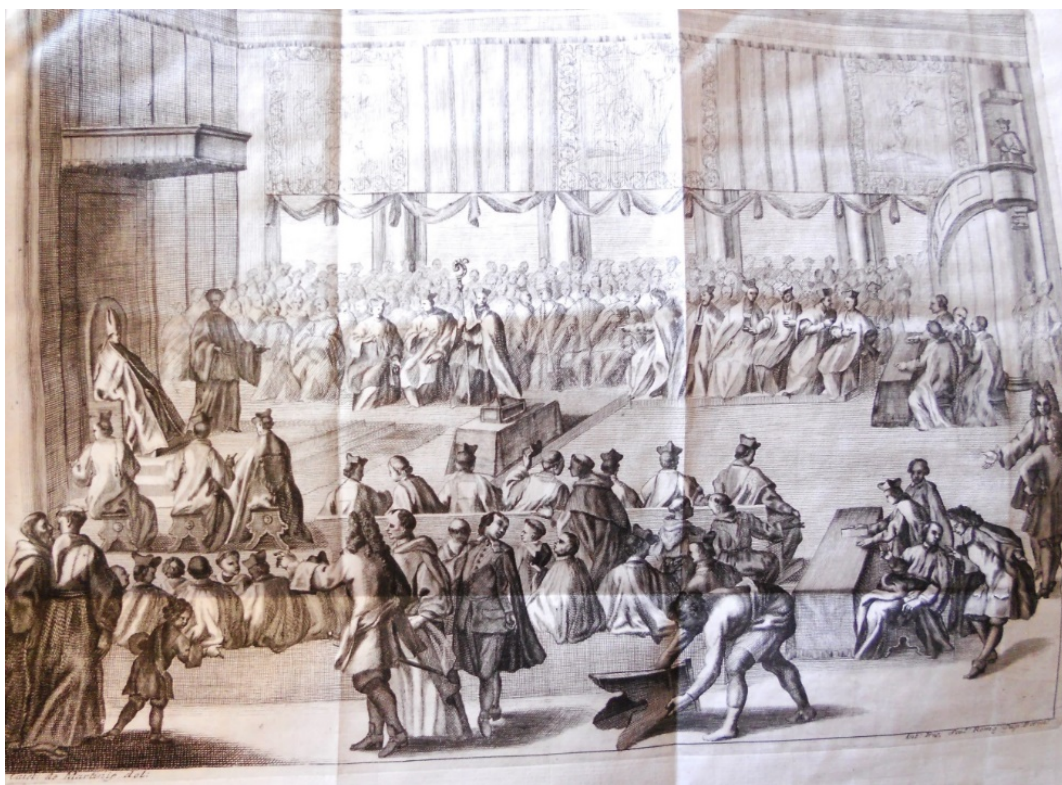


Figure 3. Illustration of the diocesan synod of Portalegre held on May 20, 21 and 22 of 1714, under the presidency of bishop D. Alvaro Pires de Castro e Noronha, contained in the Constitutions published in 1719 (Archive of the Chapterhouse of Portalegre).

Could not this episode have been a chapter of the episcopal resistance to the conjuncture that unprecedentedly limited its prerogatives? Presumably, yes. However, the reality worsened in the period of Liberalism, with the transformation of the bishops into *simulacra depicta*, by the monarchical-constitutional state⁴⁸. Have some of them been more *Sombra de Bago e Mitra*⁴⁹? This is what we will try to understand, through the records produced by the Episcopal Court.

⁴⁸ *Simulacra depicta* or “painted shades” was a neologism used by Gerson to satirize the condition of bishops due to the suppression of their powers. It was recovered in the eighteenth and nineteenth centuries, by various authors, with the same purposes. See J. GERSON, *De modis reformandi Ecclesiam*, quoted by A. P. Figueiredo, *Demonstração Theologica, Canonica e Historica do Direito dos metropolitanos de Portugal para confirmarem e mandarem sagrar os bispos suffraganeos nomeados por sua Magestade, e do Direito dos bispos de cada provincia para confirmarem e sagrarem os seus respectivos metropolitanos, tambem nomeados por sua Magestade*, Lisboa, 1769, 317-318.

⁴⁹ To name the bishops that were limited in their prerogatives Eneas Silvio Piccolomini created this expression (equivalent to Gerson’s one): E. S. Piccolomini, *História do Concílio de Basileia*, quoted by FIGUEIREDO, *Demonstração Theologica*, 318.

Little more than a year had passed since the reign of the King José I had ended, when the friar of the Military Order of Santiago, from Viseu, Manuel Tavares Coutinho e Silva, was appointed in the Cathedral of Portalegre. He had already been a professor at the University of Coimbra, rector of the *Colégio dos Militares* (College of Military) of the same city, deputy of the Holy Office and canon of the cathedral of Guarda. He was to be assigned to the diocese of Vila Nova de Portimão, but as the project to create the bishopric did not materialize, he became bishop of Portalegre in 1778: appointed on May 1; confirmed on 20 July; consecrated on September 13; inducted by proxy on the 27th of the same month; and three days later publicly enthroned in the See⁵⁰.

The doctrinal basis of Galicanism and Regalism, which envisaged the reduction of the political, institutional, ideological and economic power of the Church and that subordinated it to the State, was already materialised⁵¹. The increasing secularization of values, instigated by the Enlightenment movement, and the vast legislative body that was promulgated under theoretical and doctrinal foundation, as from 1759 by the government of Sebastião José de Carvalho e Melo, not only significantly reduced the benefit of privileges of the clergy, as in the temporal domain, it sought to subordinate the Portuguese Church and its clergy to the State⁵². One of the affected areas, that we must emphasize, was the judicial power of the bishops, weakened, above all, by the decree of January 16, 1769, which by ordering that no ecclesiastic should be exempt from secular jurisdiction in temporal matters, put an end to an important part of the so-called *privilegio de foro* of the clergy.

D. Manuel Tavares Coutinho e Silva had to put an end to some of the abuses, which, because of the period of instability and the low reverence for sacred things by some clerics and lay people, occurred during the period in which he governed the diocese. Episodes of theft and sacrilege were some of the most frequent offences, leading the Episcopal Court to order some *devassas* (investigation/enquiry). One of them was ordered on June 16, 1785, after the cash box of the church of S. Domingos dos Fortios was stolen. Years later, another *devassa* was ordered, in order to investigate the authorship of the fire set to the door of the *Calvário* hermitage on the night of December 16, 1791. Sacrilegious actions were also the talk of the diocesan court, as happened when Antonio de Sousa beat the curate of the church of Alpalhão, Friar Venâncio Joaquim de Sousa, giving rise to a summary judgment of sacrilege, initiated on August 26, 1793. In 1796 the cloister violation of the monastery of S. Bento, with

⁵⁰ See BRÁSIO, “A diocese de Aveiro”, 187-222; Almeida, *História da Igreja*, III, 574; A. P. da S. MARTINS, *Sumária notícia sobre os bispos de Portalegre e Castelo Branco nos 450 anos da criação da Diocese*, Lisboa, 1997, 50-52.

⁵¹ See DIAS, *Pombalismo e teoria política*, 1982; K. MAXWELL, *Pombal: Paradox of the Enlightenment*, Cambridge, 1995; N. G. MONTEIRO, *D. José: na sombra de Pombal*, Lisboa, 2006; J. SUBTIL, *O Terramoto Político (1755-1759): memória e poder*, Lisboa, 2007.

⁵² See J. P. PAIVA, *Os Bispos de Portugal e do Império*, Coimbra, 2006, 534-538.

entrance through the interior fence and clothing and hanks of string robbery, which occurred on the night of June 22 to June 23, and that led to an investigation of the Episcopal Court⁵³.

Other examples can be found in the *livros de distribuição*. The number of cases initiated by the Episcopal Court during this episcopate is not statistically relevant. However, we should recognize that the monitoring and disciplinary policies put in place in its course are not understandable only with this indicator, and it is also important to consider the inspection activity carried out through pastoral visits⁵⁴. It is true that during this period only 19 cases of *livramento* (about 1 per year) were examined before the episcopal court, that is, for crimes detected in the *devassas* of the pastoral visits⁵⁵. However, the unknown whereabouts of the *devassas* books makes it impossible to assess the range and scope of the action of this mechanism. Nevertheless, it should be noted that between 1783 and 1796, its almost annual frequency, did not occur during the governments that succeeded D. Manuel Tavares Coutinho e Silva.

The administration of D. José Valério da Cruz is an example of this. The hostility and intolerance environment, in which the kingdom was found, has turned his episcopacy in one of the most troubled in the history of the diocese. Presbyter of the *Congregação do Oratório*, he was born in Covilhã. He was appointed bishop of Portalegre on June 13, 1798, during the regency of Prince D. João, and confirmed on November 14 of the same year. He was seized by proxy on February 19, 1799, and was consecrated in Lisbon on February 24, in the royal church of *Nossa Senhora das Necessidades*⁵⁶. Quietness was not found in Portalegre during his episcopacy. First, because he led a *Junta Revolucionária* (Revolutionary commission) in the course of the diocese invasion by the Spanish armies in 1801 and in 1808 by the French army militias commanded by General Louis Henry Loison at the orders of General Junot. And also because he governed the bishopric during the monarchical-constitutional regime period, which resulted from the liberal revolution initiated in Oporto in August 1820, and that corresponded to a turbulent affirmation of a new political, social, economic, cultural and mental order, with significant impact on religious beliefs and on Church life⁵⁷.

Known as a pious man, dedicated to prayer and study, D. José Valério also became involved in the kingdom politics. He was a member of the Academy of Sciences and member of the parliament of Portugal. Integrally and continuously, he visited the bishopric only once, having repeated the visits in some parishes⁵⁸. In fact, during his government, only one

⁵³ See ACP – TEP-CB, LDC, Lv. 001, 1780-1831, fos 4v-10r.

⁵⁴ For an up-to-date overview see J. P. PAIVA, “As Visitas Pastorais”, in C. M. AZEVEDO (ed.), *História Religiosa de Portugal*, Lisboa, 2000, II, 250-255.

⁵⁵ ACP – TEP-CB, LDC, Lv. 001, 1780-1831, fos 43v-44v.

⁵⁶ See ALMEIDA, *História da Igreja*, III, 574.

⁵⁷ See J. P. PAIVA, “A ação dos bispos e de outros poderes até 1911”, in J. P. PAIVA (ed.), *HDV*, Viseu, 2016, vol. 3, 285-356.

⁵⁸ See MARTINS, *Sumária notícia*, 54-55. It is possible to draw a certain parallel with what occurred in Viseu, during the same period. Between 1816 and 1825 the pastoral visits were not carried out in the

livramento process took place in the Episcopal Court⁵⁹. After his death on July 17, 1826, the diocese would remain vacant for some years.

The bishop was the supreme figure of the diocesan government. When the See was vacant other officers presided over the judicial structure of the diocese. Despite the propensity for disorder of the period, the Episcopal Court of Portalegre did not stop repressing them⁶⁰. The vacancy term, with the election of D. José Francisco da Soledade Bravo in 1831, confirmed by the pope in February of the following year, did not mean a return to stability. As a Miguelist supporter, D. Jose will have been more involved in political matters than in the ecclesial ones, as evidenced by the famous episode of the exile to which he condemned a clergyman of an opposite faction, and that ended up being shot by the troops of the absolutist monarchy⁶¹. In fact, the episcopacy of D. José Bravo coincided with an extremely frantic period of internal and external conflicts. Given the political panorama that preceded him, such as the kingdom invasion, the transference of the Portuguese court to Brazil, and the appearance of several protagonists that wished to take powers, with incompatible political philosophies, his choice for Portalegre, a frontier diocese, was unequivocally due to his political position, favourable to the Miguelist cause⁶².

With the turn of the political tendency, the prelate was forced to take refuge in Marvão, moving to Spain afterwards, where he died on November 10, 1833, about a year and a half after he took office⁶³. Months before, a governmental decree declared the ecclesiastical places provided by King Miguel I (1826-1834) as vacant. Once again, the diocese of Portalegre was vacant, being governed by chapter vicars, and later by general vicars appointed by the State. Is it possible that the instability of the period and the upsets of those in charge of the judicial government have had an impact on the action of the Episcopal Court?

diocese due to “unavoidable” matters, typical of times of “uncertainty and confusion”, in the words of D. Francisco Alexandre Lobo. Only from then on did the bishop impelled them, however, delegating this action, in *visitadores*. See PAIVA, “A ação dos bispos”, 295-296.

⁵⁹ See ACP – TEP-CB, LDC, Lv. 001, 1780-1831, fo 44r.

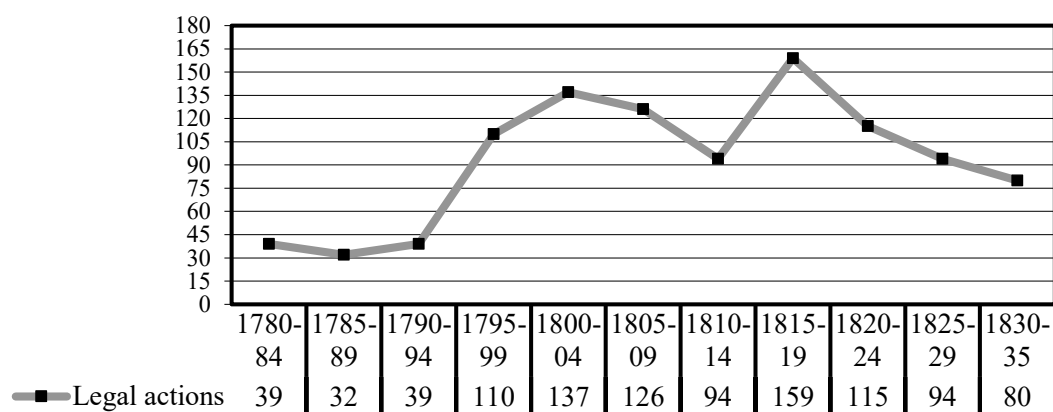
⁶⁰ See ACP – TEP-CB, LDC, Lv. 001, 1780-1831, fo 5r.

⁶¹ See MARTINS, *Sumária notícia*, 56-57.

⁶² See *Gazeta de Lisboa*, 21 (24 de janeiro de 1824), unnumbered annex. *Miguelistas* is the term used by the Portuguese historiography to designate those who fought for the permanent legitimacy of the ex-infant D. Miguel de Bragança in the line of succession to the Portuguese throne (Miguelist cause).

⁶³ For a comparison with what happened to the Bishop of Viseu, D. Francisco Alexandre Lobo, also forced to abandon the diocese in 1834, see J. P. PAIVA and S. R. PINTO, “O episcopado”, in J. P. Paiva (ed.), *HDV*, Viseu, 2016, vol. 3, 115-153; PAIVA, “A ação dos bispos”, 285-356.

Graph 2. Legal actions/procedural pleadings in the Episcopal Court of Portalegre (1780-1835)



This graph shows two periods during which there was a break in the court action: 1805-14 and 1820-35. The first may have been a reflection of the successive waves of invasions of the kingdom and respective conflicts. One of the theaters of operations of the war called *Guerra das Laranjas* (20-5-1801/6-6-1801) developed throughout Alentejo and meant the conquest of Portalegre by the Spaniards. The French invasions lashed the diocesan territory as from 1808⁶⁴. The end of this turbulent period will explain the highest peak of the *Auditório* activity, recorded in the five-year period between 1815 and 1819, during which an annual average of 32 cases was verified. The second may be due to the political-ideological conjuncture of the first liberalism, marked by the civil war and the radicalism of the monarchical-constitutional legislation, which influenced the structure of the Portuguese Church and limited its powers⁶⁵. Moreover, it is also noticed that the court's activity had an evolutionary line up to 1820 (except for the period 1810-14, for the already mentioned reasons). From then on, it declined gradually, to a point where an annual average of only 13 causes was verified, in the corresponding sexennial to the final chronology of this study. It is assumed that the revolutionary environment, the strong political-social unrest and the impact of the first legislative measures of Liberalism at the end of the episcopate of D. José Valério da Cruz may have contributed to this outcome, as well as the situation of vacancy of the diocese (1826-32, 1833-35) and the above mentioned instability of the government of D. José Bravo.

⁶⁴ See A. VENTURA, *A Guerra das Laranjas: a perda de Olivença 1796-1801*, Lisboa, 2004; T. C. de ALMEIDA, *Memória das Invasões Francesas em Portugal (1807-1811)*, Lisboa, 2010; M. GLOVER, *The Peninsular War 1807-1814*, Londres, 1974. In the documents of the court there is an echo of the Spanish invasion.

⁶⁵ See PINTO, "A diocese de Viseu no Constitucionalismo Liberal", 77-94.

Table 8. Number of administrative matters and legal actions/procedural pleadings in the Episcopal Court of Portalegre (1780-1835)

Episcopal government	Period	Number of cases			
		Administrative matters	Average	Judicial action	Average
D. Manuel Tavares Coutinho e Silva	1780 ⁶⁶ -7/4/1798	24	1	157	9
Vacant period	7/4/1798-13/11/1798	48	48	22	22
D. José Valério da Cruz	13/11/1798-17/7/1826	1369	49	711	25
Vacant period	17/7/1826-24/2/1832	214	36	95	17
D. José Francisco da Soledade Bravo	24/2/1832-10/11/1833	52	35	28	19
Vacant period	10/11/1833-1835	50	25	12	6
Total		1757	32	1025	19

Table 8 shows that during the period under review, the court dealt primarily with matters of bureaucratic nature. Instead of great oscillations, there was a gradual decrease in the number of legal actions/procedural pleadings in the Ecclesiastical Court, and that the greater decline coincided with the period of liberal governance.

The apparent lack of legal action during the government of D. Manuel Tavares Coutinho e Silva is due to the scarcity of sources. One of the two books from which the data in the table were collected, only refers to the last year of his episcopate, and the other, contains no data regarding the *alvarás de folha corrida*. However, even taking as a reference only the chronology where there are no documentary gaps (1798-1835), it can be seen that the annual average of legal actions/procedural pleadings was low, and a diachronic comparison with the records of other courts is useful.

⁶⁶ This date, 1780, concerns not the beginning of the episcopate (July 20, 1778), but the year from which there are document databases relating thereto.

Table 9. Diachronic comparison of the number of legal actions/procedural pleadings in some episcopal courts of the Euro-American Catholic world

Episcopal courts				Dates	Number of years	Number of cases	Average of cases per year
Portuguese empire	Kingdom of Portugal	Coimbra		1687-1706; 1738	21	5092	243 ⁶⁷
		Viseu		1684-1689	5	122	24 ⁶⁸
		Portalegre		1780-1835	55	1025	19 ⁶⁹
	Brazilian colony	Rio de Janeiro	Captaincy of Minas/as from 1745 bishopric of Mariana	1736-1799	63	1237	20 ⁷⁰
			Vicariate court of S. Paulo	1700-1745	46	73	2 ⁷¹
			Rio de Janeiro	1795-1812	17	54	3 ⁷²
		Maranhão		18 th Century	100	429	4 ⁷³
		S. Paulo	Court of the diocese thirst	1747-1822	75	1000	13 ⁷⁴
			Vicariate Court of Curitiba and Forensic General Court of Paranaguá	1747-1822	75	184	2 ⁷⁵

⁶⁷ See Arquivo da Universidade de Coimbra [hereinafter AUC] – Caixas da Câmara Eclesiástica [hereinafter CCE], *Livro para se carregarem os libellos e sentenças da justiça cada hum dos escrivães no seu banco*. 1684 – 1698, III - 1.^a D – 2 – 5 – 54; AUC – CCE, III, D, 1, 6, 2, 12, doc.2; AUC – CCE, III, D, 1, 6, 2, 28, doc.24; AUC – CCE, III, D, 1, 6, 2, doc.20; AUC – CCE, III, D, 1, 6, 2, 19, doc.8; AUC – CCE, III, D, 1, 6, 2, 8, doc.9.

⁶⁸ See NUNES, “Crime e castigo ...”, 177-213.

⁶⁹ See ACP – TEP-CB, LDC, Lv. 001, 1780-1831; PEP – CEP, TEP-CB, LDJE, Lv. 095, 1797-1835.

⁷⁰ See P. F. SANTOS, *Excomunhão e economia da salvação. Queixas, querelas e denúncias no tribunal eclesiástico de Minas Gerais no século XVIII*, S. Paulo 2016.

⁷¹ See M. C. de BRITTO, *Com poder e jurisdição. Conflitos jurisdicionais na construção da diocese de São Paulo (1682-1765)*, São Paulo, UNIFESP, 2018, 54-59.

⁷² See Arquivo da Cúria do Rio de Janeiro – Livro de denúncias e querelas contra padres, 1794-1818.

⁷³ See MUNIZ, *Parochos imperfeitos*, 73-86, 144-154, 226-271.

⁷⁴ See BRITTO, *Com poder e jurisdição*, 87.

⁷⁵ See BRITTO, *Com poder e jurisdição*, 117.

Spanish empire	Spanish Kingdoms	Coria	1500-1699	200	321	2 ⁷⁶
	Hispano America	Cordoba	1688-1850	162	488	3 ⁷⁷
		Chiapas y Soconusco	1600-1840	240	1826	8 ⁷⁸
Italian Kingdoms and Pontifical States		Jesi	1520-1715	196	991	5 ⁷⁹

It should be noted that, as far as Portugal is concerned, the chronological section of the study of the Episcopal Court of Portalegre is the largest available until now. Through it, it is shown that the work of the judicial system of the diocese of Alentejo, whose jurisdiction covered a small territory and limited population, was not sufficiently dynamic but it was constant. There were 1025 legal actions/procedural pleadings, with an average of 19 per year, and about two per month. It is a low average, slightly lower than the one registered by the Viseu court in a different period marked by a strong episcopal power; weaker than that observed in the Episcopal Court of Rio de Janeiro; a little higher than that of the *Juízo Eclesiástico de S. Paulo*, the only one whose available data refer to an identical chronology to this study; and clearly superior to the one verified in the courts of Maranhão, Coria, Cordoba, Chiapas y Soconusco and Jesi.

The greatest disparity between the data in Table 9 is related to the comparison with the performance of the Episcopal Court of Coimbra. For a year, the Mondego court had to deal with a much higher number of cases (243), which might be explained in part by two sets of reasons. For demographic disproportion in the first place: The number of inhabitants of the diocese of Coimbra was incomparably greater. Secondly, due to chronology: The statistics of the Episcopal Court of Portalegre concern a later period and a pivotal moment, during which, as a result of new social and religious political paradigms, the distributional channels of the prerogatives of the episcopal government, were obstructed. In addition, it can be assumed that those diocesan judicial structures no longer had the power and dynamism of

⁷⁶ See I. P. MUÑOZ, *Pecar, Delinquir y Castigar: el Tribunal Eclesiástico de Coria en los siglos XVI y XVII*, Cáceres, Institución Cultural “El Brocense”, 1992, 21-27.

⁷⁷ See Nelson C. DELAFERRERA, *Procesos Canónicos. Catálogo (1688-1888)*, Córdoba, Editorial de la Pontificia Universidad Católica Argentina, 2007, 19-112, 117-273, 717-902.

⁷⁸ Data obtained from the database of the online catalog of the diocesan fund of the Diocesan Historical Archives San Cristóbal de las Casas: <https://catalogo-ahdsc.colmex.mx>. I would like to thank Virginia Margarita López Tovilla for guiding me in accessing this platform and giving me systematic data for this chronological cut.

⁷⁹ See D. PEDRINI, L. DUBBINI (2018), “Giustizia ecclesiastica e società a Jesi in età moderna (1530-1730)”, in *Giustizia ecclesiastica e società nelle Marche in età moderna*, ed. V. LAVENIA and D. PEDRINI, Fermo, Andrea Livi Editore, Archivio di Stato di Ancona, 2018, 163.

earlier times. It should be noted that the gradual downfall of the power and influence of the episcopal courts began with the *Lei da Boa Razão* in August 18, 1769, that predicted the preponderance of common law over canon law⁸⁰. The satirization of the ecclesiastical jurisdiction remained until – and during – the liberal period, giving rise to a proliferation of measures damaging the Portuguese Church, which would culminate in the disappearance of the *foro eclesiástico* in 1833.

Conclusion

This study sought to inquire about the activity of the Episcopal Court of Portalegre at a time when the pastoral office was already strongly limited and conditioned by the limitations imposed by secular power. To this end, the chronological section with regard to the analysis of the Portuguese episcopal courts is until now the largest ever analyzed.

In the Episcopal Court of Portalegre, 1025 legal actions were required or initiated, 1730 *alvarás de folha corrida* were issued and 27 *requisitórias* were dispatched from outside and (outwards) the bishopric. This means that, in addition to an eminently judicial action aimed at the prosecution of crimes on which the ecclesiastical court had jurisdiction, the episcopal courts also exercised an important activity in what concerns administrative matters, for instance certification and dispatch, which gave them a prominent role in certain bureaucratic procedures, such as the access of laity to certain positions and offices and the performance of diligences required by other courts. Moreover, it was clear that between 1780 and 1835 the scope of the episcopal court of Portalegre was more bureaucratic than disciplinary.

The annual average of cases/procedural pleadings was quite low and, although in general, it had suffered a weak oscillation, it gradually declined. The diachronic comparison between the judicial action of the Episcopal Court of Alentejo and the judicial systems of other dioceses, not only in Portugal, but also in the Brazilian colony and the Spanish kingdoms, helped to realize this insignificance. The annual average of 19 cases/procedural pleadings fell far below from the activity revealed by the Ecclesiastical Court of Coimbra; slightly lower than the one registered by the Viseu court; weaker than the one in the Episcopal Court of Rio de Janeiro; a little higher than the *Juízo Eclesiástico* of S. Paulo; and clearly superior to the one verified in the episcopal courts of Maranhão, Coria, Cordoba, Chiapas y Soconusco and Jesi, whose action was sporadic or almost null.

Among the legal actions/procedural pleadings in the Episcopal Court of Portalegre, most of them resulted not so much from their surveillance structures, but, above all, from the denunciation culture of Christianity, which was stimulated during centuries and deep-

⁸⁰ The full transcript of this legislative document can be found at A. D. da SILVA, *Collecção da Legislação Portuguesa desde a ultima compilação das Ordenações*, Lisboa, Vol. II, 1829, 407-415.

rooted. Petitions and warrants were the dominant types of procedures and with a more relevant percentage. However, the 46 different kinds of procedural pleadings registered in the *livro de distribuição*, to which others already revealed by studies in other courts could be added, are the proof of how the diocesan judicial administration was casuistic when looking at the legal order in force.

It was also verified that the largest number of judicial cases concerning certain parts of the diocese (Portalegre, Arronches, Marvão, Nisa and Castelo de Vide) was proportional to their territorial and population size. Regarding the number and type of unlawful occurrences reported to the court, it was perceived that the disciplinary action was comprehensive, but debts were the type of crime with a greater number of legal actions against laymen and clergy.

The offenses against sexual morality, to which the Church has given, since the dawn of the modern period, a very significant attention, do not appear with relevant percentages in the judicial action of the Episcopal Court. Is this a sign of the impact of the previously undertaken action by the judicial mechanisms of the *Alentejo* diocese in the fight against lust? Is this, instead, an echo of its inability to detect and repress them? There is no empirical evidence to support a definitive answer. However, a set of systemic factors, analyzed in this study, point to the second hypothesis, namely: the strong political-religious turbulence of the period; the overwhelming supremacy of cases triggered by individuals outside the court; the almost total absence of actions triggered by the then rare pastoral visits, a sign of weakening of the diocesan judicial mechanisms.

Reflections of a new time, a time of juridical transformation. The spectrum of crimes under the jurisdiction of the episcopal courts remained wide, but the volume of judicial cases, which was generally low, showed a gradual decrease, coinciding with periods of greater agony, also present in the three episcopates and vacancy periods during the studied period, linked to the political environment of external and internal wars in the kingdom.

From 1833 onwards, everything changed. Between that year and 1835, and in the vacancy period that followed the very short and controversial episcopate of D. José Francisco da Soledade Bravo, the court was inactive, with a residual number of administrative matters and practically no judicial action, corresponding to 6 cases per year, below the previously recorded number of 19. The disappearance of the *foro eclesiástico* reduced it to insignificance, a clear proof that the lack of power and influence of the episcopal courts had repercussions on the global number of initiated procedures. It is an institutional set-up resulting from the progressive triumph of the Enlightenment ideas, responsible for the “painted shadows” that dotted the episcopal palaces.