Chaplaincies and the Mexican Reform

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IN MEXICAN HISTORY, conflict between Church and State plays a major role. At the high point of the nineteenth-century liberal movement—La Reforma—this conflict helped to precipitate a devastating civil war, 1857-1860, during which the liberal government nationalized church property and issued other notable anticlerical measures. A variety of corporations held this property which served diverse purposes. One of the institutions affected by the reformers' property laws was the chaplaincy (*capellanía*). This article will deal with the nature of this little-known institution which deserves closer study, the intention of the government in including chaplaincies in nationalization, and the problems it met in so doing.

A chaplaincy was usually established by a testamentary legacy, an endowment to support a chaplain whose function was to celebrate or have celebrated masses for the soul of the founder. "It is difficult to classify chaplaincies completely and exactly, nothing concrete on the matter being found specifically fixed in canon law; this difficulty is increased by the great variety of the chaplaincies obeying the conditions freely imposed by each founder."[1] Indeed, the founder might go into great detail in prescribing for the chaplaincy, and the Church was very liberal in accepting the many conditions established and in insisting that they be observed.

Chaplaincies may be divided into two broad categories: ecclesiastical and lay. The first term applies if a proper ecclesiastical authority erected the property endowing the chaplaincy into a benefice; the second if the chaplaincy was instituted without any ecclesiastical intervention. From this general division, the multiplying chaplaincies split into further types. Thus there were ecclesiastical chaplaincies by foundation and by prescription. In the latter case the bishop

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[1] *Diccionario enciclopédico hispano-americano de literatura, ciencias y artes* (Barcelona, 1888), IV, 530. The material defining chaplaincies is largely drawn from this source, 530-532 and from *The Catholic Encyclopedia* (New York, 1908), III, 580. After this article was written, a detailed history of the chaplaincy court appeared: Michael P. Costeloe, *Church Wealth in Mexico* (Cambridge, 1967).

acquired power over the chaplaincy through having conferred it over a long period of time on the persons nominated to him by its patron, so that eventually it came to be considered ecclesiastical. The bishop might also create a collative chaplaincy by erecting the foundation into a benefice and conferring the right to hold it on a candidate, even if the latter had been nominated by the founder or his trustee. This type was further refined and called a hereditary or family chaplaincy (*capellanía de sangre* or *capellanía gentílica*) if the founder stipulated as holder of the benefice a relative or a person of a specified line of descent.[2] In any case the collative chaplaincy required episcopal confirmation of the holder; otherwise the foundation could not be erected into a benefice. Chaplaincies were usually perpetual, although they might be established for a limited period of time.

A mercenary chaplaincy[3] is an example of a lay chaplaincy; the founder left property to someone on condition that he have a certain number of masses celebrated for the repose of the founder's soul. Often there was a distinction between the person who actually celebrated the masses, receiving a fee for his services, and the person who held the benefice and derived the bulk of the income from the foundation; the latter could be a layman. Depending on other specific requirements, a chaplaincy went by many different names.[4] By far the most common chaplaincies in Mexico appear to have been hereditary, collative chaplaincies. The detailed history of two sample chaplaincies may contribute to an understanding of the institution, suggesting what the Liberal government intended and the problems that resulted.

Don Phelipe de la Cruz Manjarrés drew up his last will and testament in 1758, authorizing the encumbrance of his hacienda in the amount of 1,500 pesos to endow a chaplaincy[5] and obligating

[2] See Jacinto Pallares (ed.), *Legislación federal complementaria del derecho civil mexicano* (México, 1897); xlii; and Joaquín Escriche, *Diccionario razonado de legislación civil, penal, comercial y forense; ó sea resumen de las leyes, usos, prácticas y costumbres, como asimismo de las doctrinas de los jurisconsultos* (Caracas, 1840), 82.

[3] Lay chaplaincies might also be called *profanas, patronatos reales de legos, memorias de misas,* and *legados píos.* See Pallares, xlii.

[4] Some of these names were: *colativa de jure, colativa patronada, de jure devoluto, colativa residencial, eclesiástica adjudicada, ministerial,* and *laical de cuenta.*

[5] Autos de la capellanía o missas que mandó fundar Don Phelipe de la Cruz Manjarrés, con el prinssipal de 1500 pesos, 1759 (MSS in the Latin American Collection, University of Texas Library; unless otherwise noted, all manuscripts cited are in this collection). There was to be added to this sum, 1,500 pesos from Doña Ferrera Pichando, thus providing the usual total endowment of 3,000 pesos.

his heirs to pay the required annuity. In 1759, when Manjarrés died, the executors of his estate appeared before a notary in Mexico City to carry out his wish. They declared that the testator had formally and legally encumbered his hacienda for 1,500 pesos, that the real estate alone was valued at 23,000 pesos, and that it had been encumbered previously only in the amount of 11,000 pesos. Therefore, they confirmed the ability of the property to bear this new burden. Don Phelipe wanted the designated capital spiritualized—i.e., erected into a benefice—and stipulated that the patron be first himself, then his son, Don Phelipe de la Cruz Manjarrés, and finally his children, grandchildren, and their descendants. In the absence of direct descendants preference was to be given to relatives from the closest to the most distant, the eldest to the youngest, and the male to the female; failing all of these, the patronage would pass in perpetuity to the archconfraternity of the Toluca parish church for the benefit of the members of its executive board.

The first chaplain was to be the testator's son, Don Phelipe, the income being used to aid him in becoming ordained. Failing Don Phelipe, the order of preference for chaplain followed that for patrons; and in the event of equal claims the poorest, ablest, and most virtuous was to become chaplain. If these conditions permitted no legitimate claimant, a native of the Toluca parish was to be chosen—legitimate, virtuous, poor, and "Spanish," with preference given, in case of equality among the applicants, to the brightest, most studious, and most competent. However, any chaplain named who obtained another benefice or prebend providing sufficient income to maintain himself forfeited his right to this chaplaincy. The chaplain was obligated to celebrate, or to have celebrated for the customary fee, twelve masses each year for the founder's soul in whatever church he considered appropriate. Except for the fees for the masses, the chaplain might enjoy the entire income from the benefice, even though he was not a priest, to aid him in his studies and sustenance.

These were the wishes of Don Phelipe de la Cruz Manjarrés which his executors asked the archbishop to accept, erecting the chaplaincy into a benefice. The "judge"[6] of the archiepiscopal chaplaincy court (*Juzgado de Capellanías*) received the petition;[7] then the court's fiscal

[6] This officer was called the "Juez Ordinario, visitador de testamentos, capellanías y obras pías."

[7] At the time of the Reform the *Juzgado* was no longer involved in judicial functions; its primary responsibility was financial. Therefore, "court" and "judge" for the mid-nineteenth century are misleading terms, but are retained throughout this paper for convenience. I am indebted to Michael P. Costeloe, University of Bristol, England, for assistance with word meanings and English counterparts of Spanish terms.

agent (*Defensor Fiscal*) investigated to establish the advisability of complying with the request. Such an investigation, routine in these cases, included determining the value of the hacienda and the extent of its encumbrances and whether a new burden could be afforded, and ascertaining whether the documents were properly drawn and registered. Following the approval of these officials, the archbishop and the cathedral chapter approved the petition, reserving the reversionary right (*derecho devolutivo*) whereby the prelate could fill vacancies in the chaplaincy under the conditions imposed by the founder. At length the new chaplaincy was duly registered in the records of the chaplaincy court.

When the first chaplain died in 1793, two candidates claimed the right to succeed him as patron and chaplain. One, the presbyter Manuel Buenaventura Cruz Manjarrés, was a cousin of the first chaplain and a nephew of the founder; the other, the presbyter José Máximo Garduño y Lazalde, was a nephew of the founder's wife. On the basis of relationship alone the former would have had preference, but the founding instrument also stipulated that the chaplain should hold no other benefice that adequately supported him. Since Cruz Manjarrés did enjoy such income, he was disqualified.

As an added complication, a third person claimed the patronage—Doña María Gertrudis Cruz Manjarrés, daughter of the founder by his second marriage. While depositions were being taken and an investigation made to determine the rightful successor to Don Phelipe, the fiscal agent of the chaplaincy court appointed an interim chaplain, José Mariano Legorreta, whereupon some complained that he had not fulfilled the founder's stipulations. Doña María Gertrudis finally became patron, and she accepted the interim appointment of Legorreta as chaplain. Complaints against the appointment continued, but after depositions that the new chaplain was indeed poor and virtuous, the chaplaincy court ended by confirming Legorreta as the new chaplain. In all, it took a year to settle this disputed succession; the first chaplain died on February 10, 1793, but the court did not confirm Legorreta in the post until February 4, 1794.

In 1811 the chaplaincy once again came to the attention of ecclesiastical authorities, when the patron, Doña María Gertrudis, sought to have her son, José Antonio Manchola, confirmed as chaplain after the death of Legorreta.[8] He was the closest relative of the founder, she averred, and he intended to follow a clerical career. Pursuant to

[8] Autos nuevamente formados entretanto parecer los originales de la capellanía que fundó D. Cristóbal Garduño como apoderado de D. Felipe Cruz Manjarrez con $1500, 1813 (MSS).

her request, an edict of September 13, 1813, as was customary, reviewed the founding conditions and her request. Displayed publicly at the cathedral and at the parish church of Toluca, the edict requested anyone who claimed a better right to the chaplaincy to come forward within thirty days. On December 13 the fiscal agent reported that no other candidates had appeared and recommended approval of José Antonio Manchola's nomination; this was given.

A dozen years later, in 1826, the young man came before a notary to renounce his rights as chaplain and transfer them to his brother, Pablo José Vicente Manchola. José Antonio had apparently decided that he did not have a vocation after all, for he married and thus could not continue as chaplain. His brother, in turn, asked the chaplaincy court to declare the chaplaincy vacant because of José Antonio's marriage and to name him, Pablo José, as the rightful chaplain and patron, being next in the line of succession. The process of Pablo's confirmation lasted until 1830, but apparently he never fulfilled his obligations, for in May 1839 he was given six days to present depositions on his behalf. If he did not comply, the ecclesiastical judge of Toluca would ask the rector of the archconfraternity mentioned in the founding instrument to name a patron from the sodality as provided. This warning was followed by a similar order in the official government newspaper on January 12, 1840. But not until October 1840 did Don Pablo appear and explain that the notice had only come to his attention "in recent days." He added that he could not exercise the rights of chaplain because he had married; however, he could and did claim the right of patronage to nominate the chaplain. The fiscal agent considered this claim just, so that Don Pablo became the patron and the judge rescinded his earlier order to the archconfraternity.[9]

The example of the chaplaincy created in the Manjarrés family illustrates problems of succession. A second case study reveals the significance and value of chaplaincies for the beneficiary. Licenciado Don Alonso de Cárdenas, a canon of the Cathedral of Mexico City, had founded a chaplaincy sustained by the income from a 3,000-peso mortgage on a rancho belonging to Don Matías Carrasco.[10] In 1780 when the chaplaincy fell vacant, the archbishop, using the reversionary right, nominated as chaplain Manuel López Escudero, member of a prominent family and one of the archepiscopal household staff.

[9] A final notation in the documents in May 1844, shows one Camilo Cruz Manjarrés petitioning the Court as the legitimate chaplain.

[10] Título de Capn. Prop. de la capellanía de missas que con 3000 pesos de principal mandó fundar el Ldo. Dn. Alonso de Cárdenas de Dn. Manuel López Escudero Familiar del Ill.º Soc. Arpo. de esta Sta. Igla. Cathl. Metropa., 1780 (MSS).

López Escudero was to enjoy the income for life and use it to become a presbyter; until such time as he qualified to celebrate the masses himself, he must have someone else fulfill the requirements of the foundation—to celebrate three masses each week, Monday, Friday, and Saturday, in the cathedral chapel of Santo Cristo.

Some years later, in 1783, López Escudero won a suit before the chaplaincy court involving rights to a chaplaincy founded by José Gutiérrez de Castro.[11] When this chaplaincy fell vacant, both López Escudero and the presbyter Licenciado Antonio Malcampo claimed it. The latter based his claim on his relationship to the founder's wife and on his being poor, as required by the founder, but López Escudero became the new patron and chaplain, presumably because Malcampo was already a presbyter. The "impoverished" López Escudero thus came to enjoy the fruits of two chaplaincies, but a document dated 1790 indicates that these represented by no means all of his enjoyments.[12] Indeed, he was the beneficiary of no fewer than twelve chaplaincies representing capital of over 20,000 pesos, which yielded an annual income of 1,010 pesos (though some payments were in arrears). His net income each year from these sources amounted to 672.50 pesos, after deducting 287.50 for the required masses—351 at one-half peso each and 112 at one peso—and 25 pesos for wine, wax, and wafers as stipulated by one founder.[13]

Although proprietary chaplain and eventually parish priest at Temamatla, López Escudero celebrated few if any of these masses himself. Nor did he handle the financial matters related to the chaplaincies. For the latter purpose he engaged an attorney in 1831, one Licenciado Cristóbal Martínez de Castro. This man not only received the sums due from the chaplaincies and made disbursements to the priest who actually celebrated the masses, but he also managed various other financial affairs for his client.[14] When López Escudero died in 1840, Castro submitted a financial accounting to the executor of the estate. This statement showed the chaplain very much in debt,

[11] Causa ordinaria que se ha seguido entre Manuel López Escudero y Don Antonio Malcampo, 1793 (MSS).

[12] Plan de las capellanías que obtiene el B. D. Manuel López Escudero, sus prales. réditos que producen al año, al tercio, gravámenes de misas de a 4 reales, y 1 peso, cargo de vino, cero (?), ostias, como lo que queda libre satisfechas sus cargas, 1790 (MSS).

[13] These are the amounts given in the document; they do not add up, nor does totaling the individual items cited for each foundation yield the above totals. Two possible explanations for the discrepancies are: reduction in the capital so that the income is less than it should have been; and delinquency in payment of the amounts due.

[14] See Miguel López Escudero, Correspondencia, 1821-1880 (MSS), *passim*.

for against a decade's income of some 13,000 pesos, largely from the chaplaincies, stood liabilities of approximately three times that amount.[15] Although López Escudero had undoubtedly derived income from other sources, as a priest and a member of a prominent family, still it would seem a fair guess that he did not live within his income. In effect, the chaplaincies were sinecures, for he enjoyed the bulk of the income from them and discharged his responsibilities by paying other priests to celebrate the masses and an attorney to manage the actual finances. It is clear, however, that such were the founders' intentions, not only in this case, but also in other hereditary chaplaincies.

These chaplaincies followed a similar general form, but varied in detail according to the desires of the founder. Like wills, each was unique, reflecting the wishes and circumstances of the creator. Thus the capital endowing the chaplaincies might be provided in a variety of ways. One woman, for example, ordered that her properties be sold, and that 4,000 pesos of the amount obtained be invested to sustain a chaplaincy.[16] A gentleman left his houses to the cathedral chapter in Mexico City, which was to rent them and devote the income to masses.[17] Others used mortgages which they held on property or more often simply encumbered their own property through a special contract (*censo*). Founders frequently stipulated the specific chapel where masses were to be celebrated, on which days, or for what occasion and purpose; but in some cases, they apparently cared little about where and when the masses took place.

The first chaplaincy described—that founded by Phelipe de la Cruz Manjarrés—well illustrates the great care taken to assure that the usufruct of the chaplaincy remained in the family. Nevertheless, frequent disputes arose between claimants to the post of chaplain or patron.[18] These disputes in turn reveal the role of ecclesiastical author-

[15] *Ibid.*, "Cuenta General de Cargo y Data que el apoderado del finado Señor Cura Br. D. Manuel López Escudero, presente a su albacea, el Sr. D. Mariano Riva Palacios, por el tiempo que giró sus negocios en esta capital y fuera de ella, desde 22 de febrero de 1831 hasta 16 de mayo de 1840."

[16] Condado del Valle de Orizaba, Copia de encabezado y cláusula 5ª del testamento de Da. Leonor Serrano de Vivero y escritura de una capellanía, 1734 (MSS).

[17] Razón de los aniversarios, capellanías, y obras pías que están fundados en esta Santa Iglesia Cathedral Metropolitana de la ciudad de México. Sus fundadores, patronos, capellanes, principales, réditos, escrituras, y condiciones, con que se han fundado y a que se obligó el M. Illre. U.e Sr. Dean y Cabildo de Dha. Sta. Yg.a que todo es en la forma siguiente, 1586-1745 (MSS), 59-60.

[18] Often the founder designated the same person as patron and chaplain; when this was not the case, the patron exercised supervision of the chaplaincy, including especially the right to nominate the chaplain within the limits set by the founder. The chaplain was the usufructuary of the foundation.

ities in seeing that the will of the founder was carried out insofar as possible. Still, documents might be lost and chaplaincies fall vacant with no claimants, while the obligation to celebrate the masses for the soul of the founder continued. In these cases the bishops, exercising the reversionary right, had authority to appoint a chaplain—or protegé, as the Liberals charged during the Reform.

With the passage of time the capital sustaining the foundation was sometimes reduced for one reason or another. This in turn might reduce the income to the chaplain, or the encumbered property simply might not produce the stipulated amount. In either case hardship resulted—in fact, it came to be argued that even the returns of 150 pesos from a 3,000-peso endowment were insufficient to maintain a chaplain decently. Therefore, some chaplains performed other duties to supplement their incomes; some became parish priests, performed duties for other pious works (*obras pías*), or occupied more than one chaplaincy.[19] Two or three priests might be found among the operators of fair-sized mining camps; others farmed.[20] Fortunate, indeed, was Manuel López Escudero, who enjoyed the revenue from a dozen chaplaincies and paid a pittance to another priest for the masses, a priest who was perhaps in straitened circumstances himself. Some founding instruments, however, specified that the chaplain could not hold more than one chaplaincy. In that case, good fortune might take the shape of a chaplaincy endowed with a principal greater than the norm of about 3,000 pesos—there were some of 4,000, 5,000, and even 12,000, which, at 5 percent, yielded 600 pesos annually.[21] More often, however, the principal was much less.

A single property could be encumbered to establish more than one chaplaincy, and an individual could endow more than one chaplaincy, allotting even tens of thousands of pesos for a number of them. In 1751 General Francisco de Echeveste encumbered his property in the amount of 18,000 pesos to endow six chaplaincies of 3,000 pesos principal each;[22] Juan de Vizarrón founded seven, one for 2,000 pesos and the rest for 3,000 each;[23] the hacienda of San José el Grande

[19] For example, see Archivo General de la Nación de México (cited hereinafter as AGN), Bienes nacionales, Leg. 859, exp. 28, "Apuntes de los que tienen . . . Don Andrés Quintila. . . ."

[20] François Chevalier, *Land and Society in Colonial Mexico: The Great Hacienda* (Berkeley, 1963), 258.

[21] Razón de los aniversarios . . ., 1586-1745, 133-36. The founder of this chaplaincy nominated himself as chaplain.

[22] Autos de las 2ª, 4ª, y 5ª capellanías que mandó fundar el Sor. Gral. Don Francisco de Echeveste con dote de $3000, 1856 (MSS).

[23] AGN, Bienes nacionales, Negocios eclesiásticos, December 1858, Leg. 1911, exp. 1, "El administrador de la obra pía del Sr. Vizarrón sobre capellanías vacantes."

was encumbered for 23,252 pesos, which supported twelve chaplaincies; and the haciendas of San José and San Gabriel for 91,000 pesos, which supported twenty.[24] A founder's desires, however, at times outran his resources, so that all the chaplaincies listed in his will could not be established.

In addition to settling disputes over rights to a chaplaincy and filling vacancies, the chaplaincy court faced other problems. In 1813, during the War for Independence, the court was forced to remove a proprietary chaplain serving as lieutenant of militia—it believed that military office was incompatible with an ecclesiastical position.[25] Ecclesiastical authorities were also concerned to fulfill the founder's wishes, when, in nominating a minor as chaplain, he stipulated that the young man must be ordained by the time he reached a certain age (usually twenty-eight). This fairly common requirement could be a source of considerable difficulty for the Church because of delays in ascertaining his intentions and in securing his appearance before the court or otherwise communicating with it. In one case, three years elapsed before settlement of the question, which ended only when the chaplain renounced the post.[26] Occasionally deliberate evasion as well as legitimate breakdowns in communications contributed to the delays. Needless to say, disputed successions, establishment of a chaplaincy, encumbering of property, and other matters required the time and effort of various individuals, lay and ecclesiastical. Since these services had to be paid for, it was not inexpensive to found a chaplaincy. In 1803, for example, it cost one individual over 120 pesos in fees for mortgage and foundation deeds and payments to a judge, notary, attorney, and other officials.[27]

Chaplaincies, then, were a complex and important aspect of church-related affairs. If problems attended the foundations before the Reform—for individuals as well as for the Church—at least as many problems emerged after nationalization, for individuals and the government. The number and value of chaplaincies and their importance in nationalization are matters difficult if not impossible to determine.

[24] *Ibid.*, "Capellanías vacantes suyos capitales reconoce el Sr. Lic. D. Manuel Piña y Cuevas," and June 1858, "D. Miguel Mosso y hermano proponen reconocer al Juzgado de capellanías el capital que reportan la hacienda de S. José, que no figure este capital en el concurso de Yermo y se le cedan todos los réditos que se adeudan."

[25] Juzgado de Testamentos, capellanías y obras pías en este Arzobispado (Autos de la 2ª capellanía de D. Pascual Fernández Araujo con dote del valor de dos casas), 1822 (MSS).

[26] *Ibid.* This occurred in the 1840s when the chaplaincy was close to completing its second century of existence, having been established in 1663; its history seemed burdened with an abnormal amount of difficulties.

[27] Títulos de capellanías de B. D. José de Piña, 1808 (MSS).

Readily accessible records show that chaplaincies represented more than 10 percent of the total value of nationalized properties submitted to imperial authorities for revision in 1865 and 1866—nearly seven million pesos of a total of about sixty-two and one-half million.[28] This amount is probably considerably below the actual total.[29]

Whatever the real figures, chaplaincies were numerous and represented considerable capital providing income important to many people; this property was nationalized, but the Liberal reformers basically sought to "individualize" it. In the nationalization law of July 12, 1859, Article I declared that all property managed by the regular and secular clergy under various titles, whether in real estate or any other form, was to enter the domain of the nation. This declaration definitely included chaplaincies.[30] Of primary concern to the government were the hereditary chaplaincies, whose founder had provided that the chaplains must be related to him. In the opinion of Melchor Ocampo, a leading radical of the period, hereditary chaplaincies were more than just property dedicated to the Faith; they were established by the wealthy to benefit poor relatives. A similar opinion was expressed by Santiago Martínez when he wrote that the disentailment of chaplaincies had been decreed in order to prevent the custom of raising children in luxury by using "ever-present" capital whose income, supposedly destined for a pious act, was most often used to produce "aristocratic vices."[31] In his study of the colonial hacienda Chevalier reveals the practical reasoning behind this kind of endowment. Thousands of chaplaincies were established;

[28] *Informe presentado al congreso de la unión el 16 de setiembre de 1873, en cumplimiento del precepto constitucional por el C. Francisco Mejía, Secretario de Estado y del despacho de Hacienda y Crédito Público de los Estados-Unidos Mexicanos* (México, 1873), document #19. The totals given of operations submitted to the Empire for revision were: chaplaincies—6,956,051 pesos; total submitted—62,429,128 pesos. At an average of 3,000 pesos principal per chaplaincy, there would have been about 2,319 of them.

[29] The value of chaplaincies in Mexico City alone has been reported as 4,930,360 pesos in 1805. "Noticias de Nueva España en 1805, publicadas por el tribunal del consulado," *Boletín de la Sociedad Mexicana de Geografía y Estadística* (México, 1864), II, 8-10. At the time of the Reform, a cleric reported the value of chaplaincies in the Bishopric of Michoacán as 2,800,000 pesos, and of total ecclesiastical wealth as 8,025,000 pesos. José Guadalupe Romero, *Noticias para formar la historia y la estadística del obispado de Michoacán presentadas a la Sociedad Mexicana de Geografía y Estadística en 1860* (México, 1862), 28.

[30] Resolution of July 28, 1859, in Luis G. Labastida, *Colección de leyes, decretos, reglamentos, circulares, órdenes y acuerdos relativos a la desamortización de los bienes de corporaciones civiles y religiosas y a la nacionalización de los que administraron las últimas* (México, 1893), 182. This disposition was repeated on August 4, 1859. *Ibid.*

[31] In the newspaper *Espíritu Público* of Campeche, reprinted in *El Siglo Diez y Nueve* (cited hereinafter as *Siglo XIX*), August 23, 1861.

the number of endowed masses increased constantly; and since these were perpetual and not redeemable, nearly every hacienda was mortgaged to some extent, many to a very large degree. To compensate for this, testators increasingly bequeathed chaplaincies to members of their own families, even infants, thus setting aside income which would remain in the family and support relatives who had taken or would eventually take holy orders. The descendants often went further, keeping the endowment and simply paying for the prescribed number of masses, thus saving a considerable amount of money for themselves.[32]

Melchor Ocampo justified the inclusion of chaplaincies in the nationalization law when he pointed out that the clergy, from being simply trustees of these pious foundations, proceeded to become "owners." The first step in this evolution was for the donor to insert in the founding instrument the provision that beneficiaries named could make use of the chaplaincies on condition that they become clerics. Later on prelates asserted the reversionary right and used the chaplaincies to endow their protegés and even their relatives.[33] Thus the Liberals had sufficient reasons for including chaplaincies in nationalization. Their purpose in so doing conformed with their theoretical belief in individual property as opposed to corporate wealth, but their objectives were significantly different from those for confiscating ecclesiastical property in general. As Santiago Martínez put it, chaplaincies were included in the nationalization law to destroy them as foundations, a species of corporation, but the capital that endowed them was considered individual property, and thus actually disentailment was decreed, not nationalization, so that the chaplain could obtain the capital.[34] The government made this clear when it disallowed the denunciation of capital of three chaplaincies on the grounds that the Reform Laws did not intend to interfere with the property of individuals, but only of corporations.[35] In fact all of the relevant government measures made it plain that hereditary chaplaincies were considered a type of private or individual property. For this reason every effort was made to insure that chaplains related to the founder should have first preference in acquiring the capital which endowed

[32] Chevalier, *Land and Society*, 257.

[33] Melchor Ocampo, *Obras completas*, Vol. II: *Escritos políticos* (México, 1901), 181-189.

[34] *Siglo XIX*, August 23, 1861.

[35] *Memoria que el Secretario de Hacienda y Crédito Público presenta al quinto congreso de la unión el 16 de setiembre de 1869, y que comprende el año fiscal de 1 de julio de 1868 al 30 de junio de 1869* (México, 1869), 837-838; and Resolution of September 29, 1868, in Labastida, *Colección*, 356.

the chaplaincy, and at a minimal cost. After the chaplains, the mortgagors were given an opportunity; and finally the door was opened to denouncers.

A good example of this process is the law of February 5, 1861,[36] the comprehensive regulatory measure on nationalization matters which the Liberals issued shortly after their victory in the brutal three-year civil war. The law provided that a chaplain could disentail his hereditary chaplaincy upon payment of 10 percent of the value of the capital if that amount were paid to the government at once, or 15 percent if he waited for the mortgagor to pay him. If the chaplain did not take advantage of this benefit within two months of the law's publication, he forfeited his rights to the mortgagor. The latter could then redeem the mortgage under the terms stipulated for any nationalized capital, that is, by paying the government two-fifths of the value of the mortgage in cash and three-fifths in bonds or credits. This same redemption method was to be followed by chaplains of non-hereditary chaplaincies. Again, the chaplain forfeited his rights to the mortgagor if he did not act within two months. Three months after publication of the law a detailed list was to be compiled of the chaplains and mortgagors who had taken advantage of the law; the capital of chaplaincies not included on this list was thereafter denounceable by third parties.

However, the laws allowed exceptions to the general policy. Article LXI of the February 5 law excluded from disentailment chaplaincies whose possessors were charged with ecclesiastical service in cathedral, parish, and nunnery churches. A decree two years later[37] extended this exemption for as long as the chaplain performed these services. All other chaplaincies were to be disentailed or redeemed within eight days, after which the government would freely dispose of the capital. The February 5 law allowed mortgagors to redeem the capital of vacant chaplaincies but with the stipulation that hereditary chaplaincies involved in litigation over the identity of the chaplain were not to be considered vacant. In a matter of days, however, the government reversed itself and ordered that the income of vacant chaplaincies be applied against the expenses of maintaining Mexico City nunneries.[38]

[36] Manuel Payno (ed.), *Colección de las leyes, decretos, circulares y providencias relativas á la desamortización eclesiástica, á la nacionalización de los bienes de corporaciones, y a la reforma de la legislación civil que tenía relación con el culto y con la iglesia* (México, 1861), Vol. II, Articles LVI to LXIII (Part IX), 147-150.

[37] Decree of February 11, 1863, in Labastida, *Colección*, 355-356.

[38] *Siglo XIX*, February 28, 1861. The prohibition against redemption of these mortgages was repeated on April 15, 1861. Manuel Dublán and José María Lozano (eds.), *Legislación mexicana; ó, colección completa de las disposiciones*

In any event, despite the care taken in the laws, disputes quickly arose concerning preference of rights between the two different parties intimately concerned—the chaplain and the mortgagor. These conflicts occurred because the mortgagor naturally preferred, if possible, to redeem the mortgage from the government under the very favorable terms allowed for ordinary redemption operations, rather than pay the chaplain the full amount of the encumbrance. Such attempts to evade the intent of the laws, however, were invariably disallowed if discovered in time.[39] Unquestionably it was highly desirable to disentail or redeem the capital of chaplaincies; therefore, many persons sought to secure rights to vacant chaplaincies. Some of these asserted the right to plead their cases in the courts; others wished to continue actions begun in the chaplaincy court, which had been suppressed, without initiating a lawsuit; and still others claimed vacant chaplaincies as relatives of the last chaplain.[40] Concerning these activities, the prominent attorney and cabinet minister, Ezequiel Montes, expressed an opinion in which the government concurred. After reviewing the various legal provisions that had been issued concerning chaplaincies, Montes concluded that, in dealing with vacancies, the government could recognize only hereditary chaplaincies which were in litigation to determine who the chaplain should be and, hence, who had the right to disentail; and those whose chaplains were charged with service in cathedrals, parish churches, and elsewhere as provided by the law of February 5, 1861. He recommended that judges be instructed to pass on the filling of chaplaincies only in these two cases.[41]

After nationalization was decreed, there were logically many requests to disentail chaplaincies as well as requests not to allow the redemption of mortgages that supported them.[42] One of the latter type involved a Spaniard, Agustín Cano, who petitioned President Juárez to exempt his four chaplaincies from the law because the 1836 treaty between Spain and Mexico stipulated that no legal obstacles would obstruct the rights of Spanish subjects on such matters as marriage and inheritance. The founder of the chaplaincy, Cano's ancestor, had provided that the beneficiaries were to be his cousin and then the cousin's relatives. When the first chaplain died in 1832,

legislativas expedidas desde la independencia de la república (México, 1876-1902), IX, 158.

[39] See, for example, *Gaceta de los tribunales de la República Mexicana, dirigida por el Licenciado Luis Méndez*, III (November 1, 1862), 861-867.

[40] Pallares, *Legislación*, November 14, 1862, 192.

[41] *Ibid.*, January 3, 1863, 193-194.

[42] AGN, Bienes nacionales, Leg. 33, *passim*.

Mexico and Spain were at war, and the chaplaincies were left vacant until the bishop mistakenly filled them with someone who was not a legitimate heir. Now redemption of the mortgages sustaining the chaplaincies was being sought to Cano's detriment; therefore, he asked suspension of the operation, which Juárez granted pending resolution of the matter.[43]

In another and perhaps not unique case, the presbyter Manuel Vigil sought to avoid losing his means of support as a result of recent legislation. He was the beneficiary of a chaplaincy endowed with 3,000 pesos in the form of a mortgage on a house which had been auctioned for only 1,880 pesos under the 1856 law of disamortization, thus reducing the capital sustaining the chaplaincy and the income received by Vigil. Even more disastrous was an order of November 24, 1859, by the Oaxaca state legislature that interest payments from all pious investments were to be paid into the state treasury for one year. If this occurred, complained Vigil, he would be deprived of his sole source of income, and he asked the federal government to exempt his chaplaincy.[44]

The attitude of the Church toward the government's chaplaincy measures was much the same as toward other Reform measures—one of firm opposition. On March 16, 1861, the archbishop forbade chaplains to take advantage of the provisions in the February 5 law on disentailment.[45] During the Regency that preceded Maximilian's arrival in 1864, these matters, like many others, were in an uncertain state, and disentailments and redemptions of capital sustaining chaplaincies were suspended.[46] But during the Empire, chaplaincy operations were resumed and were ordered submitted to Imperial revision, as were all other operations dealing with nationalized property.[47] And problems continued to occupy the government, for persons wishing to comply with the laws met obstruction from those deliberately seeking to evade them or from those who were confused or reluctant to cooperate with a usurping government. Thus Mariano Riva Palacio appealed to imperial authorities, declaring that he had disentailed a

[43] AGN, Capellanías, Leg. 33, exp. 6, "Don Agustín Cano. Sin trámite," September, 1859.

[44] *Ibid.*, Leg. 33, exp. 7, "Don Manuel E. Vigil. Sin trámite," October 11, 1859. The response to this request is not known.

[45] AGN, Bienes nacionales, Negocios eclesiásticos, March, 1860, Leg. 1828, exp. 1, "Sobre redención de capitales y desvinculación de capellanías."

[46] See, for example, AGN, Juzgado de Capellanías, August, 1863, Leg. 829, exp. 15, "Expediente promovido por D. Faustino Goribar."

[47] For example, see Archivo Histórico de Hacienda, Segundo Imperio, Leg. 103, exp. 121, "Expediente relativo a la solicitud de D. Felipe de la Sancha y Moctezuma sobre que se le admite a revisión la operación de una capellanía."

chaplaincy in March 1861 on behalf of his son, Antonio, and had paid the government ten percent of the principal as required by law. But up to 1865 he had not received the principal, much less the interest due on it, from the mortgagor despite government orders to that effect. Therefore, he again asked the government to issue orders for the principal to be paid.[48]

In examining materials on chaplaincies during the Reform, one finds almost as many questions, disputes, and problems of one kind or another as there were variations in the foundations themselves. If space permitted, pertinent cases could be reproduced at great length, each one interesting in itself and shedding some further light on the topic. In conclusion, however, one of the significant complications in disentailment and redemptions must be mentioned, for it appeared under the Restored Republic after 1867. This important issue involved not simply individual preference of rights but individual and governmental pecuniary interests and also the rivalry between federal, executive, and judicial rights. The Fagoaga-Casarín dispute led to the government's consideration of its financial interests, and this in turn led to conflict with the courts.

José Elías Fagoaga owned houses in Puebla which had been encumbered for 3,000 pesos to support a chaplaincy; the chaplain was Alejandro Casarín. During 1861 Casarín, then in Mexico City, legally requested disentailment of the capital supporting the chaplaincy. An order was issued for Fagoaga to pay 85 percent of the 3,000 pesos to Casarín and 15 percent to the government. While this operation was being conducted in the capital, however, Fagoaga in Puebla requested the redemption of the mortgages encumbering his houses. This too conformed to law, but the statute specifically excepted mortgages sustaining hereditary chaplaincies. Several months later it was discovered that Fagoaga had redeemed all of the existing mortgages. Seeking to resolve the matter with a minimum of confusion, the government ordered that Casarín be compensated with other capital, since Fagoaga had already redeemed the mortgage supporting the chaplaincy.

There the matter rested for several years until 1867, when a functionary in the Office of Nationalized Property pointed out that questions between chaplains and mortgagors were extremely numerous, and that if all were resolved in the above manner, the government would lose a great deal of money. The capital of Casarín's chaplaincy

[48] Mariano Riva Palacio, Correspondencia (MSS), "El que suscribe por su hijo Antonio Riva Palacio y en cumplimiento del reglamento de 9 del corriente mes, presenta la siguiente esposición," March, 1865.

amounted to 3,000 pesos, of which 15 percent (or 450 pesos) constituted the government's share and 85 percent (or 2,550 pesos) the chaplain's. Through Fagoaga's redemption of this mortgage, the government stood to receive 40 percent (or 1,200 pesos) in cash secured by promissory notes which were sold at a 50 percent discount (or 600 pesos actually received), and 60 percent (or 1,800 pesos) in bonds which were selling in Puebla at 4 percent of their face value (or 72 pesos in actual cash value). In other words, the government would actually receive 672 pesos through Fagoaga's redemption, while it would obtain 450 pesos through the chaplain's disentailment. By indemnifying the chaplain, Casarín, with another 3,000 pesos capital and by accepting Fagoaga's redemption, the treasury was in fact losing 2,328 pesos, the difference between the 3,000 given to Casarín and the 672 pesos received from Fagoaga.

Following this precedent in the many similar cases, the official declared, would ruin the treasury, for instead of receiving the income rightly due it from the sale of nationalized property, the government would have to expend money in such transactions. This opinion was accepted by Juan Zambrano, chief of the Office of Nationalized Property, who validated the original disentailment by the chaplain and nullified the redemption by Fagoaga, thus reversing the 1863 decision.[49]

Acting on the above basis, the Juárez administration soon found itself in conflict with the courts over such cases. In October 1868, the Ministry of Finance, apparently following the decision in the Fagoaga-Casarín case, nullified a mortgagor's redemption of a 6,000-pesos encumbrance that sustained some chaplaincies. The mortgagor, José María Pasquel, asked the District Court of Veracruz to stay the ministry's order. This court held that nullification of the redemption and reaffirmation of the chaplain's right to collect the capital from the mortgagor infringed on the latter's ownership rights and had a retroactive effect which violated the individual's constitutional guarantees. Furthermore, if the chaplain believed that he had a right to the capital, he should have appealed to the courts, not to the administration, as provided by a law of May 11, 1865. Thus the District Court granted Pasquel's request, and this decision was later upheld by the Supreme Court.[50]

[49] *Diario oficial del Gobierno Supremo de la República*, November 9, 1867, 1-3. Fagoaga was ordered to pay the 2,550 pesos plus interest to Casarín and 450 pesos plus interest to the government; the government was to return to Fagoaga the amount he had paid in redeeming the mortgage which sustained the chaplaincy.

[50] *Ibid.*, January 17, 1870, 2. For the law, see *Colección de leyes, decretos*

In this, as in similar cases,[51] the courts were technically correct in supporting mortgagors who appealed to them claiming infringement of their constitutional guarantees. Here the chaplains were appealing to the Ministry of Finance to uphold their rights to capital which had been redeemed by mortgagors. The redemption operations might have been consummated prior to the law of May 11, 1865; still, appeals by chaplains after that date should have been taken up in the courts. This was proper procedure, even though, as sometimes happened, the mortgagors had actually acted illegally prior to the expiration of the time limit allowed chaplains to exercise their disentailment rights and even though at first the mortgagor had voluntarily submitted to administrative jurisdiction. In addition, the ministry was infringing upon constitutional guarantees against retroactive laws by basing its decisions on much later dispositions which provided that only chaplains or their heirs could obtain the capital supporting chaplaincies. The judicial branch of government, then, was acting in accord with legal precepts—and standing up to the executive branch of the government. Nevertheless, the basic merit of the cases might indicate that justice was on the side of the chaplains, that the pecuniary interests of an always-needy treasury were being disregarded, and that the courts seemed to be acting primarily out of petulance over executive infringements on their jurisdiction.

Legislators of the Reform had tried to be as clear, consistent, and just to all parties involved as they could be, within the context of broader liberal aims. Even so, complications arose; disputes broke out over rights between individuals, over jurisdiction between the executive and judicial branches, and over actions taken by agencies in the capital as against the states. Almost invariably disamortization or nationalization of property caused trouble. Indeed, the history of chaplaincies in the Reform is the history of ecclesiastical expropriation in microcosm.

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y circulares expedidas por el supremo gobierno de la república (México, 1867), II, 229-230.

[51] See, for example, *Diario oficial*, April 26, 1870, 2; May 22, 1870, 2; and July 18, 1871, 1.