

## EPISCOPAL VISITATION OF CATHEDRALS IN THE CHURCH OF ENGLAND

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*In December 1994 the Revd Philip LS Barrett BD MA FRHistS FSA, Rector of Compton and Otterbourne in the Diocese of Winchester, successfully submitted a dissertation to the University of Wales College of Cardiff for the degree of LLM in Canon Law,<sup>1</sup> entitled 'Episcopal Visitation of Cathedrals in the Church of England'. Philip Barrett, best known for his magisterial study, Barchester: English Cathedral Life in the Nineteenth Century (SPCK 1993), died in 1998. The subject matter of this dissertation is of enduring importance and interest to those engaged in the life and work of cathedrals, and the Editor invited Canon Peter Atkinson, Chancellor of Chichester Cathedral, to prepare it for publication in this Journal,<sup>2</sup> so that the author's work might receive a wider circulation, but at a manageable length.<sup>3</sup> In 1999 a new Cathedrals Measure was enacted, following upon the recommendations of the Howe Commission, published in the report Heritage and Renewal (Church House Publishing 1994). The author was able to refer to the report, but not to the Measure, or to the revision of each set of cathedral Statutes consequent upon that Measure.<sup>4</sup> While this limits the usefulness of the author's work as a point of reference for the present law of cathedral visitations, its value as an historical introduction remains.<sup>5</sup>*

<sup>1</sup> I have reduced the dissertation by just over 50 per cent. I have tried to preserve the main thrust of the study, while dispensing with much of the illustration from particular instances. The reader will understand how much has been lost in the process; I can only refer the enquirer to the original copy kept by the University of Wales. (There is also a typescript in the Library of Chichester Cathedral). The historical background is obviously important, so I have retained the introductory chapter as far as the Reformation; something of the subsequent history of visitations is gathered from the pages that follow. I have regretfully jettisoned the appendix on metropolitanical and royal visitations, and visitations *sede vacante*. [PA]

<sup>2</sup> Every word of the text that follows is the author's. I have only very slightly re-ordered the material for the purposes of readability. For instance, I have used the last paragraph of the introduction to conclude the whole article. I have kept all the substantial footnotes of the surviving text, but excised extensive references to now obsolete sets of cathedral Statutes. [PA]

<sup>3</sup> In his introduction, Philip Barrett thanked Bishop Eric Kemp and Dr Norman Doe for their encouragement and advice; I am sure he would wish these acknowledgements to appear here. As one who knew Philip Barrett very slightly, I am glad to have a hand in bringing his work to a wider readership; and I am very grateful indeed to Mrs Irene Smale for re-typing the whole of the dissertation so that it could be electronically edited. [PA]

<sup>4</sup> The author also refers extensively to the Care of Cathedrals Measure 1990. The Care of Cathedrals (Amendment) Measure received Royal Assent on 24 March 2005, but the author's treatment of this aspect of a bishop's visitatorial power is not substantially affected.

<sup>5</sup> As far as I can tell, the impact of the 1999 Measure upon the conduct of visitations is not substantial, and any bishop contemplating a visitation of his cathedral

## THE PRE-REFORMATION BACKGROUND

Although there is evidence of the value placed on visitations as early as the sixth century, when in 516 the Council of Tarragona 'ordered that the old-standing practice should be observed and the churches should be visited every year by the diocesan bishop',<sup>6</sup> there is no direct evidence of cathedral visitations in England before the end of the twelfth century, when Archbishop Hubert Walter conducted a visitation of Christ Church Cathedral Priory at Canterbury in 1197.<sup>7</sup> Mediaeval English cathedrals included both monastic and secular chapters,<sup>8</sup> but both became subject to episcopal visitation early in the thirteenth century.

Several different influences can be detected which encouraged this practice. First, successive popes urged English bishops to conduct visitations. Pope Innocent III wrote to Bishop Godfrey de Lucy, Bishop of Winchester, in 1202, urging him not to be negligent in correcting monasteries and other churches.<sup>9</sup> Archbishop Stephen Langton was rebuked by Pope Honorius III in 1322 for not carrying out visitations.<sup>10</sup> Perhaps the most important move was by Pope Gregory IX, who sent a letter in 1232 to all the English bishops commanding them to visit either in person or by deputy all the non-exempt monks and canons in their dioceses.<sup>11</sup> This was followed by the legatine Council of London in 1237 which reminded bishops of their duty to visit their dioceses.<sup>12</sup>

The second influence was the example of the religious orders. The Fourth Lateran Council in 1215 required the Benedictine and Augustinian orders to hold regular chapters and triennial visitations, a custom which had long been a feature of the Cistercian and Premonstratensian orders.<sup>13</sup> The Franciscans also employed visitations,<sup>14</sup> and it has been thought possible that it was their influence upon Robert Grosseteste, who taught in the

will learn much from Philip Barrett's scholarship – and advice. [PA]

<sup>6</sup> WH Frere, *Visitation Articles and Injunctions of the Period of the Reformation* (London 1910), I, 19. For further references to a letter of Pope Gregory I to a diocesan bishop in 592 and to the provisions of the 4th Council of Toledo in 633 and the 2nd Council of Braga in 752, cf PM Smith, 'Points of Law and Practice Concerning Ecclesiastical Visitations', (1991) 2 *Ecc LJ* 189 at 190.

<sup>7</sup> CR Cheney, *Episcopal Visitation of Monasteries in the 13th Century* (Manchester 1931), 32.

<sup>8</sup> The monastic chapters were: Canterbury, Carlisle, Durham, Ely, Norwich, Rochester, Winchester and Worcester. The secular chapters were: Chichester, Exeter, Hereford, Lichfield, Lincoln, St Paul's London, Salisbury, Wells and York. In addition, the Benedictine monasteries at Bath and Coventry had co-cathedral status with the secular chapters at Wells and Lichfield. All the monasteries were Benedictine, apart from Carlisle which was an Augustinian foundation.

<sup>9</sup> Smith 194.

<sup>10</sup> *Ibid* 194.

<sup>11</sup> Cheney 33; Smith 194.

<sup>12</sup> Smith 194; cf Cheney 35.

<sup>13</sup> Cheney 35.

<sup>14</sup> JRH Moorman, *A History of The Franciscan Order From Its Origins to The Year 1517* (Oxford 1968) 98.

Franciscan school in Oxford between 1230 and 1235,<sup>15</sup> that impressed him with their value.

At any rate, when he became Bishop of Lincoln, Grosseteste was keen to conduct a visitation of his diocese, a plan which Sir Richard Southern has described as ‘a huge extension of the bishop’s pastoral function’.<sup>16</sup> In 1239 Grosseteste sent to the Dean and Chapter of Lincoln a lengthy memorandum on his right to visit the Chapter.<sup>17</sup> He had the backing of a licence from Pope Gregory IX,<sup>18</sup> but the Dean and Chapter resisted him, and refused to allow that he had any power ‘to decide causes or correct offences of canons or persons connected with the cathedral, except by appeal or neglect of the Dean’.<sup>19</sup>

Grosseteste told the Pope that he was unable to discharge his office as pastor without visitation and consequent correction, and asked for his help against the Chapter.<sup>20</sup> On 7 September 1239 he gave notice that he would begin his visitation of the cathedral, but when he arrived, he found that the Dean and Chapter had left to take their appeal to Rome.<sup>21</sup> The matter dragged on for six years until in 1245, at the Council of Lyons, Pope Innocent IV upheld Grosseteste’s right to visit his cathedral.<sup>22</sup> The Dean and Chapter were expected to show canonical obedience to the bishop, but were not required to take an oath to do so. The existing custom whereby irregularities of the canons were to be corrected by the Chapter was to be continued.<sup>23</sup>

Older scholars commonly gave the date of 1245 for a decretal of Innocent IV which set out the procedure for a metropolitanical visitation.<sup>24</sup> Professor Cheney, however, has shown that the constitution *Romana ecclesia* was in fact first given in a curial judgment for the Archbishop of Rheims in 1246. The part referring to visitations, *Statuimus ut quilibet*, comes at the

<sup>15</sup> JRH Moorman, *The Franciscans in England* (London 1974) 52. The most recent study of Grosseteste is RW Southern, *Robert Grosseteste – The Growth of an English Mind in Mediaeval Europe* (2nd edition, Oxford 1992). An older one is DA Callus (ed), *Robert Grosseteste, Scholar and Bishop* (Oxford 1955).

<sup>16</sup> Southern 259. For Grosseteste’s own account of his purpose in visitation, cf Southern 258.

<sup>17</sup> HR Luard (ed), *Roberti Grosseteste epistola* (Rolls Series, London) Ep 127 for Grosseteste’s quarrel with his chapter, cf JH Srawley, ‘Grosseteste’s Administration of the Diocese of Lincoln’, in DA Callus (ed) 171-177; JH Srawley, *Robert Grosseteste, Bishop of Lincoln 1235-1253* (Lincoln 1966) 18-19; and D Owen (ed) *A History of Lincoln Minster* (Cambridge 1994) 157-158.

<sup>18</sup> Srawley (1966) 18.

<sup>19</sup> Ep 73.

<sup>20</sup> Ep 77.

<sup>21</sup> Ep 80.

<sup>22</sup> For the text, cf H Bradshaw and C Wordsworth *Statutes of Lincoln Cathedral* (Cambridge 1892) I 315-319; cf Srawley (1966) 18-19.

<sup>23</sup> This award has been described as, ‘a turning-point in the relations of bishops and secular chapters in England’. (K Edwards *The English Secular Cathedrals in the Middle Ages* (2nd ed Manchester 1967) 129). The most recent discussion is in EU Crosby *Bishop and Chapter in 12th Century England* (Cambridge 1994) 310-312.

<sup>24</sup> Eg Frere I 82.

end of this constitution, which, with other documents from the Council of Lyons, was sent to the universities of Paris and Bologna as binding law to be followed by *all* bishops.<sup>25</sup>

Grosseteste at last carried out a visitation at Lincoln in 1246,<sup>26</sup> and the custom gradually spread to most of the other secular cathedrals. Yet the right of bishops to visit their cathedrals was not conceded without protests and obstructions on the part of chapters. When Bishop Giles de Bridport attempted to carry out a visitation at Salisbury in 1262, the Dean and Chapter protested that no previous bishop had ever made such a claim and managed to avoid a visitation until Bishop John Waltham obtained a bull from Pope Boniface IX in 1392 which confirmed the composition he had made with the Dean and Chapter to visit the cathedral once in seven years. Visitations were to last only five days, but all injunctions had to be obeyed within three months.<sup>27</sup> At Hereford, the Dean and Chapter were almost entirely successful in resisting all claims to the right of episcopal visitation. Bishop Richard may have begun a visitation in 1450, but no proper visitation was held there until 1677.<sup>28</sup>

Elsewhere we read of the right to visit gradually being established. There is no clear evidence at Chichester before Bishop Robert Rede's visitation in 1397,<sup>29</sup> though an award of Archbishop John Stratford in 1340 ordered that the dean's jurisdiction should be superseded by that of the bishop in time of visitation, and allowed the bishop to visit the prebendal estates, the dean's peculiar in the city, as well as the cathedral itself.<sup>30</sup> At Exeter Bishop Bronescombe had established his right to visit by 1275,<sup>31</sup> and there were frequent visitations during the fourteenth century.<sup>32</sup> The Dean and Chapter of Lichfield seem to have been largely successful in resisting visitations until Bishop Heyworth and the Chapter made a composition in 1428. This restricted the bishop to visiting only once in every seven years.<sup>33</sup> At St Paul's London, although there are possible traces of visitations in the late thirteenth century, the first recorded visitation was that of Bishop Segrave in 1314.<sup>34</sup> At Wells the Dean and Chapter also resisted the Bishop's

<sup>25</sup> Cheney 35, 135; cf Sext III, xx I, paragraph 6.

<sup>26</sup> Bradshaw and Wordsworth II cl.

<sup>27</sup> Frere I 75; C Wordsworth and D Maclean, *Statutes and Customs of the Cathedral Church of the Blessed Virgin Mary of Salisbury* (London 1915) 96-101, 282-307.

<sup>28</sup> AT Bannister *The Cathedral Church of Hereford* (London 1924) 176-180; Frere, I 79; Edwards 132-133.

<sup>29</sup> Frere I 79, 109-110; cf C Deedes (ed), *Episcopal Register of Robert Rede 1397-1415* (2 vols, 1908-1910) I 69-70, 98-127; II 363-373.

<sup>30</sup> Frere I 79; Edwards 131. Edwards comments that at Chichester, 'the bishop's powers during visitation became much wider than those of most English bishops'.

<sup>31</sup> Frere I 78.

<sup>32</sup> Edwards 129 n 5. For Grandisson's injunctions following his visitation in 1328, cf Frere I 116-117.

<sup>33</sup> Frere I 76. For the details collected at this time from other cathedrals about visitations, cf *ibid* 170-171. There were controversies at Lichfield about attempted visitations in 1322-4 and 1357-9. There is some evidence for visitations c1350 and in 1397 (Edwards 132).

<sup>34</sup> Frere I 77.

right to visit. Dean Godley firmly told Bishop Drokensford in 1319 that *he* had the right to visit triennially, not the bishop, but in 1321 an agreement was made which recognised both the dean's right to visit the cathedral and the bishop's right to visit the chapter. By 1331 it was stated that this custom had been in use since the mid-thirteenth century. It appears that the bishop could visit the cathedral only through the dean and relied on his questions to him and the answers he gave.<sup>35</sup> At York, an agreement between Archbishop Romeyn and the Dean and Chapter in 1290 allowed the Archbishop to make a *viva voce* enquiry once in five years. Any detected abuses were to be reformed within six months. Disputes continued and it was not until 1328 that an effective settlement with Archbishop Melton was achieved. By this agreement, the Archbishop could visit the Chapter every four years, after giving two months' notice. He could employ three or four clerks and a scribe to assist him.<sup>36</sup>

The monastic cathedrals also came to be visited by their bishops. The form of these differed little from the visitation of other religious houses, though generally the visitation of the cathedral priory was the first one to be conducted by a new bishop. Although there are several indications that Archbishop Pecham carried out visitations at Christ Church Priory at Canterbury, the earliest reasonably full record is of a visitation by Archbishop Winchelsey in 1296.<sup>37</sup> After giving notice, the Archbishop arrived on the appointed day, and examined the prior and monks. They objected to the presence of secular clerks, including the Archdeacon of Middlesex, accompanying the Archbishop, and after much argument a compromise was reached. One month later, the Archbishop returned and gave instructions to certain senior monks.<sup>38</sup> Many of the disputes between bishops and their monastic cathedral chapters were related to the question of the bishop's clerks and associates accompanying him on monastic visitation. In 1224 at Worcester the Archbishop of Canterbury arbitrated in such a dispute and decided that the bishop, 'might bring only his clerks into the chapter when he was going to discuss spiritual matters, but might be accompanied by seculars when the temporal affairs of the priory were in question'.<sup>39</sup> At Durham in 1300 the convent's resistance to the bishop bringing a crowd of clergy and laity with him on a visitation led to their excommunication and the sequestration of the priory's property. Eventually in 1302, after an unsuccessful attempt at intervention by the Archbishop of York, Pope Boniface VIII granted a privilege known as *Debent superioribus* which ruled that the Bishop of Durham should take with him at a visitation 'two or three honest men, clergy, of whom at least one should be a religious, and not more than one notary'.<sup>40</sup> This ruling was discussed at Worcester at Bishop William of Gainsborough's visitation in 1303.<sup>41</sup>

<sup>35</sup> Frere I 77-78; Edwards 131.

<sup>36</sup> Frere I, 75-76; Edwards 129-130; RB Dobson, *The Later Middle Ages, 1215-1500* in GE Aylmer and R Cant (eds) *A History of York Minster* (Oxford 1977) 83-84.

<sup>37</sup> Cheney 60; IJ Churchill *Canterbury Administration* (2 vols London 1933) I 134.

<sup>38</sup> Cheney 60-61.

<sup>39</sup> *Ibid* 67.

<sup>40</sup> *Ibid* 68-69; RB Dobson, *Durham Priory 1400-1450* (Cambridge 1973) 220.

<sup>41</sup> The priory's scribe wrote in the *Liber Albus*: 'His clerks and ours discussed a

The authority of a bishop in visiting his cathedral priory allowed him to investigate both<sup>42</sup> the temporal wealth of the monastery and also the spiritual condition of the monks. Bishop Woodlock's visitation at Winchester Cathedral Priory in 1308 was followed by directions to the prior to give yearly accounts and to visit the priory's manors.<sup>43</sup> By contrast, Bishop John Salmon's visitation of Norwich Cathedral Priory in 1308 was largely concerned with details of the conduct of services.<sup>44</sup> When Bishop Ralph de Walpole visited Ely Cathedral Priory in 1300, he examined the injunctions of his predecessors, as well as a random collection of legislation for the priory by various popes and archbishops. From this corpus of material he drew up a new code of statutes, some of which were clearly 'built upon the work of great monastic legislators of the past'.<sup>45</sup>

Visitations at Durham were subject to an agreement between the bishop and the cathedral priory made in 1229 known as *Le Covenit*. This excused the monks from paying a procuration fee because the bishop lived in Durham Castle during the visitation, and also allowed them to take part in the *correctiones compertorum* and to advise on possible reforms.<sup>46</sup> Visitations at Durham were infrequent in the later Middle Ages.<sup>47</sup> The last recorded visitation before the dissolution was that of Bishop Neville in 1442. Neville was accompanied by two clerks, a notary and one of the Durham monks, William Ebchester, as assessors.<sup>48</sup> The proceedings began in an unfortunate way, as Neville was surprised when he was greeted on Palace Green by the Prior and Chapter wearing only their monastic habits and not albs and copes. Prior Wessington agreed that if this custom could be proved at six other English cathedrals, either monastic or secular, Durham would copy them.<sup>49</sup> Two months after his thorough visitation, Neville sent a list of *comperta* to the monastery, following the clause in *Le Covenit* which allowed the monks to discuss with him ways in which reforms might be made.<sup>50</sup> Seven monks, including the Prior, drew up with the monk-assessor a detailed list of recommendations and comments on the bishop's

certain new constitution, which the Pope had recently put forth, respecting the entrance of a bishop for making a visitation. And since it was doubted whether that decretal was common or special, general or local, the Prior made protest that he would admit him on that occasion with two clerks and one notary, always, however, saving our composition if that constitution was not general. The Bishop made a like protest'. (JM Wilson *The Worcester Liber Albus* London 1920, 36; cf Cheney 69).

<sup>42</sup> Cheney 71.

<sup>43</sup> D Knowles, *The Religious Orders in England* (Cambridge 1962) I 104.

<sup>44</sup> EH Carter *Studies In Norwich Cathedral History* (Norwich 1935) 3-31.

<sup>45</sup> SJA Evans 'Ely Chapter Ordinances and Visitation Records 1241-1515', *Camden Miscellany* vol xvii London 1940 (Camden Society, 3rd series, vol lxiv) vi (cf Cheney 14).

<sup>46</sup> Dobson 220, 231.

<sup>47</sup> *Ibid* 231; cf B Harbottle 'Bishop Hatfield's Visitation of Durham Priory 1354', *Archaeologia Aeliana*, 4<sup>th</sup> series, vol 36 (1958), 81-100. Bishop Richard of Bury visited in 1337 and there were only five more visitations before 1408.

<sup>48</sup> Dobson 232.

<sup>49</sup> *Ibid* 233.

<sup>50</sup> *Ibid* 235. For the meaning of *comperta* cf below p 274. For *Le Covenit* cf Crosby 150-151.

*comperta*. Prior Wessington also submitted his personal replies to matters which concerned his office.<sup>51</sup> Finally, Bishop Neville issued his injunctions to the prior, who was responsible for publishing them to his community at a chapter meeting. The injunctions were based on the recommendations of the monastic committee but bore the imprint of Neville's own views.<sup>52</sup>

## GENERAL VISITATIONS

### *Jurisdiction*

The right of a bishop to conduct a visitation in his cathedral is derived from two sources. First, he has 'ordinary' jurisdiction to visit *jure ordinario*. This right is derived from the mediaeval canon law. His right to visit his cathedral is part and parcel of his right to visit all the churches of his diocese. Indeed, his visitation of his diocese should begin with a visitation of his cathedral.<sup>53</sup> In the exercise of his ordinary jurisdiction in visiting his cathedral, a bishop may be constrained in various ways concerning the manner and frequency of his visitations by ancient compositions between his predecessors and deans and chapters in past centuries, though it is doubtful whether any of these have any current recognised authority. Ordinary jurisdiction confers two additional powers upon a bishop. First, he may hear an appeal from a decision of the dean and chapter.<sup>54</sup> Secondly, a decision of a bishop exercising his ordinary jurisdiction is subject to an appeal to a superior ecclesiastical court.<sup>55</sup>

The second source of a bishop's jurisdiction in conducting visitations is known as 'special' jurisdiction. This is not derived from the general ecclesiastical law, but from the common law and especially from the individual codes of cathedral statutes. The judgment of Lord Campbell CJ in the case of *R v Dean and Chapter of Chester* in 1850 is generally taken to be authoritative in this matter:

The powers of the Bishop of Chester are not confined to causes in which he would have jurisdiction as Ordinary, but that he is constituted

<sup>51</sup> Dobson 235.

<sup>52</sup> *Ibid* 236.

<sup>53</sup> Sextus 3 xx 1; *Boyd v Phillpotts* (1874) LR 4 A & E 297 at 320, 341, Ct of Arches; *Phillpotts v Boyd* (1875) LR 6 PC 435 at 450, 456; Gibson *Codex* II 957; Phillimore *Ecclesiastical Law* (2nd edn) (London 1895) II 1045-1046; Smith, 203. Canon C 17 para 2, recognises the jurisdiction of each archbishop 'to correct and supply the defects of other bishops, and, during the time of his metropolitanical visitation, jurisdiction as Ordinary'. Canon C 18 para 4 similarly recognises the right of diocesan bishops to hold visitations. The purpose of visitations, according to Canon G 5 para 1 is, 'for the edifying and well-governing of Christ's flock...for the supply of such things as are lacking and the correction of such things as are amiss'.

<sup>54</sup> Cf *Withers v Dean and Chapter of Exeter* (1611) Appeals to Delegates, no 15 (PP 1867-8 lvii 112).

<sup>55</sup> Cf *Phillpotts v Boyd* (1875) LR 6 PC 435 at 450 per Lord Hatherley: 'It is equally certain, that as to some matters, at all events the bishop, visiting his dean and chapter as ordinary, would have power to make orders binding upon the dean and chapter, subject to an appeal to the higher Ecclesiastical Tribunals'. For further cases, cf Smith 204 n 170.

a special visitor to see that the statutes are enforced. He is empowered to do all things that lawfully appertain to the office of visitor, a functionary well known to the law, the law defining and recognising his powers when they are not limited by the founder.<sup>56</sup>

The origin of this jurisdiction may be found in the right of a founder to appoint a visitor. It was clearly stated by Lord Hardwicke in the case of *Green v Rutherford* in 1750:

The original of all such power is the property of the donor, and the power every one has to dispose, direct and regulate his own property... The founder may give a general power; or may limit and bind by particular statutes and laws... If the power to the visitor is unlimited and universal, he has in respect of the foundation and property moving from the founder no rule but his sound discretion, if there are particular statutes they are his rule, he is bound by them.<sup>57</sup>

This concept of special visitor entered the law of cathedral visitations in the sixteenth century and was used by Henry VIII for the new foundation cathedrals. Peter Smith has pointed out that this special jurisdiction as found in cathedrals and also as found in eleemosynary corporations such as universities and colleges has a common origin.<sup>58</sup> A decision of an episcopal visitor exercising his special jurisdiction is not subject to an appeal,<sup>59</sup> though he may himself hear appeals about the ways the statutes have been applied from members of the foundation.<sup>60</sup> In the present century, all cathedrals now have statutes granted by the Crown by means of an Order in Council

<sup>56</sup> *R v Dean and Chapter of Chester* (1850) 15 QB 513 at 519.

<sup>57</sup> *Green v Rutherford* (1750) 1 Ves Sen 465 at 472; cf also *Philips v Bury* (1694) Holt KB 715 at 724.

<sup>58</sup> The Crown is clearly represented as the founder of the church and donor of the statutes, and the whole tenor of the statutes is indicative of a quasi-private corporation. In each cathedral, the bishop is specially appointed visitor to supervise that particular foundation and to see that it observes its own rules... There is therefore no material distinction to be drawn between the visitor of an eleemosynary corporation and the local visitor of a cathedral of Henry VIII's foundation, and this means that the courts have been able to use freely, decisions concerning the jurisdiction in one kind of foundation as authority in determining the powers in the other'. (PM Smith, 'The Exclusive Jurisdiction of the University Visitor', *Law Quarterly Review*, vol 97, October 1981, 610 at 610-611; cf idem 'Points of Law', (1991) 2 Ecc LJ 189 at 204. The Henrician statutes for both Peterborough and Carlisle expressly recognised the bishop's ordinary jurisdiction in addition to his jurisdiction under the statutes. (Falkner and Thompson xlvii). For a general account of the jurisdiction of a visitor, cf *Halsbury's Laws of England* (4th edition, London 1975), vol 5 paras 872-879.

<sup>59</sup> *R v Bishop of Chester* (1747) 1 Wm B1 22, 1 Wils 206; *Philips v Bury* (1694) Holt KB 715 at 726-727; *Whiston v Dean and Chapter of Rochester* (1849) 7 Hare 532; *R v Dean and Chapter of Chester* (1850) 15 QB 513; *Boyd v Phillpotts* (1874) LR 4A & E 297 at 335-336, Ct of Arches; cf PM Smith, 'Points of Law' (1991) 2 Ecc LJ 204.

<sup>60</sup> *Philips v Bury* (1694) Holt KB 715 at 720; *Attorney-General v Talbot* (1748) 3 Atk 662 at 674; *Whiston v Dean and Chapter of Rochester* (1849) 7 Hare 532; *R v Dean and Chapter of Chester* (1850) 15 QB 513; *R v Dean and Chapter of Rochester* (1851) 17 QB 1.

and therefore this concept of special jurisdiction is not limited to the new foundation cathedrals.<sup>61</sup>

To sum up: a bishop may hold a general visitation either by virtue of his ordinary or special jurisdiction. Indeed, as every diocesan bishop is now constituted as the special visitor of his cathedral by the cathedral statutes, he must conduct such a visitation in accordance with the law governing special visitations unless the matter lies outside his jurisdiction as a special visitor. The special jurisdiction of a bishop should not be confused with his power to hold a special visitation. A general visitation is, as its name implies, a general enquiry into the affairs of his cathedral. A special visitation is an enquiry into some particular point or points of difficulty or controversy.

### *Procedure*

The traditional procedure for the general episcopal visitation of a cathedral may be seen from mediaeval records.<sup>62</sup> After giving due notice of his visitation to the dean and chapter or prior and chapter, the bishop was ceremonially met at the entrance to the close or cathedral and conducted in procession to the high altar. Either high mass or vespers followed. The clergy then went to the chapter house where a sermon was preached, either by the bishop himself or by some worthy clerk or monk. The dean or prior presented a certificate that he had received the bishop's citation, and had given notice of the visitation to all members of the chapter. Any irregularities over this were sorted out, and both the dean (or prior) and all members of the chapter produced their letters of orders and titles to their offices. Other documents produced often included foundation charters of the cathedral and a current financial statement.

After this public part of the visitation, the bishop proceeded, either personally or by deputy, to interview each member of the chapter in private. Notes were taken by the bishop's clerks and these were known as the *detecta* or matters revealed to the bishop. Any matters which required immediate action by the bishop were dealt with, and from the *detecta* the bishop drew up a schedule of matters requiring reform known as the *comperta*. The visitor then sent to the cathedral chapter a list, based on the *comperta*, of matters needing reform, often accompanied by oral instructions to that effect. Sometimes, as at Durham in 1442, the chapter had the right to comment on or respond to these.<sup>63</sup> Finally, the bishop issued his formal, written injunctions which were mandatory on the chapter, and the visitation was formally closed.<sup>64</sup> One important aspect of a visitation,

<sup>61</sup> Cathedrals Measure 1931 (21 & 22 George 5, c7); Cathedrals Measure 1963 (No 2), s 6.

<sup>62</sup> A good example is the account of Bishop William Gray's visitation at Lincoln in 1432 (AH Thompson (ed) *Visitation of Religious Houses in the Diocese of Lincoln* (London 1915) I 128-145. Thompson's summary of the procedure is valuable (ibid ix-xiii).

<sup>63</sup> Dobson 235.

<sup>64</sup> Cheney 95-99. Frere (op cit I, 111) makes a good distinction between *injunctions*

which applies to visitations of cathedrals as well as diocesan visitations, is that during the period of the visitation the powers of any lesser body – in this case, the dean and chapter – are inhibited or suspended.<sup>65</sup>

Over the centuries this basic pattern of visitation has continued with few variations.<sup>66</sup> One interesting variant was used at Chichester in the eighteenth century from 1710. Here at each visitation, two canons residentiary and two prebendaries, two vicars choral and two lay clerks were sworn as ‘inquisitors’ and the bishop’s articles were delivered to them.<sup>67</sup> In recent years, many bishops have appointed assessors to assist them. At Blackburn in 1991, for example, Bishop Alan Chesters appointed Canon Owen Conway of Chester Cathedral, Dr Dennis Townhill, formerly organist of St Mary’s Cathedral, Edinburgh, Mr Spencer Crockenden, who investigated the cathedral’s finances, and Mr Edward Hill, who advised on matters concerning the fabric.<sup>68</sup> In the same year at Salisbury, Bishop John Austin Baker’s assessors were Sir Reginald Pullen, formerly Receiver-General at Westminster Abbey, and Sister Carol of the Community of the Holy Name.<sup>69</sup> It is not clear on what legal basis or by what authority such assessors are appointed, though there is ample mediaeval precedent for bishops to be accompanied by clerks or notaries, or to delegate some of their visitatorial powers to commissaries.<sup>70</sup> It is now general for bishops to send written articles of inquiry, and to conduct a large number of personal interviews before drawing up their charge, which may contain both directions and recommendations. The former must be obeyed, but the latter have only

which are orders given for the enforcement of what is already enforceable, *constitutions* which are new diocesan regulations approved by a diocesan synod of clergy and *statutes* which are new regulations for a cathedral proposed with the consent of the chapter.

<sup>65</sup> Phillimore, II, 1050. A recent example of this was at Bishop Eric Kemp’s general visitation at Chichester in 1978. The bishop’s charge was given in two parts, on 3 November 1978 and 22 March 1979. At the end of the first part he stressed that, ‘The inhibition contained in the citation read earlier means that until the visitation is concluded and the inhibition relaxed they (the Administrative Chapter) must take no action on any matters covered by the Visitation without my knowledge and consent’. For earlier examples at Chichester, of the inhibition issued by Bishop Francis Hare in 1733 (West Sussex Record Office, Cap 1/1/2, 189) and the citation issued by Bishop Bell for his visitation in 1948 (West Sussex Record Office, Cap 1/7/3). For details of the manner of issuing citations in Chichester in the eighteenth century, cf West Sussex Record Office Cap 1/1/2, 219.

<sup>66</sup> For details of the ‘Forme of the Visitation of the Cathedral Church of Chichester’ drawn up for Bishop Waddington’s visitation in 1727, cf West Sussex Record Office, Cap 1/1/2, 174. John Wordsworth’s visitation at Salisbury in 1888 is a good example of the procedures used in the late nineteenth century (cf Wordsworth and Maclean, 467–492).

<sup>67</sup> West Sussex Record Office, Cap 1/1/2, 164–165.

<sup>68</sup> *Visitation of the Cathedral Church of St Mary the Virgin, Blackburn*, by Alan, Lord Bishop of Blackburn, November 1991, s1.4.

<sup>69</sup> *Diocese of Salisbury: Visitation of the Cathedral Church of the Blessed Virgin Mary in Salisbury: the Bishop’s Charge*, by John, Bishop of Salisbury, 14 October 1991, 1.

<sup>70</sup> Phillimore notes that ‘the practice seems to have varied as to appointing a civilian as commissary or as assessor. Bishop Gibson chose an assessor. Sometimes also two commissaries have been appointed’. (Phillimore, I, 169n).

persuasive force. A visitation usually continues in force until the dean and chapter have responded to the bishop's charge and indicated that they will obey his directions and carefully consider his recommendations.

*Powers conferred by Cathedral Statutes*

'The Bishop is the Visitor of the Cathedral Church and shall have power to do all such things as belong of right to the office of visitor'. Although all cathedral constitutions now contain this provision, the powers, duties, rights and responsibilities of the bishop as visitor vary widely from cathedral to cathedral. In this section, we shall consider some of the details of visitatorial power conferred and regulated by the individual codes of statutes. Although there is a certain amount of cross-fertilisation between different cathedrals, it will be convenient to examine in turn cathedrals of the old and new foundations and then modern cathedrals.

In each of the nine old foundation cathedrals, the diocesan is allowed the right to visit, both of his own volition and if asked to do so by others. The 'others' may be the chapter (as at Hereford and Lincoln), a majority of the chapter (at Chichester), the dean or two canons (at Exeter), the dean or two canons residentiary or ten canons non-residentiary (at Salisbury), or the dean or a majority of the chapter (at St Paul's). The right to ask for a visitation at Lichfield, Wells, and York is confined to the possibility only of a special visitation (known at Wells as a 'visitation extraordinary'). At Lichfield the chapter or a majority thereof have the right to ask for one; at Wells it is the dean or two canons residentiary, and at York seven members of the chapter have such a right, though there the archbishop must agree that a request is reasonable. The frequency of a general visitation varies.<sup>71</sup> At York a space of five years between visitations is required. At Exeter and Hereford ten years' interval is prescribed, unless the bishop deems a visitation to be expedient. At the remaining old foundation cathedrals no interval is prescribed. Two months' notice is requested for a visitation at Lichfield, Wells and York. Three months' notice is needed at Exeter, but no length of time is laid down elsewhere. At Exeter those attending a visitation must answer 'on oath or on solemn declaration', while at St. Paul's they must answer questions by the visitor 'on solemn asseveration'.<sup>72</sup> No oath is required elsewhere. There is some variation between the different old foundation cathedrals as to those who are required to take part in a visitation. At Lincoln and St Paul's it is 'all ministers, officers and servants of the Cathedral Church'. At Salisbury it is all members of the corporation of the dean and chapter and all ministers, officers and servants. At Lichfield, it is the dean and canons both residentiary and non-residentiary, while at Hereford and Wells it is all members of the chapter. At Exeter, the particular members of the cathedral staff who are visitable are identified

<sup>71</sup> The Church of England (Miscellaneous Provisions) Measure 1976 (no 3) relieves bishops of the necessity of holding visitations at regular intervals. It may be doubted whether this was a wise reform.

<sup>72</sup> For evidence on oath at visitations, cf GG Coulton, *Five Centuries of Religion* (Cambridge 1927), 480-485; for the oath at Chichester in the 17th and 18th centuries, cf West Sussex Record Office, Cap 1/1/2 pp 116, 157, 174.

in the statutes, while at Chichester, in addition to the whole chapter and priest-vicars, all other officials are included if they are required. At Exeter and Lincoln all but the chapter must withdraw after their examination by the bishop.

At several old foundation cathedrals the statutes prescribe additional features of the visitations to be held there. At Hereford, the bishop is allowed to determine how the visitation shall proceed and may disallow unconstitutional decisions or by-laws made by the chapter. At Lichfield, a schedule to the statutes gives full details of the ceremonial and procedure to be used at visitations. At Salisbury, the bishop may 'make enquiry into any matter touching the Cathedral Church'. The Wells statutes allow the bishop to inspect the accounts of the fabric fund and give further details of the procedures to be taken in respect of the citation, articles, and answers at a visitation. At York, the archbishop must send written articles to all the dignitaries, ministers, officers and servants of the cathedral. He must be accompanied by the chancellor of the diocese, 'or some other person learned in the law'. The chapter are required to consider the archbishop's injunctions at a special meeting, must accept them and must so inform the archbishop. When accepted, the injunctions are binding. No injunction shall be accepted 'if it contravenes or goes beyond the statutes and customs of the Cathedral Church'.

Although the cathedrals of the new foundation were all founded or re-founded within a few years at the end of Henry VIII's reign, their statutes are surprisingly dissimilar. This is partly because some, but not all, of them were revised in the reigns of Charles I and Charles II. In general terms, they are less prescriptive over visitations than the statutes of old foundation cathedrals. For example, only at Canterbury is an oath required from those appearing at a visitation, and at none of them is there any mention of the withdrawal of the lesser members of the foundation during the latter part of the visitation. Two months' notice is required of a visitation at Bristol, Carlisle, Gloucester and Worcester, but not elsewhere except at Norwich where a similar notice is required only for a visitation by the request of the dean or two canons. The right of the bishop to hold a visitation whenever he thinks fit is found in all the statutes of new foundation cathedrals except Peterborough, where he is allowed no discretion. There, the bishop 'shall hold a visitation of the cathedral at intervals not exceeding five years'. At Canterbury, visitations may not be held more than once in four years, save in the gravest emergency. At Norwich, the statutes appear to prescribe a visitation every seven years, but are in fact so drafted that the bishop may or may not hold one more or less often as he wills. The Ely and Peterborough statutes are unusual in not allowing the usual right of request for a visitation to be made by the dean or two canons, though at both Carlisle and Chester this right is limited to demanding only a special visitation. Those required to attend visitations at new foundation cathedrals usually include the dean and canons, both residentiary and honorary, and all other ministers, officers and servants of the cathedral. At some cathedrals, such as Durham, Ely, Gloucester

and Worcester, those visitable are listed in detail.<sup>73</sup> The new foundation cathedral statutes prescribe less additional features of visitations than do those of the old foundation cathedrals. At Canterbury, 'the Chancellor' (*sic*) may deputise for the archbishop in case of urgent necessity. The archbishop is given power at a visitation to interrogate 'upon all matters contained in the constitution and statutes and respecting any other matters relating to the estate, benefit or honour of the cathedral church. He is also given the power to punish or reform as may be necessary.'<sup>74</sup> At Carlisle the bishop must be accompanied by the chancellor of the diocese, 'or some other person learned in the law', and his injunctions must be accepted by the dean and chapter as binding. Both these provisions are similar to those at York. At Norwich the bishop may delegate his visitatorial powers to his vicar-general and his articles of inquiry may cover 'any matter contained in the statutes and concerning any other matters which affect the state, honour and profit of the Cathedral Church'. As at Canterbury, the bishop may reform abuses and punish delinquencies. At Peterborough the bishop may demand a written report from the administrative chapter on work undertaken since the last visitation and may specify the range and nature of the information demanded. At Winchester the bishop may appoint a commissary to conduct a visitation on his behalf if he should be hindered by 'great necessity'. As at Canterbury, his inquiries may be far ranging, and his responsibilities are wide.<sup>75</sup>

At the cathedrals founded in the nineteenth and twentieth centuries, a more restricted and standardised range of provisions for visitations may be found. At none of them is a visitation oath required. Provision is made for the withdrawal of the lesser members of the foundation at some but not all of these cathedrals. At Birmingham, the provost and chapter remain, as do the Administrative Chapter at Ripon and the dean and chapter at Manchester and Truro. At Bradford, Coventry, Derby, Portsmouth, St Albans, Sheffield and Southwark, the members of the Cathedral Council remain with the provost and chapter. At Blackburn, the visitation continues 'in the presence of such persons and bodies as the visitor may require'. The standard two months' notice is required at Chelmsford, Coventry, Derby, Leicester, Newcastle, and Ripon, one month at Bury St Edmunds,

<sup>73</sup> At Carlisle a distinction is made between those mentioned in the statutes and others employed in the service of the cathedral. (Carlisle statutes, st I s 6).

<sup>74</sup> Canterbury statutes, st XXXIX, s 2. The Canterbury and Winchester statutes regarding visitations are derived from differing translations of a virtually common Latin original. (cf C Jenkins (ed) *The Statutes of the Cathedral and Metropolitan Church of Christ, Canterbury* (Canterbury 1925), 88-93; Goodman and Hutton, 78-82).

<sup>75</sup> The Bishop of Winchester has entrusted to him as visitor the 'charge of this Cathedral Church...and as such he is commanded and entreated diligently to secure that the praises of God shall be constantly celebrated morning and evening in the aforesaid Church; that the most beautiful fabric both without and within, as the dignity of the place doth demand, shall before all else whatsoever be preserved not only from all decay but even from defect, and from time to time, as often as the occasion may require, shall be put in good repair; lastly that all members of the aforesaid Church shall perform their proper duties soberly and devoutly in brotherly love' (Ibid st I).

St Albans and Southwell, but three months at Blackburn and Liverpool. Elsewhere no provision is made except at Truro where it is laid down that visitations should take place after 'due notice'. At Bradford, visitations are to be held at intervals not exceeding five years, and at Guildford they should likewise be held once every five years or at other times by discretion. At Manchester the bishop is required to hold a visitation within seven years of his enthronement and at St Albans within twelve months of his consecration or confirmation, and thereafter at intervals of seven to ten years. The right to ask the bishop to hold a visitation is given to the dean or two canons residentiary at Ripon, to the chapter at Truro, to the majority of the chapter at Manchester, to the provost or chapter or Cathedral Council at Chelmsford, Coventry and Sheffield, to the provost or six members of the chapter or council at Bury St Edmunds and Southwell; to the dean or five members of the council at St Albans, to the provost or three members of the council at Southwark, to the provost or any seven members of the council at Wakefield, and to the provost or nine members of the chapter or five persons clerical or lay being members or additional members of the Administrative Chapter at Newcastle. At Liverpool, the dean or two members of the Principal Chapter may ask only for a special visitation. Those required to attend visitations at this group of cathedrals usually include all the members of the chapter and all other ministers, officers and servants of the Cathedral. At Bradford, Bury St Edmunds, Chelmsford, Coventry, Derby, Portsmouth, Sheffield, Southwark and Southwell, the members of the Cathedral Council are included. At Leicester and Portsmouth the lay canons are visitable and at Derby and Newcastle those who should attend are mentioned in detail. At Birmingham and Chelmsford the bishop may delegate his powers of visitation to his chancellor, and at Bury St Edmunds, Derby, Portsmouth and Southwell to a commissary. At Liverpool, the bishop may be accompanied by the chancellor of the diocese acting as an assessor. There are some other points of interest in the visitation statutes of modern cathedrals. For example, at Guildford 'the dean shall furnish the bishop with a list of societies of voluntary workers at the Cathedral from whom the bishop shall invite a representative appointed by each to attend the visitation upon the same terms as if they were stipendiaries'. At Liverpool, as at York, Carlisle and Chester, the bishop's injunctions following a visitation must be accepted as binding unless they go beyond the legal statutes of the cathedral. At Liverpool the bishop is presented with an inventory of the cathedral at visitations, while at Truro:

At each visitation the Chapter shall present to the bishop a full report on the condition of the fabric of the Cathedral Church and its precincts, and a statement of all alterations and additions thereto made since the last preceding visitation and of the moneys spent on them during the same period.<sup>76</sup>

At Truro, there is provision for the continuous supervision of the cathedral by the bishop, who has:

<sup>76</sup> Truro statutes st I s 6 (2).

the right at all times to inspect the acts, minutes and resolutions of the Chapter and General Chapter, forasmuch as it is his place and duty to see that nothing unlawful is passed or recorded therein.<sup>77</sup>

Although in some respects these details in cathedral statutes have been superseded by later legislation, they still form a vital basis for the authority of the visitor to conduct a visitation of his cathedral and indicate, to varying degrees of details, how he should proceed.

#### *Cases involving General Visitations*

Although much of the law which governs the conduct of general visitations is contained in the various codes of cathedral statutes which we have just examined, there are at least two cases in which visitatorial powers and duties were examined judicially. The case of *R v Bishop of Chester* (1747)<sup>78</sup> upheld the bishop's right to visit his chapter free from the interference of secular law, but the particular point at issue, whether by a writ of *mandamus* a canon whom he had dismissed should be restored, is now irrelevant since the disciplining of clergy is now governed by statute.

The case of the *Dean and Chapter of Chester v Bishop of Chester* (1902)<sup>79</sup> shows how the rights of a bishop at a visitation have been restricted by later statute law. In this case, which was finally decided in the House of Lords, the Headmaster of the King's School at Chester had petitioned the bishop, at his visitation, to confirm his right under the cathedral statutes to occupy as headmaster a stall in the cathedral. The Dean and Chapter claimed that the school and its masters were no longer subject to the bishop's visitatorial jurisdiction, since a clause of a scheme made in 1895 for the governance of the school under the Endowed Schools Act 1869 provided that the school should be

governed wholly and exclusively in accordance with the provisions of this scheme, notwithstanding any former or other scheme, Act of Parliament, charter, or letters patent, statute, or instrument relating to the subject-matter of this scheme.

In his judgment, Lord Halsbury, the Lord Chancellor said:

The school is no longer in any sense part of the Cathedral Church of Chester.... I am of the opinion that the cathedral authorities as such have no jurisdiction over the school or the master at all.<sup>80</sup>

<sup>77</sup> *Ibid* st I s 8.

<sup>78</sup> *R v Bishop of Chester* (1747) 1 Wm B1 22 at 25-6.

<sup>79</sup> *Dean and Chapter of Chester v Bishop of Chester* (1902) 87 LT 618 HL.

<sup>80</sup> (1902) 87 LT at 619. Lord Davey, agreeing with him, said: 'The master of the school has ceased to owe any duties to the Dean and Chapter, and is not in any sense whatsoever a 'minister' or officer of the cathedral church...if the present master is not a minister or officer of the cathedral, the bishop, as visitor, has no jurisdiction over him, and no jurisdiction to entertain his claim to the place in the cathedral which was attached to the headmaster of the cathedral school as a minister or officer of the church by the statutes'. (87 LT at 621).

The law as regards general visitations has not developed greatly as a result of relevant cases. Most cases which have examined visitations have, in fact, involved special visitations or the right of a bishop as visitor to determine a matter referred to him.

*The Visitation of Chichester Cathedral in 1948 by Bishop Bell*

Perhaps the best known visitation of the twentieth century was the one that Bishop George Bell held at Chichester in 1948. The immediate cause of this was the attempted sale by the Dean and Chapter of valuable books from the cathedral library. When, shortly after, the Dean and Chapter requested him to suspend a canonry, owing to the precarious financial position of the cathedral, Bell decided to hold a visitation. His charge, entitled *The Function of Chichester Cathedral*, firmly and clearly dealt with the cathedral's problems and mapped its future development.<sup>81</sup>

Bell, of course, had been Dean of Canterbury before he came to Chichester and he took care to stress the origins of the capitular foundation at Chichester and to relate the developing work of the cathedral to the statutes which regulated it. He described in some detail the work of the General Chapter as outlined in the statutes and recommended that it should meet more frequently and be given 'a clear statement of the Dean and Chapter's financial position, prepared by the auditor and a separate statement of the Cathedral Restoration Fund'.<sup>82</sup> Having discovered from the answers to his articles of enquiry that no standing orders for the conduct of meetings of the General Chapter had been framed, he further directed that this should be done.<sup>83</sup> Bell reviewed the work of the dignitaries and included several ideas about ways in which this could be developed, but his only recommendation was that 'the Cathedral's contribution to the improvement of church music in the diocese be discussed at an early meeting of the General Chapter'.<sup>84</sup>

Bell also recommended a more systematic approach to preaching, a re-organisation of the cathedral library and the establishment of a treasury.<sup>85</sup> Having surveyed the arguments for and against reducing the number of residentiary canons from three to two and the financial problems of the Prebendal School, Bell decided that it would be right to expand the work of the cathedral and fill the vacant canonry. He also suggested that the cost of the restoration and repairs of the cathedral should be kept distinct from the running costs of the cathedral, and commended for more

<sup>81</sup> Cf RCD Jasper, *George Bell, Bishop of Chichester* (London 1967) 356-359. In his charge he said that it was fitting 'that I should address myself above all other things to the principal question of the purpose of our Cathedral and how that purpose may be better served in these days' (GKA Bell *The Function of Chichester Cathedral* (Hove 1948) 3. [Philip Barrett has further described this visitation in 'The Visitation of the Cathedral', article posthumously published in *Bell of Chichester*, edited Paul Foster (Otter Memorial Paper 17, Chichester 2004) pp 51-66. - PA]

<sup>82</sup> GKA Bell 33.

<sup>83</sup> *Ibid* 11-12, 33.

<sup>84</sup> *Ibid* 33.

<sup>85</sup> *Ibid* 33; cf pp 17-23. He directed that the librarian and the communar should always be different persons, to accord with the statutes.

widespread public support the Cathedral Restoration and Repair Fund.<sup>86</sup> On the day following the delivery of Bell's charge, the General Chapter requested a conference with the Administrative Chapter and the Bishop about the cathedral's finances, and Bell recorded his satisfaction that the Administrative Chapter had accepted both the directions in his charge and also had taken steps to implement his recommendations.<sup>87</sup> As soon as he was assured of their formal compliance, Bell revoked the inhibition he had placed on the Chapter and declared the visitation completed.<sup>88</sup>

Bell's visitation at Chichester is impressive, both for its clearly defined focus and concise expression, and also for the close way he based his directions and recommendations on the statutes. His remarks were constructive and positive, despite the controversy which gave rise to the visitation. Indeed, it is a model of all that is best in general visitations.

### *Conclusion*

We have seen that the right of a bishop to conduct a general visitation is derived both from the ordinary jurisdiction of general canon law and from the special jurisdiction conferred on him by the cathedral statutes. The mediaeval procedures were carefully observed and recent visitations have generally involved teams of assessors to assist the bishop. The specific powers of the visitor are regulated by the cathedral's statutes, and we have seen that there is a wide and remarkable variation in the detailed provisions of these. Few of the leading cases concern general, rather than special visitations. Recent general visitations have tended to involve a much wider examination of the whole of a cathedral's life and witness, problems and opportunities, than was customary in previous centuries. The gathering of views from those not subject to the visitatorial authority of a bishop may be valuable as a means of assessing public opinion, but may also weaken the focus and thrust of a visitation. This has led several bishops to use a visitation as a means of setting out their own views about how the cathedral should be run rather than to take the statutes as their guiding principle and relate their directions and recommendations to them. The absence of specific directions and the frequent diffusion of recommendations by the use of words like 'suggest' and 'hope' both weakens the authority of a bishop and also fails to give a clear lead to the cathedral chapter if such recommendations are not accompanied by a direction that they must be considered and progress in action on them reported to the visitor. At the same time, the actual powers of a bishop at a visitation are limited.<sup>89</sup> A

<sup>86</sup> *Ibid* 23-32.

<sup>87</sup> Chichester Capitular Records (West Sussex Record Office, Cap 1/7/3).

<sup>88</sup> *Ibid* 16.

<sup>89</sup> Cf Bishop Eric Kemp: 'A bishop can require the dean and chapter of his cathedral to observe its statutes and the general law of the Church. He can advise and recommend but he has no power to direct them how to administer the cathedral and the institutions attached to it, nor has anybody else, so long as they act in accordance with the statutes'. [This is quoted from s 3 of the charge of Bishop Kemp's special visitation of the Prebendal School (the Chichester Cathedral choir school), in 1981. In the original dissertation Philip Barrett considers this visitation at some length, and thanks Bishop Kemp for a sight of his visitation charge. – PA]

general visitation can be a useful means of assessing the life, work, purpose, function, direction and vision of a cathedral and its staff, both paid and voluntary, at regular moments in its development. Where such occasions are rendered less effective than they may otherwise be, especially if the basic tasks of collecting and considering information and issuing directions and recommendations are not undergirded by a clear legal framework and a shared understanding of the mutual rights and responsibilities involved in a visitation, then a valuable opportunity to encourage the life of a cathedral is frustrated. Where the procedures are more strictly adhered to, as at Bell's visitation at Chichester in 1948, then there is a sense of sharpened focus and renewed purpose.

### SPECIAL VISITATIONS

A special visitation is an inquiry into some particular point or points of difficulty or controversy. In this section we shall examine first the origin of such visitations in the Middle Ages and then see how the legal powers of the special visitor were developed at the Reformation. Finally, we shall take note of recent legislation and recommendations involving special visitations.

#### *The Origin of Special Visitations*

An early glimpse of a cathedral constitution may be seen in the foundation and institution charters once thought to have been given by Bishop Osmund to Salisbury in 1091.<sup>90</sup> Formerly believed to be the only known example of a bishop giving a written constitution to his cathedral in the early Middle Ages,<sup>91</sup> the *Institutio* has now been dated to the mid-twelfth century. The other secular cathedrals gradually developed a similar organisational structure.<sup>92</sup> Statutes emerged only gradually as 'a declaration of ancient custom'.<sup>93</sup> From the late twelfth century onwards, lists of statutes survive and some bishops during the next 250 years were assiduous in collecting them into codes. New statutes could be added either as a result of a chapter accepting the bishop's injunctions following a visitation (if they went beyond existing customs or statutes), or if they agreed to his decisions and awards in particular cases.<sup>94</sup> Gradually bishops were able to insist on their approval being necessary before proposed new statutes by the chapter had any force, and in the late Middle Ages some matters were even decided by the Crown.<sup>95</sup> The origin of special visitations may therefore be seen in cases and problems referred to a bishop as visitor, for decision outside the times, when he had put in hand a general visitation of his cathedral. The extensive mediaeval records of Lincoln Cathedral enable us to see this process at work. The earliest definite example is the Award of Bishop John

<sup>90</sup> Wordsworth and Maclean 16-37.

<sup>91</sup> Edwards 12; for the research of Dr Diana Greenway into this matter, cf EU Crosby, 336-339.

<sup>92</sup> *Ibid* 19-20.

<sup>93</sup> *Ibid* 23.

<sup>94</sup> *Ibid* 115-116.

<sup>95</sup> *Ibid* 117-119.

de Dalderby in 1314. As a result of an appeal to him by the dean and the canons who were locked in a dispute, Bishop Dalderby held a special visitation in the chapter house, appointed the Dean of York and two canons of Lincoln as a commission to look into the matter and endorsed their interpretation in the form of a '*Laudum*' or Award.<sup>96</sup> Other notable awards at Lincoln were those of Bishop Fleming in 1421, Bishop Gray in 1434 and Bishop Alnwick in 1439.<sup>97</sup> These were made during the troubled reign of Dean Macworth.<sup>98</sup>

### *Special Visitations and the Reformation*

The power of a bishop to determine disputes outside the time of a general visitation was reinforced at the Reformation in the case of new foundation cathedrals. Specifically he was given authority to interpret the statutes and enforce his interpretation. At first, this power was given to the Archbishop of Canterbury, for example at Winchester,<sup>99</sup> but transferred to the Bishop of Winchester in the Caroline Statutes in 1637.<sup>100</sup> The Caroline Statutes of the old foundation cathedral of Hereford, drawn up at much the same time, place the resolving of disputes and interpretation of the statutes first in the hands of the dean and chapter and the general chapter at their twice-yearly meetings. Only if the dispute could not be resolved by this method, or if it concerned the dean or any one of the residentiaries should it be referred to the bishop, to whom it was also lawful, 'for any one in any grievance to appeal from the decision of the dean and chapter'. A final appeal from the bishop's decision could be made to the Archbishop of Canterbury.<sup>101</sup>

It should be noted that the concept of a special visitor, as envisaged in the new foundation cathedrals, thus has a twofold nature. In the first place, the visitor has an appellate jurisdiction, 'providing a *forum domesticum* to determine any dispute which may occur within the foundation'. In the second place, the visitor is constituted as the interpreter of the statutes and is empowered to determine any ambiguity or dispute as to the meaning of the statutes of the foundation.<sup>102</sup>

<sup>96</sup> Bradshaw and Wordsworth, I 83; II clxxii-clxxxviii; III 233.

<sup>97</sup> Ibid I 147, 149, 151; II 182-186, 187-228, 259-267; 366-495.

<sup>98</sup> Cf Owen (ed) 159-163. In the current Lincoln statutes, st I, s 6, a decision made by the visitor following a question or dispute arising from the interpretation of the constitution or statutes is still 'technically called a *Laudum* or Award'. For a note on the meaning of *Laudum*, cf EW Benson *The Cathedral: its necessary place in the life and work of the Church* (London 1878) n 16.

<sup>99</sup> GW Kitchin and FT Madge *Documents relating to the foundation of the Chapter of Windsor, 1541-7* (London 1889) 143, 164. Interpreters other than the bishop were also found at Chester (Archbishop of York), Ely, Gloucester, Bristol, Rochester and Worcester (Archbishop of Canterbury), and Peterborough (Lord Chancellor) (PM Smith, 'Exclusive Jurisdiction' at 613 n 31).

<sup>100</sup> Goodman and Hutton, 80-81. The Marian statutes at Durham recognised the bishop as *statutorum declarator* (Falkner and Thompson, lx-lxi).

<sup>101</sup> J Jebb and HW Phillott *The Statutes of the Cathedral Church of Hereford* (Hereford 1882) 104-107.

<sup>102</sup> Smith, *Exclusive Jurisdiction*, at 613. The case of *R v Dean and Chapter of Chester* (1850) 15 QB 513 at 519 specifically recognises a visitor's power 'upon appeal to him, to restore a person to an office on the foundation'. For the background, cf

*Recent Legislation*

The powers of a bishop to hold a special visitation have received a recent renewed emphasis as a result of the Care of Cathedrals (Supplementary Provisions) Measure 1994. This strengthens and extends the provisions of section 2 of the Care of Cathedrals Measure 1990.<sup>103</sup> Under the 1994 Measure, if a bishop believes that the administrative body of a cathedral 'may have committed or be intending to commit' an act contravening section 2 of the 1990 Measure, he must first interview the members of the administrative body, and may then, if necessary:

order a special visitation under this section in respect of the cathedral church concerned for the purposes of inquiring into the matter in question.<sup>104</sup>

A written statement of his reasons for ordering the visitation must be sent to the administrative body.<sup>105</sup> The bishop is not obliged to order a special visitation if he is satisfied that the administrative body intends to make an application to the Cathedrals Fabric Commission for England, if the application is still under consideration or if there are exceptional reasons for not proceeding.<sup>106</sup> If a special visitation is held, the administrative body 'shall have no power to act as such with regard to the matter under inquiry without the prior approval in writing of the bishop'.<sup>107</sup> A further subsection adds that:

A special visitation under this section shall not be treated as an episcopal visitation for the purposes of any provision contained in the constitution and statutes of the cathedral church concerned restricting the ordering of such visitations.<sup>108</sup>

As we have seen, there are comparatively few details on cathedral statutes specifically dealing with special visitations, apart from those dealing with

above pp 272-274. The codes of cathedral statutes drawn up in the 1960s all provide for the bishop to be the interpreter of the statutes.

<sup>103</sup> This obliges the administrative bodies of cathedrals to seek the advice of their own fabric committee and to obtain the approval of the Cathedrals Fabric Commission for England for any works 'which would materially affect the architectural, archaeological, artistic or historic character of the cathedral church, or any building within the precinct of the cathedral church which is for the time being used for ecclesiastical purposes, or the immediate setting of the cathedral church, or any archaeological remains within the precinct of the cathedral church, or for the sale, loan or other disposal of any object the property of which is vested in the chapter of the cathedral church, being an object of architectural, archaeological, artistic, or historic interest, or for the permanent addition to the cathedral church of any object which would materially affect the architectural, archaeological, artistic, or historical character of the cathedral church'.

<sup>104</sup> Care of Cathedrals (Supplementary Provisions) Measure 1994 s 2(1).

<sup>105</sup> *Ibid* s 2(1).

<sup>106</sup> *Ibid* s 2(2).

<sup>107</sup> *Ibid* s 2(3).

<sup>108</sup> *Ibid* s 2(4). The provision in s 2(3) is made 'without prejudice to any rule of law as to the effect of episcopal visitation'.

the right to ask for one, and so this clause has little practical effect. What it does mean is that a special visitation held under the provisions of this Measure is treated as a different species of visitation and is not qualified in any way by any provisions of local cathedral statutes.

For reasons of urgency, a bishop may give interim instructions before holding a special visitation, and he may also give 'such directions with respect to the matter in question as he thinks fit to the administrative body concerned'.<sup>109</sup> These directions may be issued to avoid a contravention of section 2 of the 1990 Measure, to prevent steps 'likely to lead to such a contravention' or to restore 'the position so far as possible to that which existed before the act was committed'.<sup>110</sup> In this last case, the bishop must first seek the advice of the Cathedrals Fabric Commission.<sup>111</sup> Such directions must be in writing unless urgency requires oral instructions, but if so they must be confirmed in writing, and the administrative body must comply with the bishop's directions.<sup>112</sup>

A further power is given to a bishop who has ordered a special visitation and 'considers it necessary or expedient to take further steps in respect of any actual or intended contravention' of section 2 of the 1990 Measure. He may authorise a commissary:

to institute proceedings on his behalf against the administrative body of the cathedral church concerned for the purpose of obtaining an injunction or restoration order or both against the administrative body.<sup>113</sup>

The court of the Vicar-General of the respective province is given 'original jurisdiction to hear and determine' such proceedings, which are to be conducted as the Vicar-Generals, acting jointly, may direct.<sup>114</sup> The archbishop in question may appoint a deputy vicar-general.<sup>115</sup> The Vicar-General's court may add, as a further party to the proceedings, 'by way of special citation', any person involved in an alleged contravention of section 2 of the 1990 Measure.<sup>116</sup> The court may issue an injunction restraining the administrative body or any other party from committing or continuing to commit such a contravention,<sup>117</sup> or, after taking advice from the Cathedrals Fabric Commission for England, a 'restoration order' to undo any such contravention.<sup>118</sup> Failure to comply (without reasonable excuse) with an

<sup>109</sup> *Ibid* s 3(1), (2).

<sup>110</sup> *Ibid* s 3(3).

<sup>111</sup> *Ibid* s 3(4).

<sup>112</sup> *Ibid* s 3(5), (6).

<sup>113</sup> *Ibid* s 4(1). Under s 4(2) the Church Commissioners may pay the costs or expenses of such proceedings.

<sup>114</sup> *Ibid* s 5(1), (3).

<sup>115</sup> *Ibid* s 5(2).

<sup>116</sup> *Ibid* s 6(1).

<sup>117</sup> *Ibid* s 6(3).

<sup>118</sup> *Ibid* s 6(4), (6). Such an order shall not be made if the contravention took place more than six years previously (s 6(5)), unless relevant facts have been deliberately

injunction or restoration order shall be a contempt of the court.<sup>119</sup> The Vicar-General's court has power to order a special visitation to continue or to cease 'and may make such further order in relation to the proceedings as it considers just'.<sup>120</sup> The Care of Cathedrals Measure 1990 and the Ecclesiastical Jurisdiction Measure 1963 have been amended by the 1994 Measure to bring them into line with the provisions of that Measure.<sup>121</sup>

This new Measure gives a diocesan bishop substantial additional powers to hold a special visitation and the standing of such a visitation is now strengthened by this statutory provision. The involvement of the Vicar-General's court represents a new departure in ecclesiastical law. Hitherto, this court was solely concerned with supervising the procedures for the confirmation of the episcopal elections. But the Measure leaves certain questions unanswered. Hitherto, as we have seen, there is no possibility of an appeal from a special visitation held under the provisions of the statutes of a new foundation cathedral or any cathedral where the bishop is constituted as a special visitor. The 1994 Measure makes no provision for an administrative body to appeal against the decisions of a special visitation ordered under the terms of this Measure. But an appeal from a judgment of the Vicar-General's court may lie, by the terms of the schedule to the Measure, to the Court of Arches or the Chancery Court of York. On the other hand, as we have seen in the *Exeter Reredos* case, an appeal from a special visitation held by a bishop by virtue of his ordinary powers may be made to the Court of Arches in the southern province. It is therefore vital that any special visitation held under the 1994 Measure should be confined to matters covered by section 2 of the 1990 Measure. Any ancillary matters, such as administrative or financial irregularities or difficulties which may have given rise to such a special visitation are not covered by the 1994 Measure, though they could be investigated by a bishop in either a parallel special visitation as prescribed by the cathedral statutes or by virtue of his ordinary jurisdiction. To take a particular example, the 1994 Measure, if it had been in force at the time, could have been invoked to prevent the sale of the *Mappa Mundi* at Hereford in 1988, but could not have been used for a wider investigation into the cathedral's finances. Essentially it is a Measure which gives urgent powers to a bishop to act in an emergency. As this Measure has not yet been put to any use, its practical significance remains hypothetical.<sup>122</sup>

Finally, we may note that the recent Archbishops' Commission on Cathedrals considered the visitatorial powers of a bishop and concluded that they should be retained. The Commission did not distinguish between general and special visitations, but recommended that a bishop should be

concealed from the bishop. (s 6(7)).

<sup>119</sup> *Ibid* s 6(9).

<sup>120</sup> *Ibid* s 6(10).

<sup>121</sup> Care of Cathedrals (Supplementary Provisions) Measure 1994 ss 7, 8, Schedule.

<sup>122</sup> For a further discussion of this Measure, cf *Report by the Ecclesiastical Committee upon the Care of Cathedrals (Supplementary Provisions) Measure* (Ecclesiastical Committee 206th Report, HL Paper 27-II; HC 250, London 1994).

able 'to delegate the task of undertaking a visitation'. In the event of the Commission's proposals for each cathedral to have a Greater Council with the bishop as its chairman coming into effect, the report recommended that such delegation should automatically take place in the event of any dispute between the Council and the Administrative Chapter. The Commission was not altogether right in saying that 'a bishop can already delegate his power of visitation to his Chancellor', as a general rule, though we have noted examples where this has happened and some individual statutes include such a provision. The Commission's attempt to distinguish between legal and pastoral reasons for a visitation introduces a false distinction, for it is the duty of a visitor to see that the law is obeyed and this is a duty which is both legal and pastoral. The Commission further suggested that 'a review' could be undertaken by 'a bishop from another diocese, a dean and an appropriate professional person', who would report to the diocesan bishop. The recommendation of such a group could be 'implemented informally by agreement or become the subject (with or without modification) of an episcopal 'charge'. It is not clear whether such a 'review' would have the legal status of a visitation, unless those conducting it were constituted as commissaries of the bishop. It is also not clear whether such a group is suggested as an alternative to a 'review' undertaken by the bishop himself or whether such a group is alternative to the other assistants mentioned in this paragraph of the report. In any case, the Commission hoped that their general proposals in the report would 'lessen the possible need for visitations'.<sup>123</sup>

We may conclude this study by summarising the steps which a diocesan bishop should take when he is preparing to hold a visitation of his cathedral.<sup>124</sup> First, he must decide whether it is to be held under his general jurisdiction as Ordinary of the diocese or under the special jurisdiction conferred by the cathedral statutes. In practice, he will remain a general visitor, with such residual powers proper to his office, but is bound to exercise his powers in accordance with the statutes. Secondly, he must decide whether the visitation is to be a general or a special one, ranging widely over the whole of the cathedral's life or focussing narrowly on a particular issue which may have been referred to him. If this issue is a contravention of the Care of Cathedrals Measure 1990, he must proceed in accordance with the Care of Cathedrals (Supplementary Provisions) Measure 1994.

As the cathedrals of the Church of England prepare for a new stage in their long history, at a time of unparalleled opportunity and substantial change, it is vital that the means by which they have traditionally been held accountable for their life and work should be seen to be efficient, fair and supportive. Episcopal visitations of cathedrals have often in the past been a useful means of regulating and developing the work of cathedrals and there is every reason to suppose that this may be the case in the future.

<sup>123</sup> *Heritage and Renewal* 66-7.

<sup>124</sup> Cf H Picarda *The Law and Practice Relating to Charities* (London 1977) 429-431 for details of the procedure.