

## POINTS OF LAW AND PRACTICE CONCERNING ECCLESIASTICAL VISITATIONS

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'The word *Visitatio* . . . denotes that act or office of the bishop, or of some other ordinary, going his circuit throughout his diocese or other district, with a full power of inquiring into such matters as relate to the government and discipline of the Church, and sometimes of correcting abuses and punishing excesses committed by his subjects . . . *Visitation*, as we would use the word here, implies some act of jurisdiction and *coercive* authority . . .'<sup>1</sup>

The ecclesiastical visitation has been fully recognised in the Church of England both by statute,<sup>2</sup> the temporal courts,<sup>3</sup> and ecclesiastical canon.<sup>4</sup> It is of very long standing, and a considerable body of law has grown up around it, much of which is itself made up of canon law, practice and procedure of great antiquity. In so far as these laws continue to form part of the ecclesiastical law of the Church of England, they remain binding as laws of the realm.<sup>5</sup> It is therefore perhaps timely that the ecclesiastical visitation should be the subject of a working party of the Ecclesiastical Law Society. Yet as a preliminary to such deliberations, it is advisable that some regard should be had to the existing law and practice of visitations, not only to clarify the powers and duties of the visitors themselves, but to permit any changes thought desirable in law or procedure to be made with a proper recognition and understanding of the visitatorial jurisdiction.<sup>6</sup>

### THE ORIGIN OF VISITATION

Any large organisation which becomes widely dispersed needs to erect some administrative machinery both to co-ordinate the activities of its constituent parts and to exercise a degree of supervision over them to ensure that uniform standards are maintained.

In the earliest stages of development of the Christian Church, the need for such oversight and control was evidently felt by the apostles and leaders of the Church of Jerusalem whose response was to visit personally and strengthen those

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1. Ayliffe, *Parergon Juris Canonici Anglicani* (London, 1734), p. 514.
  2. Act of Uniformity 1558 (1 Eliz. 1, c. 2), s. 23.
  3. *R. v Bastwick, Burton & Prynne* (1637), 3 Howell's St. Tr. 711 at 715; Godolphin, *Repertorium*, Appdx. pp. 8-9.
  4. Canons Ecclesiastical (1603), cc. 60, 86, 109, 111, 113, 116-119, 137; Canons of the Church of England, C 18, para. 4, C 22, para. 5, G 5, para. 1.
  5. *Caudrey's Case* (1591), 5 Co. Rep. 1a at 9a; *Edes v Walter, Bishop of Oxford* (1667), Vaugh. 18 at 21; *Martin v Mackonochie* (1868), L.R. 2 A. & E. 116 at 153; *Mackonochie v Lord Penzance* (1881), 6 App. Cas. 424 at 446; Stillingfleet, *Ecclesiastical Cases* (London, 1698), pt. i, p. 373; Hale, *History of the Common Law of England* (3rd ed., London, 1739), pp. 27-8; Gibson, *Codex Juris Ecclesiastici Anglicani* (2nd ed., Oxford, 1761), I, xxvii-xxviii; Halsbury, *Laws of England* (4th ed. London 1975), XIV, paras. 304, 306, pp. 139, 141. Canons of the Church of England, G 5 para. 1 expressly recognises and maintains the law and custom governing the conduct of visitations. 14 Halsbury's *Laws of England* (4th ed. para 490) comment as to the status of the Roman canon law concerning visitations is misleading as it is based on a misunderstanding of the case of *Philips v Bury* (1694) as reported 1 Ld. Raym. 5 (a visitation of an eleemosynary, not a spiritual foundation - see later).
  6. Any opinions expressed here are entirely those of the author and should not be taken as in any way reflecting or anticipating the views of the working party.

Christian congregations which were springing up around the Mediterranean as a result of earlier missionary activity.<sup>7</sup> Many of St. Paul's journeys were of this kind,<sup>8</sup> and it is from such pastoral care and supervision that the formal ecclesiastical visitation was to emerge.<sup>9</sup>

The visitation began as a purely episcopal function<sup>10</sup> which grew out of the supervision which every bishop possesses concerning spiritual matters within his diocese.<sup>11</sup> Its value as an organ of episcopal administration and control was evidently recognised from an early date, and express regulations began to be laid down in various national councils for the conduct of visitations,<sup>12</sup> so that by the sixth century there is some evidence of an established practice of episcopal visitation in the area around the Mediterranean.

The obligation to conduct visitations was evidently by this time an important duty of a bishop, as is illustrated by a letter of Pope Gregory I to a diocesan bishop dated A.D. 592, in which he enjoined the bishop to carry out a solemn visitation of certain specified churches in his locality to see that the incumbents of the churches lived in accordance with the canons.<sup>13</sup> The obligation of a bishop to visit his diocese each year was stated in canon 35 of the Fourth Council to Toledo, A.D. 633.<sup>14</sup> The bishop was not only to inquire as to the finances and the state of repair of the churches, but also concerning the behaviour of the clergy and the manner in which they carried out their duties. This latter function of the visitation was emphasised and elaborated in the Second Council of Braga, A.D. 752.<sup>15</sup>

Thus by the end of the eighth century the basis of the visitatorial jurisdiction was already established in the Churches of Southern Europe. Thereafter the machinery of visitation spread throughout the rest of the Western Church,<sup>16</sup> and by degrees the process of visitation came to be further defined and formalised.

In England the bishops were undertaking personal visitations by the seventh century, albeit in an extremely informal manner, primarily it seems for the purpose of preaching and teaching.<sup>17</sup> Then in A.D. 669 Archbishop Theodore

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7. See Acts viii. 14, where the Church in Jerusalem attempts to keep control in Samaria: Hanson, *The Acts* (Oxford, 1967), p. 108.
  8. "Let us go again and visit our brethren in every city where we have preached the word of the Lord, and see how they do": Acts xv. 36.
  9. See John Stephens, *An Historical Discourse, briefly setting forth the nature of Procurations* (London, 1661), p. 5. St. Paul is represented as a visitor: *Le Case de Proxies* (1604), Davis 1 at 2; Stephens, *op. cit.*, p. 45.
  10. Stillingfleet, *Eccl. Cases*, pt. i, p. 146; Ayliffe, *Parergon*, pp. 57, 514. See: *Decretum Grat.*, C. 10, q. 1, cc. 9, 10, 11, 12. (Citation of the *Corpus Juris Canonici* is in accordance with Bryson, ed., *Dictionary of Sigla and Abbreviations to and in Law Books before 1607* (Univ. of Virginia, 1975), pp. 19-20.)
  11. Frere, *Visitation Articles and Injunctions* (Alcuin Club XIV, London, 1910), I, 9. See: Council of Antioch, A.D. 332, c. 24 (*Decretum Grat.*, C. 10, q. 1, c. 5); Legatine Council of London, 1237, c. 22 (Powicke & Cheney, *Councils and Synods* (Oxford, 1964), p. 255).
  12. The earliest appears to be c. 8 of the Council of Tarragona, A.D. 516, which already refers to the annual visitation of the bishop as an ancient practice: Mansi, *Sacrorum Conciliorum Nova et Amplissima Collectio* (Venice & Florence, 1758-1798), VIII, cols 542-543 (*Decretum Grat.*, C. 10, q. 1, c. 10).
  13. *Decretum Grat.*, C. 12, q. 1, c. 14.
  14. *Decretum Grat.*, C. 10, q. 1, c. 11.
  15. Canon 1 (*Decretum Grat.*, C. 10, q. 1, c. 12).
  16. The canons concerning visitations were becoming more widely known through collections such as those of Regino of Prüm, A.D. 906 (Migne, *Patrologia Cursus Completus, series Latina* (Paris, 1844-1895), CXXXII, col. 185) and Burchard of Worms, c. 1010 (*ibid.*, CXL, col. 537). See also: Pipin, *Capitulare Suesionense*, A.D. 744, c. 4 (*ibid.*, XCVI, col. 1505); Conc. Germanicum, A.D. 743, c. 3 (Mansi, *Sacr. Conc.*, XII, 366-367).
  17. See Bede, *Historia Ecclesiastica*, III, chs. 17, 23, 28 (ed. Plummer, Oxford, 1896, I, 159, 174, 195).

became the first archbishop of all the English, and one of his first acts was to undertake a general visitation of the whole country.<sup>18</sup> It must have been the first visitation of its kind in England, for this was no mere preaching expedition but a full metropolitan visitation which included the correction of abuses among its aims.<sup>19</sup> Perhaps it is not surprising that this visitation should have been more formal and wide-ranging than any held hitherto in this country. Only five years earlier the English Church at the Council of Whitby had accepted the Roman tradition about the keeping of Easter, and it was Theodore's task to plant the rule and discipline of the Roman Church. No doubt, coming from Rome, he would have brought with him a knowledge of the more advanced forms of visitation employed in the Churches of Europe.

The episcopal visitation evidently played a significant part in the diocesan administration of the Saxon Church; the Venerable Bede was careful to remind Egberht, Archbishop of York, in a letter addressed to him in the early years of his archiepiscopate, of the need to hold visitations every year,<sup>20</sup> and such a requirement received conciliar confirmation in chapter 3 of the Council of Clovesho, A.D. 747.<sup>21</sup> It is clear that there were close contacts between the English Church and Churches on the Continent, for in a letter to Cuthbert, Archbishop of Canterbury, St. Boniface indicated that among the reforms he was introducing into the Frankish Church was the requirement that bishops were to make an annual visitation of their dioceses.<sup>22</sup> This requirement that a bishop should visit his diocese once every year was repeated in chapter 3 of the Synod of Celchyth held in A.D. 787 in the presence of the legates George and Theophylact,<sup>23</sup> and a few years later we see Alcuin urging Eanbald, Archbishop of York, to carry out regular visitations.<sup>24</sup>

The Danish invasions of the ninth century, however, for a time brought an end to the effective administration of the English Church, and the episcopal visitation appears to have fallen into abeyance. Attempts were made in the following century to re-establish those ecclesiastical institutions which had lapsed, and the obligation of bishops to perform an annual visitation of their dioceses was restated in Odo's Canons, A.D. 943,<sup>25</sup> using terms clearly borrowed from the decree of the Synod of Celchyth. Yet the attempt at revival does not appear to have met with any immediate success. Instead, the bishops preferred to supervise and administer their dioceses by means of regular synods<sup>26</sup> to which the clergy of the diocese were convoked, and much that would otherwise have been done on a visitation was then dealt with in such synods.<sup>27</sup>

What could not be done by such means, however, was the actual inspection of the church buildings and contents. The early canon law had clearly

18. Bede, *op. cit.*, IV, ch. 2 (ed. Plummer, I, 205).

19. See *ibid.*

20. Moberly, *Bede's Historia Ecclesiastica* (Oxford, 1881), p. 397.

21. Haddon & Stubbs, *Councils and Ecclesiastical Documents* (Oxford, 1871), III, 363-364.

22. Haddon & Stubbs, *op. cit.*, III, 377-378. Although this letter is often regarded as the inspiration for the reforms of the Council of Clovesho, Haddon & Stubbs suggest (III, 382-383, n.) that the latter may have followed the Council rather than preceded it, and may indicate that the decrees of the English Church in this respect were adopted by the German Church rather than vice-versa.

23. Haddon & Stubbs, *op. cit.*, III, 449-450.

24. *Ibid.* III, 501.

25. Chapter 3: Wilkins, *Concilia Magnae Britanniae et Hiberniae* (London, 1737), I, 213.

26. By the *jus commune* the diocesan synod was to be held annually (*Extra*, 5, 1, 25 (i.e. lib. 5, tit. 5, tit. *De accusationibus* (1), cap. *Sicut olim* (25)) but by custom two synods a year were held in some English dioceses: see Cheney, *English Synodalia of the Thirteenth Century* (Oxford, 1941), p. 17.

27. Frere, *Visitin. Articles*, I, 49.

envisaged a personal visitation of each church,<sup>28</sup> but the English bishops were content to leave this personal or “parochial” visitation of the churches to their archdeacons. There was some legal authority for so doing. The Fourth Council of Toledo had permitted such a delegation in the event of sickness or when occupied with other public business.<sup>29</sup> The archdeacon was the natural choice to undertake this duty of visitation on behalf of the bishop.

The Continental archdeacons had from an early date been involved in the inspection of the buildings and ornaments of churches on behalf of the bishop,<sup>30</sup> and in some places were used to carry out some of the administration as a preliminary to the bishop’s actual visitation.<sup>31</sup> By the eleventh century they were evidently also employed as *oculi episcopi* in going around the diocese inquiring into the lives of the clergy and reporting to the bishop any who were in need of correction.<sup>32</sup> The archdeacon of the *Decretals* continued to possess a power of inspection and inquiry concerning both the churches and the clergy of the diocese as *vicarius episcopi in omnibus*<sup>33</sup> and was now first in importance in the diocese after the bishop.<sup>34</sup>

By the end of the twelfth century, the practice of delegating the visitation to the archdeacons appears to have become sufficiently common for the Roman curia to lay down as a positive obligation that an archdeacon was to visit at least once every three years if the bishop was unable to do so.<sup>35</sup> Moreover, it was recognised that the archdeacon as his bishop’s deputy might correct and reform minor matters which he found needing correction without reference to the bishop.<sup>36</sup> Thus the archdeacon *de jure communi* possessed a power of correction and reformation of minor matters discovered, but did not have the right to proceed on his own authority with more weighty affairs.<sup>37</sup> With respect to the latter, therefore, he was said to have only a power of mere inspection and inquiry called by Lyndwood a *scrutatio simplex*.<sup>38</sup>

The archdeacon of which the *jus commune* speaks, however, was employed throughout the diocese as a kind of vicar-general without any territorial limitation.<sup>39</sup> But as the office grew in importance, a number of archdeacons began to be appointed to serve in some of the large dioceses on the Continent,<sup>40</sup> and in time specific areas began to be assigned to each. It was largely this form of archdeacon which was adopted in the administrative reconstruction of the dioceses which took place in England after the Norman Conquest, and by the end of the twelfth century the practice of appointing a number of archdeacons in a

28. *Decretum Grat.*, C. 10, q. 1, cc. 4, 9, 10, 11; Gibson, *Of Visitations Parochial and General* (London, 1717), pp. 10-11.

29. A.D. 633, c. 35 (*Decretum Grat.*, C. 10, q. 1, c. 11).

30. Letter of Isidore Hispalensis, dated c. A.D. 600 (*Decretum Grat.*, D. 25, c. 1, § 11).

31. Council of Rouen, A.D. 650, c. 11; Reginon of Prüm, ii, c. 1 (Migne, *Patrolog. Lat.*, CXXXII, col. 279-281); Burchard, i, c. 90 (Migne, *op. cit.*, CXL, col. 572); Mansi, *Sacr. Conc.*, X, col. 1203.

32. Letter of Pope Clemens II, c. 1046: *Decretum Grat.*, D. 93, c. 6; Gratian, *Decret.*, comment. ad D. 94, pars iii.

33. *Extra*, 1, 23, 1 & 7.

34. *Ibid.*

35. *Extra*, 1, 23, 1.

36. *Extra*, 23, 1 & 7.

37. John of Athon, *Constitutiones Legatinae d. Othonis et d. Othoboni*, (bound with Lyndwood, *Provinciale*, Oxford, 1679), Constits. Othoboni, c. 8, *Quam indecorum*, gl. ad verb. *nunciare*, p. 93.

38. *Provinciale, seu Constitutiones Angliae* (Oxford, 1679), lib. i, tit. 10, c. 1, gl. ad verb. *visitatione*, p. 49, & gl. ad verb. *imperitiam*, p. 50.

39. *Extra*, 1, 23, 1 & 7; Athon, Constits. Othonis, c. *De archidiaconis*, gl. ad verb. *visitent*, p. 53.

40. Hincmar, bishop of Rheims, A.D. 845, appointed ‘magistri et decani’ (Migne, *Patrolog. Lat.*, CXXV, cols. 777-778, para. 716), and c. 25 of the Council of Paris, A.D. 829, implies a plurality of archdeacons (Mansi, *Sacr. Conc.*, XIV, 555).

diocese, each one with his own archdeaconry defined, had become well-established throughout England.<sup>41</sup>

The English archdeacons were certainly holding visitations of the churches of their archdeaconries by the second half of the twelfth century, for Pope Alexander III wrote to the Bishop of Coventry ordering him to curb the excesses of the Archdeacon of Coventry with which he burdened the churches when visiting his archdeaconry.<sup>42</sup>

This mandate seems to have been directed to the bishop on the assumption that the manner in which the archdeacon conducted his visitations was still under episcopal control. Nevertheless, it must have been about this time that the archdeacons' parochial visitation ceased to be a delegated authority and they began to acquire an ordinary jurisdiction<sup>43</sup> to visit,<sup>44</sup> probably by custom and prescription<sup>45</sup> during the long absences of the bishops from their dioceses.

In the exercise of his ordinary jurisdiction, the archdeacon was not subject to the canonical strictures as to the quality and nature of the matters which he could determine on his own authority. Now, like any other ordinary, he was empowered as of right to do all things necessary for the proper execution of his jurisdiction.<sup>46</sup> As well as merely carrying out functions of inspection and inquiry, therefore, the archdeacon was able to proceed to correct defects of all kinds,<sup>47</sup> both in things and persons,<sup>48</sup> and to censure offenders against the ecclesiastical law,<sup>49</sup> including lay persons:<sup>50</sup> "cujus est visitare, ipsius est comperta corrigere."<sup>51</sup> Indeed, so brightly did this new star begin to shine that there was a real danger of it eclipsing the bishop!<sup>52</sup>

The early thirteenth century witnessed far-reaching reforms in Church discipline introduced under the direction of Pope Innocent III in which the visitation was to play a key role. A new form of criminal procedure was initiated, the "processus per inquisitionem",<sup>53</sup> whereby the ordinary could inquire into personal crimes without any formal accusation having been made. The visitation was

41. See Le Neve, *Fasti Ecclesiae Anglicanae* (1066-1300) (Vols. I-III, London, 1968-1977).

42. *Extra*, 1, 23, 6. Undated, but must be 1159 X 1181.

43. i.e. a jurisdiction which is possessed by the holder of an office in his own right by virtue of the office and is not dependent on the grant of another: Hostiensis, *Aurea Summa* (Coloniae, 1612), I, de Offic. Ord., para. 1, col. 289; Coke, *Institutes of the Laws of England* (6th ed., London, 1681); Hargrave ed. (*Commentary upon Littleton*) 19th ed., London, 1832), I, 96a; Stillingleet, *Eccl. Cases*, pt. i, Bonds of Resig., pp. 63-64; Godolphin, *Repertorium Canonicum* (3rd ed., London, 1687), p. 23; Burn, *Ecclesiastical Law* (9th ed., London, 1842), III, 39. See Lyndwood, lib. i, tit. 3, c. 1, gl. ad verb. *ordinarii*, pp. 16-17.

44. Ayliffe, *Parergon*, p. 96; Gibson, *Codex*, II, 958, 970; Van Espen, *Jus Ecclesiasticum Universum* (Louvain, 1753), I, pt. i, tit. 12, cap. 1, para. 6, p. 74; Fournier, *Les Officialités au Moyen Age* (Paris, 1880), p. xxx.

45. Athon, *Constits. Othonis*, c. *De archidiaconis*, gl. ad verb. *visitent*, p. 53; Lyndwood, lib. i, tit. 10, c. 1, gl. ad verb. *imperitiam*, p. 50; Hostiensis, *In Primum - Sextum Decretalium Librum Commentaria* (Venice, 1581), I, de Offic. Archid., cap. 10, para. 31, fo. 129 recto; Gibson, *Codex*, II, 969-970; Ayliffe, *Parergon*, pp. 96, 161.

46. Lyndwood, lib. i, tit. 10, c. 1, gl. ad verb. *imperitiam*, p. 50. See Justinian's *Digest*, lib. 2, tit. 1, para. 2; Coke, *Institutes*, I, 96a.

47. Legatine Council of London, 1237 (*Constits. Othonis*), c. 20 (Powicke & Cheney, *Councils*, p. 254).

48. Synodal Statutes for an English Diocese, 1222 X 1225, c. 52 (Powicke & Cheney, *Councils*, p. 148), attrib. Lynd. (lib. i, tit. 10, c. 4, p. 53) and Wilkins (*Concilia*, II, 513) to Reynold's *Constits.*, 1322, c. 6; Lyndwood, lib. i, tit. 10, c. 1, gl. ad verb. *imperitiam*, p. 50.

49. Lyndwood, lib. i, tit. 2, c. 2, gl. ad verb. *inquirere*, p. 17.

50. Lyndwood, lib. i, tit. 10, c. 1, gl. ad verb. *imperitiam*, pp. 50-51; *ibid.*, c. 4, gl. ad verb. *personis*, p. 54.

51. Athon, *Constits. Othonis*, c. *De archidiaconis*, gl. ad verb. *quae corrigenda*, p. 53. See: *Extra*, 2, 12, 4; Lyndwood, lib. i, tit. 10, c. 1, gl. ad verb. *imperitiam*, p. 50.

52. "For er the bisshop caughte hem with his hook, they weren in the erchedekenes book": *Works of Geoffrey Chaucer*, "The Friar's Tale", ed. F. N. Robinson (2nd ed., London, 1957), p. 89.

53. *Extra*, 3, 12, 1; *ibid.*, 5, 34, 10; *ibid.*, 5, 3, 31; *ibid.*, 5, 1, 17 & 21, confirmed by the Fourth Lateran Council, 1215, c. 8, Mansi, *Sacr. Conc.*, XXII, cols. 994-995 (*Extra*, 5, 1, 24).

to be employed as an “inquisitio generalis”,<sup>54</sup> which could be undertaken by the ordinary to search out crime without the pre-existing ill-fame of any single specified person.<sup>55</sup> It followed, therefore, that the regular visitation of the parishes as well as monastic houses was one of the most important features of the reform programme begun by the Fourth Lateran Council of 1215.

At first the effect of these reforms appears to have had little impact on the English bishops. In 1202 Innocent III wrote to the Bishop of Winchester that he should not be negligent in correcting monasteries and other churches,<sup>56</sup> and in 1222 Pope Honorius III complained to Archbishop Stephen Langton that he did not carry out his duty of visitation.<sup>57</sup> Ten years later, letters were sent by Gregory IX to the bishops of the see of Canterbury in which they were enjoined to visit all non-exempt monks and canons in their dioceses.<sup>58</sup> This seems to have evoked some response, for Bartholomew Cotton records that the following year the Bishop of Norwich visited his diocese “per mandatum domini papae”, and that other bishops were also visiting their dioceses.<sup>59</sup> But such visitations as there were appear to have been confined to monastic houses and did not extend to the parish churches of the dioceses. The Legatine Council of London, 1237, therefore stated the duty of visitation to be inherent in the office of a bishop, and the bishops were admonished to visit their dioceses “temporibus oportunitis”.<sup>60</sup>

Foremost in the revival of the diocesan visitation was Grosseteste, Bishop of Lincoln, who visited his diocese in 1238,<sup>61</sup> 1246,<sup>62</sup> and 1251.<sup>63</sup> Because the large number of parishes precluded a personal visitation of each church, Grosseteste adopted a synodal form of visitation already known on the Continent<sup>64</sup> whereby he travelled from deanery to deanery convoking the clergy and people of each to appear before him at some central place.<sup>65</sup>

Grosseteste brought to the visitation an unprecedented depth of inquiry and enthusiasm which set the pattern for other prelates.<sup>66</sup> The English bishops

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54. Durandus, *Speculum Juris* (Basle, 1574), lib. iii, pt. i, de Inq., para 2, s. 6 (II, 31); Lyndwood, lib. i, tit. 3, c. 1, gl. ad verb. *inquirant*, p. 17; *ibid.*, lib. i, tit. 6, c. 1, gl. ad verb. *inquirat*, p. 34; *ibid.*, lib. 1, tit. 8, c. 1, gl. ad verb. *inquirant*, p. 46.
55. Athon, *Constits. Othoboni*, c. 8, *Quam indecorum*, gl. ad verb. *inquisitionem*, p. 93; Lyndwood, *supra*.
56. Cheney & Semple, *Selected Letters of Pope Innocent III concerning England (1193-1216)* (London, 1953), no. 23, p. 79.
57. *Regesta Honorii Papae III* (ed. Pressutti, Rome, 1888-1895), no. 3891; *Calendar of Entries in the Papal Registers relating to Great Britain and Ireland: Papal Letters* (ed. Bliss, London, 1893), I, 86.
58. *Registes de Gregoire IX* (ed. Auvray, Paris, 1896-1908), no. 716 (I, col. 448); Potthast, *Regesta Pontificum Romanorum* (Berlin, 1874-1875), no. 8947 (I, 768); *Cal. Papal Reg., Letters*, I, 129; *Annales Monastici* (ed. Luard, Rolls Series, 36), I, 243-244; Matthew Paris, *Chronica Majora* (ed. Luard, Rolls Series, 57), III, 234.
59. *Historia Anglicana* (ed. Luard, Rolls Series, 16), p. 117.
60. Canon 22 (Powicke & Cheney, *Councils*, p. 255).
61. Grosseteste, *Epistolae* (ed. Luard, Rolls Series, 25), no. 50, pp. 146-147; *Annals of Dunstable (Ann. Mon., III, 147-148)*; Powicke & Cheney, *Councils*, pp. 263-4.
62. *Chronica Maj.*, IV, 579-580.
63. *Chronica Maj.*, V, 256-257. See generally Powicke & Cheney, *Councils*, pp. 261-265.
64. See the collections of canons for the practical administration of their dioceses compiled by Reginon, Abbot of Prüm (“De Eccles. Disc.”, Migne, *Patrolog. Lat.*, CXXXII, col. 185) and Burchard, Bishop of Worms (“Decret.”, Migne, CXL, col. 537) in A. D. 906 and 1010 respectively.
65. *Epistolae*, no. 50, p. 146; Powicke & Cheney, *Councils*, p. 263 (“rectoribus ecclesiarum, vicariis, et sacerdotibus parochialibus per singulos decanatus coram nobis congregatis”); Grosseteste’s report to the Pope and cardinals, Powicke & Cheney, *Councils*, p. 265; *Annals of Dunstable* (Powicke & Cheney, *Councils*, p. 264; *Ann. Mon.*, III, 147-8).
66. Archbishop Boniface was supposed to have been inspired by Grosseteste’s example when visiting his province in 1250; Matthew Paris, *Chron. Maj.*, V, 119, 195-196. The Bishop of Coventry and Lichfield was similarly encouraged to visit his diocese in 1252: *Ann. Mon.*, I, 296. See Cheney, *Episcopal Visitation of Monasteries* (Manchester, 1931), pp. 35-36.



began to conduct diocesan visitations by means of centres within the diocese, usually based on each rural deanery. Some canonical recognition was accorded such a practice where because of difficulties in going to each church in person a visitation might not be held at all.<sup>67</sup> This form of visitation which did not involve a personal inspection of each parish came to be described as a “general” visitation.<sup>68</sup>

The parochial visitation continued to be carried out by the archdeacons,<sup>69</sup> so that the archidiaconal visitation came to be the chief means by which the places of the diocese might be inspected, and the English canons and constitutions of the thirteenth century speak predominantly in terms of the archdeacon.<sup>70</sup> It would appear, however, that sometime in the course of the fourteenth century, the archdeacons stopped going in person to the churches of their archdeaconries,<sup>71</sup> and began to hold their visitations at centres around their archdeaconries in much the same way that the bishops were visiting their dioceses. That this had become a well-established practice by the sixteenth century is clearly evidenced by the very ample records of the period, and thereafter it would seem that no substantial distinction can be drawn between the visitatorial jurisdiction exercised by the bishop and that exercised by the archdeacon, except as to frequency.

#### THE PURPOSES AND NATURE OF VISITATION

The fundamental purposes of the medieval visitation are set out in canon 33 of the Fourth Council of Lateran, 1215.<sup>72</sup> They are not so very different from those expressed in the present Canons of the Church of England.<sup>73</sup> When analysed in more detail, the traditional aims of the ecclesiastical visitation may be seen to have been:

1. to inquire into the lives and behaviour of the clergy, their qualifications, and the manner in which they discharged their duties with respect to the cure of souls;
2. to inspect church buildings, ornaments and utensils necessary for divine service, and to correct any defects found;
3. to search out and punish crimes generally;
4. to check on the practical administration of the parish;
5. to obtain information about the state of the diocese, etc.;
6. for the purpose of preaching and teaching;
7. to exercise the ministerial duty of admitting churchwardens to office.

67. *Sextus*, 3, 20, 1.

68. Wake, *Visitation Charge* (London, 1707), p. 6; Gibson, *Visitations*, p. 59.

69. Lyndwood, lib. i. tit. 10, c. 1, gl. ad verb. *videant*, p. 50; Gibson, *op. cit.*, p. 11.

70. Gibson, *op. cit.*, p. 6. See: Council of Oxford, 1222, cc. 16, 29 (Powicke & Cheney, *Councils*, pp. 110-111, 115, Wilkins, *Concilia*, I, 587, 589, cc. 11, 24), and its diocesan derivatives, Stats. of Bishop Peter des Roches of Winchester, 1224?, c. 13 (*ibid.*, p. 128), Stats of Bishop Fulk Basset of London, 1245 X 1259, c. 77 (*ibid.*, p. 649); Stats for an Eng. Diocese, 1222 X 1225?, c. 52 (*ibid.*, p. 148), attrib to Constitts. Reynold, c. 4, *Sint rectores* (Wilkins, *Concilia*, II, 512-513); c. 6, *Archidiaconi et eorum* (Wilkins, *Concilia*, II, 513); Legatine Council of London, 1237, c. 20 (Powicke & Cheney, p. 254); Legatine Council of London, 1268, c. 19 (*ibid.* p. 768). See the prominence of the inventories of church goods maintained by the archdeacon of Ely in the *Vetus Liber Archidiaconi Eliensis* (ed. Feltoe & Minns, Camb. Antiq. Soc., 48, 1917), pp. 30-146.

71. Hamilton Thompson, *English Clergy and their Organisation in the Later Middle Ages* (Oxford, 1947), pp. 61-62.

72. “Porro visitationis officium exercentes non quaerant quae sua sunt, sed quae Jesu Christi, praedicationi et cohortationi, correctioni et reformationi vacando, ut fructum referant, qui non perit.” *Extra*, 3, 39, 23. See also Legatine Council of London, 1237, c. 22 (Powicke & Cheney, *Councils*, I, 255).

73. Canons of the Church of England G 5, para. 1.

It may be observed that the visitation evolved both as a most important instrument of ecclesiastical government and as a means of taking spiritual care into the localities, so that there have always been both judicial and pastoral elements present. There is also an element of what may perhaps be described as practical administration.

Judicial powers are indicated by the “coercive authority”<sup>74</sup> which a visitor possesses *de jure communi* to try issues and make binding orders.<sup>75</sup> These powers, which are defined and recognised by custom and the canon law, constitute a jurisdiction, and the visitation may be described as a court.<sup>76</sup> The jurisdiction of the visitor extends to both the places and persons coming within the ambit of his authority.

## THE CRIMINAL JURISDICTION

The punishment of all spiritual crimes belongs *de jure communi* to the bishop.<sup>77</sup> In his visitation he was empowered *jure ordinario* to seek out and punish such crimes by the imposition of spiritual censures,<sup>78</sup> and the detection and correction of offences against the ecclesiastical law was anciently one of the main aims of the episcopal visitation.<sup>79</sup> Others also began to acquire a customary right to make inquiries concerning their subjects and to punish any in whom an offence was discovered,<sup>80</sup> in particular, the archdeacon, who was able in his own right to censure offenders revealed in the course of his visitation.<sup>81</sup>

From its inception, the visitation had included the inspection of the lives and manners of the clergy<sup>82</sup> and the way in which they ministered to their congregations.<sup>83</sup> But crimes threatening the health of the Church, such as heresy, were also to be sought out and extirpated,<sup>84</sup> and inquiries made to uncover and to

74. Ayliffe, *Parergon*, p. 514.

75. See *Bishop of St. David's v Lucy* (1699), 1 Salk. 134, 1 Ld. Raym. 539.

76. *Dean of York's Case* (1841), 2 Q.B. 1 at 39; *The Reconciliation Sentence & Service in St. Paul's* (1891). 7 T.L.R. 276 at 277.

77. *Decretum Grat.*, D. 93, c. 6; *Extra*, 1, 31, 1; *Sextus*, 1, 16, 7; Lyndwood, lib. i, tit. 2, c. 2, gl. ad verb. *inquirere*, p. 17; Conset, *Practice of the Ecclesiastical Courts* (3rd. ed., London, 1708), p. 379; Oughton, *Ordo Judiciorum* (London, 1728), tit. cxxvii, p. 214.

78. *Extra*, *supra*; Athon, *Constitis*. Othonis, c. *Quid ad*, gl. ad verb. *corrigeno*, p. 56; Lyndwood, *supra*; *Bishop of St. David's v Lucy* (1699), 1 Salk. 134, 1 Ld. Raym. 539; *Phillpous v Boyd* (1875), L.R. 6 P.C. 435 at 450.

79. *Decretum Grat.* C. 10, q. 1, c. 12; *Extra*, 3, 39, 23; *Extra*, 5, 7, 13; *Sextus*, 3, 20, 1; Reginon of Prüm, I, c. 10 (Migne, *Patrolog. Lat.*, CXXXII, col. 194); Athon, *supra*.

80. Lyndwood, *supra*.

81. Athon, *Constitis*. Othonis, c. *De archidiaconis*, gl. ad verb. *quae corrigenda*, p. 53; Lyndwood, lib. i, tit. 2, c. 2, gl. ad verb. *inquirere*, p. 17; *ibid.*, lib. i, tit. 10, c. 1, gl. ad verb. *imperitiam*, p. 50. See: *Stats. of Bishop Peter of Winchester*, 1224, c. 18 (Powicke & Cheney, *Councils*, pp. 128-129); *Synodal Statutes for an English diocese*, 1222 X 1225, c. 52 (*ibid.*, p. 148); *Legatine Council of London*, 1237, c. 20 (*ibid.*, p. 254); *Statutes of the diocese of Norwich*, 1240 X 1266?, c. 81 (*ibid.*, pp. 361-362); *Legatine Council of London*, 1268, c. 19 (*ibid.*, pp. 768-769).

82. *Decretum Grat.*, comment. ad D. 94, pars iii; *ibid.*, C. 10, q. 1, c. 11; *ibid.* C. 12, q. 1, c. 14; *Extra*, 1, 23, 1; *Sextus*, 2, 20, 1, § 4.

83. *Decretum Grat.* C. 10, q. 1, c. 12; *Council of Oxford*, c. 29 [24] (Powicke & Cheney, *Councils*, p. 115); *Legatine Council of London*, 1237, c. 20 (*supra*); *Legatine Council of London*, 1268, c. 19 (*supra*); *Council of Lambeth*, 1281, cc. 9 & 10 (Powicke & Cheney, *Councils*, pp. 900-907, partic. at p. 907; see also Lyndwood version, lib. i, tit. 10, c. 2, p. 51); Durandus, *Speculum*, III, pt. i, de Inq., para. 2, sec. 11 (II, 31); *Canons Ecclesiastical* (1603), c. 137; Wake, *Visitation Charge*, p. 6. Such inquiries are clearly evident in the records of visitations.

84. *Extra*, 5, 77, 9 & 13.



punish personal offences *pro salute animae*,<sup>85</sup> not only in the clergy, but also in the laity.<sup>86</sup>

The sixteenth century reformers evidently saw the visitation as a most important means by which a tighter control could be exercised within the Church of England, and as a result it came to be used increasingly as an instrument of spiritual discipline.<sup>87</sup> There was such a vast increase in the judicial business which resulted from the use of a regular visitation and presentment system instead of relying on the initiation of criminal proceedings by apparitors,<sup>88</sup> that the ordinary's correction court was obliged to perambulate the jurisdiction afterwards to deal with the criminal *comperta* of the visitation. In the case of the archdeacon this was often an annual event.<sup>89</sup>

No doubt it is this use to which the visitation was put that to some extent has continued to colour the perception of the nature of visitation to the present day. As an inquisitorial proceeding designed to search out and to punish crime, it must have been a less than popular institution.

The criminal jurisdiction of the visitor must now be considered largely obsolete following the legislation which prescribes the particular manner in which disciplinary proceedings against the clergy must be undertaken<sup>90</sup> and the demise of any spiritual authority to punish the laity *pro salute animae*.<sup>91</sup> Although there is nothing to prevent the visitor using his visitation to inquire concerning his clergy with a view to ulterior proceedings being brought under the appropriate Measure,<sup>92</sup> this is now very rarely done, and other channels of communication are preferred. This has resulted in a marked change in emphasis in the nature of visitation, and the visitor now comes much more as a pastor than as a judge.<sup>93</sup> Nevertheless, it would seem that the visitor has retained his jurisdiction over lay officers of the church. Any person who holds an office with ecclesiastical rights and duties is amenable to the jurisdiction of the spiritual courts as to the manner

85. *Extra*, 1, 31, 1; *Reginon of Prüm*, I, c. 10 (Migne, *Patrolog. Lat.*, CXXXII, col. 194); Athon, *Constituts. Othonis*, c. *Quid ad*, gl. ad verb. *corrigo*, p. 56. See e.g. *Reg. Palatinum Dunelmense* (ed. Hardy, *Rolls Series* 62), I, 84-85.

86. *Decretum Grat.*, C. 10, q. 1, c. 5; *ibid.*, C. 35, q. 6, c. 7; *ibid.*, D. 93, c. 6; *Reginon of Prüm*, c. 10 (Migne, *Patrolog. Lat.*, CXXXII, col. 194); *Extra*, 1, 31, 1; Lyndwood, lib. i. tit. 10, c. 4, gl. ad verb. *personis*, p. 54; *Canons Ecclesiastical* (1603), cc. 109-112. Notices of visitation were expressed to be of both clergy and people (e.g. *Reg. Epist. Johannis Peckham* (ed. Trice Martin, *Rolls Series*, 62), II, 531; *Reg. Corbridge* (Surtees Soc.; 138, 1925), I, 154), and the laity were included in commissions to visit (e.g. *Reg. Pal. Dunelm.*, p. 115; *Reg. Reynolds*, f. 12 verso, quoted Churchill, *Canterbury Administration* (London, 1933), I, 307).

87. Woodcock, *Medieval Ecclesiastical Courts in the Diocese of Canterbury* (Oxford, 1952), p. 69.

88. Woodcock, *supra*. In the Archdeacon of London's court between 27 November, 1638 and 28 November, 1640, there were thirty sittings and 2500 causes entered: Holdsworth, *Hist. of Eng. Law* (7th ed., London, revised 1956 (reprinted 1966) - 1972), I, 620.

89. See Marchant, *The Church Under the Law* (Cambridge, 1969), pp. 116-117, 122-123, 136-137.

90. Church Discipline Act, 1840 (3 & 4 Vict. c. 86), s. 23, repealed by the Ecclesiastical Jurisdiction Measure 1963 (No. 1), s. 69. This section, however, is badly drafted. It expressly refers to proceedings "in the consistory court of a diocese or in the Court of Ecclesiastical Causes Reserved", unlike s. 23 of the Church Discipline Act which prohibited criminal suits against a clergyman "in any ecclesiastical court". The visitation court is neither the consistory court of the diocese nor the Court of Ecclesiastical Causes Reserved, and with the complete repeal of the former legislation (Ecclesiastical Jurisdiction Measure, 1963 S. 87, Sch. 5), on the face of it the visitatorial jurisdiction falls outside the scope of the current Measure and the criminal jurisdiction is revived!

91. *Phillimore v Machon* (1876), 1 P.D. 481 at 487.

92. *Dean of York's Case* (1841), 2 Q.B. at 40.

93. See *Report of the Archbishops' Commission on Ecclesiastical Courts, 1951* (London, 1954), p. 51.

in which he or she executes this office.<sup>94</sup> It is submitted, that lay officers of a church such as churchwardens, readers, organists, etc. may still be proceeded against in the course of a visitation, for they are not clergy, and therefore do not fall within the provisions of the Ecclesiastical Jurisdiction Measure 1963 as to clerical discipline, nor can the jurisdiction of the visitation court be affected by section 82 (2) (c) of the Measure which abolishes the jurisdiction of the consistory court over lay officers.

## SPIRITUAL PLACES AND THEIR POSSESSIONS

The visitation has always had the inspection of church buildings as one of its objects. The visitor, therefore, has a particular responsibility to see that the church buildings (including the rectory, etc.<sup>95</sup>) are maintained in good condition,<sup>96</sup> along with the churchyard and its fences.<sup>97</sup> He also has a duty to see that the books, vestments, fittings and ornaments necessary for divine service are adequately provided and well cared for.<sup>98</sup> An inventory of church goods should be kept for use by the visitor.<sup>99</sup>

When inquiring into the condition of the church fabric and the provision of necessary books, ornaments and utensils, he is empowered to order those responsible to correct anything which he finds unsatisfactory,<sup>100</sup> for the legislation governing clergy discipline "leaves untouched all other power which the bishop might previously have exercised in this visitation".<sup>101</sup> Formerly, where it was a parochial responsibility, the monition was directed to the churchwardens, who, if they had money in their hands or made no attempt to raise some by means of a rate, could be proceeded against for wilful neglect of duty.<sup>102</sup> Parishioners as individuals can no longer be made to contribute to the repair of their church,<sup>103</sup> and their obligation is now only a moral one.<sup>104</sup> The responsibility for the repair and maintenance of the church and its fittings has now been transferred to the parochial church council,<sup>105</sup> and any orders to repair, etc. will have to be directed

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94. *Sextus*, 1, 16, 7; *Hutchins v Denziloe and Loveland* (1792), 1 Hag. Con. 170; *Walter v Mountague* (1836), 1 Curt. 253; *Wyndham v Cole* (1875), 1 P.D. 130.
95. Extravags. Stratford, 1342, c. 7. *Quamvis lex naturae* (Wilkins, *Concilia*, II, 699); Gibson, *Visitationes*, p. 51.
96. *Decretum Grat.*, C. 10, q. 1, cc. 10, 11; Stats. for an Eng. dioc. 1222 X 1225?, c. 52 (Powicke & Cheney, *Councils*, p. 148). See Sparrow Simpson, *Visitationes of Churches belonging to St. Paul's, 1297* (Camden Soc. N.S., 55, 1895), p. xxiv. Lyndwood (lib. iii, tit. 27, c. 3, gl. ad verb. *viros fide dignos*, p. 254) advised that such a survey should be conducted with the assistance of builders and skilled men.
97. Extravags. Stratford, *supra*; *Anon.* (1671), 1 Vent. 127; Degge, *Parson's Counsellor* (6th ed. London, 1703), pt. i, p. 189; Sparrow Simpson, *op. cit.*, p. xxv.
98. Council of London, 1200, c. 5. *Cum inter ea* (Wilkins, *Concilia*, I, 505-506); Council of Oxford, 1222, c. 16 [11] (Powicke & Cheney, *Councils*, pp. (110-111); Consits. Reynold, c. 4, *Sini rectores* (Wilkins, *Concilia*, II 512-513). See Huls J. in Y.B. 11 Hen. 4, Mich., pl. 25, f. 12.
99. Council of Oxford, c. 29 [24] (Powicke & Cheney, *Councils*, p. 115). Rept. at diocesan level: Stats for an Eng. dioc., 1222 X 1225?, c. 52 (*ibid.*, p. 148); Stats. of Bishop Peter des Roches of Winchester, 1224? c. 13 (*ibid.*, p. 128); Stats. of Bishop Fulk Basset of London, 1245 X 1259, c. 77 (*ibid.*, p. 649); Stats of Bishop Peter Quivel of Exeter, 1287, c. 12 (*ibid.*, p. 1008). Lyndwood suggests that this should be in duplicate: lib i, tit. 10, c. 1, gl. ad verb. *in scriptis*, p. 50. See Canons of the Church of England, F 17, paras. 1 & 2.
100. *Decretum Grat.*, C. 10, q. 1. c. 10; *Extra*, 1, 23, 1; Synodal Stats. for an Eng. Diocese, 1222 X 1225?, c. 52 (Powicke & Cheney, *Councils*, p. 148).
101. *Phillpotts v Boyd* (1875), L.R. 6 P.C. 435 at 450; Phillimore, *Eccl. Law* (2nd ed., London, 1895), I, 169.
102. Lyndwood, lib. i. tit. 10, c. 4 gl. ad verb. *sub poena*, p. 53; *Millar and Simes v Palmer and Kilby* (1837), 1 Curt. 550 at 553-555; *Cooper v Wickham* (1839), 2 Curt. 303 at 312-313; *Veley v Burder* (1841), 12 Ad. & E. 265 at 314.
103. Compulsory Church Rate Abolition Act, 1868 (31 & 32 Vict. c. 109).
104. Phillimore, *Eccl. Law*, II, 1419.
105. Parochial Church Councils (Powers) Measure, 1956 (4 & 5 Eliz. 2, No. 3), s. 4 (1) (ii).

to that body, though it may be that this could still be done through the churchwardens.<sup>106</sup> In the event of the council refusing to attempt to comply with the order, it is difficult to know how this liability could ultimately be enforced.<sup>107</sup> Where the responsibility for repair is that of the incumbent, he may be admonished by the visitor to carry out this duty,<sup>108</sup> and in the event of his refusing, criminal proceedings may be instituted under the appropriate legislation for disobedience to the lawful orders of the ordinary.<sup>109</sup> The visitor is also competent to order the removal of an illegal ornament.<sup>110</sup>

The archdeacon may also inquire at his visitation whether the quinquennial inspection of a church has taken place as required by the Inspection of Churches Measure, 1955,<sup>111</sup> and may take the appropriate action under the Measure.

The Canons of the Church of England<sup>112</sup> require that every three years the archdeacon is to survey, or cause to be surveyed by the rural deans, the churches of his archdeaconry. These canons largely replicate canon 89 of the Canons Ecclesiastical (1603), which doubtless was made to remedy the absence of any physical inspection of the churches as a result of the archdeacons visiting only by means of centres.<sup>113</sup> But it should be noted that this is a limited duty of inspection which cannot amount to a complete visitatorial jurisdiction,<sup>114</sup> and therefore may not be described as a visitation; it is a survey or inspection of the churches only.<sup>115</sup> This duty to conduct a survey is in addition to any powers of visitation possessed by the archdeacon. It is, of course, still possible for an archdeacon to undertake a full parochial visitation of the churches of his archdeaconry (or some at a time), and in the course of his visitation to carry out this survey,<sup>116</sup> but some care needs to be exercised before adopting such a procedure, for such a visitation may be carried out only as part of his annual visitation, or instead of it, but not normally as well as it.<sup>117</sup>

Stemming from the oversight of the parishes within his territory, the visitor is also concerned with administrative matters such as insurance (of buildings, third party, etc.), the security of valuables, the keeping of proper records of church property, etc. These matters, which are largely dealt with by the lay officers of a parish, cannot be allowed to become neglected, and the visitation is a very practical way of making a regular check to ensure that everything is in order.

The visitation also provides a formal procedure by which the ordinary may obtain information about the spiritual state of his diocese or archdeaconry,

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106. See the proviso to s. 4 (1) (ii) of the Parochial Church Councils (Powers) Measure, 1956, which expressly preserves the liabilities of churchwardens with respect to visitations.
107. *Quaere* whether as a last resort, the visitor might be able to fall back on his historical power to close the church for divine service until the repairs have been executed: Lyndwood, *supra*.
108. Legatine Council of London, 1268, c. 17 (Powicke & Cheney, *Councils*, p. 766-767); Gibson, *Visitations*, p. 52.
109. *Neville v Kirby*, [1898] P. 160 at 167; *Att.-Gen. v Dean & Chapter of Ripon Cathedral*, [1945] Ch. 239 at 248; Phillimore, *Eccl. Law*, II, 1049.
110. *Phillpotts v Boyd* (1875), L.R. 6 P.C. 435 at 456-457.
111. (3 & 4 Eliz. 2, No. 1), s. 2.
112. Canons of the Church of England C 22, para. 5; F 18.
113. See Degge, *Parson's Counsellor*, pt. ii, p. 296.
114. The three duties of archdeacons, including that of annual visitation, set out in Canons of the Church of England, C 22, para. 5 are quite separate.
115. The legal formalities of a visitation are therefore neither required nor available.
116. See: *Boyd v Phillpotts* (1874), L.R. 4 A. & E. 297; *Phillpotts v Boyd* (1875), L.R. 6 P.C. 435.
117. See below. The churchwardens of a parish which had already been visited parochially might attend the regular visitation for the purpose of admission to office, but would not otherwise be involved in its business.

and the capabilities of his clergy. This informative use of visitation was set out in canon 137 of the Canons 1603, and is reiterated in the Canons of the Church of England, C 18, para. 4.

## THE INQUIRY

The inquiry is central to the visitation.<sup>118</sup> A system of presentment not unlike that which existed in the temporal courts<sup>119</sup> evolved where representatives of the parishes were charged with the duty of presenting offenders to the ordinary. An early form of such a jury of presentment may be seen in the diocesan statutes of Richard Poore, Bishop of Salisbury.<sup>120</sup> The appearance at visitations of lay juries charged with the duty of revealing to the visitor the state of their parish and its clergy can be seen from the fourteenth century. “*Testes synodales*” as they were sometimes called, are evident in the diocese of Exeter in 1301.<sup>121</sup> As the century progressed, it would appear to have become the regular practice to cite a number of “*viros fidedignos*” according to the size of the parish to respond to the visitor’s inquiries in the visitation.<sup>122</sup> Until replaced by the churchwardens, the presentments at a visitation continued to be made by representatives of the parishes, for contemporary records use the form “*laici dicunt*” or “*parochiani dicunt*”.<sup>123</sup> Shortly before the Reformation, this duty of making presentments passed to the churchwardens of each parish,<sup>124</sup> who began to present by themselves, or with the assistance of a small number of parishioners, the remains of the “*synodsmen*”, who became known as sidesmen.<sup>125</sup>

The old *testes synodales* were examined in accordance with written articles of inquiry,<sup>126</sup> and this practice continues with the modern churchwarden. Nevertheless, the visitor may still examine the churchwardens orally and in private if he so wishes.<sup>127</sup>

Having assumed this duty of making presentments, the churchwardens were required to take an oath on admission to office that they would execute this duty. A declaration has now been substituted for this oath.<sup>128</sup>

It should be noted that the old churchwardens are to make the presentments before the new are sworn.<sup>129</sup> These are their presentments, and they should not pass on their responsibilities to the incoming churchwardens who can have no knowledge of them. In a sense, just as the retiring churchwardens had formerly to render a financial account to their parish, so they are to render a spiritual account to the ordinary of the life of their church over the past year. Ideally, therefore, the outgoing churchwardens should be present at the visitation to make their presentments, and the incoming churchwardens to be admitted to office.

118. Wake, *Visitation Charge*, p. 4. See Stillingfleet, *Eccl. Cases*, pt. i, p. 2.

119. Assize of Clarendon, 1166, c. 1 (Stubbs, *Select Charters* (9th. ed., Oxford, 1948), p. 170). See Pollock & Maitland, *Hist. of Eng. Law* (2nd. ed., Cambridge, 1898), I, 152.

120. Powicke & Cheney, *Councils*, p. 75, c. 47.

121. *Reg. Stapeldon* (ed. Hingeston-Randolph, Exeter & London, 1892), p. 130.

122. See e.g. *Reg. Grandisson* (ed. Hingeston-Randolph, Exeter & London, 1894-1899), I, 382, II, 639; *Reg. Pal. Dunelm.*, I, 62-63; *Reg. Wykeham* (ed. Kirby, Hampshire Rec. Soc., 1896-1899), II, 189.

123. Gibson, *Codex*, II, 960.

124. *Ibid.*; Burn, *Eccl. Law*, IV, 28.

125. Gibson, *supra*.

126. See below.

127. Gibson, *Codex*, II, 963; Gibson, *Visitations*, p. 74; Burn, *Eccl. Law*, IV, 30.

128. Statutory Declarations Act, 1835 (5 & 6 Will. 4, c. 62), s. 9. Canons of the Church of England, G 6, para. 2 provides for the declaration to be made immediately before such a presentment.

129. See Canons Ecclesiastical (1603), c. 118, which though repealed is evidence of the correct practice.

## ADMISSION OF CHURCHWARDENS

Customarily, the visitor<sup>130</sup> also performs the ministerial act of admitting the churchwardens to office for the coming year. Admission is crucial, because until this has taken place the outgoing churchwardens remain in office.<sup>131</sup> It is a ministerial function because the visitor cannot exercise any judicial discretion in the matter,<sup>132</sup> but must admit all the candidates presenting themselves for admission despite any reservations which he may feel as to their personal qualities.<sup>133</sup> He may not determine any dispute as to the legitimacy of a claim to be admitted,<sup>134</sup> and may refuse to admit only if there is some definite legal impediment<sup>135</sup> or it is clear that the applicant is not the duly elected churchwarden.<sup>136</sup>

## PASTORAL FUNCTIONS

Preaching and teaching have always comprised an important part of the visitation<sup>137</sup> and the sermon is therefore an integral part of the visitation which may not be omitted.<sup>138</sup>

The visitor also delivers a charge to those assembled at the visitation.<sup>139</sup> Until comparatively recently it appears that this charge was directed to the clergy,<sup>140</sup> but it is now delivered to all those attending the visitation. The charge is a privileged communication so long as it is given in good faith.<sup>141</sup> The subject matter of the charge may differ with each individual visitor. It may be used, for example, to survey the pressing needs of the day as they affect the whole Church and to suggest to the clergy and people the way in which their thoughts and ambitions might be directed. Alternatively, the visitor may wish to direct his charge to a more limited end, perhaps using the opportunity to review the state of the parishes as revealed in the answers to the articles of inquiry, or to continue a theme set by his articles and to elaborate on practical points raised by them. The charge should not, however, replace the element of preaching and teaching inherent in the visitation, and if both are thought impractical, then it is open to the visitor to preach a sermon at the visitation service and to distribute a printed charge to the clergy and churchwardens present.

The rite of confirmation was another pastoral duty which a bishop once performed in the course of his visitation.<sup>142</sup> Confirmations are now carried out by

130. Usually the archdeacon, but the bishop in those years when he visits and the archdeacon's visitation is inhibited: *R. v Sower*, [1901] 1 K.B. 396, CA.

131. *Bray v Somer* (1862), 31 L.J.M.C. 135; *Bremner v Hull* (1866), LR 1 CP. 748 at 760; Canons of the Church of England, E 1, para. 3.

132. *R. v Rice* (1697), 1 Ld. Raym. 138, *sub nom. Morgan v Archdeacon of Cardigan*, 1 Salk. 166; *R. v Simpson* (1724), 1 Stra. 609; *R. v Dr. Harris* (1763), 3 Burr. 1420; *R. v Sarum*, [1916] 1 K.B. 466.

133. *R. v Rice*, *supra*; *R. v Bishop of Sarum*, *supra*.

134. *Carpenter's Case* (1681), Sir T. Raym. 439; *R. v Simpson*, *supra*; *R. v Dr. Harris*, *supra*; *R. v Williams* (1828), 8 B. & C. 681; *Report of the Commission into Ecclesiastical Courts*, 1832, p. 45.

135. *Anthony v Seger* (1789), 1 Hag. Con. 9 at 10; *R. v Bishop of Sarum*, *supra* at 472.

136. *R. v Williams*, *supra*.

137. See: Council of Clovesho, A.D. 747, c. 3 (Haddon & Stubbs, *Councils*, III, 363-364, and see the letter of St. Boniface to Cuthbert, Archbishop of Canterbury: Haddon & Stubbs, *op. cit.*, III, 377-378); Synod of Celchyth, A.D. 787, c. 3 (Haddon & Stubbs, *op. cit.*, III, 449-450); Odo's Canons, A.D. 943, c. 3 (Wilkins, *Concilia*, I, 213); *Decretum Grat.*, C. 10, q. 1, cc. 9, 12; *Extra*, 1, 31, 15; *ibid.*, 3, 39, 23; *Sextus*, 3, 20, 1, § 4; Legatine Council of London, 1237, c. 22 (Powicke & Cheney, *Councils*, p. 255).

138. Wake, *Visitation Charge*, pp. 4, 17, 20.

139. Ayliffe, *Parergon*, p. 515.

140. See e.g. Wake's *Visitation Charge and Gibson's Visitations*.

141. *Laughton v Bishop of Sodor and Man* (1872), L.R. 4 P.C. 495.

142. *Decretum Grat.*, C. 10, q. 1, c. 9; Grosseteste's report to the Pope and cardinals, 1250 (Powicke & Cheney, *Councils*, I, 265); Canons Ecclesiastical (1603), c. 60.

the bishop at special services when there are candidates to be presented to him, and the spirit of the old canons, which was to ensure a regular performance of confirmation at regular intervals, is now more than adequately satisfied, but it is submitted that a bishop could still hold a service of confirmation in the course of his visitation if he so wished, and in so doing he would be acting within a tradition going right back to the early Church.<sup>143</sup>

## THE EPISCOPAL VISITATION

It has already been seen that originally the visitation was exclusively an episcopal function, and every bishop is obliged *de jure communi* to visit his diocese.<sup>144</sup> Visitation is one of the principal duties of a bishop<sup>145</sup> and is inherent in his office.<sup>146</sup> The right of a bishop to hold a visitation is recognised by Canons of the Church of England, G 5, para. 1, but the canon fails to make reference to the *duty* of visitation.

The custom that a bishop should perform a visitation once every three years was incorporated into the Canons of 1603.<sup>147</sup> As a result, it is evident that many bishops began to conduct regular visitations of their dioceses.<sup>148</sup> One of these was William Wake, who became Bishop of Lincoln in 1706. Throughout his episcopate and later as Archbishop of Canterbury, he undertook regular diocesan visitation strictly in accordance with the provisions of the 1603 Canons. Although his inquiries were most thorough, he visited with great consideration for his visitands, and was not slow to recognise the enormous pastoral opportunities which the visitation afforded him.<sup>149</sup> Undoubtedly his example did much to revitalize the visitation during the eighteenth century,<sup>150</sup> and laid the foundation of much modern practice.

Associated with the purpose of visitation whereby the bishop might get to know his clergy,<sup>151</sup> is the right of a bishop to require the clergy of his diocese to exhibit to him their letters of orders, institution and induction, and any dispensations, licences, or faculties etc. possessed by them at his primary visitation,<sup>152</sup> or, in the case of a clergyman subsequently appointed to serve in the

143. See: Acts, xix. 6; St. Jerome (Eusebius Sophronius Hieronymus), *Opera Omnia* (ed. Adam Tribbeckovius, Christian Gensch, Frankfurt & Leipzig, 1684), *Epistolarum* II, epist. lviii, *Dialogus orthodoxi et Luciferiani*, p. 96.

144. *Decretum Grat.*, C. 10, q. 1, cc. 4, 5, 9, 10, 11, 12; *Ibid.*, C. 12, q. 1, c. 14. See: Reginon of Prüm, I, cc. 6, 8, 10. II, c. 1 (Migne, *Patrolog. Lat.*, CXXXII, cols. 193-194, 279-281); Burchard, I, cc. 83, 84, 86, 90 (*ibid.*, CXL, cols. 570-572). For Papal mandates to enforce the episcopal visitation in England, see above. A part of the law of the English Church: Legatine Council of London, 1237, c. 22 (Powicke & Cheney, *Councils*, p. 255). See: Grosseteste, *Epistolae*, ep. 127, p. 371; *Bishop Rede's Reg.* (Sussex Rec. Soc., vol. 8 (1908)), I, 99. Implied in Canons Ecclesiastical (1603), c. 60.

145. Stephens, *An Historical Discourse, Briefly setting forth the nature of Procurations* (London, 1661), p. 5; Godolphin, *Repertorium*, pp. 34-35; Blackstone, *Commentaries on the Laws of England* (14th ed., London, 1803), I, 382. Grosseteste was emphatic that a bishop could not be a pastor to his flock without visiting it: *Epistolae*, ep. cxxvii, pp. 373-375.

146. Legatine Council of London, 1237, c. 22 (Powicke & Cheney, *Councils*, p. 255); Stillingfleet, *Eccl. Cases*, pt. i, p. 76; Stephens, *op. cit.*, pp. 5-6.

147. Canon's Ecclesiastical (1603), c. 60.

148. See Marshall, *George Hooper, 1640-1727* (Sherborne, 1976), pp. 116-117. Hooper, either himself or by his officers, visited triennially. See also Bishop Compton's visitations: Carpenter, *The Protestant Bishop* (London, 1956), p. 216.

149. See: Sykes, "Bishop Wake's primary visitation in the diocese of Lincoln 1706", *Journal of Eccl. Hist.*, II (1951), 190; Sykes, *William Wake* (Cambridge, 1957), I, 167-174.

150. See Sykes, *Church and State* (Cambridge, 1934), pp. 137-139.

151. Canons of the Church of England, C 18, para. 4.

152. Halsbury's *Laws of England*, 4th, Edn para 662; Canons Ecclesiastical (1603), c. 137; impliedly maintained by Canons of the Church of England, G 5, para. 1. The practice is very ancient, e.g. *Reg. Grandisson* (1328), I, 382; *Reg. Wykeham*, II, 189-190; *Reg. Islip*, f. 7b, as quoted Gibson, *Codex*, II, appdx., p. 1545.



diocese. at the first visitation after appointment.<sup>153</sup> The bishop alone has the right *de jure* to demand such exhibits, and an archdeacon may claim such a right only by custom.<sup>154</sup>

Although the canon law envisages a visitation by the ordinary in person,<sup>155</sup> he is permitted to visit by means of a deputy in the event of his being prevented from visiting personally,<sup>156</sup> for otherwise there might be no visitation at all. It has already been seen how such delegations were at first made to the archdeacons, but when the archdeacons started to visit in their own right, the bishops commissioned their officials<sup>157</sup> or other persons<sup>158</sup> to conduct visitations on their behalf. A special commission to delegate such authority is necessary, even to the diocesan chancellor,<sup>159</sup> though the patent may contain such a commission.<sup>160</sup> A chancellor in receipt of such a commission acts only as the bishop's deputy, and the power of the bishop to visit in person is not thereby restricted, nor does it prevent the bishop visiting without his chancellor.<sup>161</sup>

The visitatorial jurisdiction of a bishop extends throughout his diocese, and includes the cathedral foundation.<sup>162</sup> Indeed, an episcopal visitation of the diocese should begin with a visitation of the cathedral church.<sup>163</sup> The bishop of the diocese is not the ordinary of the cathedral,<sup>164</sup> and any jurisdiction which he may exercise there is therefore derived solely from his powers as visitor. He may visit the foundation in the exercise of the same visitatorial powers and duties as the other churches of his diocese which are given him by ecclesiastical law.<sup>165</sup> A visitation by virtue of such powers may therefore be called an "ordinary" visitation, since he is visiting *jure ordinario*. Such rights of visitation were often not won without considerable opposition from the deans and chapters of the old secular cathedrals,<sup>166</sup> and might therefore be subject to certain constraints as to the manner and frequency of visitation as a result of compositions entered into by the bishops to secure their right of visitation.<sup>167</sup> The bishop has now been relieved of the obligation to visit the cathedral church of his diocese at regular

153. Lyndwood, lib. iii, tit. 22, c. 6, gl. ad verb. *primis admissionibus*, p. 225; Cripps, *Law Relating to the Church and Clergy* (7th ed. London, 1921), p. 110.

154. Gibson, *Codex*, II, 959; Phillimore, *Eccl. Law*, II, 1054.

155. *Decretum Grat.*, C. 10, q. 1, cc. 9 & 12; *Extra*, 3, 39, 23; Council of Oxford, c. 27 [22] (Powicke & Cheney, *Councils*, p. 114); Extravags. Stratford, 1342, c. 7, *Quamvis lex naturae* (Wilkins, *Concilia*, II, 699); Lyndwood, lib. iii, tit. 22, c. 1, gl. ad verb. *personaliter*, p. 221.

156. *Decretum Grat.*, D. 25, c. 1; *ibid.*, D. 93, c. 6; *ibid.*, Gratian comment. ad C. 10, q. 1, pars ii; *ibid.*, C. 10, q. 1, c. 11; *Extra*, I, 23, 1 & 7; Lyndwood, gl. ad verb. *personaliter*, *supra*; Hostiensis, *Commentaria*, VI, de Censib., cap. 1, para. 1, f. 25 verso.

157. *Sextus*, I, 13, 2.

158. Old archiepiscopal and episcopal registers abound with such examples, and anciently it would appear that this was the most common kind of delegation. e.g. *Reg. Romeyn* (ed. Wm. Brown, Surtees Soc. 123, 128, 1913, 1916), I, 55; *Reg. Pal. Dunelm.*, pp. 91-92, 115. See also Churchill, *Canterbury Administration*, II, 141-142, 143-144, 147-148.

159. *Sextus*, I, 13, 2; Lyndwood, lib. i, tit. 2, c. 2, gl. ad verb. *inquirere*, p. 17; Fournier, *Les Officialités au Moyen Age*, p. 22; Gibson, *Codex*, I, xxiii, II, 987; Ayliffe, *Parergon*, pp. 514-515.

160. e.g. in the diocese of Exeter: *Report of the Commission into the Ecclesiastical Courts*, 1883 (House of Commons Papers, sess. 1883, XXIV), II, 676.

161. Gibson, *Codex*, I, xxiii.

162. *Walron v Pollard* (1568), 3 Dyer 273a; *Bishop of Kildare v Archbishop of Dublin* (1724), 2 Bro. Parl. Cas. 179; *Dean of York's Case* (1841), 2 Q.B. 1 at 40; *Phillpotts v Boyd* (1875), L.R. 6 P.C. 435; Blackstone, *Commentaries*, I, 479; Stephens, *Law Relating to the Clergy* (London, 1848), II, 1379; Phillimore, *Eccl. Law*, I, 166-172; 14 Halsbury's Laws of England (4th Edn.) para. 491.

163. Gibson, *Codex*, II, 957; Phillimore, *Eccl. Law*, II, 1045-1046.

164. 14 Halsbury's Laws of England 4th Edn. para. 1309.

165. *Boyd v Phillpotts* (1874), L.R. 4 A. & E. 297 at 320, 341. See *Sextus*, 3, 20, 1.

166. Grosseteste's dispute with the Lincoln Dean and Chapter culminated in one of the *causes célèbres* of the middle ages. See *Epistolae*, ep. nos. 77, 80. pp. 248, 253-256

167. See Frere, *Visitin. Articles*, I, 75 et seq.

intervals.<sup>168</sup> By virtue of his ordinary visitatorial powers, the bishop may hear an appeal from a decision of the dean and chapter.<sup>169</sup>

An appeal lies from the determination of the bishop exercising his ordinary visitatorial jurisdiction to a superior ecclesiastical court.<sup>170</sup>

In addition to ordinary powers of visitation, however, bishops possess a “special” jurisdiction to visit their cathedrals which is not derived from the general ecclesiastical law, but from the common law and the statutes of each foundation.<sup>171</sup> It arises from the right of a founder to appoint a visitor to superintend his foundation:<sup>172</sup> to see that it is governed in accordance with its statutes,<sup>173</sup> to interpret those statutes in case of ambiguity,<sup>174</sup> and to hear appeals from members of the foundation concerning the application of the statutes.<sup>175</sup> There is no appeal from the decision of the bishop exercising his special jurisdiction,<sup>176</sup> and once it is established that the visitor of a particular foundation has jurisdiction over a matter, the jurisdiction of the common law courts is wholly excluded.<sup>177</sup> This is very similar to the visitatorial jurisdiction which exists in eleemosynary foundations, such as colleges and universities,<sup>178</sup> and indeed both came from the same source. Henry VIII adopted this concept of special visitor for his cathedrals of the new foundation, and this form of constitution has now been adopted for all cathedral foundations.<sup>179</sup>

## THE ARCHIDIACONAL VISITATION

The archdeacon’s visitation is today the most regular and familiar ecclesiastical visitation. By prescription and long usage, the archdeacon enjoys full visitatorial powers as ordinary to visit the parishes of his archdeaconry,<sup>180</sup> and

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168. Church of England (Miscellaneous Provisions) Measure 1976, (No. 3), s. 4.  
 169. e.g. *Robert Withers v Dean & Chapter of Exeter* (1611), Appeals to the Delegates, no. 15, Brit. Parl. Papers, 1867-1868, LVII, p. 112 (Papers in the case as prepared from the appeal to the Delegates are in the possession of the Dean and Chapter of Exeter: D. & C. Exeter MS. 7155/1); *Leneve Boughton’s Case* (1715), Brit. Parl. Papers, *supra*, no. 134, p. 172.  
 170. *Bagg’s Case* (1615), 11 Co. Rep. 93b at 99b; *Philips v Bury* (1694), Holt K.B. 715 at 725; *Bishop of St. David’s v Lucy* (1699), 1 Ld. Raym. 539 at 544; *Bishop of Kildare v Archbishop of Dublin* (1724), 2 Bro. Parl. Cas. 179 at 183; *Withers v Dean & Chapter of Exeter*, *supra*; *Leneve Boughton’s Case*, *supra*; *Wynn v Sager* (1740), Appeals to the Delegates, no. 160, Brit. Parl. Papers, *supra*, p. 185; *Boyd v Phillpotts* (1874), L.R. 4 A. & E. 297 at 320.  
 171. *R. v Dean & Chapter of Chester* (1850), 15 Q.B. 513 at 518-519. See *Philips v Bury*, *supra* at 724; *Boyd v Phillpotts* (1874), *supra* at 335, 340-341. A recent example may be seen in the visitation of Lincoln Cathedral last year by the bishop of Lincoln to inquire into the financial affairs of the cathedral following the losses incurred by taking the Lincoln Magna Carta to the World Expo 88 in Australia.  
 172. Y.B. 8 E.3, Mich. pl. 37, f. 69 at 69-70; *Philips v Bury*, *supra*; *Green v Rutherford* (1750), 1 Ves. Sen. 462 at 472.  
 173. *R. v Dean & Chapter of Chester*, *supra*.  
 174. *R. v Dean & Chapter of Ripon Cathedral*, [1945] Ch. 239 at 252. See also *Att-Gen. v Stephens* (1737), 1 Atk. 358 at 360.  
 175. *R. v All Souls College, Oxford* (1681), Skin. 12 at 13; *Philips v Bury*, *supra*, at 720; *Att-Gen. v Talbot* (1748), 3 Atk. 662 at 674; *R. v Bishop of Ely* (1756), 1 Wm. Bl. 71 at 83; *St. John’s College, Cambridge v Todington* (1757), 1 Burr. 158 at 202; *R. v Bishop of Worcester* (1815), 4 M. & S. 415 at 420; *Whiston v Dean & Chapter of Rochester* (1849), 7 Hare 532; *R. v Dean & Chapter of Chester* (1850), 15 Q.B. 513; *R. v Dean & Chapter of Rochester* (1851), 17 Q.B. 1.  
 176. *R. v Bishop of Chester* (1747), 1 Wm Bl. 22, 1 Wils. 206; *Whiston v Dean & Chapter of Rochester supra*; *R. v Dean & Chapter of Chester, supra*. See *Philips v Bury, supra* at 726-727.  
 177. See: by the author, “The Exclusive Jurisdiction of the University Visitor”, 97 *L.Q.R.*, (1981), pp. 610-647; *Thomas v University of Bradford* [1987] A.C. 795.  
 178. *Whiston v Dean & Chapter of Rochester, supra* at 559; *R. v Dean & Chapter of Chester, supra* at 520.  
 179. Cathedrals Measure, 1931, (21 & 22 Geo 5, c 7), s. 9; now Cathedrals Measure 1963 (No. 2), s. 6.  
 180. Athon, *Constits. Othonis*, c. *De archidiaconis*, gl. ad verb. *visitent*, p. 53; Lyndwood, lib. 1, tit. 10, c. 1, gl. ad verb. *imperiūm*, p. 50; Hostiensis, *Commentaria*, I. de Offic. Archid., cap. 10, para 31, fo. 129 recto; Ayliffe, *Parergon*, p. 96, 161; Gibson, *Codex*, II, 958, 969-970; Van Espen, *Jus Ecclesiasticum*, I, pt. i, tit. 12, cap. 1, para. 6, p. 74; Fournier, *Les Officialités au Moyen Age*, p. xxx; per Dodderidge J. in *Chiverton v Trudgeon* (1619), Palm. 97 at p. 98; Canons of the Church of England, C.22, para. 2.

his right to hold visitations is recognised by Canons of the Church of England, G 5, para. 1. The archdeacon, however, has no powers of visitation within a cathedral foundation.<sup>181</sup>

It has been observed that sometime around the fourteenth century the archdeacons stopped visiting parochially and visited by means of deanery chapters. Today, the archdeacons still generally conduct their annual visitations by grouping a number of churches together, often based on a rural deanery. Although by the *jus commune* a personal visitation was required,<sup>182</sup> this practice of holding visitations at centres within the archdeaconry must be regarded as validated by custom.<sup>183</sup> Nevertheless, there would appear to be nothing to prevent an archdeacon making a personal inspection of individual churches as a part of his visitation should he so wish.

Since the archdeacon exercises an ordinary visitatorial jurisdiction, the maxim “*delegatus non potest delegare*” cannot apply, and like the bishop, therefore, he may send a deputy if he is unable to visit.<sup>184</sup> This may be the rural dean.

## RURAL DEANS

Rural deans have come to be associated with the inspection of churches, and the question may be raised whether their involvement has given them powers which might even loosely be described as a visitation.

Traditionally, the ancient office of rural dean possessed a standing oversight of the behaviour of the clergy and people of his deanery on behalf of the bishop,<sup>185</sup> and as such might be regarded as a kind of ecclesiastical law enforcement agent. On the Continent by the end of the ninth century they may be seen to have been engaged in parochial visitations,<sup>186</sup> and this seems to have been a well-established activity of the rural dean by the Council of Lateran, 1179.<sup>187</sup> Nevertheless, all the visitatorial powers were derived solely from the bishop as his delegate,<sup>188</sup> and in their exercise he was merely an *oculus episcopi* with a mere power of inspection:<sup>189</sup> a *scrutator simplex*.<sup>190</sup> It may be observed that the offices of rural dean and archdeacon were developing along similar lines, and therefore in competition for the delegations of episcopal authority; a competition which in this country the archdeacon was to win.<sup>191</sup> By the thirteenth century the English rural dean was in decline, and even the rural chapters came under archidiaconal control.<sup>192</sup> The rural deans were also replaced as clerical *testes synodales* by the

181. *Extra*, 1, 23, 10; *ibid.*, 1, 33, 16; Gibson, *Codex*, I, 171; Cathedrals Measure 1963 (No. 2), s. 10 (2).

182. *Decretum Grat.*, C. 10, q. 1, cc. 4, 10, 11, 12; Gibson, *Codex*, II, 958.

183. *Shephard v Payne* (1862), 12 C.B.N.S. 414; *Archdeacon of Exeter v Green*, [1913] P. 21; 14 Halsbury's Laws of England (4th Edn.) para. 500.

184. Lyndwood, lib. 1, tit. 10, c. 1, gl. ad verb. *videant*, p. 50; *ibid.*, c. 4, gl. ad verb. *visitationibus ecclesiarum*, p. 53; *ibid.*, lib. iii, tit. 22, c. 1, gl. ad verb. *rationabili*, pp. 220-221; Ayliffe, *Parergon*, p. 161. Although the office of archdeacon's official has been abolished by the Ecclesiastical Judges and Legal Officers Measure 1976 (No. 2), s. 7, an archdeacon may still appoint a deputy to carry out a visitation: Canons of the Church of England, C 22, para. 3.

185. Gibson, *Codex*, II, 972; Dansey, *Horae Decanicae Rurales* (London, 1844), I, 160-166; Burn, *Eccl. Law*, II, 121, See *Extra*, 1, 24, 4.

186. See Hincmar, Archbishop of Rheims: Migne *Patrolog, Lat.*, CXXV, para. 716, cols. 777-778.

187. See *Extra*, 3, 39, 6, repeated Council of London, 1200, c. 5. *Cum inter ea* (Wilkins, *Concilia*, I, 505).

188. *Ibid.*, where the rural deans are referred to as the “*decani constituti sub episcopis*”; Van Espen, *Jus Ecclesiasticum*, I, pt. i, tit. vi, cap. 3, para. 7, p. 39; Richard, *Analyse des Conciles* (Paris, 1772-1777), III, 36; Dansey, *Horae Dec. Rur.*, I, 170-171.

189. Gibson, *Codex*, II, 972. See *Extra*, 1, 24, 4.

190. Lyndwood's description of the archdeacon, lib. i, tit. 10, c. 1, gl. ad verb. *visitatione*, p. 49, but compare with lib. ii, tit. 1, c. 1, gl. ad verb. *decani rurales*, p. 79.

191. Dansey, *Horae, Dec. Rur.*, II, 108-109.

192. See Athon, *Constits. Othonis*, c. *De archidiaconis*, gl. ad verb. *capitulis*, p. 54.

lay juries of presentment which began to be established in the parishes in the following century.<sup>193</sup> As the parochial visitation passed to the archdeacons, so the rural dean became the deputy of the archdeacon as well as the bishop.<sup>194</sup> When later the archdeacons ceased to visit parochially, it was the rural dean, while he still existed, who was employed to go to the churches to make the inspections required of the parochial visitor<sup>195</sup> and to ensure that the orders of the visitor had been carried out.<sup>196</sup> In most parts of the country, the office of rural dean died out shortly before the Reformation.<sup>197</sup>

When the office of rural dean was revived in 1836 by the Ecclesiastical Commissioners Act,<sup>198</sup> the question was raised whether the rural deans possessed any visitatorial jurisdiction. Dr. Phillimore was clearly of the opinion that they did not.<sup>199</sup> Any inspection of churches which rural deans perform today, usually on the archdeacon's behalf, is an administrative not a judicial act, and as such does not amount to a visitatorial jurisdiction. A reference to a rural dean's "visitation" is therefore inaccurate, and should properly be described as an "inspection" or "survey".

## THE ARCHIEPISCOPAL VISITATION

An archbishop, as well as possessing episcopal powers in his own diocese, has the superintendence and care of the whole province.<sup>200</sup> Following numerous appeals to Rome and considerable opposition from the diocesan bishops,<sup>201</sup> the right of the archbishop to visit the churches of his province *jure metropolitico* was finally established.<sup>202</sup> It seems, however, that by agreement the Archbishop of Canterbury does not visit the diocese of London.<sup>203</sup>

The traditional order when visiting metropolitically is for an archbishop to begin by visiting his own cathedral church and diocese, and then to proceed to visit the other dioceses which comprise the province.<sup>204</sup> Once he has completed the visitation of one diocese he is able to move to another, and he may not return to the first again until the whole province has been visited.<sup>205</sup> A further refinement

193. Stillingfleet, *Eccl. Cases*, pt. i, p. 2; Gibson, *Visitations*, pp. 59-60; Ayliffe, *Parergon*, p. 515.

194. See: *Extra*, 1, 23, 7, § 2; Athon, *Constits. Othonis*, c. *Quod in quodam*, gl. ad verb. *erubescunt*, p. 15; Lyndwood, lib. i, tit. 2, c. 1, gl. ad verb. *decanos rurales*, p. 14; *ibid.*, gl. ad verb. *eorum vices*, p. 15; lib. ii, tit. 1, c. 1, gl. ad verb. *In causis*, p. 79.

195. See Gibson's "Instructions for the Deans Rural", no. 3, *Codex*, II, 1551.

196. Athon, gl. ad verb. *erubescunt*, *supra*.

197. Godolphin, *Repertorium*, p. 54, appdx. p. 7; Burn, *Eccl. Law*, II, 124-125.

198. 6 & 7 Will. 4, c. 77.

199. "Rural Deans. Case for the Opinion of Dr. Phillimore", *Ecclesiastical Gazette*, Tue. 12 March, 1839, No. 9, p. 164.

200. *Decretum Grat.*, C. 9, q. 3, cc. 1 & 2.

201. See e.g. Frere, *Visit. Articles*, I, 84-86.

202. *Extra*, 3, 39, 14 & 25; *Sextus*, 3, 20, 1 & 5; Hostiensis, *Commentaria*, I, de Offic. Jud. Ord., cap. 11, para. 6, f. 163 verso; *Grange v Denny* (1616), 3 Bulst. 174 (*per* Dodderidge J. at 177). For an example of a medieval metropolitan visitation, see that of the diocese of Worcester by Archbishop Winchelsey: Graham, *English Ecclesiastical Studies* (London, 1929), pp. 330-359. A justification for the archbishop's full powers of correction is set out by Archbishop Peckham: *Reg. Ep. J. Peckham*, I, 328-334; Powicke & Cheney, *Councils*, 922-932. See also the terms of commission to visit given to commissaries by successive Archbishops of Canterbury: Churchill, *Canterbury Administration*, I, 176, 307, 313, 329, 334.

203. *Gobbet's Case* (1634), Cro. Car. 339, S.C., 3 Salk. 379; 14 Halsbury's Laws of England (4th Edn.) para. 431. But c.f. Twisden J. in *Ford v Welden* (1664), Sir T. Raym. 91.

204. The famous judgment *Romana ecclesia* of Innocent IV; *Sextus*, 3, 20, 1, confirmed in Papal bull to Archbishop Mepeham, 1329; *Cal. Papal Reg., Letters*, II, 290-291. See Churchill, *Canterbury Administration*, I, 143-146, 330 (*Reg. Arundel*, I, f. 469), and for an example of the process, *Reg. Chichele* (ed. Jacob, Oxford, 1945), fo. 247, III, 463 *et seq.*. See also: Gibson, *Codex*, II, 957; Phillimore, *Eccl. Law*, II, 1046.

205. *Sextus*, 3, 20, 1.

was introduced into this order of visiting by another decree of Innocent IV, not in the *Corpus Juris Canonici*, which required an archbishop whenever possible to begin his visitation of each diocese with the bishop himself and the cathedral chapter in the cathedral of the diocese.<sup>206</sup> All diocesan bishops are subject to the visitation of their archbishop as metropolitan.<sup>207</sup>

It may thus be summarised that an archbishop visiting *jure metropolitico* has the same visitatorial powers that any visitor possesses in right of his office, though his jurisdiction stemming from the superior nature of his position may encompass persons and places not subject to an inferior jurisdiction. An archbishop, however, may be content to exercise his visitatorial powers as diocesan ordinary, and in that case, though he is an archbishop, he will not be visiting *jure metropolitico*, but *jure ordinario*. The visitation of the Archbishop of York in 1969 was such an ordinary visitation of his diocese. The right of archbishops to visit their provinces is recognised by the Canons of the Church of England, G 5 para. 1.

## FREQUENCY OF VISITATION

It is in the nature of visitation that it is performed regularly, for visitation implies intermittent acts resumed and repeated.<sup>208</sup> The ancient canons required an annual visitation of the bishop,<sup>209</sup> and this was evidently the position in the English Church.<sup>210</sup> Nevertheless, a strict observance of an annual visitation must have been virtually impossible in some of the larger dioceses,<sup>211</sup> and the Council of Tarragona acknowledged the right of bishops to visit their whole diocese one third at a time.<sup>212</sup> This would appear to have been the origin of the triennial visitation.

In post-Conquest England, the bishops were urged by the Legatine Council of London, 1237, to hold their visitations “*temporibus oportunitis*”.<sup>213</sup> It began to be universally accepted that although the bishop had the right to visit his diocese every year, he was not bound to visit more often than once every three years unless there was reason to do so.<sup>214</sup> A triennial visitation was no doubt thought necessary because confirmation could be performed only by the bishop, and there may also have been an element of the bishop ensuring that the archdeacons were carrying out their visitations in a proper manner without exceeding their authority.<sup>215</sup>

How far the English bishops actually observed the duty to visit triennially is not easy to determine, and seems to have differed from bishop to bishop and diocese to diocese. Richard Gravesend, Bishop of Lincoln, 1258-1279 did what he could to achieve a triennial round of his diocese.<sup>216</sup> In the diocese of

206. *Ann. Mon.*, I, 303.

207. *Sexus*, 3, 20, 1; *Bishop of St. David's v Lucy* (1699), 1 Ld. Raym. 539, 1 Salk. 134.

208. Grosseteste, *Epistolae*, ep. 127, p. 376.

209. *Decretum Grat.*, C. 10, q. 1, cc. 9, 10, 11.

210. Council of Clovesho, c. 3 (Haddon & Stubbs, *Councils*, III, 363); Synod of Celchyth, c. 3 (Haddon & Stubbs, *op. cit.*, 449); Odo's Canons, c. 3 (Wilkins, *Concilia*, I, 213).

211. The Council of Lugo, A.D. 569 recognised that certain dioceses were too large to permit an annual visitation: Mansi, *Sacr. Conc.*, IX, col. 815. See also Thomassin, *Vetus et Nova Ecclesiae Disciplina* (Magontiaci, 1786-1787), VI, pt. ii, lib. 3, c. 78, para. 15, p. 546.

212. c. 8 (*Decretum Grat.*, C. 10, q. 1, c. 10).

213. c. 22 (Powicke & Cheney, *Councils*, p. 255).

214. Hostiensis, *Summa*, III, de Censib., para. 19, col. 1040.

215. Degge, *Parson's Counsellor*, II, 294. For the need for such supervision, see *Decretum Grat.*, D. 94, c. 3.

216. Hamilton Thompson, *Rotuli Gravesend Episcopi Lincolnensis (1258-1279)*, p. xvii.

Exeter, though there is evidence of very considerable visitatorial activity, it is not possible to detect any regular pattern of triennial visitations during the period 1257-1419.<sup>217</sup> This was probably the case in most dioceses. It would appear, however, that the triennial visitation was recognised as the customary obligation towards which the bishops were to aim.<sup>218</sup> This duty was maintained in the Church of England after the Reformation, as is evident from article 9 of the Royal Injunctions for York Minster, 1547,<sup>219</sup> and the *Reformatio Legum Ecclesiasticarum*.<sup>220</sup> This obligation was recognised and confirmed by the Canons Ecclesiastical (1603), c. 60.

Given then that bishops are required by law to visit their dioceses, and that visitation implies a degree of frequency, it is not easy to determine how often a bishop needs to visit in order to discharge his obligations in this respect. With the repeal of canon 60 of the Canons Ecclesiastical (1603), the rule as to frequency reverted to the status of customary law. The customary rule here is difficult to ascertain. It may be argued that canon 60 of the Canons Ecclesiastical (1603) was declaratory only of the pre-existing custom of a triennial visitation, and that therefore this rule remains in force as custom. But it is clear that in practice the bishops were rarely ever able to attain this degree of frequency, though many may have attempted to do so as far as was practical, and it may be that this practice of less frequent visitations should more properly be regarded as the custom.

The customary obligation as to frequency, however, will not have been affected by the decline in the regularity of episcopal visitations in more recent years. The non-observance of a custom, if reasonable and deliberately undertaken in opposition to a legal obligation, may have the effect of creating a contrary custom,<sup>221</sup> but such a contrary custom, even if negative in nature, must be based on more than mere non-usage.<sup>222</sup> This was the precise point which underlay Grosseteste's assertion that his right to visit the Dean and Chapter of Lincoln had not been lost because of a long period of non-user.<sup>223</sup> The likelihood is that in most dioceses, it will be impossible to show any consistent custom or practice as to frequency sufficient to abrogate the original customary obligation. It may be, therefore, that we have to go back to the "temporibus oportunis" of the Legatine Council of London, 1237.<sup>224</sup> In practical terms, this probably means a primary visitation, and perhaps one or two further visitations in an episcopate.

If it is considered too daunting a task to carry out an effective visitation of a whole diocese or province at any one time, it should be remembered that it is perfectly in order for a bishop to visit his diocese, or an archbishop his province, a part at a time,<sup>225</sup> and he may always avail himself of the assistance of his official or commissaries.<sup>226</sup>

217. *Reg. Bronescombe, Quivil and Bytton* (ed. Hingeston-Randolph, Exeter & London, 1889), pp. 294-302; *Reg. Stapeldon* (ed. Hingeston-Randolph, Exeter & London, 1892), pp. 547-560; *Reg. Grandisson*, III, 1524-1532; *Reg. Stafford* (ed. Hingeston-Randolph, Exeter & London, 1886), pp. 476-479.

218. Cardinal Pole in the Legatine Council of 1555: Wilkins, *Concilia*, IV, 126.

219. Frere, *Visit. Articles*, gen. index of docts., xxvi, p. 156.

220. De Eccles. et Min. Ejus, c. 12 (ed. Cardwell, Oxford, 1850, p. 105).

221. *Quaere* whether even this is possible at the present day: see R. Bursell, "What is the Place of Custom in English Canon Law?", (1989) 1 *Eccl. L.J.* (4), p. 12 at pp. 23-26.

222. Bursell, *op. cit.*, p. 23.

223. *Epistolae*, p. 127, p. 421.

224. C. 22 (Powicke & Cheney, *Councils*, p. 255).

225. *Decretum Grat.*, C. 10, q. 1, c. 10; *Sextus*, 3, 20, 1.

226. See notes 56-58 above.



An archdeacon must hold yearly visitations within his archdeaconry, unless inhibited<sup>227</sup> by a superior ordinary.<sup>228</sup> Originally, as the bishop's deputy, the archdeacon was to visit triennially if the bishop did not visit,<sup>229</sup> and after the archdeacon had assumed the parochial visitation as ordinary, it would seem that this canon was interpreted as still binding the archdeacon to a visitation at least once every three years. This was a minimum requirement, and did not preclude the archdeacon from holding a visitation every year if he wished, even though there might be no particular reason for doing so; indeed he might visit more frequently than once a year, but only if there was a particular weighty matter which required his attention.<sup>230</sup> It would appear that by the thirteenth century the archdeacons' visitation in this country had been established as an annual event.<sup>231</sup>

Despite the canonical restriction to an annual visitation except for good cause, the practice grew up in some archdeaconries of holding two visitations each year, one at Easter and one at Michaelmas.<sup>232</sup> The origins of this practice are obscure, but there is no reference to a second visitation in Lyndwood<sup>233</sup> which suggests that it was not known in the early fifteenth century. Most likely it arose sometime around the period of the Reformation.<sup>234</sup> The custom of a twice-yearly visitation in some areas was recognised by canon 116 of the Canons Ecclesiastical (1603). The Michaelmas visitation was largely held to ensure that the orders made at the Easter visitation had been obeyed and any defects found remedied.<sup>235</sup> This was always the lesser visitation, and with the introduction of the postal service in England in the mid-nineteenth century, churchwardens were permitted to reply by post and were excused a personal attendance.<sup>236</sup> Thus, there ceased to be a need for a second visitation, and in most archdeaconries the Michaelmas visitation has fallen into desuetude.

The Canons of the Church of England, C 22, para. 5, states the archdeacon's visitation to be an annual obligation. Canon G 5, para. 1, recognises the right to visit at times "limited by law or custom." A second visitation of a church in the one year may therefore be possible only if a long established uninterrupted custom to this effect can properly be shown to be in existence in the archdeaconry;<sup>237</sup> in the absence of such a custom it is not open to an archdeacon to initiate such a practice.

In addition to the regular visitation undertaken by an ordinary of the parishes and churches of his territory, he may make a special or extraordinary visitation to inquire into a particular matter which has come to his attention.<sup>238</sup> He may do this either in his own person or by means of an official or commissary. Such a special visitation may be in addition to his regular visitation.

227. See below.

228. Canons of the Church of England, C 22, para. 5; 14 Halsbury's Laws of England (4th Edn.) para. 500.

229. *Extra*, 1, 23, 1.

230. *Extra*, 1, 23, 6; Lyndwood, lib. i, tit. 10, c. 1, gl. ad verb. *visitatione*, p. 49.

231. Customs of the diocese of Salisbury, 1228 X 1256?, no. 11 (Powicke & Cheney, *Councils*, pp. 513-514); Statutes of the diocese of Norwich, 1240 X 1266? no. 81 (Powicke & Cheney, *Councils*, pp. 361-362). See also the Synodal Statutes of Bishop Fulk Basset of London, 1245 X 1259, no. 77 (Powicke & Cheney, *Councils*, p. 649).

232. See e.g. *Shephard v Payne* (1862), 12 C. B. (N.S.), 414 at 418-428.

233. Indeed, the contrary is asserted, *supra*.

234. There is a reference to a second visitation in the *Reformatio Legum Ecclesiasticarum*, de Eccles. et Min. Ejus, c. 6 (ed. Cardwell, p. 101).

235. *Shephard v Payne*, *supra*, at 417.

236. *Ibid*.

237. See R. Bursell, "What is the place of Custom in English Canon Law", (1989) 1 *Eccl L.J.* (4), at pp. 22, 25-26.

238. *Extra*, 1, 23, 6; *Phillpotts v Boyd* (1875), L.R. 6 P.C. 435.

A visitation conducted by an ecclesiastical superior has the effect of inhibiting all inferior jurisdictions for the period of the visitation, or until relaxed.<sup>239</sup> The archdeacon's visitation may therefore be inhibited in any year that the bishop visits his diocese.<sup>240</sup> It should be noted, however, that only an inferior *jurisdiction* is inhibited, and an inhibition during a visitation cannot of itself have the effect of closing a church or suspending the performance of divine worship.

## THE FORMALITIES OF VISITATION

### The Citation

It must not be forgotten that the visitation is a court in which the visitor exercises a jurisdiction by virtue of powers conferred on him by the ecclesiastical law. The proceedings of a visitation are therefore attended with certain formalities which should be observed.

A citation is sent out some time before the visitation is due to take place to require those liable to be visited to attend at the time and place specified. The clergy and the churchwardens<sup>241</sup> should receive such a citation. Licensed clergy should also be cited individually. At least in theory, any person cited who does not attend is liable to ecclesiastical censure for their contumacy,<sup>242</sup> and in the case of a clergyman, he will also have committed the offence of neglect of his clerical duties.<sup>243</sup> In so far that lay officers of the church other than churchwardens may be visited, they too may be cited to attend, though the present practice appears to be that if the visitor so wishes, they receive an invitation to be present.<sup>244</sup> Invitations may also be extended to others, such as members of the parochial church council, chairpersons of deanery synods, etc.

The visitation as a court comes within that general principle applicable to all courts of law whereby persons required to attend may not be detained on the pretext of any civil suit so as to hinder the administration of justice. Accordingly, all persons bound to attend a visitation, having been duly cited, are privileged from arrest in a civil action *eundo, redeundo et morando*.<sup>245</sup>

### Articles of Inquiry

The use of articles of inquiry in the visitation is well-established. A very full set of articles was produced for diocesan use by Hincmar, archbishop of Rheims, A.D. 845-882, which comprised ninety five questions concerning church ornaments, buildings, lands, the lives of the clergy, etc.<sup>246</sup> In England the earliest of such articles of inquiry appears to have been associated with Grosseteste's

239. *Lunne v Dodson* (1661), 3 Salk. 201, approved *R. v Sowter*, [1901] 1 K.B. 396, CA; Gibson, *Codex*, II, 958; Phillimore, *Eccl. Law*, II, 1050; Canons of the Church of England, G 5, para. 2.

240. *R. v Sowter*, *supra*; approved *R. v Sarum*, [1916] 1 K.B. 466.

241. *Anon.* (n.d.), Noy, 123. Sidesmen may also be cited.

242. *Clayton v Archbishop of Dublin* (1703), Appeals to the Delegates, no. 116, Brit. Parit. Papers, 1867-1868, LVII, p. 161; *Bishop of Kildare v Archbishop of Dublin* (1724), 2 Bro. Parl. Cas. 179; *Harrison v Archbishop of Dublin* (1713), 2 Bro. Parl. Cas. 199; *McGeath v Geraghty* (1866), 15 W.R. 127; Phillimore, *Eccl. Law*, II, 1050-1051. It is possible that this is not caught by the Ecclesiastical Jurisdiction Measure 1963 (No. 1) (ss. 14, 69), for the punishment of a contempt of the visitation court is not a proceeding for the punishment of an ecclesiastical offence but the means possessed by any court of law to enforce its own orders and authority, and therefore is not a proceeding instituted in an ecclesiastical court: Coleridge C.J. in *Martin v Mackonochie* (1879), 4 Q.B.D. 697 at 790-793, CA; Whiteside C.J. in *McGeath v Geraghty*, *supra* (with ref. to *Dean of York's Case* (1841), 2 Q.B.1.)

243. *Clewer v Pullen* (1684), Rothery's Precedents, No. 79, p. 39; 14 Halsbury's Laws of England (4th Edn.) para. 1357.

244. i.e. there is no element of compulsion.

245. *McGeath v Geraghty*, *supra*; *Blane v Geraghty* (1866), 15 W.R. 133.

246. Migne, *Patrolog. Lat.*, CXXXII, col. 187, *et seq.*

visitations,<sup>247</sup> and shortly afterwards the Burton Annalist recorded one set for the diocese of Lichfield<sup>248</sup> and another said to have been for general episcopal use.<sup>249</sup> Thereafter articles of inquiry became a regular feature of visitations.<sup>250</sup>

Articles of inquiry were used as the basis of the examination of the visitands which took place in the course of the visitation itself. The *testes synodales* were sworn<sup>251</sup> and examined orally and in private on the articles, and their answers recorded in the *comperta et detecta* register of the visitation.<sup>252</sup> This form of inquiry persisted even after the body of representative parishioners was replaced by the churchwardens.

Such a manner of proceeding must have eventually proved unsatisfactory, especially when the information asked for was of a more detailed nature, for the churchwardens were not in a position to answer the articles on the spot. Accordingly canon 119 of the Canons Ecclesiastical (1603) relieved the churchwardens of having to set down their presentments in the course of the visitation itself, and instead books of articles were to be drawn up in advance so that their presentments could be framed at home “both advisedly and truly”. Today, articles of inquiry are usually given as a printed form to be completed by the churchwardens which is sent out several weeks before the actual visitation,<sup>253</sup> often with the initial citation. Returns may be made to the visitor either at the visitation or sometime prior to it, the latter procedure having the advantage that by the time of the visitation the visitor is already acquainted with the situation in each parish.

Originally the articles of inquiry were addressed only to the *testes synodales* and later to the churchwardens.<sup>254</sup> It is evident, however, that in certain respects the clergy are in a better position to give the visitor detailed information about each parish, and articles of inquiry may also be sent to the clergy to deal with these points.<sup>255</sup> It may be that for the future a wider distribution, e.g. to the parochial church council, might be justified. Just to strike one note of caution. The churchwardens must be free to make their presentments without interference or even vetting by the incumbent, for the churchwardens may wish to bring to the attention of the visitor matters relating to their clergy, which may, for example, be the first intimation of a serious breakdown of the pastoral relationship between the incumbent and his parishioners.<sup>256</sup>

247. Wilkins, *Concilia*, I, 627, there attrib. to Hugh de Wells, but more likely derived from Grosseteste's statutes: Cheney, *Synodalia*, pp. 122-124.

248. *Ann. Mon.*, I, 296-298.

249. *Ann. Mon.*, I, 307-310.

250. e.g. *Reg. Giffard (York)* (ed. Wm. Brown, Surtees Soc., 109, 1904), p. 302; *Reg. Wickwane* (ed. Wm. Brown, Surtees Soc., 114, 1907), pp. 116-118; *Memoriale sive registrum Henrici Prioris Monasterii Cantuariensis*, “Articuli super quibus inquirendum est in visitationibus prelatorum”, f. 61 (B.L. MS. Cotton, Galba E IV); *Reg. Grandisson*, II, 858-860; *Reg. Courteney*, f. 90 (Churchill, *Cant. Admin.*, II, 142-143).

251. Gibson, *Codex*, II, 960.

252. Gibson, *Codex*, II, 963.

253. See Canons of the Church of England, G 6, paras. 1 & 2.

254. See Canons Ecclesiastical (1603), c. 119.

255. Dr. Kathleen Major informed the author that Bishop Wake introduced articles to the clergy as well as the churchwardens in the diocese of Lincoln, and that this marked an important change in the use made by the bishop of his visitation. This is now the practice in a number of dioceses. Canons of the Church of England, G 6, para. 1 appears to require this, but may be based on a misunderstanding of the role of the minister in making presentments as set out in Canons Ecclesiastical (1603), c. 113.

256. Interestingly (and rather surprisingly) the replies of the archdeacons to the questionnaire sent out by the Working Party on Visitations indicate that even now on rare occasions the visitation has furnished the first indication of a problem in a parish.

## CONCLUSION

Visitors should still have a proper concern for the care of church property and other matters of practical utility, but they may also want to find out more about the spiritual state of the parishes in their care, and the pastoral uses of the visitation have been increasingly recognised. Now the visitation affords an excellent opportunity for representatives of the parishes to meet their bishop or archdeacon directly when matters of celebration or concern might be shared by all the parties present. It is also a chance for the ordinary publicly to review the past year, to anticipate forthcoming difficulties, and to express his hopes for the future.

There is, however, a considerable body of law and practice which exists behind the simplicity of the modern ecclesiastical visitation. Not all of it is perhaps relevant today, and the aims and form of the modern visitation may require rethinking. Certainly there are some interesting questions to be addressed concerning the future role of the visitor in the Church of England.