WHAT IS A PECULIAR?

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1. INTRODUCTION

A peculiar or exempt jurisdiction is, broadly speaking, one which does not fit into the general scheme of jurisdiction within the Church. It is "exempt" from the "normal" structures, its jurisdiction is "peculiar" to itself.[1] It is important at this stage to note that peculiars are *jurisdictions,* not places, still less buildings. A jurisdiction can be personal, territorial, or a mixture of the two. However, since the reformation, most jurisdictions in the Church of England have been largely territorial, hence the convention of referring to them as places.

Any examination of the nature of peculiars must therefore start with a (necessarily brief) look at the general scheme of jurisdiction in the Church of England.[2] The jurisdiction of the Church of England covers the whole of the Realm of England.[3] This jurisdiction is exercised, in the first place, by diocesan bishops. A bishop's jurisdiction is defined territorially, and that area over which he exercises jurisdiction is known as his diocese. In law, this jurisdiction, or power of governance which he exercises over his diocese is called Ordinary jurisdiction because it is attached to his office by virtue of the law itself. Therefore the bishop is known as "the Ordinary" of the diocese.

The original division of the Diocese was into parishes, and for the sake of administrative convenience, parishes became grouped into deaneries and, more importantly, these were grouped together to form archdeaconries. Archdeacons, senior among the deacons (the Church's original administrative officers) exercised (and still exercise),[4] jurisdiction on the bishop's behalf throughout a wide area of his diocese.

A diocese was, however, a constituent part of the Universal Church. Dioceses were grouped together into provinces, each with an archbishop who exercised metropolitan jurisdiction over his whole province.[5] Provincial synods were held to legislate for that area. There were sometimes national structures, but they tended to be weaker. Finally, there was the Papacy, which exercised jurisdiction over the whole of Christendom.

At the reformation, the jurisdiction of the Pope was shared between the King and the Archbishop of Canterbury. The Archbishop of Canterbury exercised the powers which the Pope usually exercised through his legate. These "legatine powers" are still exercised under the Ecclesiastical Licences Act 1533 (25 Hen VIII cap. 21).[6] The rest of those powers vested in the Crown by the Acts

1. The origins of the word are proprietary, from the Latin *peculiam,* private property.
2. See also *The Ecclesiastical Courts* 1947 (Report of the Archbishop of Canterbury's Commission on Ecclesiastical Courts) pp.7-8, where peculiars are referred to as "ecclesiastical San Marinos".
3. England does not include Wales. The border between the two is defined for the purposes of this article by section 9 of the Welsh Church Act 1914.
4. Although today archdeacons are, without exception, also in priest's orders: Ecclesiastical Commissioners Act 1840, s.27.
5. For the subject of visitation generally, see Peter M. Smith, *"Points of Law and Practice Concerning Ecclesiastical Visitation",* 2 Ecc. L.J. 189.
6. The most common example of the exercise of this power today is the granting of "special licences" for marriage.

of Supremacy.[7] By virtue of those Acts the Crown replaced the Pope as Universal Ordinary in England.

2. THE ORIGINS OF PECULIARS

A detailed study of the origins of peculiar jurisdictions is beyond the scope of this article, but it may be useful to make a number of general points. The height of the development of peculiar jurisdictions coincides with mediaeval canonical theories that increasingly separated the Church's jurisdictional and sacramental roles. Jurisdiction was often exercised in dioceses on a routine basis by deacons, priests and even by laymen rather than the Bishop.

Many institutions which gained peculiar status (whether at this time or earlier) had a much longer history as institutions. Perhaps the earliest of these had their origins as Anglo-Saxon minsters – secular colleges of priests, often with royal connections. The rise of the monasteries gave rise to a large number of peculiars as the various orders developed their canonical exemption[8] (often in the face of opposition from local bishops). Other peculiars developed because of various royal, episcopal, or powerful temporal connections. In many cases there was a mixture of several of the above.[9] The actual exemption enjoyed by each peculiar sometimes depended on its origins, but in other cases depended more on the outcome of a continued power struggle within the Church.[10] As a result, no two peculiar jurisdictions are exactly alike, as each one relies on its own history. Consequently, generalisations about peculiars (such as those contained in this article!) are frequently unhelpful, and must be treated with caution.

3. THE CLASSIFICATION OF PECULIARS

Peculiars can be classified in a number of different ways, which are useful for different purposes. Classification by origin, which at first sight might seem the most obvious, although useful for the historian, turns out not to be very useful for the lawyer. For the reasons given above, peculiars sharing the same origins do not necessarily tend to exhibit the same characteristics.

A more promising scheme for our purposes is classification by jurisdiction, but this also has its problems. Firstly, just as every peculiar is different, so is its jurisdiction, and so this scheme can only be *broadly* correct. Secondly, there

7. 26 Hen VIII cap. 1, rep. by 2 Phil & Mar cap. 8, now 1 Eliz I cap. 1 s.8. See also Ecclesiastical Licences Act 1533 (25 Hen VIII cap. 21) ss. 14 & 17.
8. See generally Dom David Knowles, *The Monastic Order in England,* especially chapter XXXIII - "The Origins and Development of Exemption in England."
9. For example, Waltham, Holy Cross was a secular college and royal free chapel founded before the conquest, which was subsequently refounded by Henry II as an Augustinian Priory in 1177, becoming an Abbey in 1185, and mitred shortly after that. However, its status seems to have owed much to its previous life as a royal free chapel. See J. H. Denton, *English Royal Free Chapels 1100-1300, A Constitutional Study* (Manchester University Press, 1970) pp.66-69.
10. Sometimes a particular order can be regarded as a single, large, peculiar jurisdiction, especially if exemption were gained from the Pope on that basis, e.g. the Cistercian Order. In other cases (e.g. the Benedictine Order) it was more common for individual houses to petition for, and gain, different levels of canonical exemption. Each independent house (and its dependencies) must therefore be regarded as a separate peculiar jurisdiction. For examples of litigation over exemption, see Selden Society vols. 106 & 107, *English Lawsuits from William I to Richard I* pp.268-277 & 310-323 (Battle Abbey); and pp. 24-29 (Abbey of Bury St. Edmunds, which won its case after producing a charter from King Cnut of 1028).

are two methods of classification. One is by the status of the person who has the peculiar jurisdiction (i.e. who is the Ordinary?) and the other is by where the peculiar fits back into the "normal" structure (i.e. who is the ecclesiastical visitor of the peculiar?).[11] It seems to me that this second method is better, as it tells us more about the jurisdiction than whether its Ordinary happens to be a bishop, a dean, or a layman.

(a) Extra-Parochial Places

Extra-Parochial places are sometimes (though not often) referred to as peculiars. They are units which equate to a parish, but are not, such as certain colleges and hospitals. They are not really peculiars in the sense that there is no difference in jurisdiction (the bishop remains the Ordinary) but the law relating to parishes is modified slightly.

(b) Episcopal Peculiars

This type of peculiar can be further divided into two categories. First are those where the bishop remains the Ordinary. The simplest of these peculiars is where the customary jurisdiction of the Archdeacon is ousted. This type is simple – the bishop, whether by custom or otherwise, exercises his jurisdiction in person, rather than by his archdeacon. The bishop may also be Ordinary (as opposed to visitor) of a peculiar surrounded by another diocese. Depending on the provisions made to administer it, such a peculiar can appear very much like a detached part of the bishop's own diocese.[12]

The second type of episcopal peculiar is that where the Ordinary is visitable by a diocesan bishop in his capacity as such. Once more, whether physically detached or not, such peculiars are effectively part of the diocese of the visiting bishop, but he is visitor and not immediate Ordinary. Cathedrals are the most obvious and common examples of this type of peculiar (the capitular body being the Ordinary). The bishop's consistory court (which exercises his immediate jurisdiction) has no jurisdiction over this type of peculiar.

(c) Extra-Diocesan, or Archiepiscopal Peculiars

Now things start to get more interesting. This type of peculiar forms no part of any diocese although it may be completely surrounded by one.[13] Its Ordinary is equivalent to a diocesan bishop, and it is like a mini-diocese in its own right. This type of peculiar is known as an extra-diocesan, or archiepiscopal peculiar, since it forms part of the province, and is therefore visitable by the metropolitan.

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11. The 1832 Parliamentary Report of the Ecclesiastical Commissioners on the Ecclesiastical Courts confuses these two in its classification of peculiars and their courts (Appendix D).
12. Although if he holds the jurisdiction in a capacity other than diocesan, it should really be classified according to its visitor, whether episcopal, archiepiscopal, or royal. The question here is whether the bishop is visitable by his metropolitan in respect of the peculiar.
13. Drawing the line between the exemption a peculiar can possess whilst remaining part of the diocese, and that which puts it outside the diocese is not easy. To be extra-diocesan, the peculiar must be free from all jurisdiction, episcopal customs (payments customarily due to the bishop) and other rights of the bishop, such as canonical obedience. It seems that one of the last rights which a bishop lost was the right to supply the Sacred Chrism and other oils necessary for baptism and confirmation etc. Denton, op. cit., pp. 43-44. For the example of a bull granting full exemption see *Omne Datum Optimum* given to the Templars in 1173 by Pope Alexander III (Manuscript translation by Robert Milburn in Inner Temple Library).

(d) Extra-Provincial, or Royal Peculiars

Finally, we come to the royal peculiars. It is the word "royal" which seems to create confusion about the nature of this type of peculiar. Although many royal peculiars are royal foundations, or have some personal link with the Queen, it is not that which gives them their status as royal peculiars. Royal peculiars are so called because they can only be visited by the Crown, to the exclusion of any diocesan bishop or metropolitan.[14] These peculiars are therefore not only extra-diocesan, but also outside the jurisdiction, or province, of the metropolitan. They are therefore like mini-provinces in their own right,[15] with the Ordinary being in an equivalent position to the archbishop in his province.

Any peculiar deriving its status from a fully exempt religious house is probably a royal peculiar.

(e) Applying the Classifications

As I have stated, each of the hundreds of peculiars was slightly different. Many were large institutions, with influence in a number of places. For example, a secular college of canons may have also been a parish church, and have had the right of presentation in a number of other churches (which may not have been physically anywhere near it). Questions of the peculiar status of each of the following:

(a) The college of canons;
(b) the parish; and
(c) each of its other parishes;

were all separate and distinct.

If such a college exercised Ordinary jurisdiction over all its parishes, they would probably be known collectively as a deanery, and such a college would have been likely to have had its own courts, much like a diocese.

On the other hand, had the jurisdiction been simply over the college itself, there would almost certainly have been no formal court structure resembling that of a diocese.

In our classification scheme, such a "compound peculiar" would be classified according to who was able to visit the Ordinary. However, things were not always that simple. In a number of peculiars,[16] the Ordinary was more exempt with respect to what one would consider the subordinate elements of the jurisdiction (in our example the parishes) than with respect to what one would consider the superior element of the jurisdiction (in our example the college).

4. THE CREATION OF PECULIARS

Although many peculiars effectively came about as *de jure* recognition of *de facto* situations, it is useful to ask what, in law, can bring a peculiar jurisdiction into existence.

14. Although, of course, the Archbishop of Canterbury's *Legatine Powers* are exercisable over royal peculiars, in the same way as they are over the Province of York.
15. *Johnson v Ley* Holt K.B. 656; *Smith v Smith & Others* (1831) 3 Hag Eccl 757; *Anonymous* 6 Mod. 308; *Crowley v Crowley* (1744) 3 Hag Eccl 758n.
16. Notably those of cathedral chapters, deans and prebends.

(a) Creation by Express Grant

The majority of peculiars claim to have been created, in some way or other, by express grant of the competent ecclesiastical authority. Normally, to affect the jurisdiction of the diocesan bishop, the competent authority would have been the Pope, and such grants were generally by bull.[17] Today, the Crown would have the power to make such grants,[18] and presumably such a power would be exercisable by letters patent under the Great Seal.

(b) Creation by Operation of Law

There were also some (numerically) smaller classes of peculiar to which the law automatically attributed some form of exemption by virtue of a characteristic of that entity.[19] That there were some peculiars in this category is beyond doubt, but precisely which characteristics led to which types of exemption is far from clear. Listed below are both those categories which certainly exist, and those which may exist.

(1) Cathedral Churches

The creation of a cathedral church automatically creates a peculiar jurisdiction, vested in the capitular body of the cathedral, which is mixed, i.e. both territorial (the cathedral precinct) and personal (the chapter and cathedral clergy). The jurisdiction is exempt from the immediate, but not the visitorial, jurisdiction of the diocesan bishop. Creation of cathedrals can also be effected by letters patent, but today it is more usual to do so by Order-in-Council under an Act of Parliament or Measure.[20]

(2) The Royal Household and Royal Residences

The Royal Household could not be subject to the local bishop in the same way as other subjects, and therefore came to be under the jurisdiction of the Chapel Royal, which was exempt from all jurisdiction except that of the Crown. Perhaps originally as part of this exemption, royal residences,[21] wherever situated, are (so long as they remain royal residences) royal peculiars.[22] This jurisdiction is largely personal, with the royal residences being its territorial manifestation. Any new royal residence will carry this status.

(3) Episcopal Residences

It also seems that if a bishop has a residence outside his diocese, it is exempt from the jurisdiction of the local bishop (as long as it remains an episcopal residence) and effectively becomes a detached part of the residing bishop's diocese.[23] Creation of new peculiars in this category is unlikely, because, apart from the Archbishop of Canterbury at Lambeth Palace, most bishops now tend to reside in their dioceses.

17. Most peculiars having pre-reformation origins. After the reformation such powers passed to the Crown. Some peculiars were created, e.g. Corfe Castle, created by Elizabeth I under 31 Hen VIII cap. 13 s.23.
18. In the same way as the creation of a diocese. See for example the letters patent creating the see of Gloucester in 1541: Rymer, *Foedera,* XIV 724.
19. The corollary of this means that such a peculiar disappears (at least in theory) as soon as that characteristic ceases to exist.
20. E.g. Order-in-Council creating the See of Newcastle, 23 May 1882, *London Gazette*, p.2393, under the Bishoprics Act 1878.
21. As opposed to royal palaces which are not royal residences: see *Combe v De La Bere* (1882) 22 Ch.D. 316 at 326 *per* Chitty J. at first instance.
22. As are "the churches or chapels founded therein or annexed thereto" if the Ecclesiastical Commissioners' Order-in-Council discussed later are to be believed. How far such foundations do rely on the exemption afforded by royal residences, and what precisely "annexed to" means, is unclear.
23. e.g. Lambeth and Addington Palaces, and other London palaces of bishops, such as the Bishop of Ely's Palace in Holborn.

(4) Universities and Colleges

Both pre-reformation universities in England are peculiars, and most of the colleges of both (whether pre- or post-reformation) claim to be peculiars. The two universities appear to base their claim upon express grant of exemption.[24] For most of the colleges, however, such an approach would be difficult (especially for post-reformation colleges) and it may be that their claim rests upon an express but *general* grant to all colleges or a class of colleges, or an exemption implied by law. This would seem unlikely, but appears to be the only way in which most of these colleges' claims could be substantiated. If it is the case, the question arises as to which quality of a college gives rise to such exemption, and when (foundation, incorporation, status in the university, etc.). Also, if this is the case, the further question arises as to the status of other, similar institutions elsewhere, and of their creation in the future.

5 THE ABOLITION OF MOST PECULIAR JURISDICTIONS.

Most peculiar jurisdictions were abolished by Orders-in-Council made between 1836 and 1852 under the Ecclesiastical Commissioners Acts 1836 and 1850. These Orders covered most of the country, and the operative phrase from section 10 of the 1836 Act is:

> ". . . and in particular that it shall be competent to the said commissioners to propose in any such scheme that all parishes, churches or chapelries which are locally situate in any diocese, but subject to any peculiar jurisdiction other than the bishop of the diocese in which the same are locally situate, shall be only subject to the jurisdiction of the bishop of the diocese within which such parishes, churches, or chapelries are locally situate."

The formula used in most of the Orders was similar,[25] and a typical example is given here:

> ". . . on and from the day aforesaid, all parishes and places locally situate within the limits of the said diocese of Peterborough, and of the several archdeaconries of the same respectively, and all churches and chapels, and the whole clergy, and others, your Majesty's subjects,[26] locally situate within the limits of such parishes and places respectively, shall, notwithstanding any peculiar or other ecclesiastical jurisdiction or exemption from jurisdiction, which any of such parishes, places, churches, chapels, clergy or others, may possess or be subject to, or claim to possess or be subject to, be respectively under and subject only to the jurisdiction and authority of the Bishop of Peterborough, and of the respective archdeacons of the several archdeaconries of the said diocese of Peterborough, within the limits of which they shall respectively be so locally situate, except the cathedral church of Peterborough, which shall remain and be subject to the jurisdiction and visitation to which the same is now by law subject, and to none other.[27]

24. This would otherwise raise some interesting questions about the legal nature of a university.
25. Though not exactly the same. In one or two cases, e.g. Durham (Order-in-Council dated 27 August 1842, *London Gazette,* p. 722) and Manchester (Order-in-Council dated 10 August, 1847, *London Gazette,* p. 3157) the abolition is over archdeaconries, rather than dioceses.
26. The wording at this point goes further than the Act in that it tries to introduce a personal element into the jurisdiction to be abolished.
27. Order-in-Council dated 17 July 1851 *London Gazette, p. 1970.*

Peculiars which exist today therefore fall into three categories: (a) those peculiars which were expressly exempted from the operation of the Orders themselves; (b) those which may have escaped abolition for a number of reasons; and (c) those peculiars created since the Orders were made.

(a) Peculiars Expressly Exempt

The peculiars expressly unaffected by the Orders include the cathedral churches in most dioceses,[28] royal residences in some dioceses,[29] the Universities of Cambridge and Oxford and the Colleges and Halls thereof.[30]

(b) Peculiars Escapting Abolition

There are a number of problems associated with the Orders, brought about, it would seem, by the Commissioners' lack of understanding of the nature of the beast they were trying to abolish.

The Orders proceeded territorially, usually by diocese[31] (the Act itself is phrased in terms of territory). First of all, that meant the Orders were incapable of abolishing any peculiars which had no territorial element, e.g. the Chapel Royal.[32] Secondly, the Orders do not appear to have covered the whole Country.[33]

The biggest problem, however, concerns the wording of the Act and the Orders-in-Council. Both use the phrase "locally situate within [the diocese]" or something similar. This, of course, misses the whole point that most peculiars are not within a diocese, and, taken literally, would mean that the Orders were ineffective against archiepiscopal and royal peculiars.[34] Such an interpretation, however, would frustrate the intention of the Orders and render them largely pointless. In my view it is therefore justifiable to give the Orders a benevolent intrepretation,[35] treating the phrase as meaning "surrounded by [the diocese]".

28. With the exceptions of the cathedral churches of York and Ripon, both of which appear to have been abolished as peculiar jurisdictions by Order-in-Council dated 1 February 1838 *(London Gazette,* p. 311).
29. Exempted from the Order-in-Council dated 8 August 1845 *(London Gazette,* p. 2541) covering the dioceses of Canterbury, London, Winchester, Rochester, Chichester and Lincoln.
30. It is to be noted that exemption from an Order-in-Council did not confirm peculiar status, but simply left the *status quo,* i.e. the question still remains (especially with regard to Oxbridge Colleges) as to the status of each such institution at the time of the relevant Order.
31. See *supra* note 25 and also the following Orders-in-Council: 22 December 1836 *(London Gazette,* p. 161) – Peculiar of Hexhamshire; 8 December 1840 and 4 June 1841 *(London Gazette,* pp. 29 & 1466) – Peculiar of Southwell and the County of Nottingham; 19 December 1846 *(London Gazette,* p. 5961) – Diocese of Hereford and the Peculiar Deanery of Bridgenorth.
32. The Chapel Royal is an institution, not a place. In its zenith it has been described as "a perambulatory bishopric in constant and personal attendance on the King and his entourage": W. Ullmann (ed.) *Liber Regie Capelle,* (Henry Bradshaw Society, xcii, 1959) p.vii. Although some Orders appeared to try to extend themselves to personal jurisdictions, the Act gave no warrant for this. See *supra* note 26.
33. I have been unable to find any Order-in-Council covering the diocese of Carlisle, for example.
34. For a fuller discussion of the effect of the Orders-in-Council on this type of peculiar (with special reference to the Temple) see Lord Silsoe, Q.C. *The Peculiarities of the Temple,* (Estates Gazette Press, 1972) chapter 8.
35. Although the law is not lightly construed to take away established jurisdiction by anything but express words: *per* Dr. Tristram in *Case of St Michael Bassishaw* [1893] p. 233 at p. 240.

That copes with a large number of peculiars, but there are still some which were, at the time of the Orders, extra-diocesan, and not surrounded by a diocese, i.e. they were between two or more dioceses, or they were between a diocese and the coast. That there was a problem with these types of peculiar was evident even at the time of the Orders. At least three Orders-in-Council were made concerning such peculiars which the Commissioners thought they had already abolished.[36] Three of the larger such peculiars were specifically abolished by Order,[37] and one was abolished by Act of Parliament.[38] Ironically, it appears that those which survive today are those peculiars which accepted their purported abolition at the time, whilst those that created a fuss at the time were subsequently abolished by other means. As a result of the survival of some of these peculiars, a further question arises as to the jurisdiction if they are subsequently re-organised or amalgamated with non-peculiar parishes.[39]

(c) Peculiars Subsequently Created

The majority of peculiar jurisdictions created since the Orders-in-Council are the cathedral churches of dioceses erected subsequently.[40] Others are any new royal residences, and possibly episcopal residences. The question also arises of whether any "instrinsic" peculiars abolished by Order revived immediately after the Order by virtue of the same status that would have caused it to be a peculiar had it been newly created.[41]

6 PROBLEMS CREATED BY THE EXISTENCE OF PECULIARS.

We do not know for certain how many peculiars are left, or what the status of each of them is. We do however know that there are some, and that their existence does create some problems. Such problems, however, can also be instructive of the nature of peculiars and of jurisdiction within the Church generally, and a selection of observations is given below.

(a) Problems created by Draftsmen

Many of the problems stem from the fact that draftsmen usually ignore their existence altogether. It has become the modern practice always to refer to a bishop as such, even when referring to him in his capacity as Ordinary. For peculiars this is a problem. How do you interpret the phrase "the Bishop of the

36. 8 December 1840 and 4 June 1841 *(London Gazette,* pp. 29 & 1466) – Peculiar of Southwell: 3 September 1844 *(London Gazette,* p. 3321) – Town of Bury St Edmunds; 23 December 1845 *(London Gazette,* p. 7355) – Certain parishes adjoining but not forming part of the Deanery of Rochester.
37. The Peculiar Deaneries of Hexhamshire, Southwell, and Bridgenorth, *supra* note 31.
38. The Deanery of St Buryan, a royal peculiar between the diocese of Exeter and the coast at the tip of Cornwall, was abolished by Act of Parliament in 1850 (13 & 14 Vict cap. 76). The Order covering the Diocese of Exeter was made on 11 February 1848 *(London Gazette,* p. 675).
39. For instance, St Dunstans-in-the-East appears to have escaped abolition and lasted until 1960,when it was amalgamated to form the Parish of All Hallows Berkingchirche-by-the-Tower with St Dunstans-in-the-East. (Scheme, *London Gazette* 8 March 1960, p. 1736.) Who has jurisdiction over the new Parish? Similarly, what happens if a peculiar moves? The Hospital of St Katharine moved to Regent's Park in 1825, but its precinct next to the Tower may have remained there.
40. Except possibly the Cathedral Church of Manchester, which, when created, was expressly made subject to the same jurisdiction as the Cathedral Church of Ripon, (which had been abolished as a peculiar in 1836); Order-in-Council dated 10 August 1847, *London Gazette* p. 3157.
41. For example, the cathedral churches of York and Ripon, and royal residences.

Diocese" in the context of an Extra-Diocesan peculiar which has neither bishop nor diocese? Such a phrase occurs in section 21 of the Marriage Act 1949.[42]

In practice, since this is an administrative provision, any Extra-Diocesan peculiar (not being a parish) is effectively prevented from being licensed for marriages, and means that all marriages must be by Special Licence of the Archbishop of Canterbury, and the registers must be borrowed from the church next door. Such churches are therefore treated for the purpose of marriage law in the same way as, say, a private house. Westminster Abbey and Temple Church, for example, are both in this position.

If there is an answer to this problem, it must surely be that the phrase "bishop of the diocese" should be construed, in extra-diocesan peculiars, to mean "the Ordinary" i.e. the person who discharges such functions. In practice, though, the Registrar-General appears (incorrectly) to construe the phrase as meaning "a bishop". St George's Chapel, Windsor, looking for a way round this problem, took the practical way out. They got the Bishop of Oxford (their neighbouring bishop) to sign the certificate, knowing that as long as the name had a cross in front of it, the Registrar-General was likely to hand over a set of Marriage Registers. He did so on 17 May 1963,[43] and St George's Chapel was registered for marriages on the strength on that certificate. But it remains a fact that the Bishop of Oxford is *not* their bishop any more than, say, the Bishop of Durham. Fortunately, though, the validity of marriages celebrated in the Chapel since that date is not in doubt unless one of the parties was aware of the intricacies of this area of the law[44] – most unlikely, but readers of this article beware!

(b) The Ecclesiastical Exemption

Listed Buildings are not subject to the usual secular listed building controls if they are "ecclesiastical buildings in ecclesiastical use".[45] The justification for this, in the Church of England at least, is that the faculty jurisdiction, which is at least as rigorous, is applied to such buildings. The theory falls down because not all buildings which fall into the "ecclesiastical exemption", as it is known, have effective control under the faculty jurisdiction.

The consecration[46] of a building or piece of land anywhere in England, has the effect of bringing it within the jurisdiction of the Ordinary.[47] What is often not grasped is the fact that this jurisdiction is independent of ownership, and

42. Section 21 of the Marriage Act 1949 provides that the bishop of the diocese may authorise the publication of banns and the solemnization of marriage by banns or licence in a church or chapel in an extra-parochial place. Contrast the phrase used in this section with that used in s.5(c) ". . . a licence of marriage . . . granted by an ecclesiastical authority having power to grant such a licence" whereby the common law right of Ordinaries, not being bishops, to grant "common licences" is continued.
43. Papers in Oxford County Record Office.
44. For such a marriage to be void, one of the parties must wilfully go ahead with the marriage whilst knowing that the chapel is a place other than a church or other building in which banns may be published: Marriage Act 1949, s.25(a).
45. Planning (Listed Buildings and Conservation Areas) Act 1990, s.60(1). (See also note 52).
46. Normally, only a bishop can consecrate validly. An Ordinary who is not in Holy Orders cannot consecrate land or buildings. From the earliest times such Ordinaries (if sufficiently exempt from the local bishop) have invited bishops of their choice to consecrate and ordain, e.g. the Patriarch of Jerusalem consecrated Temple Church to St Mary in 1185.
47. *In re St John's, Chelsea* [1962] 1 WLR 706, and see also Moore's *Introduction to English Canon Law* (3rd edn.) at p. 86. Whether or not consecration by anyone recognised under English law to be in episcopal orders has the same effect has never been the subject of a court decision, but if consecration derives from Order rather than Jurisdiction, as would seem to be the case, then consecration by any Bishop will have this legal effect."

equally applies to privately owned land, e.g. local authority cemeteries and private chapels.[48] The "faculty jurisdiction" in its widest sense therefore exists over any consecrated land or building.[49] With regard to listed buildings, the concern is when the person with that jurisdiction (the Ordinary) is the same person as the owner or occupier of the building within that jurisdiction. In such a case, there is effectively no control, as the occupier and the judge are one and the same person. Such is the case with consecrated buildings in many peculiars.

In 1990, the Care of Cathedrals Measure imposed a system of control on all cathedrals except Christ Church, Oxford, [50] thus leaving a smaller number of peculiars in this situation. The number of ecclesiastical buildings in such peculiars is small, but includes some of the finest buildings in the land.[51] This anomaly is really a fault of the legislation, dating back originally to 1913, for not making the test for exemption from secular control the same as that for inclusion into the diocesan faculty jurisdiction. For chapels not in a peculiar, therefore, much the same effect could be obtained by simply not consecrating the building concerned. The Secretary of State now has the power to restrict the ecclesiastical exemption, and has done so for denominations which do not have any system of internal control. For the time being, peculiars continue to enjoy the exemption, but the government's stated policy is to abolish the exemption of peculiars if they fail to come up with an effective system of control in the near future.[52]

(c) Local Government Units

Most local government was originally based on ecclesiastical units, and it is only over the last century that the two have become substantially separate. On the subject of peculiars, it is worth noting the position of the Temple which, by virtue of its fully exempt ecclesiastical status has remained a separate local government unit in London up to the present day. It is situated between the Cities of London and Westminster, and each of the two Honorable Societies of the Middle and Inner Temple carry out the local authority functions in respect of its own portion of the Temple.[53]

Another point of interest concerns Lambeth Palace. It is not clear whether Lambeth Palace escaped abolition in 1845 (although that was the express intention of the legislation).[54] However, if it does still exist, then it is in the unique

48. In practice the faculty jurisdiction is often not exercised in respect of local authority cemeteries: G. H. & G. L. Newsom, *Faculty Jurisdiction of the Church of England,* (2nd edn., 1993) p. 150, or private chapels: *In re Tonbridge Chapel* [1993] 1 WLR 1138 at 1141. However, it does exist, and will be exercised when necessary: *In re West Norwood Cemetery* [1994] 3 WLR 820 (jurisdiction exercised over a cemetery owned by a local authority). Other examples of this jurisdiction being exercised include: *In re Liet.-Col. Dixon* [1892] p. 386 (consecrated part of Kensal Green Cemetery, owned by a private company); *Norfolk County Council v Knights and Others and Caister-on-Sea Joint Burial Committee* [1958] (cemetery managed by a burial committee); *In re Coleford Cemetery* [1841] 1 WLR 1369 (cemetery owned by the (civil) parish council). See also *Sutton v Bowden* [1913] Ch 518 (private chapel owned by an unincorporated body); and the *Tonbridge School Chapel* case above.
49. The faculty jurisdiction also extends to unconsecrated curtilage of consecrated churches, and to certain buildings licensed for public worship. Faculty Jurisdiction Measure 1964 ss. 6 & 7 and Care of Churches Measure 1991, s.11(2).
50. Care of Cathedrals Measure 1990, section 20(1).
51. E.g. King's College Chapel, Cambridge, St George's Chapel, Windsor, and Westminster Abbey.
52. Planning (Listed Buildings and Conservation Areas) Act 1990 s.60(5) and The Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, S.I. 1994 No. 1771. Consecrated buildings within peculiar jurisdictions retain the exemption by virtue of being within the faculty jurisdiction of their respective Ordinaries, art. 4(a) (this was probably not intended by the draftsman). Unconsecrated ecclesiastical buildings in peculiar jurisdictions retain the exemption by virtue of Art. 6(1) & (2)(a), and unconsecrated ecclesiastical buildings in many pretenders to peculiar status retain the exemption by virtue of Art. 6(2)(b) & (c). Government policy on the ecclesiastical exemption is given in P.P.G. 15, dated 14 September 1994.
53. London Government Act 1963, ss.2 & 89(1).
54. Ecclesiastical Commissioners Act 1836, esp. preamble; Order-in-Council, *supra* note 29.

position of being the only place in the country outside any local government unit, even though it is surrounded by the London Borough of Lambeth.[55]

(d) Legislation – Royal Peculiars

With regard to royal peculiars, there is another complication. As I have outlined before, royal peculiars are, by definition, extra-provincial. The General Synod of the Church of England has legislative power to pass measures which affect the whole of the Church of England.[56] Often, however, it chooses to enact measures which apply only to the Provinces of Canterbury and York. For most purposes they are the same, but the latter excludes Royal Peculiars.

For instance, the Book of Common Prayer is for use throughout England, but the A.S.B. has only been authorised in the Provinces of Canterbury and York. A glance through volume 14 of Halsbury's *Statutes* will give many more examples.

(e) The Nature of Jurisdiction in the Church

If bishops are primarily supposed to be the ones exercising jurisdiction within the Church, then it leads us to ask either "how do peculiars fit into such a Church", or "what can a bishop do that no-one else can?" Certainly the character of some of the bodies exercising Ordinary jurisdiction in the Church of England is anomalous. Some lords of manors are Ordinaries, and that jurisdiction can presumably be bought and sold, whereas some bodies exercising jurisdiction, which used to have an Anglican clerical character (such as the governing bodies of some Oxbridge Colleges) are now bodies of laymen which do not necessarily consist of Christians, let alone members of the Church of England, yet this is not a bar to exercising that jurisdiction.

A full exploration of these points is beyond this article. It is worth noting, though, that the rather startling answer to the second of the questions above seems to be: only the consecration of bishops. There are historical examples of Ordinaries in priest's orders performing every other function we think of as "episcopal", including ordination to the diaconate and the priesthood.[57] Lay Ordinaries are obviously unable to do some of these things, but again, there are some interesting examples, perhaps the best being those of certain Mitred Abbesses, some of whom regularly gave absolution.

Turning though to the peculiars which exist in England today, they are all (to modern thinking) serious anomalies. Historically, peculiars which have survived for a long time have only done so through eternal vigilance. In today's climate, those peculiars which do exist, and wish to survive into the future, need more than ever to keep up this vigilance. They need to appreciate the nature of their jurisdiction, and to exercise it deliberately (and, if necessary, judicially). They should formally record acts of jurisdiction, and, at the same time, not allow

55. The London Borough of Lambeth was created under London Government Act 1963 by reference to the then existing metropolitan boroughs of Lambeth and Wandsworth: s.1(1) & sch. 1. These metropolitan boroughs had been created by the London Government Act 1899 by dividing up the administrative county of London: s.1 & sch.1. The administrative county of London was in turn created from the Metropolis by the Local Government Act 1888, s.40. The Metropolis was defined (s.100) as the parishes and places mentioned in schedules A, B & C to the Metropolis Management Act 1855 (18 & 19 Vic Cap. 120), a list of ecclesiastical units which does not include Lambeth Palace.

56. Synodical Government Measure 1969 s.1(2).

57. Three examples of Papal Bulls giving faculties to priests to ordain to the major orders of diaconate and priesthood are discussed in Charles Journet, *The Church of the World Incarnate* (Sheed & Ward, 1954) vol. I, p.113-115. See also M. J. Gerland, O.P., "Le ministre extraordinaire du sacrament de l'ordre" in *Revue Thomiste* 1931, pp. 874-885. One of the Bulls, issued by Boniface IX on 1 February 1400 was to the Augustinian Abbot of St Osyth in Essex, granting to him and his successors the faculty to raise his subjects to the diaconate and the priesthood.

others to purport to exercise jurisdiction over them which does not exist. If they do not do these things, they may wake up one day to find that their claim to be a peculiar is no longer tenable.

7 THE WORKING PARTY – THE WAY FORWARD.

The work of the E.L.S. Working Party on Peculiars is proceeding on two fronts. Our long term aim is to produce a "definitive list" containing every contender for the title of peculiar, together with a potted history, an evaluation of its claim, the date of abolition (if any) and any other useful details. This task will take some time – the list runs into hundreds, and will possibly go into four figures. At the same time, we do not wish to be overtaken by events. We have therefore decided to produce a provisional list containing all those peculiars which, in our opinion, are still in existence today. Whilst the views expressed in this article are mine alone, the list below expresses the current view of the Working Party. This view may change as our researches continue.

The list is split into two parts – part one contains those where we consider there to be no doubt as to the present peculiar status of those listed, and part two contains those where we consider there to be some doubt either as to peculiar status at any time, or as to their abolition. Within each part, for the sake of convenience, the peculiars are arranged into their most likely jurisdictional classification. We would welcome comments on the contents of our list, especially from those who may know a particular peculiar better than we do. It is hoped that enough information will come to light to enable us to dispense with part two.

ECCLESIASTICAL LAW SOCIETY
WORKING PARTY ON PECULIARS

PROVISIONAL LIST OF EXISTING PECULIAR JURISDICTIONS IN ENGLAND, 1994

I. DEFINITE PECULIARS

A. **Royal Peculiars**

The Chapel Royal.

Royal Residences in the Dioceses of Canterbury, London, Winchester, Rochester, Chichester, Lincoln, Carlisle. (Including Churches or Chapels founded therein or annexed thereto).
The Royal Residence in Windsor Castle.

The Queen's Free Chapel of The Blessed Virgin Mary, Saint Edward and Saint George in Her Castle of Windsor.
may include St Michael and All Angels, Shalborne.

The Collegiate Church of Saint Peter at Westminster.
including Westminster School.
may include St Mary Maldon.

New College (Oxford).
may include the Peculiar of Hornchurch.

The King's College of Saint Mary and Saint Nicholas (Cambridge).

The College of the Holy and Undivided Trinity (Cambridge).

B. Archiepiscopal Peculiars

The Chancellor Masters and Scholars of the University of Cambridge.
The Chancellor Masters and Scholars of the University of Oxford.

The Metropolitical Cathedral Church of Canterbury.

C. Episcopal Peculiars

The Cathedral Churches of London, Durham, Winchester, Rochester, Norwich, Lincoln, Lichfield, Hereford, Worcester, Chichester, Salisbury, Exeter, Wells, Ely, Carlisle, Gloucester, Bristol, Peterborough, Chester, St Albans, Truro, Liverpool, Birmingham, Newcastle, Southwell, Wakefield, Southwark, St Edmundsbury, Chelmsford, Sheffield, Coventry, Bradford, Derby, Guildford, Leicester, Portsmouth, Blackburn.

The Cathedral or House of Christ Church in Oxford.

II. POSSIBLE PECULIARS

A. Royal Peculiars

All other Royal Residences.

The College Royal of the Blessed Mary of Eton.

University College (Oxford).
Merton College (Oxford).
Peterhouse (Cambridge).
The House of the Blessed Virgin Mary in Oxford.
Clare College (Cambridge).
Pembroke College (Cambridge).
Gonville and Caius College (Cambridge).
Trinity Hall (Cambridge).
The College of Corpus Christi and the Blessed Virgin Mary (Cambridge).
The Queens' College of St Margaret & St Bernard (Cambridge).
Saint Catherine's College (Cambridge).
The College of the Blessed Virgin Mary, St John the Evangelist and Glorious Virgin St Radegund (Cambridge).
Christ's College (Cambridge).
Brasenose College (Oxford).
The College of St John the Evangelist (Cambridge).
The College of St Mary Magdalene (Cambridge).
Trinity College (Oxford).
St John the Baptist College (Oxford).

Pembroke College (Oxford).
Worcester College (Oxford).
Hertford College (Oxford).
St Edmund Hall (Oxford).

The Temple (London).

The Tower of London
including The Liberty of the Tower.
including the Precinct of Old Tower.

Precinct of St Katharine.

Chapelry of St John the Baptist in the Savoy.

Great Canford and Poole.

Sturminster Marshall.

Corfe Castle.

B. Archiepiscopal Peculiars

The Metropolitical Cathedral Church of York.

Hadleigh, St Barnabas.

C. Episcopal Peculiars

Archiepiscopal Residences.
The District of Lambeth Palace.

Episcopal Residences.

Exeter College (Oxford).
Lincoln College (Oxford).
The Queen's College (Oxford).
Magdalen College (Oxford).
Corpus Christi College (Oxford).

The Cathedral Churches of Ripon, Manchester.

The Parish of Eton.

Ravenstonedale.

Temple Sowerby.