



A Limited Episcopacy? Canon Law and the Ministry of the ‘Episcopal Assistant’ in the Anglican Communion

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The theologian Paul Avis, in his handbook for those becoming bishops in the Anglican Communion,¹ makes scarcely any reference throughout the course of the treatise to any distinction between a diocesan and a non-diocesan bishop. At one level this is refreshing, eschewing as it does any notion of a hierarchy within the order of bishops. However, on another level it is somewhat odd, for so much of the episcopal polity and praxis articulated throughout assumes the reader is ‘becoming’ a diocesan bishop, and is, consequently, at times irrelevant to those who are ‘becoming’ a bishop in an assisting role.

Whilst present in the early church, and provided for by legislative instrument in the post-Reformation Church of England,² the presence of what is described in the *Principles of Canon Law Common to the Churches of the Anglican Communion* (‘the *Principles*’)³ as the ministry of ‘episcopal assistance’⁴ (whether described as a suffragan or assistant bishop, or in other terms) is now commonplace across the Anglican Communion. In many national and provincial churches, episcopal assistants outnumber diocesan bishops.⁵ Despite this, there have been surprisingly few historical and theological examinations of the distinct role of the episcopal assistant, and almost none that proceed from a juridical perspective.⁶

It is likely that the role and ministry of the episcopal assistant will be increasingly important and prominent into the future, across the Anglican

1 P Avis, *Becoming a Bishop: A Theological Handbook of Episcopal Ministry* (London, 2015).

2 Suffragan Bishops Act 1534.

3 Anglican Consultative Council, *The Principles of Canon Law Common to the Churches of the Anglican Communion* (2nd edn, 2022). See further R Dewhurst, ‘The 2022 Revision of *The Principles of Canon Law Common to the Churches of the Anglican Communion*’ (2023) 25 *Ecc LJ* 60–65.

4 Principle 38.

5 In the Church of England, for example, the September 2021 consultation document *Bishops and Their Ministry: Fit for a New Context* notes that there were at that time 42 diocesan bishops, 52 suffragan bishops, and 20 area bishops. See <<https://www.churchtimes.co.uk/articles/2022/18-february/news/uk/bishops-and-their-ministry-full-document>>, accessed 17 April 2023.

6 A Hanson maintained, in 1975, that ‘the institution of suffragan bishops stands in need of theological justification.’ See A Hanson, ‘The Theology of Suffragan Bishops’ (1975) 78 *Theology* 481–484, at 483.

Communion. The structural reviews envisaged by the Church of England's September 2021 consultation document *Bishops and Their Ministry: Fit for a New Context*, to draw on one national example, consider the merits of fewer and larger geographical dioceses with more geographically based 'area bishops' supplemented by 'specialist bishops' occupying ministry portfolios.⁷

The long pre-history of the office of the episcopal assistant, together with the recently expansive pattern, suggests that a more thorough understanding and appreciation of the distinctive features of the role are needed. I will argue that such a project must necessarily be at least partly juridical in nature, for the distinguishing feature of the office and role of the episcopal assistant in Anglican polity is not theological in nature, but legal.

THE ORDER OF BISHOPS

The ministry of bishops finds expression in the historic doctrine and formularies of the Church of England, and, consequently, is an integral feature of the various national and provincial churches of the Anglican Communion descended from it.

The Ordinal⁸ makes the confident claim, 'it is evident unto all men diligently reading holy Scripture and ancient Authors, that from the Apostles' time there have been these three Orders of Ministers in Christ's Church; Bishops, Priests, and Deacons'. Putting aside debates and challenges to its historical and theological merits, this statement is assumed to be Anglican polity by Article 36, and finds expression in the modern Canon C1(1) of the Church of England.⁹ In respect to the global Anglican Communion, the continuing presence of the 'Historic Episcopate, locally adapted in the methods of its administration to the varying needs of the nations and peoples called of God into the Unity of His Church', constitutes the 'fourth point' of the Chicago-Lambeth Quadrilateral.¹⁰

The *Principles* explain that Bishops are 'ordained' or 'consecrated' (The Ordinal uses both terms), 'in accordance with the prescribed liturgical form through the laying on of hands by three validly consecrated bishops'.¹¹ There may be an

7 See note 5. The report is described as a consultative document prepared for the College of Bishops.

8 Properly, *The Form and Manner of Making, Ordaining, and Consecrating of Bishops, Priests, and Deacons according to the Order of The Church of England* (hereafter 'The Ordinal'). First published in a separate edition 'alongside the BCP' in 1550, and again in 1552, 1559 and 1604. The Ordinal was again revised in 1662 and incorporated into the *Book of Common Prayer*, still 'based closely on the 1550 order': see B Cummings (ed), *The Book of Common Prayer: The Texts of 1549, 1559 and 1662* (Oxford, 2011), 786n.

9 Canon C1 of the Canons of the Church of England begins: 'The Church of England holds and teaches that from the apostles' time there have been these orders in Christ's Church: bishops, priests, and deacons'.

10 Lambeth Conference, 'Resolution 11' (1888) – *The Lambeth Quadrilateral* (Lambeth, 12 August 1888).

11 Principle 35.6. Canon 4 of the Council of Nicea (325 CE) prescribed that a bishop should be appointed by all the other bishops in a province, but if this was difficult or not possible, then by at least three bishops.

age qualification,¹² and a qualifying period of time in priests' orders (or at least the fact of ordination as priest). The Ordinal sets out substantial qualities regarding suitability, which go to character and learning, and prescribes that, procedurally, a candidate must be called, tried and examined. These, sometimes together with other elements, generally constitute 'canonical fitness'.

Within the order of bishops, 'the law of the Church of England recognises three types of episcopal office: archbishop, diocesan bishop, and suffragan bishop'.¹³ The archbishop has primary authority in a province, to the extent that, strictly speaking, all other bishops of a province, inclusive of any diocesan bishops, are suffragans or 'helpers' to the archbishop. Notwithstanding this, the term 'suffragan' is usually only applied to bishops who assist the diocesan bishop.¹⁴

Putting aside the distinctive role of an archbishop, there are, then, two groups or 'classes' of persons in bishop's orders in most constituent parts of the Anglican Communion—those in bishop's orders who are diocesan bishops, and those in bishop's orders who are not. The distinction between diocesan bishops and 'other' non-diocesan bishops is not theological, nor is such a distinction found anywhere in The Ordinal. It is, essentially, a functional distinction defined by, and given expression in, church law. For this reason John Ramsbotham, at the time the Bishop of Wakefield but previously himself a suffragan bishop, summarised the position of the episcopal assistant as being 'equal in ecclesiastical order but inferior in diocesan status'.¹⁵

THE CONCEPT OF 'EPISCOPAL ASSISTANCE'

The concept of episcopal assistance was known in the early Church, whilst the operation of an 'episcopal chaplaincy' exercised by suffragan bishops to displaced people groups is present in the Fourth Lateran Council of 1215.¹⁶ Suffragan bishops appear in the records of the Medieval Celtic and English churches.¹⁷ According to Rogers, a class of persons in bishop's orders were 'anciently called *chorepiscopi*, or bishops of the country, by way of distinction from the proper bishops of the city or see'.¹⁸ The ministry of the *chorepiscopi* was essentially pastoral, a quality and function that is prominent in the brief

12 In the Church of England, for example, 'no person shall be consecrated bishop except he shall be at least thirty years of age': Canon C2(4).

13 N Doe, *The Legal Framework of the Church of England: A Critical Study in Comparative Context* (Oxford, 1996), 161.

14 *Halsbury's Laws of England* (5th edn, 2011), vol 34, para 772.

15 J Ramsbotham, 'Suffragan Bishops', in G Simon (ed), *Bishops* (Cambridge, 1961), 90. In using the word 'inferior', Ramsbotham echoes *Halsbury's Laws of England* (5th edn, 2011), vol 34, para 772.

16 See Christopher Hill's review of '*Becoming a Bishop: A Theological Handbook of Episcopal Ministry* in (2016) 18 *Ecc LJ* 370–372, at 371.

17 A S Butler 'Suffragan Bishops in the Medieval Diocese of York' (2000) 37 *Northern History* 49–60.

18 F Rogers, *A Practical Arrangement of Ecclesiastical Law* (London, 1840), 116.

references to suffragan bishops made by canonists such as Cripps, Phillimore and Halsbury. This pastoral emphasis reportedly caused the former Bishop of Peterborough, Douglas Feaver (1914–1997), to refer to suffragan bishops as ‘no more than consecrated nannies to look after the clergy’.¹⁹

In the Church of England, the primary Reformation legal instrument pursuant to the ministry and role of the episcopal assistant is the Suffragan Bishops Act 1534. This Act of Parliament provided for a post-Reformation continuity of the ministry of episcopal assistance by legislating for the appointment of suffragan bishops to more than twenty localities, to assist the relevant diocesan bishop. Despite this piece of legislation, the office of suffragan bishop had largely lapsed after the sixteenth century, until the mid-nineteenth century, when the dioceses of Canterbury and Lincoln appointed new suffragans. Several more appointments followed in other dioceses of the Church of England in the years up to the turn of the century.²⁰ In light of this, and to provide for legal clarity, the power of a diocesan bishop to appoint a suffragan bishop was extended beyond those localities specified by the Suffragan Bishops Act 1534, by the Suffragans’ Nomination Act 1888. This largely settled the legal position regarding suffragan bishops in the Church of England, although subsequent Church Measures have further modified it in some respects.

NOMENCLATURE, ROLES AND OFFICES

Whilst both the role and the function of a diocesan bishop is immediately recognised, multiple terms are in use around the Anglican Communion to describe the office held by an episcopal assistant.²¹ There are suffragan, assistant, auxiliary and coadjutor bishops, and there are so-called ‘flying bishops’ in some places, as well as other episcopal offices that transcend geographical areas. The nomenclature is sometimes used interchangeably, and is frequently inconsistent from place to place. It is important, then, to clarify the terminology in use.

Coadjutor

A coadjutor bishop was, historically, a bishop with a right of succession to the see, appointed to assist a diocesan bishop who had become incapacitated through age, illness or by other means.²² The possibility in Anglican canon law of the

19 Cited in D J Davies and M Guest, *Bishops, Wives and Children: Spiritual Capital Across the Generations* (Aldershot, 2007), 70.

20 Davies and Guest (note 19), 69.

21 Doe (note 13), 161. This is the case also in the Roman Catholic Code of Canon Law 1983, which knows of, in addition to the Pontiff, diocesan bishops and other assisting bishops described as ‘titular’ bishops (376), and which also provides for the appointment and ministry of ‘coadjutor and auxiliary bishops’ (403–411).

22 *Halsbury’s Laws of England* (5th edn, 2011), vol 34, para 772.

appointment of a coadjutor bishop with a right of succession is recognised in principle 38.1 of the *Principles*.

Suffragan

The prescript ‘suffragan’, being derived from the Latin *suffragari*, ‘to lend support, help or assist’, is the normative term for an episcopal assistant in many parts of the Anglican Communion, prominently the Church of England. The suffragan bishop will provide assistance to the diocesan bishop in accordance with the instrument of delegation given to them. They are often appointed to provide episcopal oversight of a geographical area consisting of a group of parishes, especially in large dioceses, and in many churches are, therefore, described as area or regional bishops.²³

Assistant/auxiliary

In many churches of the Anglican Communion, the designation of assistant bishop means a person in bishop’s orders, often retired, who is invited by the diocesan bishop to assist and share in episcopal ministry, and is provided with a special licence or Permission to Officiate for this purpose.²⁴ In some churches such bishops may be described as auxiliary bishops.

There is usually a distinction between assistant bishops invited to participate in episcopal ministry in this way, and suffragan bishops having delegated authority to exercise episcopal ministry. In Southern Africa, for instance, where a suffragan bishop is a full member of the house of bishops with voting rights, canon law provides that the instrument by which an assistant bishop is appointed ‘shall in no way confer any new canonical rights upon them’.²⁵ In the Church of England the ambiguity of language is resolved by a legislative instrument which provides that ‘suffragan bishop includes an assistant bishop’.²⁶

In the Anglican Church of Australia, the ‘Assistant Bishops’ Canon 1966’ has effected a uniformity of language by determining that all non-diocesan bishops are appointed and licensed as assistant bishop. In effect, an assistant bishop in the Australian Church is usually the functional equivalent of a suffragan bishop elsewhere.

Non-territorial episcopacy

The role and function of many suffragan bishops is defined geographically and restricted by instrument of delegation to a specified locality. This is often a

23 See, for example, the Canons of the Anglican Church of Southern Africa, Canon 10.9(b).

24 N Doe, *Canon Law in the Anglican Communion: A Worldwide Perspective* (Oxford, 1998), 122.

25 See, for example, the Canons of the Anglican Church of Southern Africa, Canon 10.18.

26 Dioceses, Pastoral and Mission Measure 2007, s 13(16).

particular area or region within a diocese, but may extend to the whole of a diocese. The Bishop of Dover, for example, exercises episcopal ministry within the whole geographical area of the Diocese of Canterbury.²⁷

Some episcopal assistants have a remit that transcends geographical boundaries. An example of this are the so-called ‘flying bishops’ (properly, ‘provincial episcopal visitors’) of the Church of England, who exercise a trans-geographical episcopal ministry, initially under the Episcopal Ministry Act of Synod 1993. A further example is the Bishop of Islington, whose portfolio for new church planting was conceptually intended to transcend the diocese in which the bishopric is located (London).²⁸

In some parts of the Anglican Communion there are episcopal assistants who exercise a ministry across the entirety of a national or provincial Church, typically in a portfolio defined by a legal instrument. The Anglican Church of Australia, for example, has created by canon a bishop for the defence forces who is an assistant bishop to the Primate.²⁹ The Anglican Church of Canada has, since 2007, had a national indigenous bishop.³⁰

THE APPOINTMENT PROCESS

The appointment of diocesan bishops in the Church of England continues to be governed by the provisions of the Appointment of Bishops Act 1533.³¹ The process reflects the ‘delicate balance’ occasioned by the established nature of the Church of England.³² The constituent elements set out in the Act—nomination, election, confirmation, pronouncement—are present in the appointment processes followed by most of the churches of the Anglican Communion,³³ to the extent that it has been said to be ‘the case that the structural system that the Church of England uses to appoint its bishops is broadly shared by other churches of the Anglican Communion’.³⁴

The nomination process for episcopal assistants in the Church of England is further defined by the house of bishops in the 2016 ‘Nomination Process for

27 The distinctive role of the suffragan bishop of Dover is specifically excluded from the statutory provisions governing the filling of suffragan sees: see *Dioceses, Pastoral and Mission Measure 2007*, s 17(8).

28 See <<https://www.churchtimes.co.uk/articles/2015/6-march/news/uk/chartres-sets-out-plan-for-bishop-for-church-plants>>, accessed 17 April 2023.

29 The Defence Force Ministry Canon 1985.

30 See <<https://www.anglican.ca/im/niab/>>, accessed 17 April 2023.

31 ‘All Elections of the Archbishops or Bishops shall be made by the Deans and Chapters, & under the King’s Licence and Letters missive naming the Person to be chosen: and in Default of such Election the King shall present by his Letters Patent’ (s 3).

32 M Hill, *Ecclesiastical Law* (4th edn) (Oxford, 2018), 124.

33 Principle 36.

34 S Coleman, ‘The Process of Appointment of Bishops in the Church of England: A Historical and Legal Critique’ (2017) 19 *Ecc LJ* 212–223, at 213.

Suffragan Bishops'.³⁵ The diocesan bishop is required to 'consult the diocesan synod as to whether the vacancy should be filled, unless the bishop is of the opinion that the matter is urgent and it is not practicable to consult the diocesan synod, in which case he may, instead, consult the bishop's council and standing committee of that diocesan synod'.³⁶ Whereas section 1 of the Suffragan Bishops Act 1534 required two names to be provided to the monarch, the first of which was customarily selected, since 2010 a single name is now to be provided to the monarch.³⁷ Letters patent are then sent to the relevant Archbishop (Canterbury or York) requiring the nominee's consecration, unless the nominee is already in bishop's orders.³⁸

It is common for the appointment of an assistant bishop to require the endorsement of the house of bishops in that province. In the Church in Wales, any diocesan bishop may nominate a person in priest's orders to be an assistant bishop; however, the appointment must be ratified by the bench of bishops who, by a majority, must be satisfied as to the nominee's fitness for the office of bishop.³⁹ In some provinces the appointment of an assistant bishop must be endorsed by a representative body, such as a provincial council or its standing committee.⁴⁰ In Australia, for example, section 2 of the Assistant Bishops' Canon 1966 requires 'the concurrence of the Diocesan Council'.

In other churches election by the whole of synod is required. In Southern Africa the candidacy of a suffragan bishop must be first approved by the bench of bishops, and then be confirmed by an elective assembly following the same procedure as for the election of a diocesan bishop.⁴¹ Similarly, in the West Indies, a suffragan bishop must be elected by synod with a two-thirds majority in both the house of clergy and the house of laity.⁴²

Provisions requiring the endorsement or ratification of a diocesan council or standing committee, or other such body, or election by the whole of synod, provides for lay involvement in the appointment process, and mitigates the powers of the diocesan to elect or appoint episcopal assistants without wide consultation.

35 See further: <<https://www.churchofengland.org/sites/default/files/2017-11/Nomination%20Process%20for%20Suffragan%20Bishops.pdf>>, accessed 17 April 2023.

36 Dioceses, Pastoral and Mission Measure 2007, s 17(1).

37 Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010, s 1.

38 The validity of this was clarified by the Suffragan Bishops Act 1898, s 1, which was promulgated to confirm that, 'notwithstanding anything contained in the Suffragan Bishops Act 1534 it shall be lawful to nominate, present, and appoint as suffragan bishop a person already consecrated as a bishop'.

39 N Doe, *The Law of the Church in Wales* (Cardiff, 2002), 139.

40 Hong Kong Keng Shung Hui (Hong Kong Anglican Church (Episcopal)), Constitution of the Province, §13.6.1.

41 Canons of the Anglican Church of Southern Africa, Canon 10.5.

42 Canons of the Church in the Province of the West Indies, Canon 11.3-4.

However the appointment occurs, the principle of election, together with the operation of conditionality, is usually present at some level in all processes, either in the requirement of endorsement by a synodical house of bishops or by the metropolitan, and sometimes in the form of the majority vote of a representative body such as a nominations committee, council, standing committee, or synod as a whole.

REPRESENTATIVE ROLE IN COUNCILS AND SYNODS

In many churches, in contrast to a diocesan bishop, episcopal assistants do not have a direct right to a seat in the house of bishops in the context of a council or synod. It is possible in some provinces for an assistant to be elected to the house of bishops. In the Church of England, Canon H 3(1) provides for the election of a set number of suffragan bishops to the upper house of Convocation.

More commonly, an episcopal assistant will have a right to attend representative bodies such as synods and councils, and to participate in them by speaking, but will not have voting rights. An example of this is the Hong Kong Sheng Kung Hui, the constitution of which provides that an assistant bishop is entitled to attend and speak at all meetings of the house of bishops, but is not entitled to vote on any issue or election.⁴³

DISCIPLINE

As explained in the *Principles*, an episcopal assistant is always subject to the jurisdiction of the diocesan bishop, including in matters of discipline.⁴⁴ Hence, the Anglican Church of Canada describes the ecclesiastical jurisdiction of the diocesan bishop as being comprehensive in terms of ‘authority and power of discipline over bishops, priests, deacons and lay members’ within the diocese.⁴⁵

Assistant bishops in most churches are subject to either the same disciplinary regime as diocesan bishops, or the disciplinary regime applicable to deacons and priests. In the Australian Church, assistant bishops are subject to the safeguarding and tribunal regimes that apply to deacons and priests, whilst diocesan bishops (only) are subject to episcopal standards legislation.⁴⁶

43 Hong Kong Keng Shung Hui (Hong Kong Anglican Church (Episcopal)), Constitution of the Province, §13.6.6.

44 *Principles* 38.4 and 41.6.

45 Canons of the General Synod of the Anglican Church of Canada, Canon XVIII(1).

46 In a recent decision (December 2021), the Episcopal Standards Commission effected the deposition of the former Archbishop of Perth, Roger Herft. See G Blake, ‘Bishop Roger Herft: The Determination of the Episcopal Standards Board of the Anglican Church of Australia’ (2022) 24 *Ecc LJ* 363–377.

FUNCTION, AUTHORITY AND POWERS

The distinct role and jurisdiction of the diocesan bishop as chief pastor of all that are within the diocese is enshrined in (pre-Reformation) Anglican polity and in canon law.⁴⁷ Pursuant to this, the distinguishing feature of the role of the episcopal assistant is that the assistant takes no more authority than the diocesan bishop chooses to bestow on him or her.⁴⁸

The suffragans take only such profits, jurisdiction, and authority as are licensed and limited to them by their diocesans and by commission under their seals, and no suffragan may use any jurisdiction or episcopal power or authority otherwise.⁴⁹

The functionality of an episcopal assistant is provided for in the Church of England in section 13(1) of the Dioceses, Pastoral and Mission Measure 2007:

Subject to the provisions of this section, the bishop of a diocese may by an instrument under his hand delegate to a suffragan bishop of the diocese such of his functions as may be specified in the instrument.⁵⁰

As required by the 2007 Measure, in most instances, the functions, powers and authority of the episcopal assistant are defined by instrument.⁵¹ The nature of the delegation within such an instrument may be broad. Ingrid Slaughter observes that section 13 of the Measure gives ‘broad power for the diocesan bishop to delegate any of his functions, subject to a very few exceptions, to a suffragan or assistant bishop, or to share them with the suffragan or assistant bishop, either for the whole diocese or for a particular area’.⁵² The only power that cannot be delegated to a suffragan bishop by operation of law in the Church of England is the power to apply to the archbishop for a faculty to admit a person to holy orders who would otherwise be disqualified.⁵³

The possibility of a comprehensive, if not absolute, form of episcopal delegation is provided for in most churches of the Anglican Communion.

47 Canons of the Church of England, Canon C18. The *Principles* refer to the diocesan bishop’s ‘special responsibility and authority as the chief pastor, minister and teacher of the diocese’: principle 37.1.

48 T Briden (ed), *Moore’s Introduction to English Canon Law* (4th edn) (London, 2013), 26.

49 *Halsbury’s Laws of England* (5th edn, 2011), vol 34, para 772.

50 Consistent with Canon C20.

51 Dioceses, Pastoral and Mission Measure 2007, s 13(1). It has been noted that such an instrument is ‘intended to be a formal legal act’: see ‘The delegation of episcopal functions’, Legal Opinion, General Synod Legal Advisory Committee (September 2018), para 3, which is available at <<https://www.churchofengland.org/sites/default/files/2018-02/Delegation%20of%20episcopal%20functions.pdf>>, accessed 17 April 2023.

52 I Slaughter, ‘The Dioceses, Pastoral and Mission Measure 2007’ (2009) 11 *Ecc LJ* 4–34, at 11.

53 The Dioceses, Pastoral and Mission Measure 2007, s 13(1), specifically excludes this by excluding the provisions of the Clergy (Ordination and Miscellaneous Provisions) Measure 1964, s 9(2).

This may occur where an assistant bishop is vested with authority to act as vicar general, commissary, or diocesan administrator.⁵⁴ Typically this is given effect in canon law either by written instrument, such as a licence, or by operation of law upon the death, retirement or incapacity of the diocesan bishop. Usually the delegation to a vicar general, commissary, or diocesan administrator is complete, encompassing all of the powers that vest in the diocesan bishop. Canon law in Aotearoa, New Zealand and Polynesia, for example, provides that the assistant bishop appointed as vicar general ‘shall have any powers duties functions and authorities of the Bishop’.⁵⁵ The Constitution of the Province of Hong Kong Sheng Kung Hui is typical of many churches of the Anglican Communion in providing for a vacancy in the see:

Upon a vacancy being created by the death, resignation or removal of the Archbishop, his authorities, powers, rights and duties of under this Constitution shall be exercised by the most senior bishop of the Province at the time in the Province able and willing to act, seniority being determined by the date of consecration.⁵⁶

Unless the bishop concerned is a coadjutor with right of succession, the powers of the bishop acting as vicar general, commissary, or diocesan administrator, are time limited, and will vest only for as long as the period of time stipulated in the instrument, the time the delegator is absent from the see, or until such time as a new diocesan bishop assumes office.

Although the nature of the delegated authority, and the scope of functionality given to an episcopal assistant may be broad, it is the case, as the *Principles* note, that unless acting as vicar general, commissary, or diocesan administrator, the episcopal assistant is always subject to the jurisdiction and control of the diocesan bishop.⁵⁷ As set out canonically in the United States, the episcopal assistant everywhere acts ‘as an assistant to’ and under the ‘control and direction of’ the diocesan bishop.⁵⁸ This attracts the criticism that the office of an episcopal assistant is one ‘inserted’ uneasily into the ecclesial hierarchy, occupying a place ‘between bishop and presbyter’.⁵⁹

54 Canons of the Church of England, Canon C18(3): ‘Such jurisdiction is exercised by the bishop himself, or by a vicar general, official, or other commissary, to whom authority in that behalf shall have been formally committed by the bishop concerned’.

55 Canons of the Anglican Church in Aotearoa, New Zealand and Polynesia, Canon 1.8.1.

56 Hong Kong Keng Shung Hui (Hong Kong Anglican Church (Episcopal)), Constitution of the Province, §12.12.

57 Principle 38.4.

58 Canons of the Episcopal Church (USA), Canon III.11.9(b) and Canon III.12.6(d).

59 Hanson (note 6), 483.

RIGHTS OF SUCCESSION AND DEPARTURE FROM OFFICE

A direct right of succession vests in an assistant bishop who has been elected and appointed with such a right. Usually such an assistant bishop is described as a bishop coadjutor. In the Province of Hong Kong Sheng Kung Hui canonical provision is made for the appointment of a coadjutor bishop with right of succession to the see at the request of a diocesan bishop, pending election and appointment in the same way as for a diocesan bishop.⁶⁰ The Episcopal Church of the United States also makes canonical provision for coadjutors with a right of succession, at the discretion of individual dioceses.⁶¹ In contrast, some churches of the Anglican Communion specifically prevent such an appointment.⁶² Even where canonical provision does exist for the appointment of a coadjutor bishop with a right of succession to the see, it is the case that most of the churches of the Anglican Communion do not have coadjutor bishops in this sense.⁶³

In some churches there is canonical provision for enacting a process whereby the commission of a suffragan may be revoked, or varied, upon the appointment of a new diocesan bishop. For instance, in Southern Africa:

If a new Diocesan Bishop shall be appointed in a Diocese in which a Bishop Suffragan is appointed, such new Diocesan Bishop may, with the authority of the Synod of Bishops given after hearing any representations which the Diocesan Bishop and the Bishop Suffragan may wish to make on the matter, withdraw or alter the Commission of such Bishop Suffragan for any good cause shown to the Synod of Bishops.⁶⁴

The most common provision with regard to the tenure of an assistant bishop, other than for the removal from office for a disciplinary reason, or upon death, or resignation, is for the office to become vacant upon the assistant bishop reaching the age of 70,⁶⁵ or in some churches 72.⁶⁶ The Church of

60 Hong Kong Keng Shung Hui (Hong Kong Anglican Church (Episcopal)), Canons of the Province, Canon 5; cf. the Canons of the Church in the province of the West Indies, Canon 11.9, and the Canons of the Anglican Church in Aotearoa, New Zealand and Polynesia, Canon 1.2A.

61 Canons of the Episcopal Church (USA), Canon III.11.9(a)(1) – a ‘Diocese may elect a Bishop Coadjutor who shall have the right of succession; cf. the Canons of the Episcopal Church in the Philippines, Canon 11.9(a).

62 In Australia, the ‘Assistant Bishops Canon 1966’, s 8, provides that ‘no assistant bishop shall be appointed with a right of succession to the see’.

63 Doe (note 24), 119.

64 The Canons of the Anglican Church of Southern Africa, Canon 10.11. Hong Kong Sheng Kung Hui (Hong Kong Anglican Church (Episcopal)) has a similar provision: see Constitution of the Province, §13.6.7.

65 In the Province of Hong Kong Sheng Kung Hui, both diocesan and assistant bishops may continue in office until the end of the calendar year in which they turn 70: see Hong Kong Sheng Kung Hui (Hong Kong Anglican Church (Episcopal)), Constitution of the Province, §13.7.

66 Canons of the Episcopal Church (USA), Canon III.12.9(a).

England provides for the possibility of an extension beyond the compulsory retirement at age 70, for a fixed period of up to five years.⁶⁷

THE LEGAL POSITION OF AN EPISCOPAL ASSISTANT

The legal position of an episcopal assistant in most parts of the Anglican Communion, whether described as a suffragan or assistant bishop or in another way, is everywhere defined in relation to the diocesan bishop. This is congruent both theologically, and legally, for in Anglican polity the vast majority of the rights, duties, powers and authority of the office of bishop (excepting those particular to an archbishop) vest exclusively in the diocesan bishop.⁶⁸

Delegated authority

The episcopal assistant ‘shares in the diocesan’s oversight by delegation’,⁶⁹ and possesses only such powers and authority as may be delegated to them by the same.

The manner and extent of the delegation from a diocesan bishop, to an assistant bishop, is usually given effect through the instrument of appointment, typically a licence. It may also arise in other ways, both formal and informal, written or verbal, by custom, and by the exercising of the episcopal office itself. However given, the assistant bishop’s only general right is a right to exercise and discharge their duty ‘as the terms of episcopal office permit and as the diocesan directs’.⁷⁰ This is evident in the various legal instruments affecting episcopal assistants across the Anglican Communion, which variously speak of the functions and powers of an episcopal assistant as being ‘limited’,⁷¹ ‘permitted’,⁷² ‘specified’,⁷³ ‘directed’⁷⁴ or ‘assigned’.⁷⁵ Hence the *Principles* (38.3) speak of the authority of the assistant bishop being limited to that as may be lawfully required or ‘permitted’ by the diocesan bishop.

As a delegate, the assistant bishop is a representative person.⁷⁶ The delegation is not, however, specific to the person, but to the office; in that the delegated

67 Hill (note 32), 128.

68 This is the case also in the Roman Catholic Code of Canon Law 1983 (c. 381), excepting those powers reserved by the Pontiff.

69 P. Avis, ‘The Roles of the Ecclesial Orders in the Governance of the Church’ (2022) 18 *Ecclesiology* 3–9, <<https://doi.org/10.1163/17455316-18010002>>, accessed 17 April 2023.

70 Doe (note 13), 174.

71 Canons of the Church of England, Canon C20(2);

72 Australia, ‘Assistant Bishops’ Canon 1966’, s 6; Hong Kong Sheng Kung Hui (Hong Kong Anglican Church (Episcopal)), Constitution of the Province, §13.6.4.

73 Canons of the Anglican Church of Southern Africa, Canon 10.9(a).

74 Canons of the Episcopal Church (USA), Canon III.11.9(b.3).

75 The Canons of the Anglican Church in Aotearoa, New Zealand and Polynesia, Canon 1.2A(4); Canons of the Church in the Province of the West Indies, Canon 11.8.

76 The Oxford Dictionary defines ‘delegate’ as ‘a person sent or authorised to represent others’; A Stevenson (ed), *Oxford Dictionary of English* (3rd edn) (Oxford, 2010), 462.

authority vests in the delegate whilst they are ‘holding, occupying, or performing the duties of, the specified office or position’.⁷⁷

Agency

The legal concept that best describes the operation of this form of delegated authority is that of agency, a branch of commercial law. In the exercising of the episcopal duties and powers that have been delegated to them, the episcopal assistant acts as the agent of the diocesan bishop, who is the principal.⁷⁸

In general law, the assistant bishop, as an agent, is prevented from delegating to another any delegated powers that vest in him or her by the operation of the maxim *delegatus non potest delegare*. The agent does, however, have authority and capacity to give effect to legal powers and instruments, and to create and give effect to legal relations between the principal and other third parties.⁷⁹ This is because, as a matter of common law, an agent is generally able to do anything the principal can do himself or herself, within the bounds of the authority delegated to them. In the exercising of their duties, the agent bears a duty to the principal that is fiduciary in nature.

Authority as agent

Normatively, in the ecclesiastical context, the authority conferred by the principal to the agent is in the nature of express actual authority. Typically this will be set out in a written instrument, such as a deed, licence, position description, or a combination thereof. Express authority may also be conveyed orally. The principal will be legally bound by, and responsible for, acts carried out by the agent when the agent is acting within the bounds of the express authority delegated to them.⁸⁰ In many legal contexts, prominently in relation to proprietary and contractual matters, express authority to act must be given in writing by deed.⁸¹ The existence of a written instrument will confer legal power on the episcopal assistant to sign legal instruments under seal, such as clerical licenses, contracts and proprietary deeds, as though they were the principal.

Actual authority may also be implied.⁸² This usually arises where the position held by the agent itself gives rise to the existence of an implied authority to act.⁸³

77 ‘Acts Interpretation Act 1901 (Cth)’ s 34AA (Australia).

78 At civil law, the principal in an ecclesiastical context may be taken to be the diocesan bishop, even where the diocesan bishop may be acting in a temporal proprietary matter in isolation to their diocesan council. *Commonwealth Bank of Australia v The Right Reverend Ian Palmer, Bishop of The Diocese of Bathurst* [2015] NSWSC 450 (10 December 2015).

79 *International Harvester Co of Australia Pty Ltd v Carrigan’s Hazeldene Pastoral Co* (1958) 100 CLR 644.

80 *Ireland v Livingstone* (1872) LR 5 HL 395.

81 Arising from the stipulation in the Statute of Frauds (29 Car 2 c 3) 1677, s 3, that dealings in land be in writing; cf. *Powell v London and Provincial Bank* [1893] 2 Ch 555.

82 Sometimes this is referred to as ‘usual authority’.

83 *Hely-Hutchinson v Brayhead Ltd* [1968] 1 QB 549.

In a hierarchical and historical organisation like the Church, it is easy to see how an implied authority to act may be conveyed by the office itself. An assistant bishop may, further, have incidental or apparent authority (see further below) to act on behalf of the principal in situations where the agent is carrying out actions not specified in the instrument of express authority, but which are incidental or ancillary to it. The performance of powers and functions that are inherently customary in their nature and origin, may be considered in this way.

The episcopal assistant, as an agent, may also be taken legally to have apparent authority⁸⁴ to act on behalf of the principal. Apparent authority arises as a matter of law, and is a form of estoppel.⁸⁵ The legal test for establishing apparent authority is the examination of whether a set of circumstances exist in which it is reasonable for a third party to consider that an agent had actual authority to act, even if the agent did not have such authority.⁸⁶ Apparent authority to act on behalf of the principal cannot be constructed purely by assertions made by the agent.⁸⁷ It must have its source in an acquiescence or knowledge of the agent's conduct, or in representations made by the principal, whether explicit or inferred.⁸⁸ For example, in response to a request to act in a certain matter, a diocesan bishop may reply advising that an assistant bishop will attend to deal with the matter, in which case apparent authority to act might readily be assumed.

In civil law, the existence of actual or apparent authority may give rise to vicarious liability. The Supreme Court in the (Australian) State of Victoria, in a ruling delivered in December 2021, found that a (Roman Catholic) diocesan bishop could be held personally liable for wrongful acts committed by a priest licensed by that bishop, on the grounds of the bishop's failure to 'exercise reasonable care' in their 'authority, supervision, and control' of the conduct of the priest.⁸⁹ The operation of this principle, whilst intensely fact-specific, would presumably extend to the conduct of an episcopal assistant appointed by a diocesan. For example, in circumstances whereby there was a failure of an episcopal assistant to act on a complaint or allegation of wrong-doing, or where an episcopal assistant with delegated authority over an area or region failed to exercise adequate control over a clerk under their authority.

84 Sometimes referred to as 'ostensible authority'.

85 *Rama Corporation Ltd v Proved Tin and General Investments Ltd* [1952] 2 QB 147.

86 *Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd* (1964) 2 QB 480.

87 'Assertions made by the alleged agent that he or she is acting for the alleged principal can never by themselves prove the existence of the alleged agency': *Quikfund (Australia) Pty Ltd v Prosperity Group International Pty Ltd (in liq)* (2013) 92 ACSR 343 (79), citing Diplock LJ in *Freeman & Lockyer (A Firm) v Buckhurst Park Properties (Mangal) Ltd* (1964) 2 QB 480.

88 *Pacific Carriers Ltd v BNP Paribas* [2004] HCA 35 [36] (5 August 2004).

89 *DP (a pseudonym) v Bird* [2021] VSC 850 (22 December 2021) (3). The decision was recently upheld on appeal – *Bird v DP (a pseudonym)* [2023] VSCA 66 (3 April 2023).

CONCLUSION

There is no distinction theologically in the order of bishops. All bishops are consecrated according to the same rite as set out in *The Ordinal*. All enter into the order of bishops through that rite, and may then conduct the rites and ceremonies peculiar to the office of bishop.

A legal distinction does, however, exist within the order of bishops, and is manifested in the different roles, powers and authority that vest in diocesan bishops, but not in bishops who perform assisting roles. The episcopal assistant does not possess, and cannot possess under canon law, the same juridical powers as the diocesan bishop, but may only share in them to the extent the diocesan is prepared to delegate them. The only exception to this is when the episcopal assistant may be acting for a period of time as vicar-general, commissary, or diocesan administrator, by delegation or licence, or by operation of law.

The episcopacy exercised by an assistant bishop in the Anglican Communion is not in any way 'limited' theologically, nor does the office of the episcopal assistant somehow obscure the nature of true episcopacy.⁹⁰ The ministry of the episcopal assistant is, however, limited canonically and legally, for, as Doe concludes, it is clear that 'the law effects a subordination of the suffragan to the diocesan'.⁹¹

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90 Hanson (note 6), who suggests the office of suffragan bishop in the Church of England is a medieval one unsuited to contemporary practice.

91 Doe (note 13), 182.