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ADVOWSONS AND PRIVATE PATRONAGE

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This article focuses on the role of private patronage within the Church of England. Private patrons own advowsons. These property rights can no longer be traded but may still be bequeathed or transferred without value. When there is a vacancy in a benefice a patron has the right to nominate a new incumbent in accordance with the Patronage (Benefices) Measure 1986. This article uses contemporary and historical records to define private patronage and analyse the current role of the four broad categories of private patrons; private individuals, educational bodies, guilds and patronage societies. Whilst acknowledging the benefits that patronage can bring, this article advocates substantive reform for the future including a sunset rule for private individual patronage. This article suggests that reform of the law of private patronage will make a positive contribution to other contemporary issues before the Church by promoting diversity in vocations, facilitating necessary pastoral reorganisation and adding to the dialogue about the future of the parish system.

Keywords: advowson, patronage, benefices, patron, church

Keble College, Oxford, St. John's College, Cambridge, Eton College, the Secretary of State for Defence, the Prime Minister, the National Trust, the Mercers' Company and the Earl of Lucan all share one role. Along with a myriad of other private individuals, office holders and institutions they are patrons of benefices. A patron holds an advowson, an ancient perpetual property right, which allows them to present a new incumbent when there is a vacancy in their benefice.

¹ The author is grateful to Dr Mark Davies and Dr Lara Walker and the two anonymous referees for their helpful comments on earlier drafts.

In 2014 the Church of England’s Simplification Task Group was set up to ‘bring forward options and proposals for simplification and deregulation’ of the Church to promote mission and growth.² Flowing from this work, the Legislative Reform Committee of the Archbishops’ Council have begun a consultation under the Legislative Reform Measure 2018 ‘to remove or reduce burdens of a procedural nature’ arising from the Patronage (Benefices) Measure 1986.³ The remit of these new legislative reform measures is limited to administrative inconveniences and ‘obstacles to efficiency’.⁴ The current *Consultation* clearly states that ‘[t]here are no proposals to change the substantive rights of patrons, parochial church councils or bishops.’⁵

The last substantive reform of patronage was a generation ago.⁶ This article advocates a new review of the broader principles of the law. Church appointments turn on discernment, but in 2019 there are also new expectations of equality and transparency in all appointment processes. The six procedural changes proposed in the current *Consultation* smooth the existing patronage system for the future. This article seeks to reconsider the nature and use of the property right behind that system.

In ‘Patronage and Society in Nineteenth Century England’, Bourne observes that ‘[t]o exercise patronage, to be a patron was in some measure to possess power over the lives of others. The essential and perennial problem of power – ‘who, whom’ – lay therefore at the heart of patronage.’⁷ Applying that maxim to modern private lay patronage, this article uses contemporary and historical records to define patronage and show who is holding patronage today and how they are using it. On the basis of this research, suggestions are made for future substantive reform of this area of law. The article also explores how a reconsideration of the principle of patronage would impact other pressing contemporary issues facing the Church of England. As the bedrock of the parish system, patronage is a key part of pastoral reorganisation. Patronage needs to be openly considered within the wider debate about the future of the parish as a unit. Patronage is also relevant to the implementation of the 2017 *Taylor Review: Sustainability of English Churches and Cathedral’s* and the Church of

² <https://churchofengland.org/about/renewal-reform/simplification>, accessed 30 October 2018.

³ The Archbishops’ Council, *Consultation on a Legislative Reform Order to Amend the Patronage (Benefices) Measure 1986, Presented to Parliament pursuant to section 4(4) of the Legislative Reform Measure 2018* 1 November 2018 (hereafter referred to as the ‘*Consultation*’).

⁴ *Consultation*, para 1. The remit and exceptions to the use of these new type of measures are set out in Legislative Reform Measure 2018, Ss 2-3.

⁵ *Consultation*, para 9.

⁶ Patronage (Benefices) Measure 1986.

⁷ J Bourne, *Patronage and Society in Nineteenth-Century England* (London, 1986), p 51.

England's Renewal and Reform initiative to re-imagine the Church's ministry.⁸

Consideration of Crown patronage within the context of the future of Establishment is outside the remit of the article.

DEFINING PATRONAGE AS PROPERTY

In property law terms, the patron owns an advowson which is included within the definition of 'land' in s205(1)(ix) of the Law of Property Act 1925. An advowson, like an easement, is an incorporeal hereditament. The law of real property applies, but the property itself is a right rather than a physical object. Whilst property lawyers prize other incorporeal hereditaments such as easements as essential for modern land use, advowsons are regarded as an irrelevance. Thompson's *Modern Property Law* defines this 'right to present a clergyman to a living' as one of the 'archaic rights derived from the feudal system ... which, for some reason, was classified as real property.'⁹ In the context of chancel repairs, Dawson and Dunn observe that '[l]and law provides examples of ancient rights, some of which have enduring utility, but others of which do not.'¹⁰ Advowsons are Dawson and Dunn's first example of those rights that do not. Property lawyers value the evolving, 'organic base' of land law.¹¹ Advowsons are no longer regarded as part of that. Whereas once they were hotly traded now they have no market value and cannot be bought or sold.¹² They may only be bequeathed or transferred without value. Advowsons are excluded from the open land registration system under the Land Registration Act 2002.

Whilst property lawyers regard advowsons as relics, within the Church they are a matter of everyday use. Norman Doe's, *Canon Law in the Anglican Communion* describes patronage across different parts of the Anglican Communion.¹³ Clergy vacancy pages of *The Church Times* show that private patronage is alive and exercised by a whole variety of

⁸ Department for Digital, Culture, Media and Sport, Independent Policy Paper, *The Taylor Review: Sustainability of English Churches and Cathedrals*, 2017, <https://www.gov.uk/dcms>, accessed 31 May 2018. Renewal and Reform <https://www.churchofengland.org/about/renewal-reform>, accessed 7 October 2018.

⁹ M Thompson and M George, *Thompson's Modern Property Law* (6th edn, Oxford 2017), p 13.

¹⁰ I Dawson and A Dunn, 'Seeking the Principle: Chancels, Choices and Human Rights' (2002) *Legal Studies* 22 pp 238-258, 238.

¹¹ M Dixon, 'The Organic Nature of the Law of Real Property' in H Conway and R Hickey (eds), *Modern Studies in Property Law* vol 9 (Oxford, 2018), p 8.

¹² Patronage (Benefices) Measure 1986, s 3. Transfers may also occur in the context of pastoral reorganisation; Mission and Pastoral Measure 2011, s 46 (hereafter referred to as '2011 Measure'). *Mission and Pastoral Measure 2011: Code of Recommended Practice*, vol 1, para 11.19. The property nature of the right is reflected in the possibility of exchanging a patronage for one in another benefice in the context of parish re-organisation, para 11.14.

¹³ N Doe, *Canon Law in the Anglican Communion* (Oxford, 1998), p 138. For the appointment and functions of faith leaders in the UK see N Doe, *Comparative Religious Law, Judaism, Christianity, Islam* (Cambridge, 2018), chapter 3.

patrons in the Church of England. All church benefices have a patron but few church-goers are aware of their patron's existence or identity. Often the bishop will also be the patron, but in a significant number of benefices there will be a private individual who has inherited the right or a patronage trust or other body such as an educational institution, charity or guild.¹⁴ In the best cases there are genuine, on-going relationships between the patron and the benefice which are supportive of the community and their faith and mission. In the worst cases there are private patrons retaining the patronage as a remnant of a feudal badge of honour and the parish is only reminded of their existence and their rights when it is faced with a vacancy.

DEFINING PATRONAGE AS PROCESS: PATRONAGE (BENEFICES) MEASURE 1986¹⁵

The current process for private patronage is to be found in the Patronage (Benefices) Measure 1986. The Measure has been criticised by clergy, bishops, patrons and parishioners.¹⁶ The current *Consultation* describes it as containing a 'great deal of highly prescriptive provision' and its procedures as 'prone to delay' and 'complex'.¹⁷

The detail of the current Measure and the range of approaches taken in practice is comprehensively explained elsewhere for any parish in vacancy.¹⁸ David Parrott and David Field identify three 'key players' that bring 'stability to the process as a whole'; the patron who nominates, the parochial church council ('PCC') (through its elected representatives) who affirm or veto and the bishop who institutes.¹⁹ Together they represent a 'tripod of responsibility'.²⁰ The process begins with notice of vacancy being given to the registered patron and the PCC. The patron must respond and declare that they are a member of the Church of England, or that they are appointing an appropriate representative or body to act in

¹⁴ *Consultation*, para 11, states that across the Church of England as a whole about 50% of the right of patronage 'belongs to the bishop of the diocese' with the other 50% belonging to other patrons including 'the Crown, cathedrals, colleges, incumbents, patronage societies and private individuals.'

¹⁵ There was extensive reform of the church patronage system in the 1980s culminating in this Measure.

¹⁶ For example see the June 2018 Diocesan Synod Motion from St. Albans noting disruption caused by vacancies and requesting review. <https://www.churchofengland.org/voicing/work-general-synod/diocesan-synod-motions>, accessed 8 October 2018.

¹⁷ *Consultation*, paras 13 and 15.

¹⁸ M Hill, *Ecclesiastical Law* (4th edn, Oxford, 2018), pp 107-112, D Parrott and D Field, *Situations Vacant* (Cambridge, 2005), D Parrott, 'The Patronage (Benefices) Measure 1986. An Analysis of its working in practice', (2001) 6 *Ecc LJ* pp 12-25 and D. Parrott, 'Situations Vacant. A consideration of the law of appointment to benefices in the Church of England.' (Unpublished Cardiff Canon Law Masters thesis kindly provided by its author).

¹⁹ Parrott and Field, *Situations Vacant*, p 4.

²⁰ *Ibid*, p 7.

their place.²¹ There is no requirement to show any physical or spiritual connection to the parish. The patron waits for the PCC to meet and complete its initial duties which include preparing a statement about the needs of the parish and appointing two representatives.²² From here the advowson entitles the patron to take the lead. The patron has 12 months in which to discern, select and present their choice of clergy to the bishop.²³

Patrons have the potential to be ‘powerful allies’ for bishops or PCCs in difficult circumstances.²⁴ Parrott and Field describe four models of the patronage process at work in practice; the ‘consultation’ model, the ‘joint interview’ model, the ‘collaboration’ model and the ‘presentation model’.²⁵ The ‘presentation’ model reflects patronage at its most extreme. Here ‘[t]he assumption is that the patron’s decision should be accepted as final without too many questions asked’.²⁶ Such diversity in practice results from a lack of formal guidance. There is a Code of Practice, but it is not binding, is out-dated and practice varies widely geographically.²⁷ Regrettably the patron is not obliged to advertise the vacancy or follow any selection protocol or short-listing or hold interviews. The patron may choose to take any of these steps – which would be regarded as essential in any other public role – but decisions are at their discretion.²⁸ The advice given to members by the Private Patrons Consultative Group emphasises the breadth of patrons’ rights in deciding on the ‘method of selection’.²⁹

Once the patron has made their choice they seek the approval of the bishop and PCC representatives before making a formal offer of the benefice to the new incumbent and presenting them for admission.³⁰ Any objection from the representatives and the bishop must

²¹ Patronage (Benefices) Measure 1986 s 8.

²² Ibid, Ss 11-12. The PCC may also choose to meet formally with the bishop and patron, receive a statement from the bishop about the vacancy or request the patron to advertise. The PCC may also consider a resolution that they believe themselves to be a parish unable to accept women’s ordained ministry under *House of Bishops’ Declaration on the Ministry of Bishops and Priests*, (GS Misc 1076), para 19. See further, Hill, *Ecclesiastical Law*, para 3.34.

²³ Mission and Pastoral etc. (Amendment) Measure 2018, s 12.

²⁴ Parrott and Field, *Situations Vacant*, p 5.

²⁵ Ibid, p 9.

²⁶ Ibid, p 9.

²⁷ *Patronage (Benefices) Measure 1986 Code of Practice: Exercise of Rights of Presentation*. See also *Mission and Pastoral Measure 2011 Code of Recommended Practice*, (revised October 2018) Chapter 11 and *Patronage and Appointment of Clergy Office Holders. A Guide to Good Practice*, House of Bishops (2015). Most Dioceses also issue their own guidance. Further discussion in Parrott, ‘The Patronage (Benefices) Measure’, p 19.

²⁸ For viewing aspects of the parish clergy role as public in nature see below note 125.

²⁹ *Exercising Patronage in the Church of England, Notes Prepared and revised for the Private Patrons Consultative Group*, 2000 para. 9.1. <http://www.clergyassoc.co.uk/content/docs/Patronage%20Guide.pdf>, accessed 18 November 2017.

³⁰ Patronage (Benefices) Measure 1986 s13(1). Under s13(2) and (3) no reply is deemed approval.

be accompanied by written reasons within time limits.³¹ The patron has the right to ask the archbishop to reconsider and authorise.³² The bishop then institutes with the additional proviso that the bishop can refuse if there is a lack of pastoral experience or concerns about financial or moral character or ill health of the proposed incumbent.³³

The six procedural changes proposed in the current *Consultation* do not change the rights or roles of patrons. The first three changes are about avoiding delays and simplifying the timetable in the process.³⁴ The fourth and fifth changes aim to improve efficiency in shared patronage appointments through notice of turns and facility for joint patrons to choose to nominate another patron to act on their behalf.³⁵ The final proposal allows email and other electronic forms of communication.³⁶ At most the proposals make a modest nod to updating administrative procedures. Paragraph 68 of the *Consultation* envisages ‘updated guidance’ on ‘matters of best practice’.³⁷ None of these proposals address the underlying issues with patronage identified in this article. The legislative reform order process under the Legislative Reform Measure 2018 is only designed for procedural change.³⁸ The proposals put forward streamline and embed the existing system. This article suggests that private patronage requires more substantive reflection, review and reform.

DEFINING PATRONAGE AS ECCLESIASTICAL POWER

Patronage has been defined as a property right and as an appointment process under the Patronage (Benefices) Measure 1986. Patronage is also spoken of as a matter of ecclesiastical power. Much has been written about the history of church patronage since the early medieval period, when the Church successfully shifted the role of the feudal lord from owner of the church they founded to that of patron with a right to present clergy.³⁹ Today’s

³¹ Ibid, s13(4). The Mission and Pastoral Measure 2011 Code describes this consent, and the need for the parish statement as ‘effectively’ giving ‘the bishop and each parish a right to refuse any individual candidate’ meaning that patrons do not have ‘an unfettered choice in making a presentation’, para 11.1.

³² Patronage (Benefices) Measure 1986 s13(5). Alternatively, the patron may make another choice if time permits or put forward the same name again.

³³ Ibid, s2(1)(b) Canon C9, para 2 also provides for 28 days space for the bishop to ‘inform himself of the sufficiency and qualities of every minister’ presented for institution.

³⁴ *Consultation*, paras 20-48.

³⁵ Ibid, paras 49-56.

³⁶ Ibid, paras 57-59.

³⁷ Ibid, para 68.

³⁸ Ibid, paras 1-7.

³⁹ G Addleshaw, *Rectors, Vicars and Patrons in the Twelfth and Thirteenth Century Canon Law* (London, 1956), p 17. Also N Saul, *Lordship and Faith. The English Gentry and Parish Church in the Middle Ages* (Oxford, 2017), E Gemmill, *The Nobility and Ecclesiastical Patronage in Thirteenth-Century England* (Woodbridge, 2013), P Smith, ‘The Advowson: the history and development of a most peculiar property’,

patronage is the result of an intricate history of ecclesiastical rights, but ideas of possession still underpin it. The Private Patrons Consultative Group advise their members against transferring patronage to bishops as ‘... to do so is to assist a process which is making the Church of England more narrowly ecclesiastical and silences a lay voice which centuries ago the original donor had secured, as he thought in perpetuity.’⁴⁰

At first sight it seems inconceivable that medieval property rights are still being used to voice opinions and drive appointments processes. On closer consideration the role that patronage that can play in protecting preferences of practice and faith within the Church is apparent. New appointments impact or preserve the churchmanship of individual congregations.⁴¹ Dispersing power and responsibility for appointments has been seen as a means of retaining equilibrium in the Church as a whole. Parrott and Field observe that whilst ‘[n]o-one would dream of inventing the process’ now, it does have ‘considerable latent merits’.⁴² The Diocese of Ely’s Board of Patronage refer to the right of presentation as ‘... a system of checks and balances which ensure the continuance of a broad spectrum of belief and practice within the Church.’⁴³ The Church Society Trust describe patronage as ‘an outworking of the fact that the Church of England is neither a congregational federation, nor an episcopal hierarchy’.⁴⁴ The Trust sees patronage as protecting that structure and patrons as a ‘check’ against the ‘pressure’ of the Diocese to ‘assume control’.⁴⁵ Patronage is described as ‘part of the dynamic strength of the Church of England since its earliest days.’⁴⁶ As little is written about the identity of modern church patrons only a new examination of the patronage registers will shed light on who these patron ‘lay-voices’ are and who is exercising these ‘checks and balances.’

IDENTIFYING MODERN CHURCH PATRONS

The Bodleian Library Special Collections holds a typescript list of all patrons in England and valuations of benefices compiled by A.H. Plaisted dating from approximately

(2000) 5 *Ecc LJ* pp 320-339, M Roberts, ‘Private Patronage and the Church of England 1800-1900’, (1981) *The Journal of Ecclesiastical History*, 32:02, pp 199-223.

⁴⁰ Private Patrons Group Notes, *Exercising Patronage in the Church of England*, p 3.

⁴¹ C Brown, *Religion and Society in Twentieth-Century Britain* (Harlow, 2006), p 52.

⁴² Parrott and Field, *Situations Vacant*, p. 3.

⁴³ ‘Ely Diocesan Board of Patronage’, <http://elydiocese.org/about/synods-boards-and-council/ely-diocesan-board-patronage>, accessed 11 September 2017.

⁴⁴ Church Society Trust, ‘*Clergy Appointments. Why Patronage?*’ 2010.

www.churchsociety.org.cstrust/appointments/whypatronage.asp, accessed 8 October 2018.

⁴⁵ Ibid

⁴⁶ Ibid

1950.⁴⁷ Today the Patronage (Benefices) Measure requires the registrar of each of the 42 dioceses to hold and maintain a register of the patronage in their own diocese and make it open for inspection by the public.⁴⁸ In contrast to the land registration system, there is no one accessible centrally maintained record. At the time of this study only one diocese had a link to a formal list of patrons readily available on-line. For other dioceses application had to be made to view the register or to receive information derived from it. The piecemeal, physical format of some registers can hinder access. Some dioceses were very helpful but some did not welcome enquiries about registers. In contrast, there was immediate, free access to names of past patrons in a parish using The Clergy of the Church of England Database 1540-1835.⁴⁹

This project aimed to consider patronage across a range of geographical areas. The following sections are based on examining the physical registers of Winchester Diocese and Salisbury Diocese, using extracts from the registers of Peterborough Diocese⁵⁰, Lichfield Diocese⁵¹ and Norwich Diocese⁵² and the individual diocesan directories including patrons published by London Diocese⁵³ and available on-line from Truro Diocese.⁵⁴ Research also relied on using *Crockford's Clerical Directory*, patrons' own records in Oxford and historical case studies in Sussex.⁵⁵ In all the dioceses considered the bishop holds the largest share of patronage. Further patronage is held by diocesan boards, deans and chapters of cathedrals and other clergy (for example from 'mother' churches) and the Crown. Remaining private lay patronage can be divided into the four broad categories of private individual patrons, educational bodies, the guilds and the patronage societies. Each has a different type of patronage relationship. The 'who, whom' question will be applied to each of these categories in turn.

PRIVATE INDIVIDUAL PATRONS

The private individual patron category has always been the most controversial form of patronage. William Evershed describes the ecclesiastical patronage system at the start of the nineteenth century as having a 'secular ethos':

⁴⁷ A Plaisted, *Patrons of Parishes in the Church of England c. 1950*, Bodleian Library Special Collections, MSS Top. Eccles. D. 21-3.

⁴⁸ Patronage (Benefices) Measure 1986 s1(1) and s1(5).

⁴⁹ <http://www.theclergydatabase.org.uk>, accessed 3 September 2018

⁵⁰ <http://www.peterboroughdiocesanregistry.co.uk/patronage.html>, accessed 11 October 2017.

⁵¹ List of Patrons and Benefices provided by Lichfield Diocesan Registry.

⁵² Schedule of Register provided by Norwich Diocesan Registry.

⁵³ *Diocese of London Directory 2017*.

⁵⁴ <http://www.trurodiocese.org.uk>, accessed across November 2017.

⁵⁵ *Crockford's Clerical Directory 2018-2019, A Directory of the Clergy of the Church of England, the Church in Wales, the Scottish Episcopal Church and the Church of Ireland*, (105th edn, London, 2017), pp 1076-1245.

It fitted naturally into the wider patronage world, and like other kinds sought the advancement of friends, and the placating of enemies. It was a key to power. He who had much patronage would be great, and he who needed it would surely make himself useful.⁵⁶

Today it is tempting to limit patronage to the novels of Jane Austen and Anthony Trollope.⁵⁷ However, the registers show that a significant number of private individual patrons continue to hold and pass on rights. Some rights have been in landed families for generations. Some were purchased as investments or to provide family livings before the advowson trade was abolished.⁵⁸ All have been passed on by will or transfer since.

West Grinstead church in Sussex is a good study of private patronage because the benefice has enjoyed a variety of types of individual patrons over the centuries. The settlement was a significant area of Roman Catholic recusancy and religious land sequestration which facilitated change. Prior to the mid-seventeenth century and in the nineteenth century the advowson was held by major local land owners. In the intervening years the advowson was held in trust by the Woodward family and five consecutive rectors of West Grinstead came from that family between 1695 and 1807. In the 1920s the advowson was then sold to an entrepreneur, J.P. 'Pitt' Hornung, who made his fortune in the sugar estates of Mozambique before returning to create a family seat at West Grinstead Park. The patronage finally passed from the Hornung family to the bishop in the 1980s.⁵⁹ In most churches individual patrons leave a unique physical mark of their property rights on a church. These are symbols of spiritual ownership over centuries through monuments, memorials,

⁵⁶ W Evershed, *Party Patronage in the Church of England 1800-1945: A Study of Patronage Trusts and Patronage Reform*, Unpublished Doctoral Thesis, University of Oxford, 1985, p 34.

⁵⁷ J Durey, 'Ecclesiastical Patronage in Trollope's Novels and Victoria's England', (1995) *Churchman*, 109(3), pp 250-270. Advowsons in Austen's novels reflect family experience; A Jones, *A Thousand Years of the English Parish* (Moreton-in-Marsh, 2000), p 321.

⁵⁸ Benefices Act 1898 (Amendment) Measure 1923.

⁵⁹ 'West Grinstead Churches', *Victoria County History*, <http://british-history.ac.uk/vch/sussex/vol6/pt2/pp100-102>, accessed 25 September 2017. 'West Grinstead Manors and other Estates', *Victoria County History*, <http://british-history.ac.uk/vch/sussex/vol6/pt2/pp89-94>, accessed 2 January 2018, N Court, 'The Hornung Papers', <http://jisc.ac.uk/features/hornungpapers/>, accessed 2 January 2018, 'A Brief History of the Shrine of our Lady of Consolation West Grinstead', <http://www.consolation.rg.uk/about>, accessed 2 January 2018. The Hornung Trust fund still exists to benefit the work of the Church of England in the parish including the upkeep of the Church.

windows and burial vaults. At West Grinstead these include two twentieth century stained glass windows depicting the biography of the Hornung family.⁶⁰

It is a common misconception that all advowsons have now passed to bishops or other church authorities following the pattern at West Grinstead. In reality all the registers and records considered for this project saw surprising numbers of existing private individual patrons especially in rural areas.⁶¹ The Norwich Diocese is the best example of the advowson as a legacy of feudal rights. In 1835 eleven men held eighty livings advowsons in the Norwich Diocese. These eleven men included the Townshend and Coke families with nine each.⁶² As at 2017 of the 179 benefices in the Norwich Diocese, 63 benefices still involve one or more private individual patrons.⁶³ Furthermore the names Townshend and Coke still appear nine times between them. The patron has a formal title in over 40 of the private individual patron entries for Norwich and the majority of these patrons are male. There are more men with titles listed as patrons than there are women across the whole register. A pattern of residual private individual patronage being held by titled men can be seen repeated in other Dioceses. In Lichfield of the 53 benefices that have one or more private individual patrons there are 20 titled men and 3 titled women. Even in dioceses, such as Truro, where there is less remaining individual patronage, a similar pattern can still be seen.⁶⁴

Steve Bruce's sociological study 'Patronage and secularization: social obligation and church support', considered 'Big house patronage' and 'industrial paternalism' in nineteenth and early twentieth centuries.⁶⁵ Bruce's argues that 'the squirearchy and the major local employers paid a large part of the costs of British religious life' involving the fabric of buildings, the clergy and social events.⁶⁶ Bruce's view is that whilst some believed in the religious activity, others 'took such support to be an obligation placed on them by their social status.'⁶⁷ Advowsons are described as having been 'one of the main sources of a sense of

⁶⁰ In one window the life story and family connections of Pitt and his wife, Laura de Paiva Rapoza, are intertwined with symbols of the earlier history of the parish.

⁶¹ In London there was less private lay individual patronage; only 12 individuals listed.

⁶² Jones, *A Thousand Years of the English Parish*, p 235.

⁶³ A benefice may have more than one patron and they may be joint or alternate patrons. The 63 refers to the number of benefices where a private individual patron will be involved at some point. The number of separate individuals involved in patronage is therefore higher.

⁶⁴ In Truro there were 107 benefices 24 had the involvement of one or more private individual patrons including 8 with a titled male patron.

⁶⁵ S Bruce, 'Patronage and secularisation; social obligation and church support' (2012) *British Journal of Sociology* 63(3) pp 533-552.

⁶⁶ *Ibid*, p 534.

⁶⁷ *Ibid*, p 534.

obligation to the church.⁶⁸ Bruce's study is historical, from a time when even the right to vote was tied to land rights, but it is relevant for understanding the nature of the relationship behind private patronage rights that continue to exist today. Perceptions of social status duties and land rights should have no role in discernment of appointments.

The strongest argument made for retaining private individual patronage is that it is helpful to have an additional lay voice from the community. Individual patrons can prove very valuable in the search for candidates or in promoting a cause to the bishop. They can bring wisdom, connections and resilience. The registers show who these patrons are. The individual voices behind the advowsons are shown to come from those who have inherited or been given a property right which entitles them to nominate clergy. In many cases these rights were previously purchased. The Church needs to be certain that it can be comfortable continuing with this principle in the future. Discernment is key, but to those looking on the process can appear out of step with modern expectations of transparency and due diligence in appointments. It is important to preserve a lay voice. Going forward the loudest lay voice to be heard in modern processes should arguably be that of the parish to be served. This is heard most clearly through the elected PCC and its representatives. For these reasons the author suggests that a sunset rule is applied to private individual patronage in order that it may not be passed on or transferred again in the future to another individual.

EDUCATIONAL PATRONS

All the dioceses considered have educational bodies acting as patrons and the overwhelming majority of these are Oxford and Cambridge colleges. Norwich has over 40 registrations of educational patrons and all but one are Oxford or Cambridge colleges. Peterborough Diocese has over 30 registrations linked to the two universities. At a greater geographical distance there is still significant involvement in patronage. For example, Queens, Keble, Christ Church, Balliol, Exeter, Oxford and Sydney Sussex, Cambridge are holding patronage in Truro; Balliol, St. John's, Keble, Brasenose, Oxford and Trinity, Magdalene, Corpus Christi and King's, Cambridge in London and Keble, St. John's, University, New, Magdalen, Oxford and King's and Emmanuel, Cambridge in Winchester. The proportion of patronage held nationally by universities and colleges was estimated at 7 percent in the mid-twentieth century.⁶⁹ Today the main change is that the majority of

⁶⁸ Ibid, p 546.

⁶⁹ L Paul, *The Deployment and Payment of the Clergy* (Chatham, 1964), p 286. M McQueen, *Parson, Parish and Patron: Appointments to Benefices in the Church of England* (Abingdon, 1968), p 32.

patronage is joint or alternate. In addition to the Oxford and Cambridge colleges there are theological colleges or former theological colleges,⁷⁰ old grammar school foundations⁷¹ and leading public schools acting as patrons.⁷² The role of these educational patrons is embedded into the system. For example, the Patronage (Benefices) Measure 1986 provides that if a patron is unable to act then they should appoint an alternative. The list of alternatives includes any university or college or hall of a university or Eton and Winchester schools.⁷³

There is no longer any legal or financial reason for the educational bodies to continue these patronage relationships. The advowsons were originally bequeathed or purchased to provide income for colleges and livings for the fellows. Balliol acquired the sole patronage of Long Benton, Northumberland in 1340 and still hold it today.⁷⁴ Past appointments to the living with a Balliol connection can be seen on the historical Clergy of the Church of England Database.⁷⁵ Some endowments, such as that to Hertford College in 1887 which included the advowson of the parish of Ripe on East Sussex, made express provision for the rights of presentation. Trustees were instructed to give priority to a member of the governing body and failing that a qualified graduate member.⁷⁶ Patronages no longer provide any material benefit to a college. When Ripe (now Laughton with Ripe and Chalvington) was in vacancy in 2017, Hertford College was named as one of the patrons in the advertisement but was not expected to present their own internal candidate.

Where educational patrons continue to be involved in parishes, they do so as an act of benevolence. Eton includes its 16 shared patronages in the school's records for the public benefit requirement.⁷⁷ Advocacy on behalf of the parish with ecclesiastical authorities has been part of the patronage relationships in the past.⁷⁸ Today some colleges endeavour to support parishes and build links. Some college chaplains view patronage as part of their ministry and offer chapel services, tours and conference days. Many will still assist a parish

⁷⁰ For example, St. Chad's College, Durham whose patronages include benefices in Toxteth Park, Stourhead and Pontesbury.

⁷¹ For example, the Governors of King Edward VI Grammar School in Norwich and the Governors of Queen Elizabeth School in Wimborne Minister.

⁷² For example, Eton and Winchester.

⁷³ Patronage (Benefices) Measure 1986 s7 and s7(f).

⁷⁴ <http://archives.balliol.ox.ac.uk/images/patronageexhibition/08text.jpg>, accessed 3 September 2018.

⁷⁵ For example, Samuel Cooke (CCEd Person ID 10356) and John Besley (CCEd Person ID 22634), the Clergy of the Church of England Database 1540-1835 <http://www.theclergydatabase.org.uk>, accessed 3 September 2018.

⁷⁶ Copy trust deed dated 11th August 1887 between Charles Barring and Francis Jeune, Hertford College, Oxford Archive 17/3/1.

⁷⁷ <http://www.etoncollege.com/summaryofpublicbenefit.aspx>, accessed 30 October 2018.

⁷⁸ For example, letter of thanks from the Joint PCC of Codbury St. Mary and St. Peter to the Master of Pembroke, Oxford, dated 28th January. Pembroke College, Oxford Archive PMB/G/4/12/1/32.

in vacancy. Keble College, Oxford is one of the colleges known for a commitment to patronage. The history of the College makes it a special case. Keble was founded in 1870 as a memorial to John Keble, a leader of the Oxford Movement within the Church of England. The College was given advowsons for the specific purpose of promoting the Anglo-Catholic traditions within the Church and was the largest holder of Catholic patronage. For these reasons it has been argued that in the past Keble has been more of a party patronage trust than an educational patron.⁷⁹ Today Keble still holds more than 70 patronages and is actively involved in vacancies. Whilst many of their parishes do retain an Anglo-Catholic tradition, the College does not seek to make appointments solely on that basis.

Notwithstanding the efforts made by some educational bodies, patronage is now an optional form of support that a college can choose to provide. Some parishes are grateful for the hospitality and spiritual connection. Balliol records that when it offered its parishes the chance to sever links, all but one chose to retain the connection.⁸⁰ These valuable relationships are more akin to the sort of figurehead patron that a charity might seek. They could exist and survive independently of the formal property right from which they were originally derived and are not a reason for retaining the principle of patronage.

GUILD PATRONS

The most generous sort of patron to have has always been one of the London livery companies or guilds. Much of the medieval life of these social and religious fraternities revolved around the guild churches and chapels. Today the livery companies continue to hold patronages of churches that have served them for centuries and a small number of patronages of more far-flung parishes originally acquired for income.⁸¹ Regional guilds hold patronage as well.⁸² The companies view their continued patronage of these parishes as part of their charitable work. Just as the companies endeavour to support schools that they originally founded so too do they choose to benefit these churches.

As in the private individual patronage relationships, the patronage has often left a physical mark on the church. At St. Peter's Ugborough in Devon the 'Grocers' Window' has the coat of arms of the Company and motto as a badge of belonging. St. Peter's is one of 13

⁷⁹ Evershed, *Party Patronage*, p 321

⁸⁰ <http://archives.balliol.ox.ac.uk/Exhibitions/exhib11.asp>, accessed 17 January 2018.

⁸¹ For example, in the London Diocese the Mercers' Company, the Drapers' Company, the Merchant Taylors' Company and the Haberdashers' Company all hold one patronage and the Grocers' Company holds six and in the Lichfield Diocese the Haberdasher's Company hold a further two patronages.

⁸² For example, the Society of Merchant Venturers (Bristol) holds a patronage in Peterborough Diocese.

churches that the Company refers to as ‘our parishes’.⁸³ The Mercers’ Company and the Haberdashers’ Livery Company both hold 8 patronages many of which were originally acquired through bequests of members.⁸⁴ Both companies list ‘the right to present a new incumbent’ as the defining characteristic of their role. Both acknowledge that this patronage role is now shared through joint or alternate patronage, but neither reflect on the present realities of the suitability of themselves for that role. Many of these patronages have been long-standing and positive. For example, the Drapers’ Company has held the patronage of St Michael, Cornhill since 1503 through the destruction of the church in the Fire of London and the rebuilding by Christopher Wren. The church continues to serve the City and the Livery Companies and Guilds. The relationship is a valued one. During the last vacancy St Michael described the Company as playing ‘an important and constructive role in parish life to this day’ including ‘very considerable financial support’.⁸⁵ As with the educational patrons, the picture is one of benevolence. The current role of the guilds does not need to depend or turn upon any property right to nominate an incumbent. The relationship between the guild and the church is a charitable one. As with the educational patrons, the link would survive severance from the right to nominate and is not a reason for retaining the underlying principle of patronage.

PATRONAGE TRUSTS AND SOCIETIES: PARTY PATRONAGE

The Patronage trusts and societies are the most challenging group of patrons to address because many are still very purposeful in fulfilling their original role.⁸⁶ They represent party patronage, supporting and promoting the work of either the Evangelical or Anglo-Catholic wings of the Church of England. Some are small trusts, with the patronage of one or more local churches, such as the remnants of the Wagner Trust in Brighton.⁸⁷ The most influential trusts have an extensive national presence. The Church Pastoral Aid Society holds 521 sole or shared patronages.⁸⁸ The Church Society holds 125.⁸⁹ The Simeon’s

⁸³ <http://grocershall.co.uk/the-charity/church-patronage/>, accessed 21 May 2018.

⁸⁴ <http://mercercs.co.uk/location-mercercs-company-churches>, accessed 14 August 2018.

<http://www.haberdashers.co.uk/content.php?p=church-and-almshouses>, accessed 14 August 2018.

⁸⁵ *The Parish Church of Saint Michael, Cornhill, Statement Concerning the Conditions, Needs and Traditions of the Parish* (published during the last vacancy in May 2012) p 3 and 10.

⁸⁶ *The Church of England Yearbook 2018* (London, 2018) p 242.

⁸⁷ The Wagner Trust used to have a much larger Anglo-Catholic influence within the city; Evershed, *Party Patronage*, p 184. G Hedley, *Free Seats for All. The Boom in Church Building After Waterloo* (London, 2018), p 174.

⁸⁸ <http://www.cpas.org.uk/advice-and-support/patronage>, accessed 20 March 2017.

⁸⁹ <http://www.churchsociety.org>, accessed 30 August 2018.

Trustees and the Hyndman's Trust hold nearly 200 across 40 dioceses.⁹⁰ The Anglo-Catholic Society for the Maintenance of the Faith holds 84 across 29 dioceses and the Guild of All Souls another 40.⁹¹ The variety and spread of the trusts is striking. In the Lichfield Diocese, in addition to small individual trusts, 9 different patronage societies hold rights to present clergy.⁹² This party patronage is the legacy of the vision of significant nineteenth century churchmen to use advowsons to influence the theological direction of the Church.

The first and most deliberate of these churchmen was Rev. Charles Simeon (1759-1836), the vicar of Holy Trinity, Cambridge for 54 years. His obituary in *The Gentleman's Magazine* records his missionary work amongst his students and his '... still more important engine for the advancement of his peculiar views ... his Society for the purchase of advowsons, and thereby planting in many populous districts ministers devoted to his opinions.' The same article describes his incomplete 'episcopal tour of visitation' to his churches in the summer of 1835.⁹³ Evershed argues that, above all, Simeon 'spiritualised the idea of the advowson; he saw the need to secure perpetuity; he gave priority to the parishes' needs; and believed that the patron acted under God.'⁹⁴ In 1833 Simeon wrote his 'charge' for his trustees to guide them in appointments and this is still used by the largely evangelical Trust today.⁹⁵

Some modern trusts, like Simeon's, only exercise patronage. Other trusts see their patronage rights as fitting into their broader mission and role. The Church Society's original nineteenth-century purpose was to 'defend' the Church of England from Anglo-Catholic teaching. Today the Society's objectives are to 'strengthen local churches in Biblical faith and to help shape the Church of England now and for the future'.⁹⁶ The Society tries to achieve these aims through campaigning, publishing and patronage. It actively seeks to add to its patronages. Of the Anglo-Catholic trusts, the Guild of All Souls has regarded intercessory prayer for the deceased as its fundamental purpose and its role in patronage is an additional subsidiary function. The Society for the Maintenance of the Faith has always seen its object

⁹⁰ <http://www.simeons.org.uk>, accessed 30 August 2018.

⁹¹ <http://smftrust.org.uk/fullposts.php?id=18>, accessed 20 March 2017.

<http://www.guildofallsouls.org.uk/patronage.html>, accessed 20 March 2017.

⁹² There was a similar pattern elsewhere. For example, 6 trusts represented in Truro, 10 in London, 8 in Peterborough.

⁹³ 'Rev. Charles Simeon', *The Gentleman's Magazine and Historical Review*, July 1856-May 1868, February 1837, p 207.

⁹⁴ Evershed, *Party Patronage* p 164.

⁹⁵ J Benton, J Cameron and M Rees, *Charles Simeon of Cambridge, Silhouettes and Skeletons* (Didasko, 2013), p 33.

⁹⁶ <https://churchsociety.org/aboutus/OurWork/Ourwork.asp>, accessed 30 October 2018

as to ‘promote and maintain the Catholic teaching and practice’ and has used patronage as its principal means.⁹⁷ Today some trusts, such as Simeon’s, emphasise that they will always respect a parish’s own choice of tradition. In any case, trusts are now forced to show flexibility because of the number of patronages that are shared after parish amalgamations.

Party patronage has been much criticised in the past. In 1960 Leslie Paul was commissioned by the Church to prepare a report *The Deployment and Payment of the Clergy*.⁹⁸ Paul described party appointments via patronage trusts as ‘an irrationality which does the Church moral harm’. He continued:

One can only imagine the outcry in the press if it were discovered that a political party ‘owned’ the right to make civil service appointments in order to ensure placing men of the right political colour in key posts! Such a dubious system of empire-building within the Church could only have grown up because the Church was never properly master of its house.⁹⁹

Today many trusts are small and some share trustees. They embrace their role sincerely and protect their interests vigorously. Trusts bring experience, independence and advocacy to the table during a vacancy and mediation, prayer, connection and practical help in other times. Connection to a trust can reduce isolation for clergy. Trusts can be a supportive voice for parishes in negotiations with the Diocese and provide breadth and context. The Society for the Maintenance of the Faith describes patronage as ‘the rock upon which the Christian Church in this country has flourished for centuries’.¹⁰⁰ Trusts can promote diversity by protecting a variety of traditions within a diocese alongside the preferences of the bishop. On the other hand they can reduce opportunity where they rely on existing links with clergy known to the trust or trustees in making nominations. The trusts have these privileges because of the property rights that they purchased or were given. Again, the Church needs to be sure that it is comfortable with appointments being made on this basis going forward. The position of the trusts is different to that of the individual patrons. The trusts are largely

⁹⁷ Patronage has been given or bequeathed but was never purchased. The Society for the Maintenance of the Faith, ‘Keeping the Faith: A Brief Introduction to the SMF’, 2017.

<http://www.smftrust.org.uk/fullposts.php?id=113>, accessed 30 October 2018

⁹⁸ Paul, *The Deployment and Payment of the Clergy*.

⁹⁹ *Ibid*, p 196.

¹⁰⁰ The Society for the Maintenance of the Faith, ‘Whither Patronage?’, 2014, <http://www.smftrust.org.uk/news.php>, accessed 23 October 2018.

incorporated as charities with the safeguards that provides. However, property rights based in medieval law are a far from an ideal way to incorporate different traditions in the Church today. The recent provisions in the *House of Bishops' Declaration on the Ministry of Bishops and Priests* for PCCs unable to accept women's ordained ministry show the wisdom of concentrating on local solutions.¹⁰¹ If the trusts are to continue with their charitable work, it should be on the basis of a parish electing to continue patronage relationships with a trust. Choice should trump current perpetual ownership ties flowing from historical purchases and bequests and thereby appointments could be separated from property rights.

PARISH RE-ORGANISATION: SHARED PATRONAGE AND SUSPENDED PATRONAGE

Shared patronage

Pastoral reorganisation and new initiatives bring boundary changes, united benefices, team ministries, pluralities, clergy working under bishops' mission orders, fresh expression settings and local missional leaders. All impact the operation and relevance of patronage as it has a geographical basis. The most obvious impact is the totally impractical ways in which patronage is now often shared. Unlike other areas of property law, there are no limits on the number of patrons that can appear on the register or the complication of the sharing provisions. When parishes are amalgamated it is for the Diocesan Mission and Pastoral Committee to broker an arrangement for exercise of patronage rights going forward.¹⁰² Joint and shared patronage has become very common indeed.¹⁰³ It is estimated that in 2011 71 percent of parishes were in multi-parish benefices compared to 17 percent in 1960.¹⁰⁴ Shared patronage can result in alternate turns or more complicated arrangements. Special patronage boards may also be put in place. A large number of parties sharing the process presents significant practical difficulties. The fourth procedural change proposed in the recent

¹⁰¹ *House of Bishops' Declaration on the Ministry of Bishops and Priests* (GS Misc 1076). Hill, *Ecclesiastical Law*, p 61.

¹⁰² 2011 Measure, s46. Appeal lies to the Church Commissioners. *Mission and Pastoral Measure 2011 Code of Recommended Practice* (revised October 2018) notes that proposals must 'pay due regard' to the current arrangements and emphasises the need for consultation, 'fair play' and 'reasonable proportionality' at paras 11.16 and 11.17. See also 11.2 to 11.21.

¹⁰³ For the pastoral challenges of multi-parish ministry see J Martin, 'The Priest Attends Seven Fetes: Multi-Parish Ministry' in J Martin and S Coakley (eds), *For God's Sake, Re-imagining Priesthood and Prayer in a Changing Church* (Norwich, 2016), p 20.

¹⁰⁴ Church of England, Resource, Strategy and Development Unit, *Amalgamating Parishes and Declining Clergy Numbers, Consequences and Causes* (2016). http://www.churchgrowthresearch.org.uk/UserFiles/File/Amalgamating_parishes_and_declining_clergy_numbers_Final.pdf, accessed 5 November 2018. Comparison of modern records to Plaisted's *List* also reflects the change.

Consultation acknowledges this and suggests allowing one joint patron to nominate another to act for them.¹⁰⁵

In other benefices a large number of patrons taking turns may result in a patron waiting decades before having any involvement at all. For example, in one rural Norwich benefice the rights of presentation were recorded as being exercised in a recurring series of 5 successive turns involving the Bishop, the trustees of the Great Hospital in Norwich, two private patrons and the Norwich Diocesan Board.¹⁰⁶ Other arrangements have varied groups of patrons taking turns. Another Norwich benefice has its rights of presentation exercised in a recurring series of 4 turns. The Bishop, Keble College, Oxford and Christ's College Cambridge and the Martyrs' Memorial Trust have the first, third and fourth turns jointly and St. John's College, Cambridge has the second turn.¹⁰⁷ As the speed of pastoral reorganisation increases in the face of falling attendance and financial pressures, the issues presented by joint and shared patronages will increase.

Suspended patronage

As in some other areas of property law, an owner will lose their rights if they do not exercise them at the correct time. Patronage is unique in that the right can also be suspended and then subsequently ended, modified or revived or suspended again years later. The friction around suspension reflects dis-satisfaction with existing patronage rules from all parties.¹⁰⁸

Under the Mission and Pastoral Measure 2011 the bishop has power to suspend the patron's right of presentation during a vacancy or 3 months before a planned vacancy.¹⁰⁹ Suspensions are for up to 5 years and renewable.¹¹⁰ S85(1) obliges the bishop to give reasons why they are considering exercising the power. The accompanying Code requires that consultation is genuine and recommends that suspension is confined to benefices where 'pastoral reorganisation is under consideration or in progress' or a 'change in parsonage

¹⁰⁵ *Consultation*, para 54. The most likely result of this change is that private lay patrons holding jointly with a bishop delegate to the bishop.

¹⁰⁶ Erpingham with Calthorpe, Ingworth, Aldborough with Thurgarton and Alby with Thwaite.

¹⁰⁷ The Upper Tas Valley Benefice.

¹⁰⁸ For example, J Harris, 'Living in Suspense, Problems and Solutions with the Suspension of the Right of Presentation' (2002) *Ecc L J* 6(3) pp 199 – 207. This article and some complaints noted below pre-date the 2011 Measure and Code and recent updates but remain relevant for patronage.

¹⁰⁹ 2011 Measure, s85(1) (a)-(c), There are also rights to restrict presentation under s87 in relation to pastoral reorganisation. The bishop is required to have consulted the patron. Prior to the Pastoral Measure 1968 the patron's consent was needed.

¹¹⁰ *Ibid*, s85(5) and (6).

house is planned'.¹¹¹ The provisions are not supposed to facilitate general flexibility and fluidity. The Code states that '[c]are should be taken to allay fears' that suspension 'is being used to exclude the rights of patrons.'¹¹²

As the need for pastoral reorganisation has grown so too has the number of suspensions.¹¹³ Some patrons believe their rights are being deliberately put on hold through the suspension mechanisms. Patrons complain of over use and mis-use.¹¹⁴ Leave to petition for judicial review of the action of one bishop was granted in 1995, but the parties reached agreement and the matter went no further.¹¹⁵ The underlying problem is that the current patronage rules do not sit well with new pressures of reorganisation and redeployment. Patronage is a legacy from different times. A reconsideration of that patronage and the principles behind it, would contribute to open debate about the best ways in which to facilitate local change in the context of national pressures upon the Church.

EUROPEAN CONVENTION ON HUMAN RIGHTS, FIRST PROTOCOL, ARTICLE 1

A review of patronage needs to consider any impact of Article 1 of the First Protocol to the ECHR on the advowson that gives rise to the right. Patrons wishing to protect rights might argue that change represents an interference to the peaceful enjoyment of possessions under Article 1. Similar property rights, such as easements and covenants attached to land, do not represent separate possessions for the purposes of Article 1. They are part of the property to which they are attached.¹¹⁶ Modern advowsons stand alone, unattached to any other property and cannot be interpreted in this way. Given their inclusion in the statutory definitions of land, there is an argument that advowsons could be covered by the autonomous definition of 'possessions'.¹¹⁷ However, as a right which gives a spiritual role to discern who to put forward for religious service at undetermined times in the future, it has no measurable

¹¹¹ *Mission and Pastoral Measure 2011 Code of Practice* (revised October 2018) para 11.25. The current *Consultation* advises that if there are 'special reasons in relation in a particular benefice, in the light of which a delay in starting the formal [appointment] process would be advisable' a bishop should use suspension, para 25.

¹¹² *Ibid*, para 11.25. Similar provisions were included in a previous edition of the Code.

¹¹³ New compensation provisions for dispossessed clergy remove one driving force for suspensions going forward. *Mission and Pastoral etc. (Amendment) Measure 2018 s 6, Mission and Pastoral Measure 2011 Code of Practice*, para 11.25.

¹¹⁴ Notes from Annual Address at English Clergy Association Annual Meeting published as 'Churchwardens and Patronage', (2003) *Parson and Parish* p 10, D Phillips, 'Patronage: What's Wrong', (2002) 84 *Crossway*, Church Society, *Clergy Appointments. Suspensions of a benefice and of the patron's rights of presentation*, 2008 <http://archive.churchsociety.org/cstrust/documents/Appt03-Suspensions.pdf>, accessed 2 November 2018. and <https://churchsociety.org/cstrust/appointments/suspensions.asp>, accessed 2 November 2018.

¹¹⁵ *R v. Bishop of Southwark, exp parte the PCC and the Churchwardens of St. Luke, Kingston*, 13 November 1995 (unreported) (CO/2119/95).

¹¹⁶ *Antoniades v UK* (App No 15434/89) and *S v UK* (App No 1074/84)

¹¹⁷ *Sporrong and Lonroth v Sweden* (1982) 5 EHRR 35.

value. Nomination can be vetoed in some circumstances. Any transfer or sale for value is void. Advowsons are already regulated to the extent that the right can be lost by non-exercise for 12 months or suspended for renewable periods of 5 years after nominal consultation. All these characteristics distinguish the advowson from other property rights. If advowsons were still to be interpreted as a possession under Article 1 then any interference needs to be justified by the wider public interest in reform of the Church.¹¹⁸

POSITIVE ADVANTAGES OF REFORMING PATRONAGE

Previous sections have focused on the problems of existing patronage system. The last section of this article focuses on the positive advantages that reconsideration of the law of patronage can contribute to wider debates about the future of the Church.

Sustainability of English churches and cathedrals

The Taylor Review: Sustainability of English Churches and Cathedrals was published in December 2017. In the context of falling church attendance and significant public expenditure on church buildings, this Government commissioned Review examined future funding and conservation of churches.¹¹⁹ The challenges are huge; 78 percent of the 16,000 parish churches in England are listed and £2.6 billion of public money has been spent on Church of England buildings since 1999.¹²⁰ The Review explores new ways to fund repairs and maintenance and find additional uses for buildings. It recommends a continued focus on the work of Simplification Group to review existing law to enable parish reorganisation. The Review advises ‘more needs to be done with urgency’ to simplify processes so that churches are encouraged to work on projects to ‘enable more flexible and increased use of their buildings, and to promote their use by the whole community.’¹²¹ As previously discussed, patronage can act as a brake on pastoral reorganisation. The recommendations of the Review will be assisted by an open debate on the role of patronage in local churches.

Growing vocations

¹¹⁸ *James v UK* (1986) 8 EHRR 123.

¹¹⁹ *Taylor Review*, p 10-11. Church of England attendance has dropped by 11 percent in the last decade.

¹²⁰ *Taylor Review*, p 11. This money is in addition to the money spent by the Church and the local parish church communities where the main obligations and burden of repair costs lies.

¹²¹ *Taylor Review*, p 31. St. Martin’s Church, Brighton, one of the original Wagner Trust churches previously referred to, is an example of a church seeking innovative re-use <https://www.colander/architectural-competitions/colander-competitions/st-martins-church-brighton>, accessed 1 September 2018. For use of Victorian churches today see W. Whyte, *Unlocking the Church. The Lost Secrets of Victorian Sacred Space* (Oxford, 2017), chapter 5.

The Taylor Review focuses on broadening the use of church buildings. The Ministry Division of the Church also has initiatives to broaden recruitment and vocations. The Church is seeking to increase the number of candidates for ordination by 50 percent. It aims to recruit younger people and increase social and racial diversity.¹²² To this end the ‘Future Clergy’ project is reconsidering the initial discernment and selection processes for clergy. Processes have changed to improve access. The Church acknowledges updating has been necessary ‘to keep pace with rapid social change and technological change as a result of which all the major systems of professional selection which BAPS resembled forty years ago have changed significantly.’¹²³ Modernisation of initial selection processes is to be welcomed. This commitment to diversity and openness in recruitment could be furthered through a reconsideration of the patronage system. Historically, patronage has been described as fossilising the ‘social stratum’ of the clergy.¹²⁴ The private patron process whereby individuals can present without any duty to advertise or interview is especially problematic. In many ways this process dates back to times when it would have been seen as inappropriate for clergy to initiate a parish move themselves. Clergy would wait to be asked.¹²⁵ Patrons and in particular patronage trusts can be still helpful in finding candidates for roles and locations that lack applicants. However, given the public nature of some aspects of the parish clergy role, the process through which clergy are appointed must be seen to be open and fair and the current patronage system lacks cohesion on this point.¹²⁶

The future of the parish debate

Abby Day’s recent ethnographical study, *The Religious Lives of Older Laywomen, The Last Active Anglican Generation*, argues that as the generation of women born in the 1920s and 1930s dies, so too does the Church as successive generations have little interest in what the Church has to offer.¹²⁷ Day identifies these women as the backbone of the local parish system; ‘[t]hey attend the mainstream churches every Sunday, polish brasses, organise

¹²² <https://www.churchofengland.org/about/renewal-reform/growing-vocations>, accessed 1 October 2018.

¹²³ Bishops’ Advisory Panel, Renewal and Reform, ‘Growing Vocations, Future Clergy’, p 15. <https://www.churchofengland.org/about/renewal-reform/growing-vocations>, accessed 1 October 2018. A Bishops’ Advisory Panel (BAP) serves as a point of recommendation to bishops about the suitability of an individual to begin training for ordination.

¹²⁴ Paul, *The Deployment and Payment of the Clergy*, p 114.

¹²⁵ Parrott and Field, *Situations Vacant*, p 23.

¹²⁶ In *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v. Wallbank and Another* [2003] UKHL 37 the House of Lords treated the Church of England as an essentially religious organisation but referred to some aspects of the role of the clergy such as marriages and burials as being public in nature. For the continued significance of occasional offices in the work of the Church see R Sandberg, *Religion, Law and Society* (Cambridge, 2014), p 142.

¹²⁷ A Day, *Religious Lives of Older Laywomen, The Last Active Anglican Generation* (Oxford, 2017).

fund-raisers, keep the churches open on weekdays, bake cakes, and visit vulnerable people in their homes.’¹²⁸ It is true that some of the most dynamic recent growth in the Church is outside of the traditional geographical unit of the parish. Attendance has increased in cathedrals, in new church plants, in parish churches ‘re-planted’ with new congregations and in ‘Fresh Expressions’ variations of church under bishop’s mission orders.¹²⁹ Difficulties within the traditional parish settings and new successes outside it, have led to an on-going theological debate about the future of the parish as a unit.¹³⁰ It is very surprising that advowsons and patronage have not been considered as part of this debate. The 2018 Code of Practice on Mission Initiatives is positive for new ventures but more substantive review of the old structures is also necessary.¹³¹ Some new life is even being forced into out-dated patronage structures for procedural reasons.¹³² Reconsideration and reform of this area of law has the potential to facilitate broader change and renewal within the Church.

CONCLUSIONS

Advowsons raise different questions for property and ecclesiastical lawyers. Property lawyers view advowsons as an unfortunate relic of feudal land law. Ecclesiastical lawyers respect them as a fundamental part of the vacancy process. This article has used a variety of sources to show who is holding private patronage rights today and analyse how and why they are exercising those rights. The existing patronal relationships of private individual lay patrons, educational and guild patrons and patronage societies are rooted in different times. Historical reasons for patronage are not enough to justify its continuing use in its current form. In spite of extensive goodwill on the part of some patrons, the system has many weaknesses. The proposals in the current *Consultation* are necessarily limited to that of procedure. This article argues for a more substantive reconsideration of patronage. Reform of

¹²⁸ Ibid, p 8.

¹²⁹ See for example, ‘HTB reopens church in Bristol’, *Church Times*, 2 November 2018 p 8, ‘HTB planters seek to bless the west’, *Church Times*, 10 August 2018, p 3, *Church Times*, 28 September 2018, p 5. ‘Go forth and plant, says House of Bishops’, *Church Times*, 29 June 2018, p 8. M Moynagh, *Being Church, Doing Life, Creating Gospel Communities Where Life Happens* (Oxford, 2014), p 15. The Church of England Growth Research Programme, *From Anecdote to Evidence, Findings from the Church Growth Research Programme 2011-2013*, <http://www.churchgrowthresearch.org.uk>, accessed 30 October 2018.

¹³⁰ ‘What future does the parish have in the 21st Century?’, *Church Times*, 13 October 2017. A Davidson and A Milbank, *For the Parish. A Critique of Fresh Expressions* (London, 2010), A Rumsey, *Parish, An Anglican Theology of Place* (London, 2017), M Percy, *The Future Shapes of Anglicanism, Current, Contours, Charts* (Abingdon, 2017), N Spencer, *Parochial Vision. The Future of the English Parish* (Carlisle, 2004), R Barlow, ‘Travelling Congregations or Fixed Provision? Assessing Models of Rural Ministry’, (2018) *Rural Theology*, 16 (1) pp 3-7.

¹³¹ *House of Bishops Code of Practice on Mission Initiatives* 2018 issued under s84 Mission and Pastoral Measure 2011.

¹³² For example, a church sending a congregation to renew an older church assuming the joint patronage of the parish church that they planted into.

private patronage would make a positive contribution to other debates before the Church; promoting applications of *The Taylor Review*, facilitating open and accountable recruitment to ministry roles and contributing to the wider discussion about the geographical parish unit in the future organisation of the Church.

Patronage is a subject that some within the Church already feel strongly about one way or the other. The author believes that more parishioners and property lawyers would also hold views about it if they were fully aware of the current position. On the basis of the records considered, the author suggests three steps forward for discussion. First, propose a sunset rule on individual private lay patronage providing that personal patronage may no longer be passed onto another individual. Second, develop a nominal figurehead ‘charity patron’ role without formal rights of presentation for educational or guild patrons that are willing to retain supportive links with a church. Finally, recognise value in the work of the patronage societies in reflecting churchmanship through provision for societies to assist parishes, but only where PCCs opt into continuing that arrangement at the point of vacancy.