



# The King and the Law of the Church of England

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*Charles III acceded to the British throne on 8 September 2022, becoming at the same time Supreme Governor of the Church of England. This article presents an overview of the law relating to the King and the Church of England, and considers the effects of the royal supremacy today.*

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The first part of the article summarises the ecclesiastical law that touches the Crown. It presents a brief but holistic overview of the present-day legal role of the Supreme Governor of the Church. The second part explains and evaluates the royal supremacy in the Church of England, providing some historical context and offers some comment on what the supremacy means for the Church today.

It should be noted that the King also has duties and powers with respect to the Church of Scotland, but these lie beyond the scope of this article. In addition, constraints of space preclude detailed historical analysis of the matters covered. The primary intention of this article is to describe the law as it stands at present.

## PART ONE: A CONSPECTUS OF THE LAW RELATING TO THE KING AND THE CHURCH OF ENGLAND

The King is styled ‘Charles the Third, by the Grace of God, of the United Kingdom of Great Britain and Northern Ireland and of His other Realms and Territories King, Head of the Commonwealth, Defender of the Faith’ and is Supreme Governor of the Church of England.<sup>2</sup> The Church of England acknowledges that the King’s Majesty, acting under God and according to law, has supreme authority in both ecclesiastical and civil causes.<sup>3</sup> The King joins in Communion with the Church of England.<sup>4</sup>

1 The author is indebted to Professor Norman Doe and Morag Ellis KC for their comments on a draft of this article.  
2 Thirty-nine Articles of Religion (1562), Preface.  
3 Canon A7.  
4 Act of Settlement 1700, s 3.

By constitutional convention, the King acts on the advice of his ministers, and this includes the exercise of most powers relating to the Church of England. It is usually the Prime Minister who advises His Majesty on ecclesiastical matters. No one professing the Roman Catholic or Jewish religion may advise His Majesty on appointments in the Church of England.<sup>5</sup> In the event that the Lord Chancellor is Roman Catholic, His Majesty in Council may make provision for the Lord Chancellor's ecclesiastical functions to be performed by another minister.<sup>6</sup>

The following survey of the law relating to the King and the Church of England begins with the accession and the coronation. The relationship of the King to the Convocations and the General Synod is then considered, and His Majesty's role in ecclesiastical legislation. An overview of the Crown's ecclesiastical patronage is accompanied by some notes on the appointment of bishops. Clergy discipline, the role of His Majesty in Council, Royal Peculiars, and the Oath of Allegiance are briefly touched upon, before the first part of the article concludes with a summary of liturgical matters which relate to the King.

### Accession

Her Majesty Queen Elizabeth II died on 8 September 2022, and her eldest son immediately<sup>7</sup> acceded to the throne of the United Kingdom and to the thrones of the other Commonwealth realms. On 10 September, the Accession Council gathered in London, and the accession was proclaimed, announcing the King's regnal name, Charles III.<sup>8</sup>

In a Royal Warrant issued on 17 September 2022, the King directed that Accession Day should now be observed on the anniversary of his accession, 8 September.<sup>9</sup>

A new monarch makes the Accession Declaration:<sup>10</sup>

I [*here insert the name of the Sovereign*] do solemnly and sincerely in the presence of God profess, testify, and declare that I am a faithful Protestant, and that I will, according to the true intent of the enactments which secure the Protestant succession to the Throne of my Realm,

5 Roman Catholic Relief Act 1829, s 18; Jews Relief Act 1858, s 4. These provisions seem unsuited to the ecumenical and inter-faith witness of the Church of England. It may be appropriate for certain functions to be exercised only by those who are members of the Church of England; it may be appropriate for other functions, being primarily constitutional or political, to be exercised without any religious test. However, to exclude members of certain named churches or faiths, while allowing all other churches and faiths, seems indefensible today.

6 Lord Chancellor (Tenure of Office and Discharge of Ecclesiastical Functions) Act 1974, s 2.

7 Act of Settlement 1700, s 1.

8 *London Gazette*, Supplement 63812, 12 September 2022, 2.

9 'Lambeth Palace – Prayers for the Sovereign and for the Royal Family and Prayers and Forms of Service for Accession Day' archived at the Law and Religion UK blog at <<https://lawandreligionuk.com/wp-content/uploads/2022/09/220920-Warrant.pdf>>, accessed 29 December 2022.

10 Act of Settlement 1700, s 2.

uphold and maintain the said enactments to the best of my powers according to law.<sup>11</sup>

It is expected that this declaration will be made by the King at his coronation, as was the case at the coronation of George VI.<sup>12</sup>

At the time of writing, Amending Canon 43 is expected to be presented to the General Synod for approval in February 2023. This Amending Canon makes necessary changes consequent upon the accession of the King. It would change the word 'Queen' to 'King', and make like changes, in Canons A1–A7, B19, C13 and C17. In what follows, all quotations from these canons are given as though this Amending Canon were already in force.

A reference to the Sovereign in Acts of Parliament and Measures of the General Synod should be 'construed, unless the contrary intention appears, as a reference to the Sovereign of the time being'.<sup>13</sup>

### The coronation

It has been announced that the date of the King's coronation will be 6 May 2023.

The coronation is a service of the Church of England. The Archbishop of Canterbury and other ministers of the Church of England officiate. As such, a form of service authorised or allowed by canon must be used. There is no authorised coronation service, but it has been suggested<sup>14</sup> that the very participation of the archbishops implies that the form of service has been approved by them under Canon B4(2), as long as the 'words and order are in their opinion reverent and seemly and are neither contrary to, nor indicative of any departure from, the doctrine of the Church of England in any essential matter'.

The coronation service has developed over the centuries, but always includes a number of significant ceremonies.<sup>15</sup> Among these are the presentation of the Holy Bible and the anointing of the monarch with holy oil on the palms, breast and head. This ceremony of anointing is particularly understood as a sign of the 'religious or sacred power' of the King.<sup>16</sup> The privilege of crowning the King or Queen regnant belongs to the Archbishop of Canterbury;<sup>17</sup> the Archbishop of York has traditionally crowned a Queen Consort.<sup>18</sup> The coronation service also includes the celebration of Holy Communion.

11 Accession Declaration Act 1910, Sch.

12 *London Gazette*, Supplement 34453, 10 November 1937, at 7054. Elizabeth II made the declaration at Her Majesty's first State Opening of Parliament, 4 November 1952.

13 Interpretation Act 1978, ss 10 and 22(3).

14 *Halsbury's Laws* (5th edn) (London, 2011), vol 34, 684, n 1.

15 P Schramm, *A History of the English Coronation* (Oxford, 1937); M Range, *Music and Ceremonial at British Coronations: From James I to Elizabeth II* (Cambridge, 2012).

16 M Nazir-Ali 'The Sacramental Significance of the Coronation' (2013) 15 *Ecc LJ* 71–74; R Hooker, *The Laws of Ecclesiastical Polity* (London, 1682), Book VIII, 446.

17 *Halsbury's Laws* (note 14), para 144.

18 *Halsbury's Laws* (note 14), para 145.

Suggestions have been made in various quarters as to what changes might appropriately be incorporated in the coronation of Charles III.<sup>19</sup>

One element of the service required by statute is the Coronation Oath,<sup>20</sup> which is administered by one of the archbishops or bishops.<sup>21</sup> The Coronation Oath Act 1688 gives a statutory form of the oath, but in practice the oath taken has been varied without statutory authority.<sup>22</sup> The ecclesiastical content of the oath can be seen in this excerpt from the Coronation Oath of Queen Elizabeth II:

I will to the utmost of my power maintain the Laws of God and the true profession of the Gospel. I will to the utmost of my power maintain in the United Kingdom the Protestant<sup>23</sup> Reformed Religion established by law. And I will maintain and preserve inviolably the settlement of the Church of England, and the doctrine, worship, discipline, and government thereof, as by law established in England. And I will preserve unto the Bishops and Clergy of England, and to the Churches there committed to their charge, all such rights and privileges as by law do or shall appertain to them or any of them.<sup>24</sup>

As Prime Minister John Major stated:

The Coronation Oath is indeed regarded as a solemn undertaking by the Sovereign which is binding throughout Her reign. Ministers would not advise Her Majesty to sign into law any provision which contradicted Her Oath.<sup>25</sup>

Nevertheless, it can be argued that the ministers have done so in the past, for example, relating to the disestablishment of the Church in Wales and in

19 For example, B Morris, *The Coronation of Charles III* (London, 2022), 30–37, concludes *inter alia* that ‘ways should be found to recognize and celebrate the consequences of the changes [in society] in order to affirm that the state embraces all its citizens equally’ and that ‘the homage should cease to have any place in the next coronation’, 37.

20 See a full discussion of the oaths sworn at accession and coronation in R Hazell and B Morris, *Swearing in the New King: The Accession and Coronation Oaths* (London, 2022). See further, in the subsequent pages of this Journal, R Bursell, ‘The Coronation Oath’ (2023) 25 *Ecc LJ* 156–170.

21 Coronation Oath Act 1688, s 4. See also N Doe, *The Legal Framework of the Church of England* (Oxford, 1996), 10, nn 19 and 20.

22 For a discussion of the possible legal effects of this practice, see G Watt, ‘The Coronation Oath’ (2017) 19 *Ecc LJ* 325–341.

23 The use of the word ‘protestant’ here and in the Accession Declaration seems ill-suited to an ecumenical age. ‘Protestant’ defines a group of Christians with reference to a historical period of division, and specifically singles out Roman Catholics for exclusion, at a time when national unity is being celebrated. It is not a word which the Church of England officially uses to describe itself. The aim of the present article is not to propose changes to the law, but as the Coronation Oath is in practice varied from coronation to coronation, the removal of this word at future coronations would seem appropriate and easily achievable.

24 *Coronation Oath of Queen Elizabeth II*, 1953, The National Archives of the UK (TNA): C 57/17.

25 HC Deb 15 October 1996, vol 282 col 587.

Ireland. However, once an Act of Parliament has received royal assent, it is not open to the courts to question the *vires* of such an enactment on the grounds of the Coronation Oath or any other.

### The Convocations and the General Synod of the Church of England

The Convocations of Canterbury and York are summoned and dissolved at such times as His Majesty may determine.<sup>26</sup> This is effected by Royal Writ, addressed to the Archbishop of each province.<sup>27</sup> Each Convocation is automatically dissolved five years after being summoned,<sup>28</sup> but not by the demise of the Crown.<sup>29</sup>

The General Synod comes into being when the Convocations are called together, and is dissolved when the Convocations are dissolved.<sup>30</sup> Queen Elizabeth II was usually present at the inauguration of a new General Synod, and addressed the Synod on those occasions.

### Ecclesiastical legislation

Measures passed by the General Synod are submitted to the Ecclesiastical Committee of Parliament, which reports to Parliament and gives its views on the expediency of proposed Measures. If each House of Parliament so resolves, Measures are then presented to His Majesty and 'have the force and effect of an Act of Parliament on the Royal Assent being signified thereto in the same manner as to Acts of Parliament'.<sup>31</sup>

The General Synod also legislates by canon, exercising a power that belonged to the Convocations until 1969.<sup>32</sup> Before a motion for the final approval of a canon is moved, the Synod petitions for His Majesty's royal assent and licence to make, promulge and execute the proposed canon.<sup>33</sup> Slack explains that this is not merely a formal process, as the Ministry of Justice considers the compatibility of the proposed canon with the general law before the royal assent and licence are granted—although there seems to be no explicit legal basis for this.<sup>34</sup>

Canons cannot generally contain anything 'contrary or repugnant to the King's prerogative Royal or the customs, laws, or statutes'<sup>35</sup> of the realm. However, this

26 Church of England Convocations Act 1966, s 1(1).

27 *Halsbury's Laws* (note 14), para 153.

28 Church of England Convocations Act 1966, s 1(2).

29 Church of England Convocations Act 1966, s 1(4).

30 Synodical Government Measure 1969, s 1(4); Constitution of the General Synod, art 3(2).

31 Church of England Assembly (Powers) Act 1919, s 4.

32 Synodical Government Measure 1969, s 1(3); Sch 2, para 6(a)(ii).

33 Standing Orders of the General Synod, July 2022 edition, §64(3), as required by the Submission of the Clergy Act 1533, s 2.

34 S Slack, 'Synodical Government and the Legislative Process' (2012) 14 *Ecc LJ* 43–81.

35 Submission of the Clergy Act 1533, s 3.

does not apply to canons made pursuant to the Church of England (Worship and Doctrine) Measure 1974.<sup>36</sup>

Podmore notes that it is His Majesty's royal assent which gives Measures their legal force, whereas:

in the case of a canon the royal licence and assent only empower the Synod to 'promulge and execute a canon' – it is the action of the Synod (not of the Crown) that gives a canon its legal validity.<sup>37</sup>

### Patronage

The Crown exercises a significant ecclesiastical patronage, appointing bishops and archbishops, some cathedral deans<sup>38</sup> and canons, and the incumbents of around 200 parishes. Other ecclesiastical appointments made by His Majesty include the First and Second Church Estates Commissioners,<sup>39</sup> the Chair and members of the Churches Conservation Trust,<sup>40</sup> the Deans and Canons of Westminster Abbey and St George's Chapel, Windsor, the Master of the Temple, the members of the College of Chaplains and other members of the Ecclesiastical Household. The Crown appoints the judges of the Court of Ecclesiastical Causes Reserved,<sup>41</sup> and Commissions of Review.<sup>42</sup> The Crown also approves certain appointments, such as the Dean of the Arches and Auditor.<sup>43</sup> In addition, the Lord Chancellor appoints, on behalf of the Crown, some cathedral canons and the incumbents of over 400 parishes.

The usual law of parochial patronage is subject to certain variations where the Crown is patron of the benefice. Section 35 of the Patronage (Benefices) Measure 1986 excepts Crown benefices<sup>44</sup> from many provisions of that Measure. However, the Crown Benefices (Parish Representatives) Measure 2010 did extend to Crown benefices the right to appoint parish representatives. Likewise, section 100 of the Mission and Pastoral Measure 2011 provides that nothing in that Measure shall apply to benefices in the patronage of the Crown or the Duke of Cornwall without the consent of His Majesty or, as the case may be, the Duke of Cornwall. The Crown does not share patronage with

36 s 6(1).

37 C Podmore, *Aspects of Anglican Identity* (London, 2005), 110.

38 N Doe, *The Legal Architecture of English Cathedrals* (London, 2017), 108–109.

39 Ecclesiastical Commissioners Act 1850, s 1.

40 Mission and Pastoral Measure 2011, s 57(2).

41 Ecclesiastical Jurisdiction and Care of Churches Measure 2018, s 17(1).

42 Ecclesiastical Jurisdiction and Care of Churches Measure 2018, s 19(1).

43 Ecclesiastical Jurisdiction and Care of Churches Measure 2018, s 10(2).

44 Defined in the Patronage (Benefices) Measure 1986, s 35(1), as 'any benefice the patronage or any share in the patronage of which is vested in or exercisable by Her Majesty, whether in right of Her Crown or Her Duchy of Lancaster or otherwise, or is vested in or exercisable by the possessor for the time being of the Duchy of Cornwall, whether Her Majesty or a Duke of Cornwall'.

others, but where a Crown benefice becomes part of a larger benefice, the Crown usually takes turns in presentation with the other patrons.

As patron paramount, the Crown formerly presented to benefices in various circumstances where the right of patronage was not regularly exercised.<sup>45</sup> Most of these provisions have been abolished, but *sede vacante* patronage continues to exist. This means that, during the vacancy in see of a diocesan bishop, rights of presentation which would normally be exercised by that bishop are exercised by the Crown. This is usually done on behalf of his Majesty by a suffragan or other bishop delegated the task, but His Majesty may instead notify that he will exercise the right of presentation himself.<sup>46</sup> In either case, the usual rules for Crown benefices apply to the presentation.

### Bishops

The Appointment of Bishops Act 1533 places control over the appointment of diocesan bishops in the hands of the Sovereign. At least from George I onwards, decisions were effectively made by the Prime Minister in advising the Sovereign.<sup>47</sup> In 1977, the Crown Appointments Commission was constituted in order that the Church should have a greater voice in the appointment of Bishops: under the new arrangements a shortlist of names in order of preference was drawn up, and the Prime Minister could advise the Sovereign to appoint the second name, or ask for further names. The system was further revised in 2003 to bring greater transparency, and the commission renamed the Crown Nominations Commission.<sup>48</sup> In 2007, Prime Minister Gordon Brown announced that the Prime Minister would no longer take an active role in decisions.<sup>49</sup> A second name may still be submitted by the Commission to the Prime Minister in case the first named person is unable to accept the appointment.<sup>50</sup> All this means that, by convention, the Prime Minister and the Sovereign no longer exercise real choice in the appointment of diocesan bishops. Coleman discusses the legal implications both of the apparent fettering of the Sovereign's statutory discretion to appoint Bishops and also of the change to constitutional conventions in this area.<sup>51</sup>

Once a candidate has agreed to accept the nomination, the Prime Minister advises the Sovereign, who formally nominates him or her to the See. The

45 *Halsbury's Laws* (note 14), para 614.

46 Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010, s2.

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

48 *Ibid*, 156–158.

49 *The Governance of Britain*, Green Paper, Cmnd 7170 (2007), paras 62–63.

50 Standing Orders of General Synod, 136–141, updated July 2019, §136(3a).

51 Coleman (note 47), 219–221.

Sovereign grants to the College of Canons of the relevant cathedral<sup>52</sup> a licence (called a *congé d'élire*) to elect the bishop, with a letter missive containing the name of the person whom the college is to elect.<sup>53</sup> The Sovereign then commands the archbishop to confirm the election.<sup>54</sup> At the confirmation of election, the bishop-elect swears an oath of allegiance to the Sovereign, the election is confirmed, and the bishop-elect receives the spiritualities of the bishopric.<sup>55</sup> If the new diocesan bishop is not already in episcopal orders, episcopal consecration follows at a later date. Finally, the new bishop does homage to the King in person, suing for the temporalities of the bishopric<sup>56</sup> and 'making a corporal oath to the King's Highness'.<sup>57</sup>

The process of appointment of suffragan bishops is less elaborate than that of diocesans, and by statute only one candidate name is now submitted to the King.<sup>58</sup>

The Sovereign visits the archbishops, and receives their resignations.<sup>59</sup>

### Clergy discipline

Certain penalties imposed under the Ecclesiastical Jurisdiction Measure 1963 and the Clergy Discipline Measure 2003 do not have an effect on an 'archbishop or bishop or on any person holding any preferment the right to appoint to which is vested in [His] Majesty (not being a parochial benefice) ... unless and until [His] Majesty by Order in Council confirms the penalty'.<sup>60</sup> Furthermore, certain penalties imposed upon a member of the clergy under the Ecclesiastical Jurisdiction Measure 1963 and the Clergy Discipline Measure 2003 cease if he or she receives a free pardon from the Crown.<sup>61</sup>

### His Majesty in Council

His Majesty in Council performs various functions relating to the law of the Church. To give a few examples: His Majesty in Council has jurisdiction to hear and determine an appeal from the Court of Arches or the Chancery Court of York in faculty cases.<sup>62</sup> It is possible for a person to appeal against a

52 Cathedrals Measure 2021, s 3(3); Cathedrals Measure 1999, s 5(3).

53 Appointment of Bishops Act 1533, s 3.

54 Appointment of Bishops Act 1533, s 4.

55 The spiritualities encompass the exercise of the spiritual jurisdiction of the diocese – see Canon C19.

56 The temporalities of the See revert to the Crown in a vacancy – nowadays they are constituted only of rights of patronage.

57 Appointment of Bishops Act 1533, s 5.

58 Suffragan Bishops Act 1534, s 1; Vacancies in Suffragan Sees and Other Ecclesiastical Offices Measure 2010, s 1.

59 A visitation is a process whereby an Ordinary investigates the activities of his or her jurisdiction, and seeks to rectify any problems found. See *Halsbury's Laws* (note 14), para 60.

60 Ecclesiastical Jurisdiction Measure 1963, s 49(4); Clergy Discipline Measure 2003, s 24(2).

61 Ecclesiastical Jurisdiction Measure 1963, s 53; Clergy Discipline Measure 2003, s 28.

62 Ecclesiastical Jurisdiction and Care of Churches Measure 2018, s 21. Such appeals are to be heard by the Judicial Committee of the Privy Council: see Faculty Jurisdiction Rules 2015 (as amended), r 22.3.



draft pastoral scheme to His Majesty in Council, but only with the leave of the Judicial Committee of the Privy Council.<sup>63</sup> If it is necessary to close a churchyard to further burial, this is achieved by His Majesty's Order in Council.<sup>64</sup>

### Royal Peculiars

Royal Peculiars are jurisdictions which are visitable only by the Crown.<sup>65</sup> Royal Peculiars include Westminster Abbey, St George's, Windsor, and the Chapels Royal. Their legal position is in many respects complex,<sup>66</sup> and special provisions relate to Royal Peculiars in much ecclesiastical legislation.<sup>67</sup>

### The Oath of Allegiance

Most clergy<sup>68</sup> and legal officers<sup>69</sup> in the Church of England are required to take the Oath of Allegiance.<sup>70</sup> The Clerical Subscription Act 1865 describes the oath to be taken as an 'oath of allegiance and supremacy'.<sup>71</sup> The wording of the oath as given in Canon C13(1)<sup>72</sup> is as follows:

I, [A B], do swear that I will be faithful and bear true allegiance to His Majesty King Charles III, his heirs and successors, according to law: So help me God.

In his article on the oath, Bursell states that a cleric acting contrary to the Oath of Allegiance or denying the royal supremacy as stated in Canon A7 would be liable to ecclesiastical penalty<sup>73</sup> – presumably as 'conduct unbecoming' under section 8(1)(d) of the Clergy Discipline Measure 2003 or as an offence 'involving matter of doctrine' under sections 38 to 45 of the Ecclesiastical Jurisdiction Measure 1963. It should be noted, however, that under section 8(3) of the 2003 Measure 'lawful

63 Mission and Pastoral Measure 2011, s 12(1). At the time of writing, leave has been given in just one case, brought under the 1983 precursor to this Measure: *Cheesman v Church Commissioners* [2000] 1 AC 19.

64 Burial Act 1853, s 1.

65 P Barber, 'What Is a Peculiar?' (1995) 3 Ecc LJ 299–312.

66 A Hawkins, 'The Peculiar Case of a Royal Peculiar: A Problem of Faculty at the Tower of London' (2022) 24 Ecc LJ 345–363.

67 For example, Synodical Government Measure 1969, Sch 3; Clergy Discipline Measure 2003, s 43; Ecclesiastical Offices (Terms of Service) Measure 2009, s 9(4); The National Ministry Register (Clergy) Regulations 2020, reg 3.

68 Canon C13(1). Clerical Subscription Act 1865, ss 4 and 5. Overseas clergy can, in some circumstances, be dispensed from the requirement to take the Oath of Allegiance under Canon C13(2) and the provisions of the Overseas and Other Clergy (Ministry and Ordination) Measure 1967, ss 2 and 5.

69 Canon G2(3)(a); Canon G4(3); Ecclesiastical Jurisdiction Measure 1963, s 3(7); Ecclesiastical Jurisdiction and Care of Churches Measure 2018, ss 6 and 13.

70 Persons who object to being sworn may instead make a solemn affirmation. See the Oaths Act 1978, s 5; Canon C13(3).

71 Clerical Subscription Act 1865, ss 4 and 5.

72 Following amendment by Amending Canon 43, see above.

73 R Bursell, 'The Clerical Oath of Allegiance' (2015) 17 Ecc LJ 295–305, at 305.

political opinions' are protected. Furthermore, the Faith and Order Commission of the Church of England suggests that those who take the oath are not 'forbidden from proposing different ways in which the state or Church should be governed, for example as a republic or with the Church of England disestablished'.<sup>74</sup>

### Liturgical matters

From 1549, statutes required that only the provisions of the Book of Common Prayer be used in public worship.<sup>75</sup> Nevertheless, royal authority was also frequently used to permit additions and variations to the strict law, such as hymns and additional services.<sup>76</sup> However, the Church Assembly's attempt to revise the Book of Common Prayer by Measure, which failed in Parliament in 1927 and 1928, highlighted a need for the Church to be able to order its own liturgy.<sup>77</sup> These concerns eventually led to the current arrangements under the Worship and Doctrine Measure 1974, and Canons B1–B5. Within certain constraints, forms of service can now be authorised by the General Synod,<sup>78</sup> or approved by the Convocations, archbishops or diocesan bishops,<sup>79</sup> without further approval or assent being sought from Parliament or the Crown.

Many forms of service in the Church of England include prayers for the King. In the *Book of Common Prayer*, the Sovereign is prayed for twice at Morning Prayer and twice at Evening Prayer (if the full order is used), and twice at Holy Communion. The texts of most *Common Worship* services do not include set prayers for the Sovereign, although modern language prayers for the Sovereign are included in *Common Worship* for use at appropriate points at the discretion of the officiant. In the notes concerning the prayers of intercession accompanying the Holy Communion service, it is stated, 'Prayer for the nation is properly focused in prayer for the sovereign by name'.<sup>80</sup>

Section 1(7) of the Church of England (Worship and Doctrine) Measure 1974 provides:

In the prayers for or referring to the Sovereign or other members of the Royal Family contained in any form of service authorised for use in the Church of England, the names may be altered, and any other necessary alterations made, from time to time as the circumstances require by Royal Warrant, and those prayers as so altered shall be used thereafter.

74 The Faith and Order Commission, *To Proclaim Afresh: Declaration and Oaths for Church of England Ministers* (London, 2022), 21.

75 Act of Uniformity 1549; Act of Uniformity 1552; Act of Uniformity 1559; Act of Uniformity 1662; Act of Uniformity Amendment Act 1872.

76 W Adam, *Legal Flexibility and the Mission of the Church* (London, 2011), 94.

77 J Maiden, *National Religion and the Prayer Book Controversy, 1927–1928 (Studies in Modern British Religious History)* (Woodbridge, 2009).

78 Canon B2.

79 Canon B4.

80 *Common Worship* (London, 2000), 332.

On 17 September 2022, the King accordingly directed by Royal Warrant that various changes to prayers should be made to reflect the fact of His Majesty's accession to the throne.<sup>81</sup> The prayers for the Royal Family were also changed, and the prayer in the *Book of Common Prayer* now reads:

Almighty God, the fountain of all goodness, we humbly beseech thee to bless Camilla the Queen Consort, William Prince of Wales, the Princess of Wales and all the Royal Family: Endue them with thy Holy Spirit; enrich them with thy heavenly grace; prosper them with all happiness; and bring them to thine everlasting kingdom; through Jesus Christ our Lord. Amen.

Canon B19 provides a bidding prayer which may be used by a preacher before any sermon, lecture or homily. The portion of this prayer relating to the King<sup>82</sup> reads:

And herein I require you most especially to pray for the King's most excellent Majesty our Sovereign Lord Charles, by the grace of God of the United Kingdom of Great Britain and Northern Ireland, and of his other realms and territories, King, Head of the Commonwealth, Defender of the Faith, and ye shall also pray for Camilla the Queen Consort, William Prince of Wales, the Princess of Wales, and all the Royal Family.

The Accession Service, annexed to and printed with the *Book of Common Prayer*, constitutes forms of prayer and thanksgiving for use on the anniversary of the Sovereign's accession. As noted above, Accession Day is now to be observed on 8 September each year.

### Summary

From this overview, it is apparent that the law relating to the King and the Church of England pervades many areas of ecclesiastical law. The Oath of Allegiance and the liturgical provisions unite the ministry of each parish with the Sovereign. In the national life of the Church, the King's involvement in ecclesiastical legislation and in senior appointments demonstrates that the Supreme Governor plays a fundamental role in the Church's constitution. An essential context for understanding the purpose behind much of this law is the royal supremacy—a discussion of which forms the second part of this article.

81 'Lambeth Palace – Prayers for the Sovereign and for the Royal Family and Prayers and Forms of Service for Accession Day' (note 9).

82 Following amendment by Amending Canon 43, see above.

## PART TWO: THE ROYAL SUPREMACY

The royal supremacy came to particular prominence in the 16th century,<sup>83</sup> but from the late 17th century onwards it is generally understood to have developed into the doctrine of the absolute sovereignty of Parliament.<sup>84</sup> However, in the law relating to the Church of England, several important provisions still refer to the royal supremacy: in particular, Canon A7, the unrepealed section of the Act of Supremacy 1558, and the 37th Article of Religion.

### Canon A7

Canon A7 is titled 'Of the Royal Supremacy':

We acknowledge that the King's excellent Majesty, acting according to the laws of the realm, is the highest power under God in this kingdom, and has supreme authority over all persons in all causes, as well ecclesiastical as civil.<sup>85</sup>

In this canon, we see the essential features of the supremacy:

- i. The King's authority extends to matters ecclesiastical as well as civil;
- ii. The King's authority is supreme, that is, there is no higher jurisdiction to which one can appeal either within the kingdom or in a foreign jurisdiction;
- iii. The supremacy is acknowledged when the King acts according to law;
- iv. The King is under God.

Taking these points together we see that although the King's authority is supreme, it is not absolute: but rather is exercised according to law and under God.

### Act of Supremacy 1558

There is one unrepealed section of the Act of Supremacy 1558 still in force, section 8:

And That suche Jurisdiccions Privileges Superiorities and Preheminences Spirituall and Ecclesiasticall, as by any Spirituall or Ecclesiasticall Power or

83 Act of Supremacy 1534; Act of Supremacy 1558; and see C Cross, *The Royal Supremacy in the Elizabethan Church* (London, 1969); D Eppley, *Defending Royal Supremacy and Discerning God's Will in Tudor England* (London, 2016).

84 'Royal supremacy has now passed into [the] sovereignty of Parliament', Albert Venn Dicey, *Lectures Introductory to the Study of the Law of the Constitution* (London, 1885), 171.

85 It is instructive to compare Canon A7 with the equivalent provisions of 1604, which it replaced. Canon I required that clergy teach the doctrine of the supremacy at least four times a year in sermons and otherwise. Canon II provided that those who impugned the supremacy be excommunicated *ipso facto*. Canon XXXVI required ministers to subscribe to three articles, the first of which was a statement of the supremacy.

Authorite hathe heretofore bene or may lawfully be exercised or used for the Visitation of the Ecclesiasticall State and Persons, and for Reformation Order and Correccion of the same and of all maner of Errours Heresies Scismes Abuses Offences Contemptes and Enormities, shall for ever by auctorite of this present Parliament be united and annexed to the Imperiall Crowne of this Realme.

The powers and authorities which have been united to the Crown by this provision encompass those used for ecclesiastical visitation and for the correction of ecclesiastical offences.<sup>86</sup> Does the supremacy extend beyond these powers of oversight into determination of doctrine? Queen Elizabeth I herself did not claim ‘superiority to ourself to define, decide, or determine any article of point of the Christian faith and religion’<sup>87</sup> – and it is hard to imagine Charles III derogating from this. In the 19th century, William Gladstone argued that as the Henrician Act of Supremacy had been repealed, the above-quoted section of the 1558 Act provided the legal basis for the supremacy over ecclesiastical matters:

On Gladstone’s reading, the Crown did not claim to be ‘the source or fountain-head of ecclesiastical jurisdiction’. Rather, it claimed only ‘powers for the reparation of defect and the reform of abuse’. He compared the Church with the family; each was regulated but neither was created by the state. Gladstone distinguished between the Church’s capacity for self-government, which Tudor legislation had never questioned, and the coercive jurisdiction of the Crown. A law was one thing; the force of the law was something else. The Church of England determined the content of its own canon law, and the Crown supplied the force that made the canon law binding upon English subjects.<sup>88</sup>

In practice, Parliament certainly had legislated for the Church and continued to do so in the 19th century. Gladstone believed, however, that it was proper for the Church to determine the content of its own law. Such beliefs animated the 20th century movement<sup>89</sup> that led to the establishment of the Church Assembly and,

86 See also the Ecclesiastical Licences Act 1533, which transfers certain powers, formerly exercised at Rome, to the Archbishop of Canterbury (s 3) but does not ‘intende by the same to declyne or vary from the congregation of Christis Church in any thynges concernyng the veray articles of the Catholyke feith of Christendome’ (s 13).

87 W Collins (ed), *Queen Elizabeth’s Defence of her Proceedings in Church and State* (London, 1899), 42.

88 M Guyer, “This Unprecedented Step”: The Royal Supremacy and the 1867 Lambeth Conference’ in P Avis and M Guyer (eds), *The Lambeth Conference: Theology, History, Polity and Purpose* (London, 2019), 64.

89 As early as 1902, a church report identified that the Church of England needed to realise that ‘power of self-adjustment which is inherent in the conception of a living Church’ (my emphasis), *Report of the*

later, the General Synod. Of course, even today, the Crown does have an essential part in the process of ecclesiastical legislation, giving royal assent to Measures and licence and assent to canons. There is, however, no necessary contradiction between the Church having freedom to determine its own law (especially doctrinal law) and the involvement of its Supreme Governor in the process. As a church report from 1935 argued, the principle that legislation in matters of ritual and doctrine should be decided only by an authority which is based on membership of the Church:

is not in any way inconsistent with the Royal Supremacy, for the Sovereign is required by statute to join in communion with the Church of England as by law established, and the need of his assent to all ecclesiastical legislation may therefore be properly maintained.<sup>90</sup>

There is now a convention ‘that the government does not legislate for the Church of England on its internal matters *without the Church’s consent*’.<sup>91</sup> The civil courts today are reluctant to enter upon questions of doctrine. They are not understood to ‘declare, create, or change ecclesiastical doctrine’<sup>92</sup> but rather state what the law is respecting doctrine.

Therefore, whatever the case in earlier centuries, something like Gladstone’s ‘narrow’ interpretation of the royal supremacy seems to reflect the legislative and judicial practice of the present day: the Crown’s role is not to decide doctrine or to frame legislation but rather to confirm the Church’s law, incorporate it into the law of the nation, and oversee its implementation in the courts.

The Church’s support of the present system relies upon convention being respected. If a parliament were frequently to legislate for the Church, especially on doctrinal matters, or if a Prime Minister were to adopt the approach of routinely advising the King to exercise his ecclesiastical powers according to a party programme, the Church would presumably find this unacceptable and seek to renegotiate constitutional arrangements.

### Article 37

According to Canon A5, the doctrine of the Church of England is to be found ‘in particular’ in the Thirty-nine Articles of Religion. The Articles are also mentioned in the Declaration of Assent.<sup>93</sup>

*Joint Committee of the Convocation of Canterbury on the Position of the Laity: Presented April 29, 1902; with Appendix* (London, 1902), 84.

90 *Report of the Archbishops’ Commission on the Relations between Church and State* (London, 1935), 46.

91 Slack (note 34), 62.

92 Doe (note 21), 259; see the full discussion at 259–60.

93 Canon C15.

Article 37, Of the Civil Magistrates, begins:

The King's Majesty hath the chief power in this Realm of England, and other his Dominions, unto whom the chief Government of all Estates of this Realm, whether they be Ecclesiastical or Civil, in all causes doth appertain, and is not, nor ought to be, subject to any foreign Jurisdiction. Where we attribute to the King's Majesty the chief government, by which Titles we understand the minds of some slanderous folks to be offended; we give not our Princes the ministering either of God's Word, or of the Sacraments, the which thing the Injunctions also lately set forth by Elizabeth our Queen do most plainly testify; but that only prerogative, which we see to have been given always to all godly Princes in holy Scriptures by God himself; that is, that they should rule all estates and degrees committed to their charge by God, whether they be Ecclesiastical or Temporal, and restrain with the civil sword the stubborn and evil-doers.

By asserting that it is found in Holy Scripture, the Article seems to make the royal supremacy a doctrinal matter: Godly princes 'should' rule ecclesiastical estates.

Despite this doctrinal basis, the supremacy has not been retained by all the churches of the Anglican communion. For example, in 1801, the episcopalian church in the USA (PECUSA) established the Thirty-nine Articles of Religion while revising Article 37 to state:

The Power of the Civil Magistrate extendeth to all men, as well Clergy as Laity, in all things temporal; but hath no authority in things purely spiritual. And we hold it to be the duty of all men who are professors of the Gospel, to pay respectful obedience to the Civil Authority, regularly and legitimately constituted.<sup>94</sup>

By 1801, of course, Anglicans in the USA were living in a republic. In this version of the Article, the civil magistrate does not have spiritual authority. This appears to be a significant difference between the polities, and perhaps the doctrines, of the Church of England and the Episcopal Church in the USA. In practice, however, divergence around the royal supremacy has not caused insurmountable difficulties for the Anglican Communion.

The Lambeth Conference (a decennial meeting of bishops from across the Anglican Communion) has never assumed the power to legislate by canon. Recent research has shown that the reluctance to do so originally arose from a

94 W Perry (ed), *Journals of General Conventions of the Protestant Episcopal Church, in the United States, 1785–1835* (Claremont, 1874), 280.

concern to respect the royal supremacy.<sup>95</sup> Today, however, it is the autonomy that is understood to belong to every member church which makes a legislating Lambeth Conference unthinkable.<sup>96</sup>

Because of the royal supremacy, the Anglican Covenant proposed in 2004 (which might have introduced a supra-national Anglican jurisdiction) would have required a process of legislative adoption in the Church of England different from that needed in most other Anglican churches.<sup>97</sup>

## CONCLUSION

The law surveyed in the first part of this article shows that the King's role as Supreme Governor of the Church of England is no empty title. The King is involved in the life of the Church in many significant ways.

The discussion of the royal supremacy has shown that the doctrine is not a matter of solely historical concern but undergirds the present arrangements of church and state.

In the 16th century, the royal supremacy was used as a means of oppressing faithful Christians. Non-conforming protestants were persecuted, and England executed (or 'judicially murdered') more Roman Catholics than any other nation in Europe.<sup>98</sup> This is a reality all too often forgotten in portrayals of Elizabethan England, and nothing in this article should be taken as in any way justifying those atrocities. Not only must such manifestations of the supremacy remain in the past, but their memory should motivate the Church of England in its defence of religious freedom today. Indeed, the privileged position of the Church of England gives it particular responsibilities in this regard, as has been argued by none other than Queen Elizabeth II:

The concept of our established Church is occasionally misunderstood and, I believe, commonly under-appreciated. Its role is not to defend Anglicanism to the exclusion of other religions. Instead, the Church has a duty to protect the free practice of all faiths in this country.<sup>99</sup>

This principle is embodied in a sovereign who at once is a unifying figure for the whole nation and also Supreme Governor of the established Church. The King

95 Guyer (note 88), 73–76.

96 See Principles 11.2, 12 and 13 in Anglican Consultative Council, *The Principles of Canon Law Common to the Churches of the Anglican Communion* (2nd edn) (London, 2022).

97 See discussion in N Doe, *An Anglican Covenant: Theological and Legal Considerations for a Global Debate* (Norwich, 2008), 172–173.

98 D MacCulloch, *Reformation: Europe's House Divided 1490–1700* (London, 2003), 392.

99 Elizabeth II, 'A Speech by The Queen at Lambeth Palace, 2012', available at <<https://www.royal.uk/queens-speech-lambeth-palace-15-february-2012>>, accessed 29 December 2022.



has stated that, alongside his duties relating to the Church of England and the Church of Scotland:

the Sovereign has an additional duty—less formally recognised but to be no less diligently discharged. It is the duty to protect the diversity of our country, including by protecting the space for Faith itself and its practice through the religions, cultures, traditions and beliefs to which our hearts and minds direct us as individuals.<sup>100</sup>

Finally, what does the doctrine of the royal supremacy mean for the ordinary member of the Church of England? It is submitted that the answer is given in the prayer for the King which is read during the service of Holy Communion in the *Book of Common Prayer*:

Almighty God, whose kingdom is everlasting, and power infinite: Have mercy upon the whole Church; and so rule the heart of thy chosen servant CHARLES, our King and Governor, that he (knowing whose minister he is) may above all things seek thy honour and glory: and that we and all his subjects (duly considering whose authority he hath) may faithfully serve, honour, and humbly obey him, in thee, and for thee, according to thy blessed Word and ordinance; through Jesus Christ our Lord, who with thee and the Holy Ghost liveth and reigneth, ever one God, world without end. Amen.

The obedience encouraged in this prayer is not blind or unthinking: unjust tyrants must in every time and place be opposed. However, the prayer asks that God may rule the sovereign's heart. If the King's heart is so ruled, then in obeying the King according to law, what his subjects do is done 'in' God and 'for' God. In this way, a civic duty becomes also a sacred one.

<sup>100</sup> Charles III, 'The King's Remarks to Faith Leaders', published 16 September 2022, available at <<https://www.royal.uk/kings-remarks-faith-leaders>>, accessed 29 December 2022.