

DISPENSATIONS, PRIVILEGES, AND THE CONFERMENT OF GRADUATE STATUS: WITH SPECIAL REFERENCE TO LAMBETH DEGREES

Noel Cox[†]

I. INTRODUCTION

Since 1533 archbishops of Canterbury have conferred academic degrees by virtue of the power invested in them by the Ecclesiastical Licences Act 1533-1534, also known as the Peter's Pence Act.¹ Legally these so-called Lambeth degrees, named after the principal residence of the archbishop, survive as an aspect of the medieval papal authority to grant dispensations. This is, in individual cases of hardship, the see of Rome might exercise the jurisdiction vested in him as patriarch of the west—though not necessarily in other patriarchs²—to confer upon an appropriate recipient the academic degree which he would have received but for some impediment.³

But properly speaking, these degrees were not just an exercise of papal dispensation, they also sometimes had the character of a grant of a privilege. For example, the papacy might confer a degree upon a recipient to enable that person to hold an office that the canon law, or a specific institutional rule, limited to graduates. The power claimed and exercised by the papacy to confer the status of graduate to someone who had not earned it in the traditional way was never limited solely to true dispensations, but always included positive privilege as papal degrees granted for political reasons clearly illustrate.

[†] LLM (Hons) PhD. Barrister of the High Court of New Zealand, and of the Supreme Courts of Tasmania, New South Wales, and South Australia. Lecturer in Law at the Auckland University of Technology.

1. 1.25 Hen. 8, c. 21 (Eng.).

2. In the east, the concept of economy (*οικονομία*) is generally equated with dispensation, though there are important differences, both in theory and practise. For dispensations generally, see the "Report of a Commission appointed by the Archbishop of Canterbury," *Dispensation in Practice and Theory* (SPCK 1944).

3. Such impediments included non-residence, non-fulfilment of a prescribed minimum course of study, or other regulation imposed by the code of canon law, papal documents such as the encyclical *Pascendi*, or relevant decrees issued by the Holy See.

In post-Reformation England, Lambeth degrees replaced papal degrees and degree status. Awarded to this day, Lambeth degrees are, generally speaking, lineal descendants of the medieval papal or legatine degrees. But their nature has perhaps been misunderstood: they should not be thought of as merely honorary degrees. Like the papal degrees they replaced, they are best understood as privileges rather than dispensations, though they reflect aspects of both papal powers, and more broadly, the influence of the canon law and the papacy upon medieval higher education.

After outlining the early evolution of the universities as canonical institutions and briefly covering the nature of medieval university degrees, this article will review the nature of the dispensation and the role of papal privileges in medieval society. The article will then examine post-Reformation ecclesiastical jurisdiction in England and review the history of the Lambeth degrees, as bestowed from the Reformation to the nineteenth century, as well as describing modern Lambeth degrees. I will consider whether Lambeth degrees have continued to serve as examples of dispensation or privilege, or survive as merely a form of honour, and assess Lambeth degrees as they now stand.

II. THE RISE OF THE MEDIEVAL UNIVERSITIES

After the intellectual nadir of the Dark Ages, centers of learning grew up in many leading cities of the west, often originating in the monastic and cathedral schools. In all, some twenty-three universities were founded in Europe prior to 1300.⁴ The earliest universities to form were however in Italy, at Salerno⁵ in the ninth century, and Bologna⁶ in the eleventh century. The rise of the university in other countries soon followed. Towards the end of the twelfth century, a few of the greatest schools, including Salerno and Bologna, claimed international standing, largely on the basis of their excellent teaching.

The more ancient and customary term for these institutions was *studium* and subsequently *studium generale*, the specific term

4. There were eleven in Italy, five in France, two in England, five on the Iberian Peninsula. See Denys Hay, *Europe in the Fourteenth and Fifteenth Centuries* 361 (2d ed., Longman 1989).

5. Although it was never anything than a medical school, so could not be said to be a *universitas litterarum*, though its wide standing made it a *studia generalia* even if only in the field of medicine. A modern university was established at Salerno in 1970.

6. Bologna began as a law school but widened its scope to become a true *universitas litterarum*, something that Salerno never did. The University of Bologna remains, probably the oldest still extant.

universitas being confined to the scholastic guild within the *studium*. The *universitas* often meant simply the student body, usually called the nation, organised for the communal protection of the foreign student body, men who otherwise, being aliens, were at the mercy of local inn-keepers and tradesmen.

In the early thirteenth century, and for long afterwards, superior schools were classified as either general or particular. By the end of the thirteenth century, the general schools began to be called *studia generalia*, or places to which scholars flocked from all parts of Europe.⁷ The particular schools remained limited to educating regional students in the “primitive” sciences, grammar and philosophy. They did not teach arts, medicine, law and theology, nor were they universally considered to confer the same qualifications by the best scholars.⁸

The fusion of the *universitates* into a single *universitas* was a gradual process,⁹ but by the close of the medieval period however these distinctions had been lost sight of, and the term *universitas* was used alone. A precise definition of those schools that were recognized as universities, particularly in this early period, is difficult; but an essential feature was that a university was incorporated as such by a sovereign power,¹⁰ or at least received recognition from the sovereign. University attributes scarcely less important included admission of students from all parts of the world, plurality of masters, provision for the study of one at least of the higher faculties,¹¹ the provision for residence, and the right to confer degrees. In almost all cases, the earliest universities evolved as scholastic guilds, developed on an analogy with the tradesmen’s guilds and the later guilds of aliens that sprang up in the thirteenth and fourteenth centuries in most of the great European cities. Formal

7. There has always been some difficulty in ascertaining a seniority list for the earliest universities. It is impossible to do so with any degree of precision, largely because the first universities- those having their origins in the eleventh to thirteenth centuries, were the outcome of spontaneous social developments. As the earliest universities grew out of associations of students, many of them came into existence as result of the migration of students from one centre to another. Thus scholars from Bologna created Padua. Paris, the earliest of the northern type of university, was unusual in that it was created by its masters.

8. Reverend Fr. Benedict Hackett, *The Original Statutes of Cambridge University: The Text and Its History* 176 (Cambridge U. Press 1970).

9. Christopher Lucas, *Our Western Educational Heritage* 234 (Macmillan Publg. Co. 1972).

10. Sir William Blackstone, *Commentaries on the Laws of England* vol. 3, 371 (E. Christian ed., Garland Publg. 1978); *St David’s College, Lampeter v Ministry of Education*, 1 All E.R. 559, 560 (Ch. D. 1951).

11. The higher faculties were divinity, law (including canon law), and medicine. Arts (or philosophy) was regarded as a lower faculty as all men had to pass through its doors before they would be permitted to study for a qualification from the higher faculties. At Oxford it was however possible to study civil law after four years without taking the BA.

recognition might soon come to a successful school, but they were generally recognised as universities by the sovereign power only after their successful formation.

The papacy soon exercised the sovereign's prerogative to recognize a university. In a bull of 1225, Emperor Frederick II purported to confer upon his new school at Naples the prestige that earlier *studia* had acquired by reputation and general consent, and Pope Gregory IX followed this example for Toulouse in 1229. Other *studia generalia* were subsequently founded by papal or imperial bulls. In fact, by the second half of the thirteenth century, jurists commonly held that a *stadium generale* possessing the right of conferring degrees and licences to teach could only be founded by a *potestatis generalis*, or sovereign authority, particularly the pope or emperor. As a consequence the more prominent of the long-established universities which lacked a papal bull of foundation set about seeking *de jure* recognition or confirmation of their titles from the Holy See.¹² For example, in 1292 the Universities of Paris and Bologna found it desirable to obtain similar bulls from Pope Nicholas IV. However, a few schools such as Oxford were too well established to be seriously questioned for lack of papal recognition, and these were always regarded as *studia generalia ex consuetudine*.

The recognition of the privileges of a university of masters, which freed it from control by local ecclesiastical or civic authority, created a new type of higher education in Christendom.¹³ But universities were not completely beyond the control of Rome. As an example, a charter from the papal legate to Oxford in 1214 confirmed the clerical status of the student members of the university.¹⁴ If students were clerics, the church could exercise at least some control over their actions. Expanding this trend toward the clericalization of university education, by the mid-thirteenth century it was taken for granted that canons and other higher clergy would be released from their benefices for study.¹⁵ Under Pope Boniface VIII, it became customary for the parochial clergy to obtain dispensations for study, thus allowing members of the wider Church educational facilities.¹⁶ Since so many members of the student

12. G.L. Haskins, *The University of Oxford and the 'Ius Ubique Docendi'*, 56 English Historical Rev. 281, 282-283 (1941).

13. Colin Morris, *The Papal Monarchy—The Western Church from 1050 to 1250* at 505 (Clarendon Press 1989).

14. *Id.* at 506.

15. Leonard Boyle, *The Constitution "Cum ex eo" of Boniface VIII*, 24 Mediaeval Stud. 263 (1962); J.R.H. Moorman, *Church Life in England in the Thirteenth Century* 31, 96 (Cambridge U. Press 1946); M. Gibbs & J. Lang, *Bishops and Reform* 184 (Clarendon Press 1934).

16. Leonard Boyle, *The Constitution "Cum ex eo" of Boniface VIII*, 24 Mediaeval Stud. 263

body were clerics, it was natural that the church should continue to exercise some degree of oversight over the universities.

From the very beginning, both civil and ecclesiastical authorities that chartered colleges and universities, and gave them broad powers to grant "the usual degrees." The degrees of the *studia generalia* were publicly conferred by a general power, the pope or emperor, though the power to confer degrees was also exercised by authorities other than the universities, such as the Counts Palatine, as late as the sixteenth century. But the pope claimed particular oversight of the universities and the conferral of academic degrees.¹⁷ Indeed, in the Roman Catholic Church, the Holy See today has the right to establish and govern universities,¹⁸ and still exercises the power of conferring degrees, particularly in the fields of theology, philosophy, Scripture, and canon law.¹⁹

III. THE SYSTEM FOR GRANTING MEDIEVAL DEGREES

The medieval higher education system was rather different from that with which we are familiar today. Latin was the language of instruction throughout the middle ages, and beyond. As previously suggested, the university scholar was usually a cleric, that is a man in holy orders, or one who at least had received the tonsure, although many students did not advance beyond deacon and forsook the religious vocation for a secular career.²⁰

After preliminary qualifications in the faculties of arts or philosophy,²¹ students were awarded degrees in theology, law,²² and

(1962).

17. Canon 817 of the Roman Catholic Code of Canon Law (1983) provides that only a university or a faculty established or approved by the Apostolic See may confer academic degrees which have canonical effects in the Church. The Canon Law Society of Great Britain & Ireland, *The Code of Canon Law in English Translation* 149 (Collins Liturgical Publications 1983).

18. See *id.* at 147-149, canons 807-821.

19. The papal universities are canonically erected, and are governed by the Code of Canon Law, papal documents, and decrees issued by the Holy See. Among the most important of these have been the encyclical *Pascendi*, issued by Pope Pius X 8 Sept. 1907, and the apostolic constitution *Deus Scientiarum Dominus*, issued by Pope Pius XI 24 May 1931.

20. For the clerical status of medieval university students, see the Very Revd. Rashdall Hastings, *The Universities of Europe in the Middle Ages* (F.M. Powicke & A.B. Emden eds., Clarendon Press 1936).

21. The MA or BA might be the only qualification ever obtained by most students.

22. At Oxford, bachelors of canon law were styled BCANL, and doctors of canon law DCanL (or doctor of decrees, the *decretorum doctor*). The bachelors and doctors of civil law, the sole type remaining, were styled BCL and DCL, the former being *licencia legendi aliqua cursorie in iure ciuli*. At Cambridge, a single degree included both canon law and civil law, as LLB and LLD stand for bachelor and doctor of laws respectively. Civil Law was taught at Oxford at least as early as 1145, when Vacarius was giving lectures. Although teaching was disrupted at the Reformation, the regius professorships of civil law at Oxford and Cambridge, established 1540,

medicine.²³ The Church was especially concerned with the conferral of degrees in theology, and exercised a considerable influence, both direct and indirect, over the faculties of theology or divinity.²⁴ In particular, the papacy promoted the school of theology in Paris, and one in canon law in Bologna. As a subject in which degrees could be awarded, the discipline of music had a post-medieval arrival.²⁵

Historically, the award of an academic degree meant that the recipient was accepted into a scholarly fraternity, the university. But for centuries, aspiring scholars sought alternative means of obtaining the degree, which was a necessary pre-requisite to teaching in a university²⁶ and for many official posts and offices, especially in the Church.²⁷ Where a student or other individual failed to obtain a regular degree, for whatever reason, the pope might be persuaded to deviate from the strict requirements imposed by those institutions upon their students,²⁸ not by directly dispensing with the requirements of an individual university,²⁹ but by himself conferring a degree, or equivalent status as a privilege or dispensation.

In England, the practice of granting these dispensations began during the time when attendance at Oxford or Cambridge, the only universities at that time, was frequently disrupted by social or political disorder, or perhaps by outbreaks of the plague. Perhaps more importantly, many men were unable to complete the full requirements

ensured that the civil law was not altogether abandoned.

23. The faculty of physic only developed at Oxford as late as c.1450-c.1500.

24. For any aspect of the development of the universities, the starting point must still be the Very Revd Rashdall Hastings, *The Universities of Europe*, *supra* n. 20.

25. Cambridge MusB 1500-1501, MusD 1463 (Thomas Saintwix or Saint Just); Oxford BMus 1505, DMus 1515 (Robert Porret or Perrot).

26. Indeed, in its original form the degree was nothing but a warranty of fitness to teach.

27. *Corpus Iuris Canonici* 1917, canon 1378, outlining the general and special rights and privileges of degrees, specified that, all other aspects being equal, graduates were to be preferred for certain ecclesiastical offices (such as bishop, canon, lector). The actual exclusion of non-graduates from certain offices is found still in the Roman canon law, though the degree of licentiate now suffices for all offices previously requiring a doctoral degree, excepting certain judicial offices. Declaration of the Congregation of Seminaries and Universities 23 May 1948, *Acta Apostolicae Sedis* 40:260.

28. The requirements of the universities included attendance at a prescribed course of study, for example, encyclical *Pascendi*, issued by Pope Pius X 8 Sept. 1907 provided that no one could receive the degree of DTh or DCnL without first completing the prescribed course in scholastic philosophy. This encyclical was confirmed 29 Apr. 1927 by the Congregation of Seminaries and Universities. *Acta Apostolicae Sedis* 19:194. Although an 11 Apr. 1928 ruling of the Congregation of Seminaries and Universities exempted laymen from this requirement, religious were still bound, unless they received a dispensation. *Acta Apostolicae Sedis* 20:157.

29. The chancellor, and at times the regents, had the power to dispense with certain elements of the constitutions of the universities of Oxford and Cambridge. *See generally* Hackett, *supra* n. 8.

for the award of degrees due to the exigencies of the time, including the needs of the Church for personnel.³⁰ The archbishop of Canterbury as permanent legate, or an ad hoc papal legate, was therefore empowered by the pope to grant exemptions from the residential and other requirements then necessary for taking a degree in England.³¹ Papal degrees, or the grant of the status of a graduate, could also be conferred upon those with overseas qualifications not then recognised in England, something that was really a privilege, though it might be termed a dispensation and justified by the need to provide qualified personnel for the Church.³²

In all cases the archbishop of Canterbury, where he was empowered to confer degrees, acted solely in the role of papal legate (permanent or ad hoc—when he was given a specific additional task by the pope), and appears to have claimed no inherent or plenary powers to confer degrees as archbishop.³³ These degrees were not awarded “in prejudice of the universities”³⁴—though the pope claimed an overriding jurisdiction over all the universities; but because failure to confer a degree in the particular circumstances would be to work an injustice and might harm the Church by denying her the services of a worthy cleric.

During the fifteenth century, attempts were made to restrict the exercise of papal power in England through the Statute of Provisors 1351,³⁵ which sought to prevent papal interference with rights of presentation to livings, by securing promotion to the graduates of the English universities alone. The Act was, however, ineffective in

30. Once the structure of the university was firmly established, the study of Latin grammar (including literature), rhetoric (which also covered law) and logic (or dialectic) took some four to seven years. This led to the BA; The first recorded award of the baccalaureate was at Paris, in 1231; David Lockmiller, *Scholars on Parade* 209 (Macmillan 1964). The awarding of the baccalaureate could be followed by the course of studies known as the *quadrivium*. This involved the study of arithmetic, geometry (including geography and natural history), music (chiefly that of the Church), and astronomy (to which astrology was often added). This was normally followed by Hebrew, and Greek philosophy and history. After at least three years of study the degree of Master of Arts was awarded. In the fourteenth and fifteenth centuries less than half of the matriculated students proceeded to the BA, and much less than half of these completed the MA. Specialist qualifications in law and theology required even lengthier periods of attendance.

31. For the papal authority to confer degrees see Canon Law Society, *supra* n. 17, at 58 & 257, canons 333 § 3 & 1442.

32. Faculty Office records supply no records of pre-Reformation degrees. Rt. Revd. William Stubbs, *Lambeth Degrees* 1 Gentleman's Magazine & Historical Rev. 633, 635 (May 1864).

33. The rule that the archbishop acted only as delegate of the pope applied also for the creation of notaries public (who were however also appointed by the Emperor).

34. The Lambeth degrees were not awarded “in prejudice of the universities.” Blackstone, *supra* n. 10, at vol. 3, 381.

35. 25 Edw. 3, c. 22 (Eng.).

limiting the numbers of clergy appointed from abroad,³⁶ because toward the end of the century, clerics not educated at English universities³⁷ who suffered disabilities imposed by the Act simply obtained dispensations from Rome enabling them to hold pluralities (more than one benefice), and in a few cases to obtain degrees from the pope.³⁸

IV. THE ROLE AND PURPOSE OF THE DISPENSATION

Dispensation is the suspension by competent authority of general rules of law in particular cases. Its object is to modify the hardship often arising from the rigorous application of general laws to particular cases, and its essence is to preserve the law by suspending its operation in such cases. In canon law theory, the dispensing power is the corollary of the legislative.³⁹ The dispensing power, like the legislative, was formerly invested in general councils and even in provincial synods.⁴⁰ But in the west, with the gradual centralisation of authority at Rome, it became ultimately vested in the pope as the supreme lawgiver of the Church.⁴¹

Despite frequent crises in the diplomatic relations between the Holy See and temporal governments in the later Middle Ages, the authority of the papacy as the dispenser of grace and spiritual licences remained largely unchallenged.⁴² In the early thirteenth century Pope Innocent III (1198-1216) fostered the extension of papal political power. He emphasised, "as had no pope before him, the pope's '*plenitudo potestatis*' (fullness of power) within the Church."⁴³ Since the Church comprised the whole of mankind, medieval jurists were accustomed to what we might call shared sovereignty, and freely accepted that the pope

36. The king lacked the will to enforce the Statute of Provisors more stringently. C. Davies, *Statute of Provisors of 1351*, 38 *History* 116, 118-119 (1953).

37. It was also possible to obtain a degree from one of the English universities by incorporation. For example, Frater Steele of Rome, was incorporated at Cambridge in 1492; Frater Raddyng, a doctor of Rome, incorporated Cambridge 1497; Mr. Cabald, "ut admittatur ad eundem gradum in quo stat Romæ" 1501. Stubbs, *supra* n. 32, at 633.

38. *Id.*

39. For the view that in canon law the dispensing power is the corollary of the legislative. See *Canon Law Society*, *supra* n. 17 at 12-13, canons 85-93.

40. The dispensing power of the provincial synods only developed as the synods became more active, in the centuries after the conversion of Emperor Constantine the Great.

41. The pope was invested with *plenitudo potestatis*. The papacy of Urban II (1088-1099) marks the development of the use of dispensations. The major of canonists conceded that the pope enjoyed a general and superior right over bishops. See *Corpus Iuris Canonici* 1983, canon 16, causa 25, quaesio 1.

42. A.D.M. Barrell, *The Papacy, Scotland and Northern England, 1342-1378* 230 (Cambridge U. Press 1995).

43. Kenneth Pennington, *The Prince and the Law, 1200-1600: Sovereignty and Rights in the Western Legal Tradition* 45 (U. Cal. Press 1993) (emphasis added). Canon 81 of the new *Codex* restricts the right of dispensation to the pope, a logical result of the *plenitudo potestatis*.

had a concurrent jurisdiction with temporal sovereigns.⁴⁴ The temporal princes could administer their own laws, but the princes of the Church, and especially the pope, administered the canon law (so far as it was subject to merely human control).

In the decretal *Proposuit*, Innocent III proclaimed that the pope could, if circumstances demanded, dispense from canon law, *de jure*, with his plenitude of power, on the basis that *princeps legibus solutus est* (the prince is not bound by the laws). Because the pope was above the law;⁴⁵ time or precedent did not limit his power, and he could dispense with any law.⁴⁶ Such a dispensation was not, strictly speaking, legislative, but rather a judicial, quasi-judicial, or executive act.⁴⁷ It was also, of course, subject to the proviso that his jurisdiction to dispense with laws was limited to those laws which were within his jurisdiction or competence. “[T]his principle would have been a commonplace to anyone who had studied in Bologna.”⁴⁸

By this power of dispensation the pope could release clergy and laity from the obligations of the canon law in all cases that were not contrary to *ius divinum* and even in a few cases that were.⁴⁹ This power was most frequently invoked to enable laity to marry notwithstanding impediments of affinity or kinship, and to enable persons labouring under an irregularity (such as of bastardy, servitude, or lack of age) to take orders or become regulars.⁵⁰

Dispensations awarded might be classified into three categories.⁵¹ The first two categories, rules concerning the procedure of taking holy orders, and dispensations concerning tenure of benefices, applied only to clergy. The third category, dispensations regarding marriage, concerned only the laity. Beside the three main classes of dispensation, the papal curia was ready to grant miscellaneous positive concessions to

44. The papal doctrine of *potestas absoluta*, as advocated by Hostiensis, was soon adopted by secular monarchs. Francis Oakley, *Jacobeian Political Theology: The Absolute and Ordinary Powers of the King*, 29 J. of History of Ideas 323 [pinpoint??] (1968).

45. *Supra ius*.

46. “*Possumus supra ius dispensare*;” Pennington, *supra* n. 43, at 58 (quoting Hostiensis, *Lectura Super Decretalibus* (1512)).

47. For dispensation as a judicial, quasi-judicial, or executive act *see for example* the *Corpus Iuris Canonici* 1983, canons 85ff.

48. Pennington, *supra* n. 43, at 57.

49. Medieval canonists treated privileges and dispensations as further sources of law, alongside customs and decretals. See Gabriel Le Bras, Charles Lefebvre & Jacqueline Rambaud, *L’âge classique, 1140-1378: sources et théorie du droit* vol. 7, 487-532 (Sirey 1965).

50. Regulars were bound by a religious rule, as by belonging to a religious order.

51. David Chamber, *Faculty Office Registers, 1534-1549: A Calendar of the First Two Registers of the Archbishop of Canterbury’s Faculty Office* xiv-xv (Clarendon Press 1966).

applicants who could afford the necessary fees.⁵² This host of dispensations, faculties, and indults⁵³ included permission to eat flesh during Lent, the celebration of offices in chapels of ease and private oratories, and the granting of degrees.⁵⁴ Those dispensations relating to academic degrees were mostly issued under the sanction of the canon law as stated in the constitution of Boniface VIII beginning "Cum ex eo."⁵⁵ Strictly these "dispensations" were more properly special exercises of jurisdiction rather than responses to anything unusual in a case arising under the pope's regular jurisdiction.

If the papal degree is properly seen as a dispensation rather than a privilege, then there were strict limits upon its exercise. For the pope could only exercise his jurisdiction to dispense from the strict requirements of the canon law if the matter were a proper one for the canon law.⁵⁶ "The pope dispensed with many things that others could not, but his dispensation must always be 'with cause'."⁵⁷ This cause invariably required that there be some benefit to the Church, as well as any to the individual concerned.⁵⁸

V. CONCERNING PAPAL PRIVILEGES

Papal privileges resembled dispensations, since both involved exceptions to the ordinary operations of the law. But whereas "dispensations exempt[ed] some person or group from legal obligations binding on the rest of the population or class to which they belong,"⁵⁹ "[p]rivileges bestowed a positive favour not generally enjoyed by most people."⁶⁰ "Thus licences to teach or to practise law or medicine, for example,"⁶¹ were "legal privileges, since they confer[red] upon

52. Wilfrid Hooper, *The Court of Faculties*, 25 English Historical Rev. 670, 671 (1910).

53. The terms dispensations, faculties, and indults were synonymous, though dispensations were generally reserved for grants by the archbishop of Canterbury in respect of a more important matter. Sir Edward Coke, 4th *Institutes of the Laws of England* 337 (Garland Publg. 1979). The degrees awarded by the archbishop of Canterbury come under the general term "faculties."

54. Chamber, *supra* n. 51, at xvi.

55. Sexti Decretalium Lib I, *De electione et electi potestate*, tit vi cap xxxiv.

56. The question of what could be dispensed with, and what was immutable, was the subject of on-going debate.

57. Pennington, *supra* n. 43, at 196 (quoting Simone da Borsano, *Pastoralis*); Johannes Teutonicus, Glos. ord. to C. 1 q. 7 d. a. c. 6, v. *ut plerisque*.

58. In practice it was rarely difficult to show benefit to the Church, as the provision and encouragement of skilled personnel was always one of the main concerns of the Church. Recognition of graduate status benefitted both Church and individual.

59. James A. Brundage, *Medieval Canon Law* 161 (Longman 1995); *Decretum Gratiani*, D 3 c. 3.

60. *Id.*

61. *Id.* at 160. In the *Corpus Iuris Canonici* 1917, no cleric might practice medicine or

recipients the right to perform certain functions for pay, which the rest of the population [was] not [permitted to exercise].]⁶² Yet, such licenses might also involve what should properly be termed dispensation, if they waived canon law requirement that an individual hold a particular qualification to practice law or medicine, as, for example, a degree.

The distinction between privilege and dispensation was not always clearly observed, and the term dispensation rather than privilege was used, even when the nature of the act made it clearly a privilege. Indeed, medieval canonists treated privileges and dispensations as distinct, though related, aspects of the law.⁶³ The pope might confer a degree as a positive privilege in his capacity as a temporal sovereign, or he might do so by way of dispensation from the strict requirements of the canon law. In both cases his authority to do so was found in the canon law.⁶⁴

As suggested, in some instances petitioners sought an academic degree because without one they could not hold a particular office.⁶⁵ In these cases, conferring the status of a graduate is the granting of a privilege, in that the recipient has received a positive favour not generally enjoyed by most people, but it also acted as a dispensation with the requirements of the canon law. Still, however they were justified, in canon law, the conferral of degrees or degree status gave substantial and substantive rights and privileges, and were not merely empty honours.

In the event of degree status being conferred, the recipient was not deemed to hold the degree in question, but would enjoy any privileges which might be attached to such a degree- including qualification for office. Conferring the degree itself would of course would mean that the recipient enjoyed the style and not merely the privileges of a degree. They might also, for example, be thereafter admitted or incorporated to the same degree *ad eundem* at Oxford or Cambridge- though few seem

surgery without an apostolic indult; canon 139.2.

62. Brundage, *supra* n. 59 at 160-161.

63. Privileges and indults were both special favours. Some writers hold that the former are positive favours, while indults are negative. Amleto Giovanni Cicognani, Joseph Michael O'Hara & Francis Brennan, *Canon Law* 477-486 (2d ed., Newman Bookshop 1947).

64. The pope's powers as a temporal sovereign are recognised in the Roman Catholic Code of Canon Law 1983. In practice matters of education are dealt with though the hierarchy of the Church, rather than through that of Vatican City State, the residual part of the Papal States.

65. Canons of certain cathedrals and Westminster Abbey were still required to be degree-holders until recent times. The dean of Westminster Abbey was required to be a doctor or bachelor of divinity as recently as the late twentieth century. W.R. Pullen, 'The Constitution of the Collegiate Church' in the Revd. Edward Carpenter; *A House of Kings* 455 (London Baker 1966).

to have been so distinguished. It was however often difficult to be certain whether the degree itself, or merely its status and privileges, which was being conferred. Given the ostensible purpose of the papal dispensatory jurisdiction, it would perhaps be more logical to view all of these "degrees" as strictly degree-status, and not substantive degrees. But the medieval—if not indeed modern—concept of the degree is of a grade or status. One achieves the status of master or doctor, which is conferred by one's university (or in rare cases, by the pope). It is not an award, but the recognition of a certain degree of learning. It is perhaps significant that in the records of the (post-Reformation) Court of Faculties, the early "Lambeth degrees" are described in terms of dispensation to enjoy the privilege of DCL or whatever the degree might be.⁶⁶

The exercise of the authority to confer such a privilege was often a positive step by the pope to emphasise his spiritual, if not temporal, authority. We have already seen how, during the fifteenth century, attempts were made in England to restrict the exercise of papal power in opposition to the Statute of Provisors 1351.⁶⁷ To evade the disabilities imposed by that Act on non-graduates, it became usual towards the end of the century for those clerics not educated at English universities to obtain dispensations from Rome, including, in a few cases, degrees.⁶⁸ These were positive favours not generally enjoyed by most people, and that they were dispensing with the requirements of the canon law was a secondary consideration. They were also exercised for the good of the individual as well as the good of the church.

VI. POST-REFROMATION ECCLESIASTICAL JURISDICTION IN ENGLAND

The Statute of Appeals 1532⁶⁹ took away the right of English clergy and laity to appeal to Rome in causes testamentary and matrimonial and in regard to right of tithes and oblations. Instead, the power to hear final appeals was given to the archbishop of each of the two English provinces, Canterbury and York. In cases involving the king, final appeal was to the Upper Houses of Convocation of each province. The Act of Submission of the Clergy 1533-1534⁷⁰ took away

66. 20 Sept. 1537, Thomas Tasshe, BCL, dispensation to enjoy the privilege, etc. of a DCL, £4 (F I/Vv, fo. 175v). Chamber, *supra* n. 51, at 121.

67. *Supra* n. 35.

68. Stubbs, *supra* n. 32, at 633.

69. The Statute of Appeals 1532 is also called the Ecclesiastical Appeals Act, 24 Hen. 8, c. 12 (Eng.).

70. 25 Hen. 8, c. 19 (Eng.).

all appeals to Rome, and transferred further appeals “for lack of justice” from several courts of the archbishops to the king in Chancery.⁷¹ Under King Henry VIII, his vicar-general, Thomas Cromwell, heard these appeals.⁷² Commissioners heard appeals under King Edward VI.⁷³ Since then, the Privy Council has, in many causes been the highest appellate court, though it is not strictly an ecclesiastical court.⁷⁴

After 1534, neither the king nor his successors, nor any subject, could sue for licences, dispensations, etc. to the see of Rome. The archbishop of Canterbury had exercised the *legatus natus*⁷⁵ that the pope enjoyed throughout all England before the Reformation. Since then the archbishop has been empowered by the Ecclesiastical Licences Act 1533-1534⁷⁶ to exercise certain powers of dispensation in causes formerly sued for in the court of Rome.⁷⁷

Particularly relevant to this article, section 3 of the Ecclesiastical Licences Act 1533-1534⁷⁸ conferred upon the archbishop of Canterbury the power formerly vested in the pope to grant:

all manner such licences, dispensations, compositions, faculties, grants, [receipts], delegacies, instruments, and all other writings, for causes not being contrary or repugnant to the holy scriptures and laws of God, as heretofore hath been used and accustomed to be had and obtained by your Highness, or any of your most noble

71. The Act of Submission of the Clergy 1533-1534, *supra* n. 70, did however assert the partial continuance of the authority of the canon law.

72. For Thomas Cromwell's appointment as vicegerent *see From Edmund Bonner's commission as bishop of London, 1538*, reprinted in Geoffrey Elton, *The Tudor Constitution* 367-368 (2d ed., Cambridge U. Press 1982).

72. Act of Supremacy, 1534, 26 Hen. 8, c. 1 (Eng.).

73. Commissioners were established under the Submission of the Clergy Act 1533, *supra* n.

70. For the history of the Court of Delegates *see* Blackstone, *supra* n. 10, at vol. 3, 66; William Holdsworth, *History of English Law* vol. 1, 603-605 (7th ed., A.L. Goodhart & H.G. Hanbury eds., Methuen and Sweet & Maxwell 1972); G.I.O. Duncan, *The High Court of Delegates* (Cambridge U. Press 1971).

74. The Judicial Committee of the Privy Council (formally Her Majesty in Council), is the Court of Final Appeal, and replaced the Court of Delegates in 1833. His Majesty's Privy Council Act, 1833, 3 & 4 Will 4, c. 41 (Eng.). By the Appellate Jurisdiction Act, 1876, 39 & 40 Vict., c. 59 (Eng.), all archbishop and bishops were eligible to be members of the Judicial Committee, but they were not ex officio members. Order in Council dated 11 Dec. 1865, Rules for Appeals in Ecclesiastical and Maritime Causes, r. 3. *See* the Ecclesiastical Jurisdiction Measure, 1963, no. 1 (Eng.).

75. The legatine jurisdiction of the archbishop gave him a concurrent jurisdiction with that of all bishops within his province.

76. 25 Hen. 8, c. 21, § 3 (Eng.).

77. Diocesan bishops also retained whatever rights they possessed which then covered such diverse matters as residence, ordination outside the dioceses of birth, fasting, public reading of banns. *Id.* at § 4. These are but rarely invoked today, if at all.

78. *Supra* n. 1.

progenitors, or any of your or their subjects, at the see of *Rome*.⁷⁹ subject always to the authority of the Crown,⁸⁰ though part of this dispensation power became obsolete and part was curtailed by statute. The archbishop of Armagh was given similar powers.⁸¹ These powers were confirmed by another Act of 1536.⁸² Moreover, any dispensations that were so important that they were taxed at Rome at the sum of £4 or above had to be confirmed by letters patent under the great seal to be enrolled in chancery. Under this power, the archbishop continued to grant special licences to marry, to appoint notaries public, and to grant dispensations to clerics to hold more than one benefice.⁸³ He also continued to grant licences for preaching, teaching, or to practice medicine,⁸⁴ and, more infrequently, degrees or degree status.⁸⁵

79. *Id.* at § 3, ¶ 4.

80. E.F. Churchill, *Dispensations under the Tudors and Stuarts*, 34 English Historical Rev. 409-415 (1919).

81. The archbishop of Armagh's powers were conferred indirectly. The powers conferred by the Ecclesiastical Licences Act (1533-1534) extended to Ireland. Some time in the course of the sixteenth century a permanent commission granted the jurisdiction to the archbishop of Armagh (as Primate of All Ireland), in virtue of which he took over the jurisdiction exercised by the Court of Faculties. Certainly, he exercised dispensing power by 1690. Wilfrid Hooper, *The Court of Faculties*, 25 English Historical Rev. 670, 685 (1910). The commissary of the Irish Court of Faculties was also judge of the Court of Prerogative, 1827, 7 & 8 Geo. 4, c. 44 (Eng.), and admitted Irish notaries. *In re Champion*, 1906 P. 86, 92 (citing *O'Brien v. Bennett*, Court of Faculties (Ireland) (not reported)). The power of making notarial appointments was abolished by the Irish Church Act, 1869, 32 & 33 Vict., c. 42, § 21 (Eng.), and vested in the Lord Chancellor. The Matrimonial Causes and Marriage Law (Ireland) Amendment Act, 1870, 33 & 34 Vict., c. 110, § 29 (Eng.).

82. The Ecclesiastical Licences Act, 1536, 28 Hen. 8, c. 16 (Eng.).

83. The power to grant dispensations to clerics to hold more than one benefice is now exercised in the Church of England in accordance with the Pluralities Act, 1838, 1 & 2 Vict., c. 106 (Eng.) and the Pastoral Measure. Bishops also received faculties from the pope to appoint notaries, but from the time of John Pecham (1279-1292) onwards it was usual for the archbishop of Canterbury to receive such apostolic faculties.

84. Only five licences to practise medicine were granted in England 1534-1549. See generally Chamber, *supra* n. 51. Civil registration of medical practitioners began in England with the Physicians and Surgeons Act, 1511-1512, 3 Hen. 8, c. 11 (Eng.). However, the administration of the scheme was entrusted to the bishops, each in his own diocese, advised by four medical men. In the seventeenth century there was considerable confusion between the bishops' licences to practise medicine or surgery and the Lambeth doctorate. Cecil Wall, *The Lambeth Degrees*, British Med. J. 854, 855 (1935).

85. The Lambeth degrees issued 1534 to 1549 numbered only four; 20 Sept. 1537, Thomas Tasshe, BCL, dispensation to enjoy the privilege, etc., of a DCL, £4 (F I/Vv, fo. 175v); 10 June 1538, Roger Colley, master of Grammar, Coventry and Lichfield diocese, dispensation to receive the privileges of his status in a university, £3 (F I/Vv, fo. 202v); 8 Feb. 1539, Ellis Ferrers, BTh, confirmation of faculty conceded by word of mouth of William bishop of Norwich for the above to enjoy the status of DTh, £4 (F I/VV, fo. 255r); 6 Dec. 1544, George Broke, student in Venice, natural son and legitimised son of George Broke, Lord Cobham, dispensation to hold the status and privileges of a BA. 'Concessa per litteras Rmi. dni. Archiepiscopi,' 5s (F I/A, 92). See generally Chamber, *supra* n. 51.

The Master of the Faculties regulated all educational dispensations that fell under the Ecclesiastical Licences Act 1533-1534.⁸⁶ In the book of Taxation, Section XI, the fee for the creation of a doctor in any faculty was £4.⁸⁷ The Court of Faculties was in effect created by the Act, though it was not expressly named in that Act. It was—and still is—more than a court, and its functions were discretionary rather than ministerial,⁸⁸ the Master occasionally sitting *in iudicis* to hear argument.⁸⁹ Most ecclesiastical licences (such as marriage licences), and faculties appointing notaries public were also awarded by the Master under the inherent authority of the Ecclesiastical Licences Act 1533-1534.⁹⁰ The authority to confer Lambeth degrees was also based on this statute. Though degrees are not specified in this transfer of authority, they are understood to be included in the term faculties.⁹¹

Still, the status of the Lambeth graduates has always been rather unsettled, and the few who are mentioned as incorporated at Cambridge received that status with the proviso that it should not be construed as a precedent. Few Lambeth degrees seem to have been granted before the Restoration; although the Ecclesiastical Licences Act 1533-1534⁹² required faculties to be enrolled, the Patent Rolls record only two or three,⁹³ and two or three more come from Cambridge records.⁹⁴ The Dispensation Rolls of the Public Record Office (1597-1641) record only one Lambeth degree.⁹⁵ Since the time of the Restoration, the list recording Lambeth degrees is perfect; though one book is missing from the faculty office, 1660-1716, its records were duplicated by list adduced in the *Peploe* case.⁹⁶

86. *Supra* n. 76.

87. Wall, *supra* n. 84, at 854.

88. Wilfrid Hooper, *The Court of Faculties*, 25 English Historical Rev. 670, 676 (1910).

89. See e.g. Champion, *supra* n. 81, at 90.

90. *Supra* n. 76. Notaries are appointed under the inherent jurisdiction conferred by that Act and the later statutory authority of the Public Notaries Act, 1801, 41 Geo. 3, c. 79 (Eng.), the Public Notaries Act, 1843, 6 & 7 Vict., c. 90 (Eng.), and Courts and Legal Services Act, 1990, c. 41, § 57, ¶ 4 (Eng.).

91. Rt. Revd. Edmund Gibson, *Codex Juris Ecclesiastici Anglicani; or, the Statutes, Constitutions, Canons, Rubrics, and Articles of the Church of England Methodically Digested Under Their Proper Heads: With a Commentary, Historical and Juridical. Before It, Is an Introduction Discourse, concerning the Present State of the Power, Discipline and Laws, of the Church of England: and After It, an Appendix of Instruments, Ancient and Modern* vol. 1, 105 (J. Basket 1713).

92. *Supra* n. 76.

93. Stubbs, *supra* n. 32, at 635.

94. *Id.*

95. *Id.*

96. *Id.*

Power was conferred on the archbishop of Canterbury to act "for causes not being contrary or repugnant to the Holy Scriptures and the laws of God." This dispensation power partly fell obsolete, partly curtailed by statute.

Although the archbishop now enjoyed the authority hitherto confined to the pope, in the circumstances of his office there would have been little doubt where real power lay in the country. The Preface to the Thirty-Nine Articles of 1562, though somewhat later in date, reflects this state of affairs. It states that:

Being at God's ordinance, according to our just title, *Defender of the Faith, and Supreme Governor of the Church, within these our Dominions*, we hold it most agreeable to this our kingly office, and our own religious zeal, to conserve and maintain the Church committed to our Charge in unity of true religion, and in the bond of peace We have therefore, upon mature deliberation, and with the advice of so many of our bishops as might conveniently be called together, thought fit to make this Declaration following:

....

That we are Supreme Governor of the Church of England.⁹⁷

Article 37 makes this claim to royal supremacy clearer:

The Queen's Majesty hath the chief power in this Realm of England, and other her 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

[W]e give not to our princes the ministering either of God's word, or of the Sacraments . . . [b]ut 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 evildoers

The Bishop of Rome hath no jurisdiction in this Realm of England.⁹⁸

The king's ecclesiastical authority may have been more circumscribed than that of the pope. But the subordinate position of the archbishop was clear. His duty lay to his king, rather to the pope, and

97. Edgar Gibson, *The Thirty-Nine Articles of the Church of England* 768 (8th ed., Methuen & Co. Ltd. 1912).

98. *Id.* at 759.

the exercise of his newly acquired legal authority was to reflect this political reality. This meant that in many instances the degrees were conferred for the benefit of state rather than church.

Some examples of the comparatively few degrees conferred by the archbishop of Canterbury in the first century after the Reformation still survive. For example, Samuel Purchas (c. 1575-1626), an author, was made a Bachelor of Divinity (BD) by Archbishop George Abbot 14 March 1615.⁹⁹ Although a graduate of the University of Cambridge, Purchas lacked the divinity degree thought appropriate for a chaplain to the archbishop of Canterbury, an office to which he was appointed in 1614. In this case, the exercise of the new archiepiscopal authority may be seen as the righting of a potential wrong (the exclusion of a worthy man from office due to a technical requirement), as a true dispensation.

On 9 December 1635 Edward Layfield, MA, archdeacon of Essex, was made a BD.¹⁰⁰ A graduate of Oxford, Layfield was also incorporated as MA at Cambridge.¹⁰¹ But he did not have the BD required by the statutes of St Paul's Cathedral, London, of which he was made a canon in 1633. In the Purchas case, the Lambeth degree was awarded as a personal privilege to allow Purchas the status to which it was thought he was entitled, while in Layfield's case, it was given to avoid the consequences of a specific statute, thus allowing Layfield to hold an office to which he was strictly unqualified. The first was clearly not a dispensation, in the sense of the suspension by competent authority of general rules of law in a particular case, but the second appears to satisfy this test. We must conclude from these cases that even in the middle ages the precise nature of the papal degree as dispensation or privilege was uncertain; but whatever their precise legal nature, they were however undoubtedly either substantive degrees or degree status.

VII. LAMBETH DEGREES—RESTORATION TO NINETEENTH CENTURY

From the time of the Restoration onwards the conferral of Lambeth degrees became more frequent. But as their numbers rose, their status became more uncertain. Sometimes Lambeth degrees were treated as substantive degrees, sometimes not. This was due in no small part, it

99. Stubbs, *supra* n. 32, at 635. Rt. Revd. William Stubbs, *Lambeth Degrees*, 216 Gentleman's Magazine & Historical Rev. 633 (1864). Adduced in Peploe's case, BM MS Add 6489. *Id.* See *The Dictionary of National Biography* vol. 16, 488-489 (Leslie Stephen & Sidney Lee eds., Oxford U. Press 1967).

100. Stubbs, *supra* n. 32, at 635. Adduced in Peploe's case, BM MS Add 6489.

101. Joseph Foster, 3 *Alumni Oxoniensis* 890 (Kraus Reprint 1968). Incorporation meant that he was regarded as having the equivalent Cambridge degree.

would seem, to the increasingly varied reasons for which the degrees were conferred. As one example, on 11 May 1663, William Fyffe, MA, of Trinity College, Oxford, was created a Lambeth Doctor of Medicine (MD).¹⁰² Fyffe, a Justice of the Peace and a Member of the 1661 House of Commons,¹⁰³ was a country gentleman; and his degree seems to have been more as an honour than a traditional dispensation or privilege. The next day, 12 May 1663, Sir Edmund Freeman, alias King, was also awarded an MD by Archbishop Sheldon. A surgeon, who later turned physician, Freeman was incorporated *ad eundem* at Cambridge 3 October 1671.¹⁰⁴ Unlike Fyffe, at least he was a medical man, and his Lambeth degree recognised his standing as such, in the way that a medieval scholar might be granted a degree by papal dispensation where he had failed to qualify through regular university study due to his service in the Church, or some other cause.

Similarly, later in the same year, on 31 October 1663, Robert Thoroton, of Christ's College, Cambridge,¹⁰⁵ was created an MD. Thoroton was a physician. He was also a country gentleman and noted historian of Nottinghamshire, who after the Restoration was made a Justice of the Peace.¹⁰⁶ In each of these cases, the recipient was being granted a positive privilege, but the benefit to the church or the general public was more difficult to discern.¹⁰⁷

In some cases, the Lambeth degrees seem to have been conferred to give the recipients respectability as physicians. A few years after Thoroton's degree, on 6 February 1678, Francis Bernard, newly appointed Assistant Physician to St Bartholomew's Hospital, was created MD; and was incorporated MD *ad eundem* at Cambridge in the same year, becoming a Charter Fellow of the College of Physicians in 1687.¹⁰⁸ Also in 1678, Peter Dent, an apothecary and botanist of Cambridge, was granted a Lambeth MD.¹⁰⁹ He had been a member of Trinity College, but did not obtain a degree from that university. He was still incorporated as an MD *ad eundem* at Cambridge 18 March

102. Stubbs, *supra* n. 32, at 632.

103. Joseph Foster, 1 *Alumni Oxoniensis* 541 (Kraus Reprint 1968).

104. 1629-1709. *Dictionary*, *supra* n. 99, at vol. 11, 127-128.

105. Robert Thoroton graduated BA 1642, MA 1646, licence to practise medicine 1646.

106. Robert Thoroton lived 1623-1678. *Dictionary*, *supra* n. 99, at vol. 19, 793-794.

107. That a benefit to the church was needed for the grant of a degree was a consequence of the nature of the degree as a dispensation; if seen as a privilege there would be no need for such a benefit. Pennington, *supra* n. 43, at 196 (quoting Simone da Borsano, *Pastoralis*); Johannes Teutonicus, Glos. ord. to C. 1 q. 7 d. a. c. 6, v. *ut plerisque*.

108. 1627-1698. *Dictionary*, *supra* n. 99, at vol. 2, 380.

109. Peter Dent died 1689. *Id.* at vol. 5, 828. Stubbs, *supra* n. 32, at 636. Tanner MS 41, f. 90.

1681.¹¹⁰

Sometimes Lambeth degrees clearly savoured more of honorary than of substantive degrees though this did not reduce the value of Lambeth degrees to the recipients in both social and professional respects. For example, on 8 December 1691, Robert Hooke, Secretary of the Royal Society, and an Oxford MA, was created an MD by warrant of Archbishop Tillotson.¹¹¹ On 4 February 1695, John Woodward, a geologist and physician and Gresham Professor of Physic, was made an MD by Archbishop Tenison.¹¹² He was incorporated an MD *ad eundem* at Cambridge on 28 June of the same year—subject to the usual proviso that it should not be construed as a precedent.

The right of the archbishops to confer degrees was not challenged until the reign of King George I, when Gastrell, bishop of Chester, refused to admit Samuel Peploe, BD *Lambeth*, to the wardenship of Manchester College. The statutes of the college required that the warden have a BD or LLD. Peploe was only an Oxford MA. Rather than seeking the requisite degree from his own alma mater,¹¹³ he obtained a BD from Archbishop Wake. This was thought to have cast a slur upon Oxford, and was probably the real reason for opposition to his appointment to Manchester College.¹¹⁴ Was a Lambeth degree sufficient to meet the requirements of the college statutes? The Court of King's Bench thought so when judgement was delivered in the archbishop's favour in 1725.¹¹⁵ But the proper procedure—certainly the more politic—would perhaps have been for Peploe to have obtained a BD from Oxford.

The courts were clearly viewing the Lambeth degrees as full, though irregular (in that they were not conferred by the universities), degrees. Such a description could apply whether the degree were conferred as a privilege or by way of dispensation.

Sometimes the conferral of a Lambeth degree threatened considerable trouble for those who were perhaps not qualified to receive them. For instance, in 1756 John Hawkesworth obtained the degree of LLD from Archbishop Herring.¹¹⁶ A prolific author, the degree was in

110. Addit MS 5884 f. 11b.

111. 1635-1703. *Dictionary*, *supra* n. 99, at vol. 9, 1177-1180.

112. 1665-1728. *Id.* at vol. 21, 894-896.

113. Samuel Peploe would have had to comply with the regulations of the university in order to have obtained a degree from Oxford.

114. *Dictionary*, *supra* n. 99, at vol. 15, 797-798.

115. Blackstone, *supra* n. 10, at vol. 3, 381.

116. E.H.W. Dunkin, *Index to the Act Books of the Archbishops of Canterbury: 1663-1859* pt. 1, 388 (British Record Socy. 1929).

consideration of his literary talents, for Hawkesworth was a non-graduate. Yet Hawkesworth himself thought to practise in the ecclesiastical courts as an advocate, a project he soon abandoned.¹¹⁷ Though he had once been apprenticed to an attorney, he would probably have been quite unsuited to the profession,¹¹⁸ if, indeed, the dean of the Arches had sought fit to admit him as an advocate.¹¹⁹

VIII. AN ASSESSMENT OF THE MODERN LAMBETH DEGREES

By the early years of the nineteenth century the tendency to regard the Lambeth degrees as honorific had become more pronounced. They were still used to confer social if not necessarily professional status upon men otherwise well-qualified. For example, on 21 December 1827, Sir Charles Mansfield Clarke, a fashionable accoucheur and for many years surgeon to Queen Charlotte's Lying-in Hospital, was made an MD. He had been educated at St George's Hospital and Hunterian School of Medicine, but was not a university graduate. At least Clarke became an MA at Cambridge in 1842.¹²⁰

The list of recipients of Lambeth doctorates in the medical faculty shows that even those who had not been able to conform to the university regulations for internal degrees were usually granted the degree as a reward for eminent service.¹²¹ However, Lambeth medical degrees awarded since 1858 do not confer the right to practise medicine,¹²² and their function is more clearly that of an honour.¹²³

117. The advocates were doctors of civil law (Oxford) or laws (Cambridge). Doctors were eligible for admission as advocates of the Court of Arches, whose dean admitted advocates on a rescript of the archbishop of Canterbury, if they had studied the civil and canon laws for five (and latterly three) years. Once admitted, they were qualified to practice in the other ecclesiastical courts and civil law courts, and to be appointed judges therein. Most were members of Doctors' Commons.

Prior to 1535 advocates were required to hold a degree in canon law or canon and civil law. After 1535 the degree awarded was solely in civil law, as canon law was no longer taught in English universities. In 1545 the Ecclesiastical Jurisdiction Act, 37 Hen. 8, c. 17 (Eng.), ended the legal requirement for ecclesiastical judges to possess a degree in canon law, but they were still required to have a doctorate in civil law. In the sixteenth century foreign degrees sufficed for this requirement, though such advocates invariably sought incorporation at Oxford or Cambridge. George Squibb, *Doctors' Commons: A History of the College of Advocates and Doctors of Law* 31, 41 (Clarendon Press 1977).

118. *Dictionary, supra* n. 99, at vol. 9, 203-205.

119. The procedure for appointment of advocates is given in *The King v. Archbishop of Canterbury*, 8 East 213, 103 Eng. Rep. 323 (K.B. 1807). Whether the dean had any discretion to decline to admit a candidate duly in receipt of an archiepiscopal rescript is however doubtful.

120. Sir Charles Mansfield Clarke lived 1782-1857. *Dictionary, supra* n. 99, at vol. 4, 419-420.

121. Wall, *supra* n. 84, at 855.

122. Medical Act, 1969, c. §§ 20 & 23(1), sched. 1 ¶ 13, sched. 2 (Eng.); Medical Act, 1956, 4 & 5 Eliz. 2, c. 76 § 7, sched. 3 (Eng.); Medical Act, 1858, 21 & 22 Vict., c. 90, sched. A ¶ 10; R.

Perhaps the most significant thing to reduce the practical benefits of obtaining a Lambeth degree and re-enforce the honorific aspects of the degree has been the opening of important posts to graduates of other schools. For example, the general privileges of graduates of the universities Oxford and Cambridge, and later London, with respect to offices open or exemptions granted to them by any Act of Parliament or regulation of a public authority, have been extended to graduates of other universities in England and Wales.¹²⁴

The degrees currently granted by the archbishop are in divinity (DD,¹²⁵ BD,¹²⁶) law (DCL or LLD¹²⁷), arts (MA¹²⁸), literature (DLitt), medicine (DM or MD¹²⁹), and music (DMus or MusD,¹³⁰ BMus or MusB). Today the awards are generally made in recognition of the recipient's contributions to the life of the Church generally over many years.¹³¹ Specifically, they recognise those persons who "have attained considerable eminence, both in art and science and in learning, without possessing that inestimable testimony to profound learning [a

v. Baker, etc., (*Justices*) & Clarke 66 L.T.R. 416 (Q.B. 1891); 34 Digest 555, 122. The privilege of practising was granted by the regius professor of medicine at Oxford and Cambridge to bachelors of the faculty after they had conducted a certain number of cures. This licence was operative in the university towns and presumably throughout England, though not in London, where the chartered College of Physicians claimed an exclusive right to permit practice. Wall, *supra* n. 84, at 855; *College of Physicians Case*, 2 Brownl. & Golds. 255, 123 Eng. Rep. 928 (C.P. 1609). Bishops licensed medical practitioners from 1511 till the mid-to-late eighteenth century, under the authority of the Physicians and Surgeons Act, 1511, 3 Hen. 8, c. 11 (Eng.).

123. An example of a Lambeth degree as an honour was the MD conferred on James Rogers, a medical practitioner of Swansea, who was Mayor at the time of the Church Congress. The expense was said to have been about eighty guineas, and was defrayed by public subscription. Wall, *supra* n. 84, at 855.

124. The graduates of the newer universities were expressly given equal privileges by the Victoria University Act, 1888, 51 & 52 Vict. c. 45, § 1 (Eng.), and similar later legislation.

125. The BD or DD were more usually given as BTh or DTh in the early faculty office registers. Chamber, *supra* n. 51, at [pinpoint??]

126. Past recipients of the BD have included the Rt. Revd. Richard Chartres, then the archbishop of Canterbury's Domestic Chaplain, and now bishop of London.

127. Recent past recipients have included Sir John Owen, dean of the Arches; and Frank Robson, provincial registrar.

128. Recent recipients have included Bernard Thimont, former Controller of Her Majesty's Stationery Office; and the Revd. Rennie Simpson, precentor of Westminster Abbey, both non-graduates.

129. Past recipients of the MD have included Dame Cicely Saunders, medical director, St. Christopher's Hospice.

130. Recipients of the MusD have included Lionel Dakers, Director of the Royal School of Church Music; and Allan Wicks, Organist of Canterbury Cathedral.

131. The numbers of Lambeth degrees awarded since 1660 have been relatively small. Cecil Wall enumerated 43 MD to 1858 (after which the Lambeth MD ceased to be entered onto the medical register), from Stubbs' List and other sources. This is an average of less than one every five years, though the frequency varied, and there were as many as four in one year. Wall, *supra*, n. 84, at 855.

degree].”¹³² In this respect they may resemble honorary degrees.

Recipients of the Lambeth degrees customarily wore robes of the same style as those of Oxford or Cambridge, whichever was attended by the archbishop conferring the degree.¹³³ Since the appointment of Dr Carey, a graduate of neither university,¹³⁴ new Lambeth graduates have worn Oxford academic dress of the appropriate degree, continuing the practice of the previous archbishop Dr Runcie, who was an Oxford graduate.¹³⁵ All awards are made entirely at the discretion of the archbishop. In recent practice Lambeth degrees are awarded annually, in June. In practice, four to ten are awarded each year; for example, on 31 May 1995, for example, five doctorates¹³⁶ (two in divinity)¹³⁷ and two masters degrees were awarded.¹³⁸ In past years, doctorates in divinity were commonly awarded to all new diocesan bishops who were not already doctors of one of the universities,¹³⁹ *iure dignitatis*.¹⁴⁰ However,

132. 87 Parl. Deb., H.L. (5th ser.) (1933) 838, 839 (per Dr. Cosmo Lang, archbishop of Canterbury).

133. Wall, *supra* n. 84, at 854, 855. The exact status of the dress is uncertain, and it has been said that this rule only applied to non-graduate recipients, graduates wearing the robes of the appropriate degree of their own university. Charles Franklyn, *Academical Dress from the Middle Ages to the Present Day, including Lambeth Degrees* § 13 (Hassocks 1970). This latter interpretation has much to commend it, bearing in mind the nature of Lambeth degrees.

134. Dr. Carey himself wears the academical dress of his highest earned degree, the University of London PhD, rather than that of any of his several DD *honoris causa*.

135. Letter to the author from the Rt. Revd. Frank Sargeant, bishop at Lambeth, 8 Dec. 1995.

136. Professor Andrew Sims received an MD in recognition of his services to psychiatry, in particular in promoting the need to evaluate the religious and spiritual experience of patients. Leonard Evetts received a DLitt in recognition of his notable artistic contribution to the Church of England in the Northern Province as a designer of stained and clear glass and for his devoted service to the Newcastle Diocesan Advisory Committee for more than half a century. Robert Boughen was made a DMus in recognition of his outstanding contribution to the development of church music in Australia as Cathedral organist, teacher, conductor and composer for more than three decades; News Release from the Office of the Archbishop of Canterbury, 12 May 1995.

137. The Rt. Revd. Andrew Graham, bishop of Newcastle, received a DD in recognition of his services to the Church of England as theologian and teacher, and latterly as Chairman of the Doctrine Commission. The Revd. John Newton received a DD in recognition of his contribution to theological and historical scholarship and to the quest for Christian Unity; News Release from the Office of the Archbishop of Canterbury, 12 May 1995.

138. John Brown was made an MA in recognition of his services as Chapter Clerk, legal adviser and valued friend of Guildford Cathedral for more than thirty years. George Lunn was made a MA in recognition of his lifetime's contribution to the work, development and promotion of Christian communications and education throughout the world; News Release from the Office of the Archbishop of Canterbury, 12 May 1995.

139. Commonly, until the early twentieth century, diocesan bishop received doctorates from Oxford or Cambridge upon reaching episcopal dignity, by diploma or *honoris causa*. Parl. Deb., H.L., *supra* n. 132, at 840 (per Dr. Cosmo Lang, archbishop of Canterbury).

140. The practice of conferring degrees upon bishops was in furtherance of the very ancient custom that those who attain the status of a bishop should have a suitable degree in divinity. It was also used for those other Church dignitaries who were required, as by cathedral statutes, to hold a degree. *Id.* at 840-841.

these have been granted very sparingly since Archbishop Ramsey decided to change the policy when he became archbishop in 1961 and they are now awarded on the same criteria as other Lambeth degrees. The degrees do not, of course, confer the right of membership of any university.

IX. MODERN LAMBETH DEGREES: DISPENSATION OR PRIVILEGE?

Lambeth degrees, also called Canterbury degrees (as 'DMus Cantuar') are still awarded under the original general authority of the Ecclesiastical Licences Act 1533-1534.¹⁴¹ In the United Kingdom, the universities and other institutions which have the power to confer degrees are strictly controlled by legislation.¹⁴² The continued authority for the archbishop of Canterbury to grant degrees can be found in the Education Reform Act 1988,¹⁴³ and the Education (Recognised Bodies) (England) Order 2000.¹⁴⁴

Lambeth degrees are not honorary degrees,¹⁴⁵ though the candidates do not, in general, sit any examinations.¹⁴⁶ Indeed, to require examinations would have been contrary to the idea of a dispensation. Modern policy now requires that the recipients must be presumed to have the potential to have studied for the degree in question and to have been awarded it.¹⁴⁷ In many cases it is recognised that someone's service to the Church has precluded further academic study, and a Lambeth degree is a recognition of this sacrifice, as well as a sign of

141. *Supra* n. 76.

142. Only those universities, colleges or other bodies authorised by royal charter or Act of Parliament can confer degrees, which have official recognition. Education Reform Act, 1988, c. 40, § 214(2)(a) & (b) (Eng.). The older universities, the archbishop of Canterbury, the now defunct Council for National Academic Awards, Union Theological College, Royal College of Music, and the Royal College of Art are listed in the Education (Recognised Bodies) (England) Order, S.I. 2000, No. 3327 (Eng.) and earlier regulations. Polytechnics, which have now become universities, and the various degree-awarding colleges are provided for in separate legislation. Any award may by Order in Council be designated a recognised award. Education Reform Act, 1988, c. 40, § 214(2)(c); Education (Recognised Awards) Order, S.I. 1988, No. 2035 (Eng.). These include the Degree of the Utter Bar (Inns of Court), Degree of Barrister-at-Law (Inns of Court of Northern Ireland), and the Degree of Master of Horticulture of the Royal Horticultural Society.

143. *Supra* n. 142, at § 214(2)(a) & (b).

144. *Supra* n. 142.

145. Degrees are registered in the Crown Office of the House of Lords.

146. Examinations were conducted regularly for the MA from the 1860s until after the First World War. A limited number of candidates with good theology qualifications, who would otherwise register for the Diploma of Student in Theology, may still register for a Lambeth MA by thesis. The award of the degree is still subject to rigorous scrutiny. Parl. Deb., H.L., *supra* n. 132, at 838-839.

147. For the mode of exercise of the right to confer Lambeth degrees under Archbishop Lang, *see id.* at 838-841.

gratitude from the Church at large for someone's distinguished work and service.

In historical terms Lambeth degrees are a mixture of privilege and dispensation, through now conferred on statutory authority. They are of the nature of positive privileges, though they may potentially be conferred to meet some statutory requirement for office.¹⁴⁸ Indeed, Archbishop Lang appears to have accurately reflected the true nature of Lambeth degrees when he called himself a "one-man University."¹⁴⁹

X. CONCLUSION

The papal dispensation was a suspension of the full rigours of the canon law, exercised, amongst other circumstances, where hardship or injustice to an individual would otherwise arise or continue. This is clear in the cases of dispensations for the ordination of illegitimate clerics, or the marriage of certain couples. But how does the theory of dispensation explain the miscellaneous powers of the papacy over such matters as the appointment of notaries public, or the conferral of degrees?

This wide range of additional positive concessions, miscellaneous faculties or licences was available to both clergy and laity. Each was intended to right a wrong. For example, the dispensations to practise medicine were to allow men who were barred, perhaps because they were monks, from the profession.¹⁵⁰

By contrast, the confirmation or conferment of degrees by papal or later statutory authority is less clearly in the nature of a dispensation. However, these grants were always rare,¹⁵¹ and sometimes occurred where the man concerned had failed to qualify for a degree because of a canon law impediment, such as illegitimacy.¹⁵² Perhaps these grants are

148. Blackstone, *supra* n. 10, at [pinpoint vol?] 381.

149. Parl. Deb., H.L., *supra* n. 132, at 838.

150. The Faculty Office records give examples of a wide range of dispensations. Examples include: 10 Nov. 1536, Robert Browne, alias Broone, BM, of Oxford, licensed to practise by the university, dispensation to confirm this and permit him to practise anywhere, 40 s, *pro sigillo regis* (taxed for the Great Seal) 5 s (F I/Vv, fo. 104r); 10 Dec. 1536, Robert Moreton, OCist monk. Dispensation to practise medicine anywhere despite holy orders, £4 (F I/Vv, fo. 107v); 20 July 1537, Joseph Compton, priest, monk of Pershore, Worcester diocese, dispensation to hold a benefice and practise medicine anywhere, if granted his diocesan bishop's consent, £8 (F I/Vv, fo. 145r); 20 Sept. 1538, Joseph Hatfield, Fellow of College of Bonshommes at Ashridge, Lincoln diocese, dispensation to practise medicine anywhere, £4 (F I/Vv, fo. 226v); 7 June 1547, Robert Porter, of Bedford, Lincoln diocese, dispensation to practise the art of medicine anywhere, 4 s 5 d (F I/A, 266). *See generally* Chamber, *supra* n. 51.

151. Only four Lambeth degrees were granted by the Court of Faculties 1534-1549. *See generally id.*

152. An example of a faculty granted because of a disability was when on 6 Dec. 1544, George

understandable because the possession of a degree was of course a necessary qualification for many offices, particularly in the Church.¹⁵³

Yet, it was often difficult to see just what law was subject to dispensation. In earlier times, a faculty permitting a clerk in holy orders to hold an office which required a graduate, or the conferral of a degree upon such person would be a dispensation. But in most cases the ecclesiastical law no longer requires such qualifications. The award of a Lambeth MA to candidates with good theology qualifications—who would otherwise register for the Diploma of Student in theology and who complete a thesis—would appear to have nothing to do with dispensations.¹⁵⁴

It would be stretching the definition given by Archbishop Lang to say that the object of dispensations is “to enable some responsible person, not bound by the strictness of regulation, to get things done which, if they were not done, would involve very real hardships and disabilities.”¹⁵⁵ The current motivation seems to be to recognise persons who “have attained considerable eminence, both in art and science and in learning, without possessing that inestimable testimony to profound learning [. . . the degree].”¹⁵⁶

The best explanation for the status of these degrees is that, although many degrees were granted to prevent harm, they were more properly classified as privileges rather than dispensations. Whereas dispensations exempt some person or group from legal obligations binding on the rest of the population or class to which they belong, privileges bestow a positive favour not generally enjoyed by most people. Both involved exceptions to the ordinary operations of the law, but privileges involved a more positive, individual act of favour. Thus a notary had certain rights not enjoyed by others with respect to taking evidence, and a degree conferred by faculty gave the recipient a status that he would not otherwise enjoy.¹⁵⁷

Broke, student in Venice, natural son and legitimised son of George Broke, Lord Cobham, received a dispensation to hold the status and privileges of a BA (F I/A, 92). *Id.* at 248.

153. Although some modern ecclesiastical judges do receive Lambeth doctorates in law, this is no longer required to meet the requirements of the canon (or statute) law. Canon 127 of 1603 required that ecclesiastical judges be learned in the civil and ecclesiastical law, and at least a Master of Arts or Bachelor of Law, but did not require a degree in canon law. The statute 37 Hen. 8, c. 17 has been repealed.

154. The diploma of Student in Theology, established 1905, originally for women, and since 1944 for men also. The archbishop's examination in theology leads to a Lambeth diploma. This may be conducted by thesis for suitably qualified candidates.

155. Parl. Deb., H.L., *supra* n. 132, at 839 (per Archbishop Lang).

156. *Id.*

157. Indeed, in the immediate post-Reformation period the Lambeth degrees awarded were all said to be by way of dispensation to enjoy the privilege, etc., of a [DCL]. *See generally* those

Since 1533 the nature of the Lambeth degree has changed. Originally intended largely as an exercise of a papal jurisdiction to dispense with the strict requirements of the canon law, they are now largely conferred in much the same way as honorary degrees. But Lambeth degrees are not honorary degrees.¹⁵⁸ The privilege has become much more important than an exercise of the right of dispensation, though the former terminology is often still used.¹⁵⁹ In the words of Archbishop Lang, the archbishop of Canterbury is a "one-man University,"¹⁶⁰ yet the degrees are not awarded "in prejudice of the universities."¹⁶¹ He may be able to confer the privilege of a degree, but only in appropriate circumstances. Lambeth degrees awarded after examination were always, and remain, something of a conceptual enigma, and should perhaps be only sparingly conferred.

Currently, the awards of Lambeth degrees are usually made in recognition of the recipient's contributions to the life of the Church, generally over many years. They remain examples of the exercise of ecclesiastical jurisdiction in favour of men (and now women too) who are regarded as being worthy of such an exercise of dispensation or privilege. It is this idea that the award is for the good of the Church, as well as the good of the individual, which links modern Lambeth degrees with their ancient papal equivalents.¹⁶²

listed in Chamber, *supra* n. 51.

158. For the mode of exercise of the right to confer Lambeth degrees under Archbishop Lang, see Parl. Deb., H.L., *supra* n. 132, at 838-841.

159. The wording used by the Church of England suggests that the Church itself recognises that the nature of the Lambeth degree is rather more of a privilege than a dispensation. *See for example* the wording of the News Release from the Office of the Archbishop of Canterbury, 12 May 1995.

160. Parl. Deb., H.L., *supra* n. 132, at 838.

161. The view of Lambeth degrees as not being "in prejudice of the universities" was stated by Sir William Blackstone, *supra* n. 10, at vol. 3, 381.

162. Those instances where an individual has been awarded a Lambeth degree pursuant to examination are examples of the granting of a privilege, rather than a dispensation, though both aspects may be present.