Straining at gnats or swallowing camels?

Doctrinal Change on 11 November 1992

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1. Introduction

What does the Synod's vote to ordain women to the presbyterate actually mean?

Some say the pro-vote has swallowed a massive theological camel because it alters the doctrinal basis of the Church of England. Others suggest that those dissatisfied with the vote are straining at a relatively insignificant gnat because the issue is basically a one-off decision, not affecting other aspects of church life and one which certainly does not affect the fundamentals of the faith.

It is difficult to assess which of those two views is right partly because votes both for and against were very much coalitions of views, formed *ad hoc*. It is therefore untrue to say that the pro-vote 'represents' an adoption of a completely feminist theology. By the same token not all the vote against was composed of those who took a fundamentally Roman Catholic view of the presbyterate. So what did the vote mean?

This article aims to investigate exactly what Synod has said 'Yes' to. This will be done by examining and construing the words of the legislation itself against the background of the Canons and the Thirty-nine Articles of Religion. This may well seem a somewhat dry and technical discussion and indeed rather 'untheological' in the lack of reference to biblical data. But it is in the minutiae of construction that we can ascertain whether or to what extent the Church of England has ceased to be a church committed constitutionally to the supremacy of Scripture.

It should be stressed that the draft legislation makes no mention of any alteration of the Articles. Rather what is at stake in this stage of the debate are the implications, whether necessary or possible, of the proposed legislation and the indications that it may give as to the church's attitude to the Articles.

2. The proposed legislation—its effect on church members

2.1 Permissive Language

The draft Measure gives the power to General Synod to make provision for ordaining women to the priesthood. Clause 1(1) which confers this power reads as follows:

> It shall be lawful for the General Synod to make provision by Canon for enabling a woman to be ordained to the office of priest if she otherwise satisfies the requirements of Canon Law as to the persons who may be ordained as priests.

This language is permissive rather than mandatory in two ways. First, it provides only that General Synod *may* make provision for the ordination of women, not that it must. In that sense, Synod is not being forced to act. Secondly, the draft Measure only permits a Canon to be made enabling women to be ordained rather than compelling a Canon to be made (it is not a question of the Canon saying that, for instance, a certain number of women *must* be ordained).

This permissive sense is confirmed by draft Canon C 4B para. 1 which reads as follows:

> A woman *may* be ordained to the office of priest if she otherwise satisfies the requirements of Canon C 4 as to the persons who may be ordained as priests. [Author's emphasis].

It may therefore be said that at first blush the legislation is not coercive. On the face of it, people are not being asked to believe that women should be ordained, nor, if they are bishops, are they being asked to take part in the ordination of women to the presbyterate. It is not as though the draft legislation is saying that women *must* be ordained and that that principle should be accepted by all in the Church. That would, of course, be an absurd proposition because a woman must still satisfy the requirements of Canon Law in other respects about ordination: see Cl. 1(1) of the draft Measure.

2.2 Interaction with other Canons and with the Articles

However, this benign account of the effect of the legislation is partial, because it tends to read the draft legislation in isolation rather than against the relevant legal background.

2.2.1 Canon A 4

Part of that background is Canon A 4 ('Of the form and manner of making, ordaining, and consecrating of Bishops, Priests, and Deacons'). This Canon needs to be set out in full:

> The Form and Manner of Making, Ordaining and Consecrating of Bishops, Priests, and Deacons, annexed to the Book of Common Prayer and commonly known as the Ordinal, is not repugnant to the Word of God; and those who are so made, ordained, or consecrated bishops, priests, or deacons, according to the said Ordinal, are lawfully made, ordained, or consecrated, and ought to be accounted, both by themselves and others, to be truly bishops, priests, or deacons.

Two propositions can be formed from this which are relevant to the present debate:–

1. The *Ordinal* is not repugnant to the Word of God.
2. Those ordained according to the *Ordinal* are to be accepted by others as duly ordained.

Both those propositions affect the belief of some members of the church. In the case of the first proposition belief is at issue because it necessarily involves the relationship of the *Ordinal* to what Scripture itself says about church leadership and Scripture is the ultimate arbiter of belief. Before the vote in November this statement of Canon law was one which evangelicals could live with quite happily, given the emphasis of the *Book of Common Prayer* on a teaching ministry. Some no doubt would have suggested improvements or clarifications, but very few would have argued that the *Ordinal* itself was actually repugnant to Scripture.

The second proposition likewise was not normally a bone of contention for evangelicals. Many of us, it is true, would have liked to have seen greater discipline in some respects exercised over those ordained as priests or consecrated as bishops, but that is a different point. If anything, evangelicals would have been disposed to recognize the due ordination of those who had 'been through' an ordination service and to stress that that brought with it a commitment to bible-based ministry. Our belief was that those who had been ordained were duly ordained *and therefore* bound to keep their ordination vows, for instance about matters like the sufficiency and supremacy of Scripture.

2.2.2 Has Canon A 4 changed?

Does the legislation change this? Yes it does. This is because of Paragraph 2 of the draft Canon C 4B, which reads:

> In the forms of service contained in the Book of Common Prayer or [sic] in the Ordinal words importing the masculine gender in relation to the priesthood shall be construed as including the feminine, except where the context otherwise requires.

This is, of course, perfectly consistent with the principle of the legislation. But it is clearly an *amendment* to the *Book of Common Prayer* and the *Ordinal*. It is true that the draft Canon does not alter the words on the pages of the *Book of Common Prayer*, the actual words used remain the same. But it would be disingenuous for at least two reasons to say that there has been no amendment just because the Canon makes no change to the words actually employed, to the visible letters on the page.

First, on general principles of statutory interpretation, we must presume this paragraph of the Canon achieves *something*. That is shown by the deeming language that it uses ('. . . words . . . shall be construed as . . .'). It purports to do something, and is not merely couched in terms of 'for the

avoidance of doubt' or something similar. Unless it does achieve something it would be redundant; hard to credit in legislation of this character. On that basis we must conclude that the paragraph genuinely amends the *Book of Common Prayer* and the *Ordinal.*

This consideration shows it would be wrong to argue from the basis of English grammar that since masculine words can include the feminine (as in the common phrase 'All men are equal'—'men' here means the generic 'humans' and so includes women) one can conclude that therefore no actual change is needed to the *Book of Common Prayer* and the *Ordinal.* Clearly that was not a view shared by those drafting the Measure, given the way the paragraph uses words designed to bring about a change.

Secondly, in this specific case amendment is achieved because there is an alteration to what the words used refer to, even while the actual words employed on the page remain the same. Without this paragraph the words of the *Book of Common Prayer* and the *Ordinal* referred to the masculine gender. After this paragraph the same words will have altered their reference: they will refer to both genders.

And it is whether or not the range of reference of the words has altered that determines whether or not the doctrine of the *Book of Common Prayer* and the *Ordinal* has been altered. To take an example: if Synod passed a Canon saying that references in the Church's creeds to 'I believe' were to include the notion 'I disbelieve' it would be impossible to deny that there had been a change to the doctrine of the church as expressed in those creeds. The words simply no longer refer to the same thing. Once they referred simply to believing, afterwards they would refer to disbelieving as well. In the same way words which once referred simply to men now refer to both men and women as a result of Canon C 4B. And that is an alteration to the doctrine of priesthood expressed in the *Book of Common Prayer* and the *Ordinal.*

This in turn raises the question whether the references in Canon A 4 to the *Ordinal* are references to the *Ordinal as amended.* If those references in Canon A 4 do not refer to the *Ordinal* as amended then women priests clearly emerge as second class priests in the sense that male priests have a privilege that women priests do not, namely that of being recognized by others as priests. Such a result would run counter to the whole rationale of the legislation and would certainly frustrate the hopes appearing in para. 1(i) of the draft Code of Practice, which states that the Measure is to create a *single* order, in which women share equally. It would also create the absurdity of having the terms 'Book of Common Prayer' and 'Ordinal' refer to different things in different parts of Canon Law. Given these results this construction should not be accepted if one more consistent with the aims of the legislation can be found.

Such a consistent interpretation can, of course, be found in seeing the references in Canon A 4 as references to the *Ordinal as amended.* The trouble is that once this step is taken then the draft legislation does indeed

become coercive, and does so in two ways.

First, it declares that the amended *Ordinal* which permits and contemplates the ordination of women to the presbyterate is not repugnant to Scripture. Given that this declaration is found in a Canon, it therefore by implication requires those members of the church bound by Canon to accept a particular conclusion about the meaning of Scripture in this area. This constitutes a departure from the hermeneutical pluralism which has marked the church on many issues (you can be a priest and believe or disbelieve in regeneration of infants when baptized with water; you can be a bishop and accept a historical resurrection or disregard it). Now the position is that you *will not be able* to conform to Canon A 4 *and* say that Scripture prohibits women in the presbyterate. Canon A 4 now rules offside the traditional interpretation of, for example, 1 Tim. 2.

The second way in which this draft legislation is coercive occurs with the second proposition we took from Canon A 4, that those ordained according to the *Ordinal* are to be accepted by others as duly ordained. Clearly this must now be construed as meaning that those bound by Canon Law must accept that women ordained according to the *Ordinal* are duly ordained to the presbyterate. It is impossible to see this as preserving a plurality of views about the propriety of women's ordination. There is no permissive language at this point in the Canon about how women who have been ordained are to be viewed: it is mandatory that they are to be accepted as priests in the same way as men.

Nor can one avoid this result by saying that the Canon does not deal with belief but only with practical treatment, that what is at stake is conduct and not belief: for belief affects how we treat others. And if we are not allowed to treat others in the ways our understanding of the Bible dictates, then in practice our beliefs are being constrained.

In this way it becomes clear that the draft legislation is illiberal in its effects, no matter how pluralistic its intentions, because it coerces the beliefs of those who feel that the Bible prohibits women being ordained to the presbyterate and calls on them to accept the due ordination of such women. Permissive in expression, the legislation is coercive on the ground. A particular range of theological thought is now not acceptable *if* people are to remain within Canon Law.

2.2.3 Is the amended Canon A 4 *legitimately* coercive within the terms of the Articles?

However, given that the legislation is coercive, the question must be faced whether it is legitimately coercive within the terms of the Articles.

To take Article 6 first, the relevant part of the Article reads like this:

> Holy Scripture containeth all things necessary to salvation: so that whatsoever is not read therein, nor may be proved thereby, is not to be required of any man, that it should be believed as an article of the Faith, or be thought requisite or necessary to salvation . . .

This Article speaks of not requiring something to be believed as an article of the Faith which cannot be read or shown from Scripture. The effects of the legislation do require something to be believed, that women may properly and scripturally be ordained to the presbyterate. Now at this stage the question of this being accepted as necessary to salvation does not seem to arise either directly or by necessary implication. So attention focuses on the phrase '. . . not to be required of any man that it should be believed as an article of the Faith . . .'.

Two basic options are then open to those wishing to say that the coercive effect of the legislation does not in fact infringe those terms of Article 6. It could be said:

(*a*) although this is required to be believed as an article of the Faith, it definitely is to be read in Scripture or proved from it.

or

(*b*) while this certainly is something that is required, it is not required as an article of the Faith.

To take the argument (a) first, that the ordination of women to the presbyterate is to be found in Scripture. It is of course true that the vote at General Synod indicates that the majority of Synod felt that Scripture did not prohibit ordination in twentieth century circumstances, or possibly, that scriptural arguments could, as a matter of method, have little bearing on the present case. It is equally true that others felt that Scripture does prohibit what the majority in Synod think should be done.

This raises the question of the authority of the church (or of the majority in the church's assembly at a particular point in time) in quite an acute way. It does so because the argument (a) works only if the majority can say that Scripture is not infringed. In other words, they must have the authority to be able to determine validly that Scripture is not infringed. This argument works, therefore, only if one accepts a particular view of the validity of the majority opinion at General Synod. That is a claim to authoritative determination of the meaning of Scripture *tout court*. The appropriate analogy for such activity is the way that a court of law would determine the meaning of a piece of legislation. Once the court has spoken, that is a binding declaration of the law until a further decision by a court or until amending legislation is passed. The court's decision determines meaning.

Whether the Articles permit us to take this view of church authority will be considered later. For present purposes let us simply note that what is claimed by necessary implication for this argument to work is that the majority determines what is or is not contrary to Scripture.

Let us turn now to the second argument, (b), which would legitimate the coercive effect of the legislation within the terms of Article 6, the one to the effect that what is required is not required as an article of the Faith.

Now it is true that the Articles do not define what 'the Faith' is, although the context of the Article suggests that an 'article of the Faith'

refers to something foundational. And the argument might be made at this point that ordination of women to the presbyterate is not said by the legislation to be foundational in any way. It is simply the position adopted by the Church of England as a matter of its own internal organization. In that sense, it may be said that the legislation is coercive, but legitimately so, since what has been adopted is a matter of church government, rather than a matter of foundational church doctrine. Coercion is quite in order in such circumstances precisely because no extravagant claims are made by the legislation about the *necessity* of having female priests or presbyters.

The Articles do, of course, envisage a real degree of church government. The church can indeed legislate on various matters. But the Articles also put limitations on that power. To those relevant Articles we must now turn.

The relevant Articles are 20 and 21 and the pertinent sections of them read as follows:

> And yet it is not lawful for the Church to ordain any thing that is contrary to God's Word written, neither may it so expound one place of Scripture, that it be repugnant to another. Wherefore, although the Church be a witness and a keeper of holy Writ, yet, as it ought not to decree any thing against the same, so besides the same ought it not to enforce any thing to be believed for the necessity of Salvation. [Art. 20].

and

> Wherefore things ordained by them [*sc.* general councils] as necessary to salvation have neither strength not authority, unless it may be declared that they be taken out of holy Scripture. [Art. 21].

Article 20 is the critical Article for this stage of the debate. To be within the terms of the power laid down by the Article, the church:

1. must be ordaining something which is not repugnant to Scripture
and
2. must not be claiming that what it ordains is necessary for salvation.

Now, as was noted above, the legislation is not claiming that the ordination of women must be accepted as a matter of salvation. That limb of the test set by Art. 20 is not a problem. It is the first limb that is at stake, because if that is overstepped then the church has claimed an authority that goes beyond what the Articles permit.

To ensure that the church has not fallen at this hurdle of repugnancy to Scripture, it must be argued that the church has ordained what is consistent with Scripture. But at this point one notes that we have reached precisely the same point with Article 20 as we did with the first of the arguments relating to Article 6, namely the authority of the church to give a ruling that what it determines is not repugnant to Scripture.

In this way, whichever argument is deployed to the effect that Article 6 has not been infringed by the legislation, one is led to a position where the

Church is claiming that it is by majority vote the decisive interpreter of Scripture, because it determines when its decisions are 'repugnant' to Scripture.

Some would no doubt argue that the church certainly is not determining the meaning of scripture. Rather, what is happening is that the majority in the church are responsibly exercising a discretion in an area where Scripture is silent, or unclear, or culturally bound or contradictory (all four arguments have at some stage been advanced by those arguing in favour of a pro-vote). But to say Scripture is silent must itself depend on a view of what Scripture says—it is a claim to interpret scriptural data and say that, properly understood, it says nothing on this particular issue.

Similarly, to say Scripture is unclear still amounts to a claim to an objectively 'true' determination of meaning. One is saying one definitely knows that Scripture is objectively unclear. (It is in any event surprising to find action being justified on the grounds 'Scripture is not clear': if it really is not, then caution suggests that the church avoids the risk of breaching God's will, just as if one is not sure exactly where a cliff edge is, then one aims for what one thinks is absolutely safe.)

A parallel point may be made about the notion that a particular part of Scripture is culturally bound: one is obviously pre-supposing that one can safely and surely tell what is and what is not written for a particular time and place.

As to the claim that Scripture is contradictory on this point, one notes again that this must depend on prior decisions as to what the different 'parts' of Scripture do in fact say and further that an understanding of Scripture as self-contradictory is a position which Article 20 itself rules 'unconstitutional' for the Church of England (see the text of Art. 20 cited above).

For that reason it is clear that the majority have in practice arrived at a particular stand on scriptural interpretation (one which is known not to be universally shared). In a sense, of course, all Christians must come to an understanding of the meaning of Scripture. But the majority here are going beyond that because their understanding is being enforced as 'the truth' through the means of Canon A 4.

It should be stressed that this is a position the majority in Synod must take. If it is not taken, then the coercive effect of Canon A 4 must be unconstitutional either because of Art. 6 or Art. 20. To fall within the ambit of what those Articles permit the majority must claim to be valid determiners of the meaning of Scripture. Therefore the draft legislation raises the vitally important question of the majority in the church as the determiner of scriptural conformity. This is such a significant claim that it deserves to be examined in a little detail.

The first point to occur to a lawyer would be that this makes the majority in the Church the judge of its own case (the old principle of natural justice in English law was '*Nemo iudex in sua causa*'—*let no-one be the*

judge in his own case). The majority's action in voting for this legislation is being questioned on scriptural grounds. The majority are therefore a 'party' to the case, yet the claim to determine the meaning of Scripture means they also function as judge. And after all, the majority are hardly likely ever to concede when asked that what they have done is repugnant to Scripture—they are scarcely unbiased. The claim that is being made is an unfair claim. It offends an accepted fundamental principle of secular justice.

The second point to be made is a related one, but which deals with the effect this claim would have on the Articles. If the majority within the Church can determine what is and what is not repugnant to Scripture, then the limitations that the Articles clearly envisage on what the church may ordain become meaningless. The consequence of what is said in Articles 20 and 21 is that there are some things that the church cannot do and that it is subject to Scripture itself. But these limitations disappear in practice if the church has the power to determine what it says is not repugnant to Scripture. In an important sense it is no longer under Scripture because it controls what Scripture says. As such, this claim for the church to determine that its decisions are not contrary to Scripture defeats the purposes of the Articles. It undermines the constitutional position of the church as a church regulated by the Articles under Scripture.

Thirdly, this claim is at variance with the understanding that the Articles have of the individual and of his responsibility. If the claim is correct then logically at no point may the individual challenge the decision of the majority, because expressly or impliedly they have determined what is or is not true. The Articles do not have this understanding of the individual as fundamentally under the majority because they recognize that there *is* a place for private judgment.

This emerges in Article 34 which deals with the traditions of the church. It is true that private judgment is carefully restricted here: but it is restricted where the church has ordained something *and* where the matter is not repugnant to Scripture. This second limb would be redundant if the church could determine scriptural truth, for the mere decision of the church would then be enough. The presence of this limb requiring scriptural conformity indicates that the mere decision of the church does not amount to a determination of scriptural conformity. The very restrictions laid down by the Article show by implication that where a church decision or tradition is not scripturally justified objectively, then 'private judgment' can legitimately be exercised.

Fourthly, this means a change from the position that the church has taken for so long, which is to preserve the acceptability of different interpretations of scripture. On this issue the church can no longer claim to be pluralist, because it is adopting and enforcing one of a number of incompatible interpretations of Scripture. It is moreover curious that this lack of plural interpretation is applied so inconsistently. It is a cardinal principle

of secular justice that a law should apply impartially to all alike, the principle known as the rule of law. Yet the church is now in the anomalous position of tolerating all sorts of mutually inconsistent interpretations on issues like the resurrection or the divinity of Jesus, issues which the Articles regard as fundamental. Yet one particular interpretation about the rôle of women is now unacceptable. If the church accepts hermeneutical pluralism, in all fairness it should do so consistently. The legislation offends the principle of impartial treatment of all alike.

Fifthly, if the majority can pronounce definitively on this issue as to what is or is not repugnant to Scripture, then are there any issues on which they could not so pronounce? And even if the present majority thought there were no-go areas where the majority could not coerce belief, then how could one be sure that the formulation itself was anything other than provisional? Such a formulation would at best really be a self-denying ordinance, and anyone who has tried to diet knows how difficult it is to restrain appetite by a self-denying ordinance. If that is correct then clearly the idea of the Articles as being in any sense foundational (except purely as a historical *point de départ*) or as Scripture as being supreme or even authoritative must disappear: for the majority of the moment is supreme. To that extent this claim for church authority introduces into church affairs a new and logically uncontrollable method of government.

It has, of course, been suggested that 'truth' of all kinds, scriptural or scientific, is indeed simply the current market value of particular theories, but on such a view of truth the rationale for coercion appears highly fragile. It seems odd to coerce sincerely held belief for the sake of what one thinks of as simply the current state of play.

It may well be said, of course, that this is too cynical and bleak a view, for the idea of the majority being guided into truth is biblical and in accord with our understanding of the Spirit at work in our world. On that view coercion is indeed justifiable, because the majority are being led into truth.

But this itself is a claim which is at variance with the understanding that the Articles have of the nature of the church here on earth. Article 19 sees the churches established here on earth as liable to err. But this is a nonsense if the nature of the church is such that it is the determiner of Scriptural truth. If it does determine truth, how could it err? It determines what is and is not error. The claim displays a fundamentally different ecclesiology from the Articles and to that extent amounts to a constitutional change.

To sum up this stage of the argument, the legislation means in effect that any member of the church under Canon Law is obliged to recognize the due ordination of women to the presbyterate. This is a requirement of belief which falls foul of the Thirty-nine Articles. It does so either because it is a requirement of belief not scripturally warranted, or because it depends on the majority of Synod being able to issue conclusive and binding decisions about the meaning of Scripture, which is itself contrary to the understanding of the church shown by the Articles.

It is therefore next to impossible to resist the conclusion that Synod has not merely changed a minor matter of practice: the status of the church as constitutionally governed by the Articles is in jeopardy, and so, by extension, is its status as a scriptural church.

Some, of course, would argue for just such a constitutional change. But it does seem odd to introduce such major changes by such a roundabout route, without even the benefit of prolonged discussion on this particular point. Some might also argue that at some stage coercion is legitimate for a church. This is, of course, a weighty point and would require considerable discussion of the relevant passages of Scripture, going outside the scope of this paper. But it is not in fact strictly relevant here, for what is being discussed is changing the constitutional basis of the Church of England.

3. The proposed legislation—its effect on diocesan bishops

So far this article has looked at the more general effect of the legislation. There is, however, one group even more acutely affected by the decision of Synod—diocesan bishops, whose functions in this area are regulated by Part II of the draft Measure in Clause 2.

3.1 Clause 2 of the draft Measure

Subsection (1) of Clause 2 allows (again permissive language rather than mandatory) a diocesan bishop who is in office at the date of promulgation of the Canon enabling women to be ordained as presbyters to make a declaration. Such a declaration may be to the effect that no woman is to be ordained as priest in the diocese, or instituted or given a licence to officiate as priest within the diocese.

A declaration of this type remains in force for six months after a bishop replacing the bishop who has made the declaration has become bishop of the relevant diocese. It then expires (see subsection (5) of Clause 2). Another declaration cannot, of course, be made, since the terms of subsection (1) would not be satisfied.

Subsection (6) of Clause 2 stipulates that a suffragan shall act in accordance with a declaration made by his diocesan.

With this in mind it is time to review the effect of the legislation on bishops. It must first be noted that Clause 2(1) is not expressed as being for the avoidance of doubt or anything similar. It must therefore be presumed that the subsection has a substantive effect, that if it were not there, diocesan bishops would not be able to do something. Unless it does achieve something then it is simply redundant and that is absurd in such carefully prepared legislation. The question is what exactly that 'something' is.

It is difficult to avoid the conclusion that the 'something' is the ability to refuse ordination on the grounds that the ordinand is a woman. If this is correct then of course a diocesan bishop would, without Cl. 2, have been

in the unenviable position of having to ordain an otherwise suitable female ordinand in spite of his own understanding of Scripture on this point. And, of course, a diocesan bishop starting to hold office after promulgation will be in this position since he will not have the benefit of Cl. 2.

This is such an extraordinary result that one is inclined to seek for some other rationale for the inclusion of the declaratory power. One explanation is prompted by a statement in the Explanatory Memorandum to the draft Measure. This remarks of subsection (6) that it is to preserve the collegiality of bishops within a diocese. On that basis possibly, the declaratory power and subsection (6) together are simply there to ensure each diocese has a consistent policy relating to the ordination of women in what one might call the interim period before all diocesans are people who start to hold office after the relevant date.

Sadly, this will not quite do. For normally, in the case of suffragans at any rate, collegiality would already be ensured by Canon C 20 para. 2 which restricts the power of suffragans to what is delegated to them. In that case a diocesan who wanted to ensure that no women were ordained in his diocese would merely have to delegate power only to ordain men. The power for ensuring collegiality already exists. If that is the justification for the provisions of Clause 2 then it is unnecessary, which clearly was not the opinion of those drafting the legislation.

It would, however, be a necessary piece of legislation if the position of diocesan bishops in office at the relevant time is to be protected. This is, of course, precisely the rationale adopted by para. 3(i) of the draft Code of Practice (not part of the legislation, but conceivably useful as to what was in mind). The question immediately arises 'protect the diocesan from what?' The answer that suggests itself is 'from having to ordain women against his conscience'.

If that is correct, it explains why subsection (6) is necessary as well. After all, it would scarcely be proper for a diocesan to withhold delegating a power to ordain someone who was in Canon law suitable and able to be ordained simply in order to keep women out of the presbyterate when Synod had ruled either gender could be presbyters or priests. By implication the limited delegation route no longer seems properly open. If the non-diocesan bishops are to act in concert with their diocesan some *extra* legislative power is needed in addition to the provisions of Canon C 20 para. 2, because under the changed circumstances created by the draft Measure, that Canon could no longer be relied upon to ensure collegiality.

However, once this rationale is adopted then the position of diocesan bishops holding office from a time after the relevant date becomes highly problematic. For clearly they cannot make any of the Clause 2 (1) declarations. And if that is so, then on what basis could they themselves refuse to ordain an otherwise suitably qualified woman to the priesthood? A bishop of conscience could hardly produce a spurious reason for refusal. And to refuse overtly on the grounds of gender would be to refuse to ordain on

grounds that Canon A 4 impliedly rules out as unscriptural.

One might conceivably appeal to a 'customary' right to a completely unfettered episcopal discretion about ordination. For a completely unfettered discretion would mean that a diocesan bishop would be able to refuse ordination even on grounds such as these. But aside from all other discussion about whether such discretion did exist then clearly Clause 2 was needless because the diocesan bishops' position is already protected by the discretion. Equally clear is the implication that those drafting the legislation do not believe any such 'customary' right exists. If it did, then it would clearly defeat the purpose of the legislation unless it was removed. There is no reference to such a right in this draft legislation, so one concludes it was not thought to be there.

One could, of course, say this question of acting against one's conscience is an unreal objection since no-one will 'force' a diocesan to ordain against his will. But when the declarations are no longer in force in a diocese then a diocesan who is opposed may find himself 'landed', so to speak, with female priests, ordained by other bishops, or even by archbishops, over his head. In such a case the diocesan is in an extremely precarious position. To refuse to extend episcopal oversight or recognition to a female priest would scarcely be a feasible option: even bishops are presumably bound by Canon A 4 with its requirement that those who are duly ordained according to the amended *Book of Common Prayer* and the *Ordinal* ought to be accounted as priests and a refusal to grant episcopal oversight would be a clear and obvious refusal to abide by Canon A 4. Clearly no bishop would wish to put himself in a position of flagrant disobedience to Canon law.

Alternatively one could say that the problem of conscience-stricken diocesan bishops appointed after promulgation is unreal for another reason. After all it is scarcely likely that a person will accept a bishopric if he will be forced to ordain against his conscience. It is also scarcely likely that a person would be offered the position if that was indeed his view on the ordination of women. But this argument in fact gives the game away in another sense, because it makes it clear that one strand of theological opinion will definitely not be represented at diocesan bishop level. A broad church we may be, but not as broad as all that.

Naturally it might be argued that it is legitimate to restrict the opinions represented at diocesan level in this way. But to do so simply raises once more the question of the legitimacy of doing so within the terms of the church's existing constitution. It would be quite legitimate to do so if the majority at Synod are indeed the determiners of what is scriptural truth, but as noted above this is not the position of the Articles and it is a position of great significance to take.

To sum up this part of the argument, the provisions of Clause 2 protecting diocesans in office at the relevant date reveal the lack of protection for diocesans starting to hold office after that date. They will be in the impos-

sible position of wishing to refuse ordination on grounds which Canon A 4 rules out and it is therefore highly dubious whether they can properly refuse to ordain women. They will moreover be faced with extending episcopal oversight and episcopal recognition to those women ordained by others if they are to remain within Canon A 4. This clearly opens the door to coercion and a potential restriction on those who will be asked to be diocesan bishops, thereby entrenching a particular range of opinion at that level.

4. Conclusion

A feature of the argument running through this debate is the authority of the institutional church. For to justify the draft Measure and the attendant legislation one has to resort to a particular understanding of church authority. That understanding is implicitly totalitarian in spirit because of the way it must logically subordinate individual thought to the will of the majority for the time being. It is also, of course, an understanding which is unconstitutional within the terms of the Thirty-nine Articles. It is, worst of all, an unscriptural understanding of the church's authority, but that is another story.

It is true, no doubt, that the Measure may appear like a gnat, scarcely worth the effort and words spent on it. But reflection shows a theological camel is lurking here, which has been simply cooked in a rather nice gnat sauce. Synod, it seems, has swallowed a camel while under the impression that it was straining at gnats.

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