The Function of the Ecclesiastical Committee of Parliament with particular reference to The Priests (Ordination of Women) Measure 1992

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The Ecclesiastical Committee of Parliament, created by the Church of England Assembly (Powers) Act 1919 (the 'Enabling Act') was first envisaged in the Report of the first Archbishops' Committee on Church and State, published in 1917. It exists to scrutinise legislation proposed by the Church Assembly (since 1969 the General Synod), and to report to Parliament as to the 'expediency' (as the 1919 Act puts it) of such measures, which may not be amended in Parliament. It acts thus as a safeguard, so that members of both Houses of Parliament may be informed as to the likely effects of Church measures, which may be of a very specialized nature; which may also have effects upon the rights of citizens who are not members of the Church of England. This procedure also ensures that the Church does not exceed the powers devolved upon it by the Enabling Act, to obtain the Royal Assent for its measures without Parliament being made fully aware of what is proposed.

It appears that the Priests (Ordination of Women) Measure will raise some very important questions of definition, on which there is no existing case law. What precisely does 'expedient' mean? And to what extent can measures alter the doctrine of the Church of England, especially the Formularies, which appear to have a special constitutional status? There is clear implication in the Enabling legislation, and in subordinate legislation, that any attempt to alter the doctrine stated in the Formularies (as opposed to other doctrinal matters) would be beyond the powers conferred upon the Church's legislative bodies. This may be seen in *The Address to*

the King (1919) Section 14(b); the Synodical Government Measure 1969, Schedule 2, article 7; and in the Church of England (Worship and Doctrine) Measure 1974, Section 5(1), which repeats the terms of Canon A5, defining the doctrine of the Church of England as being that found 'in particular . . . in the Thirty-nine Articles of Religion, the Book of Common Prayer, and the Ordinal.'

The term 'expedient' is clearly designed to allow the Ecclesiastical Committee to report across a very broad range of issues, as to what is expedient both for the Church, over which the Crown in Parliament remains the supreme authority; and for all Her Majesty's subjects, who are not members of the Church's electoral rolls. Section 3(3) of the Enabling Act specifically requires the Committee to consider 'the constitutional rights of all Her Majesty's subjects' as well as 'the nature and legal effect of the measure.' Such terms of reference ought to include the likely effects upon all sections of an established Church in which a broad spectrum of churchmanship has been permitted to develop, and has been valued as creating an institutionalized comprehensiveness; upon trusts set up to promote different types of churchmanship within the Church; upon the holding of assets by the Church Commissioners for the whole Church, in cases such as this where a significant party of opinion believes itself to be at risk; and especially where the identity of the Church of England is at stake, as defined by its Formularies. The Committee has a clear duty to advise Parliament as to whether a proposed Measure advances the wishes of the General Synod, or of a portion of the Synod, in conflict with the wider rights and interests of other parties within the Church, or in the country as a whole.

It appears to me that although considerable freedom has been given, first to the Church Assembly, and latterly to the General Synod, those powers remain limited by the terms of the Enabling Act, the Synodical Government Measure, the Worship and Doctrine Measure, and by the Canons of the Church of England. The General Synod does not possess supremacy in law as discussed by Dicey and now understood to be the constitutional position of Parliament itself. Therefore the requirements of the Enabling Act 1919, that Measures should be examined by the Ecclesiastical Committee, and that they are then subject to a positive resolution in each House of Parliament, means that these procedures following final approval in Synod are intended to be, not a rubber-stamping of proposed Measures, but a very vital stage in the process of becoming law.

In the Priests (Ordination of Women) Measure and the Ordination of Women (Financial Provisions) Measure, the necessity for these procedures is very clearly highlighted. General Synod is proposing to make a change in the ordained ministry of the Church of England, which is without precedent in the Church, as it affirms in the Preface to the *Ordinal*, that it holds to the pattern which derives 'from the Apostles' time'. This is a matter of undisputed fact. That it has chosen to consider this Measure

under Article 8 of the Synodical Government Measure, Schedule 2, as a Measure providing for a permanent change in the *Ordinal*, indicates this to be a matter of historic significance; and the Measure has received detailed examination in the House of Bishops' *Second Report* (GS 829). The doctrinal nature of much of the discussion in the Report makes it difficult to argue that this is not a doctrinal issue; and the fact that the difference between the two points of view represented in the General Synod debate on 11 November has proved to be irreconcilable, with a third of the Church unwilling to accept this change, is a further clear indication that the Measure involves a doctrinal dispute of deep significance within the Church of England.

However under the legislation by which the General Synod (and the former Church Assembly) have received authority to frame Measures, as I have indicated above, there appear to be limits imposed to the powers of the General Synod. In the *Address to the King* of 1919, the basis of the Enabling Act of that year, under which the General Synod continues to present legislation for approval by Parliament, it is clearly laid down that:

> 14(b) It does not belong to the functions of the Assembly to issue any statement purporting to define the doctrine of the Church of England on any question of theology, and no such statement shall be issued by the Assembly.

This section of the Address clearly envisages that the Assembly, although it will have authority to regulate much of the administrative life of the Church, will not be able to take upon itself a quasi-papal rôle, defining new doctrines; and that the doctrine of the Church of England will continue to be found in its formularies. This position is not revoked by the 1969 Synodical Government Measure, which states in Schedule 2:

> 6. The functions of the General Synod shall be as follows:–
> (a) to consider matters concerning the Church of England and to make provision in respect thereof—
> (i) by Measure intended to be given, in the manner prescribed by the Church of England Assembly (Powers) Act 1919, the force and effect of an Act of Parliament,
> or
> (ii) by Canon made, promulged and executed in accordance with the like provisions and subject to the like restrictions and having the like legislative force as Canons heretofore made, promulged and executed by the Convocations of Canterbury and York.

The earliest of those restrictions are those imposed by the Submission of the Clergy Act 1533, which is reiterated in the Synodical Government Measure 1969 at Section 1(3):

> The provisions of sections 1 and 3 of the Submission of the Clergy Act 1533—
>
> (a) requiring the Queen's Assent and Licence to the making, promulging and executing of Canons by the said Convocations,
>
> and
>
> (b) providing that no Canons shall be made or put in execution by the said Convocations which are contrary or repugnant to the Royal prerogative or the customs, laws or statutes of this realm,
>
> shall apply in like manner to the making, promulging and executing of Canons by the General Synod.

Given that this provision is so deeply established in the Tudor settlement of the Church of England, it is questionable, to say the least, whether these restrictions can be avoided by the device of first obtaining a Measure, to permit a Canon to be made which might otherwise be challenged as to its validity. In this case, where the proposed change to the priesthood is very likely to be challenged under the provisions in (b) above, the method adopted by the Synod would appear, if successful, to void the provisions of the Submission of the Clergy Act of any force or value.

There is provision within the *Address to the King* for measures 'touching doctrinal formulae or the services and ceremonies of the Church of England', words which are echoed in Article 7 of Schedule 2 of the Synodical Government Measure 1969:

> (1) A provision touching doctrinal formulae or the services or ceremonies of the Church of England or the administration of the Sacraments or sacred rites thereof shall, before it is finally approved by the General Synod, be referred to the House of Bishops, and shall be submitted for such final approval in terms proposed by the House of Bishops and not otherwise.

It is submitted that the circumlocution, speaking of *touching doctrinal formulae* rather than of *changing* or *altering* doctrinal formulae, is an indication of the intention that there are certain matters which lie beyond the powers of the Synod to vary or change. Taken with the quotation from the Submission of the Clergy Act, this phraseology indicates that the powers of the Synod are limited, for example, to the provision of *alternative services* to those in the *Book of Common Prayer*, not to its replacement or revision (as was proposed in 1927 and 1928). Measures may be framed which *touch* upon such matters, but which are not in themselves a means to altering the formularies.

Although the extent to which Measures may 'touch' such matters is not defined, it is clear that the formularies, that is to say the *Book of Common Prayer*, the *Thirty-Nine Articles of Religion* of 1562, and the *Ordinal*, have a protected status, which is reaffirmed in the Church of England (Worship and Doctrine) Measure, Section 5, as standing outside the powers conferred upon the General Synod. These formularies have the status of a doctrinal basis of the Church of England, on the basis of which it

holds its endowments as an ecclesiastical body. The Canons of the Church of England affirm:

> A1 OF THE CHURCH OF ENGLAND
> The Church of England, established according to the laws of this realm under the Queen's Majesty, belongs to the true and apostolic Church of Christ; and, as our duty to the said Church of England requires, we do constitute and ordain that no member shall be at liberty to maintain or hold the contrary.
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> A4 OF THE FORM AND MANNER OF MAKING, ORDAINING, AND CONSECRATING OF BISHOPS, PRIESTS, AND DEACONS
> The [Ordinal] annexed to the Book of Common Prayer . . . 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.
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> A5 OF THE DOCTRINE OF THE CHURCH OF ENGLAND
> The doctrine of the Church of England is grounded in the Holy Scriptures, and in such teachings of the ancient Fathers and Councils of the Church as are agreeable to the said Scriptures.
> In particular such doctrine is to be found in the Thirty-nine Articles of Religion, the Book of Common Prayer, and the Ordinal.

All those who are about to be ordained, or admitted to public ministry in the Church of England, must make the prescribed Declaration of Assent as set out in Canon C15 of the Canons of the Church of England:

> PREFACE
> The Church of England is part of the One, Holy, Catholic and Apostolic Church worshipping the one true God, Father, Son and Holy Spirit. It professes the faith uniquely revealed in the Holy Scriptures and set forth in the catholic creeds, which faith the Church is called upon to proclaim afresh in each generation. Led by the Holy Spirit, it has borne witness to Christian truth in its historic formularies, the Thirty-nine Articles of Religion, the Book of Common Prayer and the Ordering of Bishops, Priests and Deacons. In the declaration you are about to make will you affirm your loyalty to this inheritance of faith as your inspiration and guidance under God in bringing the grace and truth of Christ to this generation and making Him known to those in your care?
>
> DECLARATION OF ASSENT
> I, A B, do so affirm, and accordingly declare my belief in the faith which is revealed in the Holy Scriptures and set forth in the catholic creeds and to which the historic formularies of the Church of England bear witness . . .
> Every person who is to be consecrated bishop or suffragan bishop shall on the occasion of his consecration publicly and openly make and subscribe the Declaration of Assent in the presence of the archbishop by whom he is to be consecrated and of the congregation there assembled.

It would of course be possible for Parliament to alter the formularies, or to abolish or amend them in any way; to establish other Churches or to disestablish the Church of England. But it appears that the formularies, as the doctrinal basis of the Church of England for all its clergy in public office; and affirmed as the doctrine of the Church of England in Canon A5; hold such a fundamental place in the laws of this realm that it would not be 'expedient' for them to be altered in any significant way, without the effects of the legislation being clearly understood by the members of both Houses of Parliament as a change to something equivalent to Magna Carta, or Habeas Corpus; nor without the assent of a clear consensus within the Church itself.

I make this latter point because there are substantial numbers of us already in office, who have made the Declaration of Assent willingly in the past, on the basis of the unchanged ministry of the Church of England from the time of the Apostles. We doubt, however, to what extent, and with what integrity, we can continue to hold to our Assent, if there should be ordained women priests (why not bishops?) who are clearly not part of the apostolic tradition of the Church (Canon A1); the validity of whose ordination is in doubt as a matter of doctrine (Canon A4; cf. also Sections 51–59 of the House of Bishops' *Second Report*); who, when we made our Declaration of Assent, believed that we were assenting to a body of basic doctrines which no Synod could have authority to alter. A strong body of liberal opinion in the Church of England believes that such things can be modified, and has obtained a Synodical majority on this occasion for this Measure. But as a matter of law, it is arguable that the formularies are not open to modification by the provisions of the Enabling legislation, not least because they stand for many Anglicans as a fundamental guarantee of doctrines and of rights.

At the very least, any alteration to so significant a part of the most fundamental structures of the Church of England ought to be permissive, and not prescriptive. The refusal of the courts to condemn the authors of the *Essays and Reviews* in 1864, and the case of the Bishop of Lincoln in 1892 (*Read v. Bishop of Lincoln*, L.R. Appeal Cases 1892), are instances of the pattern of toleration of differing emphases within the Church of England which has become accepted since the nineteenth century. In the Priests (Ordination of Women) Measure, Part II (2), the General Synod has attempted to prescribe for the future that those who do not accept the proposed change to the priesthood will be unable to accept office as diocesan bishops in the Church of England, by removing from such future bishops the right to exercise their beliefs in practice in their dioceses. They will have to accept not only the ordination of women, but their presentation to benefices; their collation as incumbents, and their licensing to other forms of ministry. All these aspects of ministry in a diocese are carried out in the name and on the authority of the diocesan bishop.

In imposing this new doctrinal test upon the bishop of the diocese, the

Measure effectively imposes it from the bishop downwards. His is the original ministry of the Church, from which all other forms of ministry are derived. Once the Measure comes into effect, it will prevent the appointment of opponents to any office in which they will have to deal professionally with women priests—such as archdeacons, rural deans, or theological college staff. If any opponents are accepted for ordination they will have to share their training, and probably their ordination service, with candidates whose vocation they do not accept to be valid or lawful; and they will know that after ordination they never will be able to play a full part in the life of their diocese. The Measure effectively restricts their ministry within their parish boundaries. It is certain that there will be immense moral pressure put upon such opponents to conform.

In the present situation, to which all bishops and clergy have made their Declaration of Assent, there is no doubt of the lawfulness of existing priests. The Measure will overturn this Assent to the formularies, and impose instead an alternative orthodoxy, to which Assent will be required from all new office-holders. Such a new test of orthodoxy is gravely unjust to those who still abide by the historic formularies; and is arguably contrary to Article 6, which states that:

> 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.

There is no text of Scripture which can be shown conclusively to require, or to allow the ordination of women as priests, as Article 6 would require for such a test. In a matter of such uncertainty, those who have remained faithful to the historic doctrines of the Church of England ought not to be deprived of their rightful share in the counsels of the Church, including membership of the bench of diocesan bishops.

There are useful parallels with the case of *Free Church of Scotland v. Lord Overtoun* [1904] 7F (HL) 1, in which the House of Lords held that those who remained faithful to that Church's original doctrinal basis, were entitled to hold the assets of that Church, to the exclusion of those who claimed liberty to alter the terms of the Church's adherence to the Westminster Confession. A Church which wishes to alter its original trust deeds must be able to demonstrate that it has the right to do so, if it is to continue to hold its property and endowments in trust. It is clear that the Priests (Ordination of Women) Measure envisages, in Section 12(2), that its effect will be to cause a body of opponents to withdraw from the Church of England; and those who do so will be required to sign a declaration, contained in the Schedule to the Financial Provisions Measure, citing their opposition to the new Canon as the cause of resignation. Those who remain within the Church will be able to do so, on restricted terms.

There is every expectation within the Measure of division as a matter of high doctrinal principle. But it is far from clear that the Synod has authority to alter the historic formularies, dating back to the Establishment of the Church of England at the Elizabethan Settlement; or that it has been given authority so to limit the Royal prerogative, to appoint as diocesan bishops only those who are prepared to work with the legislation. It is surely not 'expedient' that the General Synod should be permitted to remove such fundamental constitutional rights from a very significant proportion of the Church of England, which wishes only to remain faithful to the doctrinal basis established by the formularies, offering instead only very limited terms of compensation to those who are constructively dismissed from their share in the ministry and worship of the Church. If the formularies are not to be made simply to mean whatever the General Synod deems them to mean, but are, rather, to stand as a guarantee of the rights of all Church members, then at the least, the doctrinal prescription of Part II(2) ought to be removed from the first Measure, enabling opponents to remain within the Church in good conscience and with full confidence that their doctrinal understanding of the sacred ministry will continue to be respected. It seems to me that this is the very function of the Ecclesiastical Committee, as envisaged when it was set up under the 1919 Act, to ensure that the rights of all sections of the Church are respected, and not ridden over.

Taken together with Part II(2) of the first Measure, the Ordination of Women (Financial Provisions) Measure, constitutes a conscious decision by the General Synod to enforce one point of view at the expense of another. The majority of the Synod expects to continue to hold all the endowments, property and assets of the Church of England, and to continue to be recognized in law as the Church of England, while offering to the minority a stark choice, either to conform; to continue as a form of second-class constituency; or to leave altogether.

Professor H.L.A. Hart wrote in 1982:

> It seems fatally easy to believe that loyalty to democratic principles entails acceptance of what may be termed moral populism: the view that the majority have the moral right to dictate how all should live. (*Law, Liberty and Morality*).

It appears to me that the proponents of the ordination of women have become so convinced of the rightness of their cause that this very process has taken place in the General Synod; and that the legislation which has been approved there has, in consequence, taken a form which demonstrably exceeds the powers given to the Synod, is hopelessly unworkable in practice, and is contrary to natural justice in the terms of the very narrowly restricted financial provisions made available to some clergy, without any adequate provision for dispossessed laity.

On the basis of the Free Church of Scotland parallel, legislation which effects such a radical change to the formularies, doctrine and ministry of the Church, ought to make provision for those sections of the Church which are opposed, to opt out as a new ecclesial body, taking its share of the property and endowments of the former Church. In fact what is proposed is a modest form of parochial apartheid, permitting parishes to refuse the ministry of women priests for an unspecified period of time; and for the clergy, such limited financial provisions that they would actually, in many cases, prove so narrowly defined that they are worthless. The second Measure does not take into account the years spent acquiring qualifications and training for ordination, up to five years in some cases, when it excludes those who have been in stipendiary ministry for less than five years. It excludes the many clergy who are temporarily serving outside the parish system, but dependent for their very livelihood on their ministry—missionaries, school and college chaplains, chaplains to the forces. Those who have reached sixty years of age must effectively take early retirement on a reduced pension. Those under fifty have their financial support limited to three years, and it is means tested, to permit only the national minimum stipend to be received before deductions are made *pro rata*. The free housing element on which the low rate of stipend is justified each year for serving clergy is removed. The housing provision in the Measure, which is designed for pensioners, is too expensive for those in receipt of payments under the Measure to be able to afford. The lump sum resettlement grant, currently worth £3,660, is hardly enough to provide a deposit on a mortgage, and would in many cases be swallowed up in repaying to the Church Commissioners the outstanding balance on their car loan schemes. Before the Priests (Ordination of Women) Measure, and the attendant Financial Provisions Measure are presented for Parliamentary approval, the cumulative effect of what is being proposed ought to be made known in the *Report* of the Ecclesiastical Committee; and, as a matter of constitutional law, the Legislative Committee of the General Synod ought to be required to demonstrate conclusively, that the Synod has power under its Enabling legislation, to alter or vary the doctrine of the Church of England as contained in the Formularies.

It is widely asserted in some circles in the Church of England that the Church has cumulatively gained freedom over matters of doctrine in the course of this century, as it has secured for itself first the Church Assembly, then Synodical Government, and latterly, the 1974 Worship and Doctrine Measure. As a matter of law, it will be seen from the quotations above in this paper that Parliament has constantly reserved the position of the formularies, which the Church itself in its Canons and in its Declaration of Assent in Canon C15 has consistently defined as the special doctrinal basis of the Church of England. The 1974 Worship and Doctrine Measure itself explicitly requires in Section 1(1) that the *Book of Common Prayer* will continue to be available for use in the Church of England,

while permitting the Church to make provision by Canon for alternative forms of service. And as a matter of fact, that Measure does not open up to the General Synod the same freedom with regard to the doctrines of the Church of England, as it does with respect to forms of worship. What it does provide for, in Section 2, is that the Synod will have power to provide by Canon for new forms of assent or subscription to the doctrine of the Church of England, defined in Section 5 of the Measure 'in particular' in terms of the formularies. The function of the 1974 Measure with regard to doctrine, therefore, is in effect to transfer to the General Synod the power to determine forms of assent or subscription which was previously exercised by Parliament under the Clerical Subscription Act 1865.

The limitation of the powers of the General Synod to determine matters of doctrine, especially doctrines which are contained in the formularies, enables two strands of Anglicanism to be held together in tension on the basis of the Elizabethan Settlement: Catholic sacraments and orders but a Reformed ethos expressed in an Establishment under Royal rather than papal supremacy. It is Establishment, and the various Acts of Uniformity, which have hitherto prevented either party in the Church from gaining complete control, although the influence of each has seen times of greater or lesser influence. The partial disestablishment which has come about in the form of church self-government has brought about a situation in which the liberalism which is at present influential in the Church has obtained a controlling majority in the Synod in this issue, to achieve the ordination of women to the priesthood, and also to deny any further appointment to high office of those who remain opposed. Parliament, which stands as guarantor of the rights of all parties in the Church to a continued full share in its life, ought not to approve such a Measure while the Church remains Established. Such a Church belongs to all its members, and is not at the disposal of a General Synod. The only legitimate course, if General Synod desires to purge the Church of opponents to women priests, is for the Church to be disestablished, and its endowments shared between the parties. The General Synod of the new Church of England will then be free to order its own life entirely according to its own wishes. Those who wish to continue in the Anglican tradition which existed before 11 November will then be able to seek to exercise their share of the endowments in a new denomination. It may be possible to create parallel churches within the Church of England, or a 'third province' with its own bishops and parishes, but permanently and legally divided from the majority of 11 November. Unless the rights of both sections of the Church are protected fully and permanently in this or some similar way, then the present Measure, falling far short of the protection for both parties envisaged in the English Reformation, must surely be classified as being 'not expedient' for the Established Church.

It will no doubt be argued by some that the cumulative effect of the Church of England Assembly (Powers) Act 1919, the Synodical

Government Measure 1969 and the Church of England (Worship and Doctrine) Measure 1974, is to give to the General Synod all the powers it needs to amend even fundamental doctrines such as those expressed in the formularies; and to take the Church of England in any direction which it chooses. In the case of the Priests (Ordination of Women) Measure, those who have advanced the principle and the detailed form taken by the present Measure, will no doubt seek to convince Parliament that it has given such powers to General Synod; that it is a step that can practically be carried through despite the very substantial opposition which exists; and that sufficient account has been taken of the needs of opponents, both those who wish to remain in the Church, and those who will choose to resign. Any assurances which may be given with respect to the latter must have the force of law, and it is hard to see how Clause 2 of the Measure can at the same time restrict the right of the Crown to appoint as future diocesan bishops only those who will be required to cooperate with the Measure; and at the same time permit opponents to continue to be appointed. The only safeguard of the Church remaining comprehensive in its senior appointments is for Clause 2 to be deleted. An exclusion clause such as this which is given statutory force can not be balanced by verbal assurances as to effects which it clearly exists to prevent, after the Canon is promulged.

The clearest way of illustrating the intention of Parliament to limit the powers of church self-government, is to compare what has been given to the Church of England, with the freedom of self-determination in spiritual matters which the Act of 1921 gives to the Church of Scotland. The latter remains Established, as a sign of its desire to remain the Church of the Scottish kingdom. The Church of Scotland Act, however, excludes the state from any powers of regulation or control with respect to matters which are of a spiritual nature; while acknowledging the need for 'the jurisdiction of the civil courts in relation to any matter of a civil nature.' (Clause 3).

Clause 1 of the Church of Scotland Act 1921 [11 & 12 Geo.5, c.29] enacts that:

> The Declaratory Articles are lawful articles, and the constitution of the Church of Scotland in matters spiritual is as therein set forth, and no limitation of the liberty, rights and powers in matters spiritual therein set forth shall be derived from any statute or law affecting the Church of Scotland in matters spiritual at present in force, it being hereby declared that in all questions of construction the Declaratory Articles shall prevail, and that all such statutes and laws shall be construed in conformity therewith and in subordination thereto, and all such statutes and laws in so far as they are inconsistent with the Declaratory Articles are hereby repealed and declared to be of no effect.

The fourth Declaratory Article sets out the full claim of the Church of Scotland to exercise independence of judgment and legislation in its spiritual affairs:

> This Church, as part of the Universal Church wherein the Lord Jesus Christ has appointed a government in the hands of Church office-bearers, receives from Him, its Divine King and Head, and from Him alone, the right and power subject to no civil authority to legislate, and to adjudicate finally, in all matters of doctrine, worship, government, and discipline in the Church, including the right to determine all questions concerning membership and office in the Church, the constitution and membership of its Courts, and the mode of election of its office-bearers, and to define the boundaries of the spheres of labour of its ministers and other office-bearers. Recognition by civil authority of the separate and independent government and jurisdiction of this Church in matters spiritual, in whatever manner such recognition be expressed, does not in any way affect the character of this government and jurisdiction as derived from the Divine Head of the Church alone, or give to the civil authority any right of interference with the proceedings or judgements of the Church within the sphere of its spiritual government and jurisdiction.

The model provided by the Church of Scotland Act 1921 has been much discussed in the Church of England as a possible pattern for its own form of self-government. Following the rejection by Parliament in 1927 and again in 1928 of the *Revised Prayer Book*, which was seen by the Church as an essential element in its aim of restoring ecclesiastical discipline, and as one of the purposes for which the Church Assembly had been established, Bishop William Temple and others held a series of meetings in London to examine the Scottish model as an alternative to the Enabling Act of 1919. The 1919 Act had been thought to confer upon the Church sufficient powers of self-government, and independence from the State, to satisfy all but the most extreme elements who demanded full separation from the State. The 1928 crisis showed conclusively that the powers which had been retained by Parliament could be used where doubts remained about any Measure; and although no subsequent Measure of comparable significance has been rejected by Parliament, some minor Measures have failed to obtain the approval of the House of Commons, and others have been amended, often substantially, as a result of meetings provided for in the 1919 Enabling Act, between the Ecclesiastical Committee of Parliament, and the Church's Legislative Committee.

The *Report* of the Archbishops' Commission on the Relations between Church and State, 1935, considered the Scottish model of Establishment as a possible solution to the needs of the Church of England, following the events of 1927 and 1928. It concluded (p. 56) that:

> a complete spiritual freedom of the Church is not incompatible with Establishment. The Crown in Parliament has solemnly ratified the principles

> on which the Scottish settlement is explicitly based, and has accepted the relations between the spiritual and the civil power laid down in the Declaratory Articles. It is, therefore, neither illogical nor impracticable to infer that the Crown in Parliament would be willing to consider and to grant to the Church of England what has been, with the full consent of England, freely granted or confirmed to the Church of Scotland.

The clear implication of what was thus written in 1935 is that the Church Assembly was not considered to have the full autonomy in spiritual matters which was given legal recognition in the Church of Scotland in 1921. It is instructive to note that the draft bill proposed by the 1935 Report, which was intended to achieve spiritual independence for the Church in legislative matters affecting doctrine, still contained the requirement that any Measure should be:

> neither contrary to nor indicative of any departure from the fundamental doctrines and principles of the Church of England, as set forth in the Thirty-nine Articles of Religion and the Book of Common Prayer. (I.63).

Bishop Hensley Henson's view, expressed in a letter to the Commission, was that even the Scottish model would not go far enough to obtain in England the sort of liberty which would enable the Church to exercise total independence in spiritual matters.

> In casting about for proposals of legal and constitutional change which shall transform the existing Establishment, I apprehend that the Commission can but be constructing theoretical schemes, and so far as any practical result is concerned, will be 'ploughing the sand'.

Henson believed that:

> the cessation of conflict which followed the final defeat of the Church's effort to revise the Prayer Book [proved] both the satisfaction of church people generally at the failure of reform and their acceptance of the House of Commons as the final authority in spiritual causes. (II.316–317).

Henson had come to believe that the only means for the Church to enjoy complete independence in spiritual matters was for it to seek disestablishment; and that any attempt to obtain a modified form of Establishment would inevitably fail to provide independence of action in spiritual matters. On the other hand, as he noted, much of the Church wished Establishment to continue, in the knowledge that Parliament could continue to exercise a veto over the Church's judgment in spiritual matters. The Church of England's leaders in 1993 have not expressed any desire for the Church to be disestablished, and many of them would oppose it. It follows that they must be willing to accept the conditions, as well as the privileges, of the continued Establishment of the Church of England.

The *Report* of the Archbishops' Commission on Church and State in 1970 also considers the nature of the Scottish Establishment. Section 216 argues that although the Commission's recommendations 'bear a distinct resemblance' to the Scottish model, there are such differences between the two countries as to render a direct imitation impracticable:

> The history of Church and State in the two countries has been very unlike since the Reformation if not before. We cannot take a system of law which has arisen in another part of Britain and impose it on England as though it fitted the facts, or the memories, of English life. We have to take English ecclesiastical polity as we find it and then see how it can be adapted. [*Church and State 1970* p. 66.].

The chief recommendation of the Report (para. 211) is that:

> 1. All matters affecting the worship and doctrine of the Church should become subject to the final authority of the General Synod, with certain safeguards provided.
> 2. To this end, a Measure should be promoted to ensure that the authority to order forms of worship already granted in part by Parliament should be granted finally to the General Synod, under certain safeguards.

These safeguards are to include that of paragraph 77(b), that

> new forms of worship must not contradict the teaching of the Prayer Book and Ordinal of 1662.

The form of Measure proposed by the 1970 Report, to obtain for the General Synod the 'final authority' which it sought in matters of doctrine by permitting it to make provision by Canon:

> 2(b) for interpreting, whether by the forms of subscription or otherwise, the formularies of the Church of England . . . in particular for interpreting them in their historical context and in relation to other understandings of Christian truth;

was very far from the actual form of the Measure which received the Royal Assent in 1974 as the Church of England (Worship and Doctrine) Measure, which as we have seen on page 14 above, is limited to defining the terms of the Declaration of Assent to the formularies, reiterated in section 5 of the Measure:

> References in this Measure to the doctrine of the Church of England shall be construed in accordance with the statement concerning that doctrine contained in the Canons of the Church of England, which statement is in the following terms: 'The doctrine of the Church of England is grounded in the holy Scriptures, and in such teachings of the ancient Fathers and Councils of

> the Church as are agreeable to the said Scriptures. In particular such doctrine is to be found in the Thirty-nine Articles of Religion, the Book of Common Prayer, and the Ordinal.'

It will readily be seen that the 1974 Measure does not give to the General Synod, or to the Church of England, the freedom to define, or develop or alter doctrines contained in the formularies that was envisaged by the 1970 *Report*; and that General Synod, therefore, has no original authority to do so by virtue of this or any other Measure or Act of Parliament.

It would of course have the full authority of an Act of Parliament if a Measure conferring powers of this extent upon the Synod were to be approved by Parliament under the 1919 Enabling Act. But it ought properly to do so only if that were the explicit purpose of the Measure, if it were presented and debated as such, and if the full effects of such a proposal had been fully discussed by both sides in Church and State. That would probably require an extensive inquiry by a Royal Commission, into the nature of the Anglican Settlement, and the future disposal of the Church's endowments and assets, between the various elements comprising the present Church.

The Ecclesiastical Committee, as the body charged by Parliament with reviewing all Measures proposed by the Church, will surely wish in its discussions with the Legislative Committee of General Synod, and in its Report, if necessary, to point out that the Priests (Ordination of Women) Measure would, if approved, represent a substantial change to the Ministry of the Church of England as it has received it, and as it is enshrined in one of the principal Reformation formularies, the *Ordinal*. In effect, General Synod would be accomplishing piecemeal what it does not have authority to do as a matter of recognized principle: to amend the formularies on which the Church holds its position in law, in the state, in public life, and especially amongst its members who are bound together by the formularies. Upon the basis of those formularies, the Church continues to enjoy the privileges of being an Established Church, amongst which are included the right to convey benefices and other freehold offices such as archdeaconries and deaneries, by institution and induction; and to participate in the endowments held for the Church on behalf of Parliament by the Church Commissioners. These privileges and benefits at present belong equally to all parties in the Church; but will, if the present Measure is enacted, be withdrawn from approximately a third of its members. Some of those who resign from clerical office will receive some slight financial provisions. Those clergy who stay will not be eligible in law for appointment as diocesan bishops, and in practice, for any other diocesan office.

Because the Church is Established, any wish expressed by the General Synod to amend the formularies ought to be the subject of a Royal Commission, to ensure that fair treatment is being meted out to all sections of its membership, which have relied since the Church's

Establishment upon the formularies as the basis of a common life in the Church of England. One of the principle functions of the Ecclesiastical Committee might thus be to identify any Measure which involves such a change of constitutional significance, and to recommend in its Report to Parliament that there should be such an inquiry by Royal Commission. Any Measure which may result in an unravelling of the Reformation Settlement, and thereby occasion a division of the Church between two or more of its constituent parts, ought thus to be declared to be 'not expedient' for the Church. The General Synod will then need to cooperate with the Royal Commission, to decide whether its proposals ought still to be given the force of law; and if so, whether the Church is to remain Established; whether entrenched provision, such as concurrent endowment, needs to be made for those whose position in the Church is at risk; and whether the powers which the Synod exercises are in any way detrimental to the interests of the wider Church, in the parishes of England. It can hardly be right that the excessive powers of the mediaeval papacy, against which the Reformation Settlement was intended to defend the rights of the Church of England, should be paralleled in their exercise in this century by a Synod which is largely unelected, and whose spiritual authority to alter the Ministry is disputed by a large section of its members, even should Parliament confer upon it full legal powers to legislate as it wishes.

Neither Parliament, nor the Ecclesiastical Committee of Parliament, can reasonably be expected to settle doctrinal disputes within the Church of England, as a court of theological final appeal. In the end, if the Church wishes to ordain women as priests or bishops, or to replace the formularies, or to be disestablished, then on the evidence of what is clearly expedient for the Church, and on the basis of a clear consensus within it, it would be inappropriate for Parliament to block its mind, if expressed in a legally formulated and approved Measure which carried a full consensus of opinion within the Church. But the Ecclesiastical Committee would be completely justified in reporting to Parliament that a proposed Measure was not expedient where its secondary provisions, aside from its principal objective, would adversely or even unjustly affect a significant section of the Church. That the Priests (Ordination of Women) Measure falls into this category is evident. It proposes to exclude women from the office of bishop in the Church of England. It alters the formularies of the Church of England, although Parliament has not explicitly given the General Synod authority to do so; nor has such authority been explicitly debated in Synod or sought by Measure. Because it affects the doctrinal fundamentals which have lain at the heart of the common life of the Church since the Reformation, it will divide the Church and exclude from its fellowship a sizeable constituency of classical Anglicans. Section 2 of the Measure will create a category of second-class clergy, defined by their adherence to the former doctrines of the Church of England, who will be tolerated for the

time being as incumbents of freehold benefices, but who will be effectively excluded from higher preferment—thereby also being deprived altogether of leadership in the Church at the highest levels. It creates a new and unbiblical test of doctrine, contrary to Article 6, although the Church already permits clergy and even bishops publicly to deny or reinterpret key biblical doctrines such as the Virgin Birth, or the Resurrection (stated plainly by Article 4). The Measure breaches the biblical injunctions on Headship, and the tradition of the undivided Church as to the ordination of men as priests representing Jesus sacramentally, not as mere delegates, at the Lord's Table. It is contrary to the Submission of the Clergy Act, in proposing a Canon to enable a form of ministry which is not known to the 'customs, laws or statutes of this realm' and restricting the Royal prerogative as to who may be appointed to offices included in the patronage of the Crown, especially the episcopate. By dividing the clergy and bishops, without any realistic prospect of reconciliation, along entirely novel lines; and by creating entrenched doctrinal divisions outlined above; the Measure will end the comprehensive character of the Church which was the fruit of Tudor wisdom, and was formerly assumed to be guaranteed by the Reformation statutes and formularies. The creation of three 'visiting' bishops will do nothing to rectify the difficulty, nor will any Code of Practice drawn up by the House of Bishops which is not given statutory force.

If the present majority of General Synod wishes to press ahead with the ordination of women without the quality of consensus that should have first obtained, then in order to preserve the rights of the substantial minority which faces dispossession, there must be a Royal Commission established to consider the redistribution of the Church's benefices and its other considerable endowments. This will probably complete the process of disestablishment comparable to the Church of Scotland Act 1921, and enable the endowment of a new Anglicanism, for which there is ample precedent. Parliament has intervened to redistribute the endowments of the Church of Ireland and of the Church in Wales, following disestablishment; and to divide equitably the property and endowments of the Free Church of Scotland in 1905.

It is evident that the Church of England is in the process of radical change, of which the Priests (Ordination of Women) Measure represents a most immediate and symbolic example. The Measure would institutionalize in the ordained Ministry of the Church of England the liberalism in theology of which the 'feminist' theology represents an increasingly powerful voice. To secure its permanent dominance in the Church, the Measure will exclude by statute from the episcopate, and so ultimately from all influence, a whole constituency of the Church. It will make it impossible for opponents to make the Declaration of Assent in good conscience, and so preventing them from being ordained or from accepting any change of office in the Church which would require them to make the

Declaration of Assent, while Canon A4 remains unamended. Parliament may not wish to oppose doctrinal changes which demonstrably represent the mind of the Church: but in this instance there is demonstrably *not* a consensus, and there is substantial opposition which the Measure proposes to treat harshly. Parliament must take responsibility for the best interests of all concerned. It would clearly be unjust and contrary to the comprehensive tradition of the Church to permit one element so completely to prevail against another, to the extent of dispossessing it of its inheritance. That can never be expedient. If there is to be change on such a scale, against such strong opposition, the cost will inevitably be high. The Ecclesiastical Committee, and Parliament, assisted by the report and recommendations of a Royal Commission, must ensure that the cost is borne fairly; and that the price is not paid solely by those who have simply remained true to the historic formularies which have served the Church of England so well since the Elizabethan Settlement. Change to such a fundamental inheritance of faith can surely be accomplished only by entirely recasting the Reformation trust deeds of the Church, and by providing a new Elizabethan Settlement for the new churches which arise from the ashes of the old Church of England.

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