Response to GSMisc 1033: Women in the Episcopate – the Final Legislative Lap

1

The preamble to option 1 (esp para 28) gets to some of the heart of the matter of why there was no qualification of maleness in the draft Measure. The quote from the Revision Committee's report makes clear that not all traditional catholics have the same requirements but fails, even then, to mention the matter of "co-consecration", a concept which was introduced by the Bishop of Burnley but which was difficult even for other traditional catholics to define. Difficulties for the Revision Committee included the fact that traditionalists themselves could not agree about who would and who would not be acceptable male bishops. This must call into question the validity of their arguments.

The assertion in para 39 that the Measure is at risk of failing if it contains 5(1)c clearly has merit and is most welcome.

The Archbishop's argument that qualifying maleness would allow charges of misogyny to be avoided is excruciatingly insulting (para 33). It is an idea which the traditionalists have developed in the recent past in the context of women bishops; ("we are rejecting male as well as female bishops and therefore we cannot be accused of discrimination"). Women and their supporters are already accommodating misogyny and have been doing so with astonishing generosity for years. The responses to the unamended Measure from the Dioceses indicated that there was very wide acceptance of this.

To say that the phrase "male bishop" is "insufficient [and] does not go to the root of [the problem]" is incorrect. The position of the traditionalists and of the conservatives depends totally on a theology of gender and pandering to the notion of "pedigree" on the face of the legislation does nothing to alter this. In 2008, just before the Revision Committee started its work, senior women clergy wrote to the House of Bishops spelling out clearly that this was precisely what they would regard as "the price [which is] too high".

"We believe that it should be possible for women to be consecrated as bishops, but not at any price. The price of legal "safeguards" for those opposed is simply too high, diminishing not just the women concerned, but the catholicity, integrity and mission of the episcopate and of the Church as a whole. We cannot countenance any proposal that would, once again, enshrine and formalise discrimination against women in primary legislation. With great regret, we would be prepared to wait longer, rather than see further damage done to the Church of England by passing discriminatory laws. In this, we support the recent principled stand taken by the Archbishop and Bishops of the Church in Wales." (**Statement to the HoB from senior women clergy regarding the Single Clause Measure as outlined in The Manchester Report 2008)**

The Archbishop and Bishops of the Church in Wales had refrained that year from introducing legislation for women bishops because it was going to include a regime like the one proposed in the unamended Measure. A year later the Archbishop made it clear that he would not have "unacceptable male bishops" in the context the arrangements for women priests

[Dr Morgan said] "We have also given an assurance that there is room in the Church in Wales for those who in conscience cannot accept the ordination of women. However, we are not minded as bishops to perpetuate a system whereby conscientious objectors may avoid not only the ministry of ordained women but also the ministry of male bishops who have ordained them. That leads in the end to fundamental division and a denial that things are other than they are – that we do live in a church that ordains both women and men.

"There is a difference between recognising the fact that some individuals hold personal views that are at variance with what the Governing Body has decided about the ordination of women and reflecting those views in the structures of the church as if the Church in Wales as a whole had doubts about women's ordination and the bishops who ordained them. That to my mind would be a real act of injustice – to ordained women, bishops, indeed to the whole church."

The Revision Committee's solution to meeting the wishes of General Synod was to allow the traditionalists to function exactly in the way that they would wish without spelling out the "theological convictions" which underlie the regime they appear to require on the face of the legislation. If this had been a problem to which there was another solution, then it is likely that the Revision Committee and its advisers would have found it. 5(1)c was demonstrably not such a solution.

Moreover, retaining clause 5(1)c would make the qualifications of maleness, currently reserved for the Code of Practice, become a matter of primary legislation and therefore requiring a two thirds majority in Synod were an amendment to this part of the legislation to be proposed . This could well be seen as a measure of its "substance" as an amendment. (See below)

2

Option 2 is clearly the most attractive notwithstanding para 46. Many of the newer members of Synod have been taken by surprise by all these arcane arguments and what some of them require is the unflinching endorsement of the Measure by their leaders. If the Archbishops were to throw their weight behind the unamended draft Measure on the basis that it contains all the provision necessary for extremists at either end to continue to practice as they have been doing up to now by statute **and** by grace and trust, then the very few changes of heart which are required among the House of Laity could be achieved.

Evidence has not been provided about the numbers in the House of Laity to support the assertion that the unamended measure would fail in that House. Mention was made of examining voting patterns and taking soundings in the Dioceses. These are not convincing without the resulting calculations which underlie the conclusion. If Simon Killwick's estimate that the traditionalists and conservatives form 35% of the House of Laity, then the numbers who need to change their vote in order to achieve 66.6% in favour in that House would only be four. Changing hearts and minds is the life's work of bishops and archbishops and it would be strange indeed if , between them, they could not effect a change of heart in this small number if they put their weight behind the unamended Measure. The risk of taking the alternative route of retaining 5(1)c or something like it might well be greater not only in the House of Laity but, more importantly, in the House of Clergy.

Para 44 requires some attention. Reference is made to the "adverse impact" of withdrawing something once given. However, the amendment to clause 8 remains and even proponents of the unamended Measure have accepted this compromise as they have accepted so many others. Meanwhile, no reference is made to the "adverse impact" on others of having added 5(1)c in the first place. It is difficult to grasp the notion that this detrimental effect apparently does not matter.

The whole argument in this and other respects appears to be couched in terms of those opposed and how to placate them, regardless of the price to be paid by those in favour. Women, for all their gifts, numbers and ministerial ministry, appear to remain the problem rather than the solution.

3

There is no specific recognition in the paper of the fact that 5(1)c was incomplete. It required further elucidation in the CoP. Of course, when the outworking of 5(1)c in the Code was attempted, the full horror of it became apparent. Although there is some attempt here to draft out possibilities for the Code which might fit with each of the options, there is no concession that Synod will not be fully informed about the effect of any alternative to 5(1)c unless the draft CoP is fully worked out in respect of it. This is because

(a)the current draft CoP covers the rest of the Measure and any 5(1)c replacement, like its predecessor, will stand alone (bearing in mind the importance of it) in not being so covered and, more importantly,

(b) any replacement of it is, like the whole of clause 5, pertaining to the "Guidance in a Code of practice" itself (5(1) and, finally because

(c)the change to the draft Measure and the consequent change to the CoP should be considered together when considering whether or not the amendment in question is an amendment of substance.

4

The assertion in para 4 that "the General Synod in November [will not]have the power to make amendments or pass a further reconsideration motion under SO94" is not explained and this information is not readily available from the Standing Orders. Church House should provide some explanation and verification of this stipulation.

5

Substantial change. There may be reasons to ask the lawyers to look again at the criteria for deciding whether or not a change is substantial, not to revisit the first such decision but to inform everyone in preparation for the next potential amendment. The reasons include

(a) the fact that two thirds of the Synod voted for 5(1)c to be reconsidered despite the decision that it was insubstantial. Clearly two thirds thought that the amendment was indeed sufficiently significant to require extra time before it could be voted on by Synod. This might be an indication of substance.

(b)the fact that this decision was without precedent and there were presumably no established legal principles to go on. In those circumstances, it may well be that the views of Synod members have legal significance.

(c)the possibility of using an alternative principle to judge the level of substance in the change to the Measure, namely the fact that 5(1)c effectively made matters dealt with in the Code (draft CoP para 40)alone and on which the Measure was deliberately silent become matters dealt with on the face of the Measure. This is because the Measure would then have dictated what should be included in the Guidance on the selection of these supernumerary bishops. As a result, any amendment in relation to those matters over the years would require the 2/3 majority in all three houses regime, rather than a simple majority regime. Many would have thought that this alone would be sufficient to render the new clause substantial.

The lawyers have refrained from publishing the criteria which they used to determine the substance (or lack of it) in the case of 5(1)c. Would they now publish the criteria they intend to use in the event of any new or substitute version of 5(1)c? Since 5(1)c was never voted upon or accepted, would the lawyers also confirm that the substance of any change be considered in relation to the unamended draft Measure and not in relation to the draft Measure after the addition of 5(1)c

6

It would be interesting to know why the common practice of peer review by lawyers was not followed. Commonly, as I understand it and have experienced it, neither the lawyer who had drawn up a piece of legislation or an amendment nor an immediate colleague would be invited to pass further comment of such importance on that same amendment. The work would be given to an independent lawyer. Otherwise there is a very clear conflict of interest. In house lawyers cannot be other than acutely aware of the great practical and other difficulties there would be in sending the amended draft Measure back to the Dioceses. Legal advice on the matter of substance is not difficult to estimate from the decision reached by the Group of 6. It will be more convincing to the Dioceses as well as to General Synod members if they know it comes from lawyers who are not themselves embroiled in the tortuous processes which could result from "adverse advice". There is also the risk that such considerations will influence any amendment which might be proposed on the advice of the very lawyers who will have to deal with the difficulties mentioned in the aftermath of the House of Bishops' decision. This will again be a matter of great importance unless 5(1)c is simply deleted.

7

There is confusion in much of the paper about who makes the judgement about which sort of bishop is suitable for which parish and this would be particularly important where there was any dispute. Para 37 says

it (5(1)c) provides no basis for the making of guidance which would allow parishes to choose their own bishop or insist that the male bishop selected for them reflected their own churchmanship.

Para 38 continues this theme which is very welcome but, of course, without the outworking of the CoP in respect of the amendment, this was not at all clear. Was it the Bishops' intention to make sure that these matters were in the Code of Practice? Is that still their intention? However, when we get to para 56, we find a different approach. The "downside" of Option 5 is apparently that it "provides no assurance that the guidance would result in the provision of ministry that parishes would be able to receive", implying that the decision should lie with the parishes in question.

It may take quite a simple change to make this clear on the face of the Measure since that is what is considered important. In options 3,4 (both examples), 5, 6 and 7 it would be possible to include the words "by the Diocesan Bishop" after the word "selection" and that would make it very clear where the authority lay in the matter. Option 4 (para 55) would then read

"(c) the selection by the Diocesan Bishop of male bishops and the selection of male priests generally to exercise ministry in parishes whose parochial church councils issue letters of request under Section 3"
A similar change could be made in each of the other options.

8

If we need to replace 5(1)c (which is by no means a given) then we need to bear in mind that any replacement risks elevating the qualification of maleness to a matter which will need a 2/3 majority to amend it. Option 4 might avoid this danger but there should be a written assurance from the lawyers that this is the case. It is the most likely to be found acceptable by women clergy and their supporters (subject to the amendment in para (6) above). The relevant CoP paragraphs will be essential before it can be properly assessed and voted upon but, as noted, the paper is not sufficiently encouraging on this matter.

9

The guidance given in the Code of Practice would also need to be framed in terms which avoided carrying any implication that the parish could regard as 'unsuitable/inappropriate anyone who did not match their expectations in all respects', as set out in paras 37-38. Further, it will need to spell out that there may well be a case for one supernumerary bishop to serve both conservative evangelical and traditionalist catholic parishes.

10

It is most unfortunate that the voting record of none of the three CoP bishops (Chichester (only for July 2012 vote), Coventry and Eds and Ipps) fully represents the female clergy line (ie in favour of the Southwark amendment and not of the Spiers amendment in February 2012 and in favour of the adjournment in July 2012). Indeed, the trio are heavily weighted against the acknowledged wish of the Church as a whole,(as indicated by the Dioceses) to enact the unamended draft Measure. It would be helpful if they were joined by women when resuming their work.

11

My own solution which I submitted very shortly after the July Synod has not been acknowledged as yet but I still think that a reference to the setting up the Diocesan Scheme might be a far better point at which to tackle this issue. The unamended measure already provides not only the opportunity but the obligation on the Diocesan to consult with the Diocesan Synod on the scheme which will identify the bishop(s) on whom the Diocesan will rely to provide oversight (draft Measure 2(9) and CoP para 40). It would read

Clause 5

The House of Bishops shall draw up, and promulgate, guidance in a Code of Practice as to

a.

b.

c. t**he identification in the Diocesan Scheme both of the bishop or bishops who will exercise episcopal ministry by delegation to parishes who issue a letter of request and the circumstances under which alternative provision might be made in a particular case (adapted from draft CoP para 40)**

I add it here

(a) to show that thought has been given to alternatives
(b) because the Diocesan would be making the decision once and for all at the start of the episcopacy, with the agreement of the Synod and relieving him or her of the obligation to spend time on negotiating the issue every time there is a letter of request.
(c) because, at the time of drawing up the scheme, there would be a measure of detachment (albeit limited) which would not pertain when one particular parish was in question

12

What a long way we have come from 1986 when the then Archbishop of Canterbury said, in General Synod,

'At the root of some of the options set out is the view, apparently held by some, that "Bishops who had associated themselves with the ordination of women" would no longer be "valid ministers of the sacraments". I find this an extraordinary attitude. The scholastic doctrine, that the "unworthiness of the minister hindereth not the effect of the sacrament" is enshrined in Article 26. It is also traditional catholic theology that unorthodoxy does not invalidate the sacraments. The opposite view seems to me to introduce uncatholic heresy. How could we allow a situation where individual church members or groups decide who are real bishops and who are not? To reject the bishop is to reject the Church that he represents. I do not believe that it is possible to be an Anglican and not be in communion with your bishop and - I say this with deference and due humility - with the See of Canterbury.'

It is difficult for women not to feel they have been badly let down in the interim.

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